

**Bail Slip**

Moorthy @ Ramanathan aged about 27 years, s/o. Muniyandi, Petitioner/Applicant/Accused/Sole Accused was released on bail made by Court passed in MP 1/2015 in CrI.A.No.242 of 2015 dated 08.10.2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED On : 15.11.2016

PRONOUNCED ON : 30.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.A.[MD].No.242 of 2015

and

M.P.(MD).No.1 of 2015

Moorthi @ Ramanathan

: Appellant/Accused
Sole accused

Vs.

State rep. by
the Inspector of Police,
Meemisal Police Station,
Pudukkottai.
(Crime No.69/2012)

: Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 27.04.2015, made in S.C.No.120 of 2013, by the learned Additional District and Sessions cum Special Judge for EC and NDPS Act cases, Pudukkottai.

For appellant : Mr.G.Bhagavath Singh

For respondent : Mr.K.Duraipandian,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by **S.NAGAMUTHU, J.**)

The appellant is the sole accused in S.C.No.120 of 2013 on the file of the learned Additional District and Sessions cum Special Judge for EC and NDPS Act cases, Pudukkottai. He stood charged for the offence under Section 302 IPC (2 counts). By judgment dated 27.04.2015, the trial Court convicted the appellant/accused under Section 302 IPC for 2 counts and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,50,000/-, for each count, in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the

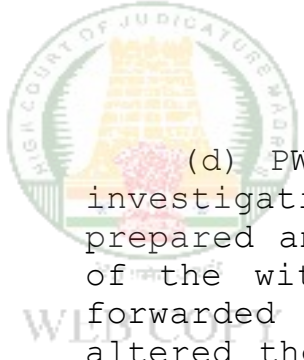
appellant/accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows;

(a) The deceased in this case were one Mrs. Tamilselvi and Mr. Arjunan (hereinafter referred to as D1 and D2 respectively). D1 was the wife of D2. They were residing at S.P. Pudukkadu Village, in Ramanathapuram District. For quite some time, D2 had gone to Hyderabad on account of his job. Thus, D1 alone was at her house at S.P. Pudukkadu Village, Ramanathapuram District. It is alleged that the accused with the intention to have illicit sexual relationship with D1, on few occasions made sexual overtures towards her. The accused also belongs to the same village. D1 informed the same to PW1, who is her brother and others. She informed the same to D2 also. To be precise, on 20.07.2012 around 7.30 p.m. when D1 alone was at her house, the accused went into the house and extended sexual overtures. Mr. Palani (PW8) and Mr. Kuppu (PW7), who were neighbours, caught hold the accused. In respect of the same, around 10.00 p.m. on the same day, there was a panchayat held at the house of one Shanmugam. The accused felt ashamed of the same. It is the further case that on account of the above incident, he developed grudges against D1 and D2.

(b) On 26.07.2012, around 6.00 p.m. D1 and D2 were proceeding from south towards north in a TVS Scooty bearing Registration No. TN-07-W-2156. In fact, they were returning from Gobalapattinam to S.P. Pudukkadu Village. It was a broad road. However, there was no divider. They were followed by PW1 and PW2 in another motorcycle. D2 rode the motorcycle and D1 was sitting as a pillion rider. When they were nearing the village known as Makkalnatchi, from the opposite direction a TATA Sumo car bearing Registration No. TN-65-J-9105 was proceeding towards north. The said vehicle was driven by the accused. At that place, there was a slight curve in the road. The TATA Sumo car which was driven by the accused, on the western side of the road, suddenly, crossed the median line went to the eastern side of the road, dashed against the motorcycle in which D1 and D2 were travelling and dragged them around 20 feet and at last, the vehicles came to a halt. The accused got down from the car and ran away from the scene of occurrence. D1 died instantaneously. D2 fell unconscious due to injuries.

(c) PW1, immediately, took D2 in an ambulance to Manamelkudi Primary Health Centre, from where he was taken to the Government Hospital at Ramanathapuram. After the first aid treatment, he was shifted to the Government Rajaji Hospital, Madurai. But, on the next day, D2 succumbed to the injuries in the hospital. On 26.07.2012 at 11.30 p.m., PW1 went to Meemisal Police Station and made a complaint under Ex.P1. The Then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No. 69 of 2012 under Sections 307 and 302 IPC against the accused. Ex.P11 is the FIR.



(d) PW17, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of the witnesses. He conducted inquest on the body of D1 and forwarded the same for postmortem. After the death of D2, he altered the case into one under Section 302 IPC (two counts). He conducted inquest on the body of D2 in the hospital. Then, he forwarded the same also for postmortem.

(e) PW12 - Dr.T.Shanmugham conducted autopsy on the body of D1 on 27.07.2012 and found the following injuries:

"Head - Laceration about 5 x 0.25 cm over right parieto temporal area.

Eyes - closed.

Nose - No Bleeding from nose.

Abdomen - Multiple injuries abrasion over lower abdomen.

Genitalia - Normal.

Right Thigh - fracture femur present.

Left Thigh - Fracture femur present.

Laceration over right dorsum of foot.

Abrasion left elbow.

Internal finding : Haematoma 5 x 0.5 cm over right parieto temporal area.

Fracture parietal bone present.

Liver lung, Lung : appears normal.

Kidney, spleen, genitalia : Normal

Intestine, stomach appears : Normal."

Ex.P6 is the postmortem certificate. He gave opinion that the death of D1 was due to shock and haemorrhage due to the multiple injuries sustained.

(f) PW15 - Dr.Saravanan conducted autopsy on the body of D2. He found the following injuries:

"1.Abrasion 6 cm x 4 cm noted over right forehead.

2.Sutured lacerated wound 4 cm x 2 cm x 1 cm noted over right forehead.

3.Abrasion 6 cm x 4 cm noted over right cheek.

4.Abrasion 10 cm x 6 cm noted over right side of abdomen.

5.Abrasion 2 cm x 1 cm noted over left knee.

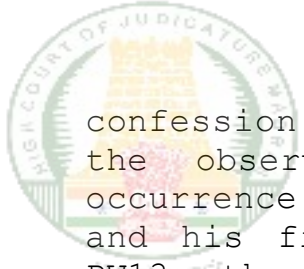
6.Abrasion 4 cm x 2 cm over left knee.

7.Abrasion 4 cm x 3 cm noted over right knee.

8.Right leg deformed.

On dissection: The underlying bone found in its upper 1/3rd with surrounding bruising noted.

9.Left ankle deformed.



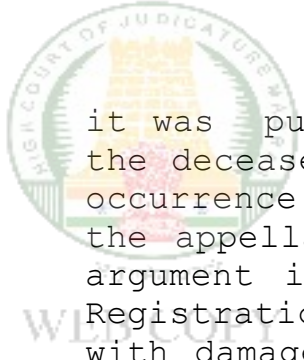
confession made by him. PW11 has spoken about the preparation of the observation mahazar and rough sketch in the place of occurrence. PW12 has spoken about the postmortem conducted on D1 and his final opinion regarding the cause of the death of D1. PW13, the Motor Vehicle Inspector, has stated that she examined the car as well as motorcycle and gave opinion that there was no mechanical failure. PW14 has stated that when he was on duty at Manamelkudi Government Hospital, D2 was brought to him for treatment around 07.15 p.m. He found a number of injuries on him. His condition was serious. Therefore, he forwarded him to the Government Hospital at Dindigul. PW15 has spoken about the postmortem conducted on the dead body of D2 and his final opinion. PW16, a Head Constable, has stated that he handed over the FIR to the learned Judicial Magistrate, as directed by the investigating officer. PW17 and PW18 have spoken about the investigation done and the final report filed.

(k) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any document on his side. The defence of the accused was that D1 and D2 had died in a motor accident and it was a hit and run case and therefore, according to the accused, he has been falsely implicated as the vehicle which hit the deceased and the driver of the same were not known. It is his further defence that the so called eyewitnesses are motivated witnesses and thus, they have falsely implicated him. Having considered all the above, the trial Court convicted him, as detailed in the first paragraph of this judgment. That is how he is before this Court with this appeal.

3. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

4. As we have already narrated, there are five eyewitnesses to the occurrence, who have been examined as PWs.1 to 5. All these witnesses have stated that D2 was riding the motorcycle in which D1 was sitting as a pillion rider. The road at that place was running north towards south with a slight curve. The deceased were proceeding towards south keeping to the left i.e., on the eastern side of the road. PWs.1 and 2 were riding another motorcycle behind D1 and D2. The other eyewitnesses were also present at the time of occurrence. According to them, the car bearing Registration No. TN-65-J-9051, which was coming from the opposite direction on the western side of the road, at the place of occurrence, went to the eastern side of the road and dashed against the motorcycle. These eyewitnesses have vividly spoken

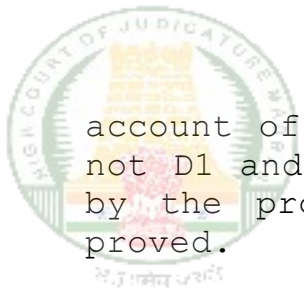
5. But, the learned counsel for the appellant would submit that



it was purely a motor vehicle accident and the vehicle which hit the deceased was not known as the same fled away from the scene of occurrence. In other words, according to the learned counsel for the appellant, it is a hit and run case. The hollowness of this argument is so explicit from the very fact that the car bearing Registration No.TN-65-J-9051 was found at the place of occurrence with damages on the front side and the vehicle was seized by PW17 during investigation from the place of occurrence. The observation mahazar and the rough sketch prepared at the place of occurrence would also go to show that the said car was found lying with damages at the place of occurrence. The motorcycle in question was also found lying with damages. PW9 is the owner of the car. Ex.P2 is the Registration Certificate of the said vehicle. PW9 has stated that the accused was the driver of the said vehicle and that on the day of the occurrence, around 12.00 noon, the accused took the said car from the possession of PW9. All the eyewitnesses have also stated that the said vehicle was driven by the accused at the time of occurrence. From these evidences, the prosecution has clearly established that the vehicle which hit the deceased was only TATA Sumo car bearing Registration TN-69-J-9051 of PW9 and that the same, at the time of the occurrence, was driven only by the accused. We do not find any reason to disbelieve the evidences of these witnesses.

6. Though the learned counsel for the appellant/accused would submit that the presence of these eyewitnesses is highly doubtful, we do not find any reason to doubt about their presence at the place of occurrence, because their evidences are very cogent and convincing. Though all these witnesses examined at length, nothing has been elicited during such examination. Therefore, we hold that the evidences of PWs.1 to 5 inspire the confidence of the Court and from their evidences, the prosecution has clearly established that the car in question was driven only by the accused which dashed against the deceased and caused their death.

7. PWs.1, 7 & 8 have spoken about the earlier incident held on 20.07.2012. According to them, on 20.07.2012, when D2 was not at his home, the accused entered into the house and made sexual overtures towards D1. This was noticed by PW7 and PW8. They caught him hold and brought him to the Panchayat. This is stated to be the motive against D1 and D2. But, it is not in evidence that D1 resisted the said sexual overtures allegedly made by the accused. It was not the first occasion such an occurrence had taken place. When D2 had gone to Hyderabad for job, on few occasions, it is alleged that the accused had gone to the house of D1 and misbehaved with her. Had it been true that D1 was not a willing party, she would have resisted and she would have cried. It is not in evidence that on 20.07.2012 when the accused entered into the house of D1, D1 resisted. It appears that when D1 and the accused were together, PW7 and PW8 had seen them and they brought the accused for panchayat. Thus, if at all there was anyone against whom the accused would have developed anger and grudge on



account of the above incident, that would be only PW7 and PW8 and not D1 and D2. Thus, in our considered view, the motive alleged by the prosecution is doubtful and the same has also not been proved.

8. Now, again reverting back to the occurrence, it is in evidence that the car driven by the accused was proceeding towards north. At the place of occurrence, the road is not straight, there is a curve. The car had been driven in a rash and uncontrollable speed. Going by the breadth of the road, when the car had negotiated in the curve, the accused would have lost control and that is the reason why the car had gone to eastern side of road and dashed against the motorcycle driven by D2. In our considered view, the act of the accused in allowing the car to go to the other side of the road was not an intended one, but it was beyond his control. Therefore, in our considered view, the act of the accused would neither fall under first limb nor under second limb of Section 299 IPC. But, at the same time, in our considered view, the act of the accused would squarely fall within the third limb of Section 299 IPC.

9. The accused was not new to the said area, more particularly the road and he must have been aware of the curve in the road. Knowing that there was a curve and knowing that if the vehicle was driven in such a great speed, it would be difficult to control the vehicle, while negotiating in the curve and so the vehicle would go to the other side of the Road, the accused had driven the vehicle in such a uncontrollable speed. Thus, the accused had full knowledge, as required under Section 299 IPC, that his act was likely to cause death of anybody coming from the opposite direction by crossing to the other side of the road. Thus, in our considered view, the act of the accused would squarely fall within the third limb of Section 299 IPC. At the same time, from the evidences available, we are of the view that the act of the accused would not fall under the fourth limb of Section 300 IPC and so he is liable to be punished under Section 304(ii) IPC.

10. The learned counsel for the appellant/accused would submit that assuming that the car driven by the accused had dashed against the deceased and caused their death, the act of the accused would fall only under Section 304-A IPC and not under 304 IPC. This argument does not persuade us at all. Section 304-A IPC speaks of causing of death by doing any rash or negligent act. In our considered view, the act of the accused, in the instant case, cannot be attributed to his alleged negligence. Similarly, the act of the accused, in the instant case, is not a simple rash act. But, it is an act done with the knowledge that by the said act, he was likely to cause the death of any one coming from the opposite direction. Thus, in our considered view, the act of the accused is not an offence under Section 304-A IPC, but the same, as we have already held, is only an offence punishable under

Section 304(ii) IPC.

11. Now turning to the quantum of punishment, the accused at the time of accident was hardly 24 years old. He has no bad antecedents. He has got lot of chances for reformation. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay the fine for each count would meet the ends of justice.

12. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused for the offence under Section 302 IPC (2 counts) is set aside and instead he is convicted under Section 304(ii) IPC (2 counts) and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1-1/2 lakhs for each count, in default to undergo rigorous imprisonment for two months. On realisation of the said fine amount, the entire fine amount of Rs.3 lakhs shall be paid to the legal heirs of D1 and D2 by the trial Court. The sentence shall run concurrently. The sentence already undergone by him shall be given set off under Section 428 Cr.P.C. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

- 1.The Additional District and Sessions cum
Special Judge for EC and NDPS Act cases,
Pudukkottai.
 - 2.The District and Session Judge
Pudukkottai.
 - 3.The Judicial Magistrate
Pudukkottai.
 - 4.To Through The Chief Judicial Magistrate
Pudukkottai.
 - 5.The Superimtentend
Central Prison, Trichy.
 - 6.The Inspector of Police,
Meemisal Police Station,
Pudukkottai.
 - 7.The Additional Public Prosecutor,
Madurai.
- +1 cc to Mr.G.Bhagavathsingh, Advocate, SR.NO.78639



Gcg

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**Pre-delivery Judgement made in
Crl.A.[MD].No.242 of 2015
Dated: 30.11.2016**