

Bail Slip

The appellant/accused viz., L.Krishnappa S/o Latchumapa was directed to be released on bail as per order of this court dated 10/09/14 made in MP 1/2014 in CrI.A.306/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.06.2016

CORAM:

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

CrI.A.No.306 of 2014

L.Krishnappa ... Appellant

vs.

State,by
The Inspector of Police,
Berigai Police Station,
Hosur Taluk,
Krishnagiri District.
Crime No.101 of 2011

...Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 21.11.2013 passed by the learned Principal District and Sessions Judge, Krishnagiri, in S.C.No.116 of 2011.

For Appellant : Mr.V.Parthiban for
Mr.K.A.Mariappan

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 sole accused in Sessions Case No.116 of 2011, on the file of the learned Principal District and Sessions Judge, Krishnagiri. He stood charged for an offence under Section 302 of IPC. The Trial Court, by judgement dated 21.11.2013, convicted the appellant/accused for the offence under Section 302 of IPC, and sentenced him to

undergo life imprisonment and also imposed a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months. Challenging the above said conviction and sentence, the appellant/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 Jayammal. She is the mother of P.W.1 and P.W.2. The deceased is a vegetable vendor and her husband left her 30 years ago. The appellant/accused was having illicit intimacy with the deceased for a long time and used to receive money from the deceased and the deceased also used to go to the accused's house and live with him. That being so, in the month of March, 2011, she left the house and did not come back. Both, P.W.1 and P.W.2, searched for their mother and on 04.04.2011, P.W.1 heard the news that one dead body was found in the Muthimangala forest, under a rock and bad smell emanating from it. Immediately, he went there and found a decomposed body and based on the saree worn by the deceased, he identified the body as that of his mother, immediately, P.W.1 gave a complaint, Ex.P1 to the respondent police, on 04.04.2011.

(ii) P.W.7, sub Inspector of police, Berigai Police Station, received the complaint from P.W.1 and registered a case in Crime No.101 of 2011 under Section 174 Cr.P.C. and prepared Ex.P9 FIR and the same was sent to the Judicial Magistrate Court and copies of the same to the higher officials. On receipt of the FIR, P.W.8, Inspector of Police, Berigai Police Station, commenced investigation. He visited the place where the dead body was found and prepared an observation mahazar Ex.P2 and drew a rough sketch, Ex.P10, in the presence of witnesses. He also recovered bloodstained soil, M.O.1 and sample soil, M.O.2, under Ex.P3 seizure mahazar and made arrangements to have the dead body photographed. Thereafter, he sent the body to the Government Hospital, Hosur, for postmortem through P.W.6, Head Constable. Then, he went to the Government Hospital, Hosur, and conducted inquest over the dead body in the presence of panchayatars and prepared inquest report Ex.P12.

(iii) P.W.4, Doctor, working in the Government Hospital, Hosur, conducted poston the dead body and found the following injuries.

External Injuries:

Face tissue highly decomposed. Hyoid bone not found separately. Chest wall county highly decomposed exposing the sub cage. Abdomen cavity open injury no enamel organs. Peline tissues could not be demarcated separately. Both upper and lower limbs is highly decomposed state exposing the underlying injured and bone. Cervical spine projected from the forgo intact. Skull found exposing

Internal injuries:

No internal organ found separately due to decomposition. Skull abrasion of partial bone. Cervical cavity empty. Bone of skull fracture. Long bone fracture.

He found that the dead body was highly decomposed and opined that the deceased would have died 10 days prior to autopsy. He was also of the opinion that the deceased would probably have died due to injuries to skull and issued postmortem certificate. Ex.P5.

(iv) Based on the postmortem certificate, P.W.8 altered the charge into Sections 302 and 201 IPC and prepared altered FIR Ex.P13. Then, he arrested the accused in the presence of P.W.5, and other witnesses and on such arrest, the accused voluntarily gave a confession statement, based on the disclosure statement, P.W.8 recovered M.O.4 bloodstained stone, and sent the accused to judicial custody. P.W.8 examined witnesses and recorded their statements and after completion of investigation, he filed charge sheet on 30.07.2011 before the concerned 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 8 witnesses were examined and 18 documents exhibited and 5 material objects were marked.

4. Out of the 8 witnesses, P.W.1 and P.W.2 are the sons of the deceased. In his evidence, P.W.1 has stated that his mother had illicit intimacy with the accused and the accused used to receive money from his mother and suddenly she was found missing and subsequently, on information he found the body of his mother in Muthimangala forest, under a rock. He has further stated that the accused himself informed him that he murdered his mother 10 days prior to giving the complaint,. In his cross examination, he stated that on hearing the news from the accused, he gave a complaint before the respondent police on that date itself, the respondent police arrested the accused, once again he gave the present complaint, after recovery of the body of the deceased. P.W.2 is the another son of the deceased. In his evidence, he has stated that his mother was found missing and he, along with P.W.1, searched their mother and on information, they went to the forest and found the dead body of their mother and they identified the dead body. P.W.3 is a resident of Guruparapalli village and he is known to the deceased and accused. He has stated that he saw both the deceased and accused together 10 days prior to the occurrence.

He is the witness, who has spoken about the deceased and the accused together lastly. P.W.4, Doctor, working in Government Hospital, Hosur, conducted postmortem on the dead body and issued post mortem certificate. P.W.5- Village Administrative Officer, is a witness to arrest of the accused and recovery of M.O.5 stone. P.W.6, Head Constable, has spoken about taking the dead body to the Government Hospital, Hosur for post mortem. P.W.7, Sub Inspector of Police has stated that he received the complaint and registered the case. P.W.8, Investigating Officer, investigated the case and filed final report against the appellant/accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. 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 and sentenced the accused for the offences as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court.

7 We have heard Mr.V.Parthiban, 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 would submit that there was no eye witness in this case and absolutely there is no evidence available to prove the guilt of the accused. He further submitted that it is a case of circumstantial evidence, the prosecution did not prove any of the circumstances relied on by them, the trial Court erred in convicting the appellant/accused, without any evidence and therefore the same is liable to be set aside. Hence, he prays for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has proved the case through the evidence of P.W.3, who saw the accused and deceased together and it is also established by the prosecution that the accused and deceased had illicit intimacy, and when the accused demanded money, the deceased refused to give the same to the accused, hence he murdered her. The prosecution clearly established the guilt of the accused and hence he prays for dismissal of this appeal.

10. It is a case of circumstantial evidence. We are conscious of the legal position that in a case based on

circumstantial evidence, 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 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. Now, the question arises for our consideration is whether the prosecution has proved the guilt of the accused beyond any reasonable doubt. According to P.W.1, the accused himself informed him that he murdered his mother 10 days prior to the complaint and based on the information he gave a complaint before the respondent police along with other villagers and based on the above complaint, the respondent police arrested the accused and took him to police station, and after seeing the dead body once again he gave the present complaint. But, the complaint said to have given by P.W.1 earlier to the respondent police was not produced by the prosecution and it has been suppressed. In the above circumstances, since the respondent police had already arrested the accused, based on the earlier complaint given by P.W.1, the arrest and recovery cannot be believed in this case. It is very much evident that the prosecution has suppressed material facts in this case. So far as the evidence of P.W.3 said to have seen the deceased and the accused together, 10 days prior to the occurrence and hence the above evidence cannot be considered to hold that the deceased and accused were together before the occurrence. Apart from the above circumstance, there is absolutely no evidence to prove the guilt of the accused. In the said circumstances, the conviction and sentence imposed by the trial Court cannot be sustained. Hence, the same is liable to be set aside.

11. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned Principal District and Sessions Judge, Krishnagiri dated 21.11.2013 in Sessions Case No.116 of 2011, is set aside and the appellant/accused is acquitted of charges levelled against him 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

//True Copy//

Sub Assistant Registrar

rrg
To

1.The Principal District and sessions Judge,
Krishnagiri District.

2.The Inspector of Police,
Berigai Police Station,
Hosur Taluk,
Krishnagiri District.

3.The Judicial Magistrate I,
Tiruchirapalli

4.The Superintendent
Central Prison,Vellore

5.The Collector, Krishnagiri

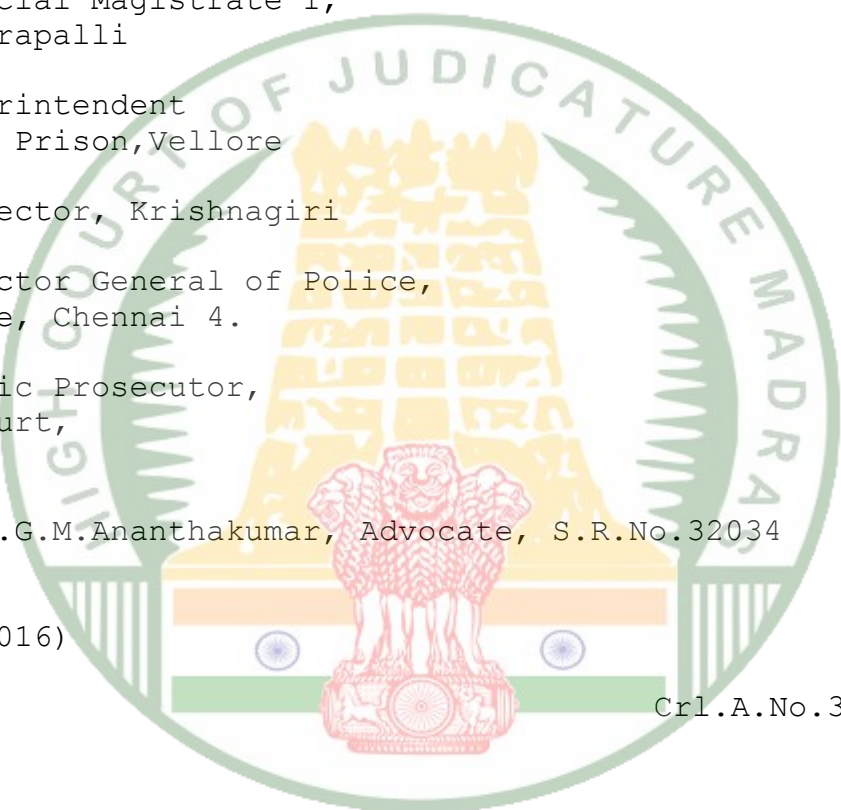
6.The Director General of Police,
Mylapore, Chennai 4.

7.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.G.M.Ananthakumar, Advocate, S.R.No.32034

VD(CO)
BB(30/12/2016)

Cr1.A.No.306 of 2014

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green trees. The entire emblem is set against a white background with a green border. The text "HIGH COURT OF JUDICATURE MADRAS" is written in a green arc around the top. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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