

Bail Slip

The Appellant/Accused namely Kumar, S/o.Chinasamy, aged 36 years was directed to be released on bail in MP.No.1 of 2014 in CrI.A.No.422 of 2014, dated 20/08/2014 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.422 of 2014

Kumar ...Appellant/Single Accused
Vs.

The State rep. by
The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
(Crime No.578 of 2011)

...Respondent/Complainant

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure seeking to call for the entire records in connection with the S.C.No.36 of 2012 on the file of the learned Principal District and Sessions Judge, Krishnagiri, Krishnagiri District and set aside the judgment dated 01.08.2014.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.T.Shanmugarajeswaran,

Government Advocate (CrI.Side)

Judgment

This criminal appeal has been filed to set aside the judgment of conviction dated 01.08.2014 made in S.C.No.36 of 2012 by the learned Principal District and Sessions Judge, Krishnagiri District.

2 The appellant was prosecuted by the respondent police in Cr.No.578/2011 for the offence under Section 304(Part-I). After investigation, the respondent police laid a charge sheet, which was taken on file in P.R.C.No.20 of 2012 by the learned Judicial Magistrate No.I, Krishnagiri. The learned Magistrate, after completing formalities, since the offence charged against the appellant is triable only by the Court of Sessions, the case was committed to the learned Principal District and Sessions Judge, Krishnagiri, which was taken on file in S.C.No.36 of 2012.

3 Before the trial Court, in order to prove the case of the prosecution, P.Ws. 1 to 10 were examined and Exs.P1 to 17 were marked besides Material Objects 1 to 3. After completing evidence of prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses were put before the appellant, he denied as false. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, after trial, found the appellant guilty for the offence punishable under Section 304(Part-I) of IPC and by judgment dated 01.08.2014 convicted and sentenced him to undergo rigorous imprisonment for a period of five years with fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of six months.

5 Assailing the judgment of conviction dated 01.08.2014, the accused has preferred this criminal appeal.

6 The learned counsel appearing for the appellant would submit that there is delay in filing the complaint and there is no proper explanation for the same. The alleged occurrence has taken place on 30.08.2011 at about 08.00 p.m. whereas, the Village Administrative Officer has informed about the occurrence to the respondent police only on 03.09.2011, based on the same, the respondent police registered the present case against the appellant. There is contradictions between the prosecution witnesses 2 and 5 regarding arrest and confession statement. P.W.2 has stated that the respondent police has arrested the accused, but, P.W.5 has stated that the appellant has voluntarily surrendered at about 11.00 a.m. The Doctor P.W.7, one who given first aid treatment to the deceased VEDIYAMMAL and also made entry in the Accident Register, has not stated that there was injury on the head of the deceased, but the postmortem report shows that there was injury on the head of the deceased, which is fatal to the case of the prosecution. P.Ws.2 & 4 are relatives and interested witnesses and hence their evidence cannot be relied on. The trial Court has miserably failed to consider the material contradictions and discrepancies in the evidence of prosecution witnesses and therefore the judgment of conviction recorded by the trial Court is liable to be set aside.

7 The learned Government Advocate (Crl.Side) appearing for the respondent would submit that all the witnesses have clearly spoken about the case of the prosecution. P.W.1 is Village Administrative Officer, who has spoken about the complaint given before the respondent police. P.W.2 is the son of the deceased and P.W.3 is relative and P.W.4 is wife of

P.W.2. P.W.5 is also the Village Administrative Officer, who is witness for confession statement. P.W.7 is Doctor, one who given first aid treatment to the deceased P.W.8 is the Doctor, one who conducted autopsy on the body of the deceased. P.W.9 is the Head Constable, who registered the First Information Report and P.W.10 is the Investigating Officer. P.W.4 has spoken about the previous enmity between the appellant and P.W.2. P.W.6 has deposed that soon after the occurrence, when he saw the appellant, he has spoken about the action done by him on the deceased. The Doctor, one who given treatment at the time of admission, has stated that the deceased was brought by her son and they have stated that one known person attacked and due to which the deceased sustained injuries, which are grievous in nature. The Doctor, who conducted autopsy on the body of the accused has found injuries on the head of the deceased and also fracture, which are causes for her death. Medical records also strengthen the case of the prosecution and the trial Court has rightly convicted the appellant by appreciating the evidence of prosecution witnesses in a right manner, which does not call for any interference of this Court.

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

9 Case of the prosecution is that there was a dispute between the appellant and the P.W.2's family with regard to hand loan and fetching of water in the public tap. On 30.08.2011 at about 8.00 p.m., when P.W.2 proceeded to his house, the appellant intercepted him and demanded to repay the hand loan of Rs.400/- and there was scuffle, on seeing the same, the deceased VEDIYAMMAL, mother of P.W.2 and P.W.4, wife of P.W.2 came and the appellant kicked the deceased VEDIYAMMAL on her stomach and she fell down on the floor and sustained head injury and thereafter she was taken to the Government Hospital, Kaveripattinam and was referred to Government Hospital, Krishnagiri for further treatment and thereafter, she was taken to Private Hospital at Thiruppathur, by P.W.2. The Doctor, after examining the deceased VEDIYAMMAL, has stated that the deceased was in critical condition and refused to give treatment and while returning home, died on 03.09.2011. Therefore, respondent police registered the present case, which was ended in conviction.

10 It is seen from the records that P.W.2, who is son of the deceased has clearly deposed the transaction between him and the appellant, which was corroborated with the evidence of P.W.4. P.W.3 is independent witness, who has clearly spoken about the occurrence and how the deceased sustained injuries. It

is contended by the appellant that there was delay in registering the case, but, on reading of the records, it reveals that the occurrence has taken place on 30.08.2011, the deceased died on 03.09.2011 and thereafter only complaint has been lodged, therefore, the delay stated by the appellant is not fatal to the case of the prosecution. Further, even though, the Doctor, one who given the first aid to the deceased has not stated anything about the injury sustained by the deceased on her head, the Doctor, one who conducted autopsy on the body of the deceased has clearly stated that there was injury on the head of the deceased and fracture also. P.W.3, who is independent witness has clearly stated how the occurrence has taken place and how the deceased sustained injuries. The Doctors, P.W.7 has clearly stated that at the time of admission, the deceased was brought by her son and they have stated that one known person attacked and P.W.8, who has conducted autopsy on the body of the deceased has also stated that there was injury on the head of the deceased and fracture also found, which are the causes for her death. Originally FIR was registered for the offence under Section 174 of Cr.P.C. and subsequently, was altered to Section 304 (Part-I) and the trial Court, has also rightly framed charges under Section 304 (Part-I).

11 This Court, as an appellate Court, while re-appreciating the entire evidence and on a careful reading of the judgment of conviction made by the trial Court, does not find any perversity, warranting interference of this Court. There is no merit in the appeal and the same is dismissed. The judgment of conviction dated 01.08.2014 made in S.C.No.36 of 2012 by the learned Principal District and Sessions Judge, Krishnagiri District, is hereby confirmed. Trial Court is directed to secure the appellant to serve remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge, Krishnagiri,
Krishnagiri District.

2. The Judicial Magistrate No.I,
Krishnagiri.

3. The Chief Judicial Magistrate,
Krishnagiri.(for information)

4. The Superintendent,
Central Prison, Salem.

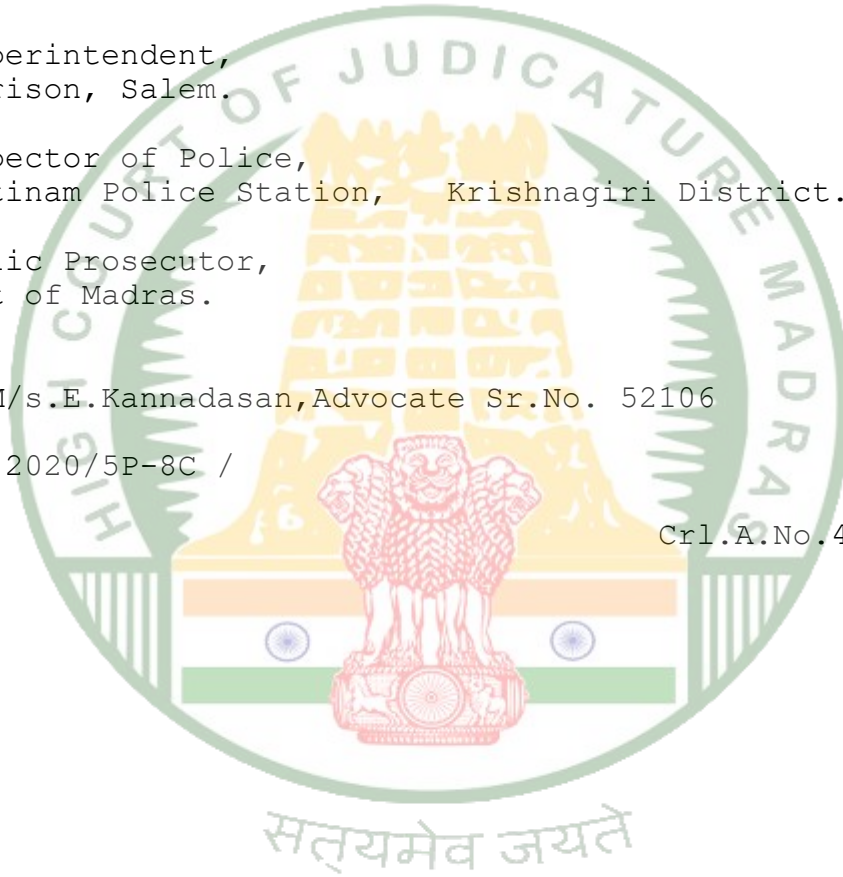
5.The Inspector of Police,
Kaveripattinam Police Station, Krishnagiri District.

6.The Public Prosecutor,
High Court of Madras.

+1 cc to M/s.E.Kannadasan,Advocate Sr.No. 52106

AKM/22.01.2020/5P-8C /

Crl.A.No.422 of 2014



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