

BAIL SLIP

The Appellant/Sole Accused viz., Subramani, S/o.Periasamy, aged about 36 years was directed to be released on bail vide court order dated 03.03.2011 in Crl.MP.NO.1 of 2011 in Crl.A.No.148 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.148 of 2011

Subramani ... Appellant/Single Accused

vs.

State by
The Inspector of Police,
Jollarpettai Police Station,
Crime No.64/2008

... Respondent

The Criminal Appeal has been filed under Section 378 of Cr.P.C, against the judgment passed in S.C.No.50 of 2009 dated 31.01.2011, by the learned Additional District and Sessions Judge, Thiruppathur, Vellore District.

For Appellant : Mr.M.G.Udayashankar for
M/s.Shanthakumari

For Respondent : Mr.T.Shanmugarajeswaran
Govt. Advocate (Crl.Side)

सत्यमेव जयते

JUDGMENT

This criminal appeal has been filed against the judgment of conviction made by the learned Additional District and Sessions Judge, Thiruppathur, Vellore District, in S.C.No.50 of 2009 dated 31.01.2011.

2 The respondent police registered a case against the appellant for the offence under Section 307 and 302 of IPC in Crime No.64 of 2008 and after investigation, laid a charge sheet before the jurisdictional Magistrate. The learned Magistrate, after taking cognizance of the charge sheet filed by the

respondent police, committed the case to the learned Principal Sessions Judge, Vellore, since the offences charged against the appellant are triable only by the Court of Sessions. The learned Principal Sessions Judge, after taking the case on file in S.C.No.50 of 2009 made over the same to the learned Additional District and Sessions Judge, Thiruppathur, Vellore. The learned Additional District and Sessions Judge, after receiving the papers and completing procedural formalities, framed charges against the appellant. During trial, on the side of prosecution P.Ws.1 to 15 were examined and Exs.P1 to 19 were marked besides 14 Material Objects. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the appellant, he denied as false. On the side of the appellant, no oral evidence was adduced and one document was marked. After trial, the learned Additional Sessions Judge, by judgment dated 31.01.2011 convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of seven years with fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a further period of six months for the offence under Section 307 and to undergo rigorous imprisonment for a period of seven years with fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a period of six months for the offence under Section 304(1) of IPC. Aggrieved against the judgment of conviction, the accused has preferred the present appeal before this Court.

3 According to learned counsel appearing for the appellant/accused there are material contradictions between the prosecution witnesses and medical evidence has not supported the case of the prosecution. Even though, P.W.1 is brother of deceased wife of the appellant, he has not supported the case of the prosecution and turned hostile. P.W.2, who stated to be eye witness, has also not supported the case of the prosecution. Even though, P.W.4 is injured eye witness and his evidence cannot be relied upon, since it is not reliable. There was two motives attributed for the occurrence one is the injured witness P.W.4 had illegal intimacy with the deceased, who is wife of the appellant and in front of the appellant, P.W.4 called his wife disrespectfully and the appellant got irritated, therefore he took a knife from his hip and stabbed him, when the deceased came and questioned the same, he stabbed her also. The deceased died immediately and neighbours took P.W.4 to the Hospital and he was admitted as inpatient for more than 4 days. Another motive is that the appellant and P.W.4 had money transaction. The appellant borrowed money from P.W.4 and when P.W.4 asked to repay the same some wordy quarrel occurred and at that time the deceased came out of the house and questioned . Therefore version of the prosecution has not proved and further P.W.1 has not stated anything about the illegal intimacy. Therefore prosecution has not specified the motive clearly for conviction

of the appellant. From the evidence of P.W.2 stated to have been eye witness, it is clear that he has not supported the case of the prosecution and also he has stated only that there was money transaction and the quarrel arose on the same, he has not stated anything about the illegal intimacy. P.W.1, who is the brother of the deceased has also not supported the case of the prosecution. Blood stained shirt has not been recovered and the injuries had not tallied with the medical evidence and in this case the Doctor who gave treatment to the injured witness has not been examined. Therefore prosecution has failed to prove its case beyond reasonable doubt.

4 The learned counsel has relied on the judgments of the Hon'ble Supreme Court reported in 2008-1-L.W.(Crl.) 423 (Kunju @ Balachandran vs. State of Tamil Nadu) and (2010) 2 Supreme Court Cases (Cri) 1025 (Neelam Bahal and another vs. State of Uttarkhand) stating that P.W.4 is not reliable witness and non examination of the Doctor, one who gave treatment to the injured witness, is fatal to the case of the prosecution. Occurrence has taken place on 15.01.2008 at 8.30 p.m., whereas, FIR registered only at 11.00 p.m., but, witnesses have stated that police came to the Village at 10.00 p.m. and therefore, prosecution has not explained as to how before registering FIR they came to the place. The respondent police has arrested the appellant accused at the next day of occurrence only and therefore arrest and presence of the accused in the place of occurrence is also doubtful. Further he would submit that children of the deceased were very well available at the time of occurrence, but prosecution has failed to examine them as witnesses and they have withheld the best evidence, which creates doubt in the case of the prosecution. There are lot of contradictions in the evidence of prosecution witnesses and except P.W.4, all other witnesses have turned hostile and there is no corroborative evidence for P.W.4. Therefore evidence of P.W.4 is not wholly reliable and there is no material to prove that the appellant has committed offence. Since there is no specific motive established by the prosecution and all of the eye witnesses have turned hostile and also there is enmity between the appellant and P.W.4, there is every possibility to foist false case against the appellant and hence the evidence of P.W.4, the injured witness cannot be relied on. Trial Court has failed to consider the above facts and even though it acquitted the appellant for the offence under Section 302 of IPC, erroneously convicted for the offence under Section 307 and 304(1) of IPC, which warrants interference.

5 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.2, who is an independent witness and also eye witness to the occurrence, has supported the case of the prosecution to some extent. He has

clearly spoken about the occurrence that one day before the Pongal festival, both the appellant and P.W.4 went to house of the appellant. Therefore it is clear that occurrence took place in the house of the appellant and in front of the house, the body of the deceased was found and P.W.4 has also sustained injuries in front of the house and therefore presence of the accused cannot be doubted. From the evidence of P.Ws.2 & 3, it is clear that P.W.4 and the appellant went to the house of the appellant and there was some wordy quarrel happened in the house and at that time the appellant/accused stabbed P.W.4 and when the deceased came out and questioned the same he stabbed her also and caused injuries in the vital parts of the body and caused death. The copy of the Accident Register shows that the appellant used knife, which is deadly weapon and chosen vital part and also not one single injury, there were several injuries on the body of the deceased and also P.W.4. Therefore it is clear that the occurrence is not mere sudden provocation, since the appellant/accused was having knife at his pocket itself, which shows that he intend to attack P.W.4 and the deceased. Further the postmortem report Ex.P10 shows that there were several stab injuries on the vital organs of the body of the deceased. The Doctor has clearly opined that the injuries found on the body of the deceased might have caused through knife and if proper treatment is not given, there is possibility for death. Therefore the appellant has committed offence under Section 307 of IPC, since the weapon used in the occurrence is knife i.e. deadly weapon and he has not stopped with one stab and caused injury on the vital parts of the body. The trial Court has found that there is no clear intention and due to sudden provocation the occurrence had taken place and convicted the appellant/accused under Section 307 of IPC for causing injuries to P.W.4 and also rightly convicted under Section 304 (1) for causing death to his wife. There is no reason to interfere with the judgment of conviction and the appeal is liable to be dismissed.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 It is the case of the prosecution that on 15.01.2008 at about 8.30 p.m. P.W.4 and appellant came to the house of the appellant and there was some wordy quarrel, which according to prosecution due to illicit intimacy between wife of the appellant and P.W.4, according to P.W.4, appellant borrowed money from P.W.4 and when P.W.4 asked to repay the same there was some wordy quarrel and due to which the appellant stabbed P.W.4 and the deceased wife, who came out of the house and caused grievous injuries to P.W.4 and death to his wife. Therefore the respondent police has filed the case against the appellant, which ended in conviction.

8 A conjoint reading of the evidence of P.W.4, who is injured eye witness, it reveal that he has clearly spoken about the occurrence. P.W.2, who is independent eye witness to the occurrence, has clearly spoken about the presence of the deceased, injured eye witness P.W.4 and also presence of the appellant/accused at the time of occurrence. In the copy of the Accident Register also it is stated that known person attacked and they are all proved that the appellant committed offence. Even though the learned counsel appearing for the appellant vehemently contended that the motive has not been clearly established by the prosecution, when there are eye witnesses P.W.4 the injured eye witness and P.W.2 independent eye witness and they have clearly spoken about the occurrence, it is not necessary to establish the motive. Further evidence of P.W.2, who is independent eye witness has clearly stated that on the date of occurrence, the appellant, deceased and P.W.4 were present in the place of occurrence. It is stated that evidence of injured eye witness P.W.4 cannot be wholly relied on, since it is not reliable evidence, but the fact remains that from the evidence of P.W.2 and P.W.4, presence of the injured witness P.W.4 and deceased wife of the appellant and also the appellant has been clearly established. Merely there is two motives attributed by the prosecution for the occurrence, the evidence of P.W.4 the injured eye witness cannot be discarded. Even though, P.W.4 has not stated anything about the illicit intimacy between him and deceased wife of the appellant, from the evidence of P.W.2 and P.W.4, it is clear that there was some wordy quarrel between the appellant and P.W.4, either it may be for money dispute or illicit intimacy as stated by the prosecution and due to which the appellant stabbed P.W.4 and the deceased.

9 The learned counsel for the appellant contended that police came to the place of occurrence at 10.00 p.m. itself, whereas, FIR registered only at 11.00 p.m. and prosecution has not explained as to how before registering FIR, police officials came to the place of occurrence. On reading of the evidence of P.W.1 and 2 and the Mahazar, it is seen that witnesses have stated that at about 10.00 p.m. police came to the spot. In the night hours, especially in village, people may not know the exact time they can only say the approximate time and hence the above contention is not acceptable. Further there is no specific question put during cross examination that how police came to the spot at 10.00 am before registering the FIR. There is no reason to disbelieve the evidence of injured witness P.W.4. There is no dispute with regard to the fact that the deceased died due to the injuries sustained by her in the vital parts and P.W.4 sustained grievous injuries and medical evidence also corroborates the same. When there are eye witnesses available in this case and there is no reason to discord the evidence of

them, the Court can safely come to the conclusion that prosecution has proved its case beyond reasonable doubt. In criminal cases, quality of evidence has to be taken into consideration and not quantity of the evidence. Further the authorities cited by the learned counsel appearing for the appellant are not applicable to the case on hand, since the injured eye witness have clearly spoken about the occurrence and the same has also been corroborates with the evidence of P.W.2 independent eye witness and even though the Doctor one who gave treatment to the injured witness was not examined, the Doctor who made entries in the Accident Register has appeared before the Court and examined as witness and is supporting the case of the prosecution.

10 This Court does not find any sound ground or reason to interfere with the judgment of conviction and there is no merit in the appeal and hence the same is dismissed. The judgment of conviction dated 31.01.2011 made in S.C.No.50 of 2009 by the learned Additional District and Sessions Judge, Thiruppathur, Vellore District, is hereby confirmed. Trial Court is directed to secure the presence of the appellant/accused to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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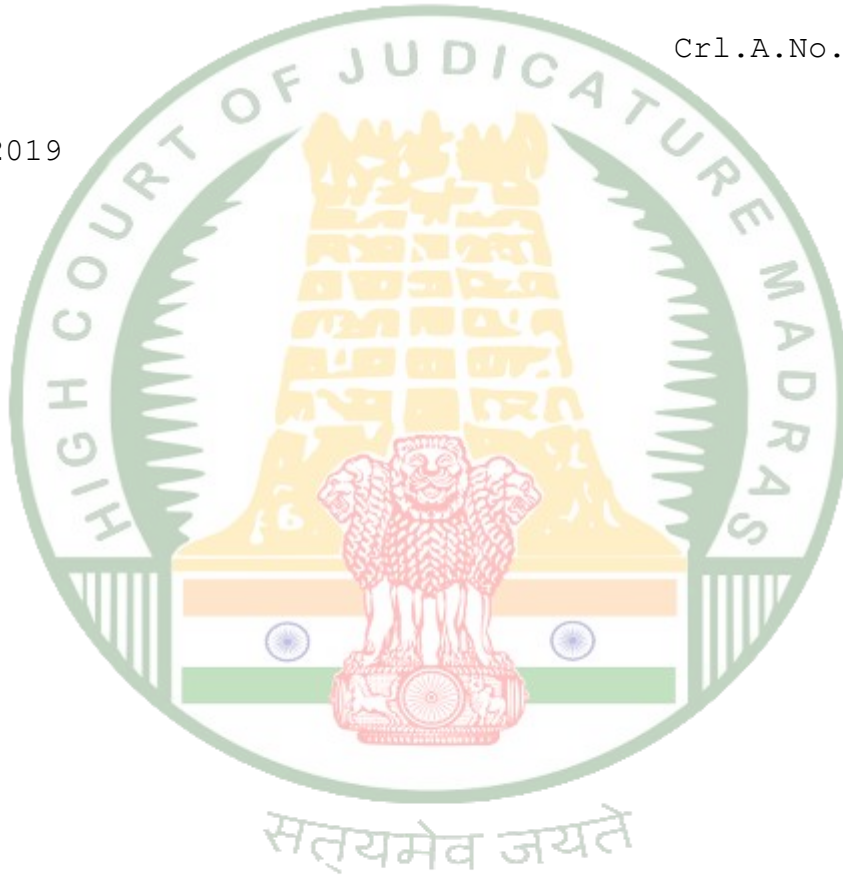
To

1. The Judicial Magistrate No.I,
Thirupathur.
2. The Chief Judicial Magistrate,
Vellore.
3. The Additional District and Sessions Judge, Thiruppathur,
Vellore District.
4. Do Through The Principal District and Sessions Judge,
Vellore District.
5. The Director General of Police,
Mylapore, Chennai-4

6. The District Collector,
Vellore District.
7. The Superintendent,
Central Prison,
Vellore.
8. The Additional Public Prosecutor,
High Court of Madras.
9. The Inspector of Police, Jollarpettai Police Station,
Vellore District.

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CA (CO)
CS/10/09/2019



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