

Bail Slip:- CrI.A.No.233 of 2015:- The appellants/Accused namely Abu @ Abuthahir(A2) Jayaraj (A3) were directed to be released on bail as per order of this court dated 31.3.2016 made in M.P.No.2 /15 in CrI.A.No.233 of 2015.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM:

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

Criminal Appeal No.233 of 2015

1. Abu @ Abuthahir (A2)
2. Jayaraj (A3) .. Appellants

- Vs -

State rep by Inspector of Police,
Sankarapuram Police Station,
Villupuram District.
(Cr.No.387 of 2010) .. Respondent

Prayer:- Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned III Additional District and Sessions Judge, Kallakurichi in S.C.No.2 of 2012 dated 23.09.2014.

For Appellants : Mr.A.Arasu Ganesh

For Respondent : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

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

The appellants are accused 2 and 3 in S.C.No.2 of 2012 on the file of the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram district. The first accused was one Mrs.Sathya wife of Mr.Muneeswaran. The second accused stood charged for offences under Sections 302 and 201 r/w 302 I.P.C. and the accused 1 and 3 stood charged for offences under Section 302 r/w 34 I.P.C. and Section 201 r/w 302 I.P.C. By judgment dated 23.09.2014, the trial Court convicted all the three accused under all the charges and sentenced the second accused to undergo imprisonment for life and pay a fine of Rs.500/- in default to undergo simple imprisonment for one year for the offence under Section 302 I.P.C. and to undergo

rigorous imprisonment for three years and pay a fine of Rs.500/- in default to undergo simple imprisonment for nine months for the offence under Section 201 r/w 302 I.P.C. The trial Court sentenced the accused 1 and 3 to undergo imprisonment for life and pay a fine of Rs.500 in default to undergo simple imprisonment for one year for the offence under Section 302 r/w 34 I.P.C and to undergo rigorous imprisonment for three years and pay a fine of Rs.500 each in default to undergo simple imprisonment for nine months for the offence under Section 201 r/w 302 I.P.C. Challenging the said conviction and sentence, the appellants / accused 2 and 3 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 Muneeswaran. The first accused Mrs.Sathya is his wife. It is alleged that the second accused had developed illicit intimacy with the first accused. This came to the knowledge of the deceased. He reprimanded both of them. Thus the deceased was a hindrance for the accused 1 and 2 to continue their illicit intimacy. Therefore, the accused 1 and 2 decided to do away with the deceased.

2.2. It is further alleged that on 29.06.2010 at 09.00 p.m. on information given by the first accused, the accused 2 and 3 came in the motorcycle belonging to the third accused to the farm house of the first accused. At that time, the deceased was in the same house and he was sleeping on a coir cot. As per the earlier plot, the second accused attacked the deceased with iron pipe on the neck of the deceased. Then, he took a cloth and with that, he closed the mouth and nose and suffocated him. The third accused held the legs of the deceased facilitating the second accused to kill the deceased. The first accused, bite the deceased on his leg and stabbed on the testicles of the deceased with a scissor. The accused 1 and 3 then strangled the deceased with a rope. The deceased died on the spot. Then the second accused hanged the dead body by using a ligature to make it appear as though the deceased has committed suicide. The occurrence was not witnessed by anyone.

2.3. P.W.1 was the then Village Administrative Officer of Marravanatham village. According to him on 30.06.2010 at around 06.00 a.m. his Village Assistant informed him that the deceased the owner of the medical shop had died and the body was about to be transported in a car. Immediately, P.W.1 went to the place of occurrence and found the car bearing Registration No.TN 30 D 5239 in front of the house of the deceased. The dead body of the deceased was in the car. It was covered with a white cloth and the face alone was kept open. But there were bloodstains on the cloth. When he closely watched, he found the blood was bleeding still and there were bleeding from his testicles. Suspecting some foul play, P.W.1 went to the Police Station and made a complaint in this regard on 30.06.2010 at 07.30 a.m.

2.4. P.W.18, the then Sub Inspector of Police on receipt of the said complaint, registered a case in Crime No.387 of 2010 under Sections 302 and 201 I.P.C. against the first accused and two other unknown persons. Ex.P24 is the F.I.R. He forwarded the complaint (Ex.P1) and the F.I.R. (Ex.P24) to the Court which was received by the learned Magistrate at 11.00 a.m. on 30.06.2010.

2.5. P.W.18 the then Inspector of Police took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch at 08.30 a.m. in the presence of P.W.12 and another witness. He recovered the bloodstained earth and sample earth from the place of occurrence. He recovered the bloodstained scissors found at the place of occurrence. Then, he conducted inquest on the body of the deceased between 11.00 am to 12.30 p.m. on the same day and forwarded the body for postmortem.

2.6. P.W.15 Dr.Vijayakumari conducted autopsy on the body of the deceased. On 30.06.2010 at 01.00 p.m. she found the following injuries:

"Injuries: (1) Abrasion 2 x 2 cm over right knee (2) semi circular human bite mark 6x0.5 cm present superficially over upper right lateral thigh (3) 8 lacerated injuries of various sizes 3x1x0.5 to 2x0.5x0.5 in scrotum. (4) one lacerated injury 3x0.5x1 cm in the base of penis (5) 2 small abrasions in the dorsal aspect of left wrist 2x0.5cm (6) Brownish discolouration of lower half of face (7) Black coloured ligature mark running horizontally in the middle of neck extending 3 cm from midline of right side to 5 cm from medline of left side with irregular interruptions 35 cms longx1cmdeepx3 cm wide. (8) contusion 3x3 cm upper anterior midline abdomen and dissection of it showed a haematoma 3 x5cm under the skin.

Internal Examination: (1) Lungs right-450 gms, left-400 gms. Congested, dark. (2) Heart: 350 gms, empty, congested. (3) stomach: empty, pink in colour, 100 ml of clotted blood seen behind the stomach. (4) Liver:1500 gms, congested. (5) Spleen:90 gms, congested (6) Kidneys: Each 120 gms, congested, dark brown (7) Intestines: distended with gas. (8) Bladder empty. (9) Skull: about 100 gm of clotted blood seen under the scalp in left parietal area. (10) brain: 1500 gms, congested.

Dissection of neck: (a) Tissues under the ligature mark congested and dark brown

in colour (b) Hyoid bone: fractured at the left lesser horn with surrounding tissues, congested and dark brown in colour (c) Epiglottis, Larynx, trachea congested and dark brown in colour."

Ex.P19 is the postmortem certificate. Ex.P21 is the Hyoid bone report. The examination of the internal organs revealed that the deceased had taken ethyl alcohol. She gave opinion that the deceased had died due to asphyxia due to strangulation.

2.7. P.W.18, collected the bloodstained clothes from the body of the deceased and forwarded the same also to the Court. On the same day at around 05.00 p.m. he arrested the first accused in the presence of P.W.2 and another witness. Then, he recovered a cell phone from the first accused. On 01.07.2010, he arrested the second accused in the presence of P.W.10 and another witness. On such arrest, he gave a voluntary confession. Out of which a cell phone bearing No.9442734001 was recovered. He also recovered a iron pipe from him. Then he forwarded him to Court for judicial remand. The third accused had surrendered before the Court. On 16.07.2010, P.W.18 took police custody of the third accused and while in custody, he made a voluntary confession, in which, he disclosed the place where he had hidden a motorcycle. In pursuance of the same, he took the police and witnessed to the said place of hide out and produced the same. P.W.18 recovered the same in the presence of witnesses. Then, he forwarded the accused to Court for judicial remand. He forwarded all the material objects to the Court. At his request, the material objects were sent for chemical examination. On completing the investigation, he laid chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment, which the accused denied. In order to prove the case, on the side of the prosecution as many as 18 witnesses were examined, 23 documents and 8 material objects were marked.

2.9. Out of the said witnesses, P.W.1 the Village Administrative Officer has stated that on receipt of intimation from the Village Assistant at 06.00 a.m. on 30.06.2010, he went to the house of the deceased and he found the dead body of the deceased covered by a white cloth with bloodstains and the body was lying in the car. He has further spoken about the complaint made by him. P.W.2 is the Village Assistant who has informed P.W.1 that the dead body of the deceased was lying in a car.

2.10. P.W.3 is a resident of Murarpalayam village. He said that he knew the first accused and the deceased. The deceased was running a medical shop and a tea shop. He was working in the said tea shop and he used to come for work in the tea shop every day at around 3.30 a.m. and return around

08.00 p.m. He has stated that on 30.06.2010, as usual, he went to the tea shop and when he opened the tea shop, he found the deceased hanging. He believed that he had committed suicide by hanging inside the shop. Then, he informed the father of the first accused. Thereafter, he was not present at the place of occurrence. Thus, he has not stated anything incriminating against the accused. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner.

2.11. P.W.5 has stated that he heard that the deceased was no more. When he went to the place of occurrence and he found the dead body of the deceased in the car. P.W.6 has stated that on hearing about the death of the deceased, when he went to the place of occurrence, he was told that the deceased had committed suicide, but he found the dead body was in the car. But there were bloodstains in the white cloth covering the dead body. Therefore, the villagers had suspicion regarding the death of the deceased. Therefore, they did not allow the vehicle to be taken. According to him, then the police came on the complaint of P.W.1. P.W.7 has also stated the same facts as spoken by P.W.6.

2.12. P.W.8 is the daughter of the deceased. At the time of occurrence, she was hardly aged seven years. She has stated that at the time of the demise of her father, she was doing second standard. She has further stated that she did not know the accused 2 and 3. On the day of occurrence, according to her, she was sleeping in a room along with her mother and her father was sleeping on the cot. The fan was running. On the next day morning, she found her father dead. On the day of occurrence she did not saw the accused 2 and 3 at all. Thus, her evidence is of no use for the prosecution.

2.13. P.W.9 is a villager, he has stated that on hearing about the death of the deceased, he went to the place of occurrence. P.W.10 has spoken about the arrest of the second accused and the disclosure statement made by him and also the recovery of M.O.2 (silver iron pipe). P.W.11 has also spoken about the same facts as spoken by P.W.10.

2.14. P.W.12 has spoken about the preparation of the observation mahazar and a rough sketch and the recovery of material objects from the place of occurrence. P.W.13 has stated that she handed over the material objects to the forensic lab as directed by the learned Magistrate. P.W.14 a constable has stated that he handed over the dead body of the deceased to the doctor for postmortem. P.W.15 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.16 the then learned Magistrate has stated that she recorded the statements of P.Ws.6 and 7 and one Poomalai under Section 164 Cr.P.C. as requested by the investigating officer. P.W.17 has spoken about the registration of the case and P.W.18 has spoken about the investigation done and the 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. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, the appellants / accused 2 and 3 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. This is a case based on circumstantial evidence. The motive suggested is that the first accused had illicit intimacy with the second accused. Assuming that the said illicit relationship stands proved and on account of the same, there was misunderstanding between the first accused and the deceased, that by itself would not go to conclusively prove that the accused were the perpetrators of the crime.

6. According to the daughter of the deceased (P.W.8), on 29.06.2010, she lastly found the deceased sleeping in the house. The first accused and P.W.8 were sleeping in a room separately. On the next day morning the deceased was found dead. According to the opinion of the doctor who conducted autopsy the deceased had died of homicidal violence and not by suicide. From these evidence, the prosecution has succeeded in establishing that the deceased had been done to death by somebody between 08.00 p.m. on 29.06.2010 and 07.30 a.m. on 30.06.2010.

7. In order to prove that the death of the deceased was caused by these accused, there is no other evidence at all available on record. P.W.8 has not even stated that she found these two accused at the place of occurrence. There is no other evidence to connect these two accused with the crime. Because the motorcycle and cellphone were recovered from these accused, we cannot rush to the conclusion that these two accused had a role in the death of the deceased. There is no connection between the recovered objects from the possession of these two accused and the crime. Thus, absolutely there is no evidence against these two accused.

8. Under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived only by following the procedure established by law. The said procedure denotes a fair procedure where the proof of guilt is made beyond reasonable doubts. In other words, the Court cannot afford to convict an individual on mere surmises or suspicion. In the instant case, the prosecution has not even succeeded in establishing a mere suspicion against these two

accused. Thus, we hold that the trial Court had convicted the appellants / accused 2 and 3 only on mere surmise and therefore the same should not be allowed to sustain. We hold that the prosecution has failed to prove the case against the appellants / accused 2 and 3 beyond reasonable doubts and therefore the appellants / accused 2 and 3 are entitled for acquittal.

9. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellants / accused 2 and 3 by the learned III Additional District and Sessions Judge, Kallakurichi in S.C.No.2 of 2012 dated 23.09.2014 is set aside and they are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bond, if any executed, by them, shall stand discharged.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate
Sankarapuram

2. The Chief Judicial Magistrate
Villupuram

3. The Superintendent
Central Prison,
Cuddalore

4. The III Additional District and Sessions Judge,
Kallakurichi.

5. The Inspector of Police,
Sankarapuram Police Station,
Villupuram District.

6. The Public Prosecutor,
Madras High Court.

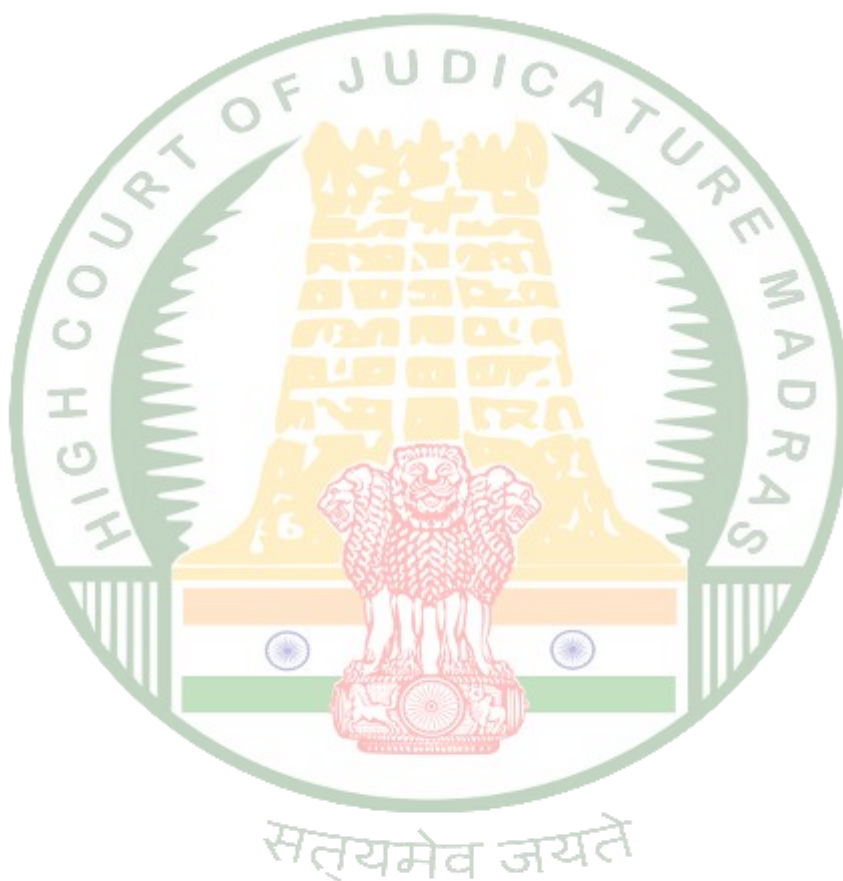
7. The Director General of Police
Mylapore Chennai

8. The Distrit Collector
Villupuram

1 cc to Mr.A.Arasu Ganesan, Advocat,e Sr. 44504

Crl.A.No.233 of 2015

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