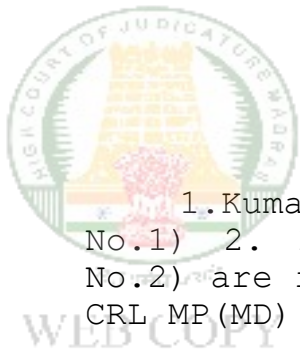


**Bail Slip**

1.Kumar, S/o.Ramar, male, aged about 35/2018 years (Accused No.1) 2. Murugesan, S/o.Ramar, male aged 36/2018 years (Accused No.2) are released on bail vide court order dated 28.04.2018 made in CRL MP (MD).No.2912 of 2018 in CRL A(MD).No.182 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.07.2019
CORAM:

**THE HONOURABLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

CRL.A[MD].No.182 of 2018

1.Kumar
2.Murugesan ... Appellants/Accused Nos.1 & 2

Vs.

The State,
represented by
The Inspector of Police,
Siruganur Police Station,
Tiruchirappalli District.
(Crime No.56 of 2015)

... Respondent/Complainant

Prayer: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment dated 07.03.2018 made in S.C.No.30 of 2017, on the file of the Principal Sessions Court, Tiruchirappalli.

For Appellants : Mr.P.Pethu Rajesh

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

* * * * *

JUDGMENT

[Judgment of the Court was delivered by the **Hon'ble Chief Justice**]

This appeal is directed by the appellants - original accused Nos.1 and 2 against the judgment and order dated 07.03.2018 passed by the learned Principal Sessions Judge, Tiruchirappalli, in Sessions Case No.30 of 2017. By the said judgment and order, the learned Sessions Judge convicted both the appellants for the offences under Sections 294(b) and 302 I.P.C. For the offence under Section 302 I.P.C., each of the appellants was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- (Rupees Two Thousand only), in default, to undergo rigorous imprisonment for three years and for the commission of the offence under Section 294(b) I.P.C., each of the appellants was sentenced to



undergo rigorous imprisonment for three months.

2. The case of the prosecution, briefly stated, is as under:

2.1. One Sekar was the husband of P.W.3 - Ramayee. Sekar was residing along with his wife - P.W.3 - Ramayee and his son P.W.4 - Dhanapal at Thiruppathur village. It is further case of the prosecution that there was some intimacy between Sekar and Malar, who is the sister of both the appellants. On account of this intimacy, both the appellants used to demand money from Sekar. The incident occurred on 08.02.2015 at about 06.00 p.m., in the forest near the village. At that time, the appellant No.2 - Murugesan asked Sekar to give Rs.70,000/- (Rupees Seventy Thousand only) to go abroad, however, Sekar refused to give him the money and also abused the appellant No.2 - Murugesan. Thereupon, appellant No.1 - Kumar abused Sekar and assaulted him on the neck with aruval. Sekar fell down. Thereafter, the appellant No.2 - Murugesan assaulted Sekar with aruval on various parts of his body. Thereafter, the appellants 1 and 2 left the spot. According to the prosecution, the incident was witnessed by P.W.5 - Rengaraj.

2.2. P.W.1 - T.Vairamuthu, who is the Village Administrative Officer, received information from his Assistant that one dead body of a male person was lying at Poyyeri land. P.W.1 - T.Vairamuthu, then, went to the spot where the dead body was lying. After sometime, P.W.3 - Ramayee, wife of deceased Sekar accompanied by P.W.4 - Dhanapal, son of the deceased Sekar came to the spot where the dead body was lying and P.W.3 - Ramayee identified the dead body as that of her husband - Sekar.

2.3. P.W.1 - T.Vairamuthu gave a complaint at about 01.00 p.m., to P.W.14 - Rajeswari, Sub Inspector of Police. The said complaint was against unknown persons. The complaint was recorded as Ex.P.10. Thereafter, investigation commenced. The dead body was sent for post-mortem. Statements of various witnesses were recorded. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Session.

3. Charge came to be framed against both the appellants [original accused Nos.1 and 2] under Sections 294(b), 302 and 506 (ii) I.P.C. Both the appellants pleaded not guilty to the said charges and claimed to be tried. Their defence is of total denial and false implication. To support its case, the prosecution examined P.W.1 to P.W.17 and marked Exs.P.1 to P.18 and eight material objects. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant, as stated in Paragraph No.1, above, hence, this appeal.

4. We have heard the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State. We have carefully considered their submissions, the evidence in this case and the judgment and order passed by the learned Sessions Judge. After carefully considering the same, for the below-mentioned

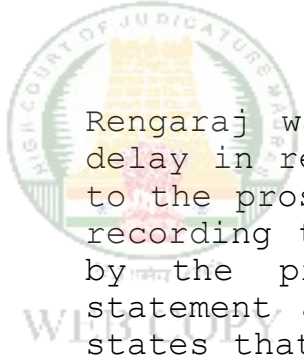


reasons, we are of the opinion that the prosecution has not proved its case against both the appellants beyond reasonable doubt.

5. In order to sustain the conviction against both the appellants, the prosecution is mainly relying on the evidence of P.W.5 - Rengaraj, who according to the prosecution, is an eyewitness to the incident. P.W.5 - Rengaraj has stated that on the date of incident at about 06.00 p.m., Sekar came to the fields to graze his goats and at that time, P.W.5 - Rengaraj was grazing his cow. According to P.W.5 - Rengaraj, at about 06.00 p.m., both the appellants/accused persons approached Sekar and the appellant No.2 - Murugesan asked Sekar to give Rs.70,000/- (Rupees Seventy Thousand only) to him, to go abroad. Sekar refused to give the money and also abused the appellant No.2 - Murugesan. Thereupon, the appellant No.1 - Kumar abused Sekar and assaulted Sekar on the back side of his neck with aruval. Sekar fell down. Thereafter, the appellant No.2 - Murugesan assaulted Sekar with aruval on various parts of his body. PW.5 - Rengaraj stated that on seeing this, immediately, he went to the shed in his field. On the next day, he was asked to come to the Police Station.

6. Though the prosecution has heavily relied on the evidence of P.W.5 - Rengaraj, who according to the prosecution, is the sole eyewitness to the incident, as stated in the above paragraph, P.W.5 - Rengaraj has stated that on the next day, he was called to come to the Police Station and hence, he went there. It is material to note that on that day, the statement of P.W.5 - Rengaraj was not recorded. The evidence on record shows that the statement of P.W.5 - Rengaraj was recorded only on 18.04.2015, that is more than two months after the incident. This has been brought out in the evidence of P.W.17 - P.Gopalachandran, who is the Investigating Officer in this case. P.W.17 - Gopalachandran has stated that he joined duty on 18.04.2015 and on that day, he arrested both the appellants and also recorded the statement of P.W.5 - Rengaraj.

7. It is pertinent to note that prior to P.W.17 - Gopalachandran taking over the investigation, the case was being investigated by P.W.16 - K.Selvarajan. He has stated that he has recorded the statements of various witnesses. However, during the period that he was investigating the case, no statement of P.W.5 - Rengaraj was recorded. Through the evidence of P.W.17 - Investigating Officer, it has clearly come on record that the statement of P.W.5 - Rengaraj, the sole eyewitness was recorded on 18.04.2015, i.e., two months after the incident. It is not the case of the prosecution that P.W.5 - Rengaraj was not available in the village to record his statement. In fact, P.W.5 - Rengaraj had gone to the Police Station on the very next day and enquiries were made with him for a period of almost 16 days. P.W.5 - Rengaraj has stated that on the next day, he was called to the police station and for about 16 days enquiry was made with him and he was beaten up. Thereafter, he consumed poison, on account of which, he was hospitalised, hence, he was alive. Thus, it is seen that P.W.5 -



Rengaraj was very much available and yet there was an inordinate delay in recording the statement of P.W.5 - Rengaraj, who according to the prosecution, is an eyewitness to the incident. This delay in recording the statement of P.W.5 - Rengaraj has not been explained by the prosecution. This unexplained delay in recording the statement as well as other evidence of P.W.5 - Rengaraj where he states that he was tortured by the police for about 16 days, raises a serious doubt about the veracity of his evidence. Hence, we do not consider it safe to rely on the evidence of this witness, P.W.5 - Rengaraj that he witnessed both the appellants assaulting deceased Sekar.

8. The other evidence against the appellant No.1 on which the prosecution is relying is the circumstance of recovery of aruval at the instance of the accused. In relation to the said circumstance, the prosecution has relied on the evidence of P.W.15 - K.Periyasamy. P.W.15 - K.Periyasamy has stated that on 18.04.2015 at about 11.00 a.m., while he was going to Thiruppattur bus stop, there was a crowd and he saw that the Inspector of Police was examining two persons. They were the appellants - Kumar and Murugesan. At that time, the appellant No.1 - Kumar voluntarily gave a confession statement to the Inspector of Police wherein, he stated that he would hand over aruval which he had hidden in the bushes in Poyyeri forest area. Thereafter, the appellant No.1 led the police and mahazar witnesses to a place in the forest where he handed over the aruvals - M.O.3 and M.O.4. The said fact of recovery of aruvals was recorded under the mahazar - Ex.P.12. There was no blood on these aruvals. As far as this recovery and circumstance against the appellant No.1 is concerned, we would like to advert to the evidence of P.W.5 - Rengaraj. P.W.5 - Rengaraj has stated that on the next day of incident, when he went to the Police Station, he saw aruvals - M.O.3 and M.O.4. in the Police Station. Thus, if aruvals were at the Police Station on the next day of the incident, the recovery of the very same aruvals at the instance of the appellant No.1 on 18.04.2015 cannot be believed. The evidence on record clearly shows that the recovery is a planted one.

9. The prosecution has tried to make out a case that the deceased Sekar was having intimacy with Malar, who is the sister of both the appellants. On account of this fact, both the appellants were demanding money from deceased Sekar and had also given threats to him. In this respect, the prosecution has relied on the evidence of P.W.3 - Ramayee, who was the wife of deceased Sekar. However, it is seen that all these averments in the evidence of P.W.3 - Ramayee were not stated before the police when her statement was recorded by the police. Thus, it is seen that all these averments have come on record by way of improvement. This is clear from the evidence of P.W.16 - K.Selvarajan, Inspector of Police, who is one of the Investigating Officers. Thus, the evidence of P.W.3 - Ramayee on this aspect cannot be taken into consideration. Thus, the circumstance of "Motive" has also not been proved by the prosecution.



10. For the foregoing reasons, we are of the opinion that the prosecution has not proved its case against both the appellants beyond reasonable doubt. Thus, the conviction and sentence imposed on them by the learned Principal Sessions Judge is liable to be set aside.

11. In the result, the following order is passed:

- this Criminal Appeal is allowed and the conviction and sentence imposed on both the appellants by the learned Principal Sessions Judge, Tiruchirappalli, in S.C.No.30 of 2017, dated 07.03.2018 is set aside and both the appellants are acquitted of the charges framed against them.
- Bail bonds and the sureties executed by both the appellants shall stand terminated.
- Fine amounts, if any paid, shall be refunded to both the appellants.

Sd/-

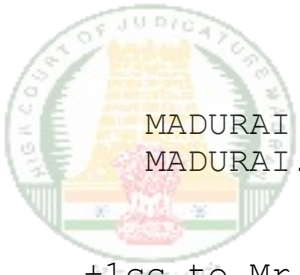
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. THE PRINCIPAL SESSIONS JUDGE, TIRUCHIRAPPALLI
2. THE JUDICIAL MAGISTRATE , ILLAKUDI
3. -DO- THROUGH THE CHIEF JUDICIAL MAGISTRATE, TRICHY
4. THE INSEPCTOR OF POLICE SIRUGANUR POLICE STATION,
TIRUCHIRAPPALLI DISTRICT,
5. THE SUPERINTENDENT CENTRAL PRISON, TRICHY
6. THE COMMISSIONER OF POLICE, TRICHY
7. THE DISTRICT COLLECTOR TRICHY
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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MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

+1cc to Mr.P.PETHU RAJESH, Advocate, SR.No.73657

WEB COPY

rsb
JUDGMENT MADE IN
CRL.A. [MD].No.182 of 2018
05.07.2019

NA (31.07.2019) 6P : 13C