

Bail Slip
in
Crl.A. 502/14
and
Crl.A. 610/15

The Appellants/petitioners namely, 1. Edward Jeyakumar, 2. Prabha @ Prabhavathi, were directed to be released on bail as per the Order of this Court dated 10/04/2015 and 01/10/2015 in MP. 1/2014 in Crl.A. 502/2014 and MP.1/2015 in Crl.A. 610/2015, respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos. 502 of 2014 & 610 of 2015

Edward Jeyakumar ... Appellant/A.2 in Crl.A.502/2014

Prabha @ Prabhavathi ... Appellant/A.1 in Crl.A.610/2015

VS

State represented by

Inspector of Police,

R-4, Soundarapandianar Angadi

Police Station,

T.Nagar, Chennai - 600 017.

Crime No.982 of 2010. .. Respondent in both Crl.A.

Common Prayer in both Criminal Appeals:- These Criminal Appeals have been filed under Section 374 (2) Cr.P.C., to set aside the conviction and sentence imposed upon the appellants in S.C.No.155 of 2011 dated 20.06.2014 by the learned I Additional Sessions Judge, Chennai.

In Crl.A.No.502 of 2014:-

For Appellant

: Mr. G.R.Deepak,
Legal Aid Counsel

For Respondent

: Mr.M.Maharaja,
Additional Public Prosecutor

In CrI.A.No. 610 of 2015:-

For Appellant : Mr. S.N.Arunkumar,
for Mr. G.Jeremiah

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

COMMON JUDGMENT

The appellant in CrI.A.No.502 of 2014 is A.2; and the appellant in CrI.A.No.610 of 2015 is A1 in S.C.No.155 of 2011 on the file of the learned I Additional Sessions Judge, Chennai. A1 stood charged for the offences under Sections 120-B, 450 r/w.34, 302 & 382 r/w.34 IPC. A2 stood charged for the offences under Sections 120(b), 450 r/w.34, 302 r/w.34 & 382 r/w.34 IPC. After trial, by judgment dated 20.06.2014, the trial Court found guilty of both the accused, as detailed below:-

Accused	Section of law	Sentence
A.1 & A.2	120(B) I.P.C.,	Imprisonment for life and to pay a fine of Rs.2000/- each, in default to undergo rigorous imprisonment for three months.
A.1 & A.2	450r/w.34 I.P.C.,	Rigorous Imprisonment for 10 years and to pay a fine of Rs.2,000/- each, in default, to undergo rigorous imprisonment for three months.
A.1 & A.2	382r/w.34 I.P.C.,	Rigorous Imprisonment for 10 years and to pay a fine of Rs.2000/- each, in default, to undergo rigorous imprisonment for three months.
A1	302 I.P.C.,	Imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo rigorous imprisonment for six months.

Accused	Section of law	Sentence
A2	302r/w.34 I.P.C.,	Imprisonment for life and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for six months.

The trial Court ordered the above sentences to run concurrently. Challenging the above said conviction and sentence, the appellants are before this Court with these Criminal Appeals.

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

The deceased, in this case, one Adilakshmi @ Lakshmi, is the aunt of A1. P.W.1 is the daughter of the deceased. P.W.2 is the son-in-law of the deceased. The deceased was residing at No.26/6, Kolamamani Amman Koil Street, T.Nagar. Since A1 was in financial difficulties, she demanded money from the deceased, but the deceased refused to give money to A1. Hence, on 15.10.2010, at about 9.30 a.m., both the accused went to the house of the deceased and smothered her with a towel and thereby caused the death of the deceased. Thereafter, both the accused had stolen the gold chain and gold ear stud, camera and silk sarees, worth about Rs.66,000/-, from the house of the deceased and went away.

3. P.W.1, daughter of the deceased tried to contact the deceased. But since the deceased did not pick the phone, on 18.10.2010, at about 8.00 a.m., P.Ws.1 and 2 went to the house of the deceased and found the door locked from outside and a bad smell coming from the house. Hence, they broke open the door and found the deceased dead and the gold chain and stud worn by the deceased were found missing. When, P.W.1 enquired the neighbours, they informed that A1 was with the deceased on 15.10.2010 at about 11.00 p.m., and suspecting her, P.W.1 lodged a complaint, Ex.P.1, before the respondent police.

4. P.W.21, Inspector of Police, on receipt of the complaint, registered a case in Crime No.982/2010, for an offence under Section, 302 IPC and forwarded the First Information Report, Ex.P.28, to the Court. Thereafter, P.W.21 proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.30, and a Rough Sketch, Ex.P.29, and also collected bloodstained samples and bloodstained towel from the scene of occurrence in the presence of witnesses. P.W.21 also collected hair found on the cot, under a cover of Mahazar, Ex.P.31, in the presence of witnesses. Then, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared an Inquest Report, Ex.P.33. Thereafter, he sent the dead body of the deceased for postmortem to the Government Hospital, Royapettah.

5. P.W.17, doctor, working the Government Hospital, Royapettah, conducted postmortem on the dead body of the deceased on 19.10.2010, at about 10.40 a.m., and found the following injuries:-

“ Injuries :

1. Brownish black irregular abrasion; (i) Five abrasions 0.5 x 0.4 cm, 0.2 x 0.1 cm 0.3 x 0.2 cm & 0.4 x 0.3 cm, were present obliquely, with concavity towards the fingers, on the back of upper end of right middle finger & ring finger; (ii) 1.3 x 0.5 cm, on the back of right wrist; (iii) 11 x 4-2 cm, horizontally oblique, on outer aspect of upper end of right arm; (iv) 6.5 x 5.4 cm, horizontally oblique, on upper part of right side of the chest; (v) 8 x 6.4 cm, horizontally oblique on upper part of left side of the chest & front of left shoulder; (vi) 8 x 2-1.5cm, horizontally oblique, on outer aspect of upper third of left arm; (vii) 2 x 1.5-1 cm, 0.5 cm from the outer angle of right eye; (viii) 0.5 x 0.5 cm, on the front of right side of the chin; (ix) 1.2 x 0.5-0.3 cm, linear abrasion.
2. An oblique, semicircular, pressure abrasion 6.5 x 1-0.5 cm, on the back of middle third of right forearm; OP/D: Dark red, muscle deep, diffuse bruising on the underlying subcutaneous soft tissues.
3. Brownish black irregular abrasion 3 x 2-1 cm, vertically oblique, on the inner aspect of lower part of front of right knee; surrounded by 7 x 5-4 cm, black irregular abrasion, on upper outer part of the right knee, with peeling of cuticle exposing the underlying pale dermis.
4. On reflection of the scalp: Dark red, scalp deep, diffuse bruising on right frontal region of the scalp; skull was intact. On opening the calvarium; Membranes were intact. Brain: Normal in size & softened, surface vessels were congested.
5. A horizontally oblique lacerated wound 0.7 x 0.3-0.1 x 0.3-0.1 cm, on the inner surface of right side of lower lip; dark red, skin deep, diffuse

bruising on the inner surface of both lips.

6. On Dissection of neck : Dark red bruising 5 x 4-2 cm x 1-0.5 cm on the right side of the posterior pharyngeal wall. There were no other external or internal injuries anywhere on the body.

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Ex.P.17 is the postmortem certificate given by P.W.17. He gave opinion that the deceased appears to have died of Asphyxia due to smothering. Ex.P.18 is his opinion.

6. On 18.10.2010, at about 7.00 p.m., P.W.21 arrested the accused near Central Railway Station and on such arrest, both of them voluntarily gave confessions and based on the disclosure statement of A1, Ex.P.34, P.W.21 recovered a gold chain(M.O.1) weighing about 24.100 gms and gold ear stud (M.O.2) weighing 4.100 gms under a cover of Mahazar Ex.P.11, in the presence of P.W.11 and another. Based on the disclosure statement of A2(Ex.P.35), P.W.21 recovered a bloodstained full hand shirt(M.O.5), Yashica camera(M.O.4) and two sarees (M.O.3) under a cover of Mahazar, Ex.P.13. Both the accused had injuries. A1 told P.W.21 that the deceased had bitten her and she sustained injury on her hand, and when A2 tried to catch the train, he fell down in the platform and sustained injuries. Hence, P.W.21 sent both the accused for treatment to Government Hospital, Royapettah. After treatment, he sent both of them to judicial custody. In the course of investigation, P.W.21 came to know that it is a murder for gain. Hence, he altered the charge into Section 302 and 382 IPC. He sent the material objects for chemical examination. Thereafter, P.W.21 recorded the statements of other witnesses and as he was transferred, he handed over the case diary to his successor, P.W.22.

7. P.W.22 continued the investigation and made arrangements for an identification parade. P.W.20, the learned Judicial Magistrate conducted the identification parade. P.W.10 identified both the accused in the Identification parade. Then, P.W.22 recorded the statements of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. After completion of investigation, P.W.22 laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 22 witnesses were examined and 36 documents were exhibited, besides 7 Material Objects.

9. Out of the witnesses examined, P.W.1 is the daughter of the deceased. According to her, the deceased was living alone and A1 is the brother's daughter of the deceased, on 15.10.2010, at about 7.00 p.m., the deceased called her

over phone and talked to her, thereafter, on 16.10.2010 and 17.10.2010, when she tried to talk with the deceased, through phone, the deceased did not pick up the phone and hence, on 18.10.2010, at about 8.10 am., she and P.W.2 went to the house of the deceased and found the door locked from outside and a bad smell coming from the house and hence, they broke open the door and found the deceased dead and on suspicion, they lodged a complaint before the respondent police against the accused.

10. P.W.2 is the husband of P.W.1. He has also corroborated the evidence of P.W.1. P.W.3 is the brother of the deceased. According to him, on 15.10.2010, at about 9.30 p.m., the deceased called him over phone and told him that A1 was demanding money from her and he informed her that he would meet her on the next day, on the next day morning, when he tried to contact the deceased, she did not pick-up the phone, thereafter, on 18.10.2010, along with P.Ws.1 and 2, he went to the house of the deceased and found her dead. P.W.4 is an auto driver and according to him, on 15.10.2010, after finishing his work, while he was sitting in front of his house, at about 9.30 p.m., A1 went into the house of the deceased. P.W.5 is a neighbour of the deceased. He has stated that he also saw A1 in the house of the deceased at 10.30 p.m., on 15.10.2010 and talking with the deceased. P.W.6 is the mother of P.W.5 and she has stated that she also saw A1 in the house of the deceased on 15.10.2010 between 9.30 p.m. and 10.00 p.m. and A1 also asked the key of the front gate of her house, but she refused to give the key.

11. P.W.7 is a hearsay witness. P.W.8 has turned hostile. P.W.9 is a witness to the Observation Mahazar. P.W.10 is an auto driver. According to him, on 15.10.2010, at about 1.30 p.m., in the mid night, he saw both A1 and A2, in a perturbed mood and when he asked them whether they want to hire an auto, they refused. He has also identified A1 and A2 in the identification parade. P.W.11, yet another auto driver, is a witness to the arrest and also a witness to confession statements of A1 and A2. He is also a witness to the recovery of Gold chain(M.O.1), Gold ear stud(M.O.2), sarees (M.O.3) and camera(M.O.4), blood stained shirt(M.O.5) on the basis of the disclosure statement of A2.

12. P.W.12, photographer, has stated that he took photographs of the dead body of the deceased at the scene of occurrence. P.W.13 is a pawn broker, who is running a shop at Meenjur. According to him, on 16.10.2010, at about 8.00 a.m., both A1 and A2 approached him to pledge gold chain(M.O.1) and gold ear stud(M.O.2) and they received a sum of Rs.32,000/- on 17.10.2010 and on 18.10.2010, he paid another sum of Rs.12,000/-, but, the accused did not receive any receipt from him and hence, he kept the receipt, Ex.P.14, with him. P.W.14 is the house owner, where A1 and A2 were residing. P.W.15, Head Constable, has stated that he accompanied the

dead body of the deceased for postmortem to Government Hospital, Royapettah, and identified the same for postmortem and after postmortem, he handed over the body to her relatives. P.W.16, Doctor, has deposed that he examined A1 and A2 and issued Accident Register, Ex.Ps.15 & 16 and found some injuries on the head of A2 and also a small injury in the finger of A1. P.W.17, Doctor, has stated in his evidence that he conducted postmortem on the dead body of the deceased. P.W.18 is the Assistant Director in the Forensic Science Lab who examined the bloodstained material objects and gave a report, Ex.P.19.

13. P.W.19, doctor, has stated that he received the dead body of the deceased and sent the body to mortuary and he also issued Accident Register, Ex.P.20, with regard to the injuries sustained by the deceased. P.W.20, Judicial Magistrate, has spoken about the conduct of identification parade for the accused. P.W.21, Inspector of Police, has deposed that he registered the First Information Report, conducted investigation, examined the witnesses, arrested the accused and also recovered material objects and as he was transferred, he handed over the case records to P.W.22, his successor, for further investigation. P.W.22 has spoken about the further investigation done by him and filing of charge sheet after completion of investigation.

14. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or mark any documents, on their side.

15. Having considered all the above, the trial Court convicted both the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 & 2 are before this Court with these Criminal Appeals.

16. We have heard Mr.G.R.Deepak, learned Legal Aid counsel, appearing for appellant in CrI.A.No.502 of 2014, Mr.S.N.Arunkumar, learned counsel appearing for appellant in CrI.A.No.610 of 2015 and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

17. It is a case of circumstantial evidence. The first and the foremost circumstance relied upon by the prosecution is the motive for the murder. A1 is the brother's daughter of the deceased and she was in a financial crisis. Hence, she had approached the deceased and requested money from her. But, the deceased had refused to give any money to A1. According to P.W.3, brother of the deceased, on 15.10.2010, at about 9.30 p.m., the deceased called him and told him that A1 was troubling her by demanding money, for which, he told her that he would come to her house, the next day. P.W.3 has also informed the same to P.W.1. According

to the prosecution, since the deceased refused to give money to A1, A1 & A2 have murdered the deceased and had stolen the gold chain and ear stud from the deceased. From the above, it is clear that the prosecution has proved the motive for the occurrence.

18. The next circumstance relied upon by the prosecution was that A1 was last seen with the deceased on 15.10.2010, between 9.00 p.m. and 11.00 p.m. P.W.4, Auto driver, who was residing in the ground floor of the building, where the deceased was residing, has stated that after completing his work, when he was sitting in front of his house, at 9.30 p.m., he saw the presence of A1 in the house of the deceased and talking with her. P.W.5 is the neighbour of the deceased. Even according to P.W.5, at about 10.30 p.m., when he returned his house, he saw A1 sitting in a chair and talking with the deceased. P.W.6, mother of P.W.5, has also stated that she saw A1, along with deceased, between 9.30 p.m. to 10.00 p.m. According to her, A1 also asked the front door key, but, she refused to give the same to her. Therefore, from the above testimonies, it is clear that A1 was in the house of the deceased at the time of occurrence.

19. The next circumstance relied upon by the prosecution is recovery of M.O.1, Gold chain and M.O.2, ear stud, based on the disclosure statement of A1 and A2. It is the case of the prosecution that after the occurrence, the accused pledged the jewels of the deceased in a pawn broker shop, owned by P.W.13. Based on the disclosure statements of accused, P.W.21, investigation officer, has recovered the jewels from the shop of P.W.13. According to P.W.13, on 16.10.2010, at about 8.00 a.m., both the accused came to his shop and pledged the gold chain (M.O.1) and ear stud (M.O.2) and received a sum of Rs.500/- on 16.10.2010 and also received a sum of Rs.32,000/- and Rs.12,000/- on 17.10.2010 & 18.10.2010. He has also produced the receipt, Ex.P.14 and the jewels were also identified by P.W.1 as that of the deceased. The above recovery was on the basis of the disclosure statement of A1 and A2.

20. From the above, it is clear that immediately after the occurrence, the jewels, belonging to the deceased, were in possession of the accused. Hence, under Section 114 (a), there is a presumption that it is only these accused who have stolen the jewels of the deceased and also murdered her. It is a rebuttable presumption. But, there is no explanation on the part of the accused for rebutting that presumption and they have failed to rebut the same. In the absence of any such explanation, it is one of the strong circumstance against the accused. Eventhough the prosecution has failed to prove the motive for the occurrence, with any plausible evidence, from the evidence of prosecution witness, it could be seen that A1 was last seen together with the deceased at or about

the time of occurrence and followed by the murder of the deceased and possession of the jewells of the deceased, which were pledged by A1 and A2 jointly.

21. Hence, we are of the considered view that from the above evidence, relied upon by them, the prosecution has proved the circumstances beyond all reasonable doubt unerringly pointing the guilt of the accused and we see no reason to overturn the judgment of the trial court which has been recorded after marshalling the evidence adduced in proper perspective. Hence, the appeals fail and the same are liable to be dismissed.

22. In the result, the Criminal Appeals are dismissed. The conviction and sentence imposed on the appellants by the trial Court in S.C.No.155 of 2011 Dated 20.06.2014, is hereby confirmed. It is reported that the accused/appellants are on bail. Bail bonds, if any, executed by them shall stand cancelled. The trial Court is directed to take steps to secure the presence of the accused/appellants and to commit them to prison to undergo the remaining period of sentence, if any.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The I Additional Sessions Judge,
Chennai
2. The Inspector of Police,
R-4, Soundarapandianar Angadi Police Station,
T.Nagar, Chennai-17
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.R. Deepak, Advocate SR. 43480

CrI.A.Nos.502 of 2014
& 610 of 2015

SK(CO)
VR(23/02/2017)