

Bail Slip

The Appellant/Accused viz., Saravanan S/o. Gopal, was released on bail as per the order of this Court dated 25.6.2016 in MP.1/2015 in CrI.A. 294/2015.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.294 of 2015

Saravanan

.. Appellant

- Vs -

State rep by Inspector of Police,
Karimangalam Police Station,
(Cr.No.100 of 2006)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in S.C.No.68 of 2010 dated 18.09.2014.

For Appellant : Mr.V.Rajamohan

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 appellant is the sole accused in S.C.No.68 of 2010 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri. As per the police report, there was yet another accused by name Vadivel. Since, he has been absconding, the case against Mr.Vadivel has been split up and tried separately. Thus, the appellant alone was charged by the trial Court. The trial Court framed as many as six charges against the appellant as follows:

Serial Number of charge	Charge(s) framed under Section
1	364 of IPC (3 counts)
2	368 of IPC

Serial Number of charge	Charge(s) framed under Section
3	302 r/w 109 of IPC
4	302 r/w 109 of IPC
5	201 of IPC (2 counts)
6	363 of IPC

By judgment dated 18.09.2014, the trial Court convicted the appellant for various offences as detailed below:

Penal provision(s) under which convicted	Sentence
364 of IPC (3 counts)	Rigorous Imprisonment for five years for each count.
368 of IPC	Rigorous Imprisonment for five years.
302 r/w 109 of IPC (2 counts)	Imprisonment for life for each count.
201 of IPC (2 counts)	Rigorous Imprisonment for three years for each count.
363 of IPC	Rigorous Imprisonment for five years.

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

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

2.1. There are two deceased in this case by name Subbulakshmi and Sakthivel @ Mohd Ismail (hereinafter referred to as D1 and D2 respectively). P.W.8 Mr.Arul Karuppusamy is the son of Mrs.Subbulakshmi. At the time of occurrence, he was hardly aged seven years. It is alleged that D1-Mrs.Subbulakshmi was having living-in-relationship with D2 Mr.Sakthivel @ Mohd Ismail. Thus, they were living together and P.W.8 was also with them. For quite sometime, it is alleged, that the other accused in this case Mr.Vadivel developed illicit intimacy with D1-Mrs.Subbulakshmi. While so, Mr.Vadivel proposed to marry another girl. This was not to the liking of D1. Therefore, D1-Mrs.Subbulakshmi intimidated Mr.Vadivel that she would disclose his illicit relationship with her and stop the marriage proposal. Thus, D1 was a hindrance for the marriage proposal for Mr.Vadivel. Enraged over the same, it is alleged that he

decided to do away with both D1 and D2. The present appellant is stated to be an associate of Mr.Vadivel. Thus, according to the case of the prosecution, he joined hands with Mr.Vaidvel to commit the above crimes.

2.2. It is the further case of the prosecution that on 22.02.2006, the appellant and Mr.Vadivel went to the house of the deceased and invited them by playing deception on them to come to his village to participate in the village temple festival. Believing the deceiving words of Mr.Vadivel, D1 and D2 along with P.W.8 went along with the appellant and Mr.Vadivel in the bus. They got down on the bus stop at Palacode. From Palacode, the appellant took P.W.8 in his motorcycle informing D1 and D2 that he would come straight to Hanumanthapuram to the house of Mr.Vadivel. After leaving P.W.8 at his house at Kettanahalli village, the appellant returned to Hanumanthapuram in the TVS Suzuki motorcycle. Mr.Vadivel took the same motorcycle and took D1 in the same under the guise of taking her to his house. Mr.Vadivel instead of taking her to his house, took her to a mango grove belonging to one Thirupathi and stopped the motorcycle. D1 got down from the motorcycle. Mr.Vadivel had already, kept an aruval in a bag in the motorcycle. He suddenly took out the aruval and cut D1 repeatedly. D1 died on the spot. This occurred at around 10.30 p.m. Mr.Vadivel removed the gold chain worn by D1. Then he abandoning the dead body there, he returned in the same motorcycle to Palacode.

2.3. Mr.Vadivel then took D2 in the motorcycle to the same place and cut him repeatedly with aruval. This happened at around 11.00 p.m. He also died on the spot. Then Mr.Vadivel tied the dead bodies with stones and threw the dead bodies into a well with water belonging to one Mr.Venkatasamy. Then, he returned to the house of the appellant.

2.4. Mr.Vadivel and the appellant took P.W.8 in the motorcycle to Dharmapuri. Then, the appellant took P.W.8 in the motorcycle to the railway station and from where he took him to Vijayawada in Andhra Pradesh State and left him there. Then, the appellant returned to his native place. Mr.Vadivel and the appellant did not disclose about the occurrence to anybody.

2.5. P.W.1 was the then Village Administrative Officer of Hanumanthapuram village in Palacode taluk. On 05.03.2006 at around 08.30 a.m. one Mr.Selvaraj (P.W.2) informed him that two dead bodies of a male and a female respectively aged about 30 to 35 years were floating in the water in the well belonging to Mr.Venkatasamy. P.W.1 reduced the said information into writing. He went to the well and found two dead bodies. Then,

he prepared a special report and went to Karimangalam police station and submitted the said statement of P.W.2 and his report (vide Ex.P1 and P2).

2.6. P.W.19 registered a case in Crime No.100 of 2006 under Section 302 I.P.C. Ex.P22 is the F.I.R. He forwarded both the documents to Court, which were received by the learned Magistrate at 08.00 p.m. on 05.03.2006.

2.7. P.W.20 took up the case for investigation. He proceeded to the place of occurrence and with the help of Fire and Rescue service, he lifted both the dead bodies from out of the well. Then, he prepared an observation mahazar and a rough sketch in the presence of P.W.1 and another witness. Then he conducted inquest on both the dead bodies. Since the dead bodies were highly decomposed, he requisitioned the services of a Doctor to conduct the postmortem on the spot. Accordingly, P.W.17 came to the place of occurrence and conducted autopsy on both the dead bodies on 06.03.2006. At 12.00 noon she conducted autopsy on the body of D1 and found the following injuries:

"External injuries: body fully bloated, peeling of skin all over the body. An incised wound 22 cm x 3.5 cm starting from 4 cm below the right external ear encircling the anterior aspect of the neck ending 3 cm below the left external ear exposing major blood vessels and muscles.

Internal examination: hyoid bone intact. Ribs both sides normal. Heart chambers empty c/s pale. Lungs, Liver, Kidneys, Spleen all were of normal size c/s pale. Stomach empty. Bladder empty. Skull intact. Brain liquefied."

On the same day at 11.00 a.m., she conducted autopsy on the body of D2 and found the following injuries:

"External injuries: The whole body was bloated with peeling of skin all over the body. An incised wound 25 cm x 3 cm starting from 4 cm below the right external ear encircling the anterior aspect of neck ending 3 cm below the left ear exposing major blood vessels and muscles.

Internal examination: hyoid bone intact. Ribs both sides normal. Heart chambers empty c/s pale. Lungs, Liver, Kidneys all were size normal c/s pale. Stomach empty. Bladder empty. Skull intact. Brain liquefied."

She gave opinion that the death of both the deceased was due to shock and hemorrhage due to cut injuries found on the respective dead bodies. P.W.20 examined few more witnesses. The dead

bodies were identified by the respective family members.

2.8. When the investigation was in progress, it is alleged that Mr.Vadivel the other accused surrendered before P.W.9, the then V.A.O of Bhommanahalli village and made a voluntary confession. P.W.9 reduced the same into writing (vide Ex.P4). Then along with a special report, he produced Mr.Vadivel before P.W.20.

2.9. P.W.20 arrested Mr.Vadivel and while in custody, he made a voluntary confession, in which, he disclosed the place where he had hidden the aruval. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the same. He also identified the place from where the bloodstains were found and he recovered bloodstained earth and sample earth from the place of occurrence. Then, he forwarded Mr.Vadivel to Court for judicial remand.

2.10. The appellant surrendered before the learned Judicial Magistrate No.1, Dharmapuri. On 13.03.2006, P.W.20 made a request to the learned Magistrate for holding Test Identification Parade to identify these accused by P.Ws.7 and 8. Accordingly test identification parade was conducted. Then the investigation was taken over by his successor P.W.21. On completing the investigation, he laid chargesheet against the accused.

2.11. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution as many as 21 witnesses were examined, 28 documents and 19 material objects were marked.

2.12. Out of the said witnesses, P.Ws.2 has stated that he found two dead bodies in the well on 05.03.2006 and then he informed the same to P.W.1. P.W.1 the then V.A.O. has stated that he reduced the statement of P.W.2 into writing and then along with his special report, he went to the police station and presented the same. He has further stated about the recovery of the dead bodies from the well and later on the recovery of further material objects from the place of occurrence by P.W.20. P.W.3 has stated that as requested by P.W.20 he helped the fire and rescue service men to lift both the dead bodies from the well.

2.13. P.W.4 is an officer in the fire and rescue service. He has stated about the lifting of the dead bodies from the well as requested by P.W.20. P.W.5 has stated that the first accused purchased an aruval from him. He has identified M.O.1, as the

one which was produced by Mr.Vadivel. P.W.6 was running a cycle stand in Karimangalam village. According to him, on 23.02.2006 the appellant parked a motorcycle bearing Registration No.TN 27 T 6065 in the cycle stand and then took it back at around 03.00 p.m. on the same day. Again, he kept the motorcycle in the very same stand on 25.02.2006 at 07.00 a.m. and he has further stated that on 07.03.2006 at 05.00 p.m. he took back the same. P.W.7 is the husband of D1 and father of P.W.8. He has stated that he identified the dead body.

2.14. P.W.8 the son of D1 has stated that he was taken along D1 and D2 in the bus upto Palacode and from where he was taken to Kettanahalli village and then to the Andhra Pradesh, where he was left in lurch by the appellant. P.W.9 the V.A.O. of Bhommanahalli village has stated about the surrender of Mr.Vadivel on 07.03.2006 at 12.00 noon and the confession made by him. P.W.10 has turned hostile and he has supported the case of the prosecution in any manner. P.W.11 has stated that he was running a jewelry shop. He has stated that a middle aged man aged between 20 to 23 years once came to him and gave a chain and wanted to sell the chain. On testing, he found that it was not gold and it was only a covering chain. Therefore, the said man returned. He did not identify any of the accused.

2.15. P.W.12 a police constable has stated about the fact that he gave the letter to the doctor for postmortem. P.W.13 the administrator of the school where P.W.8 was studying has stated that on 22.02.2006 at 02.00 p.m. the parents of P.W.8 came to the school and took him. P.W.14 has stated about the photographs taken by him at the place of occurrence as requested by P.W.20. P.W.15 the Head Clerk of the learned Judicial Magistrate Court has stated that he forwarded the material objects for chemical examination.

2.16. P.W.16 was the Head Constable attached to Karimangalam police station has stated that he was present when the postmortem was conducted by the doctor and then he recovered the clothes from the dead bodies and handed over the same to P.W.20. P.W.17 has spoken about the postmortem conducted on the dead bodies of D1 and D2 and her final opinion regarding the cause of death. P.W.18 a police constable attached to the respondent police station has stated that he handed over the F.I.R. to the learned Magistrate at 08.00 p.m. on 05.03.2006. P.W.19 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.20 and 21 have 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., he denied the same as false.

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 appellant as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant 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 prosecution has let in evidence to prove the motive for Mr.Vadivel against D1 and D2. Nothing has been stated in the evidence of any witness even suggesting any motive for this appellant against the deceased. There is no evidence that this accused was a close associate of Mr.Vadivel.

6. In order to prove the charges against the accused, one of the main evidences upon which much reliance is made by the prosecution is the evidence of P.W.9 and the extra judicial confession said to have been given by Mr.Vadivel to him, wherein, he has confessed to his guilt narrating as to how he executed the crime. In the said confession, he has stated that this appellant, induced him to commit the crime and he kidnapped P.W.8. The trial Court has failed to take note of Section 30 of the Evidence Act, which mandates that a confession of the co-accused is relevant against the other, provided there is a joint trial of both the accused. Here in this case, Mr.Vadivel who is stated to have made the extra judicial confession to P.W.9 has not been tried along with the appellant and therefore, the evidence of P.W.9 and the so called confession said to have been given by Mr.Vadivel to P.W.9 (vide Ex.P4) are not relevant as against this accused. Therefore, the same cannot be considered against the appellant. The trial Court has unfortunately given undue weightage for this extra judicial confession of Mr.Vadivel and it has used the same against the appellant. This, in our considered view is illegal. Therefore, we reject the evidence of P.W.9 and Ex.P4.

7. The next evidence upon which much reliance is made by the prosecution is the evidence of P.Ws.1 and 2, who have stated that the dead bodies of both D1 and D2 were found floating in the well on 05.03.2006. The doctor who conducted autopsy on the bodies had found number of cut injuries on both the bodies and he has opined that the death of both the deceased was due to shock and hemorrhage due to the cut injuries found. Thus, the prosecution has established that the death of D1 and D2 were homicides. In order to prove that the appellant had got anything

to do with the death of these two deceased, absolutely there is no evidence against him. As we have already pointed out, the trial Court had convicted him for the offence under Section 302 r/w 109 I.P.C. solely based on the extra judicial confession allegedly given by Mr.Vadivel. As we have already rejected the said extra judicial confession and since we find no other evidence against the accused in connection with the death of both the deceased, we are forced to acquit the accused from the charge under Section 302 r/w 109 I.P.C. (2 counts).

8. Now turning to the offence of kidnapping, the prosecution depends only on the statement of P.W.8, the son of D1. On the day of occurrence, he went to the school. According to P.W.13, the Administrator of the school, P.W.8 was taken from the school at 02.00 p.m. on 22.02.2006 by the parents of P.W.8. He has not stated that the appellant had gone to the school to take him. According to P.W.8, he was taken to his house by his mother. He has further stated that thereafter, Mr.Vadivel, the accused, D1, D2 and P.W.8 went together in a bus to go to Kettanahalli. He has further stated that D1 and D2 had gone to Kettanahalli by bus and this accused took him in the motorcycle to Kettanahalli and made him to stay in his house. Then the accused took him in the motorcycle to the railway station from where he took him to a different place and dropped him there and disappeared. After sometime, since he did not find the appellant, he started weeping. On noticing him standing alone and weeping in the railway station, someone there took him to the police station and handed him over to the police. Since he informed about his native place and other details, he was taken to Kettanahalli village. This witness has been cross examined at length by the accused. But nothing could be elicited from him so as to disbelieve him.

9. The learned counsel for the appellant would submit that he being a child witness, he has spoken on account of tutoring. We find no force in the said argument at all. A close reading of the evidence of this witness and considering the facts and circumstances would go to show that there is nothing on record even to remotely infer that he would have been tutored by someone to depose against this accused. Thus, we hold that the evidence of P.W.8 fully inspires the confidence of the Court. From the evidence of P.W.8, it has been clearly established that the appellant had committed an offence under Section 363 I.P.C. for which he is liable to be punished.

10. As we have already narrated, there is no other evidence against this accused to prove the other charges. There is no evidence on record that the accused abducted D1 and D2 and he was a party to the killing of the deceased. There is no evidence even to infer that the appellant had knowledge that the deceased

D1 and D2 were taken by Mr.Vadivel and killed. The trial Court has convicted him under all the charges based on the extra judicial confession made by Mr.Vadivel. Since the evidence of Mr.Vadivel is rejected and since there is no other evidence available, the appellant could be convicted only for the offence under Section 363 I.P.C.

11. Now turning to the quantum of punishment, having regard to the nature and gravity of the offence and all the other attending circumstances, we deem it appropriate to sentence him to undergo rigorous imprisonment for two years and pay a fine of Rs.1,000/- in default to under rigorous imprisonment for four weeks for offence under Section 363 I.P.C.

12. In the result, the appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed by the trial Court for offences under Sections 364 I.P.C. (3 counts), Section 368 I.P.C., Section 302 r/w 109 I.P.C. (2 counts) and Section 201 I.P.C. (2 counts) are set aside and he is acquitted from all these charges. The conviction of the appellant under Section 363 I.P.C. is confirmed, however the substantive sentence imposed on him by the trial Court is reduced to two years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to under rigorous imprisonment for four weeks.

(ii) It is directed that the period of detention already undergone by the accused shall be set off under Section 428 Cr.P.C.

(iii) Bail bond, if any, executed by the appellant shall stand cancelled. The Trial Court shall take steps to secure the accused and commit him to prison so as to undergo the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jbm/kk

To

1. The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.
 2. The Inspector of Police,
Karimangalam Police Station.
Dharmapuri.
 3. The Public Prosecutor,
Madras High Court.
 - 4 The Judicial Magistrate, Palacode
 - 5 The chief Judicial Magistrate, Dharmapuri
 - 6 The Superintendent of Police, Central Prison, Vellore
 - 7 The Director general of Police, Mylapore, Chennai
 - 8 The District Collector, Dharmapuri
- +1cc to Mr.Mohideen Basha, Advocate, S.R.No.43202

GM1 (CO)
md(4/11/2016)

Cr1.A.No.294 of 2015

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