

Bail Slip

The Petitioner/sole Accused namely V.Arul S/O.Venkatesan was ordered to be released on bail by order of this Court dated 15.06.2015 and made in M.P.No.1 of 2015 in C.M.A.No.291 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.291/2014

V.Arul ... Appellant/sole accused

Vs

State by
The Inspector of Police,
Tiruppur Police Station,
Tiruppur District. ... Respondent

Appeal filed u/s.374(2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Tiruppur, made in S.C.No.75 of 2012 dated 28.06.2013.

For Appellant : Mr.V.Balamurugane

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

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.75 of 2012 on the file of the learned I Additional District and Sessions Judge, Tiruppur. He stood charged for offences under Sections 302 and 201 of IPC. By judgment dated 28.06.2013, the trial court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for six months for the offence under Section 302 of IPC and to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/-, in

default, to undergo simple imprisonment for 3 months for the offence under Section 201 of IPC. Challenging the said conviction and sentence, the appellant is before this Court with his Criminal Appeal.

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

(a) The deceased in this case was Mrs. Kalavathi. The accused is her husband. Prior to their marriage, they had fallen in love with each other and when they decided to marry, it was opposed by the parents of the deceased. Therefore, much against their will, they married at Chidambaram in the year 2007. After the marriage, they started living at Tiruppur. Both were employed in two different Concerns. In the year 2008, out of the said wedlock, the deceased delivered a female child. Initially, the accused alone was employed and the deceased was at home. After the birth of the child, she secured a job in a private concern and started working. In that company where she was working, a person by name Senthil Kumar was also working. In due course of time, they became friends which culminated in illicit relationship between them. This was not initially known to the accused.

(b) On 21.06.2010, the deceased, who was sleeping with the accused, was suddenly found missing. The accused went in search of her. But, he could not trace her out. On 27.06.2010, he received a phone call from the Cell Phone No. 91506 93212. The man who spoke from the other side was Senthil Kumar. Senthil Kumar informed him that the deceased had come to him and started living with him as his wife. He further wanted the accused to hand over the child to her so that the child could be brought by her and Senthil Kumar. When the accused wanted him to hand over the cell phone to his wife, he told that the deceased was not willing to speak to him. It was only from and out of the said phone, he came to know about the illicit intimacy between the deceased and Senthil Kumar.

(c) Thereafter, on 03.07.2010, the deceased herself spoke to the accused over phone. The accused persuaded her to forget about the past and return to the matrimonial home. But the deceased was not willing for that. She insisted the accused to hand over the child as she did not want to continue the marital life with him. She also did not give her address. On 04.07.2010, the accused came to Chennai. When he spoke to Senthil Kumar and the deceased, they wanted him to wait at Perambur Railway Station. The mother of Senthil Kumar and his sister brought the deceased to the Railway Station and left her in the custody of the accused. They got a written acknowledgment for the same. The accused took her to Tiruppur by train.

(d) On the same day, around 07.00 p.m., they reached Tiruppur from where they went to the house around 08.00 p.m. On entering into the house, they bolted the house from inside, started chatting. During that time, the accused tried to persuade her to forget about the past and be with him as his wife for ever. But the deceased told him that she had illicit intimacy with Senthil Kumar for about 6 months and therefore, she could not forget him. She further told that she had not interested to live with the accused as his wife as he wanted to go away from him and to live with Senthil Kumar as his wife. By about 12.00 p.m., during the above quarrel, the deceased suddenly attempted to open the door to leave the house. She told that she was proceeding to Chennai to meet Senthil Kumar. The accused prevented her from leaving the house and locked the door and in order to prevent her from leaving, she undressed her. Even after that, she did not stop. She was trying to take the clothes and leave the house. At last, provoked by the attempts made by the deceased to leave him, he took out a knife and stabbed her. She died on the spot. Thereafter, with a view to erase the evidence, he went to a nearby Petrol Bunk, purchased petrol for Rs.100/- and returned the house. He covered the dead body with a Sari, took the body in a motorcycle to a nearby lake. He pushed the body into a small structure there and poured kerosene and set fire. After returning to his house, he cleaned the house to remove the traces of blood stains.

(e) On 05.07.2010, the owner of the house P.W.1 noticed the blood stains in the motorcycle and enquired him. He also enquired about the whereabouts of the deceased. He told him that since she was not willing to live with him, she had deserted him. He also informed that since she wanted to desert him, he killed her and burnt the dead body. He wanted the accused to surrender to the police. Out of fear for the police, he has stayed away from the said place and went to Erode. P.W.1 went to Tirupur Rural Police Station on 05.07.2010 at 2.00 p.m. He made a complaint under Ex.P.1 P.W.17, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.4527 of 2010 under Sections 302 and 201 of IPC. Ex.P.30 is the First Information Report. He forwarded Ex.P.1 and Ex.P.30 to court which were received by the learned Magistrate at 07.00 p.m. on 05.07.2010.

(f) When the case was taken up for investigation by P.W.18, he went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. He recovered the material objects from the place where the dead body was found. He prepared an Observation Mahazar and a Rough Sketch at that place also. He enquired few more witnesses and then he conducted inquest on the body of the deceased and forwarded the body for postmortem.

(g) P.W.14 conducted autopsy on the body of the deceased. He found the following injuries:

'The following postmortem burns noted on Parietal and frontal region of scalp, face, front and sides of chest and abdomen, left forearm, front of pelvic region, both thighs and left leg, - Front of pelvic region, left hand and both thighs found deeply, charred with post mortem separation of right thigh at the level of mid thigh. Heat fracture noted on right mid arm remaining lower part found absent, the upper part of right arm found charred.

-Postmortem burst noted on the front of abdomen over the area of 10x6 cm through which a part of intestines and mesentery found protruded out.

The following ante mortem injuries noted on the body.

-A transverse gapping cut wound measuring 14x4 cm cervical deep noted on front and sides of neck in its middle, just above to thyroid cartilage, on dissection the wound cutting the underlying muscles, nerves, vessels, including both side greater vessels, and superficially cutting the underlying C-5 vertebra. The wound is 8cm below to right mastoid, 8cm below to left mastoid, 6cm from chin.

-Another transverse cut wound 4x1 cm x skin deep noted on front of neck, 1cm below to previous wound.

-Pelvic organs found decomposed, not identifiable.

OTHER FINDINGS:-

-Peritoneal and pleural cavities - empty

-Heart: Flabby. Cut section shows decomposition changes noted.

-Hyoid bone: intact

-Stomach contains about 10ml of light brown colour decomposed fluid, smell of decomposed, mucosa decomposition changes noted

-Liver, Spleen, Lungs, Brain and Kidneys: cut section: decomposition changes noted

-Urinary bladder empty''

Ex.P.20 is the Postmortem Certificate. He opined that the deceased died due to the cut injury on the neck due to shock and hemorrhage. He further opined that the burn injuries were postmortem in nature.

(h) P.W.18, during the course of investigation, recovered clothes from the body of the deceased. When the investigation was in progress, it is alleged that the accused appeared before P.W.9 and made a Voluntary Confession. P.W.9, the then Municipal Councillor of that area was already known to the accused, reduced into writing the confession alleged to have

been given by the accused. Ex.P.33 is the Extra Judicial confession. Along with the said extra judicial confession, he took the accused to P.W.18 and produced him. P.W.18 arrested the accused and on such arrest, he gave a voluntary confession. In the said confession, he disclosed the place where he had hidden the motorcycle and the plastic can. In pursuance of the same, he took the police to his house and produced the motorcycle, the knife, shirt and lungi. P.W.18 recovered the same under a Mahazar in the presence of P.W.9 and another witness. On returning to the police station, he forwarded the accused to court for judicial remand. He forwarded all the material objects to the court. He collected the photographs of the deceased and forwarded the same for super imposition for skull in order to establish the identity of the deceased. The Super Imposition Report revealed that the skull of the dead body of the deceased tallied with the live photograph of the deceased. On completing the investigation, he laid charge sheet against the accused.

3. 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, on the side of the prosecution, as many as 18 witnesses were examined and 34 documents and 15 material objects were also marked.

4. Out of the said witnesses, P.W.1, the landlord of the house where the accused and the deceased have stayed, has spoken to the fact that the deceased had eloped with someone. He has further stated that after 20 days of elopement of the deceased, when he went to the house of the accused, he found the motorcycle of the accused parked in front of the house. According to him, he had gone to the house of the deceased on information that the deceased had returned home. Incidentally, he noticed blood stains on the motorcycle M.O.1. The accused was inside the house. When he entered into the house, he found blood stains inside the house of the accused. When he enquired, he told that he had sent the deceased to her native place. He has further stated that thereafter, he made a complaint to the police. P.W.2 is a co-worker of the deceased. He has stated that on 04.07.2010 at 09.00 p.m., when he came to the house of the accused, he found the motorcycle of the accused parking in front of the house of the deceased and one pair of lady's chappal were also found in front of the house. P.W.4 is a neighbour of the house of the accused. On 05.07.2010 around 12.00 a.m. to 12.30 a.m., he heard that there was some conversation going on between the accused and the deceased. He further told that it was only a domestic quarrel and therefore, he could not worry much about the same. Within half-an-hour, he heard the starting sound of the motorcycle. When he came out, he found the accused going in the motorcycle. Within half-an-

hour, the accused returned to his house. Again, within a short while, he heard a noise of starting his motorcycle. He went out from the house. At that time, he found the accused ready to sit on the motorcycle and ready to move. There is a big gunny bag on the pillion of the motor cycle. According to P.W.2, he believed that it was a bag containing banians and he was taking the same to his company. Therefore, he did not say anything on the same. On the next day, he found blood stains on the seat of the motorcycle belonging to the accused, which was parked in front of his house. He informed the same to P.W.1. P.W.1 came to his house to verify as to whether there were blood stains in the motorcycle. He also found blood stains on the floor. Then P.W.1 went to the Police Station and made a complaint. P.W.3 is yet another neighbour. He has not stated anything incriminating against the accused. He gently stated that he heard about the death of the deceased later. P.W.14 who is yet another neighbour has stated that on the night of the occurrence, around 03.00 a.m. to 03.30 a.m., on hearing the noise raised by starting the motor cycle, when he came out, he found the accused moving in the motorcycle carrying a gunny bag on the pillion. He also stated about the blood stains found on the motorcycle, he has noticed on the next day. P.W.5 is yet another neighbour who has stated among other things that he noticed the blood stains in the motorcycle and when he enquired the accused, he told him that he killed his wife. P.W.5 also noticed the blood stains on the floor inside the house of the accused. P.W.6 is yet another neighbour who has stated about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.7 is the mother of the deceased. She has stated about the marriage and the living of the deceased with the accused as his wife. She has not stated anything incriminating against the accused. P.W.8 is the brother of the deceased who has also stated only about the marriage between the accused and the deceased and other facts. He has not stated anything incriminating against the accused. P.W.9 has stated about the extra judicial confession given by the accused to him on 08.07.2010 at 08.00 a.m. P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 has stated that he found the body of the deceased at the place behind Arora Company and he informed the same to the police. P.W.11 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place where the dead body was found. P.W.12 has also spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place where the dead body was found. P.W.13 the then Revenue Division Officer at Tiruppur has spoken that he conducted inquest under Section 174 Cr.P.C. on the dead body of the deceased and has prepared Ex.P.11 Report. P.W.14 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.15, the Chemical Analyst has stated about the super imposition conducted by her. According to her,

the live photograph of the accused tallied with the skull of the deceased. P.W.16 has stated that he took the dead body of the deceased and handed over the same to the doctor for postmortem. P.W.17 has spoken about the registration of the case and his final report.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. 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.

7. This is a case based on circumstantial evidence. There is no denial of the fact that the deceased and the accused were living together as husband and wife, after their marriage at Tirupur and they had a child also. It is also not in dispute that the deceased was eloped with one Selva Kumar who was her co-worker, 20 days prior to the occurrence. It is the further case of the prosecution that the deceased had returned home and on that day, she was done to death by the accused. But the accused disputes the same. According to him, there is no evidence that the deceased came to her house at all after her elopement. It is the further contention of the accused that the dead body which was found was not that of his wife at all.

8. In order to prove these facts, the prosecution mainly relies on the extra-judicial confession given to P.W.9 by the accused. It is submitted by the learned Counsel for the appellant that the said extra-judicial confession cannot be true and therefore, no one could be attributed to the same. We find no force in the said argument at all. It is not as though P.W.9 was not known to the accused earlier. P.W.9 has stated that as an earlier Councillor of that area, he interfered in the dispute between the accused and the deceased and tried to sort out the issues between them. Thus, P.W.9 was well known to the accused. He had gone to him and made a lengthy confession voluntarily. Though it is stated that the said confession was not voluntary and as a matter of fact, he did not give any confession at all to P.W.9, we find it difficult to accept the said version of the accused. The entire evidence of P.W.9 would go to show that he is trustworthy. He has got no grudge against the accused. Therefore, we hold that the confession said to have been given by the accused to P.W.9 is true and voluntary. It is the well settled legal position that if the retracted extra judicial

confession is shrouded with any suspicion, unless it draws corroboration from any independent sources, it is not safe to act upon the same.

9. Here in this case, so far as the confession of the accused to P.W.9 is concerned, we find no doubt at all. Apart from being a doubtless confession, it draws corroboration from other sources also. P.W.1 landlord has stated that on the next day of the occurrence, he found the motorcycle of the accused parked in front of his house with blood stains. There were also blood stains inside the floor of the house. The accused has got no explanation for the same. Similarly, P.W.2 and few other witnesses have also seen the blood stains in the motorcycle as well as in the floor. Soon after the witnesses have seen the blood stains, the accused absconded from the house. Thereafter, he made a confession to the Revenue Divisional Officer. These witnesses, namely, P.W.1 and P.W.2 are independent witnesses, who have got nothing against the accused. The accused has not explained as to how there were blood stains came on the motorcycle as well as on the floor of the house. In the absence of any such explanation, this piece of evidence gives corroboration to the extra-judicial confession.

10. Next, the conduct of the accused also assumes importance. The accused did not make any complaint to the police after the dead body of the deceased was noticed. If really, he was innocent and he had not committed the crime of killing his wife, he would have been appeared before the police. But the fact that the accused was absconded for such a long time until he surrenders before the Revenue Divisional Officer, is a conduct inconsistent with the so called innocence projected by him. This conduct of the accused also adduce sufficient corroboration to the extra-judicial confession.

11. The learned Counsel for the appellant would further submit that the dead body, which is the subject matter of this case, was not that of the deceased at all. He would further submit that there is no proof for the same. But the Super Imposition conducted by the Scientific Expert would clearly go to prove that this skull recovered from the dead body of the deceased tallied with the live photograph of the deceased. There is no reason to reject the said opinion of the expert. But the learned Counsel for the appellant would submit that the photograph used for comparison by means of Super Imposition has not been proved to be that of the deceased. We find no force at all in this argument, for all through, the photograph was used and exhibited as that of the deceased. Had it been true that the photograph is not that of the deceased, certainly, the accused would have been taken a positive plea or objection at the appropriate stage during trial disputing the photograph. But, he did not do so. For the first time, he has come with

such a plea before this Court only. Thus, it is crystal clear that the photograph which was used for comparison was only that of the deceased and tallied with the skull of the deceased and thus, the prosecution has clearly established that the dead body was that of the deceased. According to the medical evidence, the death of the deceased was due to cut injury on her neck. Thus, the prosecution has also proved that the death of the deceased was due to homicidal violence.

12. The plea of the accused that the dead body was not that of his wife, as we have already pointed out, is a false plea. In a case of this nature, taking a false plea itself is an additional incriminating circumstance against the accused. This would also lend assurance to the case of the prosecution.

13. From the circumstances proved by the prosecution about which we have discussed herein above, it is crystal clear that the deceased died of homicidal violence i.e. by stabbing with a knife on her neck. It has also been proved through the extra-judicial confession which draws corroboration from many other sources that it was this accused, who caused the death of the deceased.

14. Now the question is as to what was the offence the accused has committed by the said act. In this regard, we have to state as to what transpired at the time when the accused killed the deceased could be gathered only from the extra-judicial confession. In the extra-judicial confession, the accused has stated that on returning home, he and his wife entered into the house, bolted the same inside. For some time, they started chatting. The accused requested her to forget about the past and to remain with him to lead a matrimonial life. But the deceased was not willing for the same. She told him that since she had lived in illicit intimacy with Senthil Kumar for about 6 months, he could not forget him and therefore, she would live only with him as his wife. She further told that she was not willing to live with the accused. This quarrel went on for some time. The accused was trying to persuade her to give up such a stand. But the deceased attempted to open the door and ran away so as to go away and join Senthil Kumar. In an attempt to prevent her from doing so, as we have already narrated, the accused undressed her. Even then, the deceased did not stop. She was searching for her clothes and she was making attempt to open and go away. It was, only, at this stage, the accused has taken the knife which was lying there and stabbed her once on her neck which has resulted in her death. The narration of these facts would clearly go to show that the accused had been provoked by the conduct of the deceased and by

her utterances. It was only out of the said provocation, having lost his mental balance, the accused had stabbed the deceased with knife on her neck. The act of the accused would fall within the 3rd limb of Section 300 IPC and the first exception to Section 300 of IPC. Therefore, the appellant is liable to be punished under Section 304-I of IPC alone.

15. After having caused the death of the deceased, he had taken body to a distant place and by pouring kerosene, tried to burn the dead body. This act of the accused would be an offence punishable under Section 201 of IPC.

16. Now turning to the quantum of punishment, the accused is a young man. The occurrence was not premeditated also. It was out of provocation. The provocation was so sudden. He had got no bad antecedents. The very fact that he went to Chennai, brought back his wife to Tirupur is only to live with her. The deceased was killed for deserting her husband even leaving the child shammingly with another man.

17. Having regard to the mitigating and aggravating circumstances, we are of the view that sentencing 5 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks for the offence under Section 304-I of IPC would meet the ends of justice. For the offence under Section 201 of IPC, the conviction and sentence imposed by the trial court needs to be confirmed.

18. In the result, the appeal is partly allowed in the following terms:

1. The conviction and sentence imposed on the appellant by the trial court under Section 302 of IPC is set aside and instead, he is convicted under Section 304-I of IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 4 weeks;

2. The conviction and sentenced imposed on the appellant by the trial court for the offence under Section 201 of IPC is hereby confirmed; and

3. It is directed that the sentences shall run concurrently and the period of sentence already undergone by the appellant shall be given set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur District.
2. The I Additional District and Sessions Judge,
Tiruppur.
- 3.The Public Prosecutor,
High Court, Chennai.
- 4.The Judicial Magistrate No.II,
Tiruppur.
- 5.-Do-Thro The Chief Judicial Magistrate,
Tiruppur.
- 6.The Superintendent,
Central Prison,
Coimbatore.
- 7.The District Collector,
Tiruppur District.
- 8.The Director General of Police,
Chennai-600 004.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.B.Balamurugan, Advocate Sr.31316

Cr1.A.No.291/2014

sv[co]
srg 04/07/2016