

Bail Slip

The petitioner/Accused Viz., Krishnan, S/o. Pachiappan, was released on Bail dated 25.06.2015 in MP.NO.1 of 2015 in Crl.A.No.185 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.185/2015

Krishnan
accused

.. Appellant/sole

Vs

State by

The Inspector of Police,
Kaveripakkam Police Station,
Vellore District.(Crime No.11/2012)

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Ranipet, Vellore District, made in S.C.No.57 of 2013, dated 11.03.2015.

For Appellant : Mr.K.Elangovan

For Respondent : Mr.E.Raja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.57 of 2013 on the file of the learned II Additional District and Sessions Judge, Ranipet, Vellore District. He stood charged for offences under Sections 392 read with 394 and 302 of IPC. By judgment dated 11.03.2015, the trial court convicted him under both the charges and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default, to undergo

Simple Imprisonment for 3 months for the offence under Section 394 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.3,000/-, in default, to undergo, simple imprisonment for 3 months. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mrs.Jagathammal. She was a resident of Vaniyan Chathiram Village in Vellore District. P.W.1 is her son. He was also residing with her. On 06.01.2012 around 10.30 a.m., P.W.1 and the deceased had taken their cows to Ariyur Village for the purpose of grazing. After leaving the deceased at the said place to take care of the cows, P.W.1 returned home. After some time, P.W.3 Govindaraj, who was passing through Ariyur, found the cattle grazing the crops and there was no one to take care of the same. P.W.3, on returning to Vaniyan Chathiram Village, informed P.W.1 about the same. Immediately, P.W.1 rushed to the said place and found the cattle alone. His mother, namely, the deceased was not there. Along with one Mr.Thirunavukkarasu, he went in search of her. But his shock, he found the dead body of the deceased in a pit near the motor pump set belonging to one Mr.Malaikodi. The jewels worn by the deceased were also found missing. There were injuries on her body. P.W.1 suspected some foul play in her death. Therefore, he rushed to Cauverypakkam Police Station and made a complaint at 02.00 p.m. on 06.01.2012.

(b) P.W.22, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.11 of 2012 under Section 174 of Cr.P.C. (Suspicious Death). He forwarded both the documents to court which were received by the learned Magistrate at 02.30 p.m. on 07.01.2012.

(c) P.W.23, took up the case for investigation. He proceeded to the place of occurrence at 04.30 p.m. on 06.01.2012 and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. With the help of P.W.6 and one Anandan, he lifted the body from the pit. Then, he conducted inquest on the body of the deceased. At his request, the Police Photographer took photographs at the place of occurrence. Then, he forwarded the body for postmortem.

(d) P.W.20 Dr.Venkateswaran, conducted autopsy on the body of the deceased on 07.01.2012. He found the following injuries:

'A moderately built female body lying on its back. Rigor mortis present in all limbs.

External Appearance :

1. Ligature mark of 25 c.m. length present in front of neck;

2. 1 x 1 c.m. laceration on right ear and left ear lobule near stud region.

Internal Examination :

Thorax and Abdomen

Lungs : Congested Right 500 gms and Left 450 gms; floated in waster, on squeezing, water expelled out.

Stomach : Distended, partially digested food particles present.

Kidney : Right and Left congested.

Uterus : Congested.

Hyoid Bone : examined and sent for analysis.

Cranium : No skull fracture. Both congested.''

He gave opinion that the death of the deceased was due to asphyxia due to manual strangulation.

(e) P.W.23 collected the clothes from the body of the deceased and forwarded all the material objects to court.

(f) When the investigation was in progress, on 10.01.2012, the accused appeared before the Village Administrative Officer of Poondi Village. On such appearance, the accused wanted to make a voluntary confession. After having ascertained that he wants to voluntarily confess, P.W.16 allowed him to orally confess. P.W.16 reduced the same into writing (vide Ex.P.4). The accused signed the same. Then, he took the accused along with the extra-judicial confession and his Special Report to P.W.23 and produced the accused before him at 01.00 p.m. On such production, P.W.23 arrested the accused. On such arrest, he made a voluntary confession in the presence of P.W.16 and another witness in which he disclosed the place where he had hidden a Gold Chain and a Pair of Ear Studs made up of gold in a handbag. In pursuance of the said disclosure statement, he took the police and the witnesses to the place of hide out and produced a pair of gold ear studs M.O.6 and a gold chain M.O.5. P.W.23 recovered the same under a Mahazar. The accused also produced the blood stained clothes. They were also recovered. Then, P.W.23, forwarded the accused to court for judicial remand and handed over the material objects also to court. At his request, the blood stained clothes were sent for chemical examination. The report revealed that there were human blood stains found on all the material objects. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 23 witnesses were examined and 22 documents and 10 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the son of the deceased. He has stated that on 06.01.2012 at 10.30 a.m., he accompanied the deceased, taking the cattle to the field of one Malaikodi at Ariyur Village. He has further stated that after leaving the deceased at the said place to take care of the cattle, he returned home. When he was sleeping at the house around 12.00 Noon, P.W.3 came and informed that the cattle were grazing the crops. He has further stated that when he went to the place of occurrence, he found the cattle alone, but, not the deceased. Then, with the help of one Thirunavukkarasu, he searched for the deceased and at last, he found her dead body. He has also stated that the jewels worn by her were found missing. He has identified M.Os.5 and 6 as that of the deceased. He has further spoken about the complaint made by him. P.W.2 has not stated anything incriminating against the accused. She has stated only about the hearsay information. P.W.3 Govindaraj has stated that he was working in his field near the place of occurrence. At that time, he found that the cattle belonging to the deceased were grazing his crops. Therefore, he informed the same to P.W.1. P.W.4 has stated that he went to the place of occurrence on hearing about the same at 01.30 p.m. on 06.01.2012. He has not stated anything incriminating against the accused. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the blood stained earth and sample earth from the place of occurrence. P.W.6 has stated that he came to know about the death of the deceased around 12.00 Noon. He has further stated that after hearing the same, he went to the place of occurrence and lifted the body from the pit. P.W.7 is a relative of the deceased. He has also stated that he came to the place of occurrence on hearing about the death of the deceased. P.W.8 has also stated about the same facts.

5. P.W.9 is the Head of the Sniffer Dog Squad. He has stated that the said exercise proved futile. P.W.10 is a resident of Vaniyam Chathiram. He has stated that at 12.00 Noon, he came to know about the death of the deceased. He has not stated anything incriminating. P.Ws.11 and 12 have also spoken about the same facts. P.W.13 has spoken that on 06.01.2012 around 10.00 a.m., he took his cattle to Malaikodi's land for grazing. At that time, according to him, he found the deceased leading her cattle near the said place. He has further stated that around 11.00 a.m., he found the accused also moving towards the same direction at the place of occurrence. After that, he did not see the deceased. Thus, according to him, the accused was lastly moving near the place of occurrence, at or about the time of occurrence. P.W.14 has also stated about the same facts as spoken by P.W.13. P.W.15 has not stated anything incriminating. He has spoken only on hearsay information. P.W.16 is the then Village Administrative Officer of Poondi Village. He has spoken about the Extra judicial confession

given by the accused on 10.01.2012 and he has also spoken that he produced him before P.W.23 the Inspector of Police and at that time, the accused gave a voluntary confession out of which M.Os.5 and 6 were recovered. P.W.17 has spoken about the photographs taken at the place of occurrence. P.W.18 has spoken about the Chemical Analysis conducted on the clothes removed from the dead body of the deceased. P.W.19 has spoken about the chemical analysis conducted on the clothes. P.W.20 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.21 is a Police Constable. He has stated that he handed over the dead body of the deceased to the relatives after the postmortem was over. P.W.22 has spoken about the registration of the case on the complaint of P.W.1. P.W.23 has spoken about the investigation done and the final report filed by him.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. This is a case based on circumstantial evidence. The first and foremost circumstance projected by the prosecution is that on 06.01.2012 at 10.30 a.m., the deceased had gone to the field of one Malaikodi at Ariyur Village. P.W.1, who accompanied the deceased, had lastly seen her alive. P.W.13 has also seen her alive around 10.00 a.m. to 10.30 a.m. From these evidences, the prosecution has succeeded in establishing that the deceased was lastly found alive near the place of occurrence around 10.30 a.m. on 06.01.2012.

9. According to P.W.3, around 12.00 Noon, he found the cattle of the deceased grazing the crops. The deceased was not found there. Immediately, he informed the same to P.W.1. P.W.1 rushed to the place of occurrence. He along with others searched for the deceased. They found the dead body of the deceased immediately, around 12.00 Noon. The doctor who conducted autopsy has opined that the death of the deceased was due to asphyxia due to manual strangulation. There is no reason to reject the opinion of the Doctor. From these evidences, the prosecution has clearly established that the death of the deceased was a homicide and the same had occurred between 10.30 a.m. and 12.00 Noon on 06.01.2012.

10. P.W.1 has stated that from the dead body of the deceased, the gold jewels, namely, M.Os.5 and 6 were found missing. These two jewels were lastly worn by the deceased. Thus, the prosecution has further established that M.Os.5 and 6 were stolen away in the same occurrence in which the deceased had been killed.

11. Now the question is as to who are the perpetrators of the above crime. In order to prove the same, the prosecution mainly relies on the evidence of P.W.16, the Village Administrative Officer. He has stated that on 06.01.2012 at 10.00 a.m., when he was at his office, the accused appeared before him and gave a voluntary confession in which he disclosed that he killed the deceased by strangulating her and removed her jewels.

12. The learned Counsel for the appellant would submit that the said extra-judicial confession cannot be true. He would further submit that there was no reason for him to repose confidence in P.W.16 to make such a voluntary confession. We find no force at all in the said argument. In Ex.P.4 itself, the accused has stated that out of fear for the police, he had chosen to appear before P.W.16 for making such a voluntary confession. Thus, in our considered view, the accused had his own reason, to repose confidence in P.W.16 to confess to him. Above all, P.W.16 is an independent Village Administrative Officer who has got no grudge against the accused. For these reasons, we hold that Ex.P.4 was made voluntarily by the accused.

13. After the said confession was recorded, P.W.16 took the accused to P.W.23 and produced before him. After his arrest, the accused gave a voluntary confession to P.W.23 in which he disclosed the place where he had hidden M.Os.5 and 6. Accordingly, he produced M.Os.5 and 6 from the place of hide out. This has been spoken by P.W.16 as well as by the Investigating Officer. The learned Counsel for the appellant would assail the said evidence. According to him, in Ex.P.1, P.W.1 had not mentioned anything about the missing of M.Os.5 and 6. Therefore, according to the learned Counsel for the appellant, the missing of M.Os.5 and 6 and the alleged recovery of the same from the possession of the accused have been later on introduced by the police to make the case very reliable.

14. In our considered view, as has been held repeatedly by the Hon'ble Supreme Court, the FIR cannot be treated as an Encyclopedia so as to contain every minute details of the occurrence. Here in this case, at 10.30 a.m. on 06.01.2012, P.W.1 had seen his mother alive. In such a situation, when P.W.1 rushed to the police station, he would not have noticed the missing of the jewels. However, he mentioned about the same during the course of investigation. Therefore, in our considered view, non-mentioning of M.Os.5 and 6 in the First

Information Report would not in any manner create any dent in the case of the prosecution.

15. The learned Counsel for the appellant would, next, contend that P.W.13 during the cross-examination has stated that a minor chain was found on the dead body of the deceased. Referring to the same, the learned Counsel for the appellant would contend that since the chain was found on the neck of the deceased, the story of the prosecution that M.O.5 was recovered from the possession of the accused cannot be true. This argument also deserves only to be rejected. During the cross-examination, P.W.13 has not at all stated that the chain, which was found on the neck of the dead body of the deceased, was a gold chain. But the chain which was recovered from the accused as a stolen property was a gold chain. Further, P.W.1 identified M.O.5 as a gold chain which was lastly worn by the deceased. Therefore, from out of the innocuous answers given by P.W.13 that on the dead body of the deceased, a chain was found, we cannot come to the conclusion that M.O.5 was not stolen away. Thus, this argument advanced by the learned Counsel for the appellant, is liable to be rejected.

16. The learned Counsel for the appellant would next contend that the material objects have been sent to the court belatedly. This also would not create any doubt in the case of the prosecution. It is too well settled that an extra-judicial confession by itself can be the sole foundation for sustain the conviction, provided, it inspires the confidence of the court. If only the court finds that the said extra-judicial confession is shrouded with any doubt, then, as a rule of prudence, the court has to look for corroboration from independent sources on material particulars. Here in this case, as we have already concluded, the extra-judicial confession (vide Ex.P.4) is a voluntary confession of the accused which inspires the fullest confidence of the court. It does not require any further corroboration. But the fact remains that it draws corroboration from other sources also. As we have already pointed out, P.W.13 had seen the accused at or about the time of occurrence near the place of occurrence.

17. Though this is a weak piece of evidence, it will give corroboration to the extra-judicial confession. Above all, as we have already concluded, the accused was found in possession of M.Os.5 and 6 which were stolen properties. The accused has got no explanation for the same. Therefore, we have to draw a presumption as provided under Section 114 of the Indian Evidence Act that the accused had committed the murder of the deceased and robbery of M.O.5 and 6 from the deceased. This presumption is of course rebuttable. But the accused has not brought on record any material to rebut the said presumption. Thus, from out of the said unrebutted presumption coupled with the extra-

judicial confession, we hold that the prosecution has proved that it was this accused, who committed the murder of the deceased and committed the robbery. Thus, in our considered view, the trial court was right in convicting the accused.

18. Now turning to the quantum of punishment, the trial court has imposed only a proportionate reasonable punishment which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

19. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant are hereby confirmed. Since the appellant/sole accused is on bail, the trial court is directed to secure him to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif - cum - Judicial Magistrate NO.i, Wallajah.
2. The Chief Judicial Magistrate, Vellore, (for information)
3. The II Additional District and Sessions Judge, Ranipet, Vellore District.
4. The Principal Sessions Judge, Vellore (for information)
5. The Superintendent, Central Prison, Vellore.
6. The District Collector, Vellore.
7. The Director General of Police Mylapore, Chennai.
8. The Inspector of Police, Kaveripakkam Police Station, Vellore District.
9. The Public Prosecutor, High Court, Chennai.
10. The Section Officer, Criminal Section, High Court, Madras (for records)

+ 1 cc to Mr.K. Elangovan, Advocate Sr.46715

Cr1.A.No.185/2015

PUR(CO)
Eu 07.09.16