



Bail Slip

The Appellant / Accused Muralidaran, S/o. Saminathan, was released on bail as per the order of this Court made in CRL MP (MD) No.1/2013 in CRL A(MD)No.372/2013, dated 18/12/2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.372 of 2013

Muralidaran

... Appellant / Sole Accused

Vs.

State rep by
The Inspector of Police,
Edamalaipattipudur Police Station,
Trichy District.
(Crime No.152/2012)

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C, to set aside the judgment dated 27.11.2013 passed by the learned Sessions Judge, Trichy, made in S.C.No.109 of 2013 and allow this appeal.

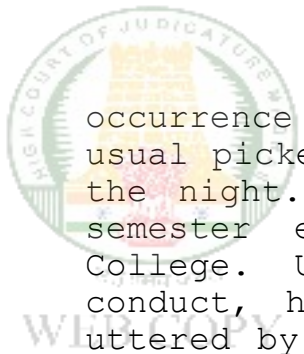
For Appellant : Mr.B.Jameel Arasu

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

J U D G M E N T

The appellant was convicted for the offence under Section 304(ii) of I.P.C. and sentenced to undergo ten years rigorous imprisonment and also levied with fine of Rs.1,000/-, vide judgment dated 27.11.2013, in S.C.No.109 of 2013, on the file of the learned Sessions Court, Tiruchirappalli Division, Tiruchirappalli.

2.The case of the prosecution is that the appellant used to harass his wife, namely., Geetha and demand money from her. On the



occurrence date i.e., 26.05.2012, the appellant returned home and as usual picked up quarrel with his wife. Quarrel continued late into the night. The appellant's elder son/Vinith was studying for his semester examination. He was a student of Sastra Engineering College. Unable to bear the nuisance emanating from the appellant's conduct, he is said to have remonstrated. Angered by the words uttered by his son, the appellant is said to have taken the knife from the dinning table and stabbed on the left portion of the chest of his son. He also grabbed his hair and dashed against the wall. The appellant's son died on the spot.

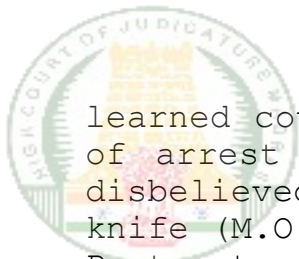
3.Ex.P.1/complaint was lodged by P.W.1/Geetha, the wife of the appellant. Based on the same, Ex.P.11/FIR in Crime No.152 of 2012 was registered on the file of Edamalaipattipudur Police Station for the offence under Section 302 of I.P.C. Investigation was conducted and after following the usual formalities, final report was laid against the appellant before the learned Judicial Magistrate No.II, Tiruchirappalli, for the offence under Section 302 of I.P.C. The case was committed to Sessions Court in P.R.C.No.17 of 2012. It was taken up for trial in S.C.No.109 of 2013, on the file of the learned Sessions Court, Tiruchirappalli Division, Tiruchirappallai. Charge under Section 302 of I.P.C. was framed against the appellant. The appellant denied the charge and claimed to be tried.

4.The prosecution examined as many as 12 witnesses and marked Exs.P.1 to P.19. M.O.1 to M.O.6 were also marked. On the side of the accused, no evidence was adduced.

5.The learned Trial Judge after a detailed consideration of the evidence on record acquitted the appellant of the offence under Section 302 of I.P.C but found him guilty of the offence under Section 304(ii) of I.P.C. Challenging the same, this criminal appeal has been filed.

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

7.The learned counsel appearing for the appellant pointed out that the case of the prosecution rests on the ocular evidence of the appellant's wife, namely., Geetha and that of the second son, namely., Vishal (P.W.1 and P.W.2). Both of them turned hostile. The appellant's counsel would point out that the very basis of the prosecution stands undermined as a result of this. He also pointed out that P.W.1/Geetha admitted only her signature in Ex.P.1/complaint and she had categorically stated that she is not owning the contents of Ex.P.1/complaint. The learned counsel for the appellant drew my attention to the testimony of P.W.3, who was a colleague of P.W.1. P.W.3 had clearly stated that he saw the appellant along with P.W.1 in the police station. From this, the



learned counsel for the appellant wants me to infer that the theory of arrest said to have effected post-noon on 27.05.2012 is to be disbelieved. He also pointed out that as per Ex.P.3/Mahazer, the knife (M.O.1) was recovered only at around 03.30 p.m. But then, the Postmortem Doctor/P.W.7 admitted in his cross examination that the Investigating Officer had shown him the knife/M.O.1 at 12.45 p.m. Itself. Therefore, according to the appellant's counsel, the entire arrest as well as recovery will have to be disbelieved. The appellant's counsel further submitted that there was delay, on the part of the prosecution in reaching the FIR to the Court and that the said delay has not at all been explained. The learned counsel appearing for the appellant wanted this Court to reverse the impugned judgment and acquit the appellant.

8.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 the appeal.

9.I carefully considered the rival contentions and perused the evidence on record. It is true that the eye witnesses to the occurrence turned hostile. It is also true that recovery projected by the prosecution does not fit in with over all time sequence. There is force and substance in almost every contention urged by the appellant's counsel. But then, this Court will have to take note of certain admitted facts. The occurrence took place inside the house of the appellant at around midnight on 26.05.2012. It is not in dispute that at the time of occurrence, the persons, who were in the house were only the appellant, his wife/P.W.1/Geetha, the elder son/deceased/Vinith and the younger son/P.W.2/Vishal. Other than these four, there was no other person in the house. Therefore, the appellant is obliged to explain as to how the occurrence had taken place. After the occurrence, information was lodged before Edamalaipattipudur Police Station and FIR in Crime No.152 of 2012 was registered. FIR was registered based on the complaint of P.W.1, who is none other than the wife of the appellant. Of course, P.W.1/Geetha had disowned the contents of the complainant. She admitted her signature in the complainant and that was marked as Ex.P.1. It is relevant to note here that P.W.1 is not a rustic village lady. She is employed in ESI Hospital. Her son had been killed. Therefore, this Court finds it impossible to believe that P.W.1 would have merely put her signature on the dotted lines. This Court can safely come to the conclusion that in order to save her husband, both P.W.1 as well as P.W.2/younger son decided to turn hostile. In fact, P.W.1 had gone to the extent of giving a convenient answer in the cross examination that the back door of the house was open. But then, in response to the Court question, she admitted that before going to bed, she locked the door. I can take judicial notice of the fact that whenever people retire to bed, they would lock all the doors of the house and then only go to bed. P.W.1 had admitted that the door was locked in the previous night.



10.The learned Government Advocate (Crl. Side) drew my attention to the decision of the Honourable Supreme Court reported in **[(2014) 12 SCC 211, (State of Rajasthan Vs. Thakur Singh)]**. The Honourable Supreme Court in the said decision held as follows:-

''22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23 . Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24.It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.''

11.The learned Government Advocate (Crl. Side) also took me to another recent decision of the Honourable First Bench of this Court reported in **[2018 (4) MLJ (Crl.) 641, Ramar Vs. State rep. by the Inspector of Police]**. It was held thereon as follows:-

"21. The next question, which this Court has to address is as to who committed this crime. In the considered view of this Court, the prosecution has proved or discharged the initial burden of establishing prima facie the guilt of the appellant beyond reasonable doubt. As stated above, admittedly, the appellant was very much present in the scene of occurrence and therefore, burden



shifts on him to explain as to what really happened at the time of occurrence, since the said fact is specially within the knowledge of the appellant, more particularly, in a case where the appellant is none other than the husband of the deceased and both of them were present in the house, when the incident happened.

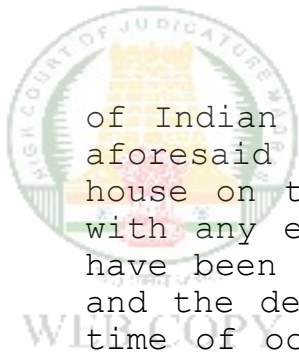
22. It is in cases of this nature, Section 106 of the Indian Evidence Act, comes into play. It will be useful to extract Section 106 of the Indian Evidence Act, 1872, which is as follows:

"106. Burden of proving fact especially within knowledge:-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him"

23. It will be useful to refer to a judgment of the Hon'ble Supreme Court rendered in *Tulshiram Sahadu Suryawanshi Vs. State of Maharashtra* in CRIMINAL APPEAL No.507 of 2008, while dealing with Section 106 of the Evidence Act, which is as follows;

"A fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference."

12. In both these decisions, Section 106 of Indian Evidence Act was invoked to fasten penal liability on the accused. The case on hand will have to be approached only in the light of Section 106



of Indian Evidence Act and by applying the ratio laid down in the aforesaid decisions. It is not disputed that Vinith died in the house on the appellant and P.W.1. The appellant has not come out with any explanation whatsoever to indicate that the offence could have been committed by somebody else. The appellant, P.W.1, P.W.2 and the deceased were the only members present in the house at the time of occurrence. Hence, the burden shifts on the appellant to explain before the Court as to how, the deceased sustained such injuries. This is all the more so, because the appellant stands squarely implicated in Ex.P.1/complaint. The conduct of the parties will also have to be noted. P.W.1 now conveniently states that she is not aware of the contents in Ex.P.1/complaint. If that be so, she would have certainly intervened when her husband was arrested in connection with the murder of her son namely., Vinith. In the FIR, P.W.1 is clearly mentioned as the defacto complainant. This Court had a look at the original FIR. In Column No.6, it is Geetha, who is mentioned as the first informant. As rightly pointed by the learned Government Advocate (Crl. Side), not only in the complaint but also in the FIR also the signature of P.W.1/Geetha is found. I cannot mortgage my common sense. It is true that the appellant had brought out certain discrepancies in the matter of arrest and recovery. But then, as rightly pointed out by the learned Government Advocate (Crl. Side), such lapses on the part of the prosecution cannot enure to the benefit of the accused. He placed reliance on the decision reported in **[(2017) 11 SCC 195, Yogesh Singh Vs. Mahabeer Singh and others]**, in which, it was held as follows:-

"30. In C. Muniappan and Others vs. State of Tamil Nadu, (2010) 9 SCC 567, this Court explained the law on this point in the following manner:

There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The



conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation."

13. At the cost of repetition, it must be stated that the presence of the appellant at the time of the occurrence is not in dispute. Even P.W.1 would admit that when they lifted their son the blood split on her nighty and her husband's lungi. The presence of blood of the deceased on M.O.3/lungi of the appellant is confirmed by the Serology report/Ex.P.9. Ex.P.9 was marked through the Investigating Officer. The learned Trial Judge rightly held that the prosecution established the involvement of the appellant beyond reasonable doubt but taking note of over all circumstances, acquitted him of the charge of murder but found him guilty under Section 304(ii) of I.P.C. The learned Trial Judge rightly observed that since the appellant had killed his own son, he deserved to be awarded stringent punishment. I find no ground to interfere and the criminal appeal stands dismissed. The trial Court shall take steps to enforce this order.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:

1. The Sessions Judge, Trichy.
2. The Chief Judicial Magistrate, Trichy
3. The Judicial Magistrate No.II, Trichy.
4. The Superintendent, Central Prison, Trichy.
5. The Inspector of Police,
Edamalaipattipudur Police Station, Trichy District.
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.

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-83614[F]

Crl.A. (MD)No.372 of 2013

26.08.2019

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