



BAIL SLIP

The Appellant/Accused viz., Subetha, W/o.Karunanithi was directed to be released on bail as per order of this Court dated 04.12.2012 and made in CRL.A.(MD) No.257/12.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. A.(MD)No.257 of 2012

Subetha

.. Appellant/ Accused

Vs.

The State represented by,
The Inspector of Police,
Nachiyarkovil Police Station,
Thanjavur District.
(Crime No.136 of 2011)

.. Respondent/Respondent

Prayer : This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the order dated 16.10.2012 passed in S.C.No.113 of 2012 on the file of the learned Principal Sessions Judge, Thanjavur District, as against the appellant by allowing the above Criminal Appeal.

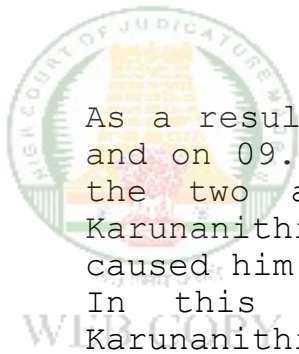
For Appellants : Mr.K.Radhakrishnan,
Legal Aid Counsel.

For Respondent : M/s.A.Robinson,
Government Advocate(Crl. Side).

JUDGMENT

The appellant was convicted for the offence under Section 304 Part-II of I.P.C., and sentenced to undergo Rigorous Imprisonment for five years vide Judgment dated 16.10.2012 in S.C.No.113 of 2012 on the file of the Principal Sessions Judge, Thanjavur District.

2. The case of the prosecution is that the appellant was married to the deceased Karunanithi and that two years prior to the occurrence, Karunanithi suffered Paralytic stroke. The appellant was doing coolie work and taking care of the family. The deceased was said to have developed suspicion over the conduct of the appellant.



As a result, there used to erupt frequent quarrels between the two and on 09.05.2011 at about 9.30 p.m. there arose a dispute between the two and the appellant is said to have hit the deceased Karunanithi with M.O.1 wooden log on the back of his head and caused him injuries. Karunanithi fell down and he died on the spot. In this regard, Pappa, namely, the mother of the deceased Karunanithi lodged Ex.P.1 complaint before Nachiyarkovil police station. On the next day, at 1.00 p.m., Ex.P.11 First Information Report was registered in Crime No.136 of 2011 for the offence under Section 302 of I.P.C.

3. Investigation was taken up and final report came to be laid against the appellant for the offence under Section 302 of I.P.C., before the Judicial Magistrate, Kumbakonam. The learned trial Magistrate took cognizance of the offence and committed the case to the Sessions Court in P.R.C.No.60 of 2011. The case was taken up for trial in S.C.No.113 of 2012 on the file of the Principal Sessions Judge, Thanjavur. Charge under Section 302 of I.P.C., was framed against the appellant. The appellant denied the charge and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.15. M.O.1 and M.O.2 were also marked. On the side of the accused, no evidence was adduced. After considering the evidence on record, the learned trial Judge by Judgment dated 16.10.2012 convicted and sentenced the appellant as mentioned above, holding that the involvement of the accused has been established. Questioning the same, this Criminal appeal came to be filed.

4. Heard the learned counsel appearing for the appellant and the learned Government Advocate(Crl. Side) appearing for the respondent.

5. The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum and wanted this Court to set aside the impugned Judgment and acquit the appellant.

6. Per contra, the learned Government Advocate(Crl. Side) appearing for the respondent submitted that the impugned Judgment does not call for any interference and wanted this Court to dismiss this appeal.

7. I carefully considered the rival contentions and perused the evidence on record.

8. The primary contention of the appellant's counsel is that the evidence of P.W.1 is highly unbelievable. The learned counsel took me through the contents of Ex.P.1 complaint which is said to have been lodged by P.W.1 Pappa. P.W.1 had stated in her complaint that she was in the house of her son on the date of occurrence and that there arose a quarrel between the appellant and her son of P.W.1 and that the appellant pushed down her



husband on the floor. The appellant's counsel would point out that admittedly Karunanithi was a paralytic patient. When he had been pushed down, no mother would simply leave the spot. P.W.1 would claim that when she returned the house on the next day morning, she found her son dead.

WEB COPY

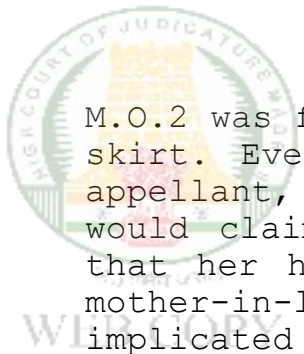
9. I am of the view that there is considerable merit in the submission of the appellant's counsel that P.W.1 has been falsely introduced as an eyewitness. But then, the question for consideration is whether prosecution case will get weakened as a result.

10. It is not in dispute that Karunanithi, husband of the appellant died in their house. He was a paralytic patient. P.W.5 Backiyaraj is also a resident of the very same street. He specifically stated that on the occurrence date, at about 08.00 p.m., Karunanithi had dinner at his house and that Karunanithi left his house after watching T.V. for a while. Even though it has been elicited in the cross examination that P.W.5 did not state during his examination under Section 161 of Cr.P.C., he heard a noise in the house of the appellant, his testimony that the appellant and the deceased Karunanithi together went home has not been shaken at all.

11. In these circumstances, the appellant herself will give explanation under Section 106 of the Indian Evidence Act. Section 106 of the Indian Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

12. In this case, it has been established that Karunanithi did not die a natural death. He was done to death. P.W.10 who conducted postmortem of Karunanithi had stated that he had suffered a skull fracture. Blood was coming out from the back of his head. It was suggested to the said doctor that if the deceased fell down from a high altitude, he could have sustained the injuries found on his body. But the doctor had ruled out the possibility of injuries occurring in the manner suggested by the accused. P.W.10 had also deposed that if the deceased was attacked by M.O.1 wooden log, the injury found on the head of the deceased should be caused.

13. In fact the head injury is spoken not only by the doctor but also by P.W.1, mother of the deceased and P.W.5 Backiyaraj. The appellant who was present with the deceased during the relevant time had come out with any explanation as to what had happened. She did not lodge information before the police. It was Pappa who seeing her son dead went to the police station to lodge information. The appellant was arrested on 11.05.2011 and she gave confession before P.W.13. Ex.P.14 is the admissible portion of the confession. Pursuant to the confession given by her, M.O.1 wooden log and M.O.2 bedsheet were recovered from the room. M.O.3 bedsheet and M.O.4



M.O.2 was found to be bloodstained and blood was detected on her in-skirt. Even though this circumstance was specifically put to the appellant, she once again feigned ignorance. All that the appellant would claim in her examination under Section 313 of Cr.P.C., was that her husband was lying dead and she was crying and since her mother-in-law was on inimical terms towards her, she falsely implicated her. Excepting this, the appellant has not come out with any defence version.

14. I am of the view that the prosecution had established beyond reasonable doubt the involvement of the appellant in the crime. The Court below has acquitted the appellant of the charge under Section 302 of I.P.C., and found her guilty under Section 304 Part-II of I.P.C. I am of the view that the impugned Judgment does not call for any interference. But however, the mitigating facts obtaining in this case, will have to be taken note of. The appellant's husband had become paralytic. It was the appellant by doing coolie work was taking care of the appellant. Her husband appears to have suspected her character. Therefore, the appellant was under the mental stress and the entire occurrence appears to have been committed more out of grave and sudden provocation. That is why, the Court below rightly acquitted the appellant of the charge of murder, but found her guilty of the lesser offence under Section 304 Part-II of I.P.C.

15. The appellant is having three children and out of them two who are twins are physically challenged. The conviction of the appellant is confirmed. Taking note of all the mitigating factors, the sentence of imprisonment is modified and reduced from 5 years Rigorous Imprisonment to 2 years Rigorous Imprisonment. The period of incarceration undergone by the appellant will be set off under Section 428 of Cr.P.C.

16. This Criminal appeal stands partly allowed, accordingly. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The bail bond, if any, executed by her shall stand cancelled. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Thanjavur District.

2.The Judicial Magistrate,



- 3.The Chief Judicial Magistrate,
Thanjavur.
- 4.The Superintendent of Police,
Thanjavur.
- 5.The Inspector of Police,
Nachiyarkovil Police Station,
Thanjavur District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 7.The Superintendent,
Special Prison for Women, Trichy.
- 8.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.K.RADHAKRISHNAN, Advocate (SR-81106[F] dated
09/08/2019)

Crl. A.(MD)No.257 of 2012
09.08.2019

pmu

JM/03.10.2019/5P/11C