

BAIL SLIP

Petitioner/Appellant/Accused was namely Arunachalam @ Mani M/A 60 years S/o.Muthuswamy Goundar was released on bail as per dated 04/09/2019 in CrI.MP.No.11785/19 in CrI.A.No.41/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.01.2020

Judgment Delivered on : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.41 of 2018

Arunachalam @ Mani ... Appellant/Single Accused
Vs.

State Represented by
Inspector of Police,
Jaderpalayam Police Station,
Namakkal District.
Crime No.287/2010 ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment of conviction and sentence, dated 07.09.2012 in Sessions Case No.42 of 2011 on the file of the Principal Sessions Court, Namakkal.

For appellants : Mr.T.Muruganantham
For respondent : Mrs.M.Prabhavathi, Addl.P.P.

JUDGMENT

R.SUBBIAH, J

The sole accused in S.C.No.42 of 2011 on the file of the learned Principal Sessions Court, Namakkal is the appellant herein. He stood charged for the offence punishable under Section 302 IPC. The trial Court by Judgment dated 07.09.2012 convicted him for the said offence and sentenced him to undergo life imprisonment with fine of Rs.10,000/-, in default, to undergo imprisonment for one year. Challenging the aforesaid Judgment of conviction, the present appeal is filed.

2. The case of the prosecution as put-forth by its witnesses, is narrated in a nut-shell below:

(a) The deceased in this case is one Komalam, who is the wife of the appellant/accused. P.W.1 is the daughter of the deceased and the accused. Prior to the marriage of P.W.1, the appellant/accused and deceased were living separately. Only at the time of marriage of P.W.1, the accused and the deceased joined together. The marriage of P.W.1's sister took place 10 to 15 days prior to the date of occurrence being 21.06.2010. It is stated that the accused had deposited a sum of Rs.25,000/- in Syndicate Bank for the marriage of his daughter Sasikala, i.e. P.W.1's sister. Since the marriage of the said Sasikala was a love marriage, the deceased, the mother of P.W.1, was unhappy. Since then, there were quarrels between the deceased and the accused.

(b) On 21.06.2010, the appellant insisted that the F.D. amount deposited has to be withdrawn and paid to him for which the deceased refused, which resulted in a quarrel between them. The conduct of the deceased resulted in developing a grudge in the mind of the accused.

(c) While so, on the intervening night of 21/22.06.2010 at about 00.30 hours, while the deceased was sleeping in a cot in the verandah of the house, the appellant/accused came with Aruval and caused a cut injury on her left neck and on sustaining the said injury, she screamed. Upon hearing the same, P.W.1, who was sleeping in another cot nearby the deceased, woke up and raised an alarm. The deceased got from the bed and moved two feet and fell down. On hearing the cry of the deceased, P.W.1's aunt P.W.2 Pappathi @ Chinnammal came running. On seeing them, the appellant/accused fled away from the scene of occurrence and left the Aruval, charger light and slippers in the place of occurrence itself. On examination, the deceased died on the spot itself.

(d) Thereafter, P.W.1, along with others, went to the Police Station at about 2 a.m. and lodged Ex.P-1 complaint. On receipt of the complaint, P.W.9 Sub-Inspector of Police registered a case in Crime No.287 of 2010 for the alleged offence under Section 302 IPC. Subsequently, he forwarded the express report/FIR to the jurisdictional Judicial Magistrate and other higher officials through Grade I Police Constable P.W.5. Ex.P-11 is the FIR.

(e) On receipt of the copy of the FIR, P.W.11 Inspector of Police took up the investigation and at about 4.30 a.m., he rushed to the scene of occurrence and prepared Ex.P-3 observation mahazar and Ex.P-14 rough sketch in the presence of

witnesses Somasundaram and Palanisamy. Thereafter, he collected blood stained soil and sample soil under the seizure mahazar Ex.P-5. At about 5.45 a.m., the investigating officer seized Aruval, charger light and slippers left by the accused at the scene of occurrence, which were marked as MOs 1 to 3 respectively, under seizure mahazar Ex.P-4. and they were were produced before Court.

(f) Thereafter, P.W.11 conducted inquest over the body of the deceased in the presence of witnesses from 6.40 a.m. to 8.40 a.m. and prepared inquest report Ex.P-15. Then he recorded the statement of the witnesses and sent the body of the deceased through P.W.6 Grade-I Constable for conducting post-mortem. On 22.06.2010 at about 10.30. a.m, he arrested the accused near Solasiramani Bus Stand upon identification by the witnesses. On such arrest, the accused gave a confession statement, which was recorded in the presence of Ponnusamy, Somasundarm and others. He obtained the signature of the accused in the confession statement. Subsequently, P.W.11 investigating officer sent the appellant/accused to judicial custody. Thereafter, after recording the statement of the witnesses, P.W.11 sent the material objects seized by him under Form-95, Ex.P-16 to the Court concerned. Then he sent the blood stained soil, sample soil, bed sheet, charger light, etc., for examination to the Forensic Laboratory with Ex.P-17 request. As PW11 was transferred, he handed over the investigation to P.W.12 Inspector of Police. In continuation of the investigation, PW12 recorded the statement of P.W.8, Doctor who conducted post-mortem and recorded his statement. Ex.P-9 is the post-mortem certificate. PW12, on completion of the investigation, filed charge sheet against the appellant/accused under Section 302 IPC.

3. Based on the above materials, the trial Court framed charge against the accused under Section 302 IPC, and the accused was questioned in respect of the charge and he pleaded innocence. In order to prove the charge, on the side of prosecution, P.Ws.1 to 12 were examined, Exs.P-1 to P-17 were marked and M.Os.1 to 6 were produced.

4. The trial Court questioned the appellant/accused under Section 313 Cr.P.C., in respect of the incriminating materials available against the accused, but he denied the same. However, the accused did not choose to examine any witness nor mark any document.

5. On the basis of the oral and documentary evidence, the trial Court convicted the appellant/accused under Section 302

IPC and sentenced him as stated above.

6. The learned counsel for the appellant/accused took us through the evidence of prosecution witnesses to substantiate his submissions and stated that except P.W.1, there is no other eye-witness to the occurrence. In fact, P.W.1 herself did not say that she had actually seen the occurrence during which the accused was alleged to have caused cut injury on the neck of the deceased. What she has stated in her evidence is that on hearing the hue and cry of the deceased, she woke up and saw the deceased falling down from the cot. There were material contradictions with regard to the statement given by P.W.1 to the investigating officer and her evidence before the Court. In her chief examination, she has stated that the deceased moved 2 feet from the cot and fell down, whereas the body was found 30 feet away from the house, which is evident from the rough sketch Ex.P-14. There is no explanation as to how the body was moved 30 feet away from the house. There was no investigation on this aspect.

7. The learned counsel for the appellant further contended that according to P.W.1, the appellant gave a single blow on the neck of the deceased, whereas five injuries are referred to in Ex.P-9 post-mortem certificate, which would only indicate that P.W.1 has not at all seen the occurrence and she was elsewhere.

8. The learned counsel for the appellant further submitted that there was contradiction with regard to the time of giving the complaint. There was a correction in the FIR with regard to the time, i.e. 2 O'clock was corrected as 3 O'clock. Further, with regard to the time of the Police arriving at the scene of occurrence, P.W.1 has stated that they came around 4.15 a.m., whereas the Police came around 5 a.m. as spoken to by P.W.3.

9. Further, according to the learned counsel for the appellant, the complaint is not written by P.W.1, but P.W.1 had put her signature on the bottom of the white sheet and the contents were filled by the Police officials, which is evident from the fact that the line spaces were not uniform and in some places, it is close and in some places, space is more. Moreover, P.W.1 signed it in English, but the contents are in Tamil. Further, P.W.1 stated that she went along with her relatives to the Police Station to lodge the complaint, whereas there is no attestation by any of her relatives who went along with P.W.1 to the Police Station. Similarly, the presence of the Village Administrative Officer in the scene of occurrence even before the Police arrived, creates a doubt that already someone informed about the occurrence to the VAO as well as Police.

10. The learned counsel for the appellant further contended that P.W.2 is not the eye witness to the occurrence. The deceased was wearing gold jewels at the time of occurrence, which was admitted by P.W.1 in her evidence. But there was no explanation on that aspect or any investigation made on that score. It is not known as to whether the jewels were stolen or in-tact with her and there is every possibility of someone committing the death of the deceased for the purpose of stealing her jewels. No investigation was conducted on that line.

11. Further, according to the learned counsel for the appellant, the motive for the occurrence is also not proved by the prosecution. In fact, it was the money of the appellant that was deposited in the Bank in his name, and to withdraw the money, nobody's consent is required and the appellant can withdraw it on his own. In such circumstances, the motive projected by the prosecution that the deceased did not permit the appellant to withdraw the amount is imaginary. Thus, the learned counsel for the appellant submitted that there are lots of infirmities in the case of the prosecution and those contradictions/infirmities would prove that the occurrence could not have happened in the manner as put forth by the prosecution and he prayed that the appellant/accused is liable to be acquitted of the charge.

12. Countering the above submissions, the learned Additional Public Prosecutor appearing for the respondent submitted that it is a case of brutal murder, in which the accused caused injury on the neck of the deceased. P.W.1 who is none other than the daughter of the accused, was sleeping on a cot near to her mother (deceased) and witnessed the entire occurrence. On raising the alarm, P.W.2 who is her aunt, came to the scene of occurrence and she also witnessed the occurrence and when she came, the accused ran away from the scene of occurrence. The evidence of P.Ws.1 and 2 is cogent and convincing. P.W.2 had also spoken about the occurrence in a vivid manner. Under such circumstances, no infirmities can be found in the case of the prosecution and this Court need not interfere with the conviction and sentence imposed by the trial Court on the appellant/accused and prayed for dismissal of the Criminal Appeal.

13. We have given our thoughtful consideration to the submissions made on either side and perused the entire materials available on record.

14. It is the main submission of the learned counsel for the appellant that P.W.1 might not have been present in the scene of

occurrence and even according to her evidence, only after hearing the hue and cry of the deceased, she woke up and saw the deceased falling down from the cot. She did not see the accused actually causing cut injury on the deceased. Further, according to P.W.1, the body of the deceased was moved from the cot 2 feet away and she fell down, whereas in Ex.P-14 rough sketch, the distance is shown as 30 feet. Therefore, according to the learned counsel for the appellant, this contradiction would show that P.W.1 would have been somewhere-else at the time of occurrence. Moreover, it is to be noted that though in the rough sketch it is shown as 30 feet away, in the photographs which were taken and shown as M.O.6 series, the body of the deceased was lying just about 10 feet from the cot. Moreover, the blood stained bed-sheet was recovered from the cot. Therefore, the submission of the learned counsel for the appellant based on the rough sketch, cannot hold water.

15. It is yet another submission of the learned counsel for the appellant that the conviction was recorded solely based on the evidence of the eye witness P.W.1, but there is no corroborating piece of evidence on that score. Therefore, on this ground, the judgment of the trial Court is liable to be set aside.

16. To rebut the above submission, the learned Additional Public Prosecutor relied on a decision of the Supreme Court in the case of Prithipal Singh Vs. State of Punjab, reported in 2012 (1) SCC 10 = 2012 (1) SCC (Cri) 1. The ratio laid down in that case, in our opinion, gives a fitting answer to the above contention of the learned counsel for the appellant. As held in that decision of the Apex Court, it is not the question of the number of witnesses, i.e. it is not the quantity of the witnesses examined, but the quality of the witnesses examined alone is material. In the instant case, P.W.1 is none other than the daughter of the appellant and she has no motive to speak against the accused, who is her own father. Moreover, even according to P.W.1, both the accused and the deceased were living separately for several years and only during the course of marriage of P.W.1, they got united. Further, the prosecution case clearly shows that there was a dispute with regard to the withdrawal of the money and there was a quarrel on this aspect on the date of occurrence. The occurrence took place in the night hours. Moreover, P.W.2 has also deposed that on hearing the hue and cry of P.W.1, she came near the scene of occurrence and saw the accused running away from the place of occurrence. Therefore, we are of the opinion that the evidence of P.W.1 and PW2 are sufficient and they inspire the confidence of this Court, while so, absolutely, there is no bar for the trial court

to base a conviction by relying on the solitary witness of PW1, which was also in fact corroborated by PW2.

17. Further, the medical evidence through PW8, Doctor corroborates with the injuries caused by the accused on the deceased, which tallies with Ex.P-9 post-mortem certificate.

18. From the evidence of P.W.1, in our considered view, the prosecution has established that it was the accused who inflicted the injury on the neck of the deceased, which resulted in her death. P.W.8 Doctor who conducted autopsy on the body of the deceased, found injuries on the neck of the deceased resulting in fracture in the neck due to assault. He further opined that the death of the deceased was due to the attack by the weapons like M.O.1 Aruval. We do not find any reason to discredit or ignore such an opinion offered by the medical expert, P.W.8. Further, the evidence of P.W.1 is duly corroborated not only by the medical evidence, but also the other circumstances narrated by the prosecution. It is clearly established that the deceased was done to death only on account of the cut injury on the neck of the deceased by the accused. The very fact that the accused had attacked the deceased with Aruval, that too on the neck, would go to show that the accused was, with a clear intention to do away with the deceased, caused the injury. Thus, going by the nature of the injuries, the weapon used and all the other attendant circumstances, we hold that the act of the accused would squarely fall within the ambit of First limb of Section 300 IPC. Therefore, we hold that by causing the death of the deceased, the accused has committed the offence punishable under Section 302 IPC.

19. So far as the quantum of sentence is concerned, we do not find any reason to interfere with the same as awarded by the trial Court. The trial Court has imposed appropriate punishment proportionate to the gravity of the offence.

20. In the result, the Criminal Appeal is dismissed, confirming the conviction and sentence imposed on the appellant/accused by the trial Court. Since the appellant/accused is on bail pending appeal, the trial Court is directed to take steps to secure his custody to undergo the remaining period of sentence, if any.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

cs/rsh

To

1.The Judicial Magistrate Paramathi

2.The Chief Judicial Magistrate
Namakkal

3. The Principal Sessions Judge, Namakal.

4. Inspector of Police,
Jaderpalayam Police Station,
Namakkal District.
Crime No.287/2010

5. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.T.Muruganantham Advocate sr15163

Pre-Delivery Judgment in
Crl.A.No.41 of 2018

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