

Bail slip

The Petitioner/Accused viz., Mohamed Atham, Haja Seit @ Haja Sherib, was released on bail as per the order of this Court dated 23.04.2015 in CrI.MP.No.1 of 2015 in CrI.A.No.172 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.08.2019

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.172 of 2015

Mohamed Atham

....Appellant

vs

State by,
The Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.
(Crime No.309 of 2011)

.... Respondent

Prayer Criminal Appeal filed under Section 374(2) of Criminal Procedure code, to set aside the conviction and sentence made in S.C.No.16 of 2012 dated 18.12.2014 on the file of the District and Sessions Judge, Nagapattinam and thus allow the Criminal Appeal.

For appellant : Mr.P.G.Perumal Pandian
Legal-Aid-Counsel

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (CrI.Side)

JUDGEMENT

The Criminal Appeal is filed to set aside the conviction and sentence made in S.C.No.16 of 2012 dated 18.12.2014 on the file of the District and Sessions Judge, Nagapattinam.

2 The respondent police registered a case against the appellant for the offence under Sections 302 and 341 IPC, in Crime No.309 of 2011. After completing investigation, the respondent police laid charge sheet before the learned Judicial Magistrate No.1, Nagapattinam. The learned Judicial Magistrate No.1, has taken the charge sheet on file in P.R.C.No.23 of 2011. Since the case is triable by the Court of Sessions, the learned Judicial Magistrate No.1, committed the case to the learned District and Sessions Judge, Nagapattinam. The learned District and Sessions Judge, Nagapattinam, taken the case on file in S.C.No.16 of 2012. After completing the trial, the accused found

not guilty for the offence under Section 302 IPC, hence, the accused was acquitted for the offence under Section 302 IPC. But at the same time, the accused found guilty for the offence under Section 304(ii) IPC, and was convicted and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/- in default, to undergo Rigorous Imprisonment for one year.

3 Challenging the said judgment of the learned Principal District and Session Judge, Nagapattinam, in S.C.No.16 of 2012, the appellant/accused filed present Criminal appeal before this Court.

4 The learned counsel for the appellant would submit that there is a material contradictions in this case. Even the statement under Section 161 Cr.P.C., recorded by the police from P.W.1 contradicts the evidence given before the Court below. Further, he would submit that identification parade conducted by the Magistrate is not in accordance with the provisions of Cr.P.C. The report of the identification parade by the Magistrate is defective and it is not admissible in evidence and it is not acceptable. Regarding the statement recorded under Section 164 Cr.P.C., P.W.2 also stated that he knows the deceased and did not know P.W.1 in earlier to the occurrence. But whereas, in the examination before the Court below, he has stated that he does not know P.W.1 prior to the occurrence which also creates suspicious. In this case, the accused is a known person. P.W.5 is the owner of the vehicle, but he has turned hostile and has not supported the case of the prosecution. However, prosecution has not proved the fact that P.W.5 is the owner of the offending vehicle and the accused only drove the vehicle at the time of the occurrence. It is also vehemently argued on the side of the accused that the deceased Kumar is having a habit of consuming liquor and he only had quarrels with public, when he was coming in the car at the time of occurrence. Hence, this accused is no way connected with this case. It is also contended that there are many contradictions between the evidence of P.W.1 and the FIR which was given by P.W.1. There are many contradiction between the evidences of P.W.1. The P.W.2. These contradictions create doubt on the side of the prosecution. So it is clear that the prosecution has miserably failed to prove its case beyond all reasonable doubt, which warrants interference by this Court.

5 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1 is the son of the deceased, who is the eyewitness in this case. He has clearly narrated that they went to Karaikal, to visit his aunty's house in the morning. While they were returning from Karaikal in the evening, the appellant who drove the lorry, came

very closer to the car which was driven by his father. When his father questioned the same, the appellant assaulted the deceased on his chest. Therefore, he sustained injury and he was taken to Government Hospital and there, he died. P.W.1 has narrated the complaint before the Inspector of Police, Kilvelur Police Station. FIR has also been registered on the same day. Identification parade was also conducted before the Magistrate in the manner known to law. The appellant has identified the accused during the identification parade before the Magistrate. The Magistrate, who filed a report was also examined before the Court. The Doctor one who treated the deceased has also opined that there is a possibility for death because of the assault made by the appellant. The prosecution has established that the appellant has committed the offence. The courts below have rightly appreciated the evidence and convicted the accused, which does not warrant any interference by this Court.

6 Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

7 The case of the prosecution is that on the fateful day, on 23.12.2010 at 07.30 P.M., when the deceased Kumar was driving his car bearing Reg.No.TN51/F 2713 from Nagapattinam to Tiruvarur and when he was going near the Poravacheri petrol Bunk, the accused drove his mini lorry bearing Reg.No.TN50/W 1163 in a rash and negligent manner, overtook the car of the deceased. The mini lorry after hitting on the right side edge of the car, stopped in front of the car of the deceased and drew out the deceased from the car seat by pulling his shirt and punched on his chest repeatedly with an intention to kill him. The deceased who suffered severe pain in his heart due to the assault made by the accused, died on the way to the hospital. Therefore, the Inspector of Police, Kilvelur Police Station has filed a final report as against the appellant punishable under Section 302 IPC.

8 P.W.1 is the son of the deceased who accompanied with the deceased at the time of the occurrence has clearly narrated the occurrence and he was examined by the Magistrate, soon after the occurrence. Therefore, on examining P.W.1 before the Court, the said Magistrate/P.W.7 recorded the statement under Section 164 Cr.P.C., P.W.1 stated that he was present in the scene of occurrence and seen the vehicle. P.W.10/Magistrate one who conducted the identification parade, deposed that the appellant has stated before him that he did not know the deceased prior to the occurrence.

9 On reading of the evidence of the Magistrate/P.W.10 who has conducted the identification parade in the manner known

to law, it is apparent that P.W.1 is the eye witness who has identified the accused at the time of conducting the identification parade. Further, P.W.5 is the owner of the vehicle who has clearly stated that the mini lorry bearing Reg.No.TN50/W 1163 belonging to him and the same was entrusted to the appellant. The Doctor who conducted the postmortem states that the assault in this nature on the chest by force, there is possibility to get injury and cause death.

10 Therefore, on reading of the evidence of P.W.1, P.W.5, P.W.7, P.W.10 and P.W.11 and also VAO/P.W.4, it is clear that the prosecution has proved its case beyond reasonable doubt. Though the learned counsel for the appellant pointed out some contradictions in the evidence of prosecution witnesses, the said contradictions are only minor contradictions and not the major contradictions, which would go to the root of the prosecution case.

11 On conjoint reading of the evidence of prosecution witnesses and also the Magistrate, one who recorded the statement of the witnesses under Section 164 Cr.P.C., and the Magistrate, who has conducted the identification parade and the Doctor one who has conducted the Postmortem and gave the report, reveal that the prosecution has proved its case beyond reasonable doubt. This Court also finds that the death was due to the injury sustained by the deceased. Further the evidence of the prosecution witnesses shows that the appellant is the one, who caused injuries to the deceased and due to the said injury, the deceased died. However, on reading of the evidence of P.W.1, it is seen that there is no pre-motive. P.W.1 drove the car and at that time, the appellant, who drove the lorry came very closer to the car. Therefore, the deceased questioned the manner of driving and the appellant has got sudden provocation and he came out from the lorry and assaulted the deceased. Due to the assault, the deceased sustained injury. Since the occurrence is only due to provocation and not enmity or any pre motive, but the deceased died because of the assault made by the appellant. Considering all the above, the learned District and Sessions Judge has rightly convicted the accused for the offence under Section 304 II IPC.

12 The evidence of P.W.1 clearly shows that there is no pre-motive, but out of sudden provocation, the appellant assaulted the deceased. Hence, to meet out the ends of justice, 7 years Rigorous Imprisonment is modified into 5 years Rigorous Imprisonment.

13 With the above modification, this Criminal Appeal is dismissed. 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

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To

1. The learned District and Sessions Judge,
Nagapattinam.
2. The Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.
3. The Public Prosecutor,
High Court, Chennai.
4. The Judicial Magistrate No.I, Nagapattinam.
5. The Chief Judicial Magistrate, Nagapattinam District.
6. The Superintendent, Central Prison, Cuddalore.

RSK(CO)
CSR: 31.01.2020

CrI.A.No.172 of 2015

सत्यमेव जयते

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