

Bail Slip

The Appellant/Accused namely Subramani was directed to be released on bail as per the Order of this Court dated 20.11.2000 and made in Crl MP No.7683/2000 in Crl.A.961/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 961 OF 2000

Subramani

.. Appellant

- Vs -

State rep. by
Inspector of Police
Rasipuram Police Station.
Namakkal District.

.. Respondent

Appeal preferred against the conviction and sentence passed by the learned II Addl. Sessions Judge, Salem, made in S.C. No. 128 of 1999 dated 26.9.2000 as stated therein.

For Appellant : Mr. D.Shivakumaran

For Respondent : Mr. S.Jayakumar, APP

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

The sole accused in a case of murder on being found guilty as per the charge and sentenced to imprisonment for life by the Court of Sessions (II Addl. Sessions Judge), Salem, has brought forth this appeal.

2. The deceased, Malarvizhi, is the wife of the appellant. P.W.1 is the brother of the deceased. P.W.1 along with his parents was living at Madha Koil Street, Rasipuram. The deceased was given in marriage to the appellant seven years back. The appellant was doing paddy business all along and for the said purpose he was demanding money often and used to drive the deceased out of the house and she, in turn, used to go to her parents house and demand money. Six months prior to the occurrence the appellant made a

demand and drove the deceased to her parental home. Her father pacified her and sent her back to her matrimonial house. Ten days prior to the date of occurrence also the deceased came to her parental house with the same demand.

3. On 17.11.96 the marriage of one of the brother of the deceased by name Saravanan took place. The married spouses went to Vepadai. On 18.11.96, in order to bring them home, the parents of the deceased and all the relatives went over to Vepadai. On that day P.W.1 was present in the house apart from the deceased and the appellant. At about 2.30 p.m., both the deceased and the appellant were in the upstairs. P.W.1 was also present there. The deceased and the appellant were shouting at each other and, therefore, P.W.1 came down. He found P.W.s 2 and 3 in the ground floor and, therefore, he started chatting with them. Within a short while, he heard the distressing cries of the deceased. P.W.s 1 to 3 went upstairs and they found the door locked on the inside. They knocked the door, but it was not opened and when they broke open the door and got inside, they found the deceased lying in a pool of blood. At that time, the appellant left the place of occurrence. They took the deceased, Malarvizhi to the Government Hospital, Rasipuram, where she was declared dead by the doctor, P.W.11. Immediately, P.W.1 proceeded to Rasipuram police station, where P.W.12, the Sub-Inspector of Police was on duty. He gave a report, Ex.P-1 on the strength of which a case came to be registered in crime No.1643/96. The express first information report, Ex.P-11, was despatched to court and P.W.13, the Inspector of Police was informed about the registration of a crime.

4. P.W.13, the Inspector of Police, on receipt of a copy of the printed first information report, took up investigation. He proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared an observation mahazar, Ex.P-12. He also drew a rough sketch, Ex.P-14. The scene of occurrence as well as the dead body was caused to be photographed by the photographer, P.W.8. M.O.6 series are the photographs. The investigating officer, thereafter, conducted inquest over the dead body of the deceased in the presence of witnesses and panchayatadars and prepared inquest report, Ex.P-15. After the inquest, the body was handed over to a police constable with a requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, P.W.9, the Assistant Surgeon attached to the Government Hospital, Rasipuram, conducted autopsy on the dead body of the deceased and found the following injuries :-

"1) A lacerated injury 10 x 5 cm in front and lower part of the neck running obliquely on the right side cutting the whole of trachea, oesophagus, major blood vessels and muscles.

2) An elliptical wound 2 x 1 x skin deep on the left temporal region.

3) An elliptical injury 2 x 1 x skin deep on the lower part of the left side of the chest 5 cm

lateral to the midline.

4) An elliptical injury 2 x ½ x muscle deep on the left side of the abdomen 7 cm above the umbilicus.

5) A linear abrasion 3 cm length just above the right cubital fossa.

6) An elliptical injury 2 x 1 cm x skin deep running downwards about 5 cm depth. On the lateral side of the left side of the chest 15 cm below the axilla."

The doctor issued Ex.P-8, the post-mortem certificate, opining that the deceased would appear to have died on account of shock and haemorrhage due to injuries to blood vessels and vital organs.

6. Pending investigation the accused was arrested on 19.11.96. He volunteered to give a confessional statement and the same was recorded in the presence of two witnesses, the admissible portion of which is marked as Ex.P-4. Consequent upon the same, he produced M.O.1, knife, M.O.6, shirt and M.O.7, bloodstained dothi. All the material objects were recovered under a mahazar. The accused was remanded to judicial custody. All the material objects which were recovered from the scene of occurrence, and those produced by the accused pursuant to the confessional statement were all subjected to chemical analysis, which resulted in the chemical analysis report, Ex.P-18 and serology report, Ex.P-19. On completion of the investigation, final report was filed against the appellant by the investigating officer. The case was committed to the court of sessions, necessary charges were framed by the sessions court and the case was taken up for trial.

7. In order to substantiate the charge levelled against the accused, the prosecution marched fourteen witnesses and relied on nineteen exhibits and seven material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. He denied them as false. No defence witness was examined. The trial court heard the arguments advanced by either side and after a thorough scrutiny of the materials available before it, found the accused guilty as per the charge. Hence, this appeal.

8. The learned counsel for the appellant, inter alia, made the following submissions. The prosecution relied on the evidence of P.W.s 1 to 3 as direct evidence. They are closely related and, hence, they are interested in the deceased and their evidence, if carefully scrutinised, does not inspire the confidence of the court and their testimony should have been rejected. Insofar as the scene of occurrence was concerned, according to the prosecution the occurrence has taken place in the upstairs. The evidence of P.W.1 shows that he got down and, he was in the company of P.Ws. 2 and 3 at the time of occurrence and thus nobody was present at the place at the time of occurrence and, thus it would be clear that they have not witnessed the appellant stabbing his wife. It is also their evidence that they broke open the lock and went inside. If to be so, it would be quite clear that they have not witnessed the

occurrence and thus they cannot be termed as eye witness, but all have spoken falsity in order to strengthen the case of the prosecution. Therefore, their evidence should not have been relied upon by the trial court. Added further the learned counsel, in the instant case, there were two information to the police. According to P.W.11, the doctor, he declared the deceased dead at 3.00 p.m. on 18.11.96 and he sent death intimation, Ex.P-10 to the police authorities within half an hour. According to P.W.12, the Sub-Inspector of Police, a case was registered at 6.00 p.m. not on the basis of Ex.P-10, death intimation, but on the basis of Ex.P-1, the complaint given by P.W.1, which is highly improbable. While the death intimation was given by P.W.11 at 3.00 p.m., within half an hour from the time when the deceased was declared dead, the information should have been received by the Officials attached to the police station situate and they should have registered the case immediately. Thus the first information given to the police through the intimation from the hospital has been suppressed and now what is available before the court is the second information, which is of no consequence in law. In the circumstances, the trial court should have rejected the prosecution case outright, but erroneously found the accused guilty, which has got to be considered by this Court. Even assuming all the facts putforth by the prosecution are true, that there was a quarrel between the spouses, which preceded the incident, the appellant has called the deceased to come and live with him to which she refused due to which he got provoked and he attacked the deceased and, therefore, the offence would not certainly fall within the ambit of murder and it would be only a culpable homicide not amounting to murder and would fall within the exception to Section 300 IPC and, therefore, the benefit has got to be given to him.

9. This Court heard the learned Addl. Public Prosecutor appearing for the State on the above contentions and also perused the recorded evidence, both oral and documentary.

10. It is not in controversy that the deceased died instantaneously and was declared dead by the doctor, P.W.11, attached to the Government Hospital, Rasipuram. The prosecution has also succeeded in establishing the cause of death of the deceased, Malarvizhi, by examining P.W.9, the doctor, who conducted autopsy and the post-mortem certificate, Ex.P-8 issued by him. The doctor has opined that death was on account of shock and haemorrhage due to injuries to blood vessels and vital organs. The evidence of the doctor and the post-mortem certificate issued by him, conclusively establish that the deceased Malarvizhi died on account of homicidal violence. The said fact was not disputed by the appellant before the trial court nor it is disputed before this Court. On the medical evidence this Court holds that the deceased died on account of homicidal violence.

11. The specific case of the prosecution is that the appellant stabbed the deceased to death. In order to substantiate the charge, the prosecution examined P.W.s 1 to 3. In the instant case, it is true that P.W.1 is the brother of the deceased and according to his

evidence he was present at the time of occurrence along with both the spouses in the upstairs and when they started shouting, he got down and the door was locked and then sometime thereafter he along with P.W.s 2 and 3 heard the distressing cries of the deceased and they went up and they knocked the door and when it was not opened, they broke open the lock and went inside and saw the deceased lying in a pool of blood. At that time, the accused went out of the room.

12. The contention putforth by the learned counsel for the appellant that P.W.1 was not an eye witness cannot be accepted. In the instant case, it is the evidence of P.W.1 that when he came down from upstairs, only two persons were available, one being the appellant and the other being the deceased. Therefore, the appellant was in the company of his wife, the deceased, and within a short time of ten minutes the deceased was found dead in a locked room and the appellant also went out of the room. Therefore, it is for the appellant, who is the husband of the deceased, to come out with a responsible answer as to how his wife died, but in the instant case, no explanation was forthcoming. On the contrary, the appellant would say that he did not know anything about the occurrence and that he was not present at the scene of occurrence, which has been putforth by way of a memo before the trial court, which is nothing but utter falsehood in order to come out of the clutches of law. There is no circumstance or reason to disbelieve the evidence of P.W.1. The evidence of P.W.1 is natural, acceptable and cogent and the trial court has accepted the same and rightly too.

13. The next contention of the learned counsel that the place of occurrence is different and has not been properly shown in the rough sketch also cannot be accepted. The occurrence has taken place in a closed room in the upstairs in the house of P.W.1. The witnesses were available in the ground floor. The feeble attempt made by the counsel for the appellant that the witnesses could not have seen the occurrence cannot be accepted at all in view of the materials available before us. Hence, we reject the said contention as well.

14. The third contention putforth by the learned counsel for the appellant is that there were two information in the crime to the police and the first information has been suppressed and now what is available before the court under Ex.P-1, which is the second information, has got to be thoroughly discountenanced for the following reasons. Admittedly, P.W.11, the doctor declared the deceased dead at the Government Hospital, Rasipuram. It is also the admitted position that within half an hour the doctor sent the death intimation to the police station. Therefore, all that was available to the police at that time was the intimation from the hospital informing about the death of the deceased and the same cannot form the basis for registration of a crime and preparation of first information report. What is generally expected of the police officer is that he make an entry in the general diary about the receipt of the information. According to P.W.12, the Sub-Inspector of Police, he recorded the statement of P.W.1, which stands marked

as Ex.P-1 on the basis of which a case came to be registered under Section 302 IPC. Now at this juncture it has to be pointed out that the attempt to project that the intimation sent by the hospital at 3.00 p.m. and a case came to be registered on the basis of that and the same has been suppressed and subsequently Ex.P-1 has been brought into existence is an invention before the appellate forum. There are no circumstances to suspect that the first information report was given at 3.00 p.m. and the same has been suppressed. This Court is of the considered opinion that the ground urged by the learned counsel for the appellant is too flimsy to be accepted and the contentions put forward by the counsel for the appellant are all hackneyed weapons in the armoury of a desperate appellant and, therefore, have to be stated for being rejected. Accordingly, the same is rejected.

15. The last contention that there was a quarrel preceding the occurrence and, therefore, the appellant is entitled for the benefit of one of the exceptions, cannot also be countenanced for the simple reason that there is no material available in the entire case records to suggest such an action. The evidence of P.W.1 is that both the spouses were shouting at each other and in that shouting there is nothing to show that the deceased uttered something bad due to which the appellant got provoked and attacked the deceased. It has to be pointed out that in a given case like this, in order to give the benefit of any of the exceptions falling short of murder and to make it as one of culpable homicide not amounting to murder, the provocation should be sudden and the circumstances must be indicated for the said provocation. In the instant case, this Court is unable to notice that the action of the appellant would attract any one of the ingredients to fall under any one of the exceptions and, hence, the contention has got to be necessarily rejected.

16. The trial court was perfectly correct in finding the appellant guilty for murder and this Court is of the considered opinion that no interference is called for with the conviction and sentence imposed on the appellant.

17. In the result, the judgment of conviction and sentence awarded by the trial court are confirmed. The criminal appeal is dismissed. It is reported that the appellant is on bail. The learned Sessions Judge shall take steps to secure the appellant and commit him to prison to undergo the remaining period of sentence imposed upon him.

GLN

Sd/
Asst.Registrar

/true copy/

To

- 1) The II Addl. Sessions Judge, Salem.
- 2) -Do- Thro' The Principal Sessions Judge, Salem.
- 3) The Judicial Magistrate, Rasipuram.
- 4) -do- Thro' The Chief Judicial Magistrate, Salem.
- 5) The District Collector, Salem.
- 6) The Director General of Police, Chennai.
- 7) The Public Prosecutor, High Court, Madras.
- 8) The Superintendent of Central Prison, Coimbatore.
- 9) The Inspector of Police, Rasipuram Police Station,
Namakkal District.

+1 CC to Mr.D.Shivakumaran, Advocate, SR No.36296.

MRD(CO)

BG/12.09.2005.

CRL. A. NO. 961 OF 2000



WEB COPY