

BAIL SLIP

CRL.A.439/2010

The Appellant/Sole Accused viz., S.Kumar, aged 31 years, S/o.Subbaiyan @ Subramani is directed to be released on bail, as per order of this Court dated 13/08/2010 in MP.No.1 of 2010 in CRL.A.No. 439/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :07.06.2018

PRONOUNCED ON :13.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.439 of 2010

S.Kumar

.. Appellant/Accused

Vs

State, rep. by the Inspector of Police,
Kadathur Police Station,
Erode District.
(Crime No.201 of 2009

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to admit the appeal and set aside the conviction and sentence imposed on the appellant by the judgment dated 18.06.2010 passed in S.C.No.20 of 2010 on the file of the Principal Sessions Judge, Erode, Division at Erode, Erode District by allowing the present Criminal Appeal.

For Appellant :Mr.I.C.Vasudevan

For Respondent :M/s.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

This appeal is directed against the judgment and order dated 18.06.2010 passed in S.C.No.20 of 2010 on the file of the Principal Sessions Judge, Erode, whereby the appellant being the sole accused convicted and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.5,000/- i/d to

undergo one year Rigorous Imprisonment for offence punishable under Section 304 Part-II IPC.

2. Based on the final report filed in Crime No.201 of 2009 in Kadathur Police Station, the learned Judicial Magistrate No.II, Gobichettipalayam, took up the case on file in PRC.No.12 of 2009. After appearance of the accused, he committed the case to the learned Principal Sessions Judge, Erode, as the offence u/s.302 IPC is exclusively triable by the Court of Sessions.

3. The short facts of the prosecution revealed from the evidence on record is as follows:

The accused is a resident of Gobichettipalayam Village and deceased viz., K.M.Venkatachalam, PW.1-Arukkaniammal were also living in the same Village. PW.2-Pushpam, is the wife of deceased Venkatachalam, PW.3-Vivekandan is the grandson of the deceased Venkatachalam, PW.4-Annakodi and PW.7-Kaliammal was residing at Gobichettipalayam and doing Agricultural work. The deceased was the fit person for administering the temples of Mariamman, Mahaliammam and Muniappan situated in Gobichettipalayam. The deceased, the accused and other persons resided in the same locality. Due to the request made by the accused to the deceased in respect of appointing a fit person to administer the temples, some misunderstanding arose between them.

4. On 23.08.2009 at about 07.30 p.m., when the deceased was in the Vinayagar Temple, PW.1 to PW.4 were also present. At that time, due to the previous enmity, the accused came behind the deceased with M.O.1-hand made roof tile and by using the same assaulted on the head of the deceased Venkatachalam, so the deceased immediately fell on the floor of the said temple which was seen by PWs.1 to 4. There after PWs.1 to 4 brought Venkatachalam to Gobichettipalayam Hospital through ambulance van in which PW.6-Dr.Gowrishankar was working as Civil Assistant Surgeon.

5. PW.6-Dr.Gowrishankar attached with Government Hospital, Gobichettipalayam. On 23.08.2009 he gave treatment to the deceased. On examination, he found a lacerated wound 7cmx1cm bone deep at the back of the head extending from temporal to middle of the head. So, he provided first aid by way of suturing the wound. Thereafter, he referred the patient to the Government hospital, Erode for further treatment. In respect of giving treatment, PW.6 issued an accident register copy which was marked as Ex.P4.

6. Since the said deceased was referred to Government Hospital, Erode, PW.2 and others immediately brought the deceased to the Private Hospital at Erode, wherein a surgery was done to him. Thereafter, the deceased would not be able to

speak to anybody. While so, PW.9-Rasappan, who was working as Head Constable in Kadathur Police Station, received information from Gobichettipalayam Police Station at about 22.00 hours. Immediately, he rushed to the Government hospital, Gobichettipalayam for seeing the accused. But he was informed that the said deceased has already been sent to Government Hospital, Erode, where he came to know that the said deceased was not admitted in the Government Hospital, Erode. Thereafter, he came to know that the said deceased was admitted in a K.M.C.H hospital and taking treatment at Erode. On 24.08.2009 when PW.13 Dr.S.Mohan was on duty in K.M.C.H, Erode, he examined the deceased through CT Scan. During the time of examination, he found a fracture on the head and blood was Oozing out on the brain and necessary operation was conducted by him. He opined that the injury found on the head of the deceased was grievous in nature and he gave accident register under Ex.P13. The case summary in respect of the deceased is Ex.P15.

7. After reaching Erode K.M.C.H Hospital, PW.9 enquired PW.1-Arukkaniammal and recorded the statement under Ex.P1. Thereafter, he returned to the Police Station and registered a case in Crime No.201 of 2009 under Sections 294(b), 324 and 506 (ii) of IPC, he prepared the first information report which was marked as Ex.P7. After the registration of the case, records have been handed over to the Sub Inspector of Police, Kadathur Police Station, who in turn took up the investigation, went to Gobichettipalayam and visited the scene of occurrence and prepared the observation mahazar and rough sketch in the presence of PW.5 -Sekvakumar and Thambikannan. Those documents were exhibited as Exs.P2 and P9. Thereafter, he seized three pieces of roof-tile (M.O.I.Series) under Ex.P3-Seizure Mahazar. On the same day, at about 16.15 hours, he arrested the accused in the bus stop near Coimbatore Road Junction and brought him to the Police Station at about 16.45 hours and sent him to remand at about 07.30 hours. Subsequently, PW.11 took up further investigation in this case. Despite of giving necessary treatment to the deceased was reported to have died on 10.11.2009. Immediately, PW.11 received EX.P14, death intimation. Thereafter, he altered the Section of offence into 302 of IPC and prepared alteration report under Ex.P11 and sent the same to the higher authorities.

8. Subsequent to receiving the alteration report PW.14 Saravanan, Inspector of Police, Kadathur Police Station, took up the investigation and went to the K.M.C.H Hospital, Erode. He conducted inquest on the dead body of the deceased and he also examined the witnesses and recorded their statements. In order to know the real cause for the death of deceased, PW.14 sent the dead body to Government Hospital, Erode, for conducting autopsy along with requisition under Ex.P5.

9. On 10.11.2009, Dr.N.Sureshkumar, who conducted the autopsy, found the following injuries:

External Injuries:

- (i) Healed wound of size 14 cms length starting from right forehead extending to parietal and temporal region;
- (ii) Bed sore of size 6x3x2 cm over right hip joint region;
- (iii) Bed sore of size 2x1x1 cm over sacral region:

Internal Examination:

- (1) Ribs intact. Heart 200 gms. cut-section- No clots;
- (2) Lungs, right 450 gms. Left 400 gms. Congested;
- (3) Hyoid bone-intact. Stomach-empty. Liver - 1400 gms;
- (4) Spleen - 130 gms. Kidneys - both 250 gms. Bladder empty;
- (5) Skull-Fracture right parieto temporo frontal region of skull;
- (6) Brain partially liquified 1000 gms. Liquified blood seen.

10. After, conducting autopsy, he gave postmortem certificate under Ex.P6. Further he gave a opinion that the deceased would appear to have died 6 to 8 hours prior to the autopsy due to head injury and its complications.

11. In the mean time, PW.14 went to the scene of occurrence and recorded the further statement of witnesses already examined. After completion of investigation on 25.11.2009, he filed a final report against the accused under section 302 of IPC.

12. In the trial Court, after adopting all procedure laid in the Cr.P.C., the learned Principal Sessions Judge, Erode, completed the trial and at the end of the trial, he pronounced the judgment that the appellant is found guilty for the offences under Section 304 part(ii) of IPC, against which the present appeal has been preferred by the appellant.

13. Heard Mr.I.C.Vasudevan, learned counsel appearing for the appellant and M/s.T.P.Savitha, learned Government Advocate appearing for the respondent and perused the entire materials available on record.

14. The first and foremost contention raised by the learned counsel appearing for the appellant is that the alleged death was happened after two and a half months from the date of occurrence. Thereby, the death may be occurred not only due to the injury sustained in the assault made by the appellant. Particularly, he mentioned that the deceased is aged about 80 years at the time of occurrence may be the reason for his death.

15. Now, considering the submission of the appellant, it is true that the death had happened to the deceased after 2 1/2 months from the date of occurrence. In this aspect, it is to be noted that from the date of incident to date of death, the deceased was admitted in the hospital. The said aspect is not disputed by the appellant. Further, during the time of cross examination, the Doctor who conducted the autopsy clearly gave a opinion that the death was occurred only due to the impact of the injury sustained by the deceased on the forehead.

16. In order to impeach the said evidence put forth by the prosecution before the trial Court, the submissions made by the appellant counsel is not substantiated through necessary documents. So, this Court rejected the said contention made by the appellant counsel.

17. Secondly, the learned counsel appearing for the appellant would submit that earlier to the registration of FIR, the police attached with Kadathur has examined the deceased in Gopichettipalayam itself. But as per the evidence of police authorities the FIR was registered based on the complaint given by PW.1 in K.M.C.H Hospital, Erode. In this way, the earlier complaint given by the deceased is suppressed which affects the case of prosecution.

18. On the other hand, the learned Government Advocate would submit that even though the Police attached with Kadathur Police Station has examined the deceased on the date of occurrence, they have not recorded any statement from the deceased. Therefore, mere enquiry by the Police Officer in respect of the incidents cannot be construed as a complaint. Accordingly, he prays to reject the contention raised by the appellant.

19. Considering the submissions made on either side and the evidences recorded by the trial Court, it is seen that the first information report has been prepared by PW.9 after recording the statement from PW.1 in K.M.C.H Hospital. Further as per the evidence of PW.9, the said statement was recorded on 24.08.2009. On the other hand, PW.3, who is the grand son of the deceased stated in the cross examination that on 23.08.2009 itself the Police Officers attached with Gopichettipalayam came to the hospital in which the deceased was first treated and enquired the incident. Further he deposed on the same day at night hours the Police Officers attached with Kadathur Police Station came and enquired PW.1. So the said evidence and arguments advanced by the learned counsel shows that before

recording statement on 24.08.2009, the Police Officers examined the deceased on 23.08.2009 itself.

20. So, as per the evidence of PW.3, it should be necessary for the Police Officer to register the case immediately after completing the enquiry with the deceased. But, in this case, FIR has been registered only on the subsequent statement given by the PW.1. So, the complaint given by PW.1 in this case has been skipped by Section 161 of Cr.P.C, which is nothing but fatal to prosecution.

21. The learned counsel appearing for the appellant submits that the weapon used for attacking the deceased is not properly explained by the prosecution. The contradiction in the description of the property shows the entire case of the prosecution is a false one. Further he added that due to the previous enmity, the alleged complaint was lodged by PW.1 and the same is nothing but an after thought.

22. With regard to the said submission, it is the case of the prosecution that at the time of occurrence, the deceased was assaulted by the appellant by using the சீமை ஓடு for which PW.1 stated in his cross examination that the appellant was assaulted by using சீமை ஓடு and not by கை ஓடு. The said evidence was corroborated by the evidence of PWs.2 and 3. On the other hand, the deceased when at the time of giving the statement before the Doctor, who gave first treatment to him, informed that some unknown persons assaulted him by using கை ஓடு. Thereby, the evidence given by PWs.1 to 3, with regard to the weapons used by the appellant was entirely different and cannot be compared with the evidence of PW.6. Moreover, in the cross examination of PW.1, she clearly deposed that she know the difference between the if XL and சீமை ஓடு. In the said circumstances, the Inspector of Police seized three pieces of சீமை ஓடு in the presence of witnesses and the same was sent to the Court for chemical analysis. But P.W.4, who is an eye witness to the alleged occurrence, stated in his evidence that the Police Officer recovered the if XL as well as சீமை ஓடு. So the evidence put forth by the prosecution witnesses, in respect of the weapon used by the appellant at the time of accused is contradictory in nature. However, the said contradiction alone is not sufficient ground for allowing the appeal, but the same is taken into account considerably.

23. Now the last contention made by the learned counsel appearing for the appellant is that as per the evidence of prosecution apart from M.O.1 more materials were recovered from the scene of occurrence. But in order to fix the place of

occurrence, reliable witnesses were not put forth by the prosecution. The evidences put forth by the prosecution in this regard create doubts whether the alleged occurrence was happened as stated by the prosecution or not. On considering the said submission it is true that, the first investigation officer deposed in the cross examination that in the scene of occurrence, there was no blood stain soil was available. Further, he has stated that M.O.1 சீமை ஓடு was recovered without any blood stain. Further, he has stated that in the place of occurrence, no such occurrence had been taken place. While so, PW.1 stated in his evidence that there was blood stain in his belongings as well as in the body of the accused. Whereas, PW.2 who is the wife of the deceased stated in his evidence, after assault, the blood spreaded all over the clothes of my husband. Further, PW.4 being the eye witness to the alleged occurrence stated in his evidence that there was blood stain in M.O.1 and also on the clothes of the Pushpam-PW.2, who was the witness. In the said circumstances, the prosecution story projected by the Investigation Officer in respect of the scene of occurrence creates doubt as whether the observation mahazar and rough sketch had prepared in the scene of occurrence or not. The said doubt also goes in favour of the appellant. Therefore, in the light of the above discussion, particularly, due to the suspicion over the registration of the case, the weapon used in the commission of offence and with regard to scene of occurrence, the prosecution case would not stand as per the findings of the trial Court.

24. Therefore, the Criminal Appeal shall stand allowed. The conviction and sentence imposed by the learned Principal Sessions Judge, Erode, in S.C.No.20 of 2010, dated 18.06.2010, is hereby set aside. Appellant/accused is acquitted of all charges. Fine amount, if any, paid shall be refunded to the appellant. Bail bonds, if any, executed shall stand cancelled.

सत्यमेव जयते

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Gobichettipalayam.

2.The Chief Judicial Magistrate,
Erode.

3.The Principal Sessions Judge,
Erode, Division at Erode,
Erode District.

4.The District Collector,
Erode.

5.The Director General of Police,
Mylapore, Chennai-4.

6.The Superintendent,
Central Prison,
Salem.

7.The Public Prosecutor,
High Court, Madras.

8.The Inspector of Police,
Kadathur Police Station,
Erode District.

9.The Section Officer,
Crl.Section, High Court,
Madras.

+1cc to Mr.I.C.Vasudevan, Advocate SR.No.37248

CRL.A.439 OF 2010

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GN(22/06/2018)

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