

BAIL SLIP

The Appellant/Accused namely Lalitha D/o Gunasegaran be and hereby is directed to be released on bail vide court order dated 19/11/2014 in MP.No.1/14 in CrI.A.No.580/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.580 and 644 of 2014

Lalitha

... Appellant/Accused-2
in CrI.A.No.580/2014

Kavitha

... Appellant/Accused-1
in CrI.A.No.644/2014

-Vs-

State

The Inspector of Police
Grand Bazaar Police Station
Puducherry
(Crime No.497/2008)

... Respondent in both Appeals

These Criminal Appeals have been preferred to set aside the conviction and sentence imposed by judgment dated 24.09.2014 made in S.C.No.18 of 2010 on the file of the III Additional Sessions Court, Puducherry, by allowing these appeals.

For Appellant in
CrI.A.No.580/2014
CrI.A.No.644/2014

: Mr.P.Kumaresan
: Mr.G.Prabhakaran

For Respondent

: M/s.V.Balamurugane
Additional Public Prosecutor (Pondy)

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant in Crl.A.No.644 of 2014 is the first accused and the appellant in Crl.A.No.580 of 2014 is the second accused in S.C.No.18 of 2010 on the file of the learned III Additional Sessions Judge, Puducherry. They are sisters. The first accused stood charged for offences under Sections 302 r/w 34 and 382 IPC and the second accused stood charged for offence under Section 201 r/w 34 IPC. By judgment dated 24.09.2014, the Trial Court convicted the first accused and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for one year for the offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 381 IPC. The second accused was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for one month for the offence under Section 201 r/w 34 IPC. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

The deceased in this case was one Mrs.Aline Sinnas aged 76 years. She was a resident at No.138, Needarajappaiyar Street, Puducherry. The first accused was a house maid working in the house of the deceased. The second accused was residing at Pudhu Street, Thatchan Street via, Omakulam, Chidambaram. It is alleged that on 09.10.2008 around 08.30 p.m., these two accused entered into the house of the deceased, committed murder of the deceased by causing injuries with a grinder stone and a knife and had also stolen away gold jewels weighing around 485.130 gms. It is further alleged that around 6.15 a.m., on 10.10.2008, the first-accused went to the house of P.W.1, the daughter of the deceased and told her that when she came to the house of the deceased as usual to work, she found the deceased lying dead in a pool of blood. She pretended as though she had nothing to do with the death of the deceased. On receiving the said information, P.W.1, immediately rushed to the house of the deceased. She found the dead body of the deceased lying in a pool of blood with number of injuries. Then P.W.1 immediately went to the Police Station and made a complaint. On receipt of the said complaint, P.W.14, the then Sub-Inspector of Police registered a case in Crime No.497 of 2008 under Section 302 IPC.

Ex.P1 is the complaint and Ex.P27 is the FIR. He forwarded both the documents to the Court, which were received by the learned Magistrate at 12.00 Noon on 10.10.2008.

3. P.W.15, the then Inspector of Police took up the case for investigation. He visited the place of occurrence at 8.30 a.m. He arranged for Police photographer to take photographs. At his request, a sniffer dog was brought to the place of occurrence. The said dog tried to catch the first accused at the scene of occurrence. P.W.15 then prepared Observation Mahazar and Rough Sketch in the presence of witnesses. Then he conducted inquest on the body of the deceased between 10.00 a.m. and 12.45 p.m. Then he forwarded the dead body for post-mortem.

4. P.W.8 - Dr.Diwakar conducted autopsy on the body of the deceased on 10.10.2008 at 04.00 p.m. He found as many as 6 external injuries. Many of them were cut injuries. He gave opinion that the death of the deceased was due to shock and haemorrhage and due to multiple injuries found on the body of the deceased. He further opined that the said injuries could have been caused by a weapon like M.O.1 - knife. He also opined that the death would have occurred 12 to 18 hours prior to the time of post-mortem. Ex.P14 is the post-mortem certificate and Ex.16 is the final opinion regarding the cause of death.

5. P.W.15 recovered blood stained material objects and also the cell phone of the deceased from the place of occurrence. On suspicion, he interrogated the first accused. He left the first accused in the company of one women constable and one Sub-Inspector viz., Shanmugam to interrogate the first accused. When P.W.15 came to the scene of occurrence around 3.25 p.m., Shanmugam, the Sub-Inspector of Police informed that the first accused confessed to the guilt. Therefore, he arrested the first accused at 4.00 p.m. On such arrest, the first accused gave voluntary confession. P.W.15 recorded the same in the presence of P.W.6 and another witness. In the said confession, she disclosed the place where she had hidden the grinding stone and identified the second accused to whom she had handed over the jewels. P.W.15 seized the Nokia Cell Phone used by the first accused under a Mahazar around 7.10 p.m. She took the police to the place of hide out and produced the knife. P.W.15 recovered all these material objects under a Mahazar in the presence of the same witnesses. Then the first accused took the police and the witnesses to the house of one Chitra (P.W.11). From the house of Chitra, the first accused produced blood stained clothes, 2 locks, 2 keys and one iron chain. P.W.15 recovered the said material objects under a mahazar. Then she took the Police and the witnesses to the house of the second accused at Chidambaram. On 11.10.2008, at 8.30 a.m., they reached the house of the second accused. The second accused was

arrested. She also made a voluntary confession in the presence of the same witnesses. Ex.P29 is the disclosure statement, in which, she disclosed the place where she had hidden the jewels. In pursuance of the same, she produced one brown colour purse (M.O.46) and green colour purse (M.O.47) and gold jewels viz., M.Os.3 to 20. She produced the cell phone and that was also recovered. On returning to the Police Station, P.W.15 forwarded the accused to the Court for judicial remand. The investigation was thereafter continued by his successor and finally, he laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed charges as detailed in the first para 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 19 witnesses were examined and 31 documents were exhibited, besides 47 Material Objects were marked.

7. Out of the said witnesses, P.W.1 is the daughter of the deceased. She has stated that on the date of occurrence, the deceased alone was at her house. She has further stated that the first accused was maid servant. She has also stated that around 8.30 p.m. on 09.10.2008, the deceased called her over phone and told her that these two accused were standing outside and they were ringing the calling bell so as to enter into the house. P.W.1 told her not to open the door. Thereafter, on the next day morning at 6.15 a.m., the first accused informed her that the deceased was lying dead. She further stated that when she rushed to the house of the deceased, she found the deceased lying dead and the gold jewels namely M.Os.3 to 20 were found missing. She has identified M.Os.3 to 20 as the stolen properties. P.W.2 is the husband of P.W.1. He has also stated about the same facts as spoken by P.W.1. P.W.3 has not stated anything incriminating against the accused. P.W.4 has spoken about the preparation of Observation Mahazar, rough sketch and also recovery of material objects from the place of occurrence. P.W.5 has also spoken about the same facts. P.W.6 has spoken about the arrest of the accused and the consequential recovery of the material objects including the jewels. P.W.7 is the Ward attender in the Government Hospital, Pondicherry. He has stated that before post-mortem, he removed the clothes of the deceased (M.Os.41 to 45) and handed over the same to the Police. P.W.8 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.9 is the finger print expert. He has stated that as requested by the Investigating Officer, he visited the place of occurrence and searched for chance finger prints. He found chance finger prints in the bureau of the house of the deceased. Later, after arrest of the accused, finger prints of the accused were sent to him for comparison. The finger print of the first accused tallied with the chance finger prints taken from the house of the deceased. P.W.10 has stated

that he took photographs of the dead body at the place of occurrence as requested by P.W.14. P.W.11 has not stated anything incriminating. P.W.12 has stated that he took the dead body to the doctor for post-mortem. P.W.13 has spoken about the collection of material objects including blood stained earth from the place of occurrence. P.W.14 has spoken about the registration of the case. P.W.15 has spoken about the investigation done by him. P.W.16 is the head of the dog squad and dog handler. He has stated that at request of P.W.15, he took the dog to the place of occurrence and the said dog went near the first accused and caught her. P.W.17 is the Forensic Expert. He has stated that he has lifted 7 chance finger prints from the bureau of the house of the deceased. P.W.18 is the Inspector of Police of Grand Bazaar Police Station. He has spoken about the part of the investigation done. P.W.19 has also spoken about the investigation done and final report filed.

8. 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 on their side nor marked any document in their favour. Their defence was a total denial.

9. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how the appellants are before this Court with these appeals.

10. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. The learned counsel for the appellants raised number of grounds assailing the judgment of the Trial Court. The learned Additional Government Pleader (Puducherry) resisted the said argument. In the course of submissions of the learned counsel on either side and on perusal of the records, we found that there lot of anomalies committed during trial. First of all, according to the case of prosecution, at 8.30 p.m., on 09.10.2008, the accused 1 and 2 were near the house of the deceased and the first accused had spoken to the deceased. It is stated that the first accused spoke through her cellphone to the deceased. The cell phone has also been recovered, it is stated. But the call details of the cell phone have not been marked in evidence. If the call details had been marked, it would go to show whether the first accused was really near the house of the deceased within the coverage of the cell phone tower. It is further stated that after committing murder and robbery, these two accused went to the house of the second accused at Chidambaram. The cell phone of the second accused has also been recovered. The call details of the cell phone of the second

accused also have not been included in the evidence. If the call details have been collected from the tower dump details, it could have been easily established as to whether the second accused was also near the house of the deceased around 8.30 p.m. or not. After that, it is the case of the prosecution that both the accused have travelled to Chidambaram from Puducherry by keeping the cell phone alive. That being so, movement of cell phone from Puducherry to Chidambaram could also have been easily established by collecting necessary data from the service providers. That also has not been done. It is alleged that after leaving the stolen jewels at the house of A.2 at Chidambaram, A1 again returned to Puducherry. During this travel also, it is alleged that the first accused had kept the cell phone alive. Had the details of the movement of the said cell phone been collected at the relevant time, it would have gone to establish the movement of the cell phone from Chidambaram to Puducherry again.

12. It is submitted by the learned Additional Public Prosecutor that these documents were collected, but they were not marked during trial. We have gone through the records. Unfortunately, the details collected from the service providers, which are records do not bear the certificate as required under Section 65-B of the Evidence Act. This is the flaw committed by the Investigating Officer, for that, we cannot close our eyes and allow justice to be killed at the very altar of the temple of justice. Similarly, the IMEI number of the cell phone ownership and other details have not been proved by the prosecution. So far as recovery of jewels is concerned, sufficient evidence has not been let in, though sufficient evidence has been collected during the course of investigation. Therefore, in our considered view, to rectify these anomalies and to bring on record the evidences collected during the course investigation, the matter needs to be remitted back to the Trial Court. When this was pointed out, the learned counsel for the appellants submitted that the said exercise would amount to allowing the prosecution to fill up the lacuna. We do not think so, because, these materials were collected during the course of investigation and those collected materials were put on notice to the accused.

13. It is the case of the prosecution that these two accused were in Puducherry at 8.30 p.m. on 09.10.2008 and they travelled to Chidambaram to keep the jewels at the house of A.2 and then A.1 returned to Puducherry and pretended as though she had nothing to do with the death of the deceased, informed to P.W.1 the daughter of the deceased. Therefore, by receiving the above cell phone call details and other relevant documents, even afresh, with necessary certificates under Section 65-B of the Evidence Act would not amount to filling of the lacuna. In our considered view, allowing the prosecution to let in further

evidence, both oral and documentary would not cause any prejudice to the accused. In such view of the matter, we are inclined to set aside the conviction and sentence and remand the matter back to the Trial Court to deliver judgment afresh.

14. In the result, the appeals are allowed and the conviction and sentence imposed on the appellants are set aside. The case in S.C.No.18 of 2010 is remanded back to the file of the III Additional District Judge, Puducherry with the following directions:

i) The Trial Court shall permit the prosecution to summon any witness afresh and examine and to recall any witness already examined for the purpose of further examination.

ii) The Trial Court shall also permit the prosecution to produce documentary evidence including the stage of the call details and other details relating to the cell phone with necessary certificate under Section 65-B of the Evidence Act.

iii) The Trial Court shall furnish the documents about which reference has been made herein above to the accused well in advance and those documents shall be proved in evidence by examining the necessary witnesses.

iv) The Trial Court shall permit the accused to recall any witness already examined or to examine any witness afresh and also to let in both oral and documentary evidence afresh.

v) The Trial Court shall decide the case and dispose of the same uninfluenced by any of the observations made in this judgment, within a period of six months from the date of receipt of a copy of this judgment.

vi) The first accused/Kavitha is granted bail after executing a bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) with two sureties to the satisfaction of the Trial Court.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate II
Puducherry

2.-do- The Chief Judicial Magistrate
Puducherry

3.The III Additional Sessions Court,
Puducherry

4.-do-The Principal Sessions Judge
Puducherry

5.The Inspector of Police
Grand Bazaar Police Station
Puducherry

6.The Superintendent
Central Prison for Woman
Puducherry

7.The Public Prosecutor
High Court, Chennai.

8.The District Collector Puducherry

9.The Director General of Police
Mylapore Chennai-4

10.The Section Officer,
Criminal Section, High court Madras
(send back the trial court records forthwith)

+1 cc to Mr.G.prabhakaran Advocate sr 44990

+4 ccs to Government Pleader for puducherry sr nos.
45780,43445,45782,43446

Criminal Appeal Nos.580 and 644 of 2014

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