



Bail Slip

The Appellant/Accused namely Rajendran was released on bail as per order of this Court dated 07.10.2010 are made in MP(MD).No.1 of 2010 in CrI A. (MD)No.290 of 2010 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A(MD)No.290 of 2010

Rajendran

... Appellant/Sole Accused

Vs

State represented by
Inspector of Police,
S.P.Pattinam Police Station,
Ramanathapuram District.
(Crime No.4/2009)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the Judgment and Conviction, dated 28.07.2010 by the Principal Sessions Judge, Ramanathapuram in S.C.No.293 of 2009 and acquit the appellant.

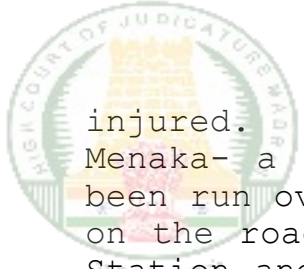
For Appellant : Mr.S.R.Senthilkumar

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

JUDGMENT

The appellant was convicted for the offences under Sections 304(I) of IPC and 307 of IPC and sentenced to seven years rigorous imprisonment and five years rigorous imprisonment respectively and also levied with fine, by Judgment dated 28.07.2010 in S.C.No.293 of 2009 on the file of the Principal Sessions Judge, Ramanathapuram. Questioning the same, this appeal has been filed.

2.The prosecution case in brief is that the appellant and the deceased Muniammal were having illicit intimacy and that, the appellant saw the said Muniammal and P.W.2-Sivasamy in a compromising position on 19.01.2009 at about 12.00 midnight in the field near Pathanakudi Thar Road. He went into rage and accused Muniammal of having betrayed him. He also assaulted her with spade on her head as well as other parts of the body and caused her death. <https://hcservices.samy.gov.in/ncservices/> attempted to separate the two. He was also beaten by the appellant on his jaw and ribs and chest with the very same M.O.1. While Muniammal died on the spot, P.W.2 was grievously



injured. Interestingly, it was the appellant who informed P.W.1 Menaka- a relative of the deceased that Muniammal and Sivasamy had been run over by the speedy vehicle and that their bodies were lying on the road. There upon, Menaka rushed to the S.P.Pattinam Police Station and lodged Ex.P1-Complaint. Based on the same, Crime No.04 of 2009 was registered for the offences under Sections 279, 337 and 304(A) of IPC (Ex-P8). However, on further information, P.W.18-Inspector of Police came to know about the involvement of the appellant. He therefore arrested the appellant on 22.01.2009 at about 06.00 a.m., in the presence of P.W.12-V.A.O. The appellant is said to have given his confession. Ex.P17 is the admissible portion of the said confession said to have been made by the appellant. Pursuant to the same, M.O.1 and M.O.4 (Spade and Half sleeved Shirt of the appellant) were recovered under Ex.P7. P.W.2 regained his consciousness and was ready to give a statement on 05.02.2009. In the mean while, the Investigating Officer had arranged holding of the inquest and performing the postmortem on the body of the deceased Muniammal. After completing all the usual formalities, P.W.19 filed final report against the appellant for the offences under Sections 302 and 307 of IPC before the Judicial Magistrate, Thiruvadanai. Since the case was exclusively triable by the Sessions Court, the case was committed to the Sessions Court in P.R.C.No.10 of 2009. The case was taken up in S.C.No.293 of 2009 on the file of the Principal Sessions Judge, Ramanathapuram. Charges were framed under both the provisions namely 302 as well as 307 of IPC. The appellant pleaded not guilty to the charge and claimed to be tried. The prosecution examined as many as 19 witnesses and marked Ex.P1 to Ex.P23. M.O.1 to M.O.8 were marked. On the side of the accused, no evidence was adduced. The learned trial Judge, while acquitting the appellant of the offence under Section 302 of IPC, found him guilty of the offence under Section 304 (I) of IPC and sentenced him to seven years rigorous imprisonment. The appellant was also found guilty of the offence under Section 307 of IPC and sentenced to five years rigorous imprisonment. Totally, a fine amount of Rs.1000/- was also imposed. Questioning the same, this appeal has been filed.

3.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum. His first contention is that the charge was very specific. It was the appellant Rajendran who saw Muniammal and P.W.2-Sivasamy having sexual intercourse in the field at about 12.00 midnight on 19.01.2009. It is this that is said to have enraged the appellant into committing the crime in question. Even though such a specific charge was framed, P.W.2-Sivasamy denied that he was having sexual intercourse with Muniammal. Therefore, according to the appellant's counsel, the very foundation of the prosecution case goes. He also doubted the arrest as well as the recovery. According to him, though the Police would claim that the appellant was arrested on 22.01.2009 at about 6.00 a.m., in Oriyur Bus Stop, the witness to the arrest deposed that he was informed by the Police some 15 minutes earlier to go to the bus stop.



4.The appellant's counsel contented that the appellant was illegally detained in the police station and arrest dramas was enacted in the bus stop in question. He also pointed out that in both M.O.1 as well as M.O.4, no blood stain were noted by the serologist. He drew my attention to the report of the Serologist-Ex.P10. His further contention is that when P.W.2 was admitted in the hospital, it was entered in the Accident Registrar that the injuries had taken place because of running over by the speeding vehicle. In fact, in the discharge summary issued by Apollo Hospital also (Ex.P14), it had been mentioned that the injuries were caused only by running over by the speeding vehicle. The appellant's counsel also drew my attention to the answers given by the Postmortem Doctor-P.W.10 who had opined that the injuries 1 to 6 found on the dead body of Muniammal could be caused, if she was in a standing position at a road side and the vehicle had hit her. The contention of the appellant's counsel is that the injuries on the body of the deceased are consistent with the case of accident projected by the defence. He would also point out that the deceased Muniammal and the appellant Rajendran were related to each other as cousin brother and sister and that, therefore, there was no possibility of they having sexual relationship. His final contention is that the inquest witness had also described the incident in question only as a motor vehicle accident and not as murder. For these reasons, the appellant's counsel wanted this Court to reverse the Judgment of the Court below.

5.Per contra, the learned Government Advocate (Crl.side) contended that the Judgment of the Court below is a well reasoned one and that, it does not call for any interference. He wanted this Court to dismiss this appeal.

6.I carefully considered the rival contentions and went through the evidence on record.

7.The charge against the appellant is that he murdered Muniammal on 19.01.2009 at about 12.00 midnight and that he caused injuries to P.W.2-Sivasamy with an intention to cause his death. Now the question is whether this is the result of the motor vehicle accident or a crime perpetrated by the appellant. As already pointed out, the Court below had acquitted the appellant of the charge under Section 302 of IPC and chose to convict the appellant only for the offence under Section 304(I) of IPC for the death of Muniammal. The appellant had also been found guilty of the offence under Section 307 of IPC. Now the only question that arises for consideration is whether the impugned Judgment warrants any interference.

8.The prosecution in support of its charges had examined as many as 19 witnesses. P.W.1 is a close relative of the deceased Muniammal and it was she who lodged Ex.P1. P.W.1 does not have any direct knowledge about the occurrence as such. But it is relevant

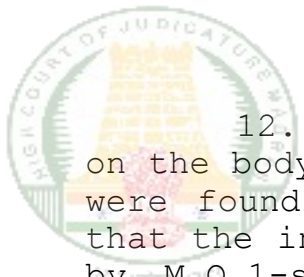
to mention here that it was the appellant Rajendran who informed Menaka-P.W.1 that Muniammal and Sivasamy-P.W.2 were lying on public road. In fact, the motor vehicle accident theory was propounded only by the appellant. It was the appellant who had informed Menaka that her aunt was lying dead on account of having been hit by the unknown vehicle. The information given by the appellant was dutifully reduced into writing by P.W.1 in Ex.P1. P.W.2 is the star witness for the prosecution. P.W.2, in his testimony, admitted that he, Muniammal and the appellant Rajendran had gone to the field for irrigating the field on the fateful night. According to P.W.2, they were sitting on the road and chatting. After a while, the appellant Rajendran left. He returned after a while. P.W.2 would claim that he was only chatting with Muniammal and that this enraged the appellant who exclaimed that they were chatting like husband and wife. Muniammal is said to have challenged the appellant and stated that the appellant had no right to question her because, the appellant was not her husband. During wordy altercation between the two, the appellant grabbed Muniammal's throat by his left hand and by his right hand hit her with spade on the head. Muniammal fell down unconscious. But the appellant continued to hit her with his hand as well as the spade. In the mean while, Muniammal passed away. When P.W.2-Sivasamy exclaimed as to why he had done so, the appellant hit P.W.2 on his left jaw. As a result, P.W.2 lost five of his teeth and fell down unconscious. The appellant is said to have hit P.W.2 on his shoulder as well as left knee with the very same spade. According to P.W.2, the occurrence took place at about 11.00 p.m. P.W.2 recollects that the deceased had bodily carried him for a little while. It is quite possible that the appellant wanted to lay the deceased Muniammal as well as the badly injured Sivasamy on the road, so that, some passing vehicle can run over their bodies. He could then make the whole incident appear as a motor vehicle accident. But unfortunately, P.W.5-Kannan happened to come there by chance in his two wheeler. P.W.5-Kannan asked the appellant as to what happened to P.W.2. This Court can safely come to the conclusion from this that the original plan and design of the appellant could not be put to execution. Kannan who was examined as P.W.5, clearly deposed that on the fateful midnight, he saw the appellant holding P.W.2. P.W.5, in his cross examination, had further stated that Sivasamy was not conscious at that time. Immediately, P.W.5 informed Sivasamy's son-in-law Ravi and that is how, Sivasamy was brought to the house of P.W.5 and from there, admitted to the Government Hospital, Devakottai. It is true that, in his earlier statements, P.W.5 informed the Police that it was a case of Motor Vehicle Accident. But then, P.W.5 was only repeating the information fed to him by the appellant. P.W.2 was admitted to the Devakottai Government Hospital originally and from there, taken to Apollo Hospital, Madurai. He was under treatment for about 25 days. Only on the 22nd day, P.W.2 regained his consciousness. Thereafter, he recollected what happened and narrated the entire sequence of events to the Police.



9.P.W.2 was cross examined at length by the appellant's counsel. The stand of P.W.2 could not be shaken at all. P.W.2 had supported the prosecution case. Of-course, as rightly pointed out by the appellant's counsel, P.W.2 denied having sexual intercourse with Muniammal during the relevant time. But then, this Court can very well understand the coyness of P.W.2 in disclosing the truth. P.W.2 is a married person who was aged about 50 years old and having grand children. Therefore, for him to admit that he was having sexual intercourse with Muniammal would be really difficult. Hence, he chose to claim that he was chatting with Muniammal. When a man and woman are chatting in a remote agricultural field around 12.00 midnight, obviously, they were not discussing weather. Section 114 of the Evidence Act enables a Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. Hence, this Court is of the view that the prosecution case that Muniammal and P.W.2-Sivasamy were found in a compromising position to be highly probable.

10.It is also evident from the record that apart from the appellant, P.W.2 was also having illicit intimacy with Muniammal. P.W.1 had stated that there was illicit intimacy between Muniammal and P.W.2-Sivasamy. By taking into account, the evidence of P.W.1, one can come to the safe conclusion that P.W.2-Sivasamy and Muniammal were actually in a compromising position which triggered the entire occurrence. P.W.2 is an injured witness. He had suffered extensive injuries on his left jaw and he lost five of his teeth. In the process, he was taking treatment in the Apollo Hospital for about 25 days. When such a person specifically implicates the appellant and his testimony could not be shaken in the cross examination, the Court below was absolutely justified in acting on the same. The Court below carefully went through the evidence of P.W.2, and found that his testimony is inherently credible. It also commands the confidence of this Court. When once the testimony of P.W.2 can be believed, I am of the view that the other contentions raised by the appellant will have to be stated only to be rejected.

11.The appellant was arrested on 22.01.2009 at about 06.00 a.m. merely because, P.W.12-Village Administrative Officer deposed that he received information from the Inspector of Police-P.W.18 about 15 minutes prior to the actual arrest, it does not shake the case of the prosecution. The fact remains that the appellant was shown as an accused at the relevant time and based on his confession, M.O.1 and M.O.4 were recovered. It is true that blood stains were not found in M.O.1 and M.O.4. This is because, M.O.1 and M.O.4 were not immediately recovered. In fact, the appellant had misled the Police into believing as if it is a case of accident. he would have water washed M.O.1 and M.O.4.



12. P.W.10 is the Postmortem Doctor. He performed postmortem on the body of Muniammal and issued Ex.P2. As many as seven injuries were found on the body of the deceased. P.W.10 clearly deposed that the injuries found on the body of the deceased could be caused by M.O.1-spade. Of-course, to a formal suggestion put to him, P.W.10 replied that if Muniammal was in a standing position on the road side and a speeding vehicle had hit her, the injuries found on her body could be caused. From this hypothetical answer, I am not prepared to doubt the case of the prosecution. Likewise, the evidence of the inquest witnesses also will not have any bearing.

13.The contention that since the deceased and the appellant were cousin brother and sister, they could not have had sexual relationship, has to be only stated to be rejected. I am of the view that the Court below was rather lenient towards the appellant. Even though he was originally charged with murder, the Court below decided to take into account the sudden provocation, in which, the appellant found himself, when he saw the deceased and P.W.2 in a compromising position. Therefore, he was found guilty only for the offence under Section 304(i) of IPC. The prosecution succeeded in establishing the charges under Section 304(i) as well as 307 of IPC beyond reasonable doubt. The conviction imposed by the Courts below does not warrant any interference. However, taking note of the fact that the appellant did not have any prior intention to commit the crime, with which, he was charged, I am of the view that the sentence of imprisonment imposed on him under Section 304(i) of IPC can be reduced from seven years to five years rigorous imprisonment. The sentence of five years imposed for the offence under Section 307 of IPC is confirmed. Both the sentences will run concurrently. The period of incarceration spent by him will stand excluded in terms of Section 428 of Cr.P.C.

14.With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal Sessions Judge, Ramanthapuram.

2. The District Munsif Cum Judicial Magistrate, Thiruvadanai.

3. The Chief Judicial Magistrate, Ramanathapuram



4. The Inspector of Police,
S.P.Pattinam Police Station,
Ramanathapuram District.

5. The Superintendent,
Central prison, Madurai.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC TO MR.R.SENTHILKUMAR, Advocate Sr. No. 76080

Cr1.A(MD)No.290 of 2010
16.07.2019

KG(CO)
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