



BAIL SLIP

Karuppasamy, S/o. Ganeshan, aged about 24/2010, sole accused was released on Bail vide order of this court in dated 11.02.2010 in MP(MD)No.1 of 2010 in CRL A(MD).No.11 of 2010

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.11 of 2010

Karuppasamy

... Appellant/Sole Accused

Vs

State represented by Inspector of Police,
Seithur Police Station,
Virudhunagar District.
In Crime No.117/08.

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the conviction and sentence passed by the Principal Sessions Court, Virudhunagar District at Srivilliputtur in S.C.No.132/2008, dated 05.01.10 and allow this criminal appeal.

For Appellant : Mr.G.Marimuthu

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellant was found guilty of the offences under Sections 304(Part-II) and 323 of IPC and sentenced to three years rigorous imprisonment for the offence under Section 304(Part-II) of IPC and to six months rigorous imprisonment for the offence under Section 323 of IPC, vide Judgment dated 05.01.2010 in S.C.No.132 of 2008 on the file of the Principal Sessions Court, Virudhunagar District, Srivilliputhur. Challenging the same, this appeal has been filed.

2.The prosecution case in brief is as under:-

The deceased as well as the accused hail from Sethur. One Irulappan had as many as seven daughters. He had permitted six of his daughters to enjoy his property by turns. But he did not allot any share to one of his daughter namely Jeyalakshmi. The deceased Muniyandi is none other than the son of the said Jeyalakshmi. Therefore, there was a dispute between the family of the Jeyalakshmi on the one hand and Irulappan on the other. It appears



that the deceased Muniyandi used to periodically demand a share in the property from Irulappan. On 18.05.2008, at about 07.30 p.m., Muniyandi had gone to Irulappan's house to make a demand for a share in the property. He was sitting in the Arasaradi Pillaiyarkovil dais. At that time, the accused Karuppasamy is said to have come there and there developed a quarrel between two. Hearing the same, P.W.1/the wife of the deceased and P.W.2/ the father of the deceased rushed to the spot. The accused Karuppasamy said to have assaulted P.W.2 with M.O.1 stick and caused him injuries on his left shoulder as well as elbow. He is said to have bodily lifted Muniyandi and thrown him to the ground. He stamped Muniyandi with his leg on his chest and on his private part. Muniyandi died on the spot. Thereupon Ex.P1-Complaint was lodged by Guruvammal wife of Muniyandi. Based on the same, Crime No.117 of 2008 was registered on the file of the Sethur Police Station for the offences under Sections 323 and 302 IPC. Investigation was undertaken and after following the usual formalities, final report was laid before the learned Judicial Magistrate, Rajapalayam. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court in P.R.C.No.26 of 2008. The case was taken up for trial in S.C.No.132 of 2008. Charges were framed against the appellant for the offences under Sections 325 and 302 of IPC. The appellant denied the charges in toto and claimed to be tried. In the trial, the prosecution examined as many as 15 witnesses and marked Ex.P1 to Ex.P17. M.O.1 and M.O.2 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge, on a detailed and elaborate consideration of the evidence on record, by Judgment dated 05.01.2010, convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal has been filed.

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and contended that, the impugned Judgment must be reversed and the appellant acquitted of all the charges.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment deserves to be sustained and wanted this Court to dismiss this appeal.

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

6. The primary contention of the appellant's counsel is that Ex.P1 cannot be believed. He took me through the original complaint and pointed out that it has too many erasures and alterations. It is not known as to who wrote the complaint. In this regard, the appellant's counsel took me through the answers given by P.W.1-Guruvammal as well as the Investigating Officer. The person who wrote the complaint was not examined. The appellant's counsel would contend that the complaint being the earliest document should be free from doubt and evoke the

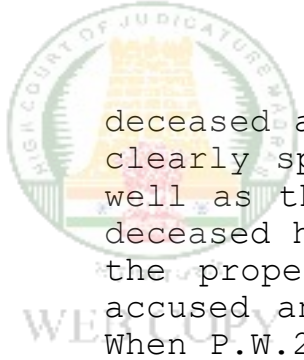


confidence of the Court. Such is not the case here.

7. I am unable to agree with this submission. It is true that Ex.P1 is full of corrections. But then, it is bound to be so. If the complaint had been neatly drafted, then, that can probably arouse one's suspicion. The occurrence had taken place at about 7.30 p.m., on 18.05.2008. According to P.W.1, shortly, thereafter, someone wrote out the complaint and that, she affixed her signature. In the very nature of things, the person drafting the complaint would certainly make corrections. The complaint as it was originally drafted with all corrections, had been given to the Police for lodging the FIR. In fact, corrections are only in respect of the non material portions. As regards, the role attributed to the appellant Karuppasamy, there is no doubt whatsoever. The appellant had been implicated in clear and definite terms.

8. The appellant's counsel would claim that even the signature of the Guruvammal is not found in the complaint. In my view, it is only Guruvammal who can own up or disown the signature. She has deposed that she affixed her signature in Ex.P1. The prosecution case cannot be thrown out, merely because, in the complaint-Ex.P1, there are corrections and alterations.

9. The appellant's counsel would again contend that there has been a gross delay in registering the FIR and that it has not been sufficiently explained. I am unable to agree with this submission. The occurrence had taken place on 18.05.2008 at about 7.30 p.m., The information was lodged at 11.30 p.m. One must note that in the meanwhile, Muniyandi was taken to a Hospital. The Doctor stated that Muniyandi was brought dead and only thereafter, the parties went to the station. Therefore, in my view, the delay occasioned in registering the FIR has been sufficiently explained. In any event, when the FIR has been registered on the same day that too within two hours, one cannot say that there has been any inordinate delay. In fact, Ex.P1-Complaint as well as Ex.P14-FIR reached the Judicial Magistrate on the very same day. The appellant's counsel would claim that the motive in this case appears to be the non allotment of share in the property by Irulappan, the grand father of the deceased. But Irulappan was not examined. Therefore, the appellant's counsel would contend that the motive is not at all proved in this case. This is the case of murder. When there are eye witnesses, failure to prove the motive by examining the concerned witnesses, will not at all affect the prosecution case. The appellant's counsel would contend that the version projected by P.W.1 is highly improbable. P.W.1 would claim that the appellant attacked P.W.2 with stick and that he bodily lifted Muniyandi and caused his death. The appellant's counsel would claim that even P.W.1 was not present in the scene of occurrence. In this case, the prosecution had examined as many as four eye witnesses. P.W.1 is the wife of the deceased. P.W.2 is the father of the deceased. P.W.3 is the elder brother of the



deceased and P.W.4 is the uncle of the deceased. All of them have clearly spoken about the attack by the appellant on both P.W.2 as well as the deceased. In fact, all of them have deposed that the deceased had gone to the house of Irulappan and demanded a share in the property and that, since the quarrel broke out between the accused and the deceased, P.W.2 and P.W.1 had come to the spot. When P.W.2 had questioned the accused as to how he can shout at his son, the accused had beaten P.W.2 with stick. Immediately, this was strongly objected by the deceased. The ire of the appellant turned towards the deceased. He had viciously lifted him bodily and thrown him down and kicked him on his chest as well as private parts. Ex.P11 is the Postmortem Certificate. The internal injuries suffered by the deceased Muniyandi which ultimately led to his death have been described in detail. His scrotum had been crushed. Similarly, he had suffered internal injury on his chest also. The wife of the deceased namely P.W.1 had clearly deposed that it was the appellant who caused those vital injuries on the deceased. P.W.2 is also an injured witnesses. He got himself treated by P.W.10-Doctor Jeyabaskar. P.W.2 claimed that he had suffered injuries on his shoulder and the elbow and the same have been confirmed by P.W.10. When incriminating circumstances were put to the appellant in the examination under Section 313 of Cr.P.C., the appellant had merely characterised the evidence of the prosecution as false. In fact, he did not have defence witness nor he gave any statement under Section 313 of Cr.P.C.,

10.The learned trial Judge, after a detailed consideration of the evidence on record, came to the conclusion that the testimony of P.W.1 to P.W.4 can certainly be believed. Even though, the original charge against the appellant was one under Section 302 of IPC, taking note of the fact that it was the deceased who went to the house of the Irulappan to demand a share in the property and that the entire occurrence appears to have been more a sudden quarrel, the appellant was found guilty only for the offences under Sections 304(Part II) and 323 of IPC. The learned trial Judge had carefully appreciated the evidence on record and found the appellant guilty only of lesser offences. I am of the view that the Judgment of the learned trial Judge is well reasoned and well founded and does not warrant any interference. I find no ground to interfere. This criminal appeal stands dismissed. The trial Magistrate shall take steps to enforce this order.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate, Rajapalayam.
2. Do through, The Chief Judicial Magistrate,
Virudhunagar at srivilliputhru.
3. The Principal Sessions Court,
Virudhunagar District at Srivilliputtur.
4. The Inspector of Police,
Seithur Police Station,
Virudhunagar District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.G.M.LAW OFFICE, Advocate Sr. No. 74824

Cr1.A(MD)No.11 of 2010
11.07.2019

PK(CO)
TR (28.08.2019) 5P 7C