

Bail Slip

The Appellants/Accused viz., Raju., S/o Sengoolan, was directed to be released on bail as per the order of this court dated 08.06.2007, in CrI.MP.No.1/2007 in CrI.A. 480/2007, on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.480 of 2007

Raju ... Appellant

Vs.

State rep. by
Inspector of Police,
Erode North Police Station,
Erode Town (Cr.No.830/2004) ... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code to set aside the order of conviction and sentence passed in S.C.No.188 of 2006 dated 24.04.2007 by the Learned Additional District Judge, Additional Sessions Court cum Fast Track Court No.1, Erode.

For Appellant : Mrs.Zeenath Begum,
Legal Aid Counsel

For Respondent : Mr.M.F.Shabana
Government Advocate (Criminal side)

JUDGMENT

The sole accused in S.C.No.188 of 2006 on the file of the Additional Sessions Court cum Fast Tract Court No.1, Erode is the appellant herein. He stood charged for the offence under section 302 IPC. The Trial Court convicted the appellant/accused under section 304(ii) IPC and sentenced him to undergo eight years rigorous imprisonment and also imposed a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. Challenging the above said conviction and sentence, the appellant is before this Court with the present appeal.

3. The brief facts of the case is as follows:

The deceased in this case is one Balamani, who is the wife of the appellant/accused. The marriage between the deceased and the accused took place ten years before the occurrence and out of their wedlock, they were blessed with two children aged 11 years and 7 years respectively at the time of occurrence. The deceased was working in Sivasakthi Processing Unit at Erode and the accused is also working in another Processing Unit. Suspecting the fidelity of the deceased, the accused used to beat the deceased frequently. P.W.1 is the brother of the deceased. P.W.2 is the mother of the deceased. The deceased complained about the quarrel and the behavior of her husband to a Panchayathar, six months prior to the occurrence, there was a mediation between the accused and the deceased by P.W.8 and P.W.8 advised the accused not to quarrel with the deceased. Even thereafter, the accused used to quarrel with the deceased despite the mediation. On the date of occurrence i.e., 01.11.2004, at about 7.30 p.m., there was a quarrel between the accused and the deceased and P.W.2, the mother of the deceased, who is residing 400 meters away from the accused house came and took the children from their house. Thereafter P.W.1, son of P.W.2 and brother of the deceased returned to his house after completing his work at 10.30 p.m. and after finishing his dinner he took P.W.1 went to the house of accused to enquire about the quarrel. At that time, they heard a noise from the house of the accused, and they saw the accused attacking the deceased with a vegetable cutter indiscriminately. After seeing P.W.1 and P.W.2, the accused ran away from the house. They went inside the house and saw the deceased dead. Immediately, P.W.1 went to the police station and filed a complaint. P.W.13, Sub-Inspector of Police, registered a case in Crime No.830 of 2004 under Section 302 I.P.C. and filed F.I.R and sent copies of F.I.R and the complaint to the Judicial Magistrate-I, Erode and also to higher officials. P.W.16 is the Inspector of Police-Respondent Police, after receipt of F.I.R, proceeded to the scene of occurrence at 1.00 p.m. and prepared observation mahazar-D9 and a rough sketch-D11 and took photograph of the scene of occurrence, conducted inquest on the dead body and inquired the witnesses and after preparing the inquest report-P12 and then he sent the body for postmortem. P.W.15 is the inspector of police, who received the dead body and sent for postmortem and also collected the blood stained dress and other materials. P.W.10, the Doctor working in the Government Hospital, Erode conducted the postmortem on the deadbody and found the following injuries:

- Ext.1.Cut injury centre of neck 10 x 4 x 2 cm extending from Right sternomartoid to left sternomartoid cutting the muscles and major vessels.
- 2.Cut injury centre of mandible 4 x 2 x 2 cm.
- 3.Cut injury centre of left side of mandible 2 x 2 x 1 cm.

4. Cut injury below the nose 1 x 1 x 1 cm.
5. Cut injury Right cheek 2 x 2 x 1 cm.
6. Abrasion Left ring finger, left index finger 2 x 1 x 1 cm.
7. Loss of right side teeth (2 in No.), right upper incision.
8. Cut injuries over the scalp (6 in No.) and (3 No.) on right parietal bone and (3 No.) on left parietal bone each about 6 x 2 cm bone depth.

The Doctor also opined that the deceased would appear to have died of shock and Haemorrhage due to multiple injuries. P.W.17-Inspector of Police/Investigating Officer had recorded statement of the Doctor and other witnesses, P.W.11 arrested the accused, on such arrest, the accused gave voluntary confession and based on disclosure statement, he recovered the blood stained vegetable cutter and after completion of the investigation, P.W.17 filed the charge sheet.

4. Based on the above incriminating materials, the Trial Court framed charges as mentioned in the first paragraph of this judgment and the accused denied the same.

5. In order to prove the case, prosecution examined 17 witnesses, marked 17 exhibits and 12 material objects.

6. Out of the witnesses examined, PW.1, is the brother of the deceased. According to him, the accused suspected the fidelity of the deceased frequently and quarreled with her. On the date of occurrence at about 10 p.m. after he came back to his house, P.W.2, his mother informed him about the quarrel. Hence, P.W.1 and P.W.2 went to enquire about the quarrel. At that time, P.W.1 saw the accused indiscriminately cutting the deceased with a vegetable cutter and caused her death. Immediately, he complained to the respondent-Police. P.W.2 is the mother of deceased. She is also an eye witness to the occurrence. She also spoke about the quarrel between the deceased and the accused on the date of occurrence, before the occurrence she went and took the grandchildren to her house. Thereafter, at 10.30 p.m. P.W.1 and P.W.2 went to the house of the accused to enquire about the quarrel, at that time the accused attacked the deceased indiscriminately with the vegetable cutter on her face and right side of the shoulder. P.W.3 is the person running a petty shop near the house of the accused. He saw the accused running with the vegetable cutter from his house. P.W.3, then went into the house of the accused and found the deceased died. P.W.4 is the daughter of the accused and deceased. She spoke about the quarrel between the accused and the deceased and on the date of occurrence, P.W.2 took her and her brother to P.W.2 house. P.W.5 is the Daughter-in-law of P.W.2 and sister-in-law of P.W.1., who came to the

scene of occurrence after hearing the news. P.W.6 is the nephew, who also spoke about the quarrel between the accused and the deceased. P.W.7 is a neighbor, who spoke about the quarrel between the accused and the deceased. P.W.8 is the supervisor in the company, where the deceased work. He spoke about the earlier quarrel between the deceased and the accused. P.W.10 is the Doctor conducted the postmortem autopsy on the dead body. P.W.11 is the Inspector of Police, arrested the accused. P.W.12 is the Head Constable, who submitted the F.I.R. to the Judicial Magistrate-I, Erode. P.W.13 is the Sub-Inspector of Police, who received the F.I.R. and registered a case in Crime No.830 of 2004. P.W.14 is the witness to the observation mahazar and also recovered the material objects. P.W.15 is the Head Constable, who recovered the body from the house and also identified the body for postmortem. P.W.16 is the Inspector of Police, who commenced the investigation, conducted enquiries, recorded statement of the witnesses and sent the dead body for postmortem. P.W.17 is the another Inspector of Police, who continued the investigation and filed charge sheet.

7. When the above incriminating materials were put before the accused under section 313 Cr.P.C, he denied the same and did not examine any witnesses or marked any documents.

8. Considering all the above incriminating materials, the Trial Court convicted the accused under Section 304(ii) IPC and sentenced him to undergo eight years of rigorous imprisonment and also imposed a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. Challenging the above said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

9. Earlier, when the matter came up for hearing on 19.01.2017, Mr.A.K.Kumaraswamy, learned Counsel filed a memo for withdrawal of his appearance. In the above circumstances, this Court appointed Mrs.Zeenath Begum as Legal Aid Counsel for the appellant and argue. Mrs. M.F.Shabana, Government Advocate (Criminal Side) appeared on behalf of the respondent. Heard Both sides.

10. The learned counsel appearing for the appellant would contend that P.W.1 and P.W.2, the mother and brother of the deceased said to be the eye witnesses to the occurrence, and they are interested witnesses. Even though, admittedly there are other houses near to the place of occurrence, no independent witnesses were examined by the prosecution, and it is unsafe to convict the accused based on the testimony of interested witnesses. Apart from that, even as per the evidence of P.W.4, they went to the scene of occurrence only after hearing the news and they could not have seen the occurrence and

their evidence cannot be believed. The arrest of the accused and recovery of material object was also not properly proved by the prosecution and hence she sought for allowing the appeal.

11. Per Contra, learned counsel appearing for the respondent would submit that eventhough P.W.1 and P.W.2 related to the deceased, their evidence is consistent. Both P.W.1 and P.W.2 went to the house to enquire about the previous quarrel, at that time, the occurrence took place and their evidence is trustworthy. Thereafter, the motive for murder is also proved by the prosecution. In the above circumstances, the prosecution has proved the case beyond reasonable doubt and sought for an appeal.

12. I have carefully considered the rival submissions made by the learned counsel for the petitioner as well as the respondents and perused the materials placed before the court.

13. There are two eye witnesses to the occurrence. P.W.2 is the mother of the deceased. According to her, the accused suspecting the fidelity of the deceased, frequently quarreled with her, earlier, a mediation was also took place in which the accused promised before the Panchayatars that he will not quarrel with her wife. Despite the same, he continued to quarrel with the deceased and fight with her. On the date of occurrence, there was a quarrel between the deceased and the accused. P.W.2, went to her daughter's house and took her grandchildren to her house leaving her daughter in the house of the accused. At about 10.30 p.m., P.W.1, son of P.W.2 and brother of the deceased came back to his house after completion of his duty went alongwith his mother-P.W.2 to the house of the deceased to enquire about the quarrel. At that time, both of them saw the accused attacking the deceased with a vegetable cutter indiscriminately. After seeing both P.W.1 and P.W.2, the accused ran away. P.W.1 is the brother of the deceased. His evidence is also consistent that at about 10 p.m., when he came back to his house after his work, his mother informed him about the quarrel between deceased and the accused. Then, P.W.1 and his mother-P.W.2 went to the house of the accused to enquire about the quarrel. At that time, he saw the accused attacking the deceased with a vegetable cutter indiscriminately and after seeing them, the accused ran away from the house of the accused. P.W.3 is the independent witness, who is running a petty shop near the scene of occurrence. He saw the accused running from the house with a vegetable cutter in his hand. Then, he went to the house of the deceased and found the deceased lying with multiple injuries. Hence, from the consistent testimony of P.Ws.1, 2 and 3, it is clear that it is only this accused attacked the deceased with the vegetable cutter and caused as many as eight injuries and caused the death of the deceased.

14. Eventhough P.W.1 and P.W.2 are the mother and brother of the deceased, their evidence cannot be simply disbelieved on the ground that they are interested witnesses. If the evidence of the interested witnesses are trust worthy, genuine and consistent can be believed, and the presence of P.W.1 and P.W.2 in the scene of occurrence is also natural and they are consistent. Apart from that P.W.3, an independent witness saw the accused running with the vegetable cutter in his hands. In the said circumstances, there is no reason to disbelieve P.W.1 and P.W.2. So far as the motive of the occurrence is concerned, P.W.8 is the mediator/Panchayatar, who mediated between the deceased and accused has spoken about the quarrel between the accused and deceased, suspecting the fidelity of the deceased, the accused used to beat the deceased and he conducted mediation twice. P.W.4 is the daughter of the deceased and accused, has also spoken about the quarrel between the accused and deceased at about 7.30 p.m on the day of occurrence. P.W.5 also spoke about the quarrel between the accused and deceased suspecting the fidelity of the deceased, the accused used to beat the deceased. P.W.6 & 7, who are independent witnesses also spoke about the motive. Hence, the motive for the occurrence was also clearly proved by the prosecution. Apart from that, the occurrence took place at about 10.30 p.m. and the complaint was given immediately at 12 p.m., and F.I.R. also registered at 12.30 p.m., and there is no delay in lodging the complaint. Apart from that, the occurrence took place inside the house of the accused, at the time of occurrence only the accused and deceased were alone in the house and minor children were already went to their grandmother's house and as the occurrence took place inside the house of the accused under section 106 of evidence Act, the burden is on the accused to explain it but, no explanation offered by the accused.

15. Considering all the above materials, I am of the considered opinion, the prosecution has established that this accused only attacked the deceased and caused her death.

16. Now, the question is "what was the offence that was committed by the accused by the said act. According to the testimony of the witnesses, there was quarrel between the accused and deceased and during the quarrel, being provoked by the words, the accused lost his mental balance and attacked the deceased with vegetable cutter, which was lying in the scene of occurrence. Though, the accused did not have any intention to cause death of the deceased, still he had an intention to cause injury, which is sufficient in the ordinary course of nature, to cause the death of the deceased. Hence, the act of the appellant/accused squarely falls within the 4th limb of Section

300 IPC., and thus the act of the appellant/accused would squarely fall within the first exception to Section 300 of IPC. Therefore, the accused/appellant is liable to be punished for the offence under Section 304(ii) IPC. The Trial Court considered all the above materials, rightly convicted the appellant u/s.304(ii) I.P.C and there is no reason to interfere with the judgments.

17. So far as the quantum of sentence is concerned, the learned counsel for the appellant submitted that the appellant is a poor man and he has no bad antecedent, and he had no intention to cause the death of his wife and only in a quarrel only out of provocation, he lost his mental balance and attacked his wife with a vegetable cutter, which was available in the scene of occurrence. Taking into consideration all the mitigating and aggravating circumstances, sentence of imprisonment is modified to six years rigorous imprisonment.

18. In the result, the Criminal Appeal is partly allowed. The conviction of the Appellant under Section 304(ii) IPC is confirmed and the sentence is modified to six years rigorous imprisonment and to a pay fine of Rs.1000/- in default to undergo four weeks rigorous imprisonment. Since the appellant is on bail pending appeal, the Trial Court is directed to take steps to secure his custody to undergo the remaining period of sentence, if any.

19. While parting with the case, this Court appreciates the services rendered by Mrs. Zeenath Begum, who appeared on behalf of the appellant/accused as Legal Aid Counsel. The Tamil Nadu State Legal Aid Services Authority is directed to pay her necessary remuneration.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Additional Sessions Court cum Fast Track Court No.1,
Erode.

2. The Public Prosecutor,
High Court of Madras.

3. The Member Secretary,
Tamil Nadu State Legal Services Authority,
High Court Buildings,
Chennai-600 104.

4 The Judicial Magistrate No.I, Erode

5 do Thro Chief Judicial Magistrate , Erode

6 The Prl. Sessions Judge, Erode

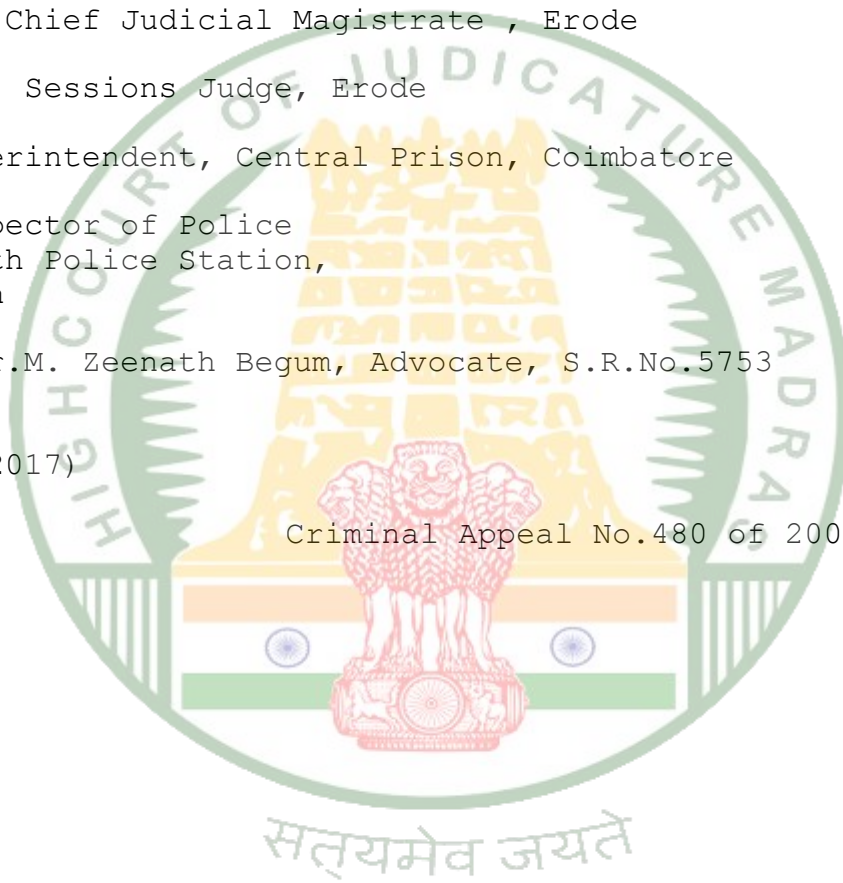
7 The Superintendent, Central Prison, Coimbatore

8 The Inspector of Police
Erode North Police Station,
Erode Twon

+1cc to Mr.M. Zeenath Begum, Advocate, S.R.No.5753

sk(CO)
md(17/03/2017)

Criminal Appeal No.480 of 2007



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