

BAIL SLIP

The Petitioner/Accused viz., Mani @Perumal was released on bail as per the order of this court dt.8/12/2019 in CrI.MP.10693/17 in CrI.A.536/17 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.10.2019

Date of Verdict:07.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT.TEEKAA RAMAN

CrI.A.No.536 of 2017

Mani @ Perumal .. Appellant/Accused

Vs

State rep. by
The Inspector of Police,
Maruvathur Police Station,
Perambalur District. ... Respondent/Complainant

Appeal filed under Section 374 (2) Cr.P.C. against the conviction and sentence imposed in S.C.No.30 of 2013 dated 26.05.2014 on the file of the Sessions Judge, Mahila Court, Perambalur.

For Appellant .. Mr.R.Sankarasubbu

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellant being the sole accused stood charged for the offence punishable under Section 302 IPC in S.C.No.30 of 2013 and thereafter convicted accordingly. Seeking to set aside the conviction and sentence rendered by the Sessions Judge, Mahila

Court, Perambalur, the present appeal is filed.

2.CASE OF THE PROSECUTION IN BRIEF:

2.1. The deceased was none other than the wife of the appellant. She was working in Muscat. Thereafter, she returned back. Both the appellant and the deceased were in frequent quarrel. On 31.05.2012 at about 2.30 a.m., when the deceased was sleeping, the appellant took a big stone and dropped it on the head of the deceased. The deceased was thereafter taken to the hospital by her paternal uncle. Within a short, time she died. Thereafter, a complaint was given by P.W.1, who witnessed the occurrence to P.W.14 and a case was registered in Crime No.115 of 2012 under Ex.P11. Ex.P11 was sent through P.W.15 to Perambalur Magistrate Court and a copy was sent to P.W.17 Inspector of Police. P.W.17 took up the investigation and prepared Ex.P4 - Observation Mahazar and Ex.P12 - Rough Sketch. The body of the deceased was sent for examination pursuant to the inquest report. The appellant was arrested on 11.06.2012 at about 06.00 a.m. Pursuant to the statement given under Ex.P6, material objects have been recovered.

2.2. P.W.18 took up the investigation and thereafter filed the final report.

2.3. P.W.1 is the brother of the deceased. He is the author of the complaint registered under Ex.P1. It is his evidence that there were frequent quarrels between the appellant and the deceased. She made a complaint on the earlier occasion and thereafter the matter has been resolved between the parties. Even on the date of occurrence, there was a quarrel in the presence of P.W.1, who pacified them. At about 2.30 a.m., the appellant attacked the deceased by dropping a big stone on her head. He threatened P.W.1. Thereafter, the deceased was taken to the hospital.

2.4. In his cross examination, P.W.1 has stated that it was the appellant who made arrangements for the travelling expenses of the deceased. The material objects in M.Os.1 to 3 were handed over by him and his paternal uncle at about 5 p.m. on 31.05.2012. It is his further statement that there was stone crusher situated about 30 feet from the place of occurrence. He did not say anything about the previous quarrel on the same day between the appellant and the deceased. He did not say anything about the noise he heard. He has deposed that the son born through the wedlock between the appellant and the deceased was sleeping inside the house, which he did not say during police

enquiry. P.W.3 did not stay with him on the date of occurrence. He has further deposed that he woke up because he overheard the fight between four persons outside and the deceased did not quarrel with the appellant. At the time of occurrence, he did not ask others to catch the appellant. After the occurrence, the paternal uncle by name Chinnapilai and his wife came running. He has not seen the appellant in the police station for two days thereafter. He did not catch sleep as he had water before the occurrence and was sitting. He has also not seen the appellant taking the stone. The fact that he has shouted on seeing the appellant dropping the stone on the deceased has not been mentioned before the police.

2.5. P.W.2 is one who is stated to have been with P.W.1. However, P.W.1 has stated that P.W.3 was not with him at that point of time. In fact the complaint given by P.W.1 has clearly stated that there was a quarrel between the appellant and the deceased and upon hearing it, he came down and saw the occurrence. This is totally contrary to the evidence given by him.

2.6. P.W.2 has also stated that there are about four persons who came to the place of occurrence thereafter. However, in the cross examination, he admitted that he was not staying with P.W.1 and staying in the other room which is situated away.

2.7. P.W.3 heard from P.Ws.1 and 2 about the occurrence. He has further deposed that the police took M.O.1 from the crusher. He has signed the paper in which statement was written.

2.8. P.W.4 is not an eye witness. He only overheard the occurrence.

2.9. P.W.5 is a witness who signed Ex.P2 Seizure Mahazar by which M.Os.1 to 3 have been seized on 01.06.2012.

2.10. P.W.6 in his cross-examination has stated that it is he who on the direction of the police helped to place of M.Os.1 to 3 in the police jeep. He has specifically denied the evidence of P.W.1 that P.W.1 and his paternal uncle Chinnapillai brought M.O.1 to the police station.

2.11. P.W.7 is the one who signed Ex.P4 - Observation Mahazar and Ex.P12 - Rough Sketch. He has also deposed that it was done on 01.06.2012 though it has been recorded as that of 31.05.2012 at about 11.45 p.m. He is also one of the witnesses.

2.12. P.W.8 is a doctor to whom the deceased was brought in ambulance by the paternal uncle Chinnapillai. In his cross examination, he has stated that it is possible that such an injury could have been caused by a stone slipping from the tractor.

2.13. P.W.9 is the Village Administrative Officer before whom the confession statement has been given during police custody. He has also clearly admitted that there is a correction in the 161 statement with respect to the date as 01.06.2012.

2.14. P.W.12 is the doctor who conducted the post mortem and issued Ex.P9. In his cross examination, he has stated that it is possible that the injury could have been caused by accident when such a stone drops from the tractor over a person sleeping under the crusher. P.W.11 is the police photographer who took the photographs which are also marked. To be noted, P.Ws. 11 and 13 have stated that they were present in the place of occurrence on 31.05.2012.

2.15. P.W.17 is the investigating officer. It is his evidence that he arrested the appellant at about 6 a.m. on 01.06.2012 and recorded his confession statement. Thereafter, he went to the place of occurrence and seized the material objects. He has deposed contrary to the evidence of P.W.1 with respect to the seizure of M.O.1. He has stated that though the son of the appellant and the deceased by name Karthik was in the place of occurrence, to his knowledge, he did not examine him. He has further stated that P.W.1 did not say anything about the fight between the appellant and the deceased at about 9 pm. Prior to the occurrence. According to P.W.17, it is P.W.1 who identified the appellant though he has not given any evidence to that effect. However, he admits that in the 161 statement, evidence of P.W.9 with respect to the date has been corrected. Similarly, in the evidence of P.W.5, the date of mahazar has been corrected.

2.16. P.W.18 is the investigating officer who took up further investigation after P.W.17. He has deposed that neither the owner of the crusher nor the tractor has been examined.

3.The prosecution has also marked Exs.P1 to P12 apart from examining P.Ws.1 to 18. However, the appellant has not chosen to mark any document nor let in evidence.

4.The Trial Court placed all the incriminating materials before the appellant and the appellant denied all the questions. Thereafter, the matter was proceeded with and placing reliance upon the oral and documentary evidence, the appellant was

convicted for the offence punishable under Section 302 IPC.

SUBMISSIONS:

5.Learned counsel appearing for the appellant submitted that there is no eye witness except P.W.1. The evidence of P.W.1 cannot be accepted as it creates serious doubt. The paternal uncle of the deceased and P.W.1 has not been examined for the reasons known. He was the one who admitted the deceased in the hospital. He was present along with P.W.1 in handing over M.Os.1 to 3. There is a material contradiction in the complaint given under Ex.P1 and the evidence of P.W.1. P.W.2, though not an eye witness, could have been present even thereafter. All the witnesses were working in the stone crusher. There is a serious discrepancy with respect to the seizure of M.Os.1 to 3. The Observation Mahazar has been created subsequently. Since the statements under Section 161 Cr.P.C. were also obtained subsequently, there are material contradictions in both Ex.P4 Observation Mahazar and the statements given by the witnesses. The evidence of P.W.6 is also contrary to P.W.1. It is also not the case of defective investigating but the one which is done admittedly to implicate the appellant. There is absolutely no reason as to why the son of the appellant and the deceased was not examined. The Trial Court merely accepted the prosecution witnesses and applied the law which is not applicable to the case on hand. Therefore, the appeal will have to be allowed.

6.Learned Additional Public Prosecutor appearing for the respondent submitted that mere discrepancy per se cannot be a ground for acquittal. Merely because all the witnesses were working in the stone crusher and P.W.1 being the brother of the deceased, it cannot be stated that they are interested witnesses. With respect to the timing of the Observation Mahazar preparation and the Rough Sketch, the oral evidence will have to be seen. The Trial Court considered the materials available on record for rendering the conviction. Thus, the appeal will have to be dismissed.

7.We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records.

DISCUSSION:

8.Before analysing the evidence available, we have perused the original records. Ex.P4 is the Observation Mahazar. We find clear interpolation in Ex.P4. The date has been corrected as 31.05.2012 at about 11.45 a.m. There is also whitener used.

Ex.P12 - Rough Sketch dated 31.05.2012 clearly indicates M.O.1. Strangely, Ex.P4 Observation Mahazar and Ex.P12 Rough Sketch were received by the Court of Judicial Magistrate, Perambalur on 07.03.2013. Ex.P11 has been received by the Court on the very same day. There is absolutely no reason as to why Ex.P4 and Ex.P12 reached after such a long period of time. Ex.P3 by which seizure of the mat and the pillow was made was received by the Court on 26.06.2012 though dated 01.06.2012. However, Ex.P2 has been received on the very same day. Similarly, all the other documents such as statement given under Section 161 Cr.P.C. and Accident Register were received on 07.03.2013.

9. On a perusal of the above, we have no doubt in our mind that the prosecution has made a clear attempt to strengthen the case by obtaining the statements subsequently though dated 31.05.2012. Insofar as the statement of P.W.9 is concerned, there is also material correction with respect to the date of Observation Mahazar- Ex.P4. Similarly, one Chinnapillai (not examined) has also given a statement, wherein similar correction is found with respect to the date of the Observation Mahazar. In fact, these corrections were actually admitted by the investigating officer. Thus, on perusal of the aforesaid documents, we are of the view that the investigation has not been done in a fair and transparent manner.

10. We are not in a position to accept the evidence of P.W.1. As stated earlier, the evidence adduced is contrary to the evidence of P.W.6 and also the case of the prosecution with respect to M.Os.1 to 3. P.W.1, though stated that it is he who brought those material objects, they have been shown in the seizure mahazar. His evidence is also contrary to the complaint given with respect to the alleged quarrel. In his evidence, he has not stated anything about the quarrel between the deceased and the appellant. In fact, in his evidence, he has stated that he saw the appellant taking stone and dropping it on the head of the deceased, who was sleeping. In another place, he has deposed that he overheard the sound and thereafter ran down. He further gives two versions on his being awake at the wee hours. At one place, he says that there was a quarrel outside, which prevented him from sleeping and in another place, he says that he had water and could not catch sleep. It is his case that he came down from the first floor to the place of occurrence which is in the ground floor. He also overheard the sound. It is the case of the prosecution, as supported by the medical evidence, that the stone was dropped on the head of the deceased. Therefore, either P.W.1 could have heard the sound or seen the occurrence and thus it cannot be both. He has also accepted the fact that the son of the deceased and the appellant was sleeping inside. Therefore,

if P.W.1 could hear the noise, the same could have been heard by the son of the deceased and the appellant. There is no reason as to why he did not disclose this to the investigating officer. Though it is the evidence of the said officer that he was aware of it, strangely, chose not to examine the son of the appellant and the deceased. P.W.1 also did not inform the persons outside nor sought for help even after seeing the appellant running. They have also not been examined. Though he had stated that he has informed his paternal uncle Chinnapillai, he has also not been examined. P.W.1 further stated that he has not seen the appellant for two days in the police station. But it is the evidence of P.W.17 that it is he who identified the appellant. Suffice it to state that he has not deposed anything on that line. The occurrence also took place at about 2.30 a.m.

11.From the above, we are not able to place reliance upon the evidence of P.W.1 which creates very serious doubt in our mind. P.W.2 has also stated that he overheard the sound and thereafter he along with P.W.1 came down. However, in his cross examination, he has deposed that he was living nearby. He also does not say anything about the presence of the paternal uncle of the deceased. Thus, the evidence of P.W.2 does not help the case of the prosecution especially when P.W.1 has stated that P.W.2 was not staying with him and he was actually belonging to Pommanapadi village.

12.All the other witnesses were also working in the stone crusher. On perusing the evidence of P.W.3, we could see that he has also not stated anything about the presence of the paternal uncle of the deceased. Strangely, he has deposed that M.O.1 was taken from the crusher by the police. Thereafter, he changed his version by saying that P.W.1 was the one who took the stone. Thus, the evidence of P.W.3 does not inspire confidence, though not being an eye witness. P.W.5 speaks about the Seizure Mahazar involving M.Os.1 to 3 under Exs.P2 and P3. As stated, this evidence is also contrary to the evidence of P.Ws.1 and 3. Similarly, P.W.7 who speaks about Ex.P4 Observation Mahazar and Ex.P12 Rough Sketch had deposed that they have been prepared on 01.06.2012 at about 8.00 a.m., which is also not the case of the prosecution. He was also conscious of the fact that he has given a statement under Section 161 Cr.P.C. that it was prepared on 31.05.2012 at about 11.45 a.m. Therefore, the evidence of P.W.1 actually militates against the case of the prosecution. P.W.9, who is the Village Administrative Officer, in clear terms, has stated that there is correction with respect to the date in the statement given by him under Section 161 Cr.P.C. The investigating officer viz., P.W.17 had deposed about the seizure on 01.06.2012. Though he denied the suggestion made on the

evidence of P.W.1, the fact remains that P.W.1 did depose to the effect that it is he along with his paternal uncle Chinnapillai handed over M.Os.1 to 3. This is in tune with the evidence of P.W.3. He has also admitted the fact that despite knowing the presence of Karthick, son of the appellant and the deceased, he has not been examined. However, he had stated, as recorded earlier, with respect to the corrections made on the dates.

13. Suspicion however strong cannot be a substitute for proof. Once we find that the evidence of P.W.1 does not inspire confidence, the appellant is certainly entitled for the benefit of doubt. The prosecution has not done its job properly. There is absolutely no explanation worth accepting for the corrections made and the belated sending of the statements obtained along with Exs.P4 and P12. If Exs.P4 and P12 were prepared much earlier to Exs.P2 and P3, there would not have been any reason for not sending them immediately. We have to consider the entire case in the light of the above said facts including the corrections made and the contradictory evidence given by the witnesses with respect to the material objects. The contradictions are not minor but substantial enough to raise serious questions on the investigation made. The very Observation Mahazar under Ex.P4, on a perusal, would show that it has been prepared very shabbily without adequate particulars.

14. From the evidence of P.W.18 and on perusal of the records, we could see that the final report was filed on 25.10.2012. It is only thereafter the 161 Cr.P.C. statements along with Exs.P4 and P12 were received by the Court. This appears to be rather strange, to say the least. The Trial Court, in our considered view, has merely accepted the evidence of P.Ws.1 and 2. The case of the prosecution raises very many doubts. As recorded by the Trial Court, it is not a small stone but nearly a rock. Even the appellant was finding it difficult to lift it as asked by the Court. The occurrence was during the night time. We do not know as to how P.W.2 could hear the noise of the stone falling on the head of the deceased and thereafter accompanied P.W.1. P.W.3, in his evidence, has stated that M.O.1 has been recovered from the stone crusher. Admittedly, the place of residence of all the parties who were working in the crusher is within the area of operation. The crusher lorry and the place in which the witnesses and the deceased were sleeping are part of the same area. He has also deposed that it could have been possibility of the accident occurring. Once we eschew the evidence of P.W.1, there is no other material worth considering to implicate the appellant. The Trial Court placing reliance upon the evidence of P.W.9 Village Administrative Officer, which in our considered view, is not the one which

would help the case of the prosecution. The Village Administrative Officer has recorded the confession statement of the appellant during police custody. There is no question of recovery involved under Section 27 of the Indian Evidence Act as the material objects were available in the place of occurrence even as per the case of the prosecution.

15. Thus, in the light of the above discussion, we are not able to uphold the conviction rendered by the Trial Court as we find very many loopholes in the case of the prosecution. Accordingly, the conviction and sentence rendered by the Sessions Judge, Mahila Court, Perambalur in S.C.No.30 of 2013 dated 26.05.2014 are set aside and the criminal appeal stands allowed and the appellant is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any paid by him, is ordered to be refunded forthwith.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Maruvathur Police Station,
Perambalur District.
2. The Sessions Judge,
Mahila Court, Perambalur.
3. The Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate,
Perambalur.
5. The Chief Judicial Magistrate,
Perambalur (for information).
6. The Superintendent, Central Prison, Trichy.

CRL.A.No.536 of 2017

SVI (CO)
CB(09/12/2019)