

Bail Slip

The appellant herein namely Palanisamy Accused in SC.No.138/13 on the file of the Mahila Sessions Court (Fast Trck Court), Erode was directed to be released on bail as per order of this court dated 11.6.2015 made in Crl.MP. No.1/14 in Crl.A. 310/14.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.06.2016

CORAM

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

CRL.A.No.310/2014

Palanisamy

.. Appellant/A1

Vs

State by
The Inspector of Police,
Kadampur Police Station,
Bungalapur Circle,
Erode District.

... Respondent

Appeal filed u/s.374(2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Mahila Sessions (Fast Track) Court, Erode made in S.C.No.138 of 2013 dated 20.05.2014.

For Appellant : Mr.R.Sankarasubbu

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

JUDGMENT

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

The appellant is the 1st accused in S.C.No.138 of 2013 on the file of the learned Sessions Judge, Mahila (Fast Track) Sessions Court, Erode. There were two other accused by name Venkatachalam and Shanthi. They stood charged for offences under Sections 120-B, 302 and 201 of IPC. By judgment dated 20.05.2014, the trial court convicted the 1st accused for the offences under Sections 302 and 201 of IPC. However, acquitted

all the three accused from the charge under Section 120-B of IPC and the accused 2 and 3 from the charges under Sections 302 and 201 of IPC. Challenging the said conviction and sentence, the appellant/1st accused is before this Court with this Criminal Appeal.

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

(a) The 1st accused is a resident of Kuttaikattuthottam, Udayagoundanpalayam, Gobichettipalayam Taluk in Erode District. 23 years prior to the occurrence, the 1st accused had married one Nageswari and out of the said wedlock, a son and a daughter were born. After a decade of their marital life, due to misunderstanding, his wife deserted him. Thereafter, for sometime, the 1st accused was living alone. At that time, he came to know that the deceased Poongodi, daughter of P.W.4, was a widow and she was willing to go in for a second marriage. The 1st accused persuaded her to come with him and accordingly, he brought her to his house and lived with her for some time. Thereafter, he performed a legal marriage between him and the deceased. For about 3 months, their marriage life was very smooth and cordial. Thereafter, the deceased fell ill. The 1st accused took her to various hospitals and it came to light that she was suffering from kidney failure and other ailments. The 1st accused was made to spend a huge amount on her treatment. She became unfit for marital life. Therefore, he wanted to go away from her.

(b) When that be so, the 3rd accused became friendly towards the 1st accused. They developed illicit relationship. The 1st accused wanted the 3rd accused to come only with him as his wife. But the 3rd accused told him that so long as the deceased was living there, it would not be possible for her to come to his house and to live with him as his wife. Therefore, the accused 1 and 2, with the help of the 2nd accused, proceeded to eliminate the deceased so that the 3rd accused could join the 1st accused and become his wife. In pursuance of the said plan, on 18.08.2009, at the office of the 1st accused, all the 3 accused had a conspiracy to kill the deceased.

(c) It is further alleged that in pursuance of the said conspiracy, on 21.08.2009, the 1st accused mixed sleeping tablets to a beverage and gave the same to the deceased. After drinking the same, the deceased became drowsy. The accused 1 and 2 verified that the deceased was drowsy and thereafter, they informed the 3rd accused to come near Shanthi Theatre at 05.00 p.m. Accordingly, the 3rd accused came and around 04.30 p.m., the accused 1 and 2 took the deceased in a TATA Sumo Car bearing Registration No.TN 38 7997 towards Shanthi Theatre. The deceased was made to sit in the back seat and by the side of her, the 2nd accused sat. While leaving, the 1st accused had taken a gunny bag, a diesel can, 10 cycle tyres and one rope.

They proceeded towards Shanthi Theatre. From the local petrol bunk near Shanthi Theatre, the 1st accused purchased 20 litres of diesel in a Can. Then, he took up the car somewhere near Shanthi Theatre. The 3rd accused, who was lying in a wait there, got into the car. Then, the car proceeded via Bungalow Pudur and reached a forest. At about 07.00 p.m. on 21.08.2009, they parked the car at a secluded place. The deceased was still drowsy and she was sleeping. Then, the 3rd accused held the legs of the deceased. The accused 1 and 2 put the rope around the neck of the deceased and strangled her. The deceased died. Then, they put the dead body of the deceased in the gunny bag which was in their hands already. They carried the dead body in the gunny bag to a nearby bush. The 3rd accused brought the cycle tyres to the said place. The 1st accused went to the car and brought the diesel can. Then, they laid the dead body of the deceased with the gunny bag on the cycle tyres, poured diesel and the 1st accused set fire to the body. The dead body of the deceased was in flames within a few seconds. At about half-an-hour, all the 3 accused left the said place, took the car via Bungalowpudur reached Karattadipalayam. The 3rd accused got down at Karattadipalayam. The accused 1 and 2, then, took the car to Kasipalayam where the 2nd accused got down. Then the 1st accused returned to his village.

(d) On the next day, the 1st accused passed a rumour that the deceased, who had gone to Erode for treatment, had disappeared. The 1st accused made the others including the relatives of the deceased to believe that the deceased was missing. In an attempt to divert the attention of all, the 1st accused made a complaint to the Superintendent of Police, Erode, on 29.08.2009 requesting him to trace out his wife-deceased and to hand over to him as though she was missing. On 01.09.2009, the father of the deceased P.W.3 has made a complaint at Kadampur Police Station in this regard.

(e) In the meanwhile, the dead body of the deceased was found near the bush in a half burnt condition and with foul smell by P.W.1 and P.W.2. P.Ws.1 and 2 were Forest Guards in the Government Service. During routine rounds in the forest, they found the dead body at 09.00 a.m. on 29.08.2009. The body was found in a half burnt condition with bad smell. Then, P.W.1 made a complaint at Kadampur Police Station.

(f) P.W.15, the then Sub-Inspector of Police, Kadampur Police Station, on receipt of the said complaint, registered a case in Crime No.28 of 2009 under Section 174 of Cr.P.C (suspicious death). On 29.08.2009, at 11.00 a.m. he forwarded the complaint Ex.P.1 and the First Information Report Ex.P.10 to court which were received by the learned Magistrate at 06.00 p.m. on the same day. The case was taken up for investigation by P.W.20.

(g) P.W.20, the then Inspector of Police, Bungalow Pudur Police Station, took the up the case for investigation on 29.08.2009, proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. Then, he recovered a small quantity of ash found near the burnt dead body, oil found near the dead body, blood stained earth and a half burnt gunny bag under a Mahazar. He gave request to the doctor to conduct postmortem on the spot itself. P.W.11, accordingly, conducted autopsy on the body of the deceased on 30.08.2009 at 12.30 a.m.. He found the following :

- '1. On examination of skull : Scalp partially charred exposing the frontal bone. Scale hairs partially singed over the upper margins of frontal region. Long hairs present over the other region.
2. Face : Found charred exposing all facial bones which is found intact. All permanent teeth found intact on both upper and lower jaw.
3. Neck : All the neck structure found charred into ash with C3 to C7 cervical bones found partially charred. C1, C2 and hyoid bone found absent. A thin thread with a metallic holy plate wearing at the level of lower cervical bones.
4. Humerus : Partially burnt. Right side Humerus noted. Partially burnt upper 2/3rd of left side humerus noted with lower portion found completely charred, the lower 1/3rd found absent.
5. Radius : Right side : Partially burnt upper 1/4th radius noted with lower portion found completely charred, the lower 3/4th found absent. Left side, partially burnt upper 1/3rd of radius noted with lower portion found completely charred, the lower 2/3rd found absent.
6. Ulna : Right side : Partially burnt upper 1/4th ulna noted with lower portion found completely charred, the lower 3/4th found absent including the hand. Left side : Partially burnt upper 1/3rd of ulna noted with lower portion found completely charred the lower 2/3rd found absent. The left hand was found wearing a metal bangle and found charred exposing all the intact bones.
7. Femur : Right side : Partially burnt upper 2/3rd of femur noted with lower portion found completely charred, the lower 1/3rd found absent. Left side partially burnt upper 1/3rd of femur noted with lower portion found completely charred, lower 1/3 found absent.
8. Tibia : Right side : Partially burnt. Upper 1/4th of tibia noted with lower portion found completely charred, lower 3/4th found absent. Life side :

Partially burnt upper 1/2 of tibia noted with lower portion found completely charred.

9. Fibula : Right side : Partially burn upper 1/4th fibula noted with lower 1/4th found completely charred, lower 3/4th found absent. Left side : Partially burnt. Upper 1/2 of fibula absent. Lower portion found completely charred, lower 1/2 found absent.

10. Foot : Both sides found charred exposing all intact bones. A metal ring noted on right side 2nd toe and left side 3rd toe.

11. Pelvic Region : Skeletonised with partially charring of both sides intact pelvic bones attached with a tag of partially charred tissue at the level of pubic syn physis region. Sacrum found absent.

12. Thorax and abdomen : Partially charred chest on both side exposing the partially charred sternum and ribs 1 to 12 in right side and 1 to 8 on left side chest. The 9 to 12 ribs on left chest found absent. Remnants of partially charred tissue was found attached with the ribs and sternum in patch areas. All thorax and lumbar vertebra 1 to 2 found partially burnt, L3 to L5 vertebra found absent. All the thoracic and abdominal contents found absent."

Ex.P.7 is the Postmortem Certificate. He gave opinion that the cause of death could not be ascertained. P.W.20 examined many more witnesses. But, still he was not able to get any clue regarding the identity of the dead body as well as that of the accused involved in the occurrence.

(h) While so, on 01.09.2009, P.W.3 went to Kadampur Police Station and made a complaint that his daughter Poongodi-the deceased herein was found missing. P.W.16, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.204/2009 at 01.45 p.m. on 01.09.2009. Ex.P.11 is the First Information Report. She forwarded both the documents to court.

(i) P.W.19, the then Inspector of Police, Kadampur Police Station, took up the case for investigation. He examined P.Ws.3 to 6 and examined few more witnesses. He made extensive publicity in newspapers and also in electronic media publishing the photograph of the deceased seeking some clues also about her whereabouts. All his efforts to trace out the deceased could not succeed. While so, on 12.09.2009, he came to know that there was a dead body of a woman in a half burnt condition found within the jurisdiction of Kadampur Police Station. On verification, he came to know that in respect of the said dead body, a case in Crime No.28 of 2009 had been registered on the file of Kadampur Police Station. Then, he took P.Ws.3 and 4 to

Police Station. At Kadambur Police Station, the personal belongings found on the dead body were kept after recovering the same during the course of investigation of the case in Crime No.28 of 2009. On noticing the nose ring recovered from the dead body, they identified the same as that of the deceased. But the 1st accused, who came to the police station, on seeing the same, said that it did not belong to the deceased at all. Then, he forwarded the photographs of the deceased to the Inspector of Police, Bungalowpudur Police Station, who was investigating the case in Crime No.28 of 2009.

(j) P.W.21, the Inspector of Police, Bungalowpudur Police Station was investigating the case in Crime No.28 of 2009. On receipt of the photographs of the deceased, forwarded the same for super imposition. He made a request for DNA examination to find out the identity of the dead body. He continued the investigation and examined many more witnesses. When the investigation had taken a serious mode, the accused appeared before P.W.10 the then Village Administrative Officer, on 06.06.2012 at 11.00 a.m. i.e. about 3 years after the occurrence. On such appearance, it is alleged that the 1st accused gave a voluntary confession to P.W.10. P.W.10 allowed him to confess orally which he reduced into writing. Ex.P.4 is the said extra judicial confession. Along with a report, he produced the accused before P.W.21. P.W.21 at about 01.00 p.m. on 06.06.2012, arrested the 1st accused. On such arrest, he gave a voluntary confession out of which he identified the 2nd accused. Immediately, he arrested him also. On such arrest, the 2nd accused gave a voluntary confession in which he disclosed about the identity of the 3rd accused. In pursuance of the disclosure statements of the accused 1 and 2, he arrested the 3rd accused also on the same day. She also gave a voluntary confession in the presence of the same witnesses. In pursuance of the disclosure statement, the 1st accused took the police and witnesses to Indira Nagar and produced TATA Sumo Car bearing Registration No.TN 38 7997. P.W.21 recovered the same under a mahazar. Then, he altered the case into one under Section 120-B, 302 and 201 of IPC and submitted an Alternative Report to the court under Ex.P.25. He examined many more witnesses, forwarded the accused to court for judicial remand. On completing the investigation, he laid charge sheet against all the three 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 21 witnesses were examined and 25 documents and 18 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 have stated that on 29.08.2009 at about 9.00 p.m., they found the dead body

of the deceased with foul smell in a half burnt condition. P.Ws.3, 4 and 5, who are the father, step mother and cousin of the deceased respectively, have stated that they went in search of the deceased, but they could not find her anywhere alive. Then, at Kadampur Police Station, they have identified the personal belongings of the deceased as that of her. P.W.6 has spoken about the fact that he searched the deceased along with other family members. P.W.8 has stated that on 21.08.2009, he found the 1st accused purchasing diesel from a petrol bunk near Shanthi Theatre and then, went into TATA Sumo Car. P.W.9 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.10, the Village Administrative Officer has spoken about the extra judicial confession given by the 1st accused and the fact that he produced the accused before P.W.21. P.W.11 has spoken about the postmortem conducted by him on the dead body of the deceased and he has further stated that he was not able to ascertain the cause of death. Thus, the cause of death has not been spoken by him. P.W.12 has stated that sometime before the occurrence, he saw the TATA SUMO Car (M.O.5) moving in a high speed. P.W.13 has spoken that the Car M.O.5 was originally owned by the 1st accused and the same was subsequently purchased by him from the 1st accused. P.W.14 has stated that he handed over the dead body of the deceased to Doctor for postmortem. P.W.15 has stated that he registered the case on the complaint of P.W.1 on the file of Kadampur Police Station in Crime No.28 of 2009 on 29.08.2009. P.W.16 has stated that she registered a case in Crime No.204/2005 on 01.09.2009 on the complaint of P.W.3 on the file of Kadampur Police Station. P.W.17 the Forensic Expert has spoken that she conducted super imposition examination on the skull of the deceased. The photographs of the deceased tallied with the same. P.W.18 has stated that she conducted DNA examination by extracting DNA from the bones of the dead body of the deceased and DNA extract from P.W.3. The DNA examination revealed that P.W.3 is the biological father of the deceased. Thus, the identity of the deceased has been established by scientific means. P.W.19, the then Inspector of Police, Kadampur Police Station has stated that he conducted preliminary investigation in the case. On 12.09.2009, he came to know that a dead body was found within Kadampur Police Station limit. Thereafter, he handed over the photographs of the deceased to the Inspector of Police, Kadampur Police Station. P.Ws.20 and 21 have spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted the 1st accused alone and acquitted the accused 2 and

3 as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant/1st accused is before this Court.

7. 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.

8. In this case, there is no denial of the fact that the deceased was lastly seen alive at her house on 21.08.2009. The dead body of the deceased was found on 29.08.2009. The identity of the dead body of the deceased has been established by DNA examination conducted and the super imposition examination conducted by the Scientific Expert. Thus, the prosecution has established that the deceased had died somewhere between 21.08.2009 and 29.08.2009.

9. While turning to the cause of death, P.W.11, who conducted autopsy on the body, was not in a position to give any opinion regarding the cause of death, since the body was in a half burnt condition and it was also highly decomposed. On that score, it cannot be said that the cause of death has not been established by the prosecution. The fact that the half burnt body was in a gunny bag, the body was burnt by using cycle tyres and the place chosen was a secluded place, would go to prove that the deceased had been either killed then burnt or she was burnt alive. At any rate, the prosecution has proved that the death of the deceased was not natural and it was a homicidal violence.

10. Now the question is, "who is the perpetrator of the crime?". In order to prove this fact, the prosecution relies on the extra judicial confession said to have been given by the 1st accused to P.W.10 on 06.06.2012 in respect of the occurrence which has taken place on 21.08.2009. The confession is stated to have been given voluntarily on 06.06.2012. There is no reason as to why the 1st accused should go to the Village Administrative Officer after about 3 years to confess. Further P.W.10 had no acquaintance with the accused. When that be so, it is highly doubtful as to whether the 1st accused would have reposed confidence in P.W.10 so as to confess to him his guilty. This creates enormous doubt in respect of the said confession.

11. It is the settled law that a retracted extra judicial confession which is shrouded with lot of doubts by itself is a very weak piece of evidence and it would not be safe to act upon the same solely on the basis of the said weak piece of evidence, unless, the same draws corroboration from the material particulars from other independent sources. Here in this case, absolutely, there is no other evidence coming forward from any other independent source.

12. So far as the conduct of the 1st accused is concerned, he was all along maintaining that the deceased, who had left for Erode for treatment, had gone missing. This alternative theory has not been ruled out by the prosecution. This theory propounded by the 1st accused is inconsistent with the so called guilty. The conduct of the 1st accused, thus, has not been proved to be quite natural. In these circumstances, in our considered view, based on the above extra judicial confession alone, it would not be safe to sustain the conviction.

13. Apart from that, the cause of death has also not been clearly established by the prosecution. At any rate, in a case based on circumstantial evidence, the prosecution is expected to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain, without any break so as to unerringly point to the guilt of the accused and there should not be any hypothesis, which is inconsistent with the guilt of the accused.

14. Here in this case, the prosecution has not proved any of the circumstances clinchingly pointing to the guilt of the accused and that the alternative theory propounded by the 1st accused that the deceased had gone missing, also has not been ruled out by the prosecution. Thus, we hold that the prosecution has failed to prove the case beyond all reasonable doubts and therefore, the appellant/1st accused is entitled for acquittal.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant are set aside and he is acquitted. The bail bond, if any, executed by the appellant, shall stand cancelled. The fine, if any, paid by the accused, shall be refunded to the accused.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tsi

To

1. The Sessions Judge,
Mahila (Fast Track) Court,
Erode.
2. The Judicial Magistrate, NO.1, Gobichettipalayam,.
3. The Chief Judicial Magistrate, Erode,
4. The Director General of Police, Mylapore, Chennai-4.
5. The District Collector, Erode.
6. The Superintendent of Central Prison Coimbatore.
7. The Inspector of Police,
Kadampur Police Station,
Bungalapudur Circle, Erode District.
8. The Public Prosecutor,
High Court, Chennai.

1 cc to Mr.R. Sankara Subbu, Advocate SR.31455

Cr1.A.No.310/2014

KGK(CO)
EU 20.7.16



WEB COPY