



Bail Slip

The Appellant /Sole Accused Avudaiyappan @ Raj S/O Ramar was directed to be released on bail order of this Court dated 22/06/2021 and made in Crl.MP 835 of 2021 in Crl.A.17 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved on : 29.11.2021

Judgment Pronounced on : 20.12.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and**

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A(MD)No.17 of 2019

and

Crl.M.P(MD)No.835 of 2021

Avudaiyappan @ Raj

... Appellant/Sole Accused

Vs.

State through

The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli District.

(In Crime No.434 of 2015).

... Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.200 of 2016, on the file of the IV Additional Sessions Court, Tirunelveli, dated 09.01.2018 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Vinoth Bharathi

For Respondent : Mr.A.Thiruvadikumar

Additional Public Prosecutor

JUDGMENT

S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

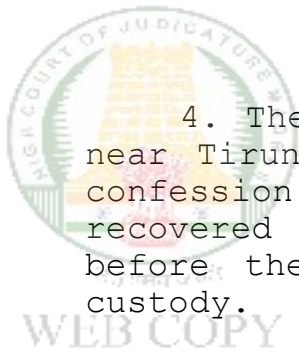
The sole appellant was convicted by the trial Court for the offence under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo one year Rigorous Imprisonment. Aggrieved by the judgment of conviction and the sentence, he has preferred this appeal.



2. The brief facts of the prosecution case:

The deceased Ramalakshmi is the wife of the appellant Avudaiappan. They got married 7 years prior to the date of occurrence, which is on 11.04.2008. Through the wedlock, two children namely Yuvaraj and Vaishnavi were born to them. At the time of occurrence, the male child Yuvaraj was about 6 years old, the female child Vaishnavi was about 4 years. The matrimonial relationship between the deceased and the appellant was not cordial. Initially, they were living at Tuticorin. Since the appellant a drunkard not regular in attending his job, there was frequent quarrel between the appellant and the deceased. The parents of the deceased used to go to Tuticorin to mediate the couple. After four years of their marriage, due to quarrel with the appellant, the deceased came back to her parents house at Tirunelveli along with the children. For nearly three years, the deceased was living with her parents at Tirunelveli. Few months before the occurrence, the appellant came to Tirunelveli and promised to the deceased parents that, hereinafter, he will take care of the deceased and the children properly and requested to arrange for reunion and for separate house for them. Therefore, the parents of the deceased arranged a rental house 300 feets away from their house in Tirunelveli Town, Mettu Street, Pallivasal compound. While so, there was a quarrel between the appellant and the deceased on 5.8.2015 at about 05.00 p.m. Knowing the incident, the parents of the deceased went to their daughter's house and pacified the couple and returned to their home. At the wee hours of 06.08.2015 two minor children of the spouse knocked the door of the deceased's parents house. When they opened the door, they found the minor grandson and granddaughter weeping and informed them that their father and mother are fighting. Immediately, the parents of the deceased rushed to the house of the deceased. They heard their daughter's crying for help. They saw the accused sitting upon the chest of their daughter Ramalakshmi and holding her head and hitting at the floor. He was repeatedly hitting her face with iron rod. When they try to rescue the deceased, the accused threatened weilding the said rod. When the neighbours gathered on hearing the noise, the accused took the iron rod with him and ran away. The father of the Bagavathi went to the police station and gave complaint. The case was registered in Tirunelveli Town police Station in Cr.No.431 of 2015 under Sections 302 and 506(ii) IPC at about 3.00 hours of 06.08.2015.

3. The investigation was taken up by Mr.Murugan (P.W.18), the Inspector of Police, Tirunelveli Town Police Station. After visiting the scene of crime, he prepared an Observation Mahazar and Rough Sketch. He collected bloodstained soil and soil without blood. The blood found on the floor was collected separately. They were sent for serology test. The body of the deceased Ramalakshmi was sent to the Government Hospital for postmortem.



4. The accused was arrested on 07.08.2015 at about 13.30 hours near Tirunelveli Town Nainarkulam Vegetable Market. Based on the confession statement given by the accused, the iron rod was recovered under mahazar and thereafter, he produced the accused before the learned Judicial Magistrate and remanded to judicial custody.

5. To prove the charge against the appellant/accused for the offence under Section 302 and 506(ii) of IPC, 19 witnesses were examined, 20 exhibits and 7 material objects were marked on the side of the prosecution. The trial Court being convinced about the prosecution case and the credibility of the witnesses, imposed life imprisonment and fine of Rs.1,000/- in default to undergo one year Rigorous Imprisonment for the offence under Section 302 IPC.

6. Aggrieved by the said conviction and sentence imposed by the trial Court, the accused has preferred this appeal on the ground that;

(i) Motive for the alleged crime has not been proved by the prosecution beyond all reasonable doubt.

(ii) The prosecution has failed to explain the reason for the delay in registering the FIR and forwarding the same to the Court.

(iii) The material contradictions between the evidence of P.W.1 and P.W.2 not taken into consideration by the trial Court.

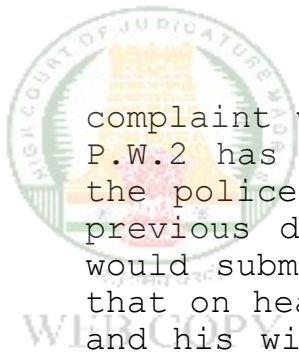
(iv) The evidence of P.W.1 and P.W.2 are highly doubtful and unbelievable since both are interested witnesses, namely, parents of the deceased.

(v) The non-examination of the children, who are the persons alleged to have informed P.W.1 and P.W.2 about the incident, is fatal to the case of the prosecution.

7. The learned counsel for the appellant has filed the written submission, wherein, the contradictions between FIR and the testimony of P.W.1 regarding the weapon alleged to have been used by the accused and the nature of injuries alleged to have been caused by the accused, which is contrary to the evidence of P.W.17-Doctor, who has conducted postmortem, have been highlighted.

8. The learned counsel for the appellant would submit that in the chief-examination, P.W.7 Auto driver, has deposed that he saw the two children of the deceased during the wee hours on the date of incident, he enquired them and being satisfied that they are going to their grand-parents house, which is nearby, he left the place. Whereas, in the cross-examination, he has improvised his evidence saying that he left the place after the children reached their grand-parents house.

9. Pointing out the contradictions between P.W.2 and P.W.1 regarding the scribe of the complaint(Ex.P1), the learned counsel for the appellant would submit that while P.W.1 had deposed that the



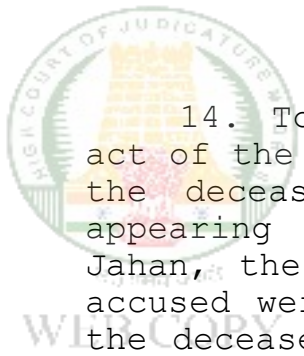
complaint was written by one Lakshmi, but contrary to his evidence, P.W.2 has stated that her husband wrote the complaint and went to the police station. Referring the incident which took place on the previous day at 05.00 p.m., the learned counsel for the appellant would submit that while P.W.1 in his chief-examination has deposed that on hearing that his daughter and the accused are quarreling, he and his wife (P.W.2) went to his daughter's house and pacified the accused. Whereas, P.W.2 has deposed that she and her husband (P.W.1) went to her daughter's house and scolded her daughter. The accused requested her to arrange reunion with his wife. Bringing out the contradiction elicited during P.W.2 cross-examination, the learned counsel for the appellant submitted that the self-contradictions of P.W.2 evidence makes doubtful whether on the date of occurrence, the accused stayed with the deceased.

10. Regarding the evidence of P.W.12, the Special Sub Inspector of Police, who has taken the express FIR to the Magistrate, the learned counsel for the appellant would submit that the FIR received by P.W.12 at 03.30 a.m., and the same was received by the Magistrate only at 08.45 a.m., (ie.,) after a lapse of 5 hours and 15 minutes, despite the fact that it will take only $\frac{1}{2}$ hour to reach the Magistrate's house from the police station, if one go by cycle.

11. The learned Additional Public Prosecutor appearing for the respondent defending the trial Court judgment submitted that the grounds raised by the appellant are untenable. To prove the case, the prosecution has examined 19 witnesses. P.W.1-Bagavathy is the father of the deceased and P.W.2 is the mother of the deceased. Both are eye witnesses to the occurrence. P.W.1 has stated that when they reached the house of the deceased based on the information given by the minor children about the quarrel erupted between the husband and wife, he saw the accused sitting upon his daughter Ramalakshmi and beating her with iron rod.

12. P.W.1 had further deposed that after causing severe injury to Ramalakshmi with iron rod, the accused ran away from the house carrying the iron rod. The iron rod with blood stain was later recovered by the Investigating Officer (P.W.18), based on the confession statement given by the accused. The admitted portion of the confession statement was marked as Ex.P2. The Seizure Mahazar was marked as Ex.P3.

13. The seizure was witnessed by one Sethupandi (P.W.9) and Chockalingam. This independent witness has identified the iron rod recovered on the information given by the accused. The iron rod was kept hidden in a bush near railway gate. The presence of the iron rod covered under the bushes was within the exclusive knowledge of the accused and therefore, the discovery of the said fact through the confession statement of the accused is admissible in evidence under Section 27 of the Indian Evidence Act.



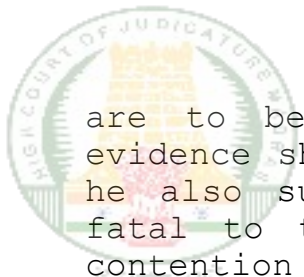
14. To corroborate the evidence of P.W.1 regarding the overt act of the accused, the prosecution has examined P.W.2 the mother of the deceased. Hence, the learned Additional Public Prosecutor appearing for the respondent would state that through P.W.5-Noor Jahan, the landlady of the house, in which, the deceased and the accused were residing as a tenant, the prosecution had proved that the deceased and the accused were living under the same roof. Few days prior to the occurrence, she asked them to vacate the house since they were frequently quarrelling. The day before occurrence, the deceased promised to vacate the house in the next day, but the deceased was murdered. In the cross-examination, P.W.5 has deposed that she know the deceased and the accused because they were her tenants for two months. The credibility of the witness stands unimpeached and also corroborated by the evidence of P.W.6 Kumayoon a co-tenant in the said compound house.

15. The visit of the minor children to the house of P.Ws.1 & 2 at Wee hours of 06.08.2015 was witnessed by P.W.7 Auto driver, who is residing in that area and an acquaintance of the deceased family. P.W.8 the neighbouring resident had deposed that on 06.08.2015 early morning around 01.30 p.m., when he came out of his house, he saw the minor children of the deceased leaving their house and going towards their grand parents house. In the cross-examination, he has stated that he came out of the house to attend his nature's call and his evidence is very natural and corroborative.

16. Regarding the delay in registering the FIR and forwarding it to the Magistrate, the learned Additional Public Prosecutor submitted that the complaint from Bagavathi (P.W.1) was received by the Sub-Inspector of Police Muthulakshmi (P.W.16) at about 03.00 hours. Immediately FIR was registered and forwarded to the learned Judicial Magistrate through P.W.12 - Special Sub-Inspector of Police and he took the FIR and submitted to the learned Judicial Magistrate at 08.45 a.m. In the cross-examination, P.W.12 has explained that the Tyre of the vehicle got deflated while going to the Magistrate's house, therefore, there was some delay in reaching the Magistrate residence. From the time of registering the complaint till it reached to the Magistrate, it has taken by near 5 ½ hours. Nothing to infer adverse in the prosecution case due to this delay and even that short delay is properly explained by P.W.12.

17. Regarding the weapon used, the injury sustained by the deceased as narrated by the eye witness correlates with postmortem certificate Ex.P16, the learned Additional Public Prosecutor would submit that the finding of the trial Court convicting the appellant for offence under Section 302 IPC and imposing Life Sentence is based on the cogent evidence and therefore, requires no interference.

18. The first contention of the learned counsel for the appellant is that P.W.1 and P.W.2 being the parents of the deceased



are to be termed as interested witnesses and therefore, their evidence should not be taken into consideration. At the same time, he also submitted that non-examination of the minor children is fatal to the case of the prosecution. To say the least, this contention is self-destructive.

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19. The examination of the adult member of the family, who were witnesses to the occurrence, is doubted by the appellant, since they are the parents of the deceased. At the same breath questions, the discretion of the prosecution not examining the minor children of the deceased. The Investigating Officer (P.W.18) in his Chief-Examination has clearly stated that the children of Ramalakshmi were very young and not in the state of mind to give any statement, therefore, P.W.18 did not examine them and recorded their statements.

20. From the evidence of P.W.1, we find that at the time of occurrence, son of the deceased Yuvaraj was 6 years old and daughter of the deceased Vaishnavi hardly 3 years old. Therefore, non-examination of these two children is not at all fatal to the case of the prosecution.

21. Yet another point raised by the counsel for the appellant to doubt the prosecution case is about the discrepancy in the nature of injuries found on the body of the deceased. In the FIR marked as Ex.P1 given by P.W.1 it is mentioned that when he went to her daughter's house the accused repeatedly stabbed the deceased with a rod like weapon, whereas, before the Court, he has deposed that the accused was repeatedly hitting on the face of the deceased with iron rod.

22. Through postmortem doctor, it is elucidated that out of three external antimortem injuries noted on the body of the deceased, none of the injuries are stab injuries. In the cross-examination, he admits that there was no stab injury found on the body of the deceased. In this regard, it is to be noted that the witnesses are rustic witnesses and it cannot be expect to say about the nature of injury preciously in medical term.

23. As far as the evidence in this case, the doctor has opined that the injuries found on the body of the deceased would have likely be caused with M.O.1 iron rod. The cause for the death is stated that the deceased appeared to have died of shock and haemorrhage due to blunt injury on the head and face.

24. In this regard, it is appropriate to extract the observation of the Hon'ble Supreme Court in ***State of U.P. vs. Krishna Gopal and others*** reported in ***MANU/SC/0506/1988*** regarding the eye witnesses account and the medical opinion in the following words:-



"13. There might also be some justification for the grievance of the appellant that the High Court had preferred some observations in the medical-evidence-which Sri Prithviraj characterised as merely conjectural answers-to the other categoric answers by the very medical-witnesses themselves. Sri Prithviraj also submitted that it would be erroneous to accord undue primacy to the hypothetical answers of medical-witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the "variable" keeping the medical-evidence as the "constant".

25. To disdain the cogent evidence of P.Ws.1 & 2 the learned counsel for the appellant could only point their close relationship with the deceased. When the occurrence has taken place few hundred mts away from the house, where, this witnesses were residing and the quarrel between the deceased and the accused was informed to them by their minor grand-children, its quite natural for any parents to rush the place to see what is happening and to rescue their daughter from whom the accused had already been not in good terms, they were quarrelling even on the day before at about 05.00 p.m., hardly 7 to 8 hours before the occurrence. The independent witnesses like P.Ws.5 to 9 have consistently deposed that they know the accused and the deceased, they were living in the area as husband and wife, while so, the accused who was living with the deceased under the same roof, on the particular night is bound to explain how the deceased died which the accused could not account for.

26. While the prosecution witnesses P.W.1 and P.W.2 had deposed about the overt act of the accused causing grievous injury on the head of the deceased using a rod (M.O.1), a minor discrepancy cannot be a relevant factor to doubt the credibility of these witnesses. It is appropriate to recollect and reproduce the below observation of the Hon'ble Supreme Court in **State of Madhya Pradesh vs. Dal Singh and Ors** reported in **MANU/SC/0550/2013**.

"7. So far as the discrepancies, embellishments and improvements are concerned, in every criminal case the same are bound to occur for the reason that witnesses, owing to common errors in observation, i.e., errors of memory due to lapse of time, or errors owing to mental disposition, such as feelings shock or horror that existed at the time of occurrence.

The Court must form its opinion about the credibility of a witness, and record a finding with respect to whether his deposition inspires confidence. "Exaggeration per se does not render the evidence brittle. But it can be one of the factors against which the credibility of the prosecution's



story can be tested, when the entire evidence is put in a crucible to test the same on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of a statement made by the witness at an earlier stage. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e., which materially affect the trial, or the core of the case of the prosecution, render the testimony of the witness as liable to be discredited."

27. The opinion of this court, taking guidance of the Supreme Court of India stated supra, the contradictions regarding the scribe of the complaint Ex.P1, or the contradictions of P.W.7, when he left after inquiring the minor children or non examination of the minor children or few hours delay in forwarding the FIR to the Magistrate, which also duly explained; noway impeach the credibility of the prosecution witness taken as a whole. Therefore, discrepancies which do not go to the root of the matter and basic version of the witness, cannot be annexed with undue importance.

28. As a result, the Courts finds no error or illegality in the judgment of the trial Court holding the accused guilty under Section 302 IPC and convicting him Life sentence and with fine of Rs.1,000/- in default to undergo one year Rigorous Imprisonment. The set off period mentioned by the Trial Court is confirmed. The trial Court is directed to take steps to secure the custody of the appellant/accused and commit him to undergo the remaining period of the sentence. The suspension of sentence already granted by this Court stands cancelled.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.THE IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI.

2.THE JUDICIAL MAGISTRATE NO.IV, TIRUNELVELI.



3.-DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

4.THE SUPERINTENDENT,
PALAYAMKOTTAI CENTRAL PRISON, TIRUNELVELI .

5.THE DISTRICT COLLECTOR,
TIRUNELVELI, TIRUNELVELI DISTRICT.

6. THE DIRECTOR GENERAL OF POLICE, MYLAPUR, CHENNAI.

7.THE INSPECTOR OF POLICE,
TIRUNELVELI TOWN POLICE STATION,
TIRUNELVELI DISTRICT.

8.THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI. (2 COPIES)

9.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

CrI.A(MD)No.17 of 2019
20.12.2021

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