

Bail Slip

That the Appellant herein/Sole Accused viz., Chitra W/o.Arumugam was directed to be released on bail as per order dated 12/06/2009 made in M.P 1/09 in CrI.A.254/09 on the file of the court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.254 of 2009

Chitra ... Appellant/Accused

Vs

State rep. By
The Inspector of Police,
Thudiyalur Police Station,
Coimbatore,
Coimbatore District,
Crime No.1146 of 2007. ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 22.04.2009 passed in S.C.No.186 of 2008 on the file of the I Additional District cum Sessions Court, Coimbatore.

For Appellant : Mr.Abdul Rahmaan

For Respondent : Mr.M.F.Shabana,
Gov. Adv. (CrI. Side)

JUDGEMENT

The sole accused in S.C.No.186 of 2008 on the file of the I Additional District and Sessions Judge, Coimbatore, is the appellant herein. He stood charged for an offence under Section 302 IPC . By Judgment dated 22.04.2009, the trial court convicted the appellant/accused under Section 304(ii)IPC and sentenced him to undergo rigorous imprisonment for 3 years. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The deceased, in this case, one Chinnasamy, is the father of the accused. The deceased and his wife, the mother of the appellant, were working in a brick-kiln, belongs to P.W.1 at Chinnathadakam village, Coimbatore District. The accused was married and she was living at Erode. The deceased was a drunkard and used to quarrel with the mother of the appellant demanding money from her for buying liquor. On 11.09.2007, the accused came to her parental house and at about 8.00 a.m., the deceased quarreled with his wife, and the accused interfered, persuaded the deceased not to quarrel with her mother. But, once again, at about 3.30 p.m., in the brick-kiln, belonging to P.W.1, the deceased quarreled with his wife and beaten her. At that time, unable to bear the torture given by the deceased to her mother, the appellant attacked the deceased with wooden log which was available in the scene of occurrence on his head and caused his death. Thereafter, P.W.1 has given a complaint before the respondent police.

3. On receipt of the complaint, P.W.10, Sub-Inspector of Police, registered a case for an offence under Section 302 IPC and forwarded the same to the jurisdiction magistrate and copies of the same to his higher officials. P.W.11, Inspector of Police, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.5 drew a Rough Sketch, Ex.P.12 in the presence of the witnesses and he also recovered blood stained soil(M.O.2), sample soil(M.O.3) and wooden log(M.O.7) from the place of occurrence. Then, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Inquest Report, Ex.P.13 and sent the dead body of the deceased for postmortem to the Government Medical College Hospital, Coimbatore, along with a memo.

4. P.W.8, Doctor, working in the Government Medical College Hospital, Coimbatore, conducted postmortem/autopsy on the dead body of the deceased, on 12.09.2007, at 3.00 p.m and found the following injuries:

"Contusion noted over left temporo occipital regions of the scalp measuring 12x7 cm. On dissection of scalp, sub scalp contusion over left temporo occipital regions 13x9 cm. Comminuted depressed fracture noted in the left temporo occipital bones measuring 12 x 7 cm. Sub arachnoid hemorrhage over entire brain surface, more dense over left temporo occipital and both cerebellar surfaces. Multiple

irregular criss cross crack fractures noted in both anterior and middle cranial fossa."

Ex.P.7 is the Postmortem certificate. P.W.8 gave opinion that the deceased would appear to have died of head injuries sustained by him. She has also given a opinion that the deceased had consumed ethyl alcohol prior to death and he could have been under its influence at the time of his death.

5. In the mean time, on 12.09.2007, the accused appeared before P.W.4, and she has voluntarily given a confession admitting her guilt and P.W.4 produced her along with her confession, Ex.P.2, before P.W.11, Inspector of Police. P.W.11 arrested the accused and on such arrest, she has voluntarily given a confession and based on the disclosure statement of the accused, he also recovered M.O.3, wooden log. After completion of investigation, he laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 11 witnesses were examined and 13 documents were exhibited, besides 7 material objects were marked.

7. Out of the witness examined, P.W.1 is the owner of the brick-kiln, where the deceased and his wife Palaniammal were working and he is also an eye-witness to the occurrence. According to him, the deceased, who was a drunkard, used to beat his wife demanding money for consuming liquor. On 10.09.2007, at about 10.00 a.m., the mother of the appellant informed him that the deceased was quarreling with her by demanding money for consuming liquor, and P.W.1 compromised them. On the date of occurrence, the accused, a married daughter of the accused living at Erode, came to her parental house. On that day, at about 8.00 a.m., the deceased quarreled with his wife, and the appellant interfered and persuaded the deceased not to quarrel with her mother. Despite the same, again at about 2.00 p.m., the deceased quarreled with his wife and had thoroughly beaten her. At that time, the appellant/accused attacked the deceased with a wooden log available in the scene of occurrence. P.W.2, who was an employee in the brick-kiln, also an eye-witness to the occurrence, has also spoken about the quarrel between the deceased and his wife and while the deceased beaten his wife, the appellant/accused intervened and persuaded him not to attack her mother, subsequently, the appellant attacked the deceased with a wooden log available in the scene of occurrence. P.W.3, another employee, also an eye-witness to the occurrence. According to him, since there was a quarrel between the deceased and his wife, the appellant intervened and attacked the deceased with wooden log. P.W.4, Village President, before whom, the

accused appeared and has given a extra-judicial confession, P.W.4, produced the accused before the respondent police along with special report. P.W.5 is a witness to the observation mahazar and the confession given by the accused. P.W.6 is a witness to the observation mahazar and recovery of material objects. P.W.7 is a witness to the recovery of material objects and mahazar. P.W.8, Doctor conducted postmortem/autopsy on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.9, Head Constable, accompanied the dead body of the deceased for postmortem to the Government Hospital, Coimbatore. P.W.10, Sub-Inspector of Police, has spoken about the registration of the case. P.W.11, Inspector of Police, conducted investigation, arrested the accused, and recorded the statements of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses and on completing investigation, he laid charge sheet against the accused.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. One Mr. Palaniammal, mother of the accused, was examined as D.W.1 and marked the xerox copy of the confession statement given by the accused before P.W.4. According to D.W.1, on the date of occurrence, when the deceased was working in the brick-kiln, fell down from 50 feet height and sustained injury and thereafter, DW1 called the accused, who was residing at Coimbatore and she came to the scene of occurrence at about 4.00 p.m., thereafter, the police arrested her.

9. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

10. We have heard Mr. Abdul Rahman, learned counsel appearing for the appellant and Mr. M.F. Shabana, learned Government Advocate (Crl. Side) appearing for the State and also perused the records carefully.

11. There are 3 eye-witnesses to the occurrence. P.W.1 is the owner of the brick-kiln, where the occurrence took place. P.W.2 and 3 are the employees in the brick-kiln. It is the consistent evidence of all the 3 witnesses that the deceased was a drunkard and he used to quarrel with his wife frequently and the accused being a married daughter, residing at Erode, came to her parental house and she was there at the time of occurrence. On the date of occurrence, at about 8.00 a.m., the deceased quarreled with his wife demanded money and had beaten her and P.W.1 compromised them. Again at about 2.00 p.m., the deceased quarreled with D.W.1 demanding money and attacked her. At that time, the accused persuaded the deceased not to quarrel

with her mother. Despite the same again at about 3.00 p.m., the deceased quarreled with D.W.1 and beaten her demanding money. At that time, being provoked by the act of the deceased, the accused attacked the deceased with a wooden log, which was available in the scene of occurrence and caused his death. Subsequently, she also appeared before the Village President, P.W.4 and has voluntarily given a confession and based on her disclosure statement, wooden log(M.O.7) was recovered from the scene of occurrence.

12. Since P.W.1, is the owner of the brick-kiln, and P.Ws.2 and 3, who are all employees working along with the deceased in the same brick-kiln, there is no reason to disbelieve their evidence. It is their consistent evidence that it is only this accused attacked the deceased with wooden log and caused his death. Even though D.W.1, the mother of the appellant came out with another story, it cannot be believed, as she is an interested witness and her evidence is also not corroborated by the medical evidence. Hence, I am of the considered view that the prosecution has proved the charges beyond any reasonable doubt that only this accused alone attacked the deceased and caused his death.

13. The next question is what was the offence that was committed by the accused by the said act?. It is the evidence of P.Ws.1 to 3 that the deceased was a drunkard and frequently quarreling with his wife D.W.1. The accused, daughter of the deceased and DW.1, was residing in Erode and came to her parental house. On the date of occurrence, in the morning 8.00 clock, the deceased quarreled with D.W.1 demanding money and at 2.00 p.m., again quarreled with D.W.1 demanding money, the accused persuaded the deceased, her father, not to beat her mother. Thereafter, once again, at about 3.30 p.m., the deceased attacked D.W.1 demanding money. At that time, the accused, being provoked by the acts of the deceased, which was so sudden and grave, attacked the deceased with a wooden log, which was available in the scene of occurrence and the deceased succumbed to the injuries. It is not a premeditated murder. Even though the accused would not have had any intention to cause the death of the deceased, definitely, she could have had the knowledge that her act would be imminently dangerous and it must, in all probability, would cause death or such bodily injury as is likely to cause death. Hence, the appellant/accused is liable to be punished under Section 304 (ii) IPC and the court-below also rightly convicted the accused under Section 304 (ii) IPC.

14. So far as the quantum of punishment, the accused is a married lady, having two children. She has no bad antecedent and she has no intention to cause death of the deceased. The

deceased, her father, who was drunkard, beaten her mother continuously, being provoked by the act of the deceased as her mother was constantly put to torture by the deceased, she lost her mental balance and attacked her with a wooden log, which was available in the scene of occurrence, without any intention to murder him. Considering the mitigating as well as aggravating circumstances, sentence is modified to that of the period already undergone would meets the ends of justice.

15. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellant in S.C.No.186 of 2008 under Section 304(ii) IPC, is confirmed and the sentence is modified to that of the period already undergone.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

To

1. The I Additional District cum Sessions Judge,
Coimbatore.

2.do Thro The Principal Sessions Judge,
Coimbatore.

3.The Judicial Magistrate No.1,
Coimbatore.

4.do Thro Chief Judicial Magistrate,
Coimbatore.

5.The Inspector of Police,
Thudiyalur Police Station,
Coimbatore,
Coimbatore District,

6.The Public Prosecutor,
High Court, Madras.

7.The District Collector,
Coimbatore.

8.The Director General of Police,
Mylapore, Chennai-4.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to C.D.Sugumar, Advocate in sr.no.5666

CrI.A.No.254 of 2009

KJI (CO)
NR 20/11/2017



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