

BAIL SLIP

The Appellant namely Panneer Selvam, S/o.Saminathan, (Sole Accused in S.C.No.192 of 2016 on the file of the III Additional District and Sessions Judge, Coimbatore) was released on bail vide Order of this Court dated:08.02.19 and 25.03.19 made in Crl.M.P.No.2178 of 2019 in Crl.A.85 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.85 of 2019
and
Crl.M.P.No.2178 of 2019

Panneer Selvam

... Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
Kovilpalayam Police Station,
Coimbatore District.
(Crime No.77 of 2015)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment dated 20.12.2018 passed in S.C.No.192 of 2016 on the file of the III Additional District and Sessions Court, FTC, Coimbatore.

For Appellant : Mr.A.Suresh Sakthi Murugan
For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

This appeal arises against the judgment dated 20.12.2018 passed in S.C.No.192 of 2016 on the file of the III Additional

District and Sessions Court, Fast Track Court, Coimbatore, while acquitting the appellant/accused for the offence under Section 302 IPC, convicted him for the offence under Sections 304(ii) and 506(i) IPC and sentenced him to undergo 7 years Rigorous Imprisonment and fine of Rs.5,000/- in default 6 months Simple Imprisonment for the offence u/s 304(ii) IPC and fine of Rs.1,000/- in default 4 weeks Simple Imprisonment for offence under Section 506(i) IPC.

2. The case of the prosecution is that the appellant/accused and the deceased were relatives. There was a quarrel between the accused and the deceased and the deceased uttered abusive words to the accused and had pestered the accused to get him liquor frequently and therefore, the accused had developed hatred against the deceased. On 14.04.2015 around 5.00.p.m when the deceased was standing near the Perumal Temple, the accused had deceitfully invited the deceased for having liquor. Thereafter, the accused and the deceased went to a remote place along with PW-2. Where there was quarrel between them and the deceased had thrashed him with repeated blows on his face and above the left eyebrows and the deceased lost his balance and fell down. Again the accused had thrashed on the cheeks of the deceased repeatedly by pressing on the ground with his legs, due to which, the deceased lost his consciousness and succumbed to his injuries on the next day. The case was registered by the respondent against the appellant/accused in Crime No.77 of 2015 for the offence under Section 174 Cr.P.C and subsequently, altered into Section 302 and 506(i) IPC. After completing the investigation, the respondent laid charge sheet before the learned Judicial Magistrate No.II, Coimbatore. The learned Magistrate taken the final report on file, since the case was triable by the Sessions Court, committed to the Sessions Court. The learned Sessions Judge taking the case on file in SC No.192 of 2016 and made over to the learned III Additional District and Sessions Judge, Fast Track Court, Coimbatore for disposal.

3. Before the trial Court, the prosecution examined as many as 12 witnesses and marked 19 documents and 3 Material Objects. After completing evidence, incriminating circumstances culled out from the prosecution witnesses were put before the accused, he denied as false. On the side of the defence, 2 witnesses were examined and 2 documents were marked. The learned Sessions Judge, after completing the trial, while acquitting the accused for the offence under Section 302 IPC, convicted and sentenced him under Section 304(ii) and 506(i) IPC as stated above. Against which, the accused is before this Court.

4. The learned counsel for the appellant would submit that there is no eye witness and there are material contradictions and discrepancies in the evidence of the prosecution witnesses

and in order to prove his case, he examined two witnesses. RWs-1 & 2 have clearly stated that the witnesses could not have seen the occurrence. PW-2 has not supported the case of the prosecution. Other independent witnesses turned hostile and they have not supported the case of the prosecution. Since there was no injury, the medical evidence has also not supported the case of the prosecution. PW-6 could not have seen the deceased along with the appellant. The confession statement recorded by the police officer is not admissible in evidence. The recovery has not been proved. The learned trial Judge failed to consider the evidence and simply convicted the appellant/accused on the ground of sympathy, which warrants interference.

5. The learned Government Advocate (Crl.Side) would submit that though PW-2 was the eye witness and PW-1 is the brother of the defacto complainant. PW-2 informed the occurrence to PW-1 and hence, PW-1 lodged the complaint. Even otherwise the evidence of PW-2 is disbelieved, PWs-5 & 6 have stated that they have seen the accused along with the deceased and also PW-2 and the accused insisted the deceased to consume alcohol and he took the deceased 1½km away by two wheeler, where the accused assaulted the deceased. The Post-mortem report-Ex.P9 clearly reveals that the deceased died due to Multiple Injuries and its complications. The evidence of the doctor and post mortem certificate supported the case of the prosecution. Therefore, the prosecution has proved its case beyond reasonable doubts.

6. Heard the learned counsel appearing for the appellant, the learned Government Advocate (Crl.Side) appearing for the respondent as also perused the materials on record.

7. The case of the prosecution is that due to quarrel between the accused and the deceased, the deceased uttered abusive words to the accused and had pestered the accused to get him liquor frequently and therefore, the accused had developed hatred against the deceased. On 14.04.2015 around 5.00.p.m the accused had deceitfully invited the deceased for having liquor. Thereafter, the accused and the deceased went to a remote place along with PW-2. Where there was quarrel between them and the deceased had thrashed him with repeated blows on his face and above the left eyebrows and the deceased lost his balance and fell down. Again the accused had thrashed on the cheeks of the deceased repeatedly by pressing on the ground with his legs, due to which, the deceased lost his consciousness and succumbed to his injuries on the next day.

8. PW-1 has stated that he was informed over phone that the accused, the deceased and PW-2 went by two wheeler nearby Pillaiyar Koil at Neelambur Raod. Subsequently, after 1½ km

from there, they found the body of the deceased and thereafter, he preferred the complaint. PW-2 stated that he accompanied with the accused and the deceased, and he admitted that he informed over phone to PW-1 about the occurrence. He has stated that he and the appellant/accused along with the deceased went to the remote area. PW-6 has spoken that he saw the accused and PW-2 along with the deceased on 14.04.2015 at about 5.00 p.m nearby Perumal Temple and subsequently, he was informed that the deceased found dead. PW-2 clearly stated that he went along with the accused and found the deceased nearby the temple, subsequently all went to the place, where the body of the deceased was found. Though, he has clearly stated that there is no weapon, no premeditation, no pre-motive and enmity, the trial Court has found guilty of the appellant/accused for the offence 304(ii) and 506(i) IPC, however, acquitted the accused for the offence under Section 302 IPC. Even though, PW-2 had initially denied the case, subsequently, he has admitted that he has given the statement under Section 164 Cr.P.C.

9. On reading of the entire evidence of PW-2, who is the eye witness in this case and also his statement was recorded by the learned Magistrate under Section 164 Cr.P.C. Exs.P17 to P19 proved the same. Further, he has also given the reason why has not supported the case of the prosecution when he was examined before the trial Court on 23.01.2018 and subsequently, he was examined on 28.09.2018 on that day he has deposed about the occurrence. This Court does not find any reason to discard the evidence of PW-2. PW-6 one who had seen the deceased and accused along with the PW-2. Therefore, on conjoined reading of the evidence of PWs-2 and 6, PW-2 is eye witness. Evidence of PW-7 also further strengthen the case of the prosecution. The evidence of PW-11-doctor, one who has conducted the post mortem and issued documents Exs.P4 to P11 which are also corroborated the evidence of PW-2 that the injuries sustained by the deceased was possible as stated by the prosecution. Therefore, this Court finds that the prosecution has proved its case with cogent evidence. The learned Sessions Judge also rightly appreciated the evidence of prosecution.

10. On a reading of the entire oral and documentary evidence, this Court comes to the conclusion that the accused has not committed the offence under Section 302 IPC and whereas has come to the conclusion that the appellant has committed the offence under Section 304(ii) and 506(i) IPC. Considering the evidence of PWs-2, 6, 7 and 11, this Court does not find any reason to interfere with the judgment of the learned Sessions Judge.

11. Accordingly, this Criminal Appeal shall stand dismissed.
Consequently, connected miscellaneous petition is also closed.

kmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The III Additional District & Sessions Judge,
Fast Track Court,
Coimbatore.
2. -Do- The Principal District & Sessions Judge,
FTC, Coimbatore.
3. The Judicial Magistrate No.II,
Coimbatore.
4. The Chief Judicial Magistrate
Coimbatore.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Inspector of Police,
Kovilpalayam Police Station,
Coimbatore District.
7. The Public Prosecutor,
High Court, Madras -104.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+2CCs to Mr.A.Suresh Sakthi Murugan, Advocate, SR.No.31778

Criminal Appeal No.85 of 2019

Kak(25/06/2019)