

BAIL SLIP

The Appellant/Accused namely Cell @ Karunanithi, was released on bail on 01.02.2013 in MP. No. 1 of 2013 in Crl.A.500/2011 on the file of the High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2018

Delivered on : 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.500 of 2011

Cell @ Karunanithi .. Appellant

Vs.

State by
Inspector of Police,
Vaduvur Police Station,
Thiruvarur District.
(Crime No.152 of 2008)

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.56 of 2009, on the file of the learned District and Sessions Judge, Thiruvarur, set aside the conviction and sentence imposed on the appellant by the learned District and Sessions Judge, Thiruvarur, by judgment dated 29.07.2011, acquit the appellant.

For Appellant : Mr.M.Baskar

For Respondent : Mrs.T.P.Savitha

Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed to call for the records in S.C.No.56 of 2009, on the file of the learned District and Sessions Judge, Thiruvarur, set aside the conviction and sentence imposed on the appellant by the learned District and Sessions Judge, Thiruvarur, by judgment dated 29.07.2011, acquit the appellant.

2.The instant appeal is preferred by the Sole Accused/Appellant as against the judgment of conviction passed in S.C.No.56 of 2009 by the learned District and Sessions Judge, Thiruvaroor on 29.07.2011.

3.The case of the prosecution is that the son of the Defacto complainant was died on 04.07.2008 as he was assaulted

by the appellant/ Accused in the presence of PWs-2, 3, 5 and 6 namely Balakrishnan, Anbarasan, Kanagarajan and one Ramesh respectively.

4.It is the case of the Defacto complainant/PW-1 that on 03.07.2008 his son the deceased Veeramani had gone to see a musical program to nearby village along with PW-2, PW-3, PW-5, and PW-6. In the early morning on 04.07.2008, when Pw-1 was in his residence at the early morning, he was waken up on the call of one Anbarasan (PW-3) and Kanagaraj (PW-5). They informed that the Appellant/Accused assaulted his son near Vaduvor Kaka Vaniyar Street, bridge. When PW-1 went to the place, he found the dead body of his son in the pool of blood. Thereafter he lodged the complaint at the police station by putting his thumb impression in the complaint which is marked as Exhibit P-1.

5.On receiving the complaint one Raju, a Sub-Inspector of Police of Vaduvor Police Station registered the case in Crime No.152 of 2008, for the alleged offence under Section 302 of Indian Penal Code and entrusted the said First Information Report, Ex.P-9. By receiving the said First Information Report, PW-13 commenced the investigation by prepared the Rough Sketch of the place of occurrence, Exhibit P-10 and also prepared Observation Mahazar, Exhibit P-2. He also prepared Exhibit P-3 through PW-13. Further, Material Objects 1 and 2 were produced before the learned Trial Court. Apart from that Pw-13, also conducted the Inquest, vide Exhibit P-11 and sent the dead body for postmortem through a Head Constable, namely Murugesan PW-11. Thereafter he continued his investigation by examined some witnesses and subsequently he took the custody of the Appellant/Accused on Prisoners Trial Warrant as the Appellant/Accused surrendered before the learned Judicial Magistrate, Orathanadu. Pursuantly, on 11.07.2008, he recorded the confessional statement of the Appellant/Accused in the presence of PW-8 Rathinavelu and PW-9 Gubendran. The admitted portion of the confessional statement is marked as Ex. P-2 and he also recovered MO-1, Aruval, MO-2 blood stained half slack and entrusted the investigation to the Inspector of Police, Vaduvor police station on 22.07.2008.

6.Thereafter the further investigation was conducted by PW-14 and by completed the investigation on 29.09.2008, he filed the final report as against the Appellant/Accused under Sections 353, 506(ii), 302 of IPC.

7.Taking cognizance based on the final report filed, the learned Judicial Magistrate No.I, Mannargudi assigned PRC.No.13 of 2009 for the charge sheet filed and committed the case to the file of the learned District Judge, Thiruvarur. To prove the case of the prosecution, PWs 1 to 15 were examined, Exhibits P-1

to P-18 were marked and MOs-1 to MO-4 were produced. By appreciating the oral and documentary evidence the learned Trial Judge has convicted the Appellant/Accused under Section 304(ii) of IPC and imposed 8 years of Rigorous Imprisonment along with a sum of Rs.1000/- with default sentence of 6 months of Rigorous Imprisonment. It is also ordered in the judgment of the learned trial Court that the period already undergone from 04.07.2008 to 11.10.2008 was set off under Section 428 of Cr.P.C.

8. Feeling aggrieved over the conviction and sentence of the learned Trial Court, the appellant has filed the instant appeal under Section 374(2) of Cr.P.C.

9. According to the learned counsel for the appellant, the judgment of the learned Trial Court is against law and contrary to the evidence available in the case. The learned Trial Judge has fallen into error that though the prosecution has not proved the charge either under Section 302 or 304(ii) of IPC, he mechanically convicted the Appellant/Accused under Section 304(ii) of IPC. The learned counsel for the Appellant/Accused has contended that though absolutely no evidence to attract Section 304(ii) of IPC, the conviction under the same provision of law is unsustainable and the same is liable to be set-aside. He adds further that as far as criminal cases are concerned, the basic principle is that the guilt must be proved beyond all reasonable doubts. However, here even, the perusal of the evidence of the eye witness will not prove that the Appellant/Accused alone is responsible for the death of the son of the PW1, then the findings of the learned trial Court is erroneous and therefore he prays this Court to allow the appeal.

10. Per contra, the learned Government Advocate Criminal side would contend that the prosecution case has proved the case in all perspective without any doubt. Moreover, only after getting satisfied, the learned Trial Court has found the Appellant/Accused as guilty and rightly placed him under conviction for the offence under Section 304(ii) of IPC. It is also the submission of the learned Government Advocate (Criminal Side) that the grounds raised in appeal memorandum are not entitled for any kind of consideration by this Court. Therefore, according to him that the well considered judgment of the learned Trial Court is no way be subjected for any kind of interference by this Court.

11. I heard Mr.M.Baskar, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and the materials available on record are perused.

12. In the instant case, though charges were framed for the alleged offence under Sections 353, 506(ii), 302 of IPC., at the conclusion of trial, the learned Trial Court has found the Appellant/Accused as guilty under Section 304(ii) of IPC. As far as Section 304(ii) of IPC is concerned, it is dealt with the offence of culpable homicide not amounting to murder. It shall run as follows: "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 10 years, and shall also be liable to fine, if the act by which the death is caused with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of death for a term which may extend to 10 years or with fine or with both, if the act is done with the knowledge to likely to cause death, without any intention to cause death or to cause bodily injury as is likely to cause death". So according to the finding of learned judge, the Appellant/Accused was convicted for the offence under Section 304(ii) of IPC., as there is no intention on the part of the Appellant/Accused to cause death of the son of the Defacto-complainant.

13. Now the evidence available in the instant case is subjected for perusal. According to PW-1, the father of the deceased that he did not see the occurrence. On the other hand, only after hearing the sad information of the death of his son, he rushed to the place of occurrence and found the body of his son in a pool of blood. In the cross examination, he has deposed that he alone put his signature in the complaint statement in exhibit P-14. However, it is his evidence that even in the place of occurrence itself, complainant statement was given to Sub-Inspector of police. But the evidence of PW-13 would show that a Sub-Inspector of Police namely one Raju recorded his complaint statement and obtained his thumb impression in one place only, at the same time, when exhibit P-1 is perused, it is found that two thumb impressions are found in the both sides of the complaint. Further, the evidence of PW-4 is perused she has stated that she also put her thumb impression in the complaint but no such thumb impression was found in Exhibit P-1, so in the lodging of complaint a serious doubt is arisen over the prosecution case.

14. However, though it is the case of prosecution that the injuries were caused upon the deceased by using an Aruval, but the evidence of PWs-2, 3, 4, 5 and 6 have not substantiated the use of Aruval. Though the prosecution has attempted to prove the case through the recovery and Aruval through PW-8 and PW-9, they did not support the case of prosecution. So, the use of Aruval in the instant case has not been proved by the prosecution. Once the prosecution has failed to prove the use of Aruval then the

injuries found on the dead body cannot be taken into account that those injuries were inflicted upon the deceased by used the MO-3 Aruval. So in my considered opinion the prosecution has also failed to prove the admitted portion of confessional statement and also the recovery of weapon.

15. Apart from that though it is the evidence of PW-13 that one Raju, Sub-Inspector of Police recorded the complaint statement no attempt was made to examine the said Raju. At the same time, the evidence of PW-14 would show that the said Sub-Inspector of Police was examined on 14.08.2008. Apart from that the appraisal of evidence of alleged eye witness namely PWs-2, 3 have not inspired confidence in the mind of this Court, as they were not sure as to whether the Appellant/Accused used any Aruval in the occurrence and thereafter he forcibly took the accused along with him. In such a situation the finding of the learned Trial Judge that the accused was taken the deceased along with him is against evidence and on that basis the fixation of responsibility upon accused and thereby convicted him is unsustainable and cannot be appreciated. Further, the evidence of PW-2 and PW-3 appears to be artificial and no conviction can be sustained based upon such evidence.

16. Further, it is the evidence of PW-1 that he had given the complaint statement on the day of the occurrence itself but he had also admitted in the cross examination that after one week from the death of his son, he preferred a representation to District Collector with a request to find out the real culprits, which would clearly show that PW-1 did not aware of the alleged occurrence and also was not sure while lodging complaint statement about the involvement of the appellant/accused in the occurrence. Further none of the witnesses have pointed out that the appellant is responsible for the death of the son of PW-1.

17. Therefore, in my considered opinion as the usage and recovery of Aruval are not proved and no clinching evidence is available as against the Appellant/Accused that he alone was responsible for the homicide of the son of the Defacto-Complainant/PW-1, then the conviction is liable to be set-aside and accordingly set-aside and the accused is entitled the benefit of doubt and acquitted from all the charges. Accordingly, the appeal filed by the appellant/accused is allowed.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

vs

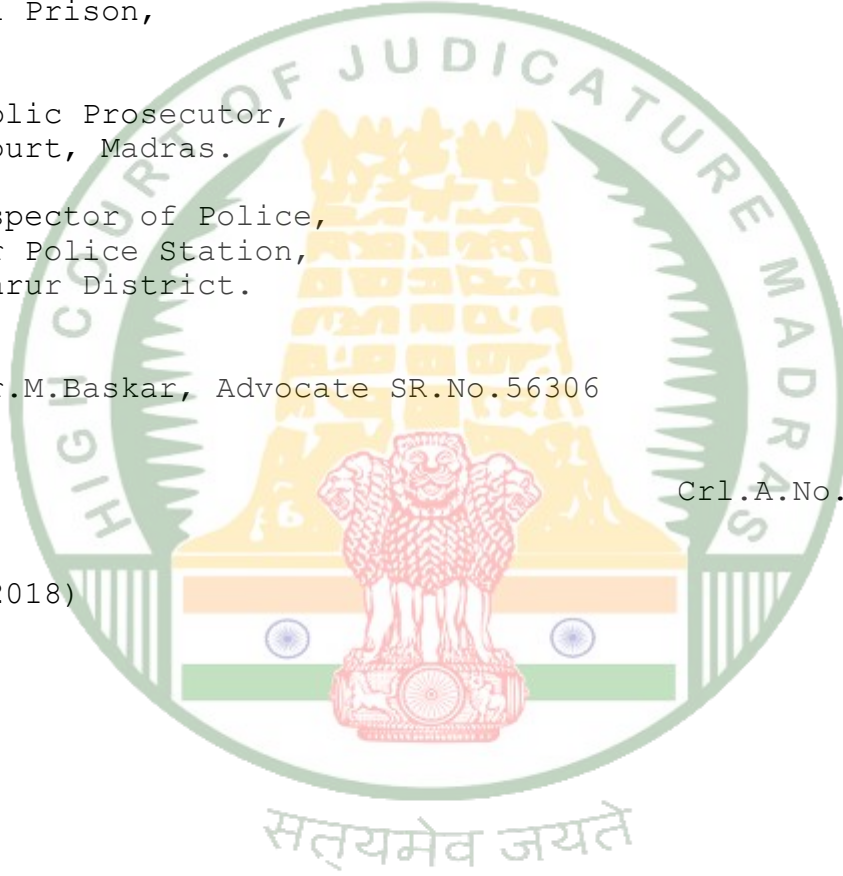
To

- 1.The District and Sessions Judge,
Thiruvarur.
2. The Judicial Magistrate I,
Namakkal.
3. The Chief Judicial Magistrate,
Thiruvallur.
4. The Superintendent,
central Prison,
Trichy.
5. The Public Prosecutor,
High Court, Madras.
6. The Inspector of Police,
Vaduvur Police Station,
Thiruvarur District.

+2cc to Mr.M.Baskar, Advocate SR.No.56306

CrI.A.No.500 of 2011

GN(24/08/2018)



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