

**Bail slip**

Palanisamy, s/o.Rajnayakkar, male, aged about 57/2017 years is released on bail vide court order dated 07/08/2017 made in CRL MP (MD)No.6226 of 2017 in Crl A (MD)No.247 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.247 of 2017

Palanisamy

... Petitioner/Sole Accused

Vs.

State through

The Inspector of Police,
Viru Veedu Police Station,
Dindigul District.

(In Crime No.51 of 2010)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to call for the records connected to the judgment in S.C.No.107 of 2015 on the file of the Fast Track Mahila Judge, Dindigul dated 26.05.2017 and set aside the conviction and sentence imposed against the appellant.

For Petitioner : Dr.R.Alagumani

For Respondent : Mr.S.Chandrasekar

Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The appellant is the sole accused in S.C.No.107 of 2015 on the file of the Mahila Fast Track Court, Dindigul and he stood charged and tried for the commission of offence under Section 302 I.P.C. for having committed murder of his wife Seeniammal. The trial Court vide judgment dated 26.05.2017, has found him guilty for the commission of offence under Section 302 I.P.C. and imposed Rigorous Imprisonment for life and a fine of Rs.1,000/- with default sentence of 6 months and set off was granted to the accused under Section 428 Cr.P.C. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.



2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated are as follows:

2.1. The deceased, viz., Seeniammal is the wife of the appellant/accused and mother of P.W.1 - Rajkumar (defato complainant) and P.W.2 - Rajkumari.

2.2. The appellant/accused had developed suspicion as to the fidelity of his wife for the reason, without heading to his advice, she used to attend the menial job outside.

2.3. The appellant/accused also told her not to attend the function of her brother viz., P.W.4 and despite that she attended the function on 04.04.2010 and after attending the same, she came to the house on the early hours on 05.04.2010 and has slept.

2.4. P.W.1 - son of the deceased as well as appellant, unable to bear the castigation of his father for his suspicion about his mother's fidelity, he started working as JCB operator and used to come to the house once in 10 days and on one such occasion when he returned to his house he heard the altercation between his father and mother. The mother of P.W.1 told him that she wants to attend the function of his brother on 04.04.2010 and the appellant/accused told her not to do so and since it was refused, there was a wordy altercation also. The deceased without heading to the advice of her husband went to attend the function of her brother and returned on 05.04.2010 and was sleeping in her house and P.W.1 went outside and returned at about 11.30 a.m. on 05.04.2010 and he saw the appellant putting grinding stone on her head and when he tried to prevent him, the appellant/accused put the stone and ran out.

2.5. P.W.1 proceeded to Viru Veedu Police Station and lodged a complaint under Ex.P.1 to P.W.9, the Sub-Inspector of Police, who upon receipt of the same has registered a case in Crime No.51 of 2010 for the commission of offence under Section 302 I.P.C. and the complaint was registered at about 14.00 hours on 05.04.2010. The printed F.I.R. was marked as Ex.P.9.

2.6. P.W.9 despatched the original F.I.R. and original documents to the jurisdictional Magistrate. P.W.10, who was the Circle Inspector of Police, at about 14.00 hours received the information about the occurrence and proceeded to the Police Station and received the F.I.R. from P.W.9 and commenced the investigation. P.W.10 proceeded to the scene of occurrence and in the presence of PW6 and another, prepared the Observation Mahazar Ex.P.3 and Rough Sketch - Ex.P.12. PW10, on 05.04.2010 from 15.00 hours to 17.00 hours conducted inquest on the body of the deceased at the scene of occurrence in the presence of witnesses and panchayatdars and the Inquest Report was marked as Ex.P.13. P.W.10, thereafter made a request for conducting postmortem on the body of the deceased and sent a requisition letter through the Head Constable - 1547 to Government Hospital at Batlagundu.

2.7. P.W.8 was the Medical Officer attached to Government Hospital, Batlagundu and based on the request received from P.W.10/Investigating Officer at 6.30 p.m. on 05.04.2010, seen the body of the deceased at 10.30 a.m. on 06.04.2010 and noted the



following features:

"Its condition then was Rigor mortis seen in all four limbs." On postmortem, he noted the following appearances:

"Appearances found at the post-mortem : Body of a female aged about 45 years, moderately built, lying (NC), Temperature cold. Hair Black & gray, iris black."

P.W.8, after concluding the postmortem, opined that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained. He also issued the Postmortem Certificate, marked as Ex.P.10.

2.8.At about 17.15 hours, P.W.10, in the presence of P.W.6 and another, had seized M.Os.1 to 3 and collected M.Os.4 and 5 under the cover of Mahazars Exs.P.4 to P.6.

2.9.P.W.10 upon receipt of the information proceeded to Meenankannipatti - Periyar Main Channel at about 18.30 hours on 05.04.2010 and effected the arrest of the accused and he voluntarily came forward to give confession statement and as per admissible portion of confession M.Os.6 and 7 were recovered under cover of Mahazar Ex.P.7 in the presence of P.W.6 and another. Thereafter, P.W.10 had examined P.Ws.1, 2, 3, 6 and other witnesses and recorded their statements and since the accused has admitted his guilt and wanted to give a statement, P.W.10 made preparation to record the statement of the appellant under Section 164 Cr.P.C. and accordingly produced him before, P.W.7, who was the Judicial Magistrate No.1, Dindigul. P.W.7, after complying with the formalities and admonishing warning, recorded the statement of appellant and the same was marked as Ex.P.9.

2.10.P.W.10 also recorded the statement of P.W.5 - Photographer and P.W.8, the doctor who conducted autopsy and also sent the material objects for chemical analysis. On receipt of Chemical Analyst Report, Biological Report and Serological Report marked as Exs.P.16 to 18, he had filed the Charge Sheet on 21.07.2010 on the file of the Court of Judicial Magistrate No.1, Dindigul charging the appellant/accused for the aforesaid offence, who took it on file in P.R.C.No.19/2010.

2.11. The Committal Court issued summons to the accused and on his appearance, furnished him with copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court, Dindigul, which in turn made over the same to the Mahila Fast Track Court, Dindigul, who took it on file in S.C.No.107 of 2015. The appellant/accused was issued with summons and on his appearance, charge under Section 302 IPC has been framed.

2.12.The prosecution, in order to sustain its case, examined PWs.1 to 10, marked Exs.P1 to P18 and also marked M.Os.1 to 7. The appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to incriminating circumstances made out against him and he denied it as false. The appellant/accused did not examine any witness and not marked any document.

2.13.The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellant/accused guilty of the offence and sentenced him as stated



above, vide impugned judgment dated 26.05.2017 and challenging the same, the present Criminal Appeal is filed.

3. Dr.R.Alagumani, learned counsel appearing for the appellant/accused made the following submissions:

(i) The presence of P.W.1 in the scene of occurrence is highly doubtful for the reason that the maternal uncle of P.W.1, who was examined as P.W.4, did not say that P.W.1 had attended the ear boring ceremony of his daughter on 04.04.2010.

(ii) The origin and genesis of the occurrence are highly doubtful and even prior to the registration of the F.I.R., police came to the spot.

(iii) The arrest and recovery of the incriminating articles pursuant to the admissible portion of the confession given by the appellant/accused is doubtful for the reason P.Ws.1, 2 and 4 have spoken the presence of the accused when the police came to the spot.

(iv) The testimony of P.W.6 would also support the defence projected by the appellant/accused for the reason that he did not note the presence of P.W.1 at 11.30 a.m. on 05.04.2010 in the scene of occurrence and the trial Court has not properly appreciated the testimony of P.W.6.

(v) The deceased would not have died at the time projected by the prosecution for the reason that the postmortem doctor, who was examined as P.W.8 has stated that the deceased died 24 - 30 hours prior to autopsy, which means, she would have died between 5.30 a.m. to 10.30 a.m. on 05.04.2010, whereas according to the prosecution, the commission of murder took place only at 11.30 on 05.04.2010 and it also creates a doubt as to the time of death and the manner of death of the deceased.

In sum and substance, it is the submission of the learned counsel appearing for the appellant/accused that the above said discrepancies go deep into the prosecution case and the foundation laid by the prosecution is shaken and therefore, the Trial Court ought to have awarded benefit of doubt and acquitted the appellant/accused. Alternatively, it is the submission of the learned counsel appearing for the appellant/accused that the appellant had become mentally imbalanced and he was incarcerated for more than 9 years and in the prison he was given treatment for psychotic ailments also and taking into consideration the said fact, this Court may alter the conviction and modify the sentence accordingly.

4. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the respondent/State would submit that the eyewitness is none other than the son of the accused as well as the deceased and he has no axe to grind his own father and his oral testimony is in conformity with Ex.P.1 complaint lodged by him and that apart motivation aspect as to the suspicion of the fidelity of his wife by the appellant/accused has been spoken to by P.Ws.2 and 4 also. It is the further submission of the learned Additional Public Prosecutor that though there is some discrepancies as to whether P.Ws.1 and 2 also accompanied their mother to the ear boring



ceremony conducted by P.W.4, the fact remains that on the early morning hours the deceased had returned and was sleeping and the appellant infuriated by the fact that despite his advice to his wife not to attend the said function had got infuriated and put the grinding stone on her head and she died.

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5. Insofar as the presence of the police even prior to the registration of the F.I.R. is concerned, the police is bound to act only on the information/knowledge as to the commission of the offence and therefore, the origin and genesis of the occurrence cannot be suspected. It is also pointed by the learned Additional Public Prosecutor, upon registration of the case, F.I.R. and relevant documents have been forwarded to the jurisdictional Judicial Magistrate without any loss of time and would submit that the points urged by the learned counsel appearing for the appellant only pointing out certain trivial discrepancies, which did not affect the core of the prosecution and the Trial Court has rightly reached the conclusion to convict and sentence the accused accordingly and prays for dismissal of this appeal.

6. This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

7. The following questions arise for consideration:-

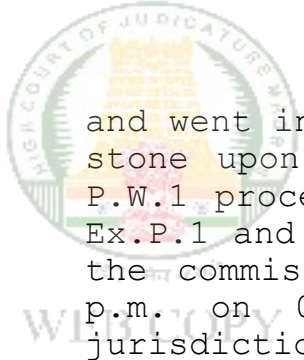
[i] Whether the prosecution through oral and documentary evidence or other materials has proved its case beyond any reasonable doubt?

[ii] Whether the conviction recorded by the Trial Court and the sentence awarded by it is sustainable? and

[iii] Alternatively, whether the appellant/accused deserves modification of the conviction and sentence?

Question No. [i] :

8. The testimonies of P.Ws.1, 2 and 4 would reveal that the appellant had developed suspicion with regard to the fidelity of his wife for the reason that she used to attend the job and despite repeated admonished warning, she used to attend the same. A day prior to the commission of offence i.e., on 04.04.2010, the deceased intimated her intention to attend the function conducted by her brother - P.W.4 and the appellant/accused advised her not to attend the same and despite that he went to attend the function and returned on the early morning hours on 05.04.2010. The said aspect has been spoken by P.Ws.1 and 2. P.W.1 would depose that agitated by the attitude of his father for having suspicion about his mother, he started attending his work as JCB driver by residing away from his house and once in 10 days he used to visit his house and on one such occasion he also witnessed wordy altercation between his father and mother with regard to the suspicion developed by his father as to the fidelity of his mother. It is the categorical submission of P.W.1 that at about 11.30 a.m. on 05.04.2010, he had heard the alarm

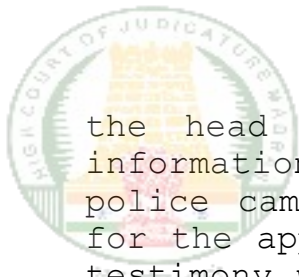


and went inside the house and he saw his father putting the grinding stone upon her mother and as a consequence she died. Immediately, P.W.1 proceeded to the police station and lodged a complaint under Ex.P.1 and P.W.9 upon receipt of the same has registered a case for the commission of offence under Section 302 I.P.C. at about 2.00 p.m. on 05.04.2010 and forwarded the original F.I.R. to the jurisdictional Magistrate and informed P.W.10 - investigating officer, who commenced the investigation.

9.The primordial submission made by the learned counsel appearing for the appellant is as to the presence of P.W.1 in the scene for the reason, according to P.W.4, P.Ws.1 and 2 did not attend the ear boring ceremony. It is to be noted at this juncture that the deceased, according to the prosecution, has returned back to the home at the early morning hours on 05.04.2010 and even for the sake of convenience if the Court accepts that P.Ws.1 and 2 did not attend the function it cannot be said that P.W.1 would not have witnessed the occurrence, which has taken place only at 11.30 a.m. and as such presence of P.W.1 in the scene of occurrence cannot be doubted at all. Though the prosecution examined P.W.2 as an eye-witness, a perusal of her testimony would disclose that she did not witness the commission of offence, however, she had seen her father standing near the body. P.W.2 also spoken about the suspicion developed by her father against her mother for the reason that she might be having relationship with somebody else.

10.It is also the submission of the learned counsel appearing for the appellant that even prior to the registration of the F.I.R., police has come to the spot and as such, the earliest information has been totally burked by the prosecution. P.W.9, who registered the F.I.R. was specifically questioned in the cross-examination she would depose that as to the murder of Seeniammal, somebody would have telephoned the information, but she could not exactly remember. This Court has also noted one thing, on receipt of information or intimation for the commission of cognizable offence especially murder, the police should have rushed to the spot and it is not settled law that police should go to the scene only on registration of F.I.R. Therefore, it cannot be the said that the earliest information as to the commission has been burked by the prosecution.

11.The learned counsel for the appellant placed heavy reliance on the testimony of P.W.6, who was the then Panchayat Board Member. P.W.6 in the chief-examination deposed among other things that he received the information at about 11.30 a.m. on 05.04.2010 and immediately he rushed to the spot and some persons from the place has lodged a complaint to the police and at about 2.30 p.m. police came to the spot and commenced the investigation and the appellant/accused fled away from the scene after the commission of offence and when he went to the scene of occurrence, he found M.O.1 grinding stone in the scene of occurrence. In the cross-examination, he would depose among other things that when P.W.3 has told him that it was the appellant/accused, who has put the grinding stone upon



the head of his wife and he did not know who has given the information to the son of the appellant viz., P.W.1 and only after police came to the spot P.W.1 came. The learned counsel appearing for the appellant placing heavy reliance on the said portion of the testimony would submit that P.W.1, only after arriving at 2.30 p.m. on 05.04.2010, would have gone to the police station and lodged the complaint.

12.In the considered opinion of the Court, the said submission cannot be accepted for the reason that it appears to be a snap answer and that apart presence of P.W.1 in the scene of occurrence has been corroborated through P.W.2 as well as P.W.4 and it has also been pointed that P.W.1 - defacto complainant is none other than the son of the appellant and the deceased and on going through his testimony, this Court is of the considered view that he has spoken about the commission of offence and also in consonance with Ex.P.1 - complaint.

13.It is also pointed by the learned counsel appearing for the appellant that since the appellant/accused was present after the commission of offence, he would not have committed the offence for the reason, normally the person who have committed the offence should have fled away from the scene of occurrence.

14.In the considered opinion of this Court, the said submission is also liable to be rejected for the reason that immediately after hearing the alarm P.W.1 went and saw his father putting grinding stone upon her mother and according to P.W.6, immediately on the commission of offence some time thereafter, he fled away from the scene of crime. Further, certain material objects have been found on the spot and those materials also been recovered in the presence of P.W.6 under the cover of Mahazar Exs.P.4 to 6.

15.It is also pointed by the learned counsel appearing for the appellant that recovery of M.Os.6 and 7 blood stained cloth said to have been recovered from the appellant/accused cannot be believed for the reason that when the police came to the spot he was present in the spot and therefore, the case projected by the prosecution that he was arrested at a later point of time and pursuant to the admissible portion of confession marked as Ex.P.14 the said articles were recovered, cannot be believed.

16.This Court even without accepting the said argument as to the suspicion as to the arrest of accused even by excluding the recovery of M.Os.6 and 7, still is of the considered opinion in the light of materials objects M.Os.1 to 5, which were found in the scene of occurrence, coupled with chemical analysis report, biological report and serological report marked as Exs.P.16 to 18 is of the considered opinion that M.O.1 was used for the commission of the offence. The postmortem certificate marked as Ex.P.10 coupled with the testimony of P.W.8 would also disclose that the deceased died on account of the homicidal violence.



17. The learned counsel appearing for the appellant made a submission that admittedly it was a tiled house and therefore one of the broken tiles, which would have accidentally fallen upon the deceased and consequently she could have died.

18. A specific suggestion has not been put to P.W.8 and only a suggestion was put in the cross-examination to him that some heavy objects could have fallen on the deceased and as a consequence she could have died. However, the scientific evidence produced by the prosecution had specified the case that the deceased died on account of homicidal violence and on account of grinding stone put up on his head. This Court also pleased with the testimony of P.W.1 as to the commission of offence.

19. The statement of appellant/accused was also recorded under Section 164 Cr.P.C. by P.W.7 and the proceedings marked as Ex.P.6 also disclose the prescribed formalities have been followed for recording the statement under Section 164 Cr.P.C. However, in the light of the testimony of P.W.1, it is not necessary on the part of the Court to go into the statement under Section 164 Cr.P.C. given by the accused and this Court on going through his statement under Section 164 Cr.P.C. found that the appellant/accused had taken a different version that he caused her death due to the instigation of two other persons.

20. In the considered opinion of this Court, the prosecution through the testimony of P.W.1, coupled with corroborating testimonies of P.Ws.2 and 4 and also through scientific evidence has proved the guilt of appellant/accused beyond reasonable doubt.

Question Nos. [ii] and [iii] :

21. Now, coming to the alternative plea made as to the modification of conviction and sentence awarded by the trial Court, this Court finds some considerable force in the submission of the learned counsel appearing for the appellant. The appellant/accused has developed suspicion as to the fidelity of his wife, for the reason despite his advise she used to go for menial job and repeated warnings have been admonished and on the day prior to the commission of offence ie., on 04.04.2010, the deceased informed his husband that she is going to attend the function of her brother and once again an warning has been admonished not to attend the function but she went to the function on 04.04.2010 and came back on 05.04.2010 early morning and the said aspect has also been spoken by P.Ws.1 and 2 as well as P.W.4. Therefore, flash point has been reached and appellant/accused had sustained provocation.

22. Therefore, in the considered opinion of the Court, it comes within the ambit of exception (4) to Section 300 I.P.C. It is also brought to the knowledge of the Court that the appellant/accused was not on bail throughout and even though after 7 years his sentence was suspended by this Court vide order dated



07.08.2017 in CrI.M.P.(MD) No.6226 of 2017, he is still in custody since he has not executed the sureties.

23. In the result, this Criminal Appeal is partly allowed and the conviction under Section 302 I.P.C. and sentence of life imprisonment awarded by the trial Court is modified to one under Section 304(i) I.P.C. and the sentence imposed is modified to 10 Years R.I. and the sentence of fine and default sentence are sustained. The appellant/accused is also granted set off under Section 428 Cr.P.C., for the period of incarceration undergone by him during trial and pendency of the appeal.

Sd/-

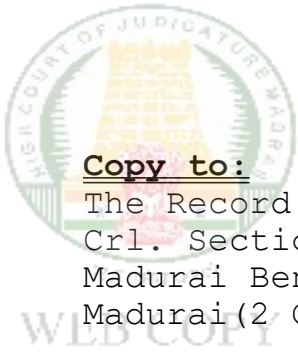
Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

To

1. The Sessions Judge,
Mahila Fast Track Court,
Dindigul.
2. The Judicial Magistrate,
Nilakottai.
3. The Chief Judicial Magistrate,
Dindigul
4. The Inspector of Police,
Viru Veedu Police Station,
Dindigul District.
5. The Superintendent,
Central Prison, Madurai
6. The Superintend of Police,
Dindigul
7. The District Collector,
Dindigul
8. The Director General of Police,
Mylapore, Chennai 4
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Crl. Section(Records),
Madurai Bench of Madras High Court,
Madurai(2 Copies)

+1 CC to Mr.R.ALAGUMANI, Advocate (SR-69148[F] dated 17/06/2019)

Cr1. A. (MD)No.247 of 2017

14.06.2019

sj

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