

BAIL SLIP

The appellant herein viz., K.Mohan, S/o.Kannusamy Naidu, was directed to be released on bail as per the order of this Court dated 19.01.2009 made in CRL MP No.1 of 2009 in CRL A No.4 of 2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2018
DELIVERED ON : 09.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.4 of 2009

K.Mohan

... Appellant

Vs

State By,
Inspector of Police,
Ranipettai Police Station,
Ranipettai,
Vellore Dist.
(Crime No.48 of 2007)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the judgment and Conviction made in S.C.No.143 of 2008 dated 28.11.2008 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.2 at Ranipettai, convicting him and undergo imprisonment of 7 years R.I. and also to pay a fine of Rs.1,000/- for an offence under Section 454 of IPC and 7 years R.I. and also pay a fine of Rs.1,000/- for an offence under Section 397 IPC and pray this Court to set aside the conviction and sentence.

For Appellant : Mr.A.Ganesh

For Respondent : Mrs.T.P.Savitha

Government Advocate (Crl.Side)

JUDGMENT

The appellant by way of this Criminal Appeal assails the Order of conviction sentencing him to undergo seven years of Rigorous Imprisonment and fine of Rs.1000/-, in default of fine one year of rigorous Imprisonment for an offence under Section 454 of IPC and 7 years of Rigorous Imprisonment and fine Rs.1000/-, in default to undergo one year of Simple Imprisonment for an offence under Section 397 of IPC. The sentences were ordered to be run concurrently.

2.The factual background of this appeal as follows:-

The appellant is the accused in Sessions Case No.143 of 2008 on the file of the learned Additional District and Session Judge, Fast Track Court No. II, Ranipettai. The appellant faced charges under Sections 454 and 397 of IPC in the above case in furtherance of an investigation conducted with regard to FIR in Crime No.488 of 2007 dated 29.10.2007 registered on complaint of one Mr.K.Prakasam, PW1.

3.According to prosecution, on 29.10.2007 at about 10.00 a.m. the appellant namely Mohan who happened to be a relative and also a nearby resident trespassed into his house and committed robbery causing grievous hurt to his wife PW2 namely Ezhilarasi and accordingly he lodged the above complaint for brutal attack on his wife by the appellant.

4.As per prosecution version on 29.10.2007 being a Sunday holiday PW1 / defacto complainant, Mr.K.Prakasam who worked in Co- operative Sugar Mill went to open the STD Booth run by his wife Ezhilarasi in I.O.B. Complex opposite to Old Bus Stand, Ranipettai around 9.30 a.m. He opened the STD Booth and was looking it.

5.At about 10.00 a.m. there was a call from PW3, Kalaivaanan an inmate of apartment, residing straight opposite to PW1's house that there was sound of quarrel between PW2 Ezhilarasi and an unknown person inside PW1's house. He further informed that on hearing the quarrel sound, PW3 Kalaivaanan rushed to PW1's house and found a person with blood stained hands. Immediately the said person was pushed into and confined in a room by PW3. He further informed that PW2 Ezhilarasi was found in kitchen lying upside down facing floor.

6.On receipt of the said information, PW1 rushed to his house and it was alarming for him to see his wife lying upside down facing ground in floor. It was further seen that PW2 suffered a stab injury in her neck and was in an unconscious/fainted state. The Thaali chain of 10 sovereigns of gold and 2 golden bangles of 3 sovereigns, totaling 13 sovereigns of gold worn by the PW2 found missing.

7.Instantly PW1 hurried to see the person confined in another room who suspected to have injured PW2 Ezhilarasi. It

was dreadful for him to see the appellant who is a close relative of them was found confined by PW3.

8.It was found that the appellant in continuation of his robbery plan has stabbed PW2 Ezhilarasi in neck as she started shouting at the appellant.

9.The victim PW2 was admitted in Hospital and a complaint dated 29.10.2007 was lodged before the respondent Police. The respondent Police investigated the case and recorded the statement of witnesses. The investigation revealed that the appellant being a relative visited their house and in the guise of thirst requested PW2 to get some water by standing out of their house. PW2 by opening the Door let him to sit in hall and gave some water to the appellant. In the said situation with a view to rob PW2, the appellant again asked for some water. Whereas unaware of the evil design to commit robbery, PW2 went to kitchen to take water for appellant.

10.It is the prosecution version that all of a sudden the appellant caught hold of the victim from backside and intimidated her to surrender the jewels worn by her. However as PW2 Ezhilarasi failed to heed appellant's demand and shouted at him, the appellant in anger stabbed her with a kitchen knife kept hidden by him. Consequently the respondent police filed final report in PRC No.4 of 2008 before the Learned Judicial Magistrate, Vaalaza, under Sections 454 and 397 of IPC. The offence being one exclusively triable by the learned Sessions Court, it was committed to the learned Principal Sessions Judge, Vellore District and was transferred before trial Court namely learned Additional District and Sessions Court, Ranipettai, Vellore for trial and disposal in accordance with law.

11.The learned trial Judge on appraisal of facts and law concluded the appellant/accused guilty of offence charged and thereby convicted the appellant in above terms. The said order of conviction is under challenge herein.

12.I heard Mr.A.Ganesh, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

13. On perusal of the impugned order and hearing upon rival submissions this Court is able to see that the prosecution to substantiate their case has examined 11 witnesses and marked 12 documents and 6 M.O.

14. PW1, Prakasam is the defacto complainant and the husband of Ezhilarasi PW2 the victim. PW3 is Kalaivaanan who happened to be neighbor of PW1. PW10 Kavitha is the daughter of PW3. PW6 is the house owner of PW1 and PW3 who also assisted PW1 in admitting PW2 Ezhilarasi in Hospital, PW4 is the Doctor who conducted surgery over the stab injury. PW5, PW6, PW7, Dr. Karthikeyan, Kalaiperumal and Ilangovan are the magazar witnesses in whose presence M.O.1-6 was recovered. PW8 is a relative of the accused and the victim to prove their family relationship. PW11 Seetharaman is the investigation officer. Material objects namely the Thaali Chain containing its accessories M.O.1, Gold Bangles M.O.2, Cloth M.O.3, Metal part of Knife M.O.4, Black handle, Foot wears M.O.6 were produced as material objects.

15. On perusal of the impugned Judgment it is further seen that the conviction is made on a conjoint appraisal of PW1, PW2, PW3 evidence.

16. PW1 had deposed that on information from PW3 he rushed to his house and found his wife stabbed as stated above.

17. PW2 the victim Ezhilarasi deposed that on 29.10.2007 the appellant came to his house asking water. She hence opened the main door of the house and the appellant came in to his house and sat in hall. The victim deposed that she gave appellant a glass of water. As the appellant again asked for some more water and for it when she went to kitchen the appellant all of a sudden caught hold of her and demanded her jewel. It is her case that as she refused to hand over the jewel, the appellant stabbed her in neck using a knife. Thus she sustained injury and fainted. When she resumed her conscious she found herself admitted in hospital.

18. PW3 deposed that on a sound of verbal quarrel he went to PW1's house, he found the appellant with blood stained hands and PW2 lying in floor in unconscious state. He further deposed that having felt some untoward incident had happened he pushed the appellant into a room and locked the room and made a call to PW1.

19.The ground of attack of the impugned Judgment is that the injury projected in the complaint and the wound certificate mismatches. It is also his case that the description of weapon as stated in the complaint and Trial differs.

20.When the prosecution case being that the appellant was let in by opening the door, there is no question of criminal trespass. It is their contention that there is material contradiction in respect of the place of occurrence i.e., according to PW2 the occurrence is said to have taken place in the hall, whereas PW1, PW3 and PW10 stated that PW2 was found lying upside down in the bedroom. Thus there is contradiction in respect of recovery of Jewel.

21.According to PW8, the Mahazar witness, recovery of Jewel was made from stainless steel box, whereas the investigation officer and other witness state the jewel as to have recovered from a shelf in the dining room. Therefore on the above grounds, the appellant seek the impugned order to be set aside as unfair and erroneous.

22.On perusal of the impugned order and deposition made by witness, it is not in dispute that the appellant was arrested by PW11 the investigation officer from the scene of occurrence. It is equally important to state that it is the prosecution case that the accused / appellant have stabbed the victim with a knife and the knife had broken.

23.The said version also found to be proved by the surgery on the injury of the victim whereby in the surgery remaining broken portion of knife (metal part) was removed from the stab injury. The said version is correspondingly proved by M.O.4 and 5.

24.This Court is not in a position to find fault with the recovery of material objects as the same is duly proved to be made in the presence of PW7 and PW8. PW8 has also spoken about the family relation between the appellant and the victim.

25.From the close family relationship, it is able to be seen that the victim has opened the door to the appellant without knowing the evil intention of the accused to rob.

26. On coming to the contention of appellant that injuries and their length and width vary, such contentions are lame and liable to be rejected.

27. It is needless to say that the complaint being lodged immediately after the occurrence cannot be expected to have description about wound as though a Medical Practitioner.

28. In fact the appellant is got red-handed in the scene of occurrence and also arrested in the very same place of occurrence by PW11. The said arrest is also proved by PW10.

29. This Court is unable to see any flaw or infirmity over the investigation of above crime made by respondent police and as well the trial conducted by Court below.

30. The prosecution version is found categorically proved. The recovery procedure of material object does not suffer infirmity.

31. In view of the foregoing reasons, I do not find any merit in this appeal and the same is hereby dismissed by confirming the order of the learned Additional District and Sessions Judge (Fast Track Court No.II), Ranipet, Vellore District made in Sessions Case No.143 of 2008 dated 28.11.2008.

32. The bail bond if any executed by the appellant shall stand cancelled and the jurisdictional Magistrate is directed to secure the accused and to send him to the judicial custody to serve the remaining period of sentence.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

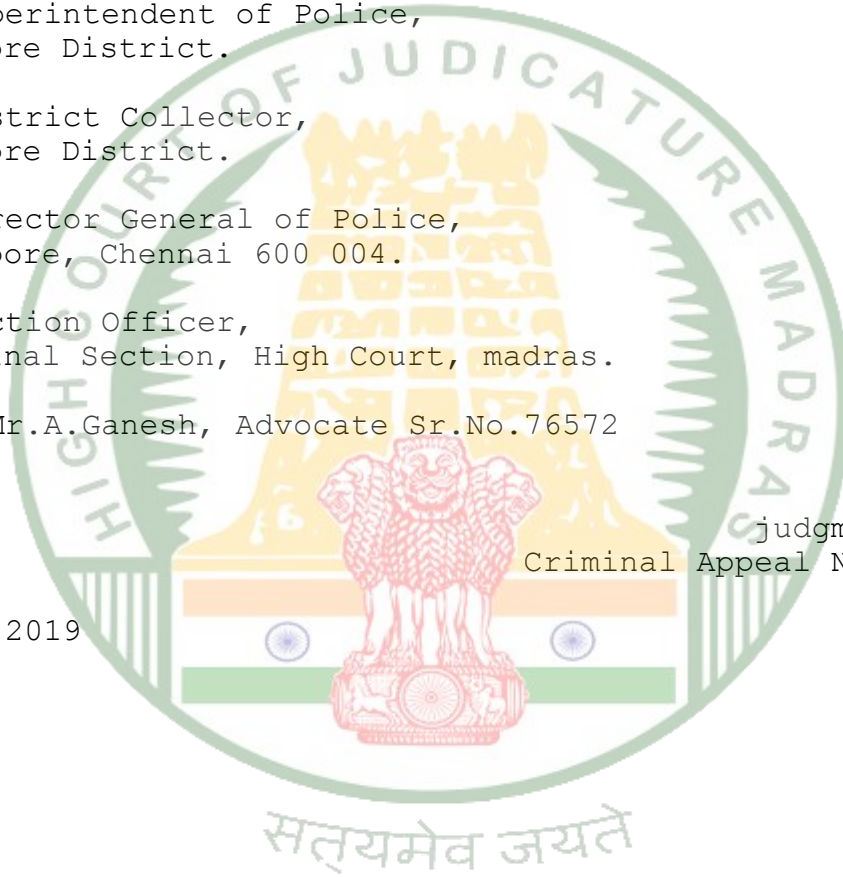
To

1. The Additional District and Sessions Judge,
Fast Track Court No.2 at Ranipettai.

2. The Judicial Magistrate-II,
Walaja, Vellore District.
 3. The Superintendent, Central Prison, Vellore.
 4. The Public Prosecutor,
High Court, Madras.
 5. The Inspector of Police,
Ranipettai Police Station,
Ranipettai, Vellore District.
 6. The Superintendent of Police,
Vellore District.
 7. The District Collector,
Vellore District.
 8. The Director General of Police,
Mylapore, Chennai 600 004.
 9. The Section Officer,
Criminal Section, High Court, madras.
- +1 cc to Mr.A.Ganesh, Advocate Sr.No.76572

MR(CO)
CSL/21.03.2019

judgment made in
Criminal Appeal No.4 of 2009



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