

Bail Slip

The Petitioner herein/Accused Viz., 1.Thangadurai Son of Subramani, 2.Gundumani S/O Arumugam, were directed to be released on bail as per order of this Court dated 06/07/2012 made in MP 1 of 2012 in Crl Appeal 552/2011 and as per order of this Court dated 08/09/2011 made in M.P.No.1 of 2011 in Crl A No.552/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-03-2016

CORAM:

THE HONOURABLE MR.JUSTICE.M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE.S.NAGAMUTHU

Crl.A.No.552 of 2011

1. Thangadurai
2. Gundumani

.. Appellants.

Versus

State by Inspector of Police,
Omalur Police Station,
Salem District.

.. Respondent.

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by the First Additional Sessions Court, Salem, dated 9.8.2011, in S.C.No.283 of 2010.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(The Judgment of the court was made by M.Jaichandren,J)

The appellants are A-1 and A-2, in S.C.No. 283 of 2010, on the file of the First Additional Sessions Court, Salem. Both the accused stood charged for the offence, under Sections 120(B), 302 and 201 read with 302 I.P.C. By the Judgment, dated

9.8.2011, the Trial Court had convicted A-1 for the offence, under Section 302 I.P.C, and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/-, and in default to undergo rigorous imprisonment for six months. In respect of the charge under Section 201, read with 302 I.P.C, A-1 had been imposed with rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, and in default to undergo three months rigorous imprisonment. A-2 had been convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, and in default to undergo three months rigorous imprisonment for the offence under Section 201, read with 302 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court, with this appeal.

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

2.1) The deceased in this case was one Menaka. The first accused is the husband of the deceased and the second accused is the cousin of the deceased. The deceased was residing at Mottupatti Village, along with the first accused. According to the case of the prosecution, the first accused had developed suspicion regarding the fidelity of the deceased, on account of the fact that the deceased had been speaking with her sister's husband, frequently. This is stated to be the motive for the occurrence.

2.2) It is further alleged that the first accused had taken the help of the second accused and both of them had conspired to kill the deceased. It is further alleged that, on 8.5.2008, at about 6 p.m., both the accused had killed the deceased killed by strangulating her and had hanged the body, by using a "Dhavani", tying one end to the ceiling fan and the other end to the neck of the deceased.

2.3) It is the further case of the prosecution that, on the day of occurrence, P.W.3, Ammasi, while she was returning home, after attending to the quarry work, had seen the first and the second accused coming down from the roof of the house. When they were questioned about the whereabouts of the deceased Menaka, they had replied that Menaka had been away from the house. At about 7.00 p.m., on receipt of the information from the brother-in-law of the deceased Menaka that she was in a serious condition and that she had been admitted in Omalur Nagaraj Hospital, P.W.1, the mother of the deceased Menaka, had gone to the hospital and had seen her daughter Menaka, with injuries. Thereafter, P.W.1 had made a complaint to P.W.9, the Sub Inspector of Police, Omalur.

2.4) On receipt of the complaint, under Ex.P-1, a case had been registered, in Crime No.600 of 2008, under Section 174(3) Cr.P.C., and the First Information Report, marked as Ex.P-25,

had been sent to the higher officials concerned. P.W.10, the Inspector of Police, Omalur, took up further investigation. He had proceeded to the place of occurrence and had prepared the observation mahazar, Ex.P-20 and the rough sketch, Ex.P-26, showing the place of occurrence.

2.5) P.W.6, Santhi, the then Revenue Divisional Officer of Mettur, on the requisition made by P.W.10, the Inspector of Police, had conducted the inquest over the dead body and had prepared Ex.P-13, the inquest report. On the requisition made by P.W.6, under Ex.P-4, P.W.4, Dr.Meera, conducted the autopsy over the dead body of the deceased Menaka, brought by P.W.8, the Head Constable. She found the following injuries.

Injuries:

(I) Linear abrasions over left side breast - Interior outer quadrant - three in nos. each measuring 5 x 0.5 cms

(II) Foot print abrasion seen over left breast, surrounding the nipple measuring 6x5 cms

(III) contusion (dark red) seen over left side of chest 3 x 2 cms

(IV) contusion (dark red) seen over right side breast 3x3 cms

(V) Dark red rope mark contusion with overlying abrasions seen both over ankles - left side 7 x 2 cms and right side 6 x 2 cms - encircling the circumference of ankles

(VI) Dark red contusion seen 1 cm below the jaw on right side of neck extending from 4 cms medial to level of right mastoid process to midline of neck - measuring 7 cms x 1-1.5 cms length and width respectively.

(VII) Crescent nail mark abrasions seen over right side of neck - three in number and one on left side of neck.

VIII) A vertical midline contusion of 4 x 0.5 cms seen over front of neck - above the level of thyroid cartilage.

(IX) An incomplete oblique ligature mark - faint on left side of neck and dark on right side of neck - seen over front and sides of neck - at the level of thyroid cartilage - 3 cms below the injury no. VI of 21 cms total length, 1 cm width. On right side, it measures 6 cms below right mastoid process and on left side, the upper border of ligature mark measures cms below left mastoid process and in midline it measures cms above suprasternal notch and cms below the chin.

O/D: - Strap muscles of neck contusion seen - on right side 4 x 2 cms and on left side 3 x 2 cms.

Fracture of hyoid bone on left greater horn with surrounding contusion 1 x 1 cms. Fracture of C2 and C3 cervical vertebrae with contusion of pre and paravertebral tissue - right side 4 x 3 cms and on left side 3 x 1 cms.

Ex.P-7, is the postmortem certificate. She had opined that the death was due to asphyxia, due to compression of the neck. Thereafter, P.W.10, had altered the offence to one under Section 302 I.P.C, and had prepared the alteration report, marked as Ex.P-27. On 11.5.2008, he had arrested both the accused, in the presence of P.W.7, the Village Administrative Officer. On such arrest, the first accused had given a voluntary confession, in which he had disclosed the place where he had hidden M.O.1, the iron rod used in the killing of the deceased. Similarly, the second accused had given a voluntary confession, in which he had disclosed the place where he had hidden a silk saree, M.O.2. Pursuance to the disclosure statements made by the accused, the material objects were taken from the place where they had been hidden.

2.6) During the investigation, the second accused was produced before P.W.5, the Judicial Magistrate, Mettur, as he was wanting to confess. P.W.5 had recorded the judicial confession of the second accused, on 26.5.2008. The same had been marked as Ex.P-12. P.W.10, on completion of the investigation had laid the charge sheet against the accused.

3. Based on the above materials, the trial court had framed as many as three charges against the accused. The accused had denied the charges. In order to prove the charges, on the side of the prosecution, as many as 10 witnesses were examined, 27 documents and two material objects were marked. Out of the said witnesses, P.W.1 and P.W.2 are the mother and sister, of the deceased, respectively. P.W.1 is the complainant in this case. P.W.3 is the friend of the deceased, who had deposed that, at or about the time of the occurrence, she had found both the accused coming down from the roof of the house of the deceased. When she had questioned about the presence of the deceased Menaka, they had stated that she had gone out. Thereafter, at about 8.30 p.m., on hearing the noise, she had gone to the house of the deceased Menaka, and had found her dead. P.W.4, is the Doctor, who had conducted the autopsy over the dead body of the deceased. She had given her opinion that the deceased would have died of asphyxia due to compression of the neck. P.W.5, is the learned Judicial Magistrate, who had recorded the statement, marked as Ex.P-12, given by the second accused. P.W.6, is the Revenue Divisional Officer, who had conducted the enquiry over the body of the deceased. She had examined the witnesses and had recorded their statements, marked as Exs.P-14 to P-18. She had also submitted a report, marked as Ex.P-19. P.W.7, is the Village Administrative Officer who had attested the

observation mahazar (Ex.P-20) and the rough sketch (Ex.P-26) prepared by the Inspector of police. He had also stated that he was present during the arrest of the accused and had attested the seizure mahazars, marked as Ex.P-23 and Ex.P-24. P.W.8, is the Head Constable, who on the requisition of the Revenue Divisional Officer, had handed over the dead body of the deceased to the Doctor, for conducting the autopsy. P.W.9 is the Sub Inspector of Police, who had registered the First Information Report, marked as Ex.P-25. P.W.10, is the Inspector of Police, who had taken up the further investigation, after altering the offence to one under Section 302 I.P.C. and on completion of the investigation had laid the charge sheet against the accused.

4. When the above incriminating circumstances were put to the accused, under Section 313 Cr.P.C., they had denied the same, as false. On the side of the accused, they marked Exs.D-1, the seizure mahazar and Ex.D-2, another seizure mahazar, dated 11.5.2008. Exs.D-1 and D2, were originally prepared at the police station, by the Inspector of Police, on 11.5.2008, but they were not sent to the court. Instead, two other mahazars were prepared for the alleged recovery of M.Os.1 and 2 and they were sent to the Court. The defence in the case was total denial of the occurrence, by the accused. According to them, the deceased had died by committing suicide. Having rejected the said defence, the trial court had convicted the accused, as stated in the first paragraph of this judgment. Therefore, the accused are before us, with this appeal.

5. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor and we have also perused the records, carefully.

6. This is a case based on circumstantial evidence. It is a well established principle of law that in a case, where the prosecution relies on circumstantial evidence, the circumstances projected should be proved beyond reasonable doubt and such proved circumstances should form a complete chain, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused.

7. In the present case, the prosecution relies only on two circumstances. The first circumstance is the evidence of P.W.3, who has stated that, at or about the time of the occurrence, when he had gone to the house of the deceased, he had found the two accused getting down from the roof of the house. The question is as to whether the evidence of P.W.3 could be believed or not.

8. The learned counsel for the appellants would state that P.W.3 has admitted that he is closely related to the deceased. But he did not disclose about his presence at or about the time of occurrence, for three days. In our considered view, the silence of P.W.3, for three days, creates a serious doubt with regard to the veracity of his evidence. Had it been true that he had seen the two accused coming down from the roof of the house, certainly, after coming to know that the deceased was dead, he would have informed the same to the family members of the deceased. The very fact that he did not disclose about this alleged incident, for three days, more particularly when the Revenue Divisional Officer had held an enquiry, under Section 174 of the Criminal Procedure Code, it would go to show that he had been, at a later point in time, planted, to connect the accused to the crime. Thus, there can be no truth in the evidence of P.W.3. Therefore, we are forced to reject the evidence of P.W.3.

9. The prosecution had relied on the confession given by the second accused, before P.W.5, the learned Judicial Magistrate, under Ex.P-12 to prove the guilt of the accused. We have carefully gone through Ex.P-12. In our considered view, it cannot be construed to be a confession, as it is completely an exculpatory statement, not only exculpating A-2, but the first accused as well. The second accused has stated that when he was in his house, he had heard the cry the house of the deceased. When he had gone there, he had found a crowd of people standing in front of the house of the deceased trying to open the door which was bolted from inside. It was he who had entered the house through the roof and had opened the door. At that time, it was found that the deceased was found hanging. He has further stated that thereafter, the deceased was taken to the hospital and as she had been declared dead, she was brought back to the village. In this statement, we do not find any admission of guilt, by the second accused. Thus, Ex.P-12 is not a confession and the same does not help the prosecution, in any manner.

10. The last circumstance relied on by the prosecution, is the so called disclosure statement made by A-1, based on which M.O.1 was recovered and the so called disclosure statement made by A-2, pursuant to which M.O.2 was recovered. At this juncture, we need to say that it is not the disclosure of every fact that makes a disclosure statement relevant, under Section 27 of the Indian Evidence Act, 1872. It is only a disclosure statement which leads to the discovery of a relevant fact, which is admissible in evidence. Here, in this case, there is no evidence to prove the relevance of M.O.1-Iron Rod with the crime.

11. In respect of the recovery of the weapons, at the instance of the accused, based on their respective statements, we find that they cannot have any weightage in law. It is

needless to point out that, to make a disclosure statement relevant, so as to be admitted in evidence under Section 27 of the Indian Evidence Act, 1872, the relevancy between the facts discovered and the facts in issue should be established by the prosecution. Only if the fact so discovered is a relevant fact, the disclosure statement would be admissible, under Section 27 of the Act. Such a relevancy can be established by many ways. To make such information relevant, what is required under Section 27 of the Act is that it should have a connection with the fact in issue. In the present case, since the same has not been established, the disclosure statements made by the accused, under Ex.P-21 and Ex.P-22, are not admissible, and therefore, they cannot be considered to be in favour of the prosecution. Thus, the recovery of the weapons from the accused would also lose its importance and relevance.

12. With regard to the medical evidence, in Ex.P-7, the postmortem certificate, the Doctor concerned has stated that the death was due to compression of the neck. There was also a ligature mark found around the neck of the deceased. Thus, the possibility of suicide, by hanging, cannot be ruled out.

13. In view of the foregoing discussions, we find that there is absolutely no evidence against the accused, warranting conviction. We hold that the prosecution has failed to prove the charges against these appellants beyond reasonable doubt, and therefore, the appellants/accused are entitled for acquittal. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the appellants by the trial Court, by its judgment, dated 9.8.2011, are set aside and they are acquitted of the charges. The bail bond, if any, executed by them, shall stand cancelled and the fine amount, if any, paid by them, shall be repaid to them.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

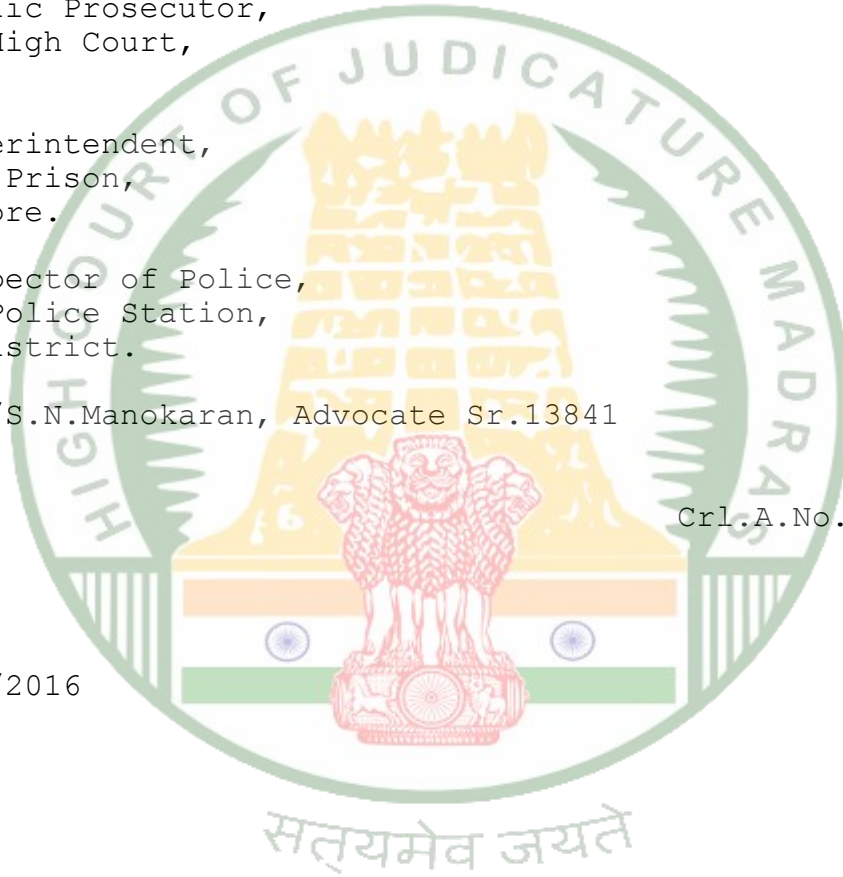
1.The First Additional Sessions Court,
Salem.

- 2.The District Collector,
Salem District.
- 3.The Director General of Police,
Mylapore, Chennai-600 004.
- 4.The Judicial Magistrate,
Omalur.
- 5.The Chief Judicial Magistrate,
Salem.
- 6.The Public Prosecutor,
Madras High Court,
Chennai.
- 7.The Superintendent,
Central Prison,
Coimbatore.
- 8.The Inspector of Police,
Omalur Police Station,
Salem District.

+1cc to M/S.N.Manokaran, Advocate Sr.13841

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srg 12/07/2016



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