

BAIL SLIP

The Accused 1 & 2/Appellants namely Nandhakumar, S/o.Gopala Krishnan in Crl.A.No.148 of 2014 and M.Selvaraj, S/o.Mani in Crl.A.No.174 of 2014 were directed to be released on bail as per Order dated 16.07.2014 and made in M.P.No.1 of 2014 in Crl.A.No.148 of 2014 and dated 01.09.2014 and made in M.P.No.1 of 2014 in Crl.A.No.174 of 2014 respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.148 and 174 of 2014

1. Nandhakumar ...Appellant in Crl.A.No.148/2014 / A-2
2. M.Selvaraj ...Appellant in Crl.A.No.174/2014 / A-1

Vs

State by, Inspector of Police,
Mallasamudram Police Station,
Namakkal District.
(Crime No.308/2011) ...Respondent in both Crl. Appeals

Common Prayer :- Criminal Appeals filed under Section 372 (2) of the Criminal Procedure Code against the judgment of the learned Principal Sessions Judge, Namakkal, in S.C.No.27 of 2012, dated 21.02.2014. सत्यमेव जयते

For Appellant in Crl.A.No.148 / 14 : Mr. J.Franklin
For Appellant in Crl.A.No.174 / 14 : Mr. N.Manokaran
For Respondent in both Crl.Appeals : Mr.M.Maharaja,
Addl.P.P.,

C O M M O N J U D G M E N T

(Judgement of the Court was delivered by S.Nagamuthu. J.,)

The appellants are accused 1 and 2 in S.C.No.27 of 2012 on the file of the learned Principal Sessions Judge, Namakkal. The trial court framed charges against the accused for the offence under Sections 364, 302, 201 read with 302 IPC. By judgment, dated 21.02.2014, the trial court convicted them, under all the three charges and sentenced them to undergo

Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo one year Simple Imprisonment for the offence under Section 302 IPC, to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment for the offence under Section 364 IPC, to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period of one month for the offence under Section 201 read with 302 IPC.

2. The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with these Criminal Appeals.

3. The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Mr. Vasu @ Thangaraj. P.W.2 and 3 are the mother and brother of the deceased, respectively. The deceased was working under P.W.4 who was a contractor by profession. P.Ws.4, 5, 6 and 10 were co-workers of the deceased. The first accused was an employee under P.W.11. P.W.11 was running a textile business under the name and style of M/s. Jeeva Textiles at Tiruchengode. P.W.4 had entered into contract with P.W.11 to do some woodwork in the shop. P.W.4 had sent the deceased and other workers under him for the said work. The said work went on for four months. During the said period, the deceased became a friend of the first accused. It appears that there were also some money transactions between them. It is also stated that on one occasion, the deceased told that the first accused was not in talking terms with him, on account of some money dispute. This is stated to be the motive for the occurrence.

4. It is further alleged that the first accused and the deceased were indulging in homo-sex. The first accused, later on, had fallen in love with a girl. Because of the same, he avoided having homo-sex with the deceased. This infuriated the deceased. It is alleged that on 09.09.2011, the deceased spoke to the first accused through cell phone and wanted him to come and meet to have homo-sex. The first accused refused. The deceased told him that he would disclose the homosexual affair between him and the first accused to others. The first accused got endangered over the same. This is stated to be the immediate motive for the occurrence.

5. It is further alleged that on 09.09.2011, the first accused, in the company of the second accused, by means of deception, spoke to the deceased over phone, from Tiruchengode Bus-stand, from a telephone booth, to come and meet them. On his arrival, they took the accused in a motor cycle to Semmampalayam Village near Perumalmalai, Uppukaradu, Namakkal District.

6. The first accused with an intention to kill the deceased dropped a huge stone on the head of the deceased. The second accused aided him by catching hold the deceased. The deceased died on the spot. They dragged the body to a different place, abandoned the same and left the place of occurrence. The occurrence was not noticed by anyone.

7. P.W.1, the Village Administrative Officer of Dharumapuram Village, was informed by someone that the dead body of the deceased was lying near Mallasamudram, Anjeneyar Temple. He went to the place of occurrence at 08.00 am on 10.09.2011 and found the body with the injuries. The motor cycle, tiffen box, cell phone and other materials of the deceased were also found lying in the site. A bottle containing liquor was also found. Immediately, he went to Mallasamudram Police Station and made a complaint at 09.00 am on 10.09.2011. Ex.P-1 is the complaint and Ex.P-19 is the First Information Report. He forwarded both the documents to the Court, which was received by the learned Magistrate at 02.40 pm on 10.09.2011.

8. The case was taken up for investigation by P.W.23. He went to the place of occurrence and prepared Observation Mahazar and Rough Sketch in the presence of P.W.13 and other witnesses. He recovered M.Os.2, 4, 7 to 10 from the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

9. P.W.8, Dr.Senthilkumar, conducted autopsy on the body of the deceased on 10.09.2011 at 03.45 pm. He found the following injuries on the dead body of the deceased:-

"External Injuries: 1. Scalp (a) 3x1x1/2 cms Lacerated wound with 5x4 cms sized contusion seen on right temporal region; (b) 3x1x1/2 cms lacerated wound with bone deep left temporal region; (c) 2x1x1/2 cms lacerated wound occipital region bone deep; RT eye: contused swelling seen over the right eyelid and closed; left eye-opened.

Internal Injuries: RT. Temporal Muscle congested and with clotted blood. Brain: RT EDH, SDH Present.

Skull: 7-10 cms Long fracture seen extending from RT temporal bone to left temporal bone. Base of the skull fractured along middle cranial fossa 3 cm long fracture seen on Ant. Cranial Fossa RT Side.

Neck: All neck structures-normal. Hyoid Bone-Intact.

Thorax : Lungs C/s. Pale. Heart: Normal, Ventricle and Coronary - Patent.

Abdomen: Stomach: 100 ML of semi Digest
Food. Liver and Spleen & Kidney C/s Pale.
Bladder-Empty Genetalia: No Injuries.
Pelvis and spinal column: Intact."

10. P.W.8 gave opinion that the death was due to shock and hamorrhage caused on account of the injuries found on the body of the deceased. He further opined that the injury would have been caused by dropping a stone on his head. Ex.P-6 is the post-mortem certificate and Ex.P-7 is the final opinion of the Doctor, P.W.8.

11. On 14.09.2011 at 11.00 am, P.W.23 arrested the accused 1 and 2 in the presence of P.W.20 and another witnesses. On such arrest, the first accused gave a voluntary confession in which he disclosed the place, where he had hidden his cell phone. In pursuance of the same, he took the police and witnesses to the place of hideout and produced the cell phone, having Sim card with No.9003672692. P.W.23 recovered the same under a mahazar. Then the accused produced Hero Honda Splender Plus (two-wheeler) bearing Registration No.TN34-C-9825. P.W.23 had recovered the same also under a mahazar. Then the accused produced a black colour jeans pant and Full Hand Shirt with blood stains. P.W.23 recovered the same under a mahazar.

12. The second accused also gave a voluntary confession in which he had disclosed that somewhere he had hidden a blue colour track shoe and a tee-shirt. On returning to the police station, P.W.23 forwarded the accused to the Court for judicial remand. At that time, the second accused was found with injuries. Therefore, he forwarded him to the hospital for treatment. P.W.9, Doctor, examined him and found minor injuries on him. On completing the investigation, P.W.23 laid the charge sheet against the accused.

13. Based on the above materials, the trial court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 23 witnesses were examined and 24 documents were exhibited, besides marking 18 Material Objects.

14. Out of the said witnesses, P.W.1, the Village Administrative Officer, has stated that on receiving information, he went to the place of occurrence on 10.09.2011 at 08.00 am, found the dead body and made complaint to the police. He has further stated about the identification of the Material Objects, preparation of observation mahazar and rough sketch.

15. P.Ws.2 and 3, mother and brother, respectively, of the deceased, have stated that the accused lastly went for

work on 09.09.2011 in the morning, but he did not return in that evening. They have further stated that on 10.09.2011 at about 08.00 am they found the dead body of the deceased at the place of occurrence.

16. P.W.4 is the employer of the deceased. He has stated about the relationship between the first accused and the deceased. P.Ws.5 and 6 have also spoken about the same. P.W.7, the cousin of the deceased, has not stated anything incriminating against the accused. P.W.8, the Doctor, who conducted autopsy on the dead body of the deceased, gave an opinion on the cause of death of the deceased. P.W.9, Doctor, has given an opinion that he examined the second accused and found some minor injuries on him.

17. P.W.10 yet another co-worker has also stated about the relationship between the first accused and the deceased. P.W.11 is the employer of the first accused, but has stated that the deceased has come to his shop for work and during that time, the first accused has become friendly with the deceased. P.W.12 has turned hostile and she has not supported the case of the prosecution in any manner. P.Ws.13 and 14, the village Administrative Officer and Mahazar Witness, have spoken about the preparation of observation mahazar and the rough sketch, in the place of occurrence and the recovery of material objects from the place of occurrence. P.Ws.15 to 18 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.19 is the neighbouring land owner, having land near the place of occurrence and he does not say anything incriminating against the accused.

18. P.W.20, the Village Administrative Officer, has spoken about the preparation of observation mahazar and the rough sketch, in the place of occurrence and the recovery of material objects from the place of occurrence. P.W.21, the Sub-Inspector of Police, has stated that he took the dead body for post-mortem. P.W.22 has spoken about the chemical analysis conducted on the material objects sent to him. He has stated that he found blood stains in all the material objects. P.W.23 has spoken about the registration of the case and investigation done by him.

19. When the above materials were put to the accused, they denied the same as false. However, no witness was examined and no document was marked on their side. The defence was total denial.

20. Having considered all the above, the trial Court convicted both the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants are before this Court with these Criminal Appeals.

21. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

22. The learned counsel for the appellants would submit that this is a case based on no evidence in favour of the prosecution incriminating the accused, but still the trial court has convicted the accused on the basis of mere surmise and conjecture. He would further submit that there is absolutely no direct evidence available on record, convicting the accused to the crime.

23. The learned Additional Public Prosecutor appearing for the respondents is not in a position to point out any incriminating evidence against the accused.

24. We have considered the above said submissions made by the learned counsel for the appellants as well as the respondent.

25. There is no denial of the fact that the deceased left for work on 09.09.2011 in the morning, but did not return back in the evening. The dead body was found on 10.09.2011 at 08.00 am. There were injuries on the body and according to the medical evidence, the death was due to shock and haemorrhage caused by injuries. Thus, the prosecution has succeeded in establishing that the death of the deceased had been caused by violence, sometime between 09.00 am on 09.09.2011 and 08.00 am on 10.09.2011.

26. Now the question is, who caused the death of the deceased.

27. In order to prove this fact, there is neither any oral evidence nor is there any circumstantial evidence. The prosecution has established only one thing, that is, the first accused and the deceased were friendly for sometime and thereafter there was love lost between them. Excepting that, there is no other evidence against the accused to clinchingly prove the charges. A perusal of the judgment of the trial court would go to show that the trial court has acted on the confession statement given by the accused to the police, in ignorance of the legal position, laid down by the Privy Council in the case of Pulukuri Kottaya v. King-Emperor, reported in AIR 1947 PC 67.

28. It needs no re-emphasis that a confession made before the Police by the accused while in custody is irrelevant except that part of the statement which distinctly leads to the discovery of a relevant fact as provided under Section 27 of the Indian Evidence Act. Here is a case, where,

unfortunately the trial court has relied on the confession of the accused, de hors the above said legal position as laid down in the case of Pulukuri Kottaya, referred to supra, which has been recognised by the Hon 'ble Supreme Court.

29. Thus, in our considered view, the trial court was not right in convicting the accused. We find that absolutely there is no evidence available on record against the accused and therefore, we are inclined to acquit both the accused.

30. In the result, these Criminal Appeals are allowed and the conviction and sentence imposed on the appellants / A-1 and A-2 by the learned Principal Sessions Judge, Namakkal, in S.C.No.27 of 2012, by the judgment, dated 21.02.2014, are hereby set-aside. The appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amounts, if any, paid by the appellants, shall be refunded to them. Bail bonds, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Judicial Magistrate I,
Madurai.
2. -Do- Through The Chief Judicial Magistrate,
Madurai.
3. The Judicial Magistrate No.I,
Tiruchirapalli.
4. -Do- Through The Chief Judicial Magistrate,
Tiruchirapalli.
5. The Judicial Magistrate,
Tiruchengode.
6. Do- Through The Chief Judicial Magistrate,
Namakkal.
7. The Principal Sessions Judge,
Namakkal.

8. The Inspector of Police,
Mallasamudiram Police Station,
Namakkal.

9. The Superintendent,
Central Prison, Salem.

10. The District Collector,
Salem District.

11. The Director General of Police,
Mylapore, Chennai 04.

12. The Public Prosecutor,
High Court, Madras.

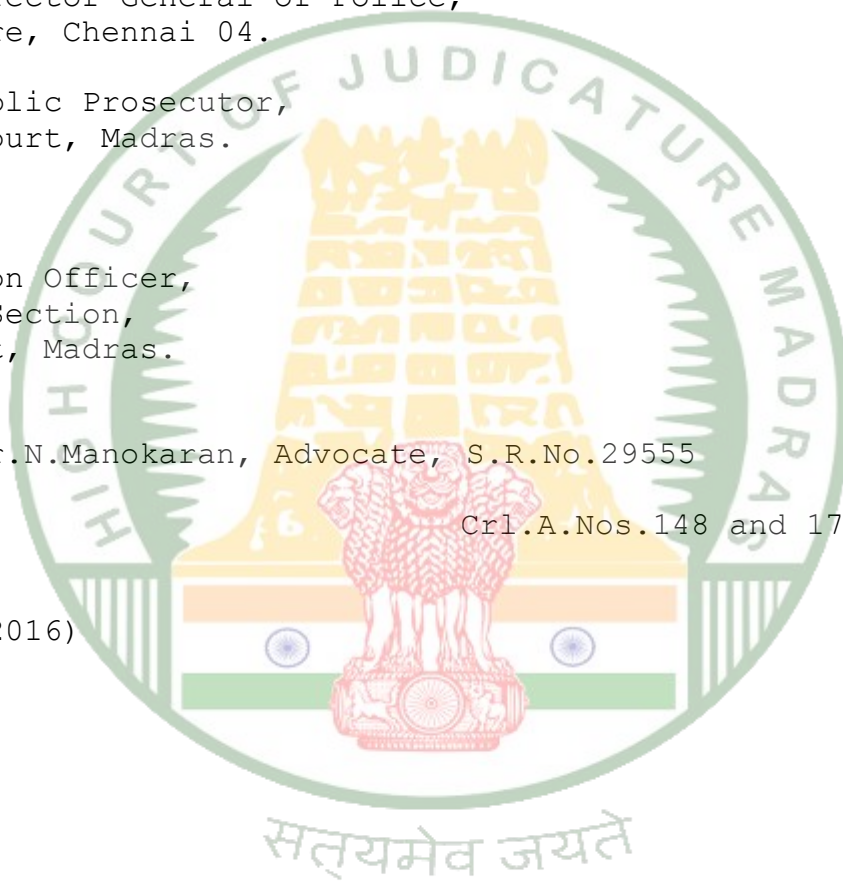
Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.29555

Cr1.A.Nos.148 and 174 of 2014

RSY(CO)
CA(11/07/2016)



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