

Bail Slip

The Appellant/Petitioner Accused namely R.Murugan, S/o.Ramasami was directed to be released on bail as per the order of this Court dated 01.11.2012 made in MP.No.1/2012 in CrI.A.655/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No. 655 of 2012

R.Murugan

.. Appellant /Accused

Vs.

Inspector of Police,
Dharapuram.

.. Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 30.04.2012 made in S.C.No.142 of 2011 on the file of the learned Additional District and Sessions Judge, Dharapuram.

For Appellant : Mr.C.Venkatesan
Legal Aid Counsel

For Respondent : Ms.T.P.Savitha
Government Advocate [CrI. Side]

J U D G M E N T

The sole accused in S.C.No.142 of 2011 on the file of the learned Additional District and Sessions Judge, Dharapuram, is the appellant herein. He stood charged for offences under Sections 452 and 302 of IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Additional District and Sessions Judge found him guilty of offences under Sections 452 and 304[ii] of IPC. The accused was accordingly convicted and sentenced to undergo 7 years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo 3 months imprisonment for the offence under Section 452 of IPC. Further, to undergo 10 years rigorous imprisonment for the offence under Section 304 [ii] of IPC. Challenging the conviction and sentence, the accused is before this court with the present criminal appeal.

2. The case of the prosecution in brief, is as follows:

2.1. The appellant [Murugan] and the deceased [Mohammed Haniffa] are neighbours. P.W.1 (Sirajudeen) is the son-in-law of the deceased. P.W.2 to P.W.5 are the daughters, grandson and

wife of the deceased respectively. Before the occurrence, the deceased and the appellant had a previous enmity due to the drainage water passing through in front of the house of the appellant.

2.2. On 29.08.2010 at about 6.00p.m, while P.W.1 was standing near to the house of the deceased, he heard the noise from his father-in-law's house. So, he went to the deceased house and on seeing the appellant, he putting his hands on the neck of the deceased and pressing his neck by saying, " I will kill you". The said incident was witnessed by P.W.2 to P.W.4.

2.3. Due to the assault made by the appellant, the deceased went into the stage of unconscious, after seeing the unconscious stage of the deceased, the appellant ran away from the scene of occurrence. P.W.1 to P.W.4 admitted the deceased in the Government Hospital, Dharapuram.

2.4. On 29.08.2010, at about 8.30p.m., P.W.7 [Dr.Periasamy] attached with Government Hospital, Dharapuram, admitted the deceased as in-patient and gave treatment. P.W.7 found that the deceased sustained the injury over his neck. After 4 hours from the time of admission in the hospital, the deceased went to serious condition and died.

2.5. After the death of Mohamed Haniffa, P.W.1 lodged a complaint under Ex.P.1 before P.W.10 [Chandrasekaran], who is the then Sub-Inspector of Police, Dharapuram. On 30.08.2010, at about 1.00a.m., when he was in charge to the Police Station registered a case against the appellant in Crime No.3418 of 2010 for the offence under Section 302 IPC. Ex.P.9 is the First Information Report. After registration of the case, he handed over the case records to P.W.11 [Ilamurugam, Inspector of Police] for investigation.

2.6. On receipt of the case records, P.W.11 [Ilamurugam], the then Inspector of Police, Dharapuram, went to the scene of occurrence at about 6.00a.m.. Further, he prepared an Observation Mahazar and rough sketch under Ex.P.4 and Ex.P.10 respectively in the presence of P.W.6 [Jafar Sadik Ali] and one Anvar Ali. Thereafter, he reached the Government Hospital, Dharapuram, in which, the dead body of Mohamed Haniffa was kept in mortuary. Further, he examined the witnesses and panchayatars and prepared inquest report under Ex.P.11.

2.7. In continuance of investigation, P.W.11 made arrangements for sending the dead body to the Government Medical College and Hospital, Coimbatore, for conducting autopsy. For which, he sent a requisition letter to the Doctor through Ex.P.12.

2.8. P.W.8 [Dr.Jeyasingh], on receiving the requisition given by P.W.11, conducted autopsy on the dead body of the deceased [Mohamed Haniffa] and found the following injuries [Ex.P.6]:

" Superficial faded Contusion 6x2cms noted on front of middle of neck, the lower border is 3cms above supra sternal notch and the upper border is 8cms below to chin.

On bloodless dissection of Neck:- No extravasations of blood noted on the underlying superficial and deep structure of muscles. Hyoid bone, thyroid and cricoid cartilage found intact."

2.9. Further, he found the following symptoms in the inner part of the dead body.

- ◆ Pleural and Peritoneal cavities: empty.
- ◆ Larynx and Trachea cut section shows frothy secretion.
- ◆ Lungs volumness and cut section shows frothy secretion.
- ◆ Hyoid bone-intact
- ◆ Heart:- Enlarged, Surface of heart shows patchy area healed pericarditis. Greater vessels of the heart show atheromatous changes. Coronary ostia is narrowed. Left coronary artery is occluded by an atheromatous plaque, 1.5 cm away from its origin. Infarction noted on apical and anterior wall of left ventricle.

2.10. After completing the process of post-mortem, he collected the viscera and sent it to the same for chemical examination. It was stated by the Forensic Department that there is no poisonous materials were found in the dead body.

2.11. Further, on examination of the dead body, the results given by the Forensic Department under Ex.P.13, are as follows:

- "1. Stomach and its contents
Detected two hundred and seventy six (276) mg. of ethyl alcohol but not other poison.
2. Intestine and its contents:
Detected one hundred and seventy (170) mg. of ethyl alcohol but not other poison.

3. Liver and Kidney

Detected three hundred and eighty six (386) mg.

of ethyl alcohol but not other poison.

4. Preservative

Did not detect ethyl alcohol or other poison."

2.12. P.W.8 [Dr.Jeyasingh] issued a final opinion [Ex.P.7] as the death could have been happened due to the consumption of ethyl alcohol and due to the disease in the heart.

2.13. On 31.08.2010 at about 5.00a.m., in Kaalipalayam Mosque, P.W.11 [Inspector of Police] arrested the appellant in the presence of P.W.6 [Jafar Sadik Ali] and one Anvar Ali. After arresting the accused, he recorded the voluntary confession from the accused under Ex.P.5. Thereafter, he made arrangements for sending the accused to the judicial custody. After receiving the final opinion from P.W.8 [Doctor], he laid a charge sheet against the accused under Sections 452 and 302 of IPC.

2.14. Based on the materials available, the trial Court framed charges under Sections 452 and 302 of IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial. During the course of trial proceedings, the prosecution in order to prove the charges against the accused, as many as 11 witnesses were examined as P.W.1 to P.W.11, besides 13 documents were exhibited as P.1 to P.13.

2.15. Out of the said witnesses, P.W.1 [Sirajudeen] is the son-in-law of the deceased. He is residing near to the house of the deceased. He has stated that on 29.08.2010, at about 5.00p.m., when he was in casual talk with the in-law, due to the hue and cry of the deceased, he went to the house of the deceased. He has further stated that on seeing the accused, he pulled the shirt of the deceased and pressing the throat. Even after intervening into the occurrence due to the pressure given by the accused, the deceased went to the stage of unconscious. According to P.W.1, the deceased initially admitted in the Government Hospital, Dharapuram, in which, the death was declared. Thereafter, he has lodged a complaint before the Police under Ex.P.1.

2.16. P.W.2 [Jareena Begum] is the daughter of the deceased deposed that on the date of occurrence, the deceased pulled the shirt of his father and pressing the throat. Further, she has stated that after seeing the neighbours, the accused went away from the scene of occurrence. According to her, the deceased was admitted in the hospital and on the same day at about 11.30p.m., he was died.

2.17. P.W.3 [Subaitha Begum] is the daughter of the deceased. P.W.4 [Ajmeer] is the grandson of the deceased. P.W.5 [Mehaboob Nisha] is the wife of the deceased. They are all stated in support of the evidence given by P.W.1 and P.W.2.

2.18. P.W.6 [Jafar Sadik Ali] is the resident of same village stands as a witness and attested in the Observation Mahazar prepared by the Investigating Officer.

2.19. P.W.7 Dr.N.Periasamy is the Doctor working in the Government Hospital, Dharapuram has stated that on 29.08.2010 at about 8.30p.m., when he was on duty, he examined the deceased and found that the deceased sustained a contusion in the size of 6x2cm on his neck. Further, he stated on the same day at about 11.30hours, inspite of giving necessary treatment, the deceased Mohamed Hanifa passed away. In this regard, he issued a Accident Register copy under Ex.P.2. Further, he sent a intimation to the police officer under Ex.P.3.

2.20. P.W.8 is the Doctor attached with the Coimbatore Medical College and Hospital deposed about the particulars of the injury found on the dead body and about the process of post-mortem. According to him, the deceased was died due to the cardiac problem as well as by the consumption of huge ethyl alcohol.

2.21. P.W.9 is the then Head Constable, Dharapuram Uthiyur Police Station, deposed about the handing over the dead body in Coimbatore Medical College Hospital along with the requisition for conducting autopsy.

2.22. P.W.10 is the then Sub-Inspector of Police, Alangiyam Police Station, has stated that he received the complaint from P.W.1 and registered a case in Crime No. 3418 of 2010 for the offence under Section 302 of IPC.

2.23. P.W.11 is the Inspector of Police, Mangalam Police Station, has stated about the particulars with regard to the investigation, about the arrest of the accused and filing of the charge sheet.

2.24. The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C., for which, he pleaded not guilty, however, he did not choose to examine any witnesses nor did he mark any documents on his side.

2.25. After concluding the trial, the learned Additional District and Sessions Judge, Dharapuram, came to the

conclusion that the appellant is found guilty for the offences under Sections 452 and 304[ii] of IPC and convicted him as stated above. Now, challenging the said conviction and sentence, the appellant is before this Court.

3. Today, when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.C.Venkatesan, learned Legal Aid Counsel appearing for the appellant, Ms.T.P.Savitha, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

4. The first and foremost contention raised by the learned counsel appearing for the appellant is that, in the trial Court all the witnesses examined on the side of the prosecution are the family members [P.W.1 to P.W.5] of the deceased. So, the evidence given by the relatives should not be accepted for believing the case of the prosecution.

5. On considering the said arguments, it is true in the trial Court, in order to prove the occurrence, son-in-law, daughters, grandson and wife of the deceased alone were examined for telling about the occurrence. However, before deciding the said issue in favour of the accused, it is necessary to see the circumstances, in which, the alleged occurrence had happened. It is an admitted fact that the alleged occurrence had happened on 29.08.2010 at 6.00p.m. As per the rough sketch prepared by the Investigating Officer [P.W.11], the house belongs to the appellant is situated next to the deceased house. Apart from that, one Abusali and P.W.1 are having houses near to the place of occurrence.

6. In the said circumstances, we cannot discard the evidence of the above witnesses for deciding the case of prosecution. It is settled position as in the above circumstances, their evidence must be scrutinized thoroughly. So, the said argument put forth by the accused is not a ground to disbelieve the case of prosecution.

7. The second ground raised by the learned counsel appearing for the appellant is as per the final opinion given by the Doctor [P.W.8], the death of the deceased had not been occurred due to the assault made by the appellant.

8. On considering the said arguments with the materials available in the case, it is rightly pointed out that the opinion [Ex.P7] given by the Doctor [P.W.8], who conducted the post-mortem had clearly disclose that only due to the consumption of ethyl alcohol and due to the disease found in the

heart, the death have been occurred. Moreover, as per the contents of post-mortem certificate [Ex.P.6], there is no contusions or any external injuries are found over the neck. Furthermore, there is no indication from the post-mortem report about the consequential injury in respect to the compression of neck.

9. Accordingly, the arguments advanced by the learned counsel appearing for the appellant is reasonable one and thus, this Court holds that the death of the deceased would not have been caused due to the assault made by the appellant. In the said situation, convicting the appellant for the offence under Section 304[ii] of IPC is nothing but erroneous one. However, with regard to the assault made by the appellant, the evidence given by P.W.1 to P.W.5 is cogent and convincing one. P.W.7 Dr.Periyasamy, who is the Doctor gave treatment to the deceased in the initial stage has stated that on examination of the deceased there is a contusion in the size of 6x2cm was found on his neck, thereby, the evidence given by P.W.1 to P.W.4 corroborated through the evidence of medical officer. Accordingly, this Court came to the conclusion that at the time of occurrence the appellant voluntarily causing simple hurt to the deceased, due to which, he is found guilty for the offence under Section 323 of IPC instead of Section 304[ii] of IPC.

10. With reference to the offence under Section 452 of IPC, the evidence given by P.W.1 to P.W.4 clearly establish that during the time of occurrence the appellant with an intention to commit offence entered into a house belongs to the deceased and assaulted him. So, for the offence under Section 452 of IPC, the evidence putforth by the prosecution is cogent and convincing one.

11. Now, on going through the judgment rendered by the learned Additional District and Sessions Judge, the aspects which are discussed in this Court are not analysed properly and perspectively. Therefore, this Court held that the appellant committed the offences under Sections 323 and 452 of IPC.

12. In the result, this Criminal Appeal is partly allowed. The conviction and sentence imposed upon the appellant by the learned Additional District and Sessions Judge, Dharapuram in S.C.No.142 of 2011, dated 30.04.2012, is modified and the appellant/accused is convicted under Sections 323 and 452 of IPC and sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month Simple Imprisonment for each offence. It is ordered to run the sentences concurrently. It is also directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C. The Trial Court

is directed to take steps to secure the custody of the appellant for undergoing the remaining period of sentence.

13. While parting with the case, I appreciate the services rendered by Mr.C.Venkatesan, learned counsel appeared on behalf of the appellant as Legal Aid Counsel. The High Court Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msv
To

1. The learned Additional District and Sessions Judge,
Dharapuram.
2. The Inspector of Police,
Dharapuram.
3. The Public Prosecutor,
Madras High Court,
Madras.
4. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to MR.C.Venkatesan, Advocate SR.NO.42235

GMR(CO)
sm:27.9.2018

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Cr1.A.No. 655 of 2012

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