

Bail Slip

The Petitioner/Accused viz., Velmurugan, S/o.P.Ayyasamy, was released on bail as per the Order of the Court dated 15/06/2011 in Crl.MP.No.1 of 2011 in Crl.A.No.338 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.338 of 2011

Velmurugan

...Appellant

Vs

State Rep., by,
The Inspector of Police,
Palladam Police Station,
Coimbatore District,
Crime No.1185 of 2008

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment passed in S.C.No.62 of 2010 dated 21.03.2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No-4, Coimbatore at Tiruppur and set aside the same.

For appellant : Mr.R.Radhapandian

For Respondent : Mr.T.Shanmugarajeswaran

Government Advocate (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed to call for the records relating to the judgment passed in S.C.No.62 of 2010 dated 21.03.2011, on the file of the learned Additional District and Sessions Judge, Fast Track Court No-4, Coimbatore at Tiruppur and set aside the same.

2 The respondent police registered the case against the appellant/accused for the offence under Section 307 IPC, in crime No. 1185 of 2008 on the file of the Palladam police station. After, completion of investigation, the respondent police laid a charge sheet before the Judicial Magistrate, Palladam.

3 Initially, the case was registered for the offence under Section 307 IPC. After the occurrence, the victim sustained injuries and was admitted in the hospital and during investigation, the victim died. Therefore, the Section of offence

was altered from 307 IPC to 302 IPC, and the charge sheet was filed under Section 302 IPC.

4 The learned Judicial Magistrate, Palladam, taken the charge sheet on file in P.R.C.No.01 of 2010, since the offence is triable by the Court of Sessions he committed the case to the learned Principal District and Sessions Judge, Coimbatore, for further proceedings. The learned Principal District and Sessions Judge, Coimbatore, taken the case on the file in S.C.No.62 of 2010 and made over to the Additional District and Sessions Judge, Fast Track Court (IV), Coimbatore. The learned Additional District and Sessions Judge, Fast Track Court IV, Coimbatore framed the charge against the appellant/accused for the offence under Section 302 IPC.

5 During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 12 witnesses were examined and 9 documents were marked and no material objects were produced. Court Documents viz, Ex.C1 was marked but no oral and documentary evidence were produced.

6 After completing the trial and hearing the arguments, the learned Additional District and Sessions Judge, Fast Track Court-IV, Coimbatore, the appellant/accused was found not guilty for the offence under Section 302 IPC and found the accused guilty for the offence under Section 304(ii) IPC and sentenced him to undergo 7 years Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo 6 months Rigorous Imprisonment.

7 Challenging the said judgment of the learned Sessions Judge, Fast Track Court-IV, Coimbatore, in S.C.No.62 of 2010, the appellant/accused has preferred the present criminal appeal before this Court.

8 The learned counsel for the appellant/accused would submit that the occurrence is alleged to have take place on 25.11.2008, whereas the victim died only on 13.03.2009 and the death was not due to the injuries alleged by the prosecution and also it is not the cause for the death of the victim. The case was registered on 25.11.2008, and the First Information Report registered on 25.11.2008 at 15.00 hours. The delay in sending the First Information Report to the Court creates a suspicion. In this case, there is no eye witness, no identification and no motive have been established. Though, P.W.8 has been cited as eye witness, during the cross examination, he has stated that after the incident he closed the shop and left the station and therefore, he was not present in the shop. Therefore, there is no possibility for examining him and recording the 161 statement which creates suspicious. P.W.1 and P.W.2 are the driver and conductor of the said bus in which, the appellant/accused alleged

to have pushed his wife/victim before the bus but, they have stated that they have not seen the occurrence, only after hearing the noise, stopped the bus and get down from the bus and saw the occurrence. At that time the victim was found injured and was lying under the bus, therefore, they are not the eye witnesses. During the investigation, the Investigating Officer has not examined P.W.12 and not recorded the 161 statement. Therefore, he was introduced before the Court first time. Therefore, when there is no previous statement, his evidence may not be taken into consideration. P.W.3, P.W.4 and P.W.5 have turned hostile and they have not supported the case of the prosecution. The motor vehicle inspector was not examined in this case. The original copy of the Accident Register has not been produced before the Court, which also creates suspicion. The Investigating Officer has admitted that there is a material contradiction between the prosecution witnesses and therefore the prosecution has failed to prove its case beyond reasonable doubt. Therefore, the learned trial Judge, failed to consider the materials and convicted the appellant/accused on sympathy ground. The medical evidence also not supported the case of the prosecution. P.W.9/Doctor even though stated that the deceased would appear to have died of thigh injuries, nothing was mentioned about complications and as such the case projected by the prosecution is not acceptable. The victim died only after 4 months from the date of occurrence. Therefore, death is not caused due to the injuries sustained by the victim on the date of occurrence. Hence, the conviction for the offence under Section 304 IPC is not correct. The appellant/accused should have been convicted only for the offence under Section 326 and not under Section 304 (ii) and 306 IPC. Therefore, the judgment of the trial court warrants interference of this Court.

9 The learned Government Advocate (Criminal Side) for the respondent would submit that due to the suspect in the fidelity of his wife, the appellant/accused pushed his wife before the bus bearing registration No.TN67N0543, which was entering into Palladam bus stand and due to that she sustained grievous injury and later she died. The investigation reveals that there was illegal intimacy between the victim and one Sekar and the appellant/accused is the husband of the deceased and he suspected the fidelity of his wife/deceased Selvi. On the occurrence date, the deceased came to Palladam bus stand with said Sekar. On seeing the deceased/wife along with the said Sekar, the appellant/accused scolded her and pushed her into the left side wheel of the bus bearing Registration No.TN 67 N 0523. The bus ran over on her left thigh and caused crush injury. Therefore, the appellant/accused has committed the offence. Since the deceased died due to the accident, though, the case was initially registered under Section 307 IPC, after the death of deceased, the Section was altered to 302 IPC, due to the sudden provocation

after seeing the deceased/wife along with Sekar. The appellant/accused suspected his wife and got sudden provocation and pushed her into the bus. Therefore, the learned Additional District and Sessions Judge, Coimbatore, convicted the appellant/accused for the offence under Section 304(ii) IPC, which does not warrant any interference by this Court.

10 Heard, the learned counsel for the appellant/accused and the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

11 The case of the prosecution is that on 25.11.2008 at about 3.00 p.m., in the entrance of the Palladam bus stand, the appellant/accused beat his wife/deceased Selvi and pushed her in the left side wheel of the bus bearing Reg. No.TN 67 N 0523, suspecting her fidelity. After hearing the noise, P.W.1 and P.W.2 the driver and the conductor of the said bus and the persons those who are in the bus stand have stated that the appellant/accused is the husband and the injured is his wife. The husband pushed his wife into the left side wheel of the said bus and hence she sustained injury on her thigh. Immediately, she was taken to Palladam Government Hospital. P.W.8 has spoken about the scene of occurrence and P.W.6 who was the van driver who has parked his van in the bus stand also saw the occurrence. He has spoken that prior to the occurrence, both the appellant/accused and the deceased were quarreling, after hearing a sound raised from the place of occurrence, where the deceased sustained injuries, he rushed to the place of occurrence.

12 The doctor one who was on duty, while the deceased was admitted in the Government Hospital on 25.11.2008, attended the deceased and made an entry in the Accident Register. It clearly shows that, the appellant/accused had pushed his wife into the moving bus, and the victim after sustaining injuries, survived nearly for four months and she has also given the statement. Therefore, the doctor and also the Investigating Officer stated that all the injuries sustained by her which was mentioned in the Accident Register are all injuries which are grievous in nature, then she was referred to Government Hospital, Coimbatore, for further treatment but they did not send the copy of Accident Register. Therefore, the respondent police could not secure the original copy of the Accident Register.

13 On reading of the entire material evidences, it is seen that there are materials to show that there is a previous enmity that the husband suspected the fidelity of his wife. Prior to the occurrence, the deceased went to the relatives house for attending the marriage function and she did not return to home. Two days later, the deceased came along with a person with whom

she is alleged to have had illegal intimacy. After seeing the deceased along with Sekar, the husband of the deceased got angry and due to sudden provocation, he scolded his wife and pushed her into an on coming bus. The persons who were in and around the bus have stated that the appellant/accused is the one who has pushed his wife before the on coming bus. Thus the motive of the offence is established. Though, P.W.3, P.W.4 and P.W.5 have turned hostile, from the evidence P.W.9 and P.W.12 who have done the postmortem and the doctor who was present at the time of admitting the deceased in the Government Hospital, made an entry in the Accident Register, whereby, it is clearly proved that the husband of the deceased had pushed her due to suspicion in respect of her fidelity.

14 Therefore, this Court finds that the prosecution has established its case beyond reasonable doubt and there is no merit in the appeal. The learned Additional District and Sessions Judge, Coimbatore, has clearly stated the motive for committing the offence and the medical evidence also corroborated the same. Even though, there is no direct eye witnesses, P.W.1 and P.W.2 are the driver and conductor of bus who have seen the deceased lying under the bus with grievous injuries.

15 This Court also finds that the prosecution has proved its case beyond reasonable doubt. There is no merit in the appeal. Though, there is no material to show that the appellant has a pre-meditation or pre-plan to murder his wife on the occurrence date. But, the appellant/accused seeing his wife along with said Sekar with whom, he suspected his wife and he pushed her into the oncoming bus. Further, the medical evidence also shows that the death is due to injury sustained by her. The learned Additional District and Sessions Judge, Fast Track Court No-IV, Coimbatore, rightly convicted the appellant for the offence under Section 304(ii) IPC, and acquitted the appellant for the offence under Section 302 IPC. This Court does not find any merit in this appeal.

16 In the result, the present Criminal Appeal is dismissed. The trial Court is directed to secure the accused to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS-)

// True Copy//

Sub Assistant Registrar

sbn

To

1.The Inspector of Police,
Palladam Police Station,
Coimbatore District.

2.The Public Prosecutor,
High Court, Chennai.

3.The Judicial Magistrate, Palladam.

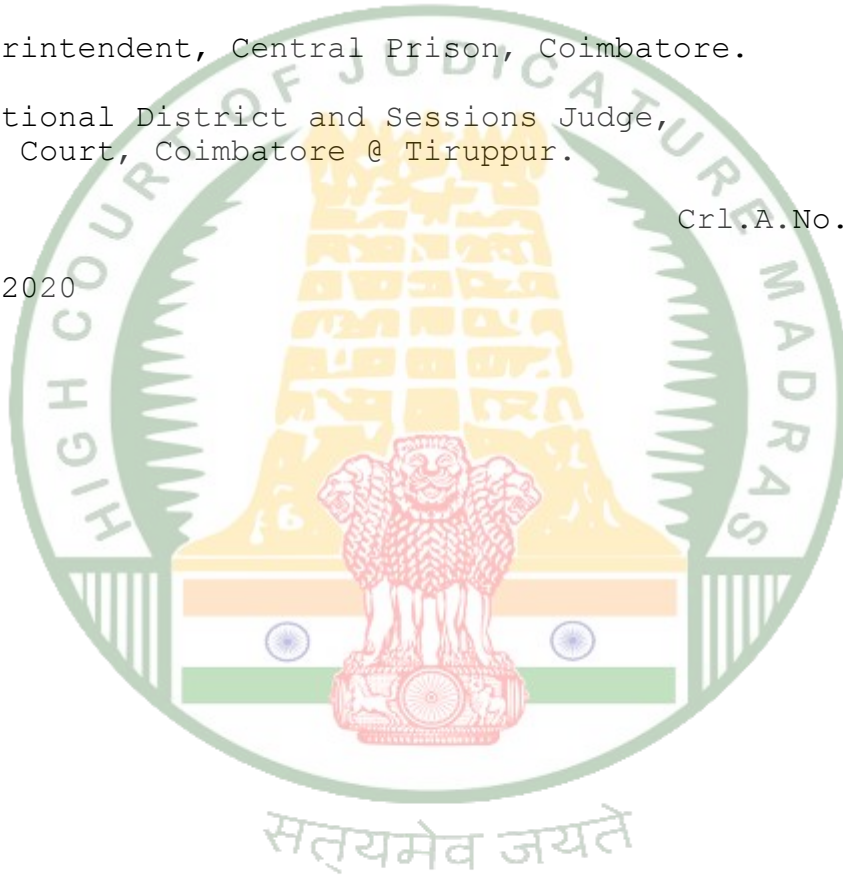
4.The Chief Judicial Magistrate, Coimbatore.

5.The Superintendent, Central Prison, Coimbatore.

6.The Additional District and Sessions Judge,
Fast Track Court, Coimbatore @ Tiruppur.

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RSK(CO)
CSR:28/01/2020



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