

BAIL SLIP

The Appellants / Accused Viz., 1)Manikandan @ Kandai, S/o.Parasuraman and 2)Sanjai @ Sanjai Gandhi, S/o.Kaliyamurthy were directed to released on bail as per Order of this Court in CrI.M.P.No.2 of 2015 in CrI.A.No.212 of 2014 dated 04.06.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.212 of 2014

1.Manikandan @ Kendai
2.Sanjai @ Sanjai Gandhi ... Appellants

Vs

State represented by
Inspector of Police
Puduchathiram Police Station
Cuddalore District. ... Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge (full in -charge), Chidambaram, in S.C.No.40 of 2011 on 04.04.2014.

For Appellant : Mr.A.Arasu Ganesan

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

A1 and A2 in S.C.No.40 of 2011 on the file of the learned II Additional District and Sessions Judge, Chidambaram, are the appellants herein. They stood charged for an offence under Section 302 r/w. 34 IPC. The trial Court found them guilty of the said offence and sentenced them to undergo life imprisonment and also to pay a fine of Rs.1,000/- each, in default to undergo two years rigorous imprisonment. Challenging the above conviction and sentence, the present Appeal has been filed.

2. The prosecution case in brief, is as follows:-

(i) The deceased in this case was one Prabhu. The deceased and the accused were friends. Earlier the deceased received money from A2 for carrying out fishing operation in A2 fish pond, but he failed to do it. Hence, on 12.03.2010 at about 11 a.m, both the accused went to the house of the deceased and took him to the fish pond and compelled him to catch fishes. When the deceased refused, the accused beat him and pushed him inside the pond and the deceased died due to asphyxia.

(ii) PW.2 is brother's son of the deceased. He was a school going boy. He saw the occurrence. When he shouted, the accused threatened him, hence, he ran away, and he raised alarm, then the villagers came there and fished out the body of the deceased from the fish pond.

(iii) PW.1 is the brother of the deceased. He came to his house at about 1.00 p.m and after he came to know about the occurrence, he lodged a complaint before the respondent police.

(iv) PW.14 - Sub-Inspector of Police (in-charge) in the respondent police station registered a case in Crime No.33 of 2010 for the offence under Section 302 IPC, against the accused and prepared First Information Report Ex.P9 and forwarded the First Information Report to the Judicial Magistrate Court and copies of the same to the higher officials for further investigation.

(v) PW.16 - Inspector of Police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, there he prepared Observation Mahazar and also rough sketch (Ex.P10). PW.16 also seized the fishing net (M.O.1) and conducted inquest on the dead body in the presence of panchayatdars and prepared inquest report (Ex.P11), sent the body for postmortem to the Government Hospital, Cuddalore, through PW.13 - Head Constable. On 13.03.2010 at about 16.30 p.m, PW.16 arrested the accused and on such arrest, the accused voluntarily gave confession, and then PW.16 sent the accused to the judicial custody.

(vi) PW.12 - Assistant Surgeon in the Government Hospital, Cuddalore, conducted postmortem on the dead body and found the following injuries:-

"No evidence of external injuries seen anywhere in the body. RM present in all four limbs, neural appearance - do tally - time of death - 23 hours prior to postmortem. Eyelids - clear, nose - bloodstained with discharge from both nostrils. Mouth & lips - closed. Tongue - inside the mouth. Teeth -

intact. Ear - no discharge. Thorax - no #.
Abdomen - distended. Scrotum - intact.
Extremities - empty.

Internal examination :

Abdomen - distended. Peritoneal Cavity
- normal, Ribs - No #. Heart - congested.
Limbs - edematous . Indentation of ribs seen
over lung surface. Cut section - edematous
and froth present. Mud particles seen in
trachea and bronchides. Hyoid bone - intact.
Stomach - intact, food particles present.
Liver, spleen, kidney - congested.
Intestine, bladder - congested. Skull -
intact, membranes - intact. Brain -
congested. Spinal cord - intact."

Ex.P6 is the postmortem report. PW.12 - Assistant Surgeon was of the opinion that the deceased appeared to have died of asphyxia due to drowning. Then PW.16 sent the visceral parts of the body for chemical examination and recorded the statement of other witnesses and handed over the investigation to PW.15.

(vii) PW.15 took up the investigation and examined some witnesses and handed over the investigation to PW.16.

(viii) PW.16 continued the investigation and recorded the statement of postmortem Doctor and other witnesses. After receipt of visceral report, PW.16 filed charge sheet against the appellants/accused.

3. Considering the above materials, the trial Court has framed charges against the appellants/accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 16 witnesses and marked 11 documents and one material object.

4. Out of the witnesses examined, PW.1 is the brother of the deceased. According to him, he came to his house at about 1.00 p.m and saw the dead body and thereafter, he lodged the complaint. PW.2 is the son of PW.1. He was a child witness. According to him, he was studying IX Std., in the Government School and on 02.03.2010, he was sent out of the school as he was not wearing school uniform, therefore, he went back to the house; at that time, the accused went to the fish pond with fishing net from the deceased's house; he also followed them and he saw both the accused beat the deceased and pushed down him in the pond and pushed his head in the water, and soon the deceased died; the accused also threatened him, hence, he ran away. P.Ws.4 and 5 have turned hostile. PW.5 is the villager. He along with other villagers fished out the body of the deceased from the pond. PW.6 also is a villager. He also along with

PW.5 searched the body in the fish pond. PW.7 is the wife of the deceased. According to her, on 12.03.2010 at about 7.30 p.m, both the accused asked the deceased to come for fishing and thereafter, at about 12.00 p.m, they took the fishing net from her; at that time, she informed them that the deceased has gone for some other work; then, they returned the fishing net and told her to excuse them; after some time, PW.2 came and informed her that both the accused drowned the deceased in the pond; hence, she rushed to the fishing pond and the villagers took the body out from the pond. PW.8 has also searched the body of the deceased in the fish pond. PW.9 is a witness to the Observation Mahazar (Ex.P2). PW.10 is also a witness to the Observation Mahazar. PW.11 has turned hostile. PW.12 - Assistant Surgeon, conducted postmortem on the dead body and issued postmortem certificate and gave opinion on the cause of death. PW.13 - Head Constable accompanying the body for postmortem and identified the body at the time of postmortem. PW.14, in-charge Sub-Inspector of Police in the respondent police, registered the complaint and sent the First Information Report to the Court and copies to the higher officials. PW.15 is the Inspector of Police, who conducted investigation. PW.16 - Inspector of Police, investigated the case, arrested the accused and recovered material object and recorded the statement of witnesses including the postmortem Doctor and after completion of investigation, filed charge sheet against the appellants.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused did not examine any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced them as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. PW.2 is the eye witness to the occurrence. He is the brother's son of the deceased. According to him, he was studying IX Std., at Mullipallam Government High School; on 02.03.2010, he was sent out of the school for not wearing the school uniform, so he came back to the house and playing in his house; at that time, both the accused took the fishing net from PW.7, the wife of the deceased to the fish pond and he followed them; and saw both the accused beat the deceased and pushed him in the pond and kept his head inside the pond; immediately, he

shouted and the accused threatened him and chased him away; when he shouted that his uncle was murdered, the villagers came and they have taken the body and on seeing them, the accused ran away. PW.2 is the child witness. The trial Court, before recording the evidence, did not follow the procedures contemplated under Section 118 of the Indian Evidence Act, and without ascertaining, whether he understood the question, recorded the evidence. According to PW.7, wife of the deceased, only the accused took the fishing net from her at about 12.00 p.m, and at that time, the deceased was not in the house and she informed them that he has gone for some other employment. PW.7 did not say that the deceased accompanied the accused to the fish pond. Apart from that, there is no evidence available on record to show that the accused took the deceased to fish pond.

9. Even though the occurrence said to have taken place at about 10.00 a.m, the complaint was given only at about 6.00 p.m with a long delay of 8 hours and the First Information Report was also reached the Court only at about 9.30 p.m. The delay in lodging the complaint was not explained by the prosecution. The delay in filing the complaint also raised considerable doubt.

10. So far as other witnesses are concerned, all of them were only searched the body in the fish pond and they found out the body in the fish pond. The Doctor, who conducted postmortem, also gave opinion that the death was due to asphyxia due to drowning, and he did not find any injuries on the dead body. The possibility of the deceased fell down in the fish pond and died due to drowning also cannot be ruled out. In such circumstances, We are of the considered opinion that it is highly unsafe to convict the accused, based on the uncorroborated testimony of child witness. Hence, we are of the considered view that the prosecution failed to prove the case beyond any reasonable doubt and the accused are entitled for acquittal.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant on 04.04.2014 in S.C.No.40 of 2011 on the file of the learned II Additional District and Sessions Judge, Chidambaram, are set aside. Both the appellants are acquitted and fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge,
Cuddalore.
- 2.The II Additional District and Sessions Judge
(full in -charge),
Chidambaram.
- 3.The District Collector,
Cuddalore District.
- 4.The Director General of Police,
Mylapore, Chennai.
- 5.The District Munsif Cum Judicial Magistrate,
Port Novo.
- 6.The Chief Judicial Magistrate,
Cuddalore.
- 7.The Superintendent,
Central Prison,
Cuddalore.
- 8.The Inspector of Police
Puduchathiram Police Station
Cuddalore District.
- 9.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.A.Arasu Ganesan, Advocate, S.R.No.43543

सत्यमेव जयते

Cr1.A.No.212 of 2014

CP(CO)
CA(27/02/2017)

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