

Bail Slip

The Appellant/Accused Viz., Vilvanathan S/O Sambasivam was directed to be released on bail as per order of Court dated 24.4.2015 made in M.P.No.1 of 2015 in CrI Appeal No.265/14 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.265 of 2014

Vilvanathan .. Appellant

Vs

State by:

Inspector of Police,
Muthunagar Police Station,
Cuddalore.

(Crime No.558/2011)

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 07.04.2014 in S.C.No.96 of 2012 on the file of the learned District Mahalir Sessions Judge, Cuddalore.

For Appellant : Mr.R.Rajasekaran

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

JUDGEMENT

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

The appellant is the sole accused in S.C.No.96 of 2012 on the file of the learned District Mahalir Sessions Judge, Cuddalore. He stood charged for offence under Section 302 I.P.C. By judgment dated 07.04.2014, the trial Court convicted the accused/appellant for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine

of Rs.1,000/-, in default to undergo rigorous imprisonment for two years. Challenging the said conviction and sentence, the appellant is before this Court, with this Criminal Appeal.

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

The deceased in this case was one Mrs.Jothi. Twelve years prior to the occurrence, she was given in marriage to one Mr.Srinivasan. Out of the said wedlock, a female child was born to them. But shortly thereafter, there arose a matrimonial dispute between them. Therefore, her husband sent her back to her parental home. The efforts taken by P.W.1, the brother of the deceased and other relatives to effect re-union turned futile. From then onwards, the deceased was living alone and was going out for coolie work every day. In due course, she developed intimacy with one Mr.Arulraj. Then she started living with him as his wife. Out of the said living in relationship, a male child was born to them. Some time after the birth of the child, Mr.Arulraj, under the guise of earning went to Kerala but he never returned. Thereafter, the deceased joined a hotel for cleaning work. Then, she developed intimacy with the accused. The accused set up a house for her where, she was residing along with her daughter P.W.3. The accused used to visit her frequently. The fact that she was living with the accused in living in relationship was known to all.

3.While so, the accused had a doubt that the deceased had developed illegal intimacy with someone else since, the deceased stopped talking to him. The efforts taken by the accused to persuade her and to continue to have the illicit relationship with him did not fructify. On 11.09.2011, in the evening, it is alleged that the accused had gone to the house of the deceased, with a view to sort out the issues between him and the deceased and to persuade her to continue to have illicit relationship with him. The deceased did not agree for the same. This infuriated the accused. By about 8.00 pm, at the end of the above attempt, it is alleged that, with a nylon rope, he constricted her neck and killed her. Leaving the dead body inside the house, according to the case of the prosecution, he fled away from the scene of occurrence. It is stated that P.W.3, the daughter of the deceased witnessed the entire occurrence.

4.P.W.1, the brother of the deceased has stated that he went to the house of the deceased on 11.09.2011 by about 8.00 to 8.30 pm. He found the deceased sitting by the side of the wall and her tongue was protruding out. She was dead. He cried for help. The neighbours came and found that the deceased was already no more. P.W.1 informed his parents about the occurrence. Thereafter, P.W.1 went to Cuddalore Muthunagar Police Station, and made a complaint at 9.30 pm on 11.09.2011.

In that complaint, P.W.1 had stated that there was only suspicion in the death of the deceased. He did not make any allegation against the accused. Based on the same, P.W.9, the then Head Constable registered a case in Crime No.558/2011 for offence under Section 174(3) Cr.P.C. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 2.30 pm on 12.09.2011.

5.P.W.10, took up the case for investigation. He proceeded to the place of occurrence at 10.30 pm on 11.09.2009, and prepared an observation mahazar and a rough sketch in the presence of witnesses. Then he conducted inquest on the body of the deceased and forwarded the same for post mortem. P.W.8 - Dr.Latha who conducted autopsy on the body of the deceased and found the following injuries:-

- "1.Ligature mark 20 cm x 3cm seen in front of neck extending right side below the right ear whole to the left side back of neck;
- 2.Abrasion 3 x 0.5 cm on the breast;
- 3.Tongue bitten and part of tongue seen outside
- 4.Lower lip of mouth diffuse contusion
- 5.Opening both eyes, chemosis seen both eyes
- 6.Contusion occipital region of scalp 1.5 x 1.5cm."

Ex.P.9 is the post mortem certificate. P.W.8 gave opinion that the death of the deceased was due to asphyxia due to strangulation. She further gave opinion that the deceased would have been strangled by means of a ligature.

6.During the course of investigation, on 14.11.2009, at 9.00 pm, P.W.11, the successor of P.W.10, who took up the case for investigation, arrested the accused in the presence of P.W.6 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden a nylon rope, TVS motor cycle and a Nokia cell phone. In pursuance of the same, he took the Police to the place of hide out and produced M.Os.1 to 3. P.W.11 recovered the same under mahazar. Then, P.W.12 took up the case for further investigation and on completing the investigation, he laid charge sheet against the accused/appellant.

7.Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C. The accused/appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 13 documents were exhibited, besides 3 Material Objects.

8. Out of the said witnesses, P.W.1, the brother of the deceased has spoken about the relationship between the accused and the deceased. He has further stated that on 11.09.2011, when he went to the house of the deceased at 8.30 pm, he found the deceased dead. He has spoken about the complaint made by him to the Police. He has further stated that after the complaint was made, when P.W.1 enquired with P.W.3 she told him that the accused came to the house at 4.00 pm on 11.09.2011 and killed the deceased. P.W.2, is the mother of the deceased. She has stated about the relationship between the accused and the deceased and the death of the deceased. She has not stated anything incriminating against the accused. P.W.3, daughter of the deceased, a child witness has stated about the relationship between the accused and the deceased. She has further stated that on the day of occurrence at 4.00 pm, the accused came to the house of the deceased, had a wordy quarrel with the deceased and at the end of the quarrel, he strangled her with a nylon rope and killed her. P.W.3 did not disclose the same to anybody. P.W.4 is a neighbour. He has spoken only on hearsay information and he has not stated anything incriminating against the accused. P.W.5, has also stated only on the hearsay information. P.W.6 has spoken about the arrest of the accused and the consequential recovery of M.Os.1 to 3 on the disclosure statement made by the accused. P.W.7 has spoken about the preparation of observation mahazar and rough sketch. P.W.8 has spoken about the post mortem conducted and her final opinion regarding the cause of death. P.W.9 has spoken about the registration of the complaint. P.Ws.10 to 12 have spoken about the investigation done and the final report filed in this case.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, one Mr. Arumugasamy was examined as D.W.1. D.W.1 has stated that on 12.09.2011 at 6.00 pm, Police came to his house, in search of the accused and at that time, they seized a TVS motor cycle from his house. He has further stated that on 13.09.2001, at about 6.00 pm, he took the accused to the Police Station and handed over him to the Police. Thus, according to him, the so-called arrest of the accused and the consequential recoveries of M.Os.1 to 3 are not true.

10. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

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

12. In this case, the prosecution mainly relies on the evidence of P.W.3. P.W.3, the daughter of the deceased has stated that at 4.00 pm, on the day of occurrence, the accused came to the house of the deceased and developed quarrel with the deceased and killed her. But, P.W.3 did not disclose about the occurrence to anybody. P.W.1, the brother of the deceased had stated that he casually visited the house of the deceased at 8.30 pm on 11.09.2011 and found the deceased lying dead. He has not stated that P.W.3 told him about the above occurrence. At 9.30 pm on 11.09.2011, P.W.1 made the complaint to the Police. In that also, he has not mentioned anything about the accused. Had it been true that P.W.3 had seen the occurrence, she would have certainly told the same to P.W.1, in which case, P.W.1 would have mentioned the same in Ex.P.1 (complaint). According to P.W.1, after lodging the complaint, when he returned to the house, P.W.3 told about the occurrence to him. This is highly unbelievable. This would not have been the natural conduct of P.W.3, had it been true that she witnessed the entire occurrence. Thus, we find it difficult to believe the evidence of P.W.3.

13. The next comes, the arrest of the accused on 14.09.2011 at 9.00 am. D.W.1 has stated that the accused was handed over by him to the Police on 13.09.2011 at 6.00 pm itself. Assuming that what is stated by D.W.1 cannot be believed even then, it is difficult to believe the recoveries of M.Os.1 to 3 on the disclosure statement made by the accused on 14.11.2011. P.Ws.1 to 3 have stated that on the day of occurrence, when the Police arrived at the scene of occurrence, they interrogated the witnesses and then took away two cellphones used by the deceased and one such cell phone is M.O.2. Therefore, the story that the cellphones were recovered on the disclosure statement made by the accused on 14.11.2011, cannot be believed. If this part of prosecution case is also rejected, there is no other evidence to connect the accused with the crime. Absolutely there is no evidence to prove the alleged crime of the accused. But, the trial Court has convicted the accused merely on surmise which is illegal. Therefore, we are forced to acquit the accused.

14. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the accused/appellant by the learned District Mahalir Sessions Judge, Cuddalore, in S.C.No.96 of 2012, dated 07.04.2014, is set aside and the accused/appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the accused/appellant, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

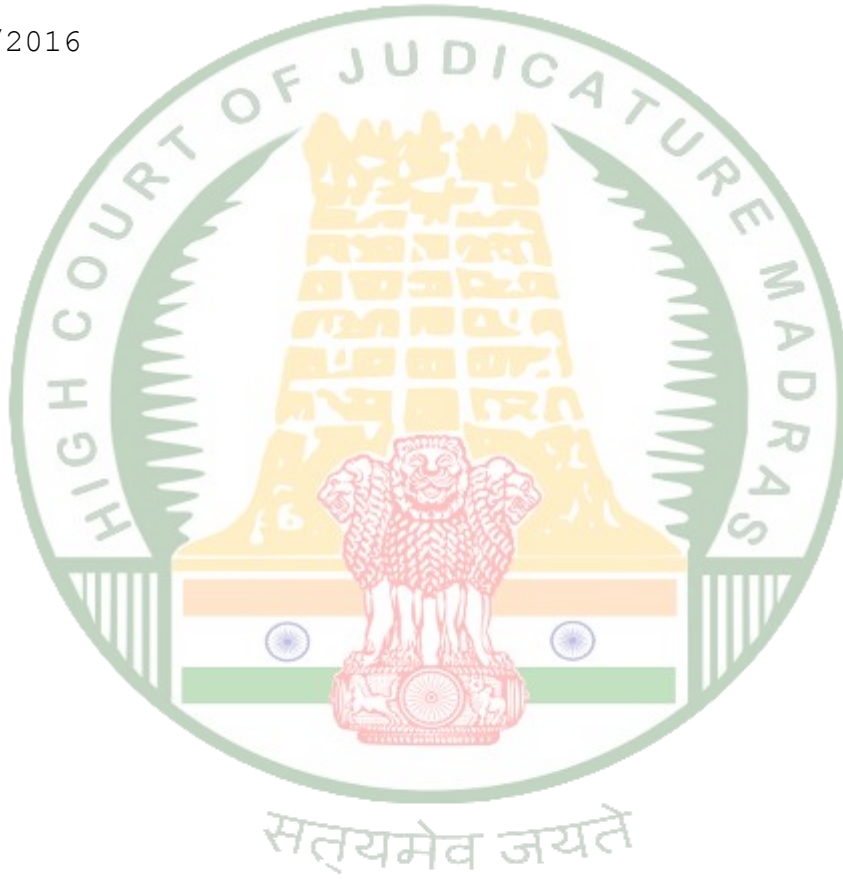
1. The Sessions Judge,
Mahila Court,
Cuddalore.
2. The Judicial Magistrate No.II,
Cuddalore.
3. The Chief Judicial Magistrate,
Cuddalore.
4. The Superintendent,
Central Prison,
Cuddalore.
5. The Inspector of Police,
Muthunagar Police Station,
Cuddalore.
6. The District Collector,
Cuddalore.
7. The Director General of Police,
Chennai-4.
8. The Public Prosecutor,
High Court, Madras.

Copy to:

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

Crl.A.No.265 of 2014

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srg 20/07/2016



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