

Bail Slip

The Appellant/Accused/Petitioner namely Baskaran S/o.Kaliyaperumal was released on bail on 08/04/2008 as per order of this Court made in MP.52/2008 in Crl.A.256/2006 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.256 of 2006

Baskaran

S/o.Kaliyaperumal

... Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
R8-Vadapalani Police Station,
Chennai.

[Crime No.782 of 2004]

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgement of learned Additional District Sessions Judge, Fast Track Court No.I, Chennai, passed in S.C.No.480 of 2005 on 31.01.2006 to set aside the conviction and sentence imposed on him and acquit to Appellant/Accused.

For Appellant : Mr.S.N.Arun Kumar
for Mr.M.N.Balakrishnan

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

J U D G M E N T

This appeal arises against judgement of learned Additional District Sessions Judge, Fast Track Court No.I, Chennai, passed in S.C.No.480 of 2005 on 31.01.2006. Court below, while acquitting the appellant/accused for offence u/s 302 IPC, convicted him for offence u/s.304(i) IPC and sentenced him to undergo 10 years R.I. and fine of Rs.1,000/- i/d 1 month R.I.

2. The prosecution case is that on 28.09.2004 at about 11.00.p.m there was a quarrel between the appellant/accused and the deceased Rajendiran, owing to which, the appellant/accused took a cement brick slab and hit the deceased on his head, causing death. Hence, the appellant/accused was tried for offence under Section 302 IPC.

3. PW-1, Watchman of J.S.Thirumana Mahal, preferred Ex.P1, complaint, on 29.09.2004. Upon receiving the complaint, PW-10, Inspector of Police, R8-Vadapalani Police Station, registered a case in Crime No.782 of 2004 on the file of respondent for offence u/s.302 IPC. The First Information Report is Ex.P12. He visited the place of occurrence and in the presence of Pws-3 & 7, prepared Ex.P5 - Observation Mahazar and Ex.P13- Rough Sketch. He seized the M.O.1, Cement Brick Slab under Seizure Mahazar Ex.P6. He examined PWs-1, 3 and 7 and recorded their statements. On the same day, between 10.30.a.m and 12.00 noon, he conducted inquest on the body of deceased in the presence of Panchayatars. The Inquest Report is Ex.P14. He sent the body of the deceased for post-mortem through a Head Constable along with a requisition letter. He seized the M.O.2-Jute bag and M.Os.3 to 7 clothes of the deceased under Form-95. On 30.09.2004, he examined PW-3 and recorded his statement. On 10.10.2004 at about 17.45 hours, he arrested the accused in front of Murugan Temple at Vadapalani. On 11.10.2004, he sent the accused to judicial custody. On 28.10.2004, he examined PW-2, Doctor and recorded his statement and obtained post-mortem report. He examined Pws-4, 5, 8 and 9 and recorded their statements. On 28.10.2004, upon completion of investigation, he filed final report informing commission of offence u/s.302 IPC. Upon committal, the case was tried in S.C.No.480 of 2005 on the file of learned Additional District Sessions Judge, Fast Track Court No.I, Chennai.

4. Before the trial Court, prosecution examined PWs.1 to 10 and marked Exs.P1 to P17 and seven material objects. Three witnesses were examined on behalf of the defence and one exhibit was marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of evidence, under judgement dated 31.01.2006, while acquitting the appellant/accused for offence u/s 302 IPC, convicted him for offence u/s.304(i) IPC and sentenced him to undergo 10 years R.I. and fine of Rs.1,000/- i/d one months R.I. There against, the present appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent. Perused the records.

6. Learned counsel for appellant submitted that the complaint has been preferred with the respondent police by PW-1 on 29.09.2004 leading to registration of case in Crime No.782 of 2004. The only witness examined to speak of having witnessed the occurrence is PW-3. His presence at the scene is doubtful, since, though he has spoken to having witnessed the occurrence wherein the appellant/accused threw a stone on the deceased, resulting in head injuries and death, he has informed of having gone to sleep immediately after the occurrence. PWs-5 & 9 have spoken to the appellant/accused

having been arrested on 10.10.2004 in the presence of PW-8. The admissible portion of the confession of the appellant/accused is Ex.P7. On the basis thereof, the blood stained shirt and lungi of the accused have been recovered under Ex.P8, attested to by PW-9. Learned counsel for appellant submits that neither the blood group of the deceased had been established nor the blood stained cloths allegedly recovered from the appellant been submitted to chemical analysis towards establishing the connection between the two. PWs-1 to 3 have been examined to speak to an occurrence 20 days prior to death of the deceased, wherein the deceased had rendered blows to PW-3 and hence there is the possibility of a retaliatory attack by PW-3. It is further evidence of defence witnesses that respondent police initially suspected the involvement of one Raja of Tiruvarur, to which place the deceased also belonged. In the circumstances, learned counsel for appellant submits that benefit of doubt ought to have been afforded to the appellant.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. The evidence of PW-3 reflects most unnatural conduct. The position that after having witnessed the occurrence wherein the deceased was put to death, he quietly went back to sleep, is totally unacceptable. None other has been examined to speak about the occurrence proper. The recovery of blood stained clothes upon the confession of the accused, does not carry forward the prosecution case. It is only when the blood group on the clothes of the accused, matches that of the deceased and is not the same as that of the accused that a semblance of doubt would arise against the accused. The benefit of doubt must in this case go to the appellant/accused.

9. Accordingly, the Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Additional District Sessions Judge, Fast Track Court No.I, Chennai, in S.C.No.480 of 2005 on 31.01.2006, are set aside and appellant/accused is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

kmi

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To

1.The Additional District Sessions Judge,
Fast Track Court No.I,
Chennai.

2.The Inspector of Police,
R8-Vadapalani Police Station,
Chennai.

3.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

4.The Chief Metropolitan Magistrate,
Egmore, Chennai.

5.The Superintendent,
Central Prison, Puzhal.

6.The Public Prosecutor,
High Court, Chennai.

7.The Section Officer,
V.R.Section,
High Court,
Madras-104.

+1cc to Mr.M.N.BalaKrishnan, Advocate Sr.No.72125/17

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SR(CO)
sm:12.12.2017



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