



Bail Slip
Crl A.No. 30 of 2012

That the Appellants namely Chinnaiyan/1st Accused S/o of Arumugam and Gopinath/2nd Accused S/o.Murugesan were released on bail on the file of this Court dated 12.01.2012 in MP.1 of 2012 in Crl A 30 of 2012 (A1) and 14.03.2012 in MP.No.2 of 2012 in Crl A.30/2012 (A2) and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 30 of 2012

1. Chinnaiyan
2. Gopinath

.. Appellants

Vs.

State : rep. by
The Inspector of Police,
Velur Police Station
Namakkal District.

.. Respondent

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. to set aside the judgement dated 15.12.2011 in S.C. No. 33 of 2010 on the file of the Principal Sessions Judge, Namakkal.

For Appellants	: Mr.B.Vasudevan
For Respondent	: Mr. G. Ramar
	Government Advocate (Crl.Side)

JUDGMENT

This appeal has been directed against the judgement in S.C. No.33 of 2010 dated 15.12.2011 on the file of the Principal Sessions Judge, Namakkal.

2. The appellants 1 & 2 herein are the 1st and 2nd accused in the said case. Initially, the respondent police laid the Final Report against the appellants for the offences under Section 304(ii) r/w 109 & 323 IPC. After receiving the same, the learned Judicial Magistrate, Paramathi after furnishing the copies of the Final Report to the Accused committed the case to the Principal Sessions Court, Namakkal, wherein the case number was assigned as S.C. No. 33 of 2010. In the trial Court, charges were framed for the offence under Section 304 (ii) r/w 109 r/w 323 IPC. But both the accused have denied the same and opted for trial. So, in order to prove the case,



on the side of prosecution 24 witnesses were examined as PW1 to PW24, besides 26 documents and 7 material objects were marked as Ex.P.1 to Ex.P26 and M.O.1 to M.O. 7 respectively.

3. After examination of the prosecution witnesses, both the accused were examined under Section 313 (1) (a) Cr.PC, in which both the accused denied the incriminating circumstances that arose in the evidence of the prosecution. However, both the accused did not choose to examine any witnesses on their side. Further, none of the documents were exhibited on the side of defence.

4. On conclusion of trial, the learned Principal Sessions Judge found the 1st appellant guilty for the offence under Section 304(ii) r/w 109 IPC and sentenced him to undergo two years imprisonment and to pay a fine of Rs.2000/- in default to undergo two months imprisonment. Further, the 2nd appellant is found guilty for the offence under Section 304 (ii) and 323 IPC and sentenced to undergo imprisonment for 10 years and to pay a fine of Rs.10000/- in default to undergo for a period of one year imprisonment, for the offence under Section 304 (ii) IPC. Further ordered to undergo imprisonment for one year and to pay a fine of Rs.1000/- in default to undergo imprisonment for one month for the offence under Section 323 IPC. Against which, now the appellant approached this Court by way of this appeal.

The case of the Prosecution in brief is as follows;

5. Admittedly, the deceased Loganathan is the son of the first appellant and the second appellant is the sister's son of the deceased, they are residing in Pothanur and doing agricultural work. On 01.04.2009 at about 10.00pm, the deceased Loganathan returned home after finishing his agricultural works, after entering into his house, he put off the lights. Immediately, his father Chinnaiyan, who is the first accused had objected and shouted like anything and further he pulled the shirt of the deceased and pushed him down. Following that, by using the iron rod he beaten the deceased Loganathan on the head. After the incident, the 1st accused went away from house by saying that he will finish off him. At about 12 midnight on the same day, the 1st accused came back to the house along with Gobinath/A2 and Gunasekaran/A3 and attacked the deceased, which results the death of Loganathan.

6. On 02.04.2009 at about 3.30hrs, PW22 V.Jayabharathi, when she was working as Sub Inspector of Police in Paramathy Police Station, received a complaint from PW1/wife of the deceased and registered a case in Cr. No. 229 of 2009 for the offences punishable under Sections 302 and 323 IPC. The complaint received from PW1 is Ex.P11 and the First Information Report is marked as Ex.P12. After registering the case, she referred PW1 to the General Hospital, Velur for getting necessary treatment. Thereafter, she forwarded the



case records to PW23 Ravichandaran, Inspector of Police, Mallur for further investigation.

7. On 02.04.2009 at about 4 hrs, PW23/the then Inspector of Police, Mallur received the case records from PW22 and immediately he rushed to the scene of occurrence and prepared observation mahazar and rough sketch under Ex.P14 and P15 respectively. He further recovered blood stained cement stone, one reeper wood and Lungi through the recovery mahazer. On the same day at 5.45 pm, he conducted enquiry over the dead body of the deceased and prepared inquest report, which was exhibited as Ex.P.17. Further he sent a requisition to the medical officer attached to the Velur Government College Hospital for conducting the autopsy to the deceased.

8. On the same day i.e on 02.04.2009, PW17 Dr.T.Santhi, while she was working as Civil Surgeon in Velur Government Hospital, received the requisition letter (Ex.P5) given by the investigation officer and conducted the postmortem. During the time of postmortem, she found the following injuries;

1. Multiple abrasions of varying size and shape red in colour, Right side of chest, left ankle, right and left fore arm, left arm, left elbow, left hand, right leg.
2. Irregular lacerated wound 2cmx2cm with bleeding on right leg above ankle.
3. Irregular lacerated wound 6cm x 2cm 2 2cm left parital region of scalp, bleeding + depressed fracture of underlying bone seen through it and O/D skull sub periosteal Haematoma 7cmx4cmx1cm, left parital region of sclap. Depressed fracture 2cm x 1cm, left parital bone inside lacerated wound. 3 linear fractures size 2cm, 4cm, 3cm starting from depressed fracture proceeding anteriorly. Sub dural haematoma 6cmx6cm beneath fracture site. Brain tissue beneath fracture line lacerated 3cmx2cm. All internal organs are pale.

9. After completing the postmortem and after receiving Viscera Report(Ex.P7), she gave her opinion that the death could have been caused due to the head injury. The postmortem report and the Final opinion were marked as Ex.P6 and Ex.P7 respectively. Before completing the postmortem, on the same day at about 8.45 hrs, she has given treatment to PW1 Kannagi and found the following injuries;

1. Abrasion 4x4x1/2cm, lateral aspect of left knee red in colour surrounded by contusion 4cm x 1/2cm blusih black in colour.
2. Abrasion 6 cmx1cm - Balck in colour.. aspect of ankle of left leg, swelling of left left ankle, 3 swelling of foot, left leg.

Further she gave opinion that the above said injury no.2 is greivous in nature.



10. Thereafter, on the same day at about 12 Noon in continuation of investigation, PW23 arrested the appellants and recorded their confession statement. Based on the confession statement, the second appellant, witnesses and the investigation officer went to the scene of occurrence and recovered a reeper wood under the cover of mahazar. In the same way, an iron rod was also recovered through juvenile accused. Thereafter, PW23 made arrangements for sending the appellants to the judicial custody.

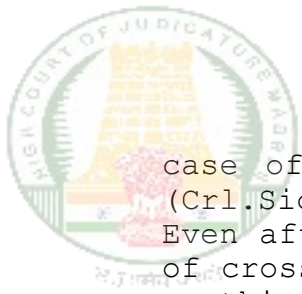
11. After completing the above formalities, the Investigation Officer sent the material objects to the Court for the purpose of chemical examination. Before that, he recorded the statements of eye witnesses and other witnesses and after conclusion of investigation, he laid a Final Report.

12. Today, when the appeal is taken up for hearing, I have heard the arguments of Mr. B.Vasudevan the learned counsel appearing for the appellants and Mr.G.Ramar, the learned Government Advocate (Crl.Side) appearing for the respondent.

13. The first and foremost contention raised by the learned counsel for the appellant is that as per the case of prosecution, the alleged occurrence had happened in the presence of PW1 to PW3. Further, PW4 and PW5 were present at the time of lodging the complaint. Material Objects and Mahazars are prepared only in the presence of Village Administrative Officer, Pothanur (PW.24). In the said circumstances, PW1 to PW 12, who are all independent witnesses, have not supported the case of prosecution. Even after knowing the said aspect, the learned Principal Sessions Judge, Namakkal believed the evidence given by the officials who are all examined with regard to the cause of death, the manner of investigation and perversely came to the conclusion that the appellants have committed the offences as stated in the charge sheet. Further, the counsel appearing for the appellant made a submission that the judgment rendered by the trial Court is nothing but perverse.

14. On the other hand, the learned Government Advocate (Crl.Side) would submit that the investigating officer and other witnesses who conducted the autopsy have clearly supported the case of the prosecution, which is enough to prove the case of prosecution. Hence, he prayed for dismissal of appeal.

15. On considering either side submissions, in the trial Court, the de-facto complainant as well as injured in the occurrence examined as PW1, eyewitness to the alleged occurrence examined as PW2, PW3 and PW10. Further in the trial Court, the prosecution is attempted to prove their case by way of letting in eye witnesses. But, during the course of the trial, the above said all eye witnesses have not supported the



case of prosecution, thereby the learned Government Advocate (Crl.Side) treated the said witnesses as hostile witnesses. Even after treating them as hostile witnesses, during the time of cross examination made by the prosecution, they did not say anything in support of the prosecution, whereas, the doctor who conducted the postmortem and experts in Forensic Medicine and the investigating officers have supported the case of prosecution without any contradiction. However, they are not eye witnesses to the alleged occurrence.

16. Initially, this case has been registered based on the complaint given by the PW1. Whereas PW1 deposed in the Court that only according to the instructions given by the police officials, she lodged a complaint. So, the said evidence is not at all useful for accepting the prosecution case. On comparing the said evidence with the evidence given by the investigating officer, it creates a doubt whether the PW1 had lodged the complaint before PW22 as stated in the Final Report or not. In the absence of any direct witnesses to prove the case of the appellants, the learned Principal Sessions Judge, Namakkal discussed about the attitude of the counsel appearing for the appellant and the learned Public Prosecutor, came to the conclusion that the appellants were found guilty for the offences as mentioned above. Moreover, all the alleged eye witnesses had not supported to the case of prosecution. In the said circumstances, believing the evidence given by the Doctor and the Investigating Officer is absolutely a grave error.

17. So, the view taken by the trial Court is nothing but perverse and it is not in accordance with law, thereby, this Court is of the opinion that trial court without considering any materials, convicted the appellants.

18. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellants in S.C. No. 33 of 2010 dated 15.12.2011 by the learned Principal Sessions Judge, Namakkal is set side and the appellants/accused are acquitted of the charges. The bail bond, if any, executed by the appellants/accused shall stand cancelled. The fine amount, if any, paid by appellants/accused shall be refunded to them.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar



To

1. The Judicial Magistrate, Paramathi
2. The Chief Judicial Magistrate, Namakkal
3. The Principal Sessions Judge,
Namakkal
4. The Superintendent, Central Prison, Coimbatore
5. The Inspector of Police,
Velur Police Station,
Namakkal District
6. The Public Prosecutor,
High Court, Madras.

Cr1.A.No. 30 of 2012

NM(CO)
SMI/30.08.2018