

Bail Slip

Appellant/Accused namely V. Chinnathayan, s/o.Veeramani, was already released on bail vide this Court Order dated 29.07.2015 in M.P(MD).1/2015 in Crl.A(MD) No.161/2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A(MD)No.161 of 2015

Chinnathayan

... Appellant / Accused No.1

Vs.

State Rep. by
The Inspector of Police,
Oomatchikulam Police Station,
Oomatchikulam,
Madurai District
(In Crime No.137 of 2007)

... Respondent / Complainant

PRAYER: Appeal filed under Section 378(2) of Criminal Procedure Code, against the conviction and sentence in S.C.No.76 of 2014, dated 22.04.2015, on the file of the learned IV Additional District and Sessions Court, Madurai.

For Appellant : Mr.M.Mohmed Rafi

For Respondent : Mr.S.Bharathi
Govt.Advocate (crl.side)

JUDGMENT

The Appellant / Accused No.1 was charged and tried before the learned IV Additional District and Sessions Judge, Madurai, made in S.C.No.76 of 2014 and after trial, the Court below found the appellant guilty and by Judgment, dated 22.04.2015, convicted the appellant under Section 304(1) r/w 34 of IPC., and sentenced him to under go 10 years Rigorous Imprisonment and to pay a fine of Rs.2000/-, in default, to undergo 3 months Simple Imprisonment. Aggrieved over the same, the appellant has filed the present appeal.

2. For the sake of convenience the appellant referred to as A-1, as arrayed before the trial court.

3. The facts of the case are briefly stated hereunder:-

<https://hcservices.ecourts.gov.in/hcscases> 03.2007, at about 4.30 a.m., the Appellant / A1

knocked the door of his house, his wife PW7 opened the door and complained that in his absence, the deceased Thiruppathy knocked the door, when she opened, compelled her to have intercourse with him and also threatened her. This enraged the first accused. The first accused along with A2, who is brother of A1, attacked the deceased through iron in the chest, right neck and the body of the said Thiruppathy and A2 sat on the chest of the deceased and attacked on the left ribs. Further, he caught hold of hands of the deceased, A1 tied the legs of the deceased, through a Nylon rope, strangulated the neck of the deceased using the Nylon rope, thereby, the accused caused death of the deceased.

4. On the same day of occurrence ie., on 22.03.2007, at about 7.15 a.m., P.W.1 / brother of the deceased given EX.P1 / Complaint to P.W.13 / Sub-Inspector of Police, who registered Ex.P11 / FIR; prepared Ex.P2 / Observation Mahazar, went to the scene of occurrence and prepared Ex.P12 / Rough Sketch; Exs.P3, P4 and P6 / are Recovery Mahazare; Ex.P5 / is the Confession Statement given by A1; Ex.P6 is the Postmortem Certificate; Ex.P8 is the Accident Register Copy; Ex.P9 is the Biological Report; Ex.P10 is the Serological Report and Ex.P13 / is the inquest report. P.W.13 / Sub-Inspector of Police forwarded the investigation to P.W.14 / Inspector of Police, who took up the investigation, leading to filing of the charge sheet against the accused for the offence, as shown above.

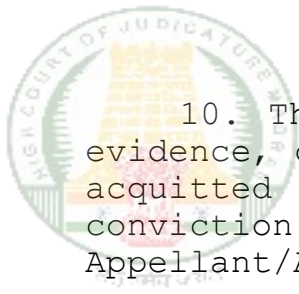
5. On receipt of final report by the prosecution, the learned Judicial Magistrate No.II, Madurai, taken the case on file as P.R.C.No.11 of 2008.

6. Since the offence committed by the accused under Section 302 r/w 34 IPC., is triable by the Court of Sessions, the learned Judicial Magistrate No.II, Madurai, has committed the case along with the entire records to the learned IV Additional District and Sessions Judge, Madurai, which was taken on file in S.C.No.76 of 2014.

7. The accused were furnished with the relied upon documents u/s.207 Cr.P.C., and the Court below initially framed charges against the appellant for the offence under Section 302 r/w 34 of IPC.

8. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined as P.W.1 to P.W.15 and 14 documents were marked as Exs.P1 to P14, besides 8 Material Objects viz., M.Os.1 to 8. On the side of the accused, no witness was examined nor any document was marked.

9. When the accused was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he

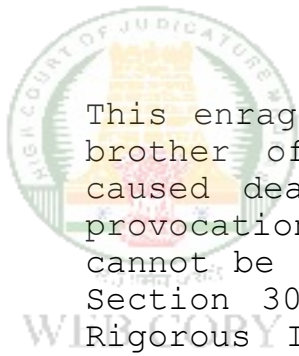


10. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid, however, acquitted A2 / co-accused. Challenging the legality of the said conviction and sentence, the present appeal has been filed by the Appellant/A1

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11. Mr.M.Mohmed Rafi, the learned counsel appearing for the appellant would submit that in this case, P.W.1 to P.W.6 are relatives of the deceased and no eyewitnesses are available to implicate the appellant/A1 in the offence. The case of the prosecution is totally unbelievable and the appellant was convicted based on the evidence of P.W.10 / Scientific Assistant, Regional Forensic Science Laboratory, who, in her evidence deposed that the bloodstain collected from the mud and the dress wore by the accused are tallied and is "B" Positive, however, P.W.8 / Postmortem Doctor, who issued Ex.P7 / Postmortem Certificate, in which, the Doctor opined that the injuries sustained by the deceased are contusion injuries. Therefore, there was no possibility of oozing the blood and hence, the blood collected from the mud and the dress wore by the appellant are not belonged to the deceased. Further, P.W.7 / wife of A1, in her evidence clearly deposed that, when she got up in the early morning and opened the door, a male corpse was lying in front of her house and not in the house of the appellant and the said contradiction is not considered by the trial Court and without considering the vital contradiction found in the case of the prosecution, the trial Court has erroneously invited conviction and sentence against the appellant / A1, and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

12. Per contra, Ms.S.Bharathi, the learned Government Advocate (crl.side) appearing for the State would submit that the prosecution, in order to prove the case, examined 15 witnesses as P.W.1 to P.W.15 and marked 14 documents as Exs.P1 to P14, besides 8 Material Objects viz., M.Os.1 to 8. It is true, P.W.1 to P.W.6 are not eyewitnesses to the occurrence, however, Ex.P2 / Observation Mahazar; Ex.P3 / Seizure Mahazar; Ex.P4 / Seizure Mahazar; Ex.P5 / Confession Statement; Ex.P6 / Seizure Mahazar; Ex.P7 / Postmortem Certificate; Ex.P8 / Accident Register; Exs.P9 & P10 / FSL Reports; Ex.P11 / FIR; Ex.P12 / Rough Sketch; Ex.P13 / Summon and Ex.P14 / List of property sent to Magistrate, proved the fact that the body of the deceased was found in A1's house. Though P.W.10 / Doctor certified that the deceased was died due to the contusion injuries sustained by him, he deposed that in a case of strangulation, using nylon rope in the neck, bleeding could be possible. It is further submitted that the confession statement of the accused clearly corroborated with the other evidences, for which, the trial Court found that the accused, when returned to home from work, at about 4.30 a.m., the Appellant / A1 knocked the door of his house, his wife opened the door, complained him that in his absence, the deceased Thiruppathy knocked the door, and when she opened, compelled her to have intercourse with him and also threatened.



This enraged the accused. The first accused along with A2, who is brother of A1, attacked the deceased through iron and thereby, caused death of the accused. Since it is a sudden and grave provocation, the trial Court found that Section 302 r/w 34 IPC., cannot be sustained and rightly converted the charge into one under Section 304(i) r/w 34 IPC., and sentenced to under go 10 years Rigorous Imprisonment with default clause, which need not be interfered with. Hence, prayed for dismissal of the appeal.

13. I have heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

14. The issues that arise for consideration in the present appeal are as follows:

1. Whether the trial Court rightly converted the offence from Section 302 r/w 34 IPC., into Section 304(i) r/w 34 IPC., and convicting the accused under the said Section, is sustainable or not?

2. Whether the evidence is sufficient to prove the offence under Section 304(i) r/w 34 IPC?

15. On perusal of the entire records it is seen that on 22.03.2007, at about 4.30 a.m., Appellant / A1, after finishing wood cutting job, returned to his home, knocked the door, his wife came out and informed that without her volition the deceased forced her for sexual intercourse. Immediately, the accused went inside the house and seen the deceased person, in a naked position. In view of the above provocation A1 along with A2 attacked the deceased, thereby, the deceased sustained serious injuries, due to which the deceased died.

16. Further, on perusal of Ex.P12 / Rough Sketch, wherein, it has been clearly mentioned that the body of the deceased was found inside the house of A1. Though the entire evidence is based on circumstantial evidence, no eyewitnesses are available, however, some of the witnesses viz., P.Ws.1 to 3 deposed that they seen accused ran way from the scene of occurrence at early hours. Further, P.W.14, in presence of P.W.6, arrested the accused on the next day, ie., on 24.03.2007, at about 7.15 a.m., in Mattuthavani Bus Stand. The trial Court, acquitted the co-accused / A2, on the ground of benefit of lack of evidence against him, however, convicted the Appellant / A1, as stated above.

17. This Court visualize the situation. According to the prosecution, the deceased had illicit relationship with P.W.7 / Wife of A1. It is true, the arrival of the deceased at the house of the accused on the ill-fated night may not be sufficient to hold

that the first accused had the sudden and grave provocation. But, considering the earlier incidents by which, the appellant was humiliated by the act of the deceased, who had illicit relationship with the wife of the appellant, definitely, the last incident, namely, the arrival of the deceased on the ill-fated night, to the house of accused would given rise to the sudden and grave provocation because of which, the offence was committed. So, in the above background, rightly the Court below converted the offence from Section 302 r/w 34 IPC., to Section 304(i) r/w 34 IPC., and convicted the accused, which cannot be interfered with. Hence, the conviction is confirmed.

18. Coming to the question of sentence imposed by the trial Court, the learned counsel appearing for the appellant prayed that the appellant is having three children, he is suffering age old ailments and he is in prison for more than three months, prayed for leniency.

19. In the result, the Criminal Appeal is allowed in part and the conviction passed by the learned IV Additional District and Sessions Judge, Madurai, in S.C.No.76 of 2014, dated 22.04.2015, is confirmed and the sentence alone imposed on the appellant / A1 that he is to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.2000/-, in default, to undergo 3 months Simple Imprisonment, for the offence under Section 304(1) r/w 34 of IPC., is modified and sentenced to undergo 3 years Rigorous Imprisonment, and to pay a fine of Rs.2000/- in default, to undergo 3 months Simple Imprisonment. The trial Court is directed to take appropriate steps to confine the Appellant / A1 in prison so as to serve the remaining period of sentence.

Sd/-

Assistant Registrar (A.S.)

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/ /2020

Sub Assistant Registrar(CS)

MPK

To

1. The IV Additional District and Sessions Judge,
Madurai.

2. The Principal District and Sessions Judge, Madurai.
Judicial Magistrate No.II, Madurai.



3. The Judicial Magistrate No.II, Madurai.
4. The Chief Judicial Magistrate, Madurai.
5. The Superintendent, Central Prison,
Madurai.
6. The The Inspector of Police,
Oomatchikulam Police Station,
Oomatchikulam,
Madurai District
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
8. The Record Clerk,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

Crl.A(MD)No.161 of 2015

Dated:16.03.2020

PU(21.05.2020) 6P 10C