



Bail Slip

The Petitioner/Appellant, namely Jengiskhan, S/o. Thajudeen, Aged about 53, was released on bail vide order made in CRL MP(MD). No.1243 of 2018 in CRL A(MD)No.95 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.A. (MD)No.95 of 2018

Jengiskhan

... Appellant/Soal Accused

versus

The State of Tamil Nadu
Rep. by its The Inspector of Police,
Tirumangalam Town Police Station,
Madurai.
(Crime No.73 / 2008)

... Respondent/Complainant

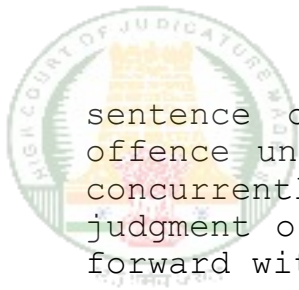
Appeal filed under Section 374 (2) of Criminal Procedure Code, against the Judgment dated 12.05.2015 made in S.C.No.186 of 2008 on the file of the Sessions Court- Mahalir Neethimandram, Madurai.

For Appellant : Mr. R.Venkatesan
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **T.RAJA, J.**]

The appellant is the sole accused in S.C.No.186 of 2008 on the file of the Sessions Court, Mahalir Neethimandram, Madurai and he stood charged and tried and convicted for the commission of offences under Sections 498-A, 302 and 316 I.P.C. The trial Court vide judgment dated 12.05.2015, has found him guilty for the commission of the above said offences and imposed Rigorous Imprisonment for life and a fine of Rs.1,000/- with default sentence of 6 months Simple Imprisonment for the commission of offence under Section 302 I.P.C., Rigorous Imprisonment for 3 years and a fine of Rs.500/- with default sentence of 6 months Simple Imprisonment for the commission of offence under Section 498-A I.P.C. and Rigorous Imprisonment for 10 years and a fine of Rs.500/- with default



sentence of 6 months Simple Imprisonment for the commission of offence under Section 316 I.P.C. the sentences were ordered to run concurrently. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.

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2. The case of the prosecution are as follows :-

P.W.1-Tahir Hussain is the landlord of a house situated at No.16, Mohammed Shahpuram 2nd Street, Thirumangalam, wherein the appellant started residing along with his wife and children for rent just one and half months before the date of occurrence. During their stay, the appellant used to come home drunk and pick up quarrel with his wife (deceased Sahar Banu) frequently. On the date of occurrence, i.e. on 28.02.2008, P.W.1, after completing his work, went to bed at 11.00 p.m. At around 1.00 a.m. P.Ws.1 and 2, on hearing the screaming of deceased, went to the house of the accused, where, he saw the appellant slapping his wife (deceased) with a black colour canvas shoe indiscriminately. When P.Ws.1 and 2 questioned the same, the appellant told them that it is not their business, he would assault his wife and they cannot question about it. Thereafter, the appellant pulled down the deceased from stair, due to which, the deceased sustained blood injury over the head and nose. After that, the deceased was taken to a hospital, where, the deceased was declared as 'dead'. P.W.1 informed the death of the deceased to her parents. Thereafter, P.W.1 has proceeded to Thirumangalam Police Station and lodged a complaint (Ex.P.1) on 29.02.2008 at about 6.45 hours. P.W.11, the Sub Inspector of Police, on receipt of Ex.P.1, complaint, has registered a case in Crime No.73 of 2008 for the commission of offence punishable under Section 302 of the Indian Penal Code. The First Information Report has been marked as Ex.P.9.

(ii) P.W.12 was the Inspector of Police, Thirumangalam Police Station. On receipt of Ex.P.9, First Information Report from P.W.11, Sub Inspector of Police, he took up the investigation and proceeded to the place of occurrence and prepared Observation Mahazer and Rough Sketch, which were marked as Exs.P.2 and P.10, in the presence of P.W.5-Ramzan Ali and one Ajmeer Ali.

(iii) In the presence of same witnesses, P.W.12 also effected seizure of bloodstained earth, ordinary earth, portion of the stair, which were marked as M.O.1 to M.O.3. P.W.12 proceeded to the Government Hospital at Thirumangalam and in the presence of Panchayatars, conducted inquest on the body of the deceased. The inquest report was marked as Ex.P.11. Thereafter, he sent a requisition letter for postmortem. After that, P.W.12, in the presence of P.W.8-Mohan and Village Administrative Officer, arrested the accused at Uzhavar Sandai, Thirumangalam and recorded his confession statement, based on which, he went to the accused's house and seized a black colour canvas Shoe, which was hidden at a bush. Thereafter, P.W.12 sent the accused and the materials recovered to



the concerned Court for judicial custody. P.W.12 examined the Doctor Manjari (P.W.10), who conducted postmortem and recorded her statement, where, she stated that a female baby, weighing 3 kgs. was found to be dead in the deceased's stomach. The postmortem report was marked as Ex.P.8.

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(iv) P.W.12 sent a requisition letter (Ex.P12) to the Court for sending the materials for chemical analysis. He also examined the other witnesses. After completing the investigation, P.W.12 filed a charge sheet before the Judicial Magistrate, Thirumangalam, charging the accused for the commission of offence under Section 302 (2 counts) and 498-A I.P.C.

3. The Judicial Magistrate, Thirumangalam, on receipt of the charge sheet, issued summons to the accused and on his appearance, furnished him with the copies of the documents under Section 207 of the Code of Criminal Procedure, 1973. Since the Judicial Magistrate, Thirumangalam, having found that the case is exclusively triable by the Sessions Court, committed the same to the Principal Sessions Court, Madurai, which in turn made over the same to Sessions Court, Mahalir Neethimandram, Madurai, which took it on file in S.C.No.186 of 2008.

4. The prosecution in order to substantiate their case, examined P.Ws.1 to 12 and marked Exs.P.1 to P.13 and M.Os.1 to 3. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as regards the incriminating materials available in evidence against him, he denied his complicity in the crime. However, on behalf of the accused, no oral and documentary evidence have been exhibited.

5. The trial Court, on consideration of the oral and documentary evidence, has found the accused guilty for the offence punishable under Section 302, 498-A and 316 of the Indian Penal Code and imposed sentences as stated above. Against the conviction and sentence passed against the accused, the present Criminal Appeal has been preferred.

6. The learned counsel appearing for the appellant has raised the following points for the consideration of this Court:

6.1.The neighbours of the deceased and accused viz., Abdul Rahim and Rahamathullah mentioned in Ex.P.1 were not examined.

6.2.The occurrence alleged to have taken place on 29.02.2008 at about 1.00 a.m., the complaint was lodged at 6.40 a.m. and the same reached the Court only at 1.40 p.m. Hence, there is a delay in lodging the F.I.R.

6.3.Dr.Ramkumar, who initially attended the deceased was not examined and the A.R. copy not marked.

6.4.Though the shoe used to attack the deceased was recovered under a cover of mahazar Ex.P.6 the same was not marked.

6.5.Contradictions between the evidence of P.W.1 and the



Complaint - Ex.P.1.

6.6.P.W.2 did not witness the occurrence.

7. The learned Additional Public Prosecutor appearing for the respondent/State submitted that P.W.1 is not only an eye-witness, but also the landlord of the house, wherein, the accused and the deceased along with their children were residing. Furthermore, P.W.2 is also an eye-witness and he in his evidence deposed that the accused/appellant is his friend. The learned Additional Public Prosecutor further submitted that when the accused assaulted the deceased, both P.W.1 and P.W.2 questioned the accused, but, the accused told them that this is not their business and he would beat his wife and they cannot question him. Therefore, both of them could not question him further. Thereafter, the accused pulled down his wife/deceased on the cement stairs at the house of the deceased, due to which, she sustained blood injury on her head and nose. Both P.W.1 and P.W.2 took the deceased to the hospital, by an auto. That auto driver was also examined as P.W.3. He has also deposed about the injuries sustained by the deceased, that has also corroborated the evidence of P.W.1 and P.W.2. Furthermore, the father of the deceased was also examined as P.W.4, he has also deposed in his evidence that there was a dispute between the accused and her daughter/deceased for the past several years. The deceased also informed him about their dispute. Therefore, the evidence adduced by P.W.4 has also strengthened the dispute between the accused and the deceased. Moreover, the deceased was a pregnant lady, who was nearing 10 months pregnancy, after knowing fully well, the accused assaulted the deceased indiscriminately with his black colour canvass shoe. Therefore, the conviction and sentence imposed by the trial Court on the appellant/accused is correct and no interference is required.

8. Heard the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the State.

9. According to the prosecution, P.W.1, who is the landlord, is an eye-witness to the occurrence. In his evidence, he has categorically deposed that after hearing the screaming of the deceased, he went to the house of the accused, at that time, the accused/appellant assaulted the deceased with his black colour canvas shoe indiscriminately, thereafter, he pulled down the deceased on the cement stair. According to the prosecution, P.W.2 is also an eye-witness to the occurrence. He has also in evidence deposed that after hearing the screaming of the deceased, he went to the scene of occurrence, at that time, the accused assaulted the deceased with his canvass shoe, thereafter, he pulled down the deceased on the cement stair, due to which, the deceased sustained injuries on her head and nose. Both of them took the deceased to the hospital, where, the deceased was declared dead by the Doctor.

<https://hccasecourts.org.in/hccservlet> The appellant/accused gave a complaint.



10. A perusal of the evidence of P.W.1 and P.W.2 would go to show that at the time of occurrence, both P.W.1 and P.W.2 were present and both of them saw the assault made by the accused on the deceased with his canvas shoe. When both of them questioned the accused, the accused replied that it is not their business and he would beat his wife and they cannot question him.

11. Both P.W.1 and P.W.2 took the deceased to the hospital by an auto and that auto driver was also examined as P.W.3, he has also deposed about the injuries sustained by the deceased. Moreover, P.W.1 is the landlord of the house, where, the accused and the deceased were residing. Though much comment was made on the evidence of P.W.1, the evidence of P.W.1 has got to be accepted by the Court since it inspires the confidence of the Court. Further, P.W.2 is not only a neighbour of the deceased, but also the friend of the accused.

12. A comparative reading of the evidence would go to show that the appellant/accused indiscriminately assaulted the deceased with his canvas shoe and he also pulled down the deceased on the stairs and thereafter, the deceased sustained blood injury over her head and her nose, due to which, she had died.

13. P.W.10 also issued Ex.P8-Postmortem Certificate, wherein, the following injuries were noted:

- (i) Contusion over right cheek;
- (ii) Contusion over left eyebrow, nose, lips;
- (iii) Lacerated injury .5 cm x .5 cm on lower lip;
- (iv) Lacerated injury .5 cm x .5cm over right temporal region;
- (v) Bleeding thro' both ears and nostrils;
- (vi) Abdomen distended.

These injuries show that they would have been sustained by beating the deceased on her face with a canvas shoe.

14. Moreover, P.W.10 had noted down in Ex.P8 about the examination of head:

"Examination of head

On opening the scalp

- (1) Hematoma in right temporal and frontal region
- (2) Depressed fracture of right frontal bone

On opening the skull, brain matter sprouting through tear of meninges in right frontal and temporal regions. Brain is pale."

15. P.W.10 further gave his final opinion that the death had occurred due to injury to vital organ brain due to fracture of skull bones and haemorrhage and death would have occurred 12-14 hrs. prior to autopsy. Therefore, the medical evidence corroborates the evidence of P.Ws.1 and 2 that the accused had indiscriminately assaulted the deceased with a shoe on her face and due to the



pulling of the deceased down, the fatal injury had been caused to the deceased, which is the main factor for the death of the deceased.

16. Further, P.W.4, who is the father of the deceased, has deposed that the deceased, on two or three occasions, had informed about the scuffle between them. This evidence also shows that the accused used to pick up quarrel with the deceased frequently. Therefore, on the date of occurrence, the accused picked up quarrel with the deceased and attacked her with a shoe indiscriminately, which was witnessed by P.W.1 and P.W.2 and their evidence corroborates with each other.

17. According to the appellant, though the shoe was recovered from the accused, that was not marked by the prosecution as material object; the neighbours of the deceased and accused viz., Abdul Rahim and Rahamathullah mentioned in Ex.P.1 were not examined and Dr.Ramkumar, who initially attended the deceased was not examined and the A.R. copy not marked and that would go to show the prosecution has burked the real facts. But, it cannot be countenanced for the simple reason that P.W.1 - landlord, who let out the house to the accused, has clearly spoken about the entire incident that took place in his own house and that was also sufficiently corroborated by P.W.2. It might also be true that Abdul Rahim and Rahamathullah were also witnesses. When eyewitnesses P.Ws.1 and 2 are examined and their evidence remained acceptable, then the non-examination of Abdul Rahim and Rahamathullah cannot be stated to be in anyway fatal to the prosecution case.

18. Learned counsel for the appellant would submit that there was some delay in lodging the complaint. The occurrence had taken place at about 1.00 a.m. in the early morning and immediately the deceased was taken to hospital, where she was taken to hospital, where she was declared dead. Then P.W.1 came to the house and informed the death of the deceased to her parents. After their arrival, P.W.1 went to the police station and lodged the complaint at the dawn of the day at about 6.40 a.m. and the same reached the Court at 1.40 a.m. Thus, consumption of few hours has been explained by the prosecution, which could have taken place in the normal course. Though the above said discrepancies and some other minor discrepancies were pointed out, such discrepancies, in the considered opinion of the Court, cannot be given much weight to shake the evidence of P.Ws.1 and 2 or the circumstances noticed by the Court. Further, P.W.1 is the land lord of the accused, who is a natural witness and P.W.2 is also the friend of the accused. Therefore, there is nothing to disbelieve and discard their evidence.

19. In view of the circumstances, which we have narrated above, we are of the view that the prosecution has established the case against the accused beyond any doubt and we see no reason to



interfere with the findings and conclusions arrived at by the trial court.

20. Learned counsel appearing for the appellant would submit that the appellant is a Tailor and he was doing tailoring work when he was under incarceration for a period of 6 ½ years and if he is given reduction of sentence, he will be able to take care of his children. But the said prayer is countered by the learned Additional Public Prosecutor stating that when the appellant was on bail for a period of more than one year has neither seen his children nor visited their home. Hence, the said prayer is rejected.

21. In the result, this Criminal Appeal is dismissed confirming the judgment dated 12.05.2015, made in S.C.No.186 of 2008 by the learned Sessions Judge, Mahila Court, Madurai. The period of imprisonment already undergone by the appellant/accused shall be given set off. The bail bonds executed by the accused shall stand cancelled and the respondent/police is directed to forthwith secure the appellant/accused for committing him to custody so as to undergo the remaining part of sentence.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Sessions Judge, Mahila Court, Madurai.

2.The Judicial Magistrate, Thirumangalam,
Madurai District.

3.The Inspector of Police,
Tirumangalam Town Police Station, Madurai.

4.The Superintendent, Central Prison, Madurai.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.VENKATESAN, Advocate (SR-105521[F] dated
18/12/2019)

Cr1.A. (MD) No.95 of 2018
16.12.2019

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