

Bail Slip

The Appellant/Accused namely Muniyandi, S/o. velu, was directed to be released on bail as per order of this court dated 05.08.2015 in MP 1/2015 in CrI.A.No.173/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-07-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.173 of 2015

Muniyandi

...

Appellant/Accused

-vs-

The Inspector of Police,
Siva Kanchi Police Station,
Kancheepuram,
Kancheepuram District.
(Crime No.781 of 2010)

...

Respondent /Complainant

Appeal filed under section 374 of Cr.P.C. against the judgment, dated 13.02.2015, made in S.C.No.62 of 2011 on the file of Sessions Court-II, Kancheepuram.

For appellant : Mrs.D.Umadevi,
Legal Aid Counsel.

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.63 of 2011 on the file of learned Sessions Court No.II, Kancheepuram. He stood charged for the offences under Sections 302 and 380 IPC. By judgment, dated 13.02.2015, the trial Court convicted him for both the charges and sentenced him to undergo rigorous imprisonment for seven years and pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for three months for the offence under Section 380 IPC and to undergo life imprisonment and pay fine of Rs.2,000/-; in default, to undergo three months rigorous imprisonment for the offence under Section 302 IPC.

Challenging the said conviction and sentence, the appellant is before this Court.

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

2.1. The deceased in this case was one Mr.Balasubramaniam. He was working as a Watchman in a shop, known as "Sekar Mandi", at Kamatchiamman Sannathi Street, Kancheepuram. The accused was also a worker in the said concern. On the intervening night of 25.11.2010 and 26.11.2010, the deceased was on night duty in the said shop. According to the further case of the prosecution, around 10.30 p.m., when the deceased was sleeping, the accused tried to commit theft of Rs.1,000/- from the deceased. The deceased was awoken by the movement of the accused. He was about to shout. The accused, suddenly, took out a nylon rope, put it around the neck of the deceased and strangled him to die. The accused took Rs.1,000/- from the possession of the deceased. The deceased died on the spot. Abandoning the dead body there, the accused fled away from the scene of occurrence. The occurrence was not witnessed by anyone. P.W.1, the owner of the shop, came to the shop on 26.11.2010 around 02.30 a.m. At that time, he found the deceased lying dead. Immediately, he went to Siva Kanchi Police Station and made a complaint.

2.2. P.W.9, Inspector of Police, on receipt of the said complaint, registered a case in Crime No.781 of 2010 under Section 302 IPC. Ex.P-9 is the F.I.R. He forwarded both the documents, namely, complaint and F.I.R., to the Court and took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch, in the presence of witnesses. Then, he conducted inquest on the body of the deceased and forwarded the same to the doctor, for post-mortem. P.W.6, Dr.Chellan, conducted autopsy on the body of the deceased on 26.11.2011 at 03.15 p.m. He found the following injuries :

"B/L ear bleed + Abrasion + from the right angle of mandible extending to left angle of mandible including the lower lip + ; ligature mark + in front of neck surrounding the whole neck about 31 cm in length. Teeth ligature mark + in neck (i) about 8 cm below chin (ii) about 8 cm below from right ear (iii) about 4 cm below from left ear and extending behind to occipit. Hyoid bone # + blood clot."

Ex.P-6 is the Post-mortem Certificate. The doctor gave opinion that the deceased would have died due to ligature strangulation. P.W.9, during the course of investigation,

arrested the accused on 27.11.2010 at 04.30 p.m, in the presence of P.W.5 and another witness. On such arrest, the accused made a voluntary confession and produced a sum of Rs.890/- (M.O.2) from his possession. P.W.9 forwarded the accused to the hospital for ascertaining his age. The doctor opined that his age was about 16 to 20 years. Then, the investigation was taken over by his successor, P.W.10. On completing investigation, P.W.10 laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of the judgment and the accused denied the same.

4. In order to prove the case, on the side of prosecution, ten witnesses were examined, sixteen documents and eight material objects were marked.

5. Out of the said witnesses, P.W.1, the owner of the shop, has stated that on the night of 25.11.2010, the deceased was on duty and on 26.11.2010 at 02.30 a.m, he found the deceased lying dead. P.W.2 has stated that he heard that the deceased had been killed in the shop of P.W.1. P.W.3 has stated about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.4 has stated that he heard about the occurrence on the next day. P.W.5 has stated about the arrest of the accused on 27.11.2010 and the recovery of a sum of Rs.890/- from his possession. P.W.6 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.7 has stated that he took photographs at the place of occurrence, on the request of P.W.9. P.W.8 has stated that he took the dead body from the place of occurrence and handed over the same to doctor, for post-mortem. P.W.9 has spoken about the registration of the case and the investigation done by him. P.W.10 has spoken about the investigation done and filing of final report.

6. When the accused was questioned under Section 313 Cr.P.C. in respect of the above, he denied the same. He did not choose to examine any witness on his side.

7. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. That is how, he is before this Court with this appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

9. The learned counsel for the appellant would submit that without there being any incriminating evidence

against the accused, the trial Court has convicted the accused.

10. We find force in the said argument. As we have already narrated about the evidences of the witnesses, we find that absolutely, there is no evidence, connecting the accused with the crime. The prosecution has succeeded in establishing that the deceased was found alive on 25.11.2010 when the shop was closed in the night and was found dead on 26.11.2010 at 02.30 a.m. The prosecution has also succeeded in establishing that the death of the deceased was due to ligature strangulation. But, the prosecution has not let in any evidence to show that it was this appellant, who strangled the deceased to die. The prosecution relied on the recovery of Rs.890/- from the possession of the accused. There is no proof that the said amount was stolen from the deceased. No one has stated that the deceased had Rs.1,000/- with him. Thus, in our considered view, absolutely, there is no evidence against the accused, but the trial Court has convicted him on mere surmise. Therefore, the appellant is entitled for acquittal.

11. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted of the charges. Bail bonds executed by him shall stand cancelled. Fine amount, if paid, shall be refunded.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Kancheepuram.

2.Do Thro The Chief Judicial Magistrate
Chengalpattu.

3.The Inspector of Police,
Siva Kanchi Police Station,
Kancheepuram,
Kancheepuram District.

4.The Sessions Court-II,
Kancheepuram.

5.The Superintendent, Central Prison,
Puzhal, Chennai.

6. The Director General of Police,
Mylapore.

7. The District Collector,
Chennai.

8. The PUBlic Prosecutor,
High Court, Madras.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

1 cc to M/s.D.Umadevi, Advocate, sr.37084.

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kra 10.08.2016



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