

BAIL SLIP MP NO.1 OF 2014 IN CRL APPL NO.197/2014

That the Appellant herein/Accused viz:- Sankar S/O.Rajagopal, Annakaran Kuppam, AndiMadam Post, Udagarpalayam Tali, Ariyalur; be and hereby is directed to be released on bail as per the order of this Court dated 24/04/2015 and made in MP No.1 of 2014 in CRL.APPL No.597/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and
THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.597 of 2014

Sankar ... Appellant/Accused

vs.

State,by

The Inspector of Police,
Karuvepilankurichy Police Station,
Cuddalore District.
(Crime No.89 of 2013)

.... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 31.10.2014 passed by the learned III Additional District and Sessions Judge, Cuddalore at Virdhachalam, in S.C.No.145 of 2014.

For Appellant : Ms.S.Vijaya for
M/s.Vijay and Anandh

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by **V.Bharathidasan, J.**)

The appellant/accused in this appeal is the sole accused in Sessions Case No.145 of 2014, on the file of the learned III Additional District and Sessions Judge, Cuddalore at Virdhachalam. He stood charged for an offence under Section 302 of IPC. The Trial Court, by judgement dated 31.10.2014, convicted the appellant/accused for the offence under Section 302 of IPC, and sentenced him to undergo life imprisonment and

also imposed a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for two years. 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 in this case is one Jayabal. Both the deceased and the accused belong to Annakarankuppam village. The accused got married to one Pushpavalli and some dispute arose between them. The deceased mediated between them and sent the accused wife to her parental house. Thereafter, the accused requested the deceased to bring back his wife to the matrimonial home. In the meantime, the deceased used to visit the accused's wife at her parental house, frequently. Hence, suspecting the fidelity of his wife, the accused decided to kill the deceased. In the above said circumstance, on 02.04.2013, at about 10.30 p.m., the accused took the deceased to a TASMAL liquor shop at Andimadam and both of them consumed liquor. After consuming liquor, the accused took the deceased to Rajendhirapattinam Anjaneyar Temple. At that time, there was a wordy quarrel between them and the deceased openly proclaimed that he was having illicit intimacy with the wife of the accused. Hence, the accused pushed the deceased along with his moped and attacked the deceased, with a stone on the head and face and murdered him. P.W.1 is the brother's son of the deceased. He saw the accused and the deceased going together in a moped in an intoxicated mood. Next day morning, at about 6.00 a.m., P.W.1 heard the news that the deceased was found dead near Rajendhirapattinam, Anjaneyar Temple. Immediately, he gave a complaint (Ex.P1) before the respondent police.

(ii) P.W.17, special Sub Inspector of Police, working in the Karuvepilankurichy Police Station, on receipt of Ex.P1 complaint, registered a case in Crime No.89 of 2013, for an offence under Section 174 Cr.P.C. He sent the FIR Ex.P11 to the Judicial Magistrate Court and copies to the higher officials. P.W.19, Circle Inspector of Police, working in the Karuvepilankurichy Police Station, on receipt of the FIR, commenced the investigation. He visited the scene of occurrence at about 11.30 am., prepared an observation mahazar (Ex.P2) and drew a rough sketch (Ex.P14) in the presence of witnesses. He examined some witnesses and recorded their statements. At the scene of occurrence, he recovered M.O.1, Cell Phone, M.O.2 Battery, M.O.3, a pair of black nylon chappels and M.O.7 Dhoti in the presence of witnesses. P.W.16, Head Constable, handed over the dead body to the Government Hospital, Virdhachalam. P.W.19, conducted inquest over the dead body in the presence of panchayators between 1.00 pm., and 2.30 p.m, in the hospital and prepared inquest report Ex.P15. He examined some witnesses and recorded their statement. On 04.04.2013, the accused

surrendered before the police station, on such surrender, he voluntarily gave confession, in the presence of witnesses. Based on the disclosure statement, P.W.19 seized M.O.6, stone used for murder, M.O.4 shirt, and M.O.5 pant, in the presence of witnesses. He altered the FIR into Section 302 of IPC and altered the FIR Ex.P16 was sent to the Magistrate Court.

(iii) P.W.15, Assistant Surgeon, working in the Government Hospital, Virdhachalam, conducted postmortem on the dead body and found the following injuries.

Symmetrical male body lying on its back, with the external injuries of 1) A laceration of 6 x 6 x 8 cm over the forehead left. 2) Laceration of 6 x 4 x 4 cm near nose (left). 3) Lacerated wound of 6 x 3 x 2 cm over the right eye. 4) Laceration of 6 x 3 x 3 cm over the right eye brow, eyes closed both sides. 5) Lacerated wound of 4 x 3 x 2 over the chin, Lacerated wound of 2 x 1 cm over the right hand, blood stains present all over the lower limbs, skull fractured and crushed (Rt) (side) (frontal temporal parietal involved) Nose crushed, hyoid bone preserved and sent for analysis. Ribs intact. Heart Empty pale. Lungs empty and pale, stomach contains 50 ml of brownish liquid. Liver, Spleen Kidney, intestines intact, genitalia intact, skull crushed right side, membranes, Brain matter damaged, there is 250 ml of blood clot present in the frontal region. All injuries are antemortum in nature.

He issued Postmortem Certificate Ex.P9. He opined that the deceased would appear to have died of haemorrhage and shock due to the injuries sustained to brain.

(iv) Further, P.W.19 examined the Doctor who conducted autopsy and recorded his statement. Then, he examined some other witnesses and recorded their statements. After completion of investigation, P.W.19 filed charge sheet before the Magistrate Court, on 29.08.2013.

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 19 witnesses were examined and 16 documents and 7 material objects were marked on the side of the prosecution.

4. Out of the said witnesses, P.W.1 is the brother's son of the deceased. In his evidence, he has stated that he saw

both the accused and the deceased going together in a moped at about 9.00 p.m. on 02.04.20213 and on the next day morning at about 6.00 am., he received a message over phone that the deceased lying dead near Rajendhirapattinam Anjaneyar Temple and after seeing the dead body, he gave a complaint (Ex.P1) before the respondent police. P.W.2 is the uncle of the deceased. It is his evidence that he saw the dead body of the deceased in the hospital with injuries over the head. P.W.3 is close relative of the deceased. He has deposed that he saw the dead body of the deceased in the hospital. P.W.4, a resident of Annakarakuppam Village, as spokes about taking the dead body to the Government Hospital. P.W.5 is known to the accused and the deceased. According to him, on 02.04.2013 at about 9.30 p.m., the accused and the deceased were going together in a moped and he followed them in his motor cycle for some distance, then he returned to his village. P.W.6 is a vegetable vendor. He has also stated that he saw the deceased in an intoxicated mood and later, the accused taking the deceased in his moped. P.Ws.7, 8 and 9 have turned hostile. P.W.10 is the wife of the accused. She has spoken about the harassment made by the accused and also the settlement talks. P.W.11 is the father of P.W.10. According to him, after the marriage his daughter was living with the accused for the past seven years, then she came to his house due to quarrel and four persons from the accused village came to his house for mediation. P.W.12 is the mahazar witness, who witnessed the recovery of M.Os.1 to 3. P.W.13 is the Village Administrative Officer, witness to the confession of the accused and seizure of M.Os.5 to 7. P.W.14 is the Junior Scientific Officer, Regional Forensic Lab, who issued Chemical Analysis Report Ex.P8. P.W.15 is the Doctor, who conducted postmortem on the dead body of the deceased and issued postmortem certificate Ex.P9. He has given opinion that the deceased would appears to have died of haemorrhage and shock, due to the injuries to brain. He is also of the opinion that the injuries found on the deceased are likely to occur in a motor accident or due to fall down in a intoxicated mood. P.W.16 is the Head Constable, who handed over the dead body to the Hospital for post mortem. P.W.17, Special Sub Inspector of Police has stated that he received the complaint Ex.P1, registered the case and sent the FIR to the Higher Officials and to the Judicial Magistrate Court. P.W.18 is the Scientific Officer, working in the Forensic Department, Chennai. According to him, he examined the material objects and gave the Report Ex.P12. Ex.P19 is the Investigating Officer, who investigated the case, examined the witnesses, recorded their statements and after completion of investigation, he filed the charge sheet before the Judicial Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. 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 Ms.S.Vijaya, 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 would submit that there is no eye witness to the occurrence and the case is based on circumstantial evidence, but the prosecution has failed to prove none of the circumstances projected by it. She further submitted that the evidence of P.Ws.1,5 and 6, that they saw the accused and the deceased together in a moped cannot be believed. She further submitted that in the absence of any other proved circumstances, the appellant is entitled for acquittal and he prayed for allowing the appeal.

9. Per contra, learned Additional Public Prosecutor appearing for the State, would submit that P.Ws.1,5 and 6 in their evidence have said that the accused and the deceased were going together in the moped soon before the occurrence. He further submitted that the stone used for murdering the deceased was also recovered based on the confession statement of the accused and therefore, the prosecution has proved the chain of circumstances, pointing to the guilt of the accused. He further submitted that there is no infirmity in the judgment of the trial Court and hence he prayed for dismissal of this appeal.

10. It is a case of circumstantial evidence. We are conscious of the legal position 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 analyse the facts of the present case.

11. In the instant case, P.Ws.1, 5 and 6 are said to have seen both the accused and the deceased together in a moped at about 9.30 p.m., and all the witnesses have categorically stated that the deceased was in an intoxicated mood. P.W.1 is the brother's son of the deceased. His evidence is that he saw both the accused and the deceased going in a moped. P.W.5 is said to have followed the accused and the deceased for some distance he

thereafter left for his village. P.W.6 has also seen the deceased in an intoxicated mood. From their evidence, the prosecution has proved that both the accused and the deceased were together before the occurrence and they were riding in a moped.

12. So far as the next circumstance, namely, motive relied upon by the prosecution is concerned, it is stated that the accused and his wife had some dispute, in which the deceased intervened and mediated between them, thereafter, the deceased was said to have developed an illicit intimacy with the wife of the accused and hence the accused murdered the deceased. But, to prove the motive, no witnesses were examined. P.W.10, wife of the deceased and P.W.11, father of P.W.10 have merely stated that some four persons came for settlement. Except that, there is no evidence available to prove the motive.

13. The third circumstance relied on by the prosecution is recovery of M.O.6 stone, based on the disclosure statement of the accused. So far as the injury on the deceased, P.W.15, the Doctor, who conducted postmortem on the dead body of the deceased, has stated that the injuries found on the deceased could be possible due to a motor vehicle accident or by fall in an intoxicated mood. Since it is the evidence of P.Ws.1,5 and 6 that the deceased was in intoxicated mood, the possibility of falling down also cannot be ruled out. Therefore, it is totally unsafe to convict the accused only on the ground that both the accused and the deceased were found together before the occurrence. In the above circumstances, in our considered view, the prosecution has miserably failed to prove the circumstances relied on by it, consistence with the guilt of the accused. Hence, the conviction and sentence imposed by the trial Court cannot be sustained and the same is liable to be set aside.

14. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, in Sessions Case No.145 of 2014, dated 31.10.2014, is set aside and the appellant/accused is acquitted of the charges levelled against him. Bail bond if any executed by him, shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forthwith.

Rrg

-sd-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The III Additional District and Sessions Judge,
Cuddalore at Virudhachalam.

2. -d0 Thro the Principal Sessions Judge,
Cuddalore.

3.The Judicial Magistrate No.II,
Virudhachalam.

4.-d0- Thro the Chief Judicial Magistrate,
Cuddalore.

5.The Inspector of Police,
Karuvepilankurichy Police Station,
Cuddalore District.

6.The Superintendent,
Central Prison, Cuddalore.

7. The District Collector,
Cuddalore.

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

9.The Public Prosecutor,
High Court, Madras.

C.C. to M/S. S.VIJAYA Advocate SR.NO.76415

सत्यमेव जयते

Cr1.A.No.597 of 2014

CO UG

VS 28.12.2016

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