

Bail Slip

The Appellant/Accused, namely Madeshwaran, was directed to be released on bail as per the Order of this Court dated 31.07.2012 made in MP.NO.1/2012 in Crl.Appeal 767/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-03-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.767 of 2011

Madeshwaran ..Petitioner/Appellant/Accused

-Versus-

State rep. by
Inspector of Police,
South Police Station,
Erode.

..Respondent/Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by Additional District Sessions Judge and Fast Track Court No.I, at Erode, dated 26.8.2010, made in S.C.No.18 of 2010.

For Appellant : Mr.V.Balu
For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence passed by the Additional District Sessions Court and Fast Track Court No.I, Erode, in S.C.No.18 of 2010, by its judgment, dated 26.8.2010, convicting the appellant for the offence under Section 302 of the Indian Penal Code, 1860, and sentencing him to undergo the punishment of life imprisonment and to pay a fine of Rs.500/-, and in default to undergo six months rigorous imprisonment.

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

2.1) The deceased Bagyalakshmi and the accused belong to Thanda Goundanpalayam, in Rasipuram Taluk, Namakkal District. The deceased and the accused had illegal intimacy with each other. They were living in Tiruppur, for a short period of time. During the month of February, 2008, the deceased was working in the house of one Dr.Durai Kandasamy, who was running Sudha Hospital, at Erode. They were living in the house of Dr.Durai Kandasamy, in Gandhinagar Colony, Erode, stating that they were husband and wife. The accused had serious doubts about the fidelity of Bagyalakshmi, as she was in contact with a number of persons, through her cell phone. While so, at about 11.00 p.m., on 6.5.2008, the deceased Bagyalakshmi had been talking to some one, for a long time. Being infuriated by the conduct of the deceased, Bagyalakshmi, the accused had questioned her act, for which the deceased had told him that if he had wanted to live with her, he had to pay her a sum of Rs.2 lakhs, or half the property. In such circumstances, the accused had decided to do away with the deceased. Therefore, when the deceased was sleeping on the floor of the house, the accused had picked up a grinding stone, which was lying outside the house, and had dropped it on the head of the deceased, causing serious injuries to her. The occurrence had taken place, at about 1.30 a.m., on 7.5.2008. Thereafter, the accused had taken away the gold ring worn by the deceased, having a value of about Rs.2,000/-. In respect of the said occurrence, a complaint had been lodged and a charge sheet had been laid.

3) On the side of the prosecution, 19 witnesses had been examined. 18 documents and 8 material objects were marked. No witness had been examined and no document had been marked on behalf of the accused.

4) P.W.1 is the husband of P.W.4. He has stated that he is running the Sudha Hospital, at Erode. He is a Cardiologist in the said hospital. His wife Dr.Dhanabagiam, is also working in the said hospital, as a Gynecologist. The accused is known to him. The wife of the accused, namely Bagyalakshmi @ Jeyalakshmi, was employed as a cook in his house. She was staying in the out house of the house of P.W.1. He had stated that the accused was working in a baniyan factory, at Tiruppur. As the deceased did not come to work, on 7.5.2008, he had gone to the house of the deceased and had found that the house had been locked from outside. On opening the door he had found the deceased lying dead, on the floor. She had been injured on the left side. A grinding stone was lying next to her. After having come out of the house he had informed his wife and the staff of the hospital, about the occurrence. When he had enquired with the watchman Thangaraj, he had stated that, on 6.5.2008, when he was taking food from the house to the hospital, he saw the accused entering the house. Thereafter, P.W.1 had given a complaint to the Soorampatti

Police Station, at about 10.30 a.m., on 7.5.2008. The said complaint had been marked as Ex.P-1. Based on the said complaint the police had registered a First Information Report. The police had arrived at the place of occurrence, at about 11.00 a.m.

5) P.W.2 had stated that he is residing at Pallipalayam. He was employed as a watchman at the Sudha Hospital, at Erode. He had stated that he knew the deceased, as well as the accused. He had stated that the accused was not the married husband of the deceased. However, he was living with the deceased. He had stated that, on 6.5.2008, at about 11.00 p.m., he had seen the accused entering the house of the deceased. At about 10.30 a.m., on 7.5.2008, he had gone to the out house where the deceased was living. He had seen the dead body of the deceased. Thereafter, the Inspector of Police had made enquiries with him.

6) P.W.3 is the younger brother of the deceased Bagyalakshmi. He had stated that the deceased was married to one Kanagaraj, about 17 years prior to the occurrence. They had two children. He had died about 6 years before the date of occurrence. Thereafter, the deceased Bagyalakshmi had gone to Tiruppur, for work. A month before her death, the deceased had come to his house and had informed him that she was working as a cook in the house of P.W.1, at Erode. On hearing about the death of his sister he had gone to the house, where she had been living, at about 11.00 a.m., on 7.5.2008. He had found that she was dead.

7) Dr.Dhanbagyam, examined as P.W.4, had stated that the accused was living with the deceased at the out house of her residence. The accused was working in a baniyan factory, at Tiruppur. On hearing the noise about the death of Bagyalakshmi, she had gone to the house where she was living and had found that she had died.

8) P.W.5, who is a resident of Mollakoundanpalayam had stated that, on receipt of the information about the death of the deceased, she had gone to the house of P.W.1. She had stated that the police from the Erode South Police Station had come to the scene of occurrence, at about 11.00 a.m. and that they had inspected the place of occurrence and had prepared the observation mahazar, marked as Ex.P-2. She had also stated that three pieces of blood stained marble stones, one piece of marble stone without any blood stains and a grinding stone with a wooden handle had been recovered under the mahazar, marked as Ex.P-3.

9) P.W.6, who was a Grade-I, Constable of Erode South Police Station, had taken the body of the deceased to the Erode Government Hospital. The Doctor had conducted the postmortem. He had received the blood stained clothes of the deceased after the postmortem and had submitted the same to the Inspector of Police.

10) P.W.7, Rajavel, the son of the accused had turned hostile. P.W.8, is an employee of Sudha Hospital. She had stated that she had known the deceased and that she had been working as a cook in the house of P.W.4.

11) P.W.9, who was an Electrician, had stated that he had seen the deceased, at about 2.30 a.m., on 7.5.2008, near Kalingarayan Guest House. He had asked the accused as to where he was going. The accused had stated that he was going to the Palani temple. Thereafter, he had come to know about the death of the deceased. P.W.10, who is a resident of Srinivasa Nagar, Tiruppur, had stated that he had known both the deceased, as well as the accused, as they used to go to his shop, to buy groceries.

12) P.W.11 had stated he had known the accused and that, during the year, 2007, she has been living in his house as a tenant. The deceased was also living with the accused. He had stated that they had stayed there for about 6 to 8 months and they had left the house without even informing him.

13) P.W.12 had spoken to the fact that the accused had been living in his house, as a tenant, for about two months, during the year, 2007. He had stated that both the accused, as well as the deceased had been living there. At that time the accused was working in a baniyan factory, at Tiruppur. After some time they had shifted their residence.

14) P.W.13 is the Village Administrative Officer of Erode Town, before whom the accused had made a statement that he had committed the murder of his wife, the deceased. He had known the accused. At about 7.00 p.m., on 9.2.2009, the accused had come to his office and had made a confession statement stating that he had murdered his wife, by using a grinding stone. The confession statement of the accused had been reduced into writing and signed by the accused. The said statement had also been signed by the Village Administrative Officer and his assistant and it had been marked as Ex.P-5. Thereafter, he had taken the accused to Soorampatti Police Station, at about 9.00 p.m. The accused was handed over to the police. The confession statement had also been handed over to the police, along with the covering letter, marked as Ex.P-6. The police had recorded the confession statement of the accused. The admissible portion of the said statement had been marked as Ex.P-7, based on which the golden ring belonging to the deceased had been recovered and it had been marked as M.O.4.

15) P.W.14, Dr.S.Vijayalakshmi had, conducted the postmortem on the body of the deceased, based on the requisition made by the Inspector of Police, Erode South Police Station, marked as Ex.P-9. She had given the postmortem certificate, marked as Ex.P-10. P.Ws.16 to 19 are official witnesses. P.W.16, the Sub Inspector of Police, received the complaint relating to the occurrence and had registered a case, under Section 302 I.P.C and had sent the F.I.R., marked as Ex.P-15.

16) P.W.18, the Inspector of Police had received the files from P.W.16 and had commenced the investigation. He had visited the scene of occurrence, at 11.15 a.m., and had prepared the observation mahazars marked as Ex.P-2, in the presence of P.W.5, Thangaraj and one Suresh Babu. He had also prepared the rough sketch, marked as Ex.P-16 and had recovered M.O.1, the grinding stone, three pieces of blood stained marble stones and an unstained marble stone, in the presence of the said witnesses, under mahazar Ex.P-3 and he had conducted the inquest in the presence of panchayatdars and had prepared Ex.P-17, the inquest report. Thereafter, he had sent the body for postmortem, through P.W.6, along with the requisition letter, marked as Ex.P-9. P.W.11, Dr.S.Vijayalakshmi, had conducted the postmortem, at about 4.45 p.m, on 7.5.2008. She had noticed the injuries on the body of the deceased and had issued the postmortem certificate, marked as Ex.P-10. P.W.18 the Inspector of Police had conducted the investigation by examining P.W.1 to P.W.5 and had also examined P.W.7, the son of the appellant. Thereafter, he had recovered the jacket and the 'saree' and the 'pavadai' belonging to the deceased, marked as M.Os.5 to 7. Thereafter, he had sent the material objects for chemical examination through a requisition letter, marked as Ex.P-11. P.W.15, the Court Clerk had sent them to the laboratory through Ex.P-12. The chemical report and the viscera report had been marked as Ex.P-13 and Ex.P-14, respectively. On 9.2.2009, after a period of nine months, the deceased had surrendered before P.W.13, the Village Administrative Officer of Erode Town and he had made an Extra Judicial Confession, marked as Ex.P-5. The Village Administrative Officer had handed over the accused, as well as the confession statement, along with the covering letter to the police station. Based on the admitted portion in the confession statement, marked as M.O.4, a golden ring had been recovered, under Ex.P-18. P.W.19 had taken the investigation. He had examined P.W.14, the postmortem doctor and on completion of the investigation had filed the charge sheet, on 25.3.2009.

17) When the incriminating materials were put to the accused, under Section 313 Cr.P.C, he had denied the same, as false. However, he did not choose to examine any witness on his side, nor had he marked any documents. His defence was a total denial. Having considered all the above, the trial Court has convicted him, under Section 302 I.P.C., and had imposed the sentence of life imprisonment on the accused. Challenging the same, he is now before this Court, with this appeal.

18) We have heard the learned counsel appearing on behalf of the appellant/accused and the learned Additional Public Prosecutor appearing on behalf of the State. We have perused the records available before this court, carefully.

19) It is noted from the statement of P.W.2 that the accused had entered into the house of the deceased, at about

11.00 p.m., on 6.5.2008. However, P.W.9 had stated that, on the same night, he had found the accused moving around in a different place. Thus, it could be seen that there is a serious contradiction in the evidence of P.W.2 and P.W.9, with regard to the presence of the accused, at the scene of occurrence, on 6.5.2008, when the occurrence is said to have taken place.

20) It is in dispute that the accused had surrendered before P.W.13, the Village Administrative Officer of Erode Town, on 9.2.2009, and had given a voluntary confession. It is highly doubtful that after a silence of about nine months, the accused would have appeared before the Village Administrative Officer to make such a confession, as it is stated by P.W.13. Further, even assuming that such confession could be acted upon, in view of the doubts shrouded in the same, it cannot be a sole foundation for conviction, in the absence of any other corroboration from an independent source. In so far as the evidence of P.W.9 is concerned it is noted that he had been examined, for the first time, only on 23.8.2008. There is no explanation as to why he had not disclosed the facts relating to the occurrence, for such a long time.

21) It is not in dispute that the accused was not residing with the deceased. Further, it is in evidence that the husband of the deceased had committed suicide due to the wretched life being led by the deceased. In such circumstances, the alternative theory of the deceased being murdered by someone else cannot be ruled out completely.

22) The present case is based on circumstantial evidence, as there is no eye witness to the occurrence. In a case based on circumstantial evidence, it is settled law that the circumstances pleaded by the prosecution are to be proved beyond reasonable doubt and every such proved circumstance should act as a link so as to form a complete chain of circumstances unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused. In this case, there are no incriminating circumstances proved by the prosecution so as to form a complete chain unerringly pointing to the guilt of the accused. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubt and so, the appellant is entitled for acquittal.

23) In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant, by the judgment, dated 26.8.2010, made in S.C.No.18 of 2010, on the file of the learned Additional District Sessions Court and Fast Track Court No.I, Erode, is set aside and the appellant is acquitted. The fine amount, if any, paid by the appellant shall be refunded to him. The bail bond executed by the

appellant and the sureties shall stand terminated.

csb

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

TO

1. The Additional District Sessions Judge
and Fast Track Court No.I, at Erode.
2. The Public Prosecutor,
Madras High Court.
3. The Inspector of Police,
South Police Station, Erode.
4. The Director General of Police,
Chennai-4.
5. The District Collector, Coimbatore.
6. The Superintendent, Central Prison, Coimbatore.
7. The Section Officer, Criminal Section,
High Court, Madras.

+ 1 cc to Mr.V.Babu, Advocate Sr 15574

KR/1/6/16

Criminal Appeal No.767 of 2011

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