

Bail Slip

The Appellant/Accused No.1 Viz., Vijiya, W/O Late Ellappan, aged 33 years, was directed to be released on Bail as per Order dated 19/7/2012 made in CrI.M.P.No.1/2011 in CrI.A.524/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM

THE HON'BLE DR.JUSTICE S.TAMILVANAN

and

THE HON'BLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.524 of 2011

Vijiya
W/o.Late Ellappan ... Appellant/Accused 1

-vs-

State represented by
Inspector of Police,
Kanthikuppam Police Station,
Burugur Circle,
Krishnagiri District.
Crime No.325 of 2008 ...Respondent/Complainant

Criminal Appeal preferred under Section 374(2) of Criminal Procedure Code to call for the records and set aside the conviction and the judgment of learned Additional Sessions Judge, Krishnagiri, made in S.C.No.109 of 2009 dated 23.06.2011.

For Appellant : Mr.S.Anbalagan

For Respondent : Mr.V.M.R.Rajentren
Additional Public Prosecutor

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J U D G M E N T

(Judgment of the Court was made by S.TAMILVANAN, J.)

This appeal arises against the judgment of learned Additional Sessions Judge, Krishnagiri, made in S.C.No.109 of 2009 on 23.06.2011, convicting the appellant/accused for offences u/s.302 and 201 r/w 302 IPC and sentencing her to

undergo life imprisonment and fine of Rs.5,000/- in default to undergo a further period of 5 months S.I., for offence u/s.302 IPC and 5 years R.I. and fine of Rs.1,000/- i/d.1 month R.I. for offence u/s.201 r/w 302 IPC.

2. The case of the prosecution is that the appellant/A1 is the wife of the deceased. There was an illicit relationship between A1 and A2. On 29.07.2008 at about 8.30 a.m., while the accused were in the plantain garden, the deceased questioned them, owing to which A2 attacked him on his head using a spade. When the deceased was in an unconscious stage, A1 and A2 immersed his head in the ground level water tank, made him to suffocate and thereby caused his death. In order to screen the offence, they put the body of the deceased into the water tank and closed the same by a cement lid. Then nine days of the occurrence, on 07.08.2008 at about 8.30 a.m., A1 went to the office of PW-1, Village Administrative Officer, and gave extra judicial confession [Ex.P1], who in turn produced A1 before PW-12, Sub-Inspector of Police, Kandikuppam Police Station, and also handed over Ex.P1 to him. PW-12, on the basis of Ex.P1, registered a case in Crime No.325 of 2008 for offences punishable u/s.302 and 201 IPC on 07.08.2008 and forwarded the FIR to the jurisdictional Judicial Magistrate, under Ex.P18. PW-13, Inspector of Police, Burgur Circle, took up the investigation on the same day. He took A1 into custody, then went to the scene of crime at about 11.00 a.m. on the said date, prepared observation mahazar [Ex.P3] and rough sketch [Ex.P19] in the presence of PW-1 and another. In the presence of witnesses and panchayatdhars, he conducted inquest on the body of the deceased between 12.30 and 2.30 p.m. The inquest report is Ex.P20. He handed over the body of the deceased to the Head Constable. Since the body was in a decomposed state, he requested the Doctor to conduct post mortem at the scene of crime itself and accordingly, the same was conducted. The post mortem report reads thus:

"Spot PM

POST-MORTEM CERTIFICATE

Govt. Head Quarter Hospital, Krishnagiri.
Regarding the body of a male aged about 40 years named Ellappan.

Requisition received at 3.45 p.m. on 7.8.08 from the Inspector of Police of Bargur Tk Police Station with his letter No.325/08 dated 7.8.08.

Body incharge of Police Constable No.HC 614 named Selvamani. Body found identification and Caste Mark:
Not able to identify marks and scar, since body is in

decomposed state. The body was first seen by the undersigned at 4.30 p.m. on 7.8.08.

Its condition then was R.M. not present.
Post Mortem commenced at 4.30 p.m. on 7.8.08.
Appearance found at the Post-Mortem

A well built male body lying on its back with decomposed state, Maggots coming out of face and eyeball cavity. Skin sodden and pale with patches of Black Algae over the trunk and limbs. Skin macerated. Only Trousers found, with rope tied around the waist with rope mark present. No visible external injuries seen. Eye balls seen with maggots. All teeth intact,

Ribs intact, Hyoid bone? Fracture Thoracic Cavity:
Heart Empty Advit size 250 gms, both lungs liquified.

Stomach - empty, Liver, Spleen, Kidney Bladder - liquified.

Skull: intact, meninges: Intact; Brain: liquified,
Spinal column: intact

Viscera sent for chemical analysis, Blood & hyoid bone sent for analysis.

Post mortem concluded at 5.30 p.m. on 7.8.08.
Opinion pending for chemical analysis report.
The time of death could not be estimated.

I Tox.H.No.716/2008 Dated 11.9.08
Forensic sciences department (Govt. of T.N.)
Regional Forensic Science Laboratory, Vellore.
Opinion:

(1) Stomach with contents, (2) Intestine with contents, (3) Liver,
(4) Kidney, (5) Preservative,

The above Five (5) articles were examined but poison was not detected.

II Bone case report:
Office of Police Surgeon (dept.) Forensic Medicine,
Kumaramangalam

Govt.Mohan Medical College Hospital, Salem.

Bone Case Nos.181/08 Dated 10.9.08

HYOID Bone Specimen: Intact

III T.No.9484/2008

SER/SLM/163-2008 Dated 3.2.09

Forensic Science dept (Govt. T.N.)

Forensic House, Kamarajar Salai, Chennai - 04.

Blood reports:

The result of grouping test is inconclusive.

Final opinion:

The exact cause of death cannot be ascertained as the body is in severely decomposed state."

In continuation of investigation, PW-13, went to the police station at 03.00 p.m. and recorded the confession statement of A1 between 03.30 and 04.30 p.m. in the presence of PW-1 and another. On the basis of the confession statement of the accused, he took the accused to the scene of crime, recovered a lungi [M.O.1], shirt [M.O.2] and a white plastic bag [M.O.3] from a thorn bush at about 04.30 p.m. in the presence of witnesses. The seizure mahazar is Ex.P5. Thereafter, he sent A2 to judicial custody. He examined Pws.1, 2 and 3 and five others and recorded their statements. He arrested A2 on 08.08.2008 at about 06.30 a.m. at the Orappan Police Station, in the presence of PW-1 and another and recorded his confession statement between 06.30 and 08.00 a.m. On the basis of the confession statement of A2, he took him to Periyachettipalli and recovered the spade [M.O.4] in the presence of the same witnesses. The seizure mahazar is Ex.P7. He forwarded the seized materials to Court. At about 10.30 a.m., he sent A2 to judicial custody. He examined PWs.1 and 7 and 3 others and recorded their statements. He sent the blood stained pant [M.O.6] for chemical analysis on 10.09.2008. On 04.09.2008, he examined PW-11, Dr.Dhanasekar and PW-10, Head Constable and recorded their statements. Upon completion of investigation, he filed charge sheet informing commission of offences u/s.302 and 201 r/w 302 IPC.

3. In order to substantiate the case, the prosecution has examined PWs.1 to 13, marked Ex.P1 to P20 and MOs.1 to 7. No one was examined on the side of the defence and no exhibits were marked. On questioning u/s.313 Cr.P.C., the accused denied the prosecution evidence against them.

4. Learned trial Judge, on appreciation of evidence adduced by the prosecution, while acquitting A2, has found the A1 guilty and accordingly, convicted her for the offences u/s.302 and 201 r/w 302 IPC and sentenced her to undergo life imprisonment and fine of Rs.5,000/- in default 5 months S.I. for offence u/s.302 IPC and 5 years R.I. and fine of Rs.1,000/- in default 1 month R.I. for offence punishable u/s.201 r/w 302 IPC. Hence, the present appeal has been preferred by the appellant/A1.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor and perused the materials available on record.

6. Learned counsel for appellant submitted that the case of the prosecution is solely based upon the extra-judicial confession alleged to have been given by A1 and according to him the prosecution version is absolutely false. It is not in dispute that A1 is the wife of the deceased. The two daughters of the deceased died due to epilepsy. The counsel for the appellant/A1 argued that the evidence of P.W.1, Village Administrative Officer, before whom A1 is said to have given extra judicial confession is unbelievable. The trial Court has also opined that the extra judicial confession given by A1 cannot be treated as conclusive proof against A2 and it cannot be presumed that A2 was involved in the crime only on the basis of seizure of spade [M.O.4] and accordingly acquitted A2, affording him the benefit of doubt. The trial Court fell into error in convicting the appellant/A1 based on the extra judicial confession in the absence of any corroborative evidences. That apart, in the extra judicial confession statement, it is alleged that A2 attacked the deceased with a spade and A1 caught hold of the deceased. While so, the trial Court fell into error in acquitting A2 and convicting the appellant/A1, when there are serious allegations attributed against A2. It is also pointed out that PW-3, son of the appellant/accused turned hostile and not supported the prosecution. The learned counsel for appellant would further contend that though PW2-father of the deceased had informed of his missing son to PW4-employer of the deceased, who in-turn preferred a compliant, no case was registered based on such complaint. Therefore, it is clear that extra judicial confession was created only to implicate the appellant as an accused. That apart the extra judicial confession is not supported by medical evidence. In support of his submissions, learned counsel relied on the decision of the Supreme Court in Chhittar v. State of Rajasthan [1995 SCC (Cri) 248], wherein it has been observed as follows:

"3. ... Therefore, the version as per the extrajudicial confession is inconsistent with the medical evidence. The extrajudicial confession should be taken as a whole and should not suffer from any infirmity even if it is to be acted upon. But in this case we find that the belated confession itself becomes doubtful in the light of the medical evidence apart from being the same retracted. We think it is highly unsafe to sustain the conviction. ..."

Learned counsel for the appellant submits that the appellant/A1 has been falsely implicated in this case and prays for allowing of this appeal.

7. Per contra, learned Additional Public Prosecutor submitted that the prosecution has established its case beyond all reasonable doubts and according to him, the judgment under challenge does not require interference by this Court.

8. Though learned counsel for appellant relied on the judgment of the Supreme court in Chhittar's case, we find the same inapplicable on the facts of the present case. However, we would allow the appeal for the following reasons:

- (i) There was no signature or thumb impression found in the first page of extra judicial confession statement and the time of recording such extra judicial confession has not been specified, which would lead to the conclusion that the same could have been prepared after getting the signature of appellant/A1, as argued by the learned counsel for the appellant/A1. Admissibility of an extra judicial confession statement made to a Village Administrative Officer and its reliability altogether are two different things. In the facts and circumstances of the present case, this Court, without hesitation, would hold that Ex.P1, extra judicial confession statement of A1 allegedly recorded by PW-1, Village Administrative Officer, is unreliable on account of the vital infirmities discussed. Further, except the extra judicial confession statement there is no other evidence available to base a conviction against the appellant/A1.
- (ii) There were vital contradictions in the evidence of the prosecution witnesses. While PW-2, father of the deceased, deposed that having informed PW-4, the employer of the deceased about missing of his son, who in-turn preferred a complaint, however PW-4 denied such version. If the version of PW-2 is true, a case could have been registered based on such complaint and the body of the deceased could have been recovered much earlier, but it is not so.
- (iii) The body of the deceased was recovered from the ground level water tank nine days after the occurrence and the same was in a decomposed state. Though the prosecution alleges that the accused attacked the deceased on his head using a spade, the post mortem report did not reveal of any fracture in the skull of the deceased.
- (iv) When the trial Court convicted A1 solely on the basis of the extra judicial confession statement, the trial Court erred in convicting the appellant/A1 while acquitting A2, who is the prime accused as per the extra judicial confession, though it is well settled that the confession of a co-accused is not binding on the other accused.

(v) There is no eye-witness to the occurrence. The alleged circumstantial evidence adduced by the prosecution is insufficient to base the conviction on the appellant/A1. Hence, the conviction and sentence imposed on the appellant/A1 cannot be sustained.

In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on appellant/A1 by the trial Court, are set aside and the appellant/A1 is acquitted of the charges. She is directed to be set at liberty forthwith, unless her custody is required in connection with any other case. The bail bond(s), if any executed by her, shall stand cancelled. The fine amount, if paid by her, shall be refunded.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions Judge,
Krishnagiri.
2. The Chief Judicial Magistrate,
Krishnagiri.
3. The Additional Sessions Judge,
Krishnagiri.
4. The Superintendent,
Central Prison,
Vellore.
5. The Inspector of Police,
Kanthikuppam Police Station,
Burugur Circle,
Krishnagiri District
6. The Public Prosecutor,
High Court, Madras.

Criminal Appeal No.524 of 2011

vgi (CO)
srg (08/02/2016)