



BAIL SLIP

The Appellant/Sole Accused Murugan S/o. Thangaiah Nadar was directed to be released on Bail of this court dated 17.10.2019 and made in CRL.MP(MD).No. 7292/19 in CRL.A(MD).No.92 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal(MD)No.92 of 2019

Murugan

... Appellant

vs.

State represented by
Inspector of Police,
Srivaikundam Police Station,
Srivaikundam,
Thoothukudi District.
(Crime No.140 of 2015)

... Respondent

Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment and conviction dated 19.02.2019 passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, in S.C.No.86 of 2016 and acquit the appellant.

For Appellant : Mr.N.Pragalathan

For Respondent : Mr.S.Ravi

Additional Public Prosecutor

JUDGMENT

R.SUBRAMANIAN, J.

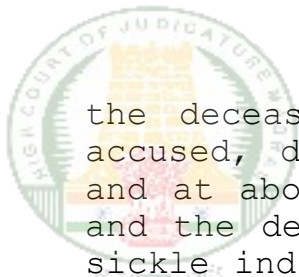
AND

N.SATHISH KUMAR, J.

Aggrieved over the conviction and sentence ordered by the trial Court, for the offence under Section 302 IPC, the appellant/sole accused has filed this appeal.

2. The brief facts of the prosecution is as follows:-

The deceased Jeya @ Jeyakala is the wife of the appellant/accused. They married 12 years prior to the occurrence and they have four children. PW1 is the father-in-law of the accused. The accused and his wife used to visit the house of PW1, which is situated at Vasavappaneri Village. Prior to the date of occurrence, the accused visited PW1's house with cooked chicken gravy and at that time, the accused had developed a quarrel with the relatives of PW1. After pacifying the quarrel, PW1 brought the accused to his house and PW1 stayed in the house of the accused and



the deceased. On the date of occurrence, i.e., 27.04.2015, the accused, deceased and their four children were inside their house and at about 04.45 a.m., there arose a quarrel between the accused and the deceased, in which, the accused attacked the deceased with sickle indiscriminately and the deceased succumbed to cut injuries. Thereafter, PW1 lodged Ex.P1-complaint statement, before the respondent/police and PW18-Sub-Inspector of Police in the respondent police station, recorded the complaint statement, reduced the same in writing and registered Ex.P9-FIR at 08.00 a.m., on 27.04.2015, against the appellant/accused in Crime No.140 of 2015, for the offences under Sections 302 and 506(ii) IPC, and forwarded the same to the Judicial Magistrate Court concerned and also forwarded copies of FIR to the higher authorities concerned. PW20-Inspector of Police(in-charge), Srivaikundam Police Station, commenced the investigation at 09.30 a.m., and went to the place of occurrence and prepared Ex.P10-Observation Mahazar and Ex.P11-Rough Sketch and also seized MO5-blood stained concrete mixture and MO6-sample concrete mixture, under Ex.P12-Mahazar. Thereafter, he conducted inquest over the dead body in the presence of Panchayatars and prepared inquest report under Ex.P13, then, he sent the dead body to Srivaikundam Government Hospital, through a Constable, for postmortem and then, he recorded the statement of the witnesses and handed over the case file to PW21-Inspector of Police, Srivaikundam Police Station. PW17, Medical Officer attached to Srivaikundam Government Hospital, conducted autopsy of the body of the deceased and found the following injuries:-

1. Deep cut wound over the post aspect of neck, left extending in front of the neck, size 15 x 3 x 4 cm in size, major blood vessels extend injured.

2. Deep cut wound from the lateral aspect of the neck, left below the left mastoid process. Extending the front of the neck, including the chin of remain of the mordible left. (10 x 3 x 4 cm in size), involving susnantal, susnordiblan region.

3. Deep cut wound extending from the front of the right ear, including the remain of the multiple right (14 x 2 x 3 cm in size)

4. Deep cut wound below the hair line and posterior aspect of the neck up to bone depth (Dorsal spine 8 x 2 cm in size)

5. Deep cut wound over the right scapular region 16 x 4 x 4 in size up to bone depth.

6. Deep cut wound over the post aspect of the left arm.

7. Deep cut wound over the 1/3rd of the left arm 4 x 2 x 2 cm in size.

8. Cut wound over the left middle finger partially separated from the MP x Jt.

9. Cut wound over the dorsum of the right hand involving the PP x Jt of all the fingers (8 x 2 x 2 cm in size)

10. Cut wound over the right wrist (6 x 2 x 2 cm in



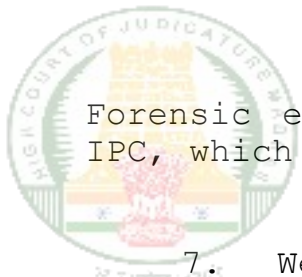
11. Cut wound over the right shoulder region (6 x 2 x 2 in size).''

3. PW17 opined that the deceased died of shock and haemorrhage due to the injuries sustained by her 12 to 24 hours prior to postmortem and issued Ex.P8-postmortem certificate. PW21 continued the investigation, arrested the accused on 29.04.2015, in the presence of the witnesses and recorded his voluntary confession. The admissible portion of the confession was marked as Ex.P14 and pursuant to the same, PW21 seized MO1-blood stained sickle and MO7-blood stained lungi, under Ex.P15-Mahazar and then, he remanded the accused to judicial custody and sent the material objects to the Court concerned and finally, after completing the investigation, laid a final report against the accused, before the learned Judicial Magistrate concerned.

4. The trial Court framed the charges against the accused under Section 302 and 506(ii) IPC. To substantiate the charges, the prosecution has examined as many as 21 witnesses and marked Exs.P1 to P16, apart from 7 material objects. The trial Court, after appreciating the evidence on record, acquitted the accused under Section 506(ii) IPC, however, convicted him under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.2,000/- in default, to undergo rigorous imprisonment for six months. Aggrieved over the abovesaid conviction and sentence, the accused has filed this appeal.

5. The learned counsel for the appellant/accused submitted that most of the prosecution witnesses turned hostile and the entire prosecution case is based upon the evidence of PW1. His contention is that PW1's presence in the place of occurrence, is highly doubtful and the same is fortified by the delay in lodging the FIR and despatching the same to the Judicial Magistrate's Court concerned. It is his further contention that PW1's evidence is highly improbable and his evidence proceeds as if the entire occurrence and the death of the deceased had taken place inside the house of the deceased, whereas, the prosecution theory itself shows that the dead body of the deceased was found in the street. Further, no traces of occurrence was noted by the investigating officer inside the house of the deceased. The children of the deceased also did not support the case of the prosecution in any manner. Hence, he submitted that PW1's presence is highly doubtful and therefore, the accused is entitled to acquittal.

6. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that PW1 is the father of the deceased and he has clearly explained the reasons for his presence in the house of the deceased on the date of occurrence. Therefore, merely because other witnesses have turned hostile, the version of PW1 should not be disbelieved. Hence, he submitted that the trial



Forensic evidence and found the accused guilty under Section 302 IPC, which does not require interference by this Court.

7. We have given our anxious consideration to the submissions made on either side and perused the materials available on record.

8. The charge against the appellant is that he developed some quarrel with the relatives of PW1 in his village and PW1 pacified the incident and brought back the accused to his house and PW1 stayed there on the date of occurrence. At about 04.45 a.m., on 27.04.2015, there arose a quarrel between the accused and the deceased, in which, the accused attacked the deceased with sickle and caused cut injuries. PW1 in his evidence has stated that on the date of occurrence, he was sleeping outside the house of the accused and deceased and at about 04.45 a.m., there arose a quarrel between the husband and wife, in which, the accused cut the deceased and she died in the house. Thereafter, he gave Ex.P1-complaint statement to PW18-Sub Inspector of Police.

9. The entire prosecution case is based on the evidence of PW1. Upon carefully analysing the evidence of PW1, we are of the view that PW1's presence in the place of occurrence is highly doubtful and his evidence as to the occurrence is also improbable. PW1 is definite in his evidence that the deceased died in the house itself immediately after the cut injuries inflicted on her, whereas, Ex.P10-Observation Mahazar and the evidence of PW20-investigating officer clearly shows that the dead body was found in the street. Therefore, the evidence of PW1 that the deceased died in the house itself, is unbelievable.

10. Further, the evidence of PW20-investigating officer, shows that no traces of blood stains were found in the house of the deceased. The prosecution case is that PW1 stayed in the house of the deceased and in a quarrel between the accused and the deceased, the accused cut the deceased indiscriminately. The said theory of the prosecution itself creates doubt, which is fortified by the conduct of PW1 in not lodging the complaint immediately, though the occurrence had taken place at 04.45 a.m. The distance between the place of occurrence and the police station is said to be only 3½ kms. Whereas, the complaint statement has been given only at about 08.00 a.m. and then, FIR has been registered and the same has been despatched to the Judicial Magistrate's Court concerned at 01.30 p.m. There is no specific explanation available on record, for the delay in despatching the FIR to the Judicial Magistrate's Court. It is also relevant to note that the evidence of PW1 clearly shows that he lodged the complaint with the respondent/police at 06.00 a.m. itself on the same day and the Police reached the spot at 07.00 a.m, whereas, the FIR reads that PW1 gave the complaint only at 08.00 a.m. That itself clearly shows that complaint has been given to the Police only after the Police visited the place of occurrence and



only then, FIR came to be registered. So, the possibility of the fabrication at a later point of time, also cannot be ruled out.

11. It is also to be noted that PW1 is definite in his evidence that after the death of her daughter, he lifted the dead body, at that time, his clothes also got blood stains which was also seen by the Police while giving the complaint, whereas, the investigation did not reveal any blood stains on the clothes of PW1. These facts raise serious doubt about PW1's presence in the place of occurrence and his evidence, witnessing the occurrence.

12. Added to the above, PW20-investigating officer, in his evidence has clearly stated that the investigation did not reveal that the accused and PW1 came together to the place of occurrence on the previous day night. These facts raise serious doubt about the credibility of the evidence of PW1 in witnessing the occurrence. Excepting the official witnesses, other witnesses have not supported the case of the prosecution.

13. The only incriminating evidence, other than the evidence of PW1, is the evidence of the investigating officer-PW21. He is said to have arrested the accused on 29.04.2015 at about 02.30 p.m. at Aniyaparanallur diversion, and recorded his confession and in pursuant to the same, seized MO1-blood stained sickle and MO7-blood stained lungi, under Ex.P15-Mahazar. The said evidence of PW21 itself creates a doubt, because, the investigating officer has stated that he has arrested the accused on 29.04.2015, at about 02.30 p.m., at Aniyaparanallur diversion, whereas PW1 in his evidence has stated that the accused was arrested on the date of occurrence itself. Though the Serology report shows that the blood group of the blood stained clothes worn by the accused and the blood group of the deceased tallied with each other, we are unable to rely upon the confession and seizure, for the reason that PW1 in his evidence admitted that on 27.04.2012, at about 06.00 a.m. itself, the Police came to the place of occurrence and the accused was also arrested on the same day. Therefore, the alleged arrest and recovery on 29.04.2015 itself, creates suspicion over the prosecution theory, as such it is unbelievable.

14. Therefore, merely on the basis of a doubtful arrest and seizure, we are not in a position to accept the entire prosecution case. Though the prosecution has proved the homicidal death of the deceased, the evidence of the accused that the deceased was chased by someone else in order to rob her jewels, cannot be ruled out, since the dead body was found in the street, during the relevant point of time. Therefore, we are of the view that the appellant is entitled to acquittal.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence ordered by the trial Court, in the judgment made in S.C.No.86 of 2016, dated 19.02.2019, is set aside. 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 (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Thoothukudi,
- 2.The Superintendent, central Prison, Palayamkottai.
- 3.Inspector of Police,
Srivaikundam Police Station,
Srivaikundam,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, Criminal Section(Soft Copy)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-6364[F] dated 16/02/2022)

CRL.A(MD)No.92 of 2019

DATED : 15.02.2022

NSN(CO)

KB(01.03.2022) 6P 7C