

Bail Slip

The Appellants / Accused namely viz., 1.Sankar S/o.Kaliyamoorthy, 2.Kaliyamoorthy S/o.Ramasamy 3.Yasothai W/o.Kaliyamoorthy were directed to be released on bail made in CrI.MP.NO.3283 OF 2016 in CrI.A.No.574 of 2014 as per order of this court dated 12/04/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.572 of 2014

1. Sankar
2. Kaliyamoorthy
3. Yasothai ... Appellants / Accused

Vs

State rep. By
Inspector of Police,
Meensuruti Police Station,
Ariyalur District,
Crime No.93 of 2011 ... Respondent / Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed on the appellants by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in S.C.No.11 of 2013 dated 08.09.2014.

For Appellant : Mr. V.Sathish
for Mrs.Greetha Senthilkumar

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

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The appellants are A1 to A3 in S.C.No.11 of 2013 on the file of the learned Fast Track Mahila Court, Ariyalur. They stood charged for the offences under Sections 302 and 316 IPC. By judgment dated 08.09.2014, the trial Court convicted them under both

the charges and sentenced A1 to A3 to undergo Imprisonment for life and to pay a fine of Rs.1000/- each, in default to undergo Rigorous Imprisonment for one year for the offence under Section 302 IPC and to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for one year for the offence under Section 316 IPC and the trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

The deceased one Seethalakshmi is the wife of the first appellant/A1. The second appellant/A2 is the father-in-law and the third appellant/A3 is the mother-in-law of the deceased. The marriage between the deceased and the accused took place one year prior to the occurrence. They were living with A2 and A3 as a joint family at Gangaikonda Cholapuram. Due to some difference of opinion between A1 and the deceased, there were frequent quarrels between them. A2 and A3 also quarreled with the deceased. At the time of occurrence, the deceased was 5 months pregnant. On 13.05.2011, at about 8.30 p.m., there was a quarrel between the deceased and A3 and the deceased attacked A3 with hands and A3 attacked the deceased with a neem tree stick on her head and the deceased fainted, A3 informed the same to A2. Then all the accused, have taken the deceased inside the house and hanged the deceased, thereby committed the murder of the deceased. Since the deceased was pregnant, the fetus in her womb also died.

3. P.W.1 is the mother of the deceased. On the date of occurrence, in the morning, some of her relative informed her that the accused are harassing the deceased and asked her to take the deceased to her house, immediately, she reached the house of the deceased, and she found the house locked. When she opened the house and saw the deceased hanging in a sitting position, then, she lodged a complaint (Ex.P.1) before the respondent police.

4. P.W.16, the Special Sub-Inspector of respondent police station, on receipt of the above complaint, registered a case in Crime No.93/2011 under Section 174(3) Cr.P.C. Since the death took place within one year of her marriage, he forwarded the First Information Report (Ex.P.12) to RDO, Udayarpalayam and to the higher officials. The RDO, Udayarpalayam conducted inquest on the dead body of the deceased and sent his Inquest Report (Ex.P.13) .

5. Based on the Inquest Report, P.W.17, the Inspector of Police, altered the case into Section 302 IPC and the altered First Information Report is Ex.P.14. Thereafter, he proceeded to the scene of occurrence and recorded the statement of the witnesses. He arrested the accused on 14.05.2011, at about 10.00 p.m. On such arrest, A1 had given a voluntary confession. Based on the disclosure statement of A1, P.W.17 recovered Nylon saree (M.O.1), which was used to hang the deceased under a Mahazar (Ex.P.5) in the

presence of P.W.10 and another witness.

6. On 14.05.2011, at 11.45 a.m. P.W.15, Doctor, working in the Government Hospital, Jayankondam, conducted autopsy on the dead body of the deceased and he found the following injuries:

" External injuries :

1) 1 x 0.5 cm abrasion over left jaw inferior aspect 2) Ligature mark 1 breadth x 0.5 cm depth ligature mark seen over the neck above the thyroid cartilage running across the midline of neck towards the back of neck incomplete on the back "

Ex.P.10 is the Postmortem Report. He also gave a opinion (Ex.P.11), that the deceased died due to asphyxia following anti-mortem hanging.

7. P.W.17 also recovered the blood stained clothes of the deceased M.Os.2 to 4 and also received a hyoid report from Forensic Lab (Ex.P.15) which says that no fracture was deducted in hyoid bone. P.W.17, on completion of investigation, filed the charge sheet.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 16 documents were exhibited, besides marked 4 Material Objects.

9. Out of the said witnesses examined, P.W.1 is the mother of the deceased. She spoke about the marriage took place between the accused and the deceased and dowry demanded by the accused and also the harassment meted out by the deceased. On the date of occurrence, she received a phone call from one of her relative about the quarrel and when she reached the house of the deceased, she found the deceased hanging in a sitting position. Hence, she immediately gave a complaint(Ex.P.1) to the respondent police. P.W.2 is the father of the deceased. He also spoke about the marriage and the harassment of the accused. He also saw the body of the deceased hanged in a sitting position. P.W.3 turned hostile. P.W.4 is a mason working in the neighbouring house. On the date of occurrence, on hearing the noise, rushed to the house of the deceased and found the deceased hanging in sitting position and he removed the body and laid her in front of the house. P.W.5 and 6 have turned hostile. P.W.7 is a mahazar witness. P.W.8 is also a resident of the village. But he has not spoken anything about the occurrence. P.W.9 is also a resident of the same village and he only saw the dead body of the deceased. P.W.10 is the Village Administrative Officer. On hearing the news about the death of the deceased, he sent a report to the Tahsildar and he was also witness to the arrest of the accused and the confession statement given by A1 and also witness to the recovery of M.O.1, Saree.

10. P.W.11 is a resident of Gangaikonda Cholapuram and his evidence was that on the date of occurrence, at about 6.00 am, he saw the deceased and A3 quarrelling and he intervened and scolded them. Then he left, when he returning back after bath, he saw the accused taking the deceased behind his house. P.W.12 is also a resident of Gangaikonda Cholapuram, a mediator of the dispute between the deceased and the accused in an earlier occasion. P.W.13 is a Scientific Officer in the Forensic Science Lab and he examined M.Os.1 to 4 and given the report (Ex.P.9). P.W.14, Head Constable, identified the dead body of the deceased for postmortem and after postmortem, he handed over the body to the relatives. P.W.15, is the Doctor, who conducted postmortem on the dead body of the deceased and given a postmortem Report and gave final opinion that the death was due to asphyxia following anti-mortem hanging. P.W.16, the Special Sub-Inspector of police, registered the complaint. P.W.17, the Inspector of police, conducted the investigation, arrested the accused and on completing investigation, he laid charge sheet in this case.

11. 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.

12. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

13. We have heard Mr. V.Sathish, learned counsel appearing for the appellant and Mr. M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. It is a case of circumstantial evidence. It is a well settled principle 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 analyze the facts of the present case.

15. The prosecution case was that the marriage between the accused and the deceased took place one year before the date of occurrence and there were frequent quarrels between A1, A3 and the deceased. P.W.11, a resident of the Gangaikonda Cholapuram village, saw A3, A1 quarreling with the deceased on the date of occurrence, at about 6.00 p.m. and he intervened in the quarrel, thereafter, he saw the accused taking the deceased behind the house. The evidence of P.W.11 cannot be believed for a simple reason that he did not disclose the fact to anybody immediately, but informed the same only during the investigation. Except the evidence of P.W.11, there is no other witness available to prove the case of the prosecution.

16. Now, turning to the medical evidence, P.W.15, the Doctor, who conducted postmortem on the dead body of the deceased and found the following injuries :

"Ligature mark seen over the neck above the thyroid cartilage running across the midline of neck towards the back of neck incomplete on the back "

He gave opinion that the deceased would have appears to have died to asphyxia following anti-mortem hanging. As per Ex.P.10, the hyoid bone was intact. Considering the medical evidence, the suicidal hanging of the deceased also cannot be ruled out. Hence, as stated above, the case of circumstantial evidence, the prosecution should prove all the circumstances beyond reasonable doubt.

17. As stated earlier, in a case of circumstantial evidence, the proved circumstances should form a complete chain, unerringly pointing the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused, but, in the instant case, in view of the medical evidence, suicidal hanging of the deceased also cannot be ruled out as stated above, which is consistent with the alternative hypothesis. In the above circumstances, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the accused are entitled for acquittal.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, in S.C.No.11 of 2013, by the judgment dated 08.09.2014 is hereby set aside. The appellants/accused are acquitted of the charges levelled against them. Bail bond, if any, shall stand discharged.

mrp

Sd/-

Assistant Registrar (CS VI)

/TRUE COPY/

Sub-Assistant Registrar

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1. The Sessions Judge, Fast Track Mahila Court,
Ariyalur.

2. The Inspector of Police,
Meensuruti Police Station,
Ariyalur District.

3. The Judicial Magistrate,
Jayankondam.

4. The Chief Judicial Magistrate,
Ariyalur District, Ariyalur.

5. The Superintendent,
Central Prison, Trichy.

6. The District Collector,
Ariyalur, Ariyalur District.

7. The Superintendent of Police,
Ariyalur, Ariyalur District.

8. The Director General of Police,
Mylapore, Chennai-4.

9. The Public Prosecutor,
High Court, Madras.

+1CC to MR.GREETHA SENTHILKUMAR Advocate SR.NO.36633

Cr1.A.No.572 of 2014

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