

**Bail Slip**

C.Jebaraj@Jeyaraj, S/o.Chellappa, aged about 42 years, Sole accused was released on Bail in the order of this Court dated 21.09.2017 made in CrI.MP(MD)1814 of 2017 in CrI.A.69 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2019

PRONOUNCED ON : 27.03.2019

CORAM :

**THE HONOURABLE MR. JUSTICE P. N. PRAKASH
and
THE HONOURABLE MR. JUSTICE B.PUGALENDHI**

CRL. A. [MD] No. 69 of 2017

C. Jebaraj @ Jeyaraj .. Appellant / Sole Accused

-Vs-

The State represented by its
Inspector of Police,
Thattarmadam police Station,
Sathankulam Taluk,
Thoothukudi District.
Crime No. 59 of 2014

.. Respondent / Complainant

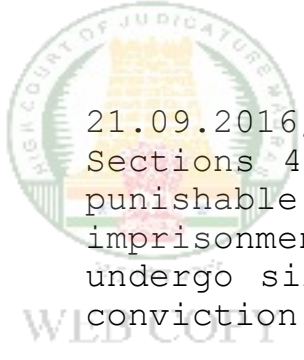
PRAYER : This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to set aside the Conviction and Sentence and fine passed in Judgment in S.C. No. 290 of 2015 dated 21.09.2016, on the file of the learned Principal Sessions Judge, Thoothukudi and acquit the appellant from the charge under Section 302 of the I.P.C.

For Appellant : Ms. M. Padmavathy
For Respondent : Mr.M. Chandrasekaran
Additional Public Prosecutor

JUDGMENT

B. PUGALENDHI, J.,

The appellant is the sole accused in Crime No.59 of 2014 on the file of Thattarmadam Police Station, Sathankulam Taluk and he was tried before the Principal Sessions Court, Thoothukudi in S.C.No.290 of 2015 for the offence punishable under Sections 449, 294(b) and 302 of the IPC. The learned trial Judge, by order dated



21.09.2016, though acquitted the appellant of the offence under Sections 449, 294(b) of the IPC, found him guilty of the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life, with fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. As against the order of conviction and sentence, this Criminal Appeal has been filed.

2. The brief facts of the case, as projected by the prosecution, is as follows:

2.1. PW1 is the husband and PW3 is the daughter of the deceased. PW3 was married to the appellant, namely, Jebaraj, twenty years back. The appellant was working as a Mason and it is alleged that the appellant used to quarrel with his wife after consuming liquor. Therefore, PW3 left her husband and was living with her parents at Naduvakurichi with her children and the appellant used to visit their house and insisted PW3 to come and live with him. On 22.03.2014, the appellant came to PW1's house and called his wife to live with him. But PW3 refused and at that time, the deceased Sundari scolded the appellant that unless he gives up the drinking habit, her daughter would not join him. For that, the appellant retaliated that if she does not send his wife with him, he will murder both of them. On 27.02.2014, at about 08.00 am, the appellant came to their house and questioned the deceased about his wife [PW3]. The deceased replied that her daughter went for job and she would not join with him. Immediately, the appellant took a knife from his waist, abused and attacked the deceased's right ear, right leg and on the backside and ran away from the place of occurrence. PWs.1 & 2, who were in the house, witnessed the occurrence and arranged 108 Ambulance and took the deceased to the Government Hospital, Sathankulam, immediately.

2.2. The Doctor [PW10], Government Hospital at Sathankulam, attended to the deceased on 27.02.2014 at about 09.40 am, and reported that she is dead. He recorded the same in Ex.P.13 and intimated the Police.

2.3. The Sub-Inspector of Police [PW12], Thattankulam Police Station, received the intimation on 27.02.2014 at about 09.50 am, went to the Government Hospital, Sathankulam, recorded the statement of PW1 in Ex.P1; returned to the Thattarmadam Police Station and registered the same in Crime No.59 of 2014 at about 11.15 am, as against the appellant for the offence punishable under Sections 450, 294(b) and 302 IPC. The printed First Information Report was marked as Ex.P16 and the same was sent to the concerned Court through PW8 / Constable. PW8 received the First Information Report at about 11.45 am, and handed over the same to the learned Judicial Magistrate, Sathankulam at about



2.4. On receipt of the intimation, the Inspector of Police, Sathankulam [PW13], who was in-charge for Thattarmadam Police Station during the relevant period, went to the place of occurrence around 12.30 pm, prepared the Observation Mahazar [Ex.P17] and recovered soil with blood and without blood under MOs.5 & 6, respectively, from the place of occurrence. He also conducted the inquest in the presence of the Panchayatharas and prepared inquest report [Ex.P18]. He made a request for Postmortem and the Doctor, [PW11] who conducted Postmortem on 27.02.2014 at about 03.50 pm, has noted down the following injuries:

- 1.A laceration of 2cm length and 2 cm depth present over right (NC) right ear.
- 2.A laceration of 4 cm length and 5 cm depth present over middle of upper back - interscapular region.
- 3.A laceration of 5 cm depth and 5 cm length present over right side posterior neck.

P.W.11 gave his opinion that the deceased would have died of shock and hemorrhage, due to the multiple laceration injuries about 6 to 12 hours prior to the autopsy.

2.5. The Inspector of Police, Thattarmadam Police Station [PW14], has taken up further investigation from 28.02.2014 and arrested the appellant at about 11.00 am, in the bus stop at Thattarmadam Bazar. He also recorded his confession statement in the presence of the Village Administrative Officer [PW7] and his Assistant one Saravanan. Pursuant to the disclosure statement of the accused, PW14 recovered a blood stained knife [MO1], blood stained Meroon colour lungi [MO7] and blood stained shirt [MO8] in Ex.P4 in the presence of PW7 and his Assistant Saravanan. He sent all these material objects to the concerned Court for chemical analysis and also examined the witnesses and in conclusion of the investigation, filed the final report as against the appellant.

2.6. In support of the prosecution, 14 witnesses were examined, 19 exhibits were marked and 8 Material Objects were produced.

2.7. The available evidences from the prosecution witnesses are as follows:

- a) PW1 is the husband of the deceased and also an eye witness to the occurrence. He speaks about the occurrence and the previous incident on 23.02.2014. He took the deceased to the hospital along with PW2 and also lodged the complaint Ex.P1.
- b) PW2 is the son of the deceased and also an eye witness. He also speaks about the earlier incident on 23.02.2014 and he took the deceased along with his father [PW1] to the Sathankulam Government Hospital in 108 Ambulance.
- c) PW3 is the wife of the appellant; daughter of the deceased and PW1. She was not present at the time of occurrence and she speaks about the harassment meted out to her by her husband /

the appellant and the earlier incident that took place on 23.02.2014.

- d) PW4 is a neighbour who witnessed the appellant running with a knife on 27.02.2014 at about 08.00 am.
- e) PW5 is also a neighbour who witnessed the appellant running with a knife on 27.02.2014 at about 08.00 am.
- f) PW6 is the witness for observation mahazar and for the recovery of MOs.5 & 6 and also attestor to Ex.P3.
- g) PW7 is the Village Administrative Officer and he speaks about the recovery of MOs.1, 7 & 8.
- h) PW8 is the Head-Constable, who received the printed First Information Report [Ex.P16] and handed it over to the Judicial Magistrate on 27.02.2014, at 01.00 pm.
- i) PW9 is the Head Clerk, who speaks about the receipt of letter from PW14 as well as the letter of the Magistrate regarding chemical analysis of the material objects.
- j) PW10 is the Doctor who attended the deceased on 27.02.2014 at about 09.40 am, ie., immediately after the occurrence and intimated the same to the Police Station in Ex.P13.
- k) PW11 is the Doctor who had conducted autopsy and noted down the injuries as stated above.
- l) PW12 is the Sub-Inspector of Police, who registered the complaint [Ex.P1] in Ex.P16.
- m) PW13 is the Inspector of Police who prepared the observation mahazar and recovered the material objects MOs. 5 & 6 [earth with and without bloodstain, respectively].
- n) PW14 is the Inspector of Police who arrested the appellant and recovered the material objects MOs.1 to 4, 7 & 8 and also filed the final report against the appellant.

2.8. From the available evidence on the prosecution, the learned trial Judge had put the incriminating materials to the appellant under Section 313 Cr.P.C., and the appellant denied the same. On his side, the appellant examined the Manager cum Nodal Officer, Vodafone Private Limited, Chennai, to establish the call details made by PW2. The said witness appeared and stated that such details after a period of one year will not be maintained. Upon appreciating the evidence let-in by both the parties, the trial Court found the appellant guilty and convicted him as stated supra. As against this conviction and sentence, this appeal has been filed.

3. Heard Ms.M.Padmavathy, learned counsel appearing for the appellant and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondent.

4. The learned counsel for the appellant assailed the judgment of the Trial Court on the following grounds:

4.1. As per the evidence of PWs.1 & 2 and the inquest report, the appellant caused cut injuries and stab injuries on the



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deceased. But the postmortem certificate reveals that there are no cut injuries and stab injuries and the injuries are lacerated injuries only, which could not be possible by the knife [MO1]. Therefore, the entire prosecution case that PWs.1 & 2 have witnessed the occurrence is doubtful.

4.2. PWs.1 to 5 are close relatives and their evidence is also contradictory to each other. Therefore, their evidence need not be relied upon. The recovery is also improbable that the appellant was found on the next day, with blood stained lungi and shirt in the bazar and also keeping the blood stained knife in his waist.

4.3. The place of occurrence is contradictory. According to PW1, it is on the back side of the house and in the chief examination, it is stated as 'Muttram' in between two house, whereas, according to PW5, the occurrence was taken place on the main road.

5. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor, submits that from the evidence, the prosecution had clearly established that it was this accused, who committed the murder of the deceased. Therefore, according to the learned Additional Public Prosecutor, the conviction and sentence imposed by the Trial Court on the accused does not require any interference at the hands of this Court.

6. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

7. The appellant is none other than the son-in-law of the deceased and PW1. He married the deceased's daughter [PW3] twenty years back and they have four children through the wedlock. The appellant was in habit of drinking and also had intimacy with another women, namely, Muthusanthanam. He left PW3 in the year 2002, when they are having two children and married the said Muthusanthanam. Through this wedlock, they have two children and thereafter, he left the said Muthusanthanam also and again started living with PW3 for sometime. In this period, the appellant and PW3 were bestowed with two other children. Even thereafter, PW3 faced several harassment at the hands of the appellant and therefore, she left the matrimonial house again and started living with her parents. The appellant with an intention to live with PW3, repeatedly came to PW1's house and called his wife [PW3] to live with him.

8. On 23.02.2014, the appellant came to PW1's house and insisted to send PW3 along with him. The deceased told that unless he gives up the drinking habit, her daughter would not come and live with him, for which, the appellant intimidated them. Again on 27.02.2014 at 08.00 am, the appellant came to PW1's house and asked for his wife. The deceased told that her daughter has gone for work and she will not come and live with him. Thereafter, the



appellant took a knife from his waist, abused and attacked the deceased. PWs.1 & 2 who were in the house, witnessed the occurrence and arranged 108 Ambulance and took the deceased to the Government Hospital, Sathankulam, immediately.

9. The Doctor [PW10] attended the deceased on the same day at about 09.40 am and stated that the deceased was brought dead. He also intimated the respondent police vide Ex.P13. The Doctor [PW11] who conducted the autopsy has noted down three injuries and gave his opinion that the deceased died of shock and hemorrhage due to multiple laceration injuries sustained by her. The Investigation Officer has also recovered the blood stained articles from the place of occurrence and established that an occurrence had taken place in the backside of the house. On the next day, the appellant was also arrested with the blood stained knife [MO1] and blood stained lungi [MO7] and the same were recovered under the cover of Mahazer. Thus, the prosecution had established the case cogently and convincingly.

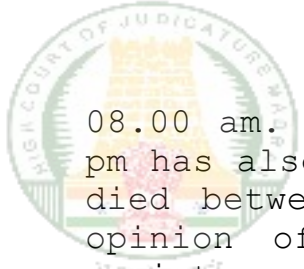
10. The learned counsel for the petitioner contended that the injuries noted down by the Doctor are only laceration, whereas knife [MO1] is a sharp edged one and those injuries found on the body of the deceased are not possible by the weapon recovered. Though the Doctor has noted down the injuries as laceration, he has also noted down the length and depth of the injuries as follows:

1. A laceration of 2cm length and 2 cm depth present over right (NC) right ear.
2. A laceration of 4 cm length and 5 cm depth present over middle of upper back - interscapular region.
3. A laceration of 5 cm depth and 5 cm length present over right side posterior neck.

All the injuries noted on the body of the deceased are deep injuries and according to PW11, the injuries found in the body of the deceased are possible by the weapon, which was recovered [MO1]. We do not find any reason to disbelieve the same.

11. The other contention raised by the learned counsel for the appellant that all the witnesses, PW1 to PW5 are closely related, as such they are interested ones and their deposition lacks evidentiary value.

12. As stated above, the occurrence took place at 08.00 am, in between two portions of the house belonging to PW1. PW1 is the husband of the deceased and PW2 is the son of the deceased and they are quite natural witnesses to be present in their house at the time of the occurrence. Immediately after the occurrence, the deceased was taken to the Hospital and admitted at about 09.40 am and the Doctor [PW10] has mentioned that she was brought in 108 Ambulance by her son in Ex.P13 and also time of the occurrence as



08.00 am. The doctor who conducted the postmortem at about 03.50 pm has also stated in his report that the deceased appears to have died between 06.00 to 12.00 hours prior to the postmortem. The opinion of the Doctor as well as the entry in the accident register report [Ex.P13] corroborate the evidence of PWs.1 & 2 that the occurrence had taken place at 08.00 am and also the presence of PW2 in the place of occurrence. The First Information Report was also registered immediately at about 11.15 am, and reached the Court at about 01.00 pm, on the same day. As such, there is no delay in preferring the complaint, registering the First Information Report and the First Information Report reaching the Court.

13. Though there are certain discrepancies with regard to the place of occurrence that the occurrence had taken the place behind the house or at 'Muttram', the rough sketch [Ex.P17] would show that the house of PW1 is of two portions and in between these portions there is a vacant place. The kitchen is in the third portion. The occurrence has taken place between these two portions. In fact, it is behind the first portion as stated by PW1, which can also be termed as 'Muttram', in between the two portions. Therefore, the nomenclature used by the witnesses to refer to the place of occurrence as backside of the house in one place and 'Muttram' in another place cannot be considered as a contradiction to disbelieve the place of occurrence. Similarly, PW4 has witnessed the appellant running with a knife after the occurrence. Though he is a relative of PW1, his evidence cannot be discarded, when he is residing in front of the occurrence place.

14. Moreover, apart from his evidence, the evidence of PWs.1 & 2 is sufficient to establish the motive for the appellant to commit the offence. The appellant had insisted PW3 to live with him and repeatedly called her. There was an incident four days prior to the occurrence and at that time, the deceased had told the appellant that her daughter would not live with him unless he gave up his drinking habit. The appellant, therefore, intimidated the deceased four days prior to the occurrence. The previous occurrence on 23.02.2014 which is stated in the complaint [Ex.P1] has also been established through the evidence of PW1 to PW3. Therefore, with the available evidences, we are of the view that there is no ground to interfere with the Judgement of conviction passed by the Trial Court in S.C. No.290 of 2015 on the file of the Principal Sessions Judge, Thoothukudi.

15. Since all the grounds raised by the appellant to interfere with the impugned judgment lack merits, this Criminal Appeal is liable to be dismissed and the same is accordingly, dismissed. The Judgement of conviction and sentence passed by the learned Principal Sessions Judge, Thoothukudi, in S.C.No.290 of 2015, dated 21.09.2016 is hereby confirmed. Since the appellant is on



bail, the learned Trial Judge is directed to secure the appellant and confine him, in accordance with law.

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Sd/-

Assistant Registrar (CRL.SIDE)

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Sub Assistant Registrar (CS)

To

- 1.The Principal Sessions Judge,
Thoothukudi.
- 2.The Judicial Magistrate, Sathankulam
- 3.-do-Thro' The Chief Judicial Magistrate, Thoothukudi
- 4.The Superintendent, Central Prison, Palayamkottai
- 5.The Inspector of Police,
Thattarmadam police Station,
Sathankulam Taluk,
Thoothukudi District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.PADMAVATHY, Advocate(SR-57068[F] dated
27/03/2019)

gk

Order made in
CRL. A. [MD] No. 69 of 2017
27.03.2019

KM/(15.04.2019) 8P 8C