



BAIL SLIP

1) 3rd Appellant in Crl.A.No.43/2012 (3rd Accused in SC.NO.1/09 by the Principal Sessions and District Judge, Krishnagiri dated 13/12/2011) was released on bail as per order of this Court dated 5/6/2012 in Crl.MP.No.1/12 in Crl.A.No.43/12

2) 1st Appellant in Crl.A.No.43/12 (1st Accused in S.C.NO.1/09 by the Principal Sessions and District Judge) Krishnagiri dated 13/12/2011) was released on bail as per order of this Court dated 18/3/2013 in Crl.MP.No.1/13 in Crl.A.NO.43/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

CORAM :

THE HONOURABLE DR.JUSTICE S.TAMILVANAN  
and  
THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.A.No.43 of 2012

1.Periyathambi @ Durai @ Venkatesami  
2.Kalaivani .. Appellants / A1 & A3

vs.

State, Rep. by  
the Inspector of Police,  
Maharaja Kadai Police Station,  
Guntoor Village,  
Krishnagiri District. .. Respondent/Complainant

Criminal Appeal preferred under Section 374 (2) of the Code of Criminal Procedure, against the Judgment of Conviction, dated 13.12.2011 made in S.C.No.1 of 2009 on the file of the learned Principal Sessions and District Judge, Krishnagiri.

For Appellants : Mr.M.G.Udayashankar for  
M/s.S.Shanthakumari

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



## JUDGMENT

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

The Criminal Appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, by the appellants / A1 & A3 against the judgment of conviction, dated 13.12.2011 made in S.C.No.1 of 2009 on the file of the Principal District and Sessions Judge, Krishnagiri.

2.The appellants / A1 & A3 stand convicted and sentenced by the learned Judge thus:-

| Accused | Conviction under section | Sentence awarded                                                                          |
|---------|--------------------------|-------------------------------------------------------------------------------------------|
| A1      | 120 (b) IPC              | Life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo six months R.I;  |
|         | 302 of IPC               | Life imprisonment and to pay a fine of Rs.3000/-, in default to undergo six months R.I.;  |
|         | 302 r/w.201 IPC          | 7 years R.I and imposed fine of Rs.1000/-, in default to undergo six months R.I           |
| A3      | 120 (b) IPC              | Life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo six months R.I.; |
|         | 302 r/w.109 IPC          | Life imprisonment and to pay a fine of Rs.3000/-, in default to undergo six months R.I.;  |

All the sentences were ordered to run concurrently.

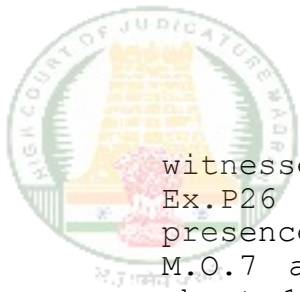
3.The case of the prosecution, in a nut shell, is as follows:-



[a] A1 is paramour of A3 and A2 is the friend of A1. The deceased Srinivasan is the husband of A3. Due to illegal intimacy of A1 and A3, there was frequently wordy quarrel between A3 and her husband, the deceased Srinivasan. Hence, A1 to A3 had conspired to murder the said Srinivsan and they decided to do away with the life of the deceased and for which, A3 had given a sum of Rs.1000/- to A1 for getting poison. A1 bought the poison-powder from Bangalore and kept the same in his house. On the fateful day, i.e. 09.08.2006, A2 gave brandi to the said Srinivasan at Guntur Village, that was already mixed with poison-powder by A1 in a 7 up bottle and that was given to the said Srinivasan to drink. After consuming the brandi mixed with poison, the deceased Srinivasan fell down unconscious. By utilizing the said situation, A1 removed his shirt and he pressed his nose and closed his mouth and caused his death. Thereafter, A1 took the body of the said Srinivasan in a TVS 50 XL Motor Cycle bearing No.29 R 9135 and dropped the same at the house of the deceased.

[b] It is seen that PW1, Kannayiram, is the elder brother of the deceased Srinivasan. The said Srinivasan had two daughters and one son. PW3, Nanthini, daughter of the deceased Srinivsan, informed PW1 that her father was lying in his bed and in his face and the other parts of the body injuries were found. Immediately, PW1 went to the house of Srinivasan and saw the dead body of Srinivsan lying in the bed, thereafter, he went to the Police Station and lodged the complaint.

[c] Based on the complaint, P.W.13-Sub Inspector of Police registered the case in Crime No.143/2006 for the offence punishable u/s.302 and prepared FIR under Ex.P19. Since the Inspector of Police, Maharajakadai, was on leave, PW15, Inspector of Police took up the investigation in Cr.No.143 of 2006 and rushed to the place of occurrence, prepared Observation Mahazar under Ex.24 and also rough sketch under Ex.23, in the presence of witnesses Munusamy and Selvam and he seized M.O.3 - mat in the presence of the same witnesses. He prepared an inquest report under Ex.24 in the presence of Panchayatd0ars and thereafter, he sent the dead body for postmortem to Government Hospital, Krishnagiri through the Head Constable Rathinavelu, with requisition letter. PW14, Dr.Dinesh who conducted autopsy on the body of the deceased on 10.08.2006, gave his opinion that the death could have caused due to alcoholic intoxication and Ex.P21 is the postmortem certificate issued by him. On 11.08.2006 at about 11.30 a.m., PW15 arrested the A1 and A2. Based on the confession statement given by A2 in the presence of



witnesses Musamy and Selvam, he seized M.O.2-Motor Cycle under Ex.P26 and seized M.O.9-shirt from A1 under Ex.P27 in the presence of the same witnesses and seized Empty liquor bottle M.O.7 and an empty plastic tumbler, M.O.8. On 11.8.2006 at about 11.30, he arrested A3 and he sent all the accused to the Court with a Female Sub- Inspector. PW15 sent the seized articles to the Judicial Magistrate under Form-95, for chemical examination under Ex.P31-Form 91. Thereafter, PW16 who joined duty, took up the case from PW15 for further investigation. PW16 completed his investigation and laid charge sheet against the accused under Section 302 r/w.109 and 120(b) IPC.

[d] The Trial court, in order to bring home the guilt of the accused, examined P.Ws.1 to 16, marked Exs.P.1 to 31 and also the material objects, M.Os.1 to 9 and on the defence side, DW1 was examined.

4. When the accused were questioned u/s.313 Cr.P.C., in respect of the incriminating circumstances appearing against them based on the evidence adduced by the prosecution, the accused denied each and every circumstances as contrary to the facts and stated that they have been falsely implicated in the case.

5. Upon consideration of the oral and documentary evidence, the Trial Court acquitted A2 for the offences u/s. 120 (b) and 302 r/w.109 IPC, however, convicted the appellants / accused 1 and 3 as stated supra, aggrieved by which, the present appeal has been preferred.

6. Mr.M.G.Udhayashankar, learned counsel appearing for the appellants, while assailing the impugned Judgment of conviction and sentence would put forth the following contentions, in support of his arguments :

(a) As per the prosecution case, P.W.5, who is the neighbour of the deceased had seen A1 who came by TVS 50 XL marked as M02 with the deceased and saw that A1 dragged the deceased inside the house of the deceased and thereafter, he dropped the body and closed the door outside, then went away with the vehicle, however, he turned hostile and did not support the prosecution case.

(b) PW6-owner of a fancy store had



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also turned hostile. During investigation, he stated that A1 came to his shop and purchased two bottles of 7 UP and also got a opener. But the alleged 7 UP bottles were not seized and marked.

(c) PW7 is the sister's son of the deceased. He deposed that on 06.10.2006, A3 came to the village namely Puliganga village. On 07.08.2006, A2 also came over there and both conspired in the bus stand to done away with A3's husband. A3 gave Rs.1000/- to A1 for purchasing poison. He told the same to his mother, however, his mother asked not to reveal the same to any one. P.W.7 was examined by P.W.15 on 11.08.2006.

(d) P.W.8 is Mahazar witness, who attested the alleged confession statement marked as Ex.P.27 and also seizure mahazar Ex.P.3 under which No.1-mat was seized and mahazar Ex.P.4 under which No.4 TVS 50 XL was seized, however, the concerned witnesses turned hostile and did not support the prosecution case.

7. Learned counsel for the appellant contended that the oral evidence is not corroborated by medical evidence. PW14-doctor who conducted the autopsy and issued postmortem Certificate marked as Ex.P21 has accepted in the cross examination that the injuries sustained by the deceased could have been possible by falling down on a mud surface. There is no direct eye witness to connect the appellants / A1 and A3 and it is submitted that the case is only based on circumstantial evidence, however, the chain of circumstance alleged by the prosecution is not completed by the evidence, to point out the guilt of the accused beyond reasonable doubt.

8. Heard Mr.V.M.R.Rajentren, learned Additional Public Prosecutor appearing for the State, brought the entire materials available on record including the impugned judgment of conviction and sentence and according to him, the prosecution has established the guilt against the appellants.

9. It is relevant to refer to the medical evidence in this case. Ex.P12, Hyoid Bone Report reveals that the Hyoid bone was intact and there was no soft tissue contusion found. Ex.P14



is the Serological report and as per the report, intestine, liver and kidney were found with ethyl and not poison. Ex.P16-Report received from forensic department in respect of MO1 and MO9, shows that blood was detected in both of the objects, MO1 and MO9. Ex.P17 is the chemical analysis report received from the forensic lab. M.O.7-Liquor Bottle (Golgonda Brandy Bottle) and M.O.8, two plastic tumblers. The result is that two items were examined, however, poison was not detected. The defence examined Panchayat President as DW1 to substantiate that the deceased was given land by the Government to construct his own house and the deceased lived in that house, while he was alive. In order to probablise the defence case that the deceased was not given any share in his property by PW1 and PW2. It is argued by the learned counsel for the appellants that panchayat was held by the A1 in favour of the deceased, hence, animosity developed between PW1 and PW2 and A1 and the false case was foisted against them.

10. As per the prosecution case, PW5, neighbour of the deceased had seen A1, coming by TVS 50 XL, marked as MO2 with the deceased and he saw A1 dragged the deceased inside the house of the deceased, dropped the body there itself and went away with the vehicle. However he turned hostile and did not support the prosecution case. Similarly, P.W.6 turned hostile and the alleged 7 UP bottles were not marked, as argued by the learned counsel appearing for the appellants. As per the evidence of P.W.7, sister's son of the deceased, on 06.10.2006 A3 came to the Puliganga village, on 07.08.2006, A2 also came over there and both conspired at the bus stand to done away with A3's husband and for purchasing poison. A3 gave Rs.10,000/-. He told the same to his mother, however, his mother asked not to reveal the same to anyone. Had there been any such conspiracy, nothing would have prevented P.W.7 to disclose the same to others, even prior to the occurrence, so as to prevent the offence. Though the deceased is the maternal uncle of the said witness, his version is that his mother, who is the sister of the deceased had asked him not to reveal the said conspiracy to any one, which is self-contradictory and also not acceptable. As contended by the learned counsel appearing for the appellants, the said witness could have been examined only for the purpose of alleging conspiracy. The Mahazar witnesses and the witnesses for the alleged confession statement relating to recovery of material objects were also not supporting the prosecution case.

11. As per the report of the viscera, no poisonous substance was found. In the cross-examination, Doctor, P.W.14 has opined that the injuries found on the body of the deceased could have been possible by falling down on a mud surface. As the case is



solely based on circumstantial evidence, the prosecution could have established each link of the circumstances, so as to establish the guilt against the accused beyond all reasonable doubts.

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12. In the instant case, we are of the view that the medical evidence is also not supporting the prosecution case, which would go to the root of the matter and hence, we are of the considered view that the alleged guilt is not established by the prosecution beyond reasonable doubt against the appellants / accused.

13. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed by the Principal District and Sessions Court, Krishnagiri in S.C.No.1 of 2009 dated 13.12.2011 is set aside. The fine amount, if any paid already is ordered to be refunded to the appellants. The bail bond if any, executed by the appellants shall stand cancelled.

-s/d-  
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

kal / tsvn

To

1. The Judicial Magistrate Krishnagiri
- 2.-do- Thro The Chief Judicial Magistrate  
Krishnagiri
3. The Principal Sessions and District Judge,  
Krishnagiri.
4. The Inspector of Police,  
Maharaja Kadai Police Station,  
Guntoor Village,  
Krishnagiri District.



5. The Superintendent Central Prison  
Vellore

6. The Superintendent Special Prison for Women,  
Vellore

7. The District Collector Krishnagiri

8. The Director General of Police Chennai

9. The Public Prosecutor  
High Court of Madras, Chennai.

+1 cc to Mr.S.Shanthakumar Advocate sr.57344

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aa04/02/2016