

Bail Slip

That the Appellant/Accused namely Sakthivel S/o. Kanagaraj was directed to be released on bail dated 02.06.2015 in CrI.MP.No.1/2015 in CrI.A.No.461/2014.

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.461 of 2014

Sakthivel ... Appellant

vs.

State,by

The Inspector of Police,
R-1, Mambalam Police Station,
Chennai.

Crime No.355 of 2012

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 21.08.2014 passed by the learned Additional Judge, Mahila Court, Chennai, in S.C.No.8 of 2013.

For Appellant : Mr.V.Parthiban for
Mr.E.Kannadasan

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.8 of 2013, on the file of the learned Additional Judge, Mahila Court, Chennai. He stood charged for an offence under Sections 302 and 201 IPC. The Trial Court by judgement dated 21.08.2014 convicted the appellant/accused for the offences under Sections 302 and 201 of IPC, and sentenced him to undergo life imprisonment for the offence under Section 302 IPC and sentenced him to undergo five years rigorous imprisonment for the offence under Section 201 of IPC. 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, one Lakshmi, was having 'living together relationship' with the accused. She was already married to another man in Andrapradesh and due to some dispute, she left him. She also have two children and left them with her father and living with the accused in Chennai. Both the accused and the deceased were doing construction work. Since the deceased used to sent money to his parents and children at Andhra Pradesh, the accused questioned the same and quarrelled with her. With the above motive, on 05.05.2012, at about 9.30 p.m., the accused strangled the deceased with a towel and murdered her. In order to escape from the charge of committing murder, he inflicted a cut injury at his neck, as if somebody attacked him and murdered the deceased.

(ii) P.W.1, is the civil contractor under whom both the accused and the deceased were working. On 05.03.2012, the accused called over the phone and informed him that some persons have attacked him and requested to save him. Immediately, P.W.1 and P.W.2, father of P.W.1 rushed to the scene place and found both the deceased and the accused laying on the floor. Immediately, P.W.1 called 108 Ambulance and went to the respondent police and gave a complaint, Ex.P1.

(iii) P.W.11, Sub Inspector Police, working in the respondent police, received Ex.P1 complaint and registered a case in Crime No.355 of 2012, under Section 302 IPC and prepared a First Information Report, Ex.P7. He sent the First Information Report to the Judicial Magistrate Court and copies to the higher officials. Thereafter, he commenced investigation, visited the scene of occurrence and prepared an Observation Mahazar, Ex.P2, and drew a Rough Sketch, Ex.P8 in the presence of witnesses. He recovered M.O.2, knife and M.O.3, towel under Ex.P.9, mahazar in the presence of witnesses. Then, he arranged the photographer for taking photographs. He examined P.W.1, P.W.2 and some other witnesses and recorded their statements. Thereafter, he sent the dead body to Royapettah Government Hospital through a Head Constable. P.W.7, a Civil Surgeon, working at Government Royapettah Hospital, received the dead body and issued accident register Ex.P3. Then, P.W.11 went to the Government Hospital, Royapettah and conducted inquest over the dead body between 8.00 a.m, and 10.00 a.m., in the presence of panchayatdars and prepared an inquest report, Ex.P10. He sent the dead body for post mortem through a Head Constable. He recovered a black colour nighty M.O.4, inskirts M.Os.5 and 6, under Ex.P11 mahazar. He also enquired some witnesses and recorded their statements. On 12.05.2012, he arrested the accused, who was taking treatment in Rajiv Gandhi Government Hospital, Chennai

for the injuries he sustained and on such arrest, the accused gave a confession statement.

(iv) In the meantime, P.W.8, Assistant Professor, working in the Government Royapettah Hospital, Chennai, conducted post mortem over the dead body and found the following injuries.

Transverse complete ligature abrasion encircling the neck measuring 36 x 3 - 50 above the level of Thyroid cartilage situated 5 cms below the right mastoid process, 5 cms below the left mastoid process and 4 cms above the supra sternal notch.

DISSECTION: On dissection. The Sub cutaneous softer underneath the ligature abrasion found contused. Petechial haemorrhages seen both sides of neck.

DISSECTION: Scalp appear normal. Cranial vault and meninges Intact brains surface vessels congested. Hyoid bone intact and thoracic cage intact. Heart normal in size. Chambers contains fluid. Lungs c/s congested multiple sub pleural. Petechial haemorrhages seen over the surface of both lungs. Stomach contained 300 gms of semi digested semi solid food material. Mucosa Normal. Liver, spleen and kidneys c/s congested. Intestines distended with gas Bladder empty uterus empty, pelvis and spinal column Intact.

He opined that the deceased would appear to have died of Asphyxia due to ligature strangulation. He issued postmortem certificate, Ex.P4. P.W.10, a Doctor, who was working in Rajiv Gandhi Government Hospital, Chennai, admitted the accused in the Hospital for the injuries sustained by him, issued accident register Ex.P.6 and found a cut injury in the neck and gave treatment to him.

(v) Since P.W.11 was transferred, P.W.12, Inspector of Police proceed further with the investigation. He examined the Doctor who conducted postmortem and other witnesses and recorded their statements. On completion of investigation, P.W.12 filed final report against the accused before the concerned Judicial Magistrate Court on 05.10.2012.

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 and 11 documents and 6 material objects were marked.

4. Out of the 11 witnesses, P.W.1 is a civil contractor under whom the accused and deceased were working as construction labourers and they were living in the construction site. In his evidence, P.W.1 has stated that on 05.03.2012, the accused called him over phone and informed him that some one had attacked the deceased and he requested to save him. It is his further evidence that immediately, he visited the scene place and found that both the accused and deceased were lying on the floor inside the house and the accused had cut injuries in his neck and immediately, he called 108 ambulance and lodged a complaint Ex.P.1 before the respondent police. P.W.2, who is the father of P.W.1 is also a civil contractor. In his evidence, P.W.2 has stated that on 05.03.2012, at about 9.30 p.m., he received a phone call from the accused and when attended the case, the accused said that three persons came to the construction site and attacked him. and immediately, he, along with P.W.1, visited the scene of occurrence. His further evidence was that the persons residing near the scene place informed that on 05.03.2012 evening, there was a quarrel between the deceased and the accused, the accused put a towel around the neck of the deceased and dragged her into the building. P.W.3, who is the father of the deceased, residing at Srikagulam village, Andhra Pradesh, after receiving death message from police, he came to Chennai. P.W.4 is the sister of the deceased. She is also residing at Srikagulam village, Andhra Pradesh and she came to Chennai on receipt of death news of her sister. P.W.5 is the photographer who took photographs of the dead body. P.W.6 is a Mahazar witness for recovery of M.O.2 knife, and M.O.3 towel. P.W.7 is a Civil Surgeon, working in the Royapettah Government Hospital. It is his evidence that, he received the dead body of the deceased and issued accident register Ex.P3. P.W.8 is an Assistant Professor, working in the Royapettah Government Hospital. According to him, he conducted postmortem on the dead body and issued postmortem certificate, Ex.P4, and he has opined that the deceased would appear to have died of Asphyxia due to ligature strangulation. P.W.9 is the Scientific Officer working in the Forensic Department. He has deposed that he examined the bloodstained knife and gave a chemical analysis report, Ex.P5. P.W.10-Doctor, who was working in the Rajiv Gandhi Government Hospital, Chennai has deposed that he admitted the accused and issued accident register Ex.P6. P.W.11 is the Inspector of Police, who prepared FIR and conducted the investigation. P.W.12 is the Inspector of Police, who completed the investigation and filed final report in this case.

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 the accused for the offences as stated in the first paragraph of this judgement. 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/accused would submit that there is no eye witness to the occurrence and none of the circumstances relied upon by the prosecution were proved. He further submitted that the accused also sustained injury and he was admitted in the Government Hospital and when his version was that some three persons attacked him and also the deceased, there was no investigation by the respondent police on that aspect. He further submits that the trial Court has erred in convicting the accused without any evidence and hence he prays for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has let in evidence to prove that the accused and the deceased living together and there was a quarrel between them on the previous day evening and the murder has taken place in the construction site, where both of them were living, and the injury found on the accused was only a self inflicted injury, in order to divert the murder and thus the prosecution has clearly proved the guilt of the accused. He further submits that there is no infirmity in the judgment of the trial Court and hence he prays for dismissal of this appeal.

10. We have considered the rival submissions.

11. It is a case of circumstantial evidence. The prosecution has relied on the following circumstances. (1) Both the accused and the deceased were living together for some time. Both of them were construction labourers and staying in the construction site and the murder has taken place in the construction site where they were residing. (2) There was a quarrel between the accused and the deceased immediately before the occurrence, over sending money to the parents and children of the deceased at Andhra Pradesh. (3) The Post-mortem certificate and opinion of the Doctor that the deceased died of Asphyxia due to ligature strangulation and recovery of M.O.3 towel, used by the accused for strangulated the deceased.

12. So far as the first circumstance, namely, quarrel between the deceased and the accused, there is no direct evidence. But P.Ws.1 and 2 only say that the persons residing

nearby informed them that there was a quarrel between the accused and the deceased. However, none was examined by the prosecution. Thus, it is only hearsay evidence. Hence, motive projected was not established by the prosecution.

13. The next circumstance that both of them were residing in the same place where the murder has taken place. It is pertinent to note that the accused had cut injuries in his neck and he was admitted in the Government Hospital. It is the case of the accused that some three persons attacked him with knife and strangulated the deceased. But, the respondent police did not conduct any investigation over the injury found on the neck of the accused. Hence, there is an alternative hypothesis as advanced by the accused that some three persons might have attacked him and caused injury to him. In the absence of any investigation over the injury found on the accused, we cannot rule out the alternative hypothesis. The recovery of towel is concerned, though it belonged to the accused, that alone cannot establish the guilt of the accused.

14. The settled legal principle of law is 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, if we analyse the facts of the present case, there is an alternative hypothesis advanced by the accused that there was a cut injury in his neck and according to him, three persons attacked him with a knife and also caused death of the deceased. In the absence of any investigation to rule out of the above alternative hypotheses, we cannot hold that the prosecution has unerringly proved the guilt of the accused. The other circumstance relied upon by the prosecution also does not point to the guilt of the accused.

15. In the above said circumstances, it is unsafe to rely upon the circumstances evidence projected by the prosecution and the conviction and sentence imposed by the trial Court cannot be sustained. Hence, the same is liable to be set aside.

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16. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned Additional District Judge, Mahila Court, Chennai, in Sessions Case No.8 of 2013 is set aside and the appellant/accused is acquitted of the charges levelled against him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The XVIIIth Metropolitan Magistrate Saidapet, Chennai
- 2 Do thro the Chief Metropolitan Magistrate Egmore, Chennai
- 3.The Additional District Judge,
Mahila Court, Chennai.
- 4 The Superintendent Central Prison, Puzhal, Chennai
- 5 The District Collector Chennai
- 6 The Director General of Police Mylapore, Chennai
- 7.The Inspector of Police,
R-1, Mambalam Police Station,
Chennai.
- 8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Kannadasan, Advocate, S.R.No.31471

mg(CO)
md(29/12/2016)

Cr1.A.No.461 of 2014