



Bail Slip

Kalaimani Son of Kanna Gounder Aged about 47 years residing at Ambedkar Nagar, Natteri Colony, Chengampoondi Village, Cheyyar Taluk, Thiruvannamalai District Accused in Crime No.492/2010 convicted in the Judgment made in S.C.No.145 of 2011 passed by Additional District Sessions Court (Fast Track Court) Arni was enlarged on bail by an order of this Hon'ble High Court dated 25/09/2018 made in Crl.M.P No.10012 of 2018 in Crl.A No.438 of 2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:10.03.2022
PRONOUNCED ON: 17 .03.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.A.No.438 of 2018

(Through Physical Hearing/Video Conferencing)

Kalaimani

...Petitioner

Vs

State by the Inspector of Police
Peranamallur Police Station,
Tiruvannamalai.

...Respondent

Prayer:- This Criminal Appeal has been filed, under Section 374(2) of Cr.PC, against the judgement of conviction and sentence, dated 07.07.2018, made in SC.No.145 of 2011, by the Additional District Sessions Court (Fast Track Court), Arni, Tiruvannamalai.

For Petitioner :Mr.V.R.Appaswamee

For Respondent :Mr.M.Babu Muthu Meeran, APP



JUDGEMENT

(Judgement of the Court was made by A.A.NAKKIRAN, J.)

- 1.This Criminal Appeal has been filed, against the judgement of conviction and sentence, dated 07.07.2018, made in SC.No.145 of 2011, by the Additional District Sessions Court (Fast Track Court), Arni, Tiruvannamalai, thereby convicting and sentencing the Appellant/Accused, for the offence under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Simple Imprisonment.
- 2.The case of the Prosecution has arisen on the basis of Ex.P1, complaint made by PW.1, father in law of the deceased, Elumalai, alleging that since the deceased stood as a witness in a criminal case against the Appellant, wherein he was convicted, previous enmity ensued between them and that in order to wreck vengeance, on 23.10.2010 at 2.00 p.m. the Appellant/Accused cut the neck of the deceased with an aruval, due to which the deceased died and hence, after completing the investigation, the Appellant/Accused was charge sheeted for the offence punishable under Section 302 of IPC.
- 3.The case was taken on file in SC.No.145 of 2011, by the Additional District Sessions Court (Fast Track Court), Arni, Tiruvannamalai and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the Prosecution had examined PW.1 to PW.18 and also marked Exs.P1 to P15 and Mos.1 to 7. On the side of the Defence, neither any witness was examined nor was any document marked. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, had found the Appellant/Accused guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal by the Appellant/Accused.
- 4.This court heard the submissions of the learned counsel on either side.
- 5.The learned counsel for the Appellant has submitted that most of the witnesses were turned hostile and not supported the case of the prosecution except PW.3. Though PW.1, the complainant,



PW.1 and PW.2 were cited as eye-witnesses, they did not support the prosecution. PW.3 evidence cannot be considered because after the occurrence, she came to the spot and enquired PW1 and PW2 and therefore she cannot be an eye witness and she would not have seen the accused in the scene of occurrence. Hence PW.3 is interested witness and her evidence is not worthy of acceptance. No independent witness was examined by the Prosecution though the place of alleged occurrence is said to be the public road and to prove the fact of existence of previous enmity between the Appellant and the deceased. He would further contend that MO.7 knife was not identified by the Village Administrative Officer, PW.10 and the PW.11, the menial. But they have not supported the prosecution case and pray for acquittal.

6.The learned Additional Public Prosecutor for the Respondent has submitted that PWs.1, 2 and 4 have stated the date of occurrence and time and that the deceased was found dead with cut injury on the neck. To that aspect, this evidence is believable and acceptable. He further contents that the entire case revolves around PW.3, her evidence is not rejected because as soon as hearing hue and cry of PW.1 and PW.2, PW.3 came out from the house and seen the deceased with cut injuries on the neck of the deceased, at that time the accused was moved from the scene of occurrence with the weapon with MO.7. PW.3 clearly deposed in her evidence about the date, time and place of occurrence and the previous enmity and what her father told her immediately after the incident and also saw the accused. Because she is the wife of the deceased, we cannot discard her evidence. To corroborate that the Village Administrative Officer PW.10 admit in their chief examination the knife MO.7 was recovered based upon the confession statement of Accused Ex.P.4. Hence he prays for sustain the conviction.

7.This Court carefully considered the submissions of the learned counsel on either side and also perused the entire evidence available on record.

8.PW.1 in his evidence has stated that on 23.10.2010 at 2.00 p.m. he saw the dead body of the deceased near canal. PW.2 also in his evidence has stated that 8 years back, he saw the dead body of Elumalai with cut injury on neck nearby canal. PW.4 also in her evidence stated that 8 years back she saw the dead body of her son nearby water body. This evidence is believable in so far as the date, time and place are concerned.



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9.PW.3 in her evidence has stated that she knows the accused and the deceased Elumalai was her husband. Near the canal, the incident had happened. The accused burnt their cattle shed with 7 bullocks. For that, Elumalai lodged a complaint against the accused and a case was registered against him and he was convicted with 3 years imprisonment. When he came out from the jail on bail, he threatened her husband. Her husband was always along with her father and brother. On the fateful day, her husband sat on the nearby canal along with her father and brother. Later on, after hearing hue and cry of her father she went to the place of occurrence and saw her husband with cut injury on his neck. At that time, she also witnessed the accused going along with knife. When she enquired her father, her father told that Kalaimani had cut Elumalai's neck with knife by saying that "you are the reason for the punishment and therefore, I am punishing you." Villagers saw the incident, but they are afraid to give evidence. Later on her father lodged the complaint. PW.1 is her father and PW.2 is her brother. PW.3, in cross, has also narrated the burnt incident of cattle shed with bullocks. She also narrated that after hearing the sound only, she went to the place of occurrence. She stated that out of fear, PW.1, PW.2 are not saying anything. After appeal, the accused came out from jail and was residing in the same village.

10.PW.10 Village Administrative Officer in his evidence stated that 8 years back after receipt of the message, he went to the place of occurrence and he saw the dead body of Elumalai with blood on his neck was lying on the nearby canal and also stated that observation and seizure mahazar was prepared and he also signed in the mahazar. 10 days later he went to the Police Station and also signed the statement given by the accused and later he went to near Vakkadai Kootroad and entered into forest and recovered the knife. To that aspect, his evidence is believable. Due to long period of age, he is unable to identify the knife is acceptable one.

11.PW.17 Dr. J. Senthilkumar, who performed the autopsy on the body of the Elumalai and issued the postmortem certificate (Ex.P11) and after getting the viscera report, gave his final opinion, which is as under:

"Injury to great vessels of neck causing Hemorrhage shock and death"



12. Now the point for consideration whether the prosecution has established the case beyond the reasonable doubt or not based upon the testimony of PW.3. Though the witnesses PW.1, the complainant and PW.2 have turned hostile, their evidence cannot be rejected in toto. As far as PW.1, he has admitted his signature in Ex.P1 which clearly mentioned the name of the accused at earliest point of time within a span of an hour. Whereas PW.3 categorically stated without an iota of doubt that as soon as hearing the hue and cry of PW1 and PW.2, she came out of the house and witness that her husband was lying in pool of blood with cut injury on his neck. Further she has deposed, she witnessed the accused walked out from the scene of occurrence at that time along with weapon MO.7.

13. It is seen that P.W.3 was subjected to grilling cross-examination by the defence and she has withstood the same. She was first cross-examined on 06.11.2017 and thereafter, she was recalled and again cross-examined on 07.12.2017. The learned counsel for the appellant contended that the Investigating Officer, in his evidence, has stated that P.W.3 was not cited as occurrence witness and therefore, her testimony should be disbelieved. In our opinion, this cannot be the yardstick for disbelieving the testimony of P.W.3, because, it is the specific case of P.W.3 that after she heard a hue and cry that was made by P.W.1 and P.W.2, she came out of her house and went near the place of occurrence and at that time, she saw her husband in a pool of blood and the appellant was moving away with a knife in his hand. It is not the case of the defence that P.W.1 and P.W.2 had murdered the deceased. In fact, in the cross-examination, the defence itself has elicited as under :

“பள்ளத்தெருவில் நான் எங்கள் வீட்டில் இருந்தபோதுதான் சத்தம் கேட்டு சம்பவம் இடம் சென்று பார்த்தேன் என்றால் சரிதான்/”

14. Now it is well settled in several cases that conviction can be based on a testimony of a single eyewitness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence that is important.

15. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent,



credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act.

16.To corroborate the evidence of PW.3, PW.10 evidence speaks about the recovery of weapon MO.7. Though PW.10 has turned hostile, he has admitted in chief examination upon the accused confessional statement, MO.7 was recovered from the spot. So, the Prosecution has clearly proved their case all beyond reasonable doubts.

17.The Trial Court had taken into account the gravity of the offence and sentenced the accused adequately. Thus, we do not find any reason to interfere with the same.

18.In the result,

i. This Criminal appeal is dismissed.

ii.The conviction and sentence passed by the Additional District Sessions Court (Fast Track Court), Arni, Tiruvannamalai, against the appellant/accused in SC.No.145 of 2011 dated 07.07.2018, is hereby confirmed.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Inspector of Police,
Peranamallur Police Station,
Tiruvannamalai.

2.The Additional District Sessions Court, Arni,
(Fast Track Court), Tiruvannamalai.

3.The Superintendent,
Central Prison,
Vellore.



4.The Public Prosecutor,
High Court, Madras.

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