

BAIL SLIP

The Petitioner / Accused Viz., Muniappan (Age 50/Accused), S/o.Munusamy was released on bail as per Order of this Court dated 12.11.2018 in CrI.M.P.No.8868 of 2018 in CrI.A.No.381 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2022
DELIVERED ON : 18.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.A.NO.381 OF 2018

Muniappan

...Appellant

Vs.

The Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District.
Crime No.309/2015

...Respondent

PRAYER : Criminal Appeal filed under Section 374 (2) Criminal Procedure Code, 1973 praying to set aside the judgment and order dated 19.03.2018, in S.C.No.159/2016 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri District.

For Appellant : Mr.K.Murugesan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

J U D G M E N T
(R.HEMALATHA, J.)

The present appeal is against the judgment and order of the Sessions Judge, Fast Track Mahila Court, Krishnagiri District, made in S.C.No.159/2016 dated 19.03.2018, in which the present appellant was convicted under Section 302 IPC and sentenced undergo life imprisonment and pay a sum of Rs.1,000/- in default, to undergo rigorous imprisonment for six months.

2.The case of the prosecution in nutshell is as follows:

- i. The deceased victim Muthammal was in live in relationship with the appellant Muniyappan and were residing in a house near Devarahalli Junction, Krishnagiri. She also owned a butcher shop in Agaram Village. Palani (P.W.1) was a resident of Ramarkotai Village and was also the brother of the victim. The earlier marriage of the victim with one Munusamy had failed and she did not have any children either in the first marriage or in the second relationship.
- ii. On 27.07.2015 at about 08.15 p.m., the victim along with P.W.1, Manimegalai (P.W.2) and Chinnapappa (P.W.3) was watching television in P.W.2's house which was near her butcher shop when the appellant barged into the house all of a sudden and attacked the victim with a butcher's knife (M.O.1) from behind on her neck accusing her of planning to give all her money to someone else. The victim after receiving a single blow from the accused fell down bleeding profusely and was rushed to Dharmapuri Government Hospital in an ambulance.
- iii. Dr.Kalaivani (P.W.11) examined the victim and admitted her as an inpatient. A copy of the Accident Register was marked as Ex.P3.
- iv. Thiru.Sampath Kumar (P.W.19), the Sub Inspector of Police, Nagarasampatti Police Station, visited the hospital on the next day and recorded the statement of P.W.1, which was marked as Ex.P1. FIR (Ex.P15) was registered in Crime No.309/2015 under Section 307 IPC against the appellant Muniyappan.
- v. After a week's treatment in Dharmapuri Government Hospital, the victim was shifted to Salem Government Hospital and thereafter to Rajiv Gandhi Government Hospital, Chennai, where the victim was given treatment for 15 days. She was then discharged and brought to the house of P.W.1. Since she was suffering from pain, she was again taken to Kirshnagiri Government Hospital and was admitted as an inpatient. After 15 days, Dr.Raja (P.W.12) found her having breathlessness on 20.09.2015 and while he (the doctor) was attending to her, she died.
- vi. Thiru. Chinnasamy (P.W.20) the Inspector of Police, Barur circle took up investigation initially when the FIR was registered under Section 307 IPC and went to the scene of occurrence on 28.07.2015 at 06.30 p.m. He prepared a Rough Sketch (Ex.P16) and an Observation Mahazar (Ex.P2) in the presence of Krishnan (P.W.9) and Venkatesan (P.W.10).

Further at about 11.00 p.m. on the same day, Muniappan, the appellant was arrested and his confessional statement was also recorded in the presence of Thiru.Rajaram (P.W.14), Village Administrative Officer of Kudimenahalli Village and his assistant Kumaresan (not examined). Based on the confessional statement, a knife (M.O.1) and a blood stained banian (M.O.2) which were hidden behind a bush near a burial ground were recovered under the cover of a mahazar (Ex.P9) in the presence of the same witnesses. He submitted M.O.1 & M.O.2 to the concerned Magistrate Court under Form 95 along with a requisition to send the same for forensic analysis. Further, he recorded the statement of the victim who had returned home from Rajiv Gandhi Government Hospital, Chennai, on 08.09.2015. After the demise of the victim on 20.09.2015 at about 12.15 p.m., the Investigation Officer altered the Section from 307 to 302 IPC and sent the alteration report (Ex.P17) to the Judicial Magistrate. On the same day at about 02.00 p.m., he conducted the inquest (Ex.P18) on the body of the deceased in the presence of panchayatdars. He then sent the body for postmortem.

vii.Dr.Sankaran (P.W.13) conducted autopsy on the body of the deceased and found the following injuries :

- a. A wound scar present over occipit.
- b. A wound scar length 7 cm present over left side of neck.
- c. Another scar of 10 cm present above previous scar

He sent the visceral organs to forensic Laboratory, Salem.

viii.The victim's blood was found to be 'A' group. However, the result of the blood grouping in the material objects were found to be inconclusive though it was human blood as per the reports of Forensic Laboratory, Chennai (Ex.P20 to Ex.P22). Since no alcohol / poison was detected in the visceral organs as per the toxicology report (Ex.P6), Dr.Sankaran (P.W.13) opined that "the death occurred due to respiratory arrest due to cut injury of Cervical Spine". The postmortem report was marked as Ex.P7.

ix.P.W.20, after completing investigation laid a final report before the Judicial Magistrate, Pochampalli in P.R.C. No.XX/2015. The learned Judicial Magistrate after furnishing copies of documents to the appellant under Section 207 Cr.P.C., committed the case to the Court of Sessions. To a charge framed under Section 302 IPC against the appellant, the appellant pleaded not guilty. The prosecution examined 20 witnesses and marked 22 exhibits and 2 Material Objects. When the appellant was questioned under Section 313 Cr.P.C. with regard to the circumstances

appearing in evidence against him, he pleaded not guilty. He did not examine any witness. After full trial, the learned Sessions Judge found him guilty of the offence under Section 302 IPC and sentenced him to undergo life imprisonment and pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment.

3. Mr.K.Murugesan, learned counsel appearing for the appellant contended that the deposition of the three direct eyewitness namely, P.W.1 to P.W.3 are contradictory and thus fatal to the case of the prosecution. He also pointed out that there was no motive or intention on the part of the appellant to commit the crime.

4. Per contra, Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor would contend that it was an open and shut case where the appellant murdered his paramour (Victim) with a butcher knife (chopper) in front of P.W.1 to P.W.3 and fled the scene of occurrence immediately. The utterance made by the appellant at the time of brutal attack clearly shows his motive and therefore, it cannot be said that the prosecution had faltered in proving the case. In fact P.W.1 to P.W.3 withstood the testimony of the cross examination and there were no contradictions with regard to the sequence of events.

5.P.W.1 who is the brother of the victim was fully aware of her activities. In fact after the failed marriage of the victim, P.W.1 had intervened, got back the jewellery and cash from the victim's ex-husband and ensured that the victim leads a financially independent life. He had set up a butcher shop and also bought a house for her with the money which was returned after the failed marriage. It is also pertinent to mention that P.W.1 did not also prevent the live in relationship between his sister (victim) and the appellant only because he wanted to see her leading a happy life. It is also clear from the evidence of P.W.1 to P.W.3 that all the three of them along with the victim were relaxing sitting in front of the television watching some TV programme when the brutal attack occurred. The description of the size of the house made by these direct eyewitnesses and the location of the entrance of the house again as described by them were all corroborative in nature. All the three of them had uniformly stated that the appellant / assailant attacked the victim from behind as soon as he barged into the house. He held the victim by her hair and using the butcher knife (chopper), attacked her neck causing serious injury to her respiratory tract. All the three witnesses have seen the appellant while attacking as well as while running away from the house. Again it is important to mention that all the three of them had stated consistently that the victim could not speak due to the injury throughout her post attack period.

6.The death of the victim occurred after 55 days of inflicting the cut injury by the appellant. The medical records also contain entries made by the doctors recording the non consent of the close relatives who were with her in the hospital for any further treatment citing affordability as the reason. On the one side P.W.1 has stated that his victim sister was earning very well and the motive for the murder appeared to be for the money and the property she held in her name, while on the other, affordability was cited as a reason for not pursuing advanced treatment. It is also pertinent to mention that all the hospitals where the treatment was given were Government Hospitals and the charges, if any, would have been very nominal and not exorbitant. This aspect is dealt with here not to cast any aspersions on P.W.1 or other relatives but only to point out that the victim could have possibly been saved had P.W.1 and his relatives heeded to the medical advice of the doctors.

7. Now analysing the act of the appellant, it is clear that he was the one who attacked the victim and no one else. Whether his attack was a planned one or was because of a grave and sudden provocation is the question before us. All the three direct eyewitnesses have claimed that the appellant while attacking the victim had shouted regarding to whom the victim is planning to handover her properties and her earnings. Going by this utterance of the appellant, it appears that he was having a lingering doubt in his mind that his paramour may handover her property and earnings to P.W.1 or other close relatives and not to him. She also did not have any child out of the first marriage. In such circumstances, it is very much possible after seeing the victim with her brother watching the TV programme could have provoked the appellant beyond a certain limit which made him attack her at that spur of the moment. It is also pertinent to mention that it was the same butcher knife which he used in his work place daily and also that the place of occurrence and the butcher shop was close by. There is an iota of doubt as to whether it is a premeditated murder which would invite the provisions of Section 302 IPC for the following reasons :

- i. The appellant and the victim were in live in relationship and the appellant was taking care of the butcher shop owned by the victim.
- ii. The appellant inflicted a single blow on the victim.
- iii. It did not cause instantaneous death and the victim died after 55 days.
- iv. The appellant was provoked on seeing the victim watching TV with her brother.
- v. The appellant took the weapon from the butcher shop which is close by and attacked the victim.

vi.The medical records show that had proper treatment been given to the victim she could have been saved.

Therefore, it is abundantly clear that there was no pre-arranged plan or any intention to murder the victim. Appropriate sentencing is a very vital function and obligation of the court and therefore, it becomes difficult to maintain the conviction of the appellant under Section 302 IPC. However, since the appellant had attacked the victim with a butcher's knife, he had the knowledge that it is likely to cause death. Hence, the appellant is convicted under Section 304 part ii IPC and sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.

8.In the result,

- i. The Criminal Appeal is partly allowed.
- ii. The conviction and sentence passed by the Sessions Judge, Fast Track Mahila Court, Krishnagiri District, in S.C.No.159/2016, dated 19.03.2018 under Section 302 IPC is set aside.
- iii. The appellant is convicted for an offence under Section 304 part ii IPC and sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.
- iv. The period of sentence already undergone by him shall be set off under Section 428 Cr.P.C.
- v. The appellant shall surrender before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri District, within 15 days from today, failing which, the Trial Court shall take steps to secure him for undergoing the sentence.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri District.

2.The Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District.
Crime No.309/2015

3.The Superintendent,
Central Prison, Vellore.

4.The Public Prosecutor,
High Court, Madras.

5.The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.381 of 2018

SPD(CO)
RVM(03/03/2022)