

Bail Slip

Appellant/Accused viz., Rajan, s/o.Dasan, was already released on bail vide this Court Order dated:08.12.2010 in M.P.(MD) No.1/2010 in CrI.A(MD).346/2010.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrI.A.(MD)No.346 of 2010

Rajan

.. Appellant/Accused

Vs.

The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
(Crime No.583 of 2006)

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 of Cr.P.C., against the Judgment passed by the learned Sessions Judge, Kanyakumari in S.C.No.100 of 2007, dated 31.08.2010 and the appellant prays that this Court pleased to set aside the conviction and sentence passed against the appellant by the learned Sessions Judge, Kanyakumari in S.C.No.100 of 2007, dated 31.08.2010 and acquit the appellant.

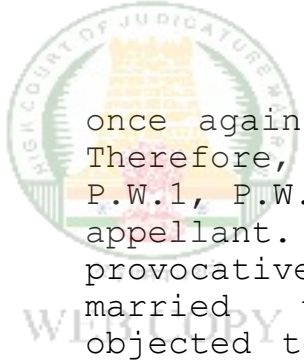
For Appellants : Mr.K.Govindarajan,
for M/s.R.M.Anbunithi.

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

JUDGMENT

The appellant was convicted for the offences under Sections 341 and 304 Part I of I.P.C. and sentenced to 10 years Rigorous Imprisonment respectively and to pay fine of Rs.5,000/- vide Judgment dated 31.08.2010 in S.C.No.100 of 2007 on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil.

2. The prosecution case is that the appellant was married to one Vasanthakumari. But the relationship between the appellant and his wife Vasanthakumari was rather turbulent. Hence, her brothers and other relatives used to mediate regularly. On 23.12.2006 at about 04.30 p.m., the brothers of Vasanthakumari came to know that

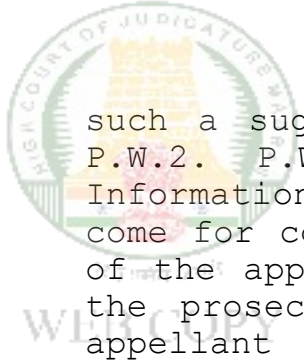


once again a quarrel erupted between the appellant and his wife. Therefore, to engage themselves for one more round of conciliation, P.W.1, P.W.2, the deceased Rajan and others came to the house of the appellant. The appellant is said to have uttered certain provocative expression against Rajan who was his co-brother, having married the sister of Vasanthakumari. Rajan is said to have objected to the expression used by the appellant. Thereupon the appellant drew M.O.1 weapon from his house and came to attack those who had come for conciliation. Thereupon all of them ran to the backyard. The appellant slashed the said Rajan his below left ear and on his jaw. He was rushed to Ramakrishna Hospital by others. Since better treatment was required, he was taken to Dr. Jayasekharan Hospital. But the treatment given to him was not successful. He breathed his last on 29.12.2006 at around 05.25 p.m.

3. After the deceased was admitted to Ramakrishna Hospital, police intimation was given to Thiruvattar police station. Thereupon the police personnel attached to the said police station came to the hospital. Since the injured Rajan was totally unconscious, statement was recorded from Selvaraj, elder brother of Vasanthakumari. Based on the said statement, Crime No.583 of 2006 was registered for the offences under Sections 341 and 302 of I.P.C. After Rajan passed away, the First Information Report was altered vide Ex.P.20. Investigation was taken up and after completion of all the usual formalities, final report was laid before the learned Judicial Magistrate, Padmanabhapuram. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court in S.C. No. 100 of 2007.

4. Charges were framed against the appellant for the offence under Sections 341 and 302 of I.P.C. The appellant pleaded not guilty and claimed to be tried. The prosecution examined as many as 14 witnesses and marked Ex.P.1 to Ex.P.21. M.O.1 to M.O.4 were also marked. Incriminating circumstances were put to the accused under Section 313 of Cr.P.C. The appellant characterised those circumstances as false. The learned trial Judge after a detailed consideration of the evidence on record, found the appellant guilty of the offences under Sections 341 and 304 Part I of I.P.C. and sentenced to him as mentioned above. Questioning the same, this Criminal Appeal has been filed.

5. The learned counsel appearing for the appellant placed heavy reliance on the testimony of P.W.11 who had investigated the case. The appellant's counsel now wanted to take advantage of Ex.P.12 Rough Sketch in which it has not been mentioned that there was any door at the backyard of the appellant's house. The learned counsel for the appellant therefore wanted to convince this Court that the very occurrence has not been properly established. He drew my attention to the defence taken by the appellant. His wife was having illicit intimacy with her brother-in-law who had actually murdered Rajan and that the blame was sought to be shifted to him. This Court posed a question to the appellant's counsel as to whether



such a suggestion was put to the eyewitnesses, namely, P.W.1 and P.W.2. P.W.1 had lodged Ex.P.1 complaint, based on which the First Information Report was registered. P.W.1 had deposed that he had come for conciliation. Likewise P.W.2 is the another brother-in-law of the appellant. Both of them had strongly supported the case of the prosecution. When their categorical stand was that when the appellant came to attack them by brandishing M.O.1 Aruval, they escaped to the backyard. If the appellant had put the question that they could not have done so, since there was no door in the backyard, the truth would have come out. It is true that in Ex.P.12 Rough Sketch, there was no reference to the door in the backside. Based on Ex.P.12 Rough Sketch, P.W.11 had also answered in favour of the accused. But that will not advance the defence on this point. The person who is competent to answer the question as to how they ran from the appellant's house towards backyard would be P.W.1 and P.W.2 alone. To those eyewitnesses, this question was not at all put.

6. P.W.3 is an independent witness hailing from the very same locality. He had corroborated the testimony of the eyewitnesses. There is nothing on record to indicate that P.W.2 was inimically disposed against the appellant.

7. Faced with this situation, the appellant's counsel now submitted that he would not challenge the conviction imposed on the appellant by the Court below and that he would only plead for showing leniency in the matter of punishment.

8. The offence itself had taken place way back in the year 2006. The appellant's wife had already left him. The appellant was in prison for about 7½ months. The child born to the appellant appears to be with the mother. The appellant's mental state is also rather feeble. Taking note of these aspects, the sentence of imprisonment imposed on the appellant is reduced from 10 years Rigorous Imprisonment to five years Rigorous Imprisonment.

9. With this modification, the Criminal Appeal stands partly allowed. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The period of incarceration already spent by the appellant will be set off under Section 428 of Cr.P.C. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (A.S.)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



1. The Sessions Judge,
Kanyakumari .
2. The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
3. The Judicial Magistrate, Padmanabhapuram.
4. The Chief Judicial Magistrate,
Kanyakumari.
5. The Superintendent, Central Prison,
Palayamkottai.
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)

Cr1. A. (MD) No. 346 of 2010

Dated: 22.07.2019

PU(21.05.2020) 4P 9C