

Bail Slip

That the Appellants herein/Accused 1&2 namely 1) P.Vennila, age 30, W/o. Pandiyan 2) R.Balamurugan @ Balan (age 29) S/o.Kalimuthu were directed to be released on bail as per the order of this court dated 07.07.2015 and made in MP No.1/2015 in CrI.A.No.203/2015.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM:

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

Criminal Appeal Nos.203 of 2015

1. P.Vennila
2. R.Balamurugan @ Balan ... Appellants /Accused 1&2

- Vs -

The State of Tamil Nadu rep. by
The Inspector of Police,
Yethapur Police Station,
Salem District.
(Cr.No.809 of 2011) ... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned III Additional District cum Sessions Judge, Salem in S.C.No.87 of 2013 dated 27.02.2015.

For Appellants : Mr.T.Gowthaman

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellants are the accused 1 and 2 in S.C.No.87 of 2013 on the file of the learned III Additional District Sessions Judge, Salem. The first accused stood charged for offences under Sections 120(B), 364 r/w 120(B) and 302 r/w 34 I.P.C. The second accused stood charged for offences under Sections 120(B), 364 and 302 I.P.C. By judgment dated 27.02.2015, the Trial Court convicted both the accused under

all the charges respectively and sentenced them as detailed below:

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A1	120(B) of IPC	Rigorous Imprisonment for six months.
A1	364 r/w 120(B) of IPC	Rigorous Imprisonment for 10 years and pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.
A1	302 r/w 34 of I.P.C.	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
A2	120(B) of IPC	Rigorous Imprisonment for six months.
A2	364 of IPC	Rigorous Imprisonment for 10 years and pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.
A2	302 of I.P.C.	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.

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 Mr. Pandian. The first accused is his wife. Out of the said wedlock, they have got three children. P.Ws. 4 and 5 are their children, who were aged 15 and 13 respectively at the time of occurrence. They were all residing at Yethapur village. In due course, the

first accused developed illicit intimacy with the second accused. The second accused used to visit the house of the deceased frequently when the first accused was not available or in his absence. The illicit relationship between the first accused and the second accused came to the knowledge of the deceased, his family members and others also. The deceased took exception to the same and warned them to give up the said illicit relationship. But they continued. This resulted in frequent quarrels between the deceased and the first accused.

2.2. The first accused felt that the deceased was a hindrance for her illicit relationship with the second accused. Therefore, as per the allegation, on 10.12.2011, the accused 1 and 2 conspired to do away with the deceased. On the said day, the deceased was at his house along with the first accused and P.Ws.4 and 5. Around 10.00 p.m., the second accused came to the house and wanted the deceased to come with him in connection with some work. The deceased declined to go. But the first accused persuaded him to go with the second accused in connection with the said work. Therefore, the deceased went along with the second accused.

2.3. It is the further allegation that the second accused took the deceased to Santhaipettai and made him to drink. The first accused also had gone there in pursuance of the conspiracy. It is alleged that the second accused held the legs of the deceased and the first accused attacked him with wooden log and then both of them pushed the deceased into running water in a nearby channel. The deceased died due to head injury sustained at the hands of the first accused. Abandoning the body, at the place of occurrence, the accused 1 and 2 vanished away from the scene of occurrence. Thus the occurrence was not witnessed by any one.

2.4. P.W.1 is the father of the deceased. He was aware of the illicit intimacy between these two accused and the consequent quarrel between the first accused and the deceased. According to him, the dead body of the deceased was seen at the place of occurrence at around 07.00 a.m. on 11.12.2011. He rushed to Yethapur Police Station and made a complaint at 11.00 a.m. P.W.19, the then Inspector of Police on receipt of the said complaint, registered a case in Crime No.809 of 2011 under Section 302 I.P.C. against both the accused. Ex.P17 is the F.I.R. and Ex.P1 is the complaint. He forwarded both the documents to the Court and the same was received by the learned Magistrate at 03.00 a.m. on 12.12.2011.

2.5. P.W.19, took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.9 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem. From the place of occurrence, he recovered the blood stained

earth, sample earth and an empty brandy bottle.

2.6. P.W.18 received the dead body at the Government Hospital and kept the same in the mortuary. P.W.12 Dr.Sangetha conducted autopsy on the body of the deceased at 3.40 p.m. on 11.12.2011 at Government M.K.Medical College Hospital, Salem. She found the following injuries:

"Injuries: (1) A dark reddish brown abrasion over left upper back 6x2 cms, left knee 2x1 cms. front of left forearm 1x1 cms. (2) An oblique irregular laceration over right temporo parietal region measuring 8x2xbone deep. It is situated 11 cms above the right mastoid process, 20 cms above the occipital protubance o/d dark red contusion seen over right temporo parietal region of scalp 10x3 cms, right temporalis muscle contusion, depressed fracture right temporo parietal bone 7x4 cms, sub dural, sub arachnoid haemorrhage over right cerebral hemisphere brain - contused laceration of rt temporal lobe 3x2x1 cms noted, base of the skull - a comminuted fracture over rt middle cranial fossa extending upto left middle carnial fossa noted.

Other findings: (1) O/D of Head: vide injury column; (2) O/D of neck: all neck structures - normal. Hyoid bone - intact; (3) O/D of Thorax: No rib fracture, heart - normal in size, chambers contained right side - fluid, blood and left side empty, myocardium - normal, valves, great vessels and coronaries - patent. Both lungs ballooned out with rib marks seen over the anterior aspect of both lungs, C/S - frothy blood stained fluid oozed out. C/S congested and edematous. (4) O/D abdomen: Stomach contains 10-15 ml of mucous fluid with no specific smell. Mucosa C/S - congested, liver, spleen, kidneys - C/S congested, Bladder - empty, genitalia - No injuries made out, pelvis, spinal column - intact."

Ex.P15 is the postmortem certificate. She gave opinion that the death was due to head injuries and the said injuries could have been caused by a wooden log like M.O.1.

2.7. When the investigation was in progress, the second accused appeared before P.W.9 on 12.12.2011 at 09.00 a.m. and wanted to make a voluntary confession. After having ascertained that the said confession was made voluntarily, P.W.9 reduced the same into writing (vide Ex.P6). Then, he prepared a report under Ex.P7. P.W.9 produced the second

accused before P.W.19 on the same day.

2.8. P.W.19, arrested the second accused in the presence of the same witnesses. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden the wooden log. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the wooden log (M.O.7), a full hand shirt (M.O.8) and a lungi (M.O.9). P.W.19 recovered the same under a mahazar. Then, he forwarded the accused to Court for judicial remand. Then, the first accused was arrested at 02.30 p.m. and forwarded her to Court for judicial remand. He made a request to the Court to send the material objects for chemical examination. The investigation was continued by P.Ws.20 and 21. Finally on completing the investigation, P.W.21 laid chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined, 24 documents and 9 material objects were marked.

2.10. Out of the said witnesses, P.W.1 the father of the deceased has stated about the illicit relationship between the accused 1 and 2 and the frequent quarrels between the deceased and the first accused. He has further stated that the dead body was found at the place of occurrence at 07.00 a.m. on 11.12.2011 and then he made a complaint to the police. P.W.2 is the sister-in-law of the deceased. She has stated that the first accused came to her at 09.00 a.m. on 11.12.2011 and told her that the deceased had left her house at 11.00 p.m. on the previous day and had not returned home. She has further told that the deceased had gone with five sovereign gold jewels and Rs.20,000/- cash. She has further stated that after the dead body was found at the place of occurrence when she rushed to the place of occurrence, she found the first accused sitting near the dead body and wailing. P.W.3 has spoken about the illicit relationship between the accused 1 and 2 and the frequent quarrel between the first accused and the deceased. P.Ws.4 and 5 are the children of the deceased. They have stated that around 10.00 p.m. on 10.12.2011, the deceased was taken by the second accused in connection with some work.

2.11. P.Ws.6, 7 and 8 are the neighbours of the deceased who have also stated about the illicit relationship between the accused 1 and 2. P.W.9 has spoken about the preparation of observation mahazar and the rough sketch and also about the recovery of material objects at the place of occurrence. He has also stated about the extra judicial confession given by the second accused to him at 09.00 a.m. on 12.12.2011. He has further stated about the recovery of the blood stained shirt,

a pant and a wooden log based on the disclosure statement made by the second accused.

2.12. P.W.10 is the leader of the sniffer dog squad. He has stated that at the request of the investigating officer, the dog was brought to the place of occurrence but could not get any clue. P.W.11 has spoken about the fact that he handed over the F.I.R. to the learned Magistrate at 11.30 a.m. on 11.12.2011. P.W.12 has spoken about the postmortem conducted and the final opinion regarding the cause of death. P.W.13 is yet another neighbour of the deceased, who has only stated about the frequent quarrels between the first accused and the deceased.

2.13. P.Ws.14, 15 and 16 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.17 has stated that he took the dead body from the place of occurrence and handed over the same to the Doctor (P.W.18) for postmortem. P.W.18 has stated that he received the dead body from the police and on 11.12.2011 at 03.30 p.m. and kept the dead body in the mortuary for the purpose of postmortem. P.W.19 has spoken about the registration of the case and the investigation done by him. P.Ws.20 and 21 have spoken about the further investigation and final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. Their defence was a total denial. Having considered all the above, the trial Court convicted the appellants as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. It is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us go into the circumstances projected by the prosecution.

6. The first and the foremost circumstance is the illicit relationship between these two accused and the consequential

quarrel between the deceased and the first accused. This has been spoken not only by P.W.1 but the neighbours, who have been examined as P.Ws.6, 7 and 13. The children of the deceased viz., P.Ws.4 and 5 have also spoken about the same. From these evidence, we hold that the accused 1 and 2 had illicit intimacy between them and as a consequence, there were frequent quarrels between the deceased and the first accused.

7. The next circumstance is that the deceased was taken out at 10.00 p.m. on 10.12.2011 by the second accused under the guise of attending an urgent work. To speak about this fact, the prosecution has examined P.Ws.4 and 5, who are the children of the deceased. They were aged about 15 and 13 years respectively. Though they are child witnesses, they were mature enough and there is no reason to doubt their credibility. They have stated that the second accused came to the house and wanted the deceased to come with him to attend an urgent work. The deceased initially declined to go. Thereafter, the first accused persuaded him to go with the second accused. Then the second accused took the deceased with him. Thus, the deceased was lastly seen alive at around 10.00 p.m. on 10.12.2011.

8. The dead body of the deceased was found at Santhaipettai on 11.12.2011 at 07.00 a.m. According to the doctor who conducted autopsy on the body of the deceased, the death of the deceased was due to the head injury found. Thus, the prosecution has established that the death of the deceased would have occurred sometime between 10.00 p.m. on 10.12.2011 and 07.00 a.m. on 11.12.2011.

9. Now, the question is as to who caused the death of the deceased by causing injury on his head. As we have already pointed out there is no direct eye witness account to prove the same. The prosecution relies only on the extra judicial confession allegedly given by A2 to P.W.9 on 12.12.2011 at 09.00 a.m.

10. The learned counsel for the appellants would submit that this extra judicial confession cannot be true and therefore, no reliance could be made on the same. But, we find no force in the said argument at all. For his own reasons, the second accused had chosen to go to P.W.9 to make a voluntary confession, assuming that there are some doubts in respect of the said extra judicial confession, prudence requires only corroboration in the material particulars. It is not the law that an extra judicial confession cannot be the sole foundation for conviction. If the extra judicial confession is shrouded with any doubt, prudence requires that the Court should look for corroboration on material particulars from independent sources.

11. In this case, the said extra judicial confession given by the second accused to P.W.9 draws adequate corroboration from two other circumstances, viz., the evidences of P.Ws.4 and 5 and the motive. P.Ws.4 and 5 have stated that lastly at 10.00 p.m. on 10.12.2011, the second accused only took the deceased with him. As we have already pointed out, there is no reason to reject the evidence of P.Ws.4 and 5 in this regard. If that be so, it becomes the duty of the second accused to explain as to what had happened to the deceased thereafter. But the second accused has not offered any explanation neither has he admitted that he took the deceased with him. This false plea taken by the second accused and his failure to explain as to what had happened to the deceased, after he was taken with him at 10.00 p.m. on 10.12.2011 onwards would give adequate corroboration to the extra judicial confession made by him to P.W.9.

12. Yet another corroboration comes by way of motive. P.Ws.1 to 5 and P.W.13 have stated about the illicit relationship between these two accused and consequential quarrel between the first accused and the deceased. This fact also provided adequate corroboration to the extra judicial confession given by the second accused to P.W.9. Thus, from the extra judicial confession made by the second accused to P.W.9 which draws adequate corroboration on material particulars from various other independent sources, we hold that the prosecution has proved that it was the second accused who caused the death of the deceased.

13. So far as the first accused is concerned, though the charge is that she was present at the time of occurrence and she also joined with the second accused to cause the death of the deceased. Absolutely, there is no evidence for the same. To prove this fact, the prosecution relies only on the extra judicial confession given by the second accused. It is the law that the extra judicial confession of the co accused cannot be the foundation to convict the other accused. As has been held by the Hon'ble Supreme Court in Kashmira Singh Vs. State of Maharashtra reported in 1952 AIR SC 159, the proper procedure to be followed while appreciating the co-accused confession is to marshall all the other evidence and first keeping aside the extra judicial confession of the co-accused and if the Court finds from other evidence that the accused has committed the offence, in order to add strength to the said conclusion, the Court may, as a last resort, consider the extra judicial confession given by the co-accused.

14. In other words, solely based on the extra judicial confession made by the co-accused, the other accused cannot be convicted. Applying the said principle to the facts of this case, if we analyse the evidences, except the fact that there

were frequent quarrel between the first accused and the deceased, there is no other evidence to hold her guilt. Therefore, the extra judicial confession given by the second accused cannot be made use of in any manner against the first accused. Thus, the prosecution has failed to prove the case against the first accused beyond reasonable doubts and therefore, she is entitled for acquittal.

15. Now turning to the quantum of punishment, for the offence committed by the second accused under Section 302 I.P.C. is concerned, the trial Court has imposed only the minimum punishment, which does not require any interference at the hands of this Court at all. So far as the offence of conspiracy is concerned, there is no proof and therefore the second accused is entitled for acquittal from the said charge. The second accused is liable for punishment under Section 364 I.P.C. for having abducted the accused for the purpose of murder. The quantum of punishment imposed by the trial Court is proportionate to the gravity of the offence and therefore the same also does not require any interference at the hands of this Court.

16. In the result, the appeal is partly allowed on the following terms:

(i) the conviction and sentence imposed on the first appellant / first accused (P.Vennila) by the learned III Additional District cum Sessions Judge, Salem in S.C.No.87 of 2013 dated 27.02.2015 are set aside and she is acquitted from all the charges. The fine amount, if any, paid by her shall be refunded.

(ii) the conviction and sentence imposed on the second appellant / second accused (R.Balamurugan @ Balan) by learned III Additional District cum Sessions Judge, Salem in S.C.No.87 of 2013 dated 27.02.2015 for offences under Sections 364 and 302 I.P.C. are confirmed. However, the conviction and sentence imposed for the offence under Section 120(B) I.P.C. alone is set aside and he is acquitted from the said charge. The above sentence shall run concurrently. The period of sentence already undergone by the second accused shall be set off under Section 428 Cr.P.C. The bail bond shall stands cancelled.

The Trial Court shall take steps to secure the second accused and commit him to prison so as to undergo the remaining sentence.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

svki/kk

To

1. The III Additional District cum Sessions Judge, Salem.
2. Do Thro The Principal Sessions Judge, Salem.
3. The Judicial Magistrate No.I, Athur.
4. Do Thro The cheif Judicial Magistrate Salem.
- 5.The Inspector of Police, Yethapur Police Station, Salem District.
6. The Superintendent, Central Jail, Salem (Accused 2)
7. The Superintendent, Central Jail, vellore (Accused 1)
8. The District Collector, Salem.
9. The District Collector, Vellore.
- 10.The Director General of Police, Mylapore, Chennai 4.
11. The Public Prosecutor, Madras High Court.

1 cc to M/s.T.Gowthaman, Advocate, sr.36072

Cr1.A.No.203 of 2015

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kra 03.10.2016