

Bail slip in Crl.A. 431/2009:

The Appellant/Accused namely Nalliappan S/o Paramasivam was ordered to be released as bail by order of this court dated 05.08.2009 and made in Crl.M.P. No 1/2009 in Crl.A.431/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.431 of 2009

Nalliappan

S/o.Paramasivam

... Appellant/Accused

Vs.

State represented by

Inspector of Police,

Rasipuram Police Station.

Crime No.599 of 2008

... Respondent/Complainant

Criminal Appeal preferred under Section 374 (2) of Code of Criminal Procedure against the judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.55 of 2008 on 10.07.2009.

For Appellant : Mr.S.Ashok Kumar, senior counsel
for Mr.P.Palaninathan

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

J U D G M E N T

This appeal arises against the judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.55 of 2008 on 10.07.2009.

2. Prosecution case is that there was a dispute over agricultural land between deceased and accused. On 20.05.2008 at about 09.30 a.m., while the accused was ploughing his land with a tractor driven by one Sundaram, the deceased asked the said Sundaram not to carry out ploughing work near his canal. Angered thereby, accused pushed the deceased forcibly owing to which the deceased fell down and died instantaneously. A case was registered in Crime No.599 of 2008 on the file of respondent for offence u/s.302 IPC. Upon completion of investigation, a charge sheet was filed before learned Judicial Magistrate, Rasipuram and on committal, the case was tried in S.C.N.55 of 2008 on the

file of learned Principal Sessions Judge, Namakkal. Before trial Court, prosecution examined 10 witnesses and marked 14 exhibits and 1 material object. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, grand son of deceased, an eye witness to the occurrence, spoke to the occurrence, accused's action resulting in the death of deceased and preference of Ex.P1, complaint. PWs.2 and 3, wife and daughter of deceased, eye witnesses to the occurrence, have also spoken on the same lines.

3.2. PW-4, driver of the tractor, spoke to carrying out ploughing work using his tractor, on rent basis, in the accused's land and that he stopped such work since the same was prevented by deceased. PW-4 has deposed to knowing both prosecution witnesses and the accused prior to the occurrence.

3.3. PW-5, who went to deceased's brickyard to purchase bricks spoke to having witnessed the occurrence.

3.4. PW-6, a worker under the deceased, spoke about the occurrence and of attesting Ex.P2, observation mahazar.

3.5. PW-7, Doctor, who conducted post-mortem on the body of deceased, has opined that the deceased would appear to have died of cardio-respiratory arrest due to shock and myocardial failure.

3.6. PW-8, Village Administrative Officer, spoke to visiting the place of occurrence along with Inspector of Police and of issuing a certificate informing that the water canal belongs to both deceased and accused. Ex.P5 is the Certificate issued by PW-8 in respect of Survey No.64/3B.

3.7. PW-9, Head Constable, spoke to submitting Ex.P6, First Information Report, in Court and of forwarding copies of the same to higher officials.

3.8. PW-10, Inspector of Police, who conducted investigation in the case, spoke to registration of case in Crime No.591 of 2008 on the file of respondent for offence u/s.302 IPC, visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports. PW-10 also deposed that on completion of investigation, he filed a charge sheet informing commission of offence u/s.302 IPC before learned Judicial Magistrate, Rasipuram.

4. On appreciation of materials before it, trial Court, under judgment dated 10.07.2009, convicted accused for offence u/s.304 (Part I) IPC and sentenced him to 3 years R.I. and fine

of Rs.5,000/- i/d 6 months S.I. Against such finding, the present appeal has been filed.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor.

6. PW-1 is the grand son of deceased. He has stated that on the date of occurrence, appellant/accused was ploughing his land using a tractor driven by PW-4. His grand father, the deceased, had asked him to make sure that the canal to the deceased's land was not damaged. PW-1 advised the accused against causing damage. Accused retorted that he knew his business. On PW-1 informing deceased, he came to the field along with his family members. Deceased required PW-4 to stop ploughing, who obliged and left. PW-1 has deposed to an argument breaking out between family members of deceased and appellant/accused. PW-1 further has deposed to appellant/accused pushing down deceased whereupon he died. A case has been registered on the complaint of PW-1 and the First Information Report is in keeping with his deposition. PWs.2 and 3, wife and daughter of deceased, also have spoken to appellant/accused pushing the deceased down. PW-7, Doctor, who conducted post-mortem, has informed that the body of the deceased revealed no internal or external injuries. He has further stated that both heart and brain of the deceased were swollen and that such position could have been the result of the deceased having suffered from high blood pressure. He has informed the possibility of the deceased having met death owing to sufferance of a heart attack. He has further stated that there were absolutely no indication of the deceased having suffered any fall. Both PW-1, grand son of the deceased as also PW-4, an independent witness, have deposed to the deceased, aged 75 years, being given to ill-health, of frequenting hospital and of being under medication. Ex.P3, post-mortem report, marked through Doctor, PW-7, informs thus:

'In the absence of the cause of death due to absence of any poison in viscera or any other external and internal injuries the deceased would appear to have died of cardio-respiratory arrest due to shock and myocardial failure.'

In the aforesaid scenario, the possibility of deceased having suffered a heart attack in an agitated frame of mind and falling down dead cannot be ruled out. We may also test if the offence u/s.304 IPC would stand attracted even if the prosecution case is to be accepted. Section 304 IPC reads as follows:

'304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of

causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.'

Unless it is the specific case of the prosecution that the accused was aware of the health complications suffered by the deceased, which it is not, appellant/accused, in pushing the deceased down, could not be presumed to have intended to cause death or such bodily injury as would cause death or for that matter knowledge that death would be the result of his action.

The Criminal Appeal shall stand allowed. The judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.55 of 2008 on 10.07.2009, shall stand set aside. Appellant/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gm
To

1. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate
Rasipuram.
3. The Chief Judicial Magistrate
Namakkal.
4. The Inspector of Police
Rasipuram Police Station
5. The Public Prosecutor
High Court, Madras.

Copy to

The Section officer
Criminal Section, High Court, Madras.

Criminal Appeal No.431 of 2009

SV (CO)
SP (16/02/2018)



WEB COPY