

Bail Slip

The Appellants/Petitioners namely 1.Kumaresan S/O Saminathan, 2.Sangeetha W/O Nagarajan were directed to be released on bail as per the order of this Court dated 3.6.2015 in M.P.No.1 of 2015 in CrI A No.267 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.267 of 2015

1. Mr. Kumaresan

2. Sangeetha

.. Appellants / accused

vs

The State, Rep. By its Inspector of Police,

Pallipalayam Police Station,

Namakkal District

(Crime No.911/2011)

.. Respondent / Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the judgment of the learned Principal Sessions Judge, Namakkal District, in S.C.No.107 of 2012, dated 13.03.2015.

For Appellants : Mrs.G.Devi

For Respondent : Mr. M.Maharaja, A.P.P.,

J U D G M E N T

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

The appellants are the accused 1 and 2 in S.C.No.107 of 2012 on the file of the learned Principal Sessions Judge, Namakkal District. They stood charged for the offences under Sections 302 read with 120 (B) and 364 IPC.

2. By judgment dated 13.03.2015, the trial Court sentenced the first accused to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year, for the offence under Section 302 I.P.C., and

sentenced to undergo Rigorous Imprisonment for Life and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment, for one year for the offence under Section 120 (B) IPC and also sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months for the offence under Section 364 IPC. The trial Court sentenced the second accused to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year, for the offence under Section 302 I.P.C., r/w 120 (B) IPC, and sentenced to undergo Rigorous Imprisonment for Life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year, for the offence under Section 120 (B) IPC and also sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months, for the offence under Section 364 IPC r/w 120 (B) IPC. The trial Court has directed the sentences imposed on the accused to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Nagaraj. The second accused is his wife. They were residing at Pallipalayam Village. Sometime before the occurrence, the accused 1 and 2 had developed illicit intimacy. This came to the knowledge of the deceased and so he questioned. He started drinking and in a drunken state, he used to harass the second appellant, on account of the above illicit intimacy. Therefore, according to the case of the prosecution, the accused 1 and 2 decided to do away with the deceased. Accordingly, a few days prior to 13.08.2011, they conspired to kill the deceased. It is further alleged that, on 31.08.2011 at about 10.00 pm, the first accused took the deceased with him under the guise of getting him liquor for drinking. He took the deceased to an eucalyptus grove belonging to one Balasubramanian, where the first accused supplied drinks to the deceased. When the deceased was in drunken state, the first accused dropped a huge stone on the deceased and killed him instantaneously. Abandoned the body, the first accused fled away from the scene of occurrence.

4. P.W.1, the employer of the deceased, came to know on 01.09.2011, that the dead body of the deceased was lying near Samayasangali Barage Road, near Pudur. Then, he went to Pallipalayam Police Station and made a complaint.

5. P.W.13, on receipt of the said complaint, registered a case in Crime No.911 of 2011 under Section 302 IPC. Ex.P-1 is the complaint and Ex.P-12 is the First Information Report. He forwarded both the documents to the Court, which were received

by the learned Judicial Magistrate at 03.30 pm. The case was taken-up for investigation by P.W.14. He went to the place of occurrence, prepared an Observation Mahazar and a rough sketch, in the presence of P.W.6 and another witness. Then he conducted inquest on the dead body of the deceased and forwarded the same to post-mortem. He recovered blood stained sample earth from the place of occurrence. P.W.5, Dr.K.Veeramani, conducted autopsy on the body of the deceased on 01.09.2011 at 04.15 pm. He found the following injuries:-

"External Injuries:

1. A contusion on left inguinal region extends upto lower abdomen & to upper thigh sized 14cm x 11 cm
2. A contusion on the left cheek 5 cm x 5 cm in size
3. Two linear abrasions passed with extends 16 cm x 0.5 cm in size on the side neck seen of the mandible.
4. Abrasion on the right side of forehead 3 cm x 3 cm in size.

Internal Injuries:

Skull Intact. Brain pale wt.1200 gms Base of skull intact. Thorax: rib cage intact. Hyoid preserved. Lungs pale Rt 400 gms. Lt.350 gms. Heart chambers empty. Abdomen: Direction of Inguinal injury (Injury No.1) Left Side large muscle. Haematoma seen in the lower abdominal wall, thigh (anterior aspect). Left side pelvic bone fractured. Pelvic cavity shows haematoma about 300 ml to 400 ml. Bladder wall shows extensive contusion inside it. Blood clots seen liver pale. 1400 gms. Spleen pale 120 gms. Kidneys pale each 80 gms. Stomach contains brownish fluid with partially digested food particles 150 ml large intestine left side wall shows contusion. All the injuries are Am in nature. Small incisions made all over the body linear injuries. The following organs and Hyoid bone preserved for chemical & HPE analysis 1) Hyoid 2) Liver 3) Blood 4) Stomach & Intestine portion with its contents 5) Kidney 6) Preservative agent. The deceased would appear to have died 12 to 18 hours prior to autopsy and opinion as to the cause of the death reserved pending chemical / HPE analysis report."

6. Ex.P-4 is the post-mortem certificate. P.W.5, the Doctor, gave opinion that the death of the deceased was due to shock and haemorrhage caused by the injuries found on the body of the deceased. P.W.14, during the course of investigation, arrested both the accused on 02.09.2011 at 04.30 am, near Senguttanpalayam Bus Stop, in the presence of P.W.9 and another witness. The accused 1 and 3 gave voluntary confessions, one after the another.

7. In the confession made by the first accused, he disclosed the place, where he had hidden a TVS-50 Motor Cycle and a stone. In pursuance of the same, he took the police and the witnesses to the place of hide out and recovered the Motor Cycle bearing Registration No.TN-37-AA-1130 and also the stone. P.W.14 recovered the same in the presence of the same witnesses under a Mahazar. Then at 10.30 am on 02.09.2011, the first accused took the police and the witnesses to the house of the second accused and produced a Full-Hand Shirt. P.W.14 recovered the same under a mahazar. On completing the investigation, he laid the charge sheet against the accused.

8. Based on the above materials, the trial court framed charges against the accused, as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 15 witnesses were examined and 22 documents were exhibited, besides marking 7 Material Objects.

9. Out of the said witnesses, P.W.1 had stated that he found the dead body of the deceased on 01.09.2011 around 06.30 am and then he made a complaint to the Police at 11.45 am. P.W.2, the owner of the eucalyptus grove has stated that, on 31.08.2011, around 08.30 to 09.00 pm, he found the first accused and the deceased sitting together in his grove and taking liquor. The next day, he found the dead body of the deceased from the Samayasangali Barage Road. P.Ws.3 and 4 have turned hostile and they did not support the case of the prosecution in any manner. P.W.5 has spoken about the post mortem conducted and final opinion regarding the cause of the death of the deceased. P.W.6 has spoken about the preparation of Observation Mahazar and recovery of the material objects from the place of occurrence. P.W.7, the Head Clerk of the Court, has stated that he forwarded the material objects for examination. P.W.8, the relative of the deceased, has turned hostile and he did not support the case of the prosecution in any manner. P.W.9 has spoken about the arrest of both the accused on 02.09.2011 at 04.00 am and consequent recovery of the material objects and the confession statements given by the accused. P.W.10 has stated that he took the complaint and First Information Report to the learned Judicial Magistrate and handed over the same at 03.30 pm on 01.09.2011. P.W.11 has stated that he took the dead body from the place of occurrence to the hospital and handed over the same for post-mortem. P.W.12, the brother of the deceased, has spoken about the previous illicit relationship between accused 1 and 2. P.W.13, the Sub-Inspector of Police has spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the investigation done. P.W.15 has spoken about the chemical analysis conducted on the hyoid bone of the deceased, which revealed that there was no fracture.

10. When the above 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 of the witness nor marked any documents.

11. Having considered all the above, the trial Court convicted the accused as stated in first paragraph of the judgment. Challenging the same, the appellants are before this Court with this Criminal Appeal.

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

13. This is a case based on circumstantial evidence. According to P.W.2, the deceased was lastly seen alive around 08.30 to 09.00 pm on 31.08.2011. The dead body of the deceased was later on found on 01.09.2011 at 06.30 am. According to the medical evidence, the injuries found on the body would have been caused by dropping a huge stone on the head of the deceased. Thus, the prosecution has succeeded in establishing the fact that the deceased was done to death somewhere between 08.30 pm on 31.08.2011 and 06.30 am on 01.09.2011.

14. Now the question is, as to who are the perpetrator of the crime. In order to prove the conspiracy between the accused 1 and 2 to do away with the deceased, absolutely there is no evidence either direct or circumstantial. Now as against the substantive charge of murder against the first accused, the prosecution relies only on the evidence of P.W.2, who has stated that the deceased and the first accused were sitting and taking drinks together around 08.30 pm on 31.08.2011, inside his eucalyptus grove. The dead body was not found inside the grove. But it was found elsewhere. Thus, from out of this only evidence stating that the first accused and the deceased were seen together on 31.08.2011 at about 08.30 pm, one cannot rush to the conclusion that the first accused has caused death of the deceased. Absolutely, there is no other evidence against the accused.

15. In a case of this nature, based on circumstantial evidence, it is needless to point out that the prosecution has to prove the circumstances projected by it, beyond all reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused.

16. Here, in this case, absolutely, there is no chain of circumstances pointing to the guilt of the accused. A perusal

of the judgment of the trial court would go to show that the lower Court has convicted the accused on mere surmise, which is not permissible in law. Under Article 21 of the Constitution of India, the life and liberty of an individual can be deprived of, only by following the procedure established by law, which includes fair trial and fair appreciation of evidence. A Court cannot afford to convict the accused on mere surmise or even on mere suspicion. Here, in this case, the prosecution has not even succeeded in establishing a suspicion against these two accused. Thus, we hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts. For these reasons, we hold that the accused are entitled for acquittal.

17. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants / accused by the learned Principal Sessions Judge, Namakkal District, in S.C.No.107 of 2012, by the judgment dated 13.03.2015 are hereby set-aside. The appellants / accused are acquitted and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bonds, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

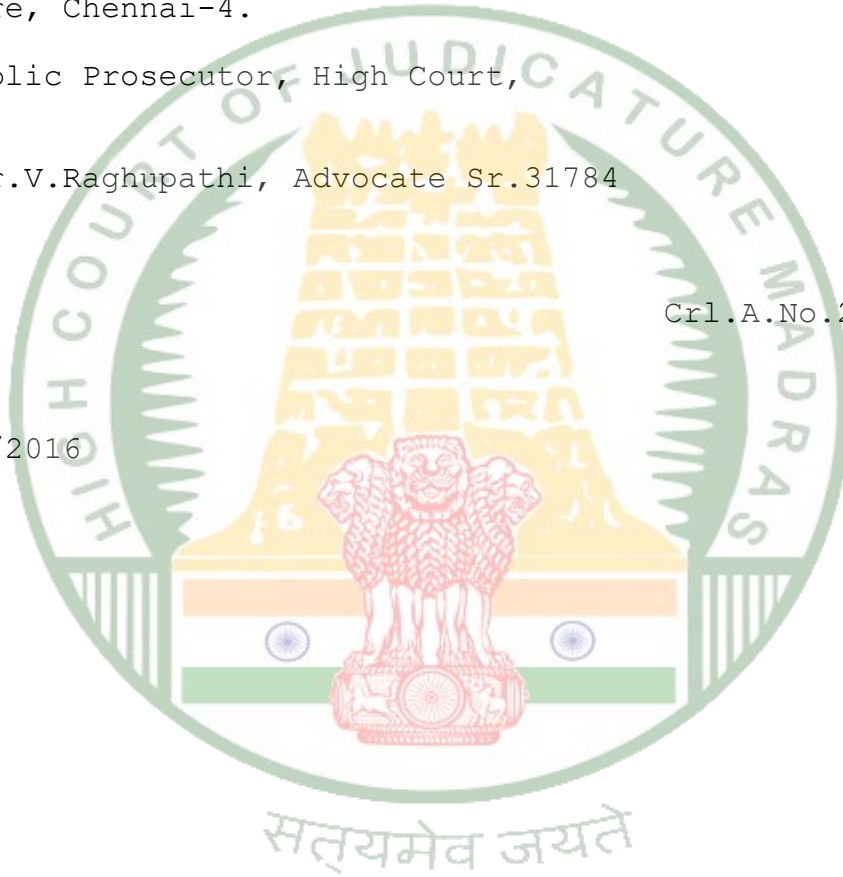
1. Principal District and Sessions Judge,
Namakkal District.
2. The Additional District & Sessions Judge,
Namakkal, Namakkal District.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Superintendent,
Central Prison,
Vellore.

5. The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
6. The District Collector,
Coimbatore.
7. The District Collector,
Vellore.
8. The Director General of Police,
Mylapore, Chennai-4.
9. The Public Prosecutor, High Court,
Madras.

+1cc to Mr.V.Raghupathi, Advocate Sr.31784

Crl.A.No.267 of 2015

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srg 12/07/2016



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