

Bail Slip

The Appellant Accused viz., Ponnusamy @ Ramasamy, S/o/Maran, (in S.C.No.180/2010, dt.09.06.2011 on the file of the Additional District and Sessions Judge (Fast Track Court No.IV, Coimbatore at Tiruppur), is released on bail as per the order of this Court dated 28/06/2011 in Mp.No.1/2011 in Crl A.No.371/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 24.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.A.No.371 of 2011

Ponnusamy @ Ramasamy : Appellant/Accused

Vs

The State By
Avinasi Police Station,
Coimbatore District
Crime No. 792 of 2009

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the Judgment dated 09.06.2011 passed in SC.No. 180/2010 on the file of Additional District and Sessions Judge (Fast Track Court No. IV), Coimbatore at Thiruppur.

For Appellant : Mr.C.Samivel, (Legal Aid Counsel)

For Respondent : Mr.T.Shanmugarajeshwaran
Government Advocate (Crl.Side)

ORDER

This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., against the Judgment dated 09.06.2011 passed in SC.No. 180/2010 on the file of Additional District and Sessions Judge (Fast Track Court No. IV), Coimbatore at Thiruppur.

2. The respondent Police registered a case in Cr.No. 792 of 2009 against the appellant for offence under Sections 323 & 307 IPC. After investigation, Police filed charge sheet before the learned Judicial Magistrate, Avinashi, for offence under Sections 323, 307 @ 302 IPC and the same was taken on file in PRC.No. 04/2010 and since the offences are triable by the Court of Session, the same was committed to the Principal District

Sessions Judge Coimbatore. The learned Principal District Sessions Judge Coimbatore took the case on file in S.C.No. 180/2010 and made over the case to the learned Additional District Sessions Judge/F.T.C.No. IV, Coimbatore.

3. The case of the prosecution is that PW1 has gone to the house of the deceased to attend a family function on 14.06.2009. During night hours around 22.30 hours, when witness Tmt.Nithya (PW1) came out from bathroom, the accused Ponnusamy @ Ramasamy gagged her mouth. When she raised alarm, her uncle Kannan came to rescue her. On witnessing Kannan who came to the scene of occurrence, the accused out of provocation, intentionally, lifted him and threw on floor, resulting in blunt head injury and the said Kannan swooned. Subsequently, injured Kannan, maternal uncle of witness Nithya died on 19.06.2009 at 11.50 hours at C.M.C. Hospital, Coimbatore. Therefore, the accused has committed an offence punishable under Section 302 IPC.

4. Before the trial court, in order to prove the case of prosecution, PWs.1 to 12 were examined and Exhibits P.1 to P.13 were marked. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the accused, he denied as false. On the side of the defense, no one was examined and no document was marked. The learned Trial Judge, after completing trial, found the accused for the offence under section 325 IPC, and by judgment dated 09.06.2011, the learned trial judge convicted the accused for offence u/s.325 IPC and sentenced him to undergo Rigorous Imprisonment for 5 five years with a fine of Rs.3000/- i/d.R.I.for 6 months. Against the said judgment of conviction and sentence, the accused has preferred this appeal.

5. The learned counsel for the appellant would submit that there was a delay of five days in giving Ex.P.1 complaint, which was not properly explained by the prosecution. Therefore, Ex.P.1 complaint is suspicious. He further submitted that medical evidence did not corroborate the prosecution case. It is submitted that doctor has opined that the death is due to head injury and its consequences and that the injury was not caused by the accused. He further submitted that the evidence of the witnesses are not cogent and reliable. There are contradictions between the prosecution witnesses and the trial court should have extended benefit of doubt to the accused, but convicted and sentenced the accused for the offence u/s.325 IPC, which warrants interference. It is further argued that the trial court had erred in not considering Ex.P.2 which was prepared at 6.30 a.m., on 19.06.2009 which shows that the offence in crime No.792/2009, as 302 IPC, whereas the respondent herein altered the offence only at about 3.45 p.m., on 19.06.2009 which shows that the

appellant/accused has been falsely implicated in the case. The trial court not considered the contradiction that P.W.10 complainant's in her statement stated that she has no idea about the complaint and the respondent herein only received her signature in the statements which was already written by the respondent.

6. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent-State would submit that the prosecution has proved its case beyond all reasonable doubts by adducing clear and cogent evidence and though there are certain discrepancies in the case of the prosecution as alleged by the learned counsel for the appellant, the same does not affect the prosecution case in its entirety and submitted that the Judgment of conviction and sentence passed by the Trial Court does not warrant interference at the hands of this Court and hence prays for dismissal of this appeal.

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

8. The appellant was charged for the offence punishable under Section 325 IPC. On seeing Ex.P.2 - observation mahazar which was prepared on 19.06.2009 at about 6.30 a.m., it is seen that the Sections of offence have been mentioned as under Sections 323, 307 IPC and thereafter, section has been altered as 302 IPC in Ex.P.10. However, as rightly pointed out by the trial court, this cannot be considered as material alteration. While looking at the act of the accused, who lifted the deceased Kannan and pushed him against the compound wall, the accused did not have the intention of causing death or causing bodily injury likely to cause death. Therefore, the trial court has correctly come to the conclusion that since the accused did not have knowledge that his act was likely to cause death, section 304(II) IPC will not be attracted. But the injury sustained by the deceased was a grievous injury resulting in death within five days from the date of occurrence. More over neither the prosecution nor the defacto complainant filed any appeal or revision for enhancement of sentence or for acquittal of the appellant for the alleged charges. This Court cannot go beyond the scope of the appeal. In such circumstances, the act of the appellant would come only under section 325 IPC and the trial court has discussed elaborately the evidence of the prosecution witnesses, and rightly convicted the appellant, which is being well founded. This court does not find any reason to take a different view on the conviction recorded by the trial court.

9. In the result, the criminal appeal stands dismissed as devoid of merits and substance. Trial court is directed to secure the appellant immediately to serve remaining period of sentence, if any.

Sd/-

Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

kmm

To

The learned Additional District and Sessions Judge
(Fast Track Court No. IV),
Coimbatore at Thiruppur.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.c.Samivel, Advocate, SR.No.51884.

Crl.A.No.371 of 2011

GP (CO)
CSR: 27/01/2020



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