WEB COPY

BAIL SLIP

The Appellant/Sole Accused R.Ramani @ Ramani Devi, W/o.Rajan, female, was released on bail vide order of this court, dated 23.07.2018 made in Crl.MP(MD).No.5177 of 2018 in Crl.A.(MD).No.295 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.09.2021
CORAM :
THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
Criminal Appeal(MD)No.295 of 2018

R.Ramani @ Ramani Devi ... Appellant/Accused(Sole)

vs.

State rep by
The Inspector of Police,
Vadaseri Police Station,
Kanyakumari District.
Crime No.642 of 2010 ... Respondent/Complainant

Appeal filed under Section 374(1) of the Code of Criminal Procedure, 1973, to call for the records and set aside the judgment dated 08.03.2018 passed in S.C.No.33 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil.

For Appellant : Mr.C.Muthusaravanan
For Respondent : Mr.S.Ravi,
Standing Counsel on behalf of
the Government of Tamil Nadu

JUDGMENT
(Judgment of the Court was made by V. BHARATHIDASAN, J.)

There are totally two accused. A1 was absconding at the time of committal. Hence, the case was split up and trial was proceeded in respect of the appellant/A2. Both the accused stood charged for the offences under Sections 449, 341 and 302 read with 109 IPC. The trial Court, convicted the appellant/accused, under Section 302 read with 34 IPC, and sentenced to undergo life imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo rigorous imprisonment for one year and convicted the appellant, under Section 449 read with 34 IPC, and sentenced to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

undergo rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/-, in default, to undergo one year rigorous imprisonment. The appellant was also convicted under Section 341 read with 34 IPC and sentenced to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week. Now challenging the abovesaid conviction and sentence, the appellant is before this Court with this appeal.

2.The case of the prosecution is that, the deceased by name, Helen, is the neighbour of the appellant, she was the Panchayat overhead water tank operator. There was a dispute between the appellant and the deceased regarding water supply and in this regard, there was a quarrel between them. On 01.07.2010, PW5, a relative of the deceased came in a two wheeler and parked the same in front of the house of the deceased, at that time, the appellant said to have poured dirty water over the two wheeler and in this regard, again there was a quarrel between the appellant and the deceased. Consequent to the same, on 02.07.2010, at about 01.30 p.m., while the deceased and PW1, husband of the deceased, were in the house, both the accused trespassed into the house of the deceased, where this appellant/accused catch-hold of the deceased and A1 stabbed her with knife and caused more than 10 stab injuries. Immediately, she was taken to Asaripallam Government Medical College Hospital, where she was declared brought dead.

3.On receipt of the intimation from the hospital, PW15, Sub Inspector of Police, visited the hospital, where he recorded the statement of PW1, based on his complaint(Ex.P1), he registered the FIR(Ex.P16) in Crime No.642/2010, for the offences under Sections 449, 294(b), 341 and 302 IPC, and sent the same to the concerned Judicial Magistrate Court and sent copies of the same to the concerned higher officials. On receipt of the FIR, PW17, Inspector of Police, in the respondent police station, commenced the investigation and visited the scene of occurrence, where, he prepared the observation mahazar(Ex.P3), rough sketch(Ex.P20) and also collected the pieces of blood stained cement mortar(MO2) and pieces of plain cement mortar(MO3), blood stained torn yellow colour synthetic bag(MO4) and blood stained clothes(MO6 to 9) and sent the same to the concerned Judicial Magistrate Court. At about 06.00 p.m., he conducted inquest over the dead body, in the hospital, in the presence of panchayatars and witnesses and sent the body for postmortem through PW14-Head Constable, then, he recorded the statement of other witnesses. PW10 is an Assistant Professor, working in the Medical-Legal Department of Kanyakumari Government Medical College Hospital, conducted postmortem autopsy of the dead body and issued postmortem certificate(Ex.P10), stating that the deceased appears to have died of shock and haemorrhage due to multiple stab injuries. PW17 continued the investigation, arrested the appellant/accused, sent her to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

judicial custody. Subsequently, on 12.07.2010, A1, surrendered before the 16th Metropolitan Magistrate, Chennai, and he was produced before the concerned Judicial Magistrate Court, then, he was taken to police custody, where A1 has voluntarily given confession, in the presence of the witnesses and based on his confession, PW17, recovered the knife(MO1), under Ex.P3-mahazar, in the presence of witnesses, then, he recorded the statement of witnesses and handed over the investigation to PW18, another Inspector of Police. PW18 continued the investigation and recorded the statement of postmortem doctor and other witnesses and on completion of investigation, he filed final report on 05.10.2010, before the concerned Judicial Magistrate Court.

4.Based on the above materials, the trial Court framed the charges as mentioned above and the accused denied the same as false. In order to prove its case, the prosecution has examined as many as 18 witnesses and marked 24 documents, apart from 9 material objects.

5.Out of the witnesses examined, PW1, is the husband of the deceased, he spoke about the earlier quarrel between the appellant and the deceased, according to him, on 02.07.2010, while the deceased and PW1 were in the house, both the accused came to his house, quarrelled with the deceased, the appellant catch-hold of the deceased, A1 stabbed her with knife and caused 10 injuries, immediately, he took the deceased to Asaripallam Government Hospital, where, she was declared brought dead. PW2 is the brother's son of PW1, he is also eye-witness to the occurrence, according to him, on 02.07.2010, both the accused came to the house of the deceased, A1 waylaid the deceased and stabbed her with knife. PW3 is the sister-in-law of PW1, she spoke about the earlier quarrel between the appellant and the deceased and also spoke about the pouring of dirty water over the motorcycle of PW5. According to her, both the accused went into the house of the deceased and this appellant stabbed the deceased. PW4 is the Vice President of the Nagercoil Municipality, he spoke about the water supply in the area. PW5, is only a hearsay witness, he is also related to the deceased. PW6, is a witness to the observation mahazar(Ex.P3), rough sketch(Ex.P20), and mahazar(Ex.P4) and also a witness to recovery of MO1 to MO3. PW7 is a witness to the observation mahazar(Ex.P3) and mahazar(Ex.P4). PW8 and PW9, are witnesses to recovery of MO1-knife and confession of A1. PW10, is a Doctor conducted postmortem autopsy and issued postmortem certificate(Ex.P10), and opined that the deceased appears to have died of shock and haemorrhage due to multiple stab injuries and examination of viscera has not detected any poison.

6.PW11 is the Superintendent, in the Judicial Magistrate Court, he received the material objects and sent it for chemical

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

examination. PW12, is the photographer in the office of the District Superintendent of Police, took photographs in the scene of occurrence. PW13, is the Head Constable handed over the express FIR to the Judicial Magistrate Court No.2, Nagercoil. PW14 is the Special Sub Inspector of Police, identified the dead body, and handed over the same for postmortem. He collected the clothes worn by the deceased and handed over the same to the investigating officer. PW15, Sub Inspector of Police, on receipt of the intimation from the hospital, went there, and recorded the statement of PW1, and based on that, he registered the FIR. PW16 is the Assistant Director in the Forensic Lab, Tirunelveli, he examined the blood stained material objects and filed reports (Exs.P17 to P19). PW17, is the investigating officer conducted initial investigation, arrested the accused, recovered the material objects, recorded the statement of witnesses, and handed over the investigation to PW18. PW18, completed the investigation and filed final report. Since A1 was absconding, after granting bail, the case was split up and trial was conducted in respect of this appellant alone.

7.When the above incriminating materials were put to the accused, the accused denied the same as false and she has not examined any witness nor marked any documents. Considering the materials available on record, the trial Court convicted and sentenced the accused as mentioned above. Now challenging the conviction and sentence, the appellant is before this Court.

8.Mr.C.Muthusaravanan, learned counsel for the appellant submitted that all the three eye witnesses are close relatives of the deceased and they are interested witnesses. So far as this appellant is concerned, she was convicted only with the aid of Section 34 IPC, but the charge was framed under Section 302 read with 109 IPC. The trial court after finding that there is no material available on record, to show that the appellant has abetted A1, has erroneously held that the appellant with common intention to do away the deceased, attacked the deceased, and convicted the appellant with aid of Section 34 IPC. That apart, the trial Court has also convicted the appellant under Section 449 read with 34 IPC, but, looking at the cross examination of PW1 and PW2, where they have clearly stated that only A1 went inside the house, chased the deceased, attacked her and they never spoke about the presence of this appellant, even though there is some evidence, regarding prior quarrel between the deceased and the appellant. According to the learned counsel, absolutely, there is no material available on record, either to show that both the appellant and A1 have common intention, to cause the death of the deceased, but without considering the same, the trial Court, convicted the appellant. Apart from that, there is no material to show that the appellant committed the offence under Section 449

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

read with 34 IPC, and hence, he would pray for setting aside the conviction and sentence awarded by the trial Court.

9.Mr.S.Ravi, learned Additional Public Prosecutor appearing for the respondent would submit that there are three eye witnesses to the occurrence, which took place inside the house of the deceased, where PW1, PW2 and PW3, were present. All the three witnesses consistently state that, this appellant also accompanied A1 and she only catch-hold of the deceased, and A1 stabbed her, and caused her death. Considering the same, the trial Court held that she has also sharing the common intention with A1, committed the murder and the trial Court rightly considered the evidence, and convicted her with the aid of Section 34 IPC. The evidence of the eye witnesses are cogent, consistent, trustworthy and there is no reason to disbelieve their evidence. That apart, the FIR is also registered within a short time of the occurrence and the copies were also sent to the Judicial Magistrate Court, without any delay. Hence, there is no reason to suspect any false implication, the trial Court considering entire materials, in proper perspective, rightly convicted the accused, and there is no reason to interfere with the well considered judgment of the trial Court.

10.We have considered the rival submissions and perused the materials carefully.

11.Originally, the appellant was charged with the offence under Section 302 read with 109 IPC on the ground that she has abetted A1, to commit the murder. However, the trial Court, finding that there is no evidence available on record, to bring home an offence under Section 109 IPC, convicted her, under Section 302 read with 34 IPC, and with Section 449 read with 34 IPC and 341 read with 34 IPC. Now, the question that has to be decided by this Court is, whether the appellant has shared the common intention with A1, and in furtherance of the same, she had committed the offence.

12.The specific case of the prosecution is that earlier, there was a quarrel between the deceased and the accused, consequent to that quarrel, both A1 and this appellant trespassed into the house of the deceased, where the appellant catch-hold of the deceased and A1 stabbed her with knife. PW1, husband of the deceased, said to be present, in the scene of occurrence. Even though in the chief examination, he has stated that both the accused trespassed into the house, this appellant catch-hold of the deceased and A1 stabbed her, in the cross examination, he has stated that, A1, alone trespassed into the house, and after seeing him, the deceased ran away, towards the back door, A1 chased her, PW1 also followed the deceased, at that time, A1 stabbed her with knife,

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

immediately the deceased fell down in the cot, then, A1, stabbed the deceased indiscriminately, and he has not stated that this appellant also accompanied A1 and she has catch-hold of the deceased while A1 was attacking the deceased. Likewise, PW2, brother's son of PW1, also in his cross examination, has clearly stated that, while he was watching TV, only A1 came inside, chased the deceased, this appellant followed him and thereafter A1 attacked the deceased. PW3, another close relative of the deceased, according to her, this appellant attacked the deceased, thereafter A1 attacked the deceased indiscriminately. She contradicts the evidence of PW1 and PW2. Hence, from the evidence of PW1 and PW2, it is seen that this appellant did not accompany A1, she has not waylaid or catch-hold of the deceased, it is only A1, chased the deceased and attacked her. In the said circumstances, the offence under Section 449 and 341 IPC is not made out in respect of this appellant.

13.The next question arises is, whether the appellant has shared the common intention with A1 and in furtherance thereof, she committed the offence. From the perusal of the testimonies of the eye-witnesses, they have only spoken about the earlier quarrel between the deceased and this accused, and there is no evidence available to show that there was a pre-arranged plan between A1 and A2, and they shared a common intention to commit the offence and in furtherance thereof, they have committed the offence. Merely because there is a quarrel between the deceased and the accused, prior to the occurrence, it is not sufficient to hold that the appellant shared a common intention with A1 and caused the death of the deceased. The trial Court, without considering the same, has erroneously convicted the accused. In our considered opinion, the prosecution has miserably failed to prove the charges against the appellant, and consequently, the appellant is entitled for acquittal.

14.Accordingly, this Criminal Appeal is allowed and the conviction and sentence passed by the trial Court in the judgment, dated 08.03.2018, made in S.C.No.33 of 2015, on the file of the Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil, is set aside and the appellant is acquitted of all the charges. Fine amount, if any, shall be refunded to the appellant. Bail bond executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

https://hcservices.ecourts.gov.in/hcservices/

bala
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.
WEB COPY

To

1.The Principal Sessions Judge,
Kanyakumari District @ Nagercoil.

2.The Sessions Judge,
Fast Track Mahila Court,
Kanyakumari District @ Nagercoil.

3.The Judicial Magistrate No.II,
Nagercoil.

4.The Inspector of Police,
Vadaseri Police Station,
Kanyakumari District.

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

6.The Superintendent,
Special Jail for Women,
Tiruchirappalli.

7.The District Collector,
Kanyakumari District.

8.Director General of Police,
Mylapore, Chennai-4

Copy to
The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

CRL.A(MD)No.295 of 2018
08.09.2021

DJ(CO)
SB(30.09.2021) 7P 11C

https://hcservices.ecourts.gov.in/hcservices/