

Bail Slip

That the Appellant herein/Accused namely Rajathi @ Kandasamy was directed to be released on bail as per the order of this Court dated 08/06/2015 and made in M.P.No.1 of 2015 in CrI. A No.267 of 2014 etc as stated within.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.06.2016

CORAM:

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

CrI.A.No.267 of 2014

Rajathi @ Kandasamy ... Appellant/Accused

vs.

State,by

The Inspector of Police,
Gobichettipalayam Police Station,
Gobichettipalayam,
Erode District.

Crime No.688 of 2011

... Respondent /Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 10.07.2012 passed by the learned Additional District and Sessions Judge, Gobichettipalayam, in S.C.No.51 of 2012.

For Appellant : Mr.C.Munusamy

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the first accused in Sessions Case No.51 of 2012, on the file of the learned Additional District and Sessions Judge, Gobichettipalayam. He along with two other persons stood charged for an offence under Sections 302 r/w 34 of IPC. The Trial Court by judgement dated 10.07.2012 convicted the appellant/first accused for the

offence under Section 302 r/w 34 of IPC, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for three months for the offence under Section 302 r/w 34 of IPC. The trial Court acquitted the other two accused, namely, A2 and A-3. Challenging the above said conviction and sentence, the appellant/first accused is before this Court with this appeal.

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

(i) The deceased in this case is one Ayyavu, who is the brother-in-law of the appellant/A-1. A-2, Mani is wife of the deceased, and A-3 one Iyyammal, is the wife of the first accused. All the accused and the deceased were residing in the house owned by the deceased. Since the deceased wants the said house for his own use he asked the appellant/first accused and the third accused to vacate the house, regarding the same, on 19.11.2011, at about 8.00 p.m., there was a wordy quarrel between themselves, A-2, the wife of the deceased supported to A-1 and A-3. During the above quarrel, the deceased attacked the second accused with a stick and the neighbours intervened and compromised them. P.W.1, the brother's son of the deceased was also present at the time of quarrel between the accused and deceased, he also asked both the parties to settle the issue.

(ii) On 20.11.2011, at about 7.00 am., P.W.1 received the phone call from his friend that the deceased was found dead in his house with injuries on his neck, immediately, he reached there. At the time, one Raghupathi P.W.2 and Kathiravan P.W.3, informed him that at about 2.00 a.m, they saw the accused were going towards western side of the house with tension. Immediately, P.W.1 lodged the complaint Ex.P1 before the respondent police, alleging that all the accused have murdered the deceased.

(iii) On receipt of the complaint, P.W.10, the Sub Inspector of Police, working in the Gobichettipalayam Police Station, registered a case in Crime No.688 of 2011, for the offence under Section 302 of IPC, and prepared First Information Report, Ex.P8, sent the same to the higher officials and the Judicial Magistrate Court.

(iv) P.W.12, the Inspector of Police, in the respondent Police Station, on receipt of the FIR, commenced the investigation and visited the scene of occurrence at about 9.00 a.m., and prepared observation mahazar Ex.P2, drew rough sketch Ex.P9 in the presence of witnesses, then conducted inquest over the dead body in the presence of panchayatars between 10.30 a.m and 11.30 a.m. and prepared a inquest report Ex.P6. Thereafter, he sent the dead body to the Government Hospital, Gobichettipalayam for post mortem through a head constable,

namely, Shivakumar. He examined the witnesses and recorded the statement of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6. Thereafter, he arrested the accused in the presence of witnesses at about 3.45 p.m, and on such arrest the first accused has given a voluntary confession statement, and based on his disclosure statement, he recovered rope M.O.1, used to strangle the deceased, in the presence of P.W.7 and other witnesses under Ex.P4. Then, he sent the accused for judicial custody.

(v) In the meantime, P.W.9, a Civil Surgeon, working in the Government Hospital, Gobichettipalayam, conducted post mortem autopsy on the dead body and found the following injuries:-

External Injuries:

Irregular rope mark seen around the neck with black discolouration above the thyroid cartilage 2 c.m in breadth extending on either side. Right side upto the mastoid left side upto the middle of back neck running oblique. Eyes closed. Tongue inside the mouths. No discharge from mouths or Nose. Edentulous artificial denture present. No fracture of ribs. Heart 200 gms. Right contains third blood 20 ml its empty. Lungs Wt. 200 gms, congested. Stomach empty. No specific smell. Kidneys each 220 gms congested. Intestines digestions.

He opined that the deceased died of due to asphyxia and strangulation. He prepared Post-mortem report Ex.P.10.

(v) Thereafter, P.W.12 obtained statement from the post mortem Doctor and examined some other witnesses and recorded their statements, and after completion of investigation he filed the charge sheet against the accused before the Judicial Magistrate Court.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 12 witnesses were examined, 11 documents and 3 material objects were marked.

4. Out of the above witnesses, P.W.1 is the brother's son of the deceased. In his evidence, he has stated that on 19.11.2011 at about 8.00 p.m., he saw the accused were quarrelling with the deceased, in respect of vacating the house owned by the deceased during the quarrel, the deceased attacked the second accused with a stick, at that time all the accused stated that they will murder him, he compromised the parties and left for his house. On the next day, i.e., on 20.11.2011 at

about 7.00 a.m., he received the phone call from his friend stating that the deceased was found dead in his house. Immediately, he visited the scene of occurrence and has given complaint Ex.P1 before the respondent police. P.W.2 is doing centring work, in his evidence, he has stated that on 19.11.2011, midnight, he saw all the accused were going out of their house with tension mood and on the next day morning he heard that the deceased was found dead near his house. P.W.3 is also doing centring work, in his evidence, he has stated that on 19.11.2011, midnight, he saw all the accused were going out of their house with tension and on the next day morning he heard that the deceased was found dead near his house. P.W.4 residing near the deceased house and he stated that he saw the deceased found dead in his house with injury in his neck. P.W.5 spoken about the quarrel between the deceased and accused on the previous day night. P.W.6 is also spoken about the earlier quarrel between the deceased and accused. P.W.7 is the attesting witness to the mahazar Ex.P2, arrest of the accused and confession given by the accused to P.W.12, and also seizure mahazar Ex.P.4. P.W.8, Head Constable, working in the Gobichettipalayam Police Station, he has taken the dead body to the Government Hospital, Gobichettipalayam for post mortem. P.W.9 is the Doctor, who conducted the post mortem on the dead body and has issued post mortem certificate Ex.P10, he has given opinion that the death is due to asphyxia and strangulation. P.W.10, the Sub Inspector of Police, working in the Gobichettipalayam Police Station, he received the complaint Ex.P1 from P.W.1 and registered the case in Crime No.688 of 2011 for the offence under Section 302 of IPC and prepared First Information Report Ex.P8 and sent the same to the higher officials and the Judicial Magistrate Court. P.W.9, working as Head Clerk in Judicial Magistrate Court, Gobichettipalayam, he sent the material objects for chemical examination. P.W.12 is the investigation officer, who conducted the investigation and on completion of investigation, he filed the final report before the Judicial Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the appellant/first accused for the offences as stated in first paragraph of this judgement and acquitted A-2 and A-3. Challenging the above conviction and sentence, the appellant/first accused is before this Court.

7. We have heard Mr.C.Munusamy, learned counsel for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned counsel appearing for the appellant/first accused would submit that there is no eye witness to the occurrence and the case is based on the circumstantial evidence and the prosecution failed to prove none of circumstances and the trial Court convicted the appellant/first accused only based on the confession statement of the accused and recovery of M.O.1 rope. He further submits that except the same, there is no evidence available to prove the guilt of the accused and hence he prays for allowing this appeal.

9. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has proved all the circumstances unerringly pointing the guilt of the accused. He further submits that P.W.1 has spoken about the motive and P.Ws.2 and 3 in their evidence stated that in the midnight they saw all the accused were going out of their house with tension. He further submits that so also the voluntary confession statement of the accused and recovery of M.O.1 rope has proved the prosecution case, hence there is no infirmity in the judgment passed by the trial court, therefore, he prays for dismissal of this appeal.

10. This is a case of circumstantial evidence. It is settled principle of law that in a case based on the circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubt and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principles in mind, we analyse the facts of the present case. The first circumstances relied upon by the prosecution is the motive. P.W.1 is brother's son of the deceased. He says that on 19.11.2011 at about 8.00 p.m., he saw the accused quarrelling with the deceased. According to him, the deceased asked A-1 and A-3 to vacate the house owned by him, since he wanted to use it for his own purpose. A-2, the wife of the deceased and sister of A1, supported A1 and A3 and quarrelled with the deceased and the deceased attacked the second accused with stick. At the time, all the accused have challenged the deceased that he will not be left alive, since P.W.5 and P.W.6 also spoke about the above occurrence. The second circumstance relied on by the prosecution was the evidence of P.W.2 and P.W.3 that on 19.11.2011, midnight, they saw all these accused coming out of their house and going towards western side of the house with tension. The 3rd circumstances relied upon by the prosecution is recovery of

M.O.1 rope, based on the disclosure statement of A-1. But, the Trial Court convicted the first accused alone based on the recovery of M.O.1 rope, and acquitted the second and third accused without believing the other two circumstances.

11. Now, we have to consider whether the above circumstance relied on by the prosecution unerringly prove the guilt of the first accused. The trial Court convicted the appellant/first accused only on the ground that he has given voluntary confession statement before police and based on the disclosure statement, M.O.1 rope has been recovered, but acquitted the second and third accused on the ground that they have not given any confession statement. In this case, the link between M.O.1 and the crime has not been established. Thus, the relevance of the rope has not been proved and so, the recovery of M.O.1 is irrelevant. As already stated the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused. In the instant case, the trial Court convicted the appellant/first accused only based on the recovery of M.O.1 rope and acquitted the other two accused without believing the other circumstances relied upon by the prosecution. In the above said circumstances, it is unsafe to sustain the conviction and sentence imposed by the trial Court. Hence, the same is set aside.

12. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned Additional District and Sessions Judge, Gobichettipalayam, in Sessions Case No.51 of 2012 is set aside and the appellant/first accused is acquitted and bail bond if any executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District & Sessions Judge,
Erode at Gobichettipalayam.

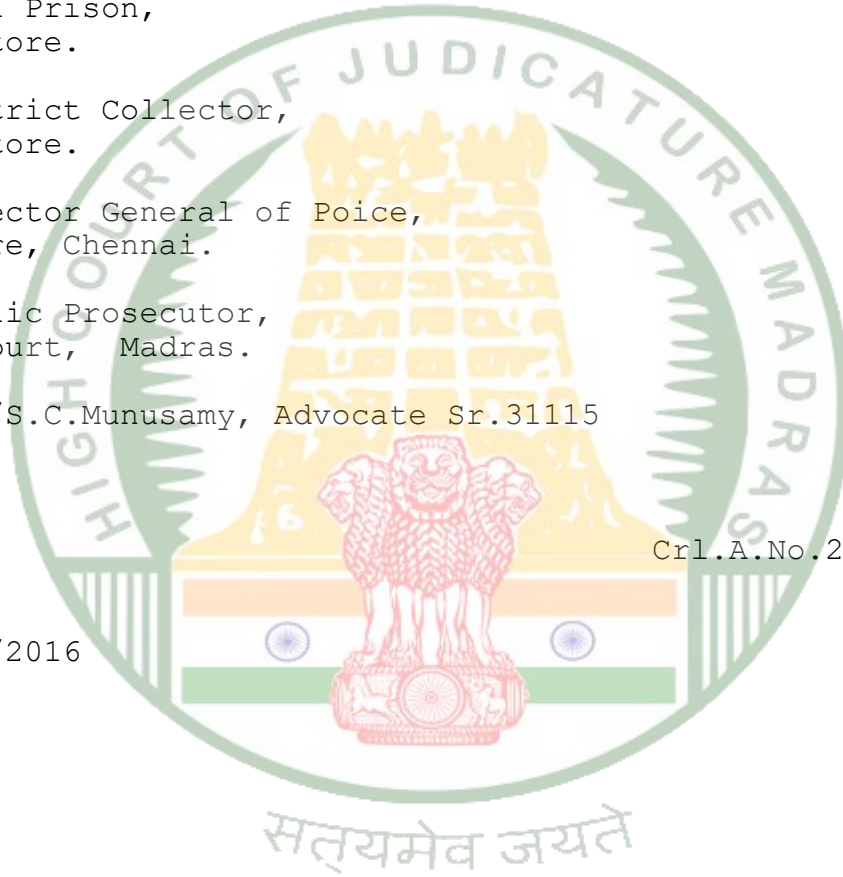
2.-Do- Thro The Principal District Judge,
Gobichettipalayam.

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- 3.The Judicial Magistrate No.1,
Gobichettipalayam.
 - 4.-Do- Thro The Chief Judicial Magistrate,
Erode.
 - 5.The Inspector of Police,
Gobichettipalayam Police Station,
Gobichettipalayam. Erode District.
 - 6.The Superintendent,
Central Prison,
Coimbatore.
 - 7.The District Collector,
Coimbatore.
 - 8.The Director General of Poice,
Mylapore, Chennai.
 - 9.The Public Prosecutor,
High Court, Madras.
- +1cc to M/S.C.Munusamy, Advocate Sr.31115

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srg 27/07/2016



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