

Bail Slip

The 2nd appellant in CrI.A.305/15 Viz Kattiyan @ Myakkannan aged 25 years S/O Madhivanan was released on bail as per order of this Court dated 07/10/15 made in MP 1/15 in CrI A 305/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.305 of 2015

1. Anandharaj
2. Kattaiyan @ Myakkannan .. Appellants/A1 and A2

Vs

State by
The Inspector of Police,
Pallipalayam Police station,
Namakkal District.
(Crime No.811/11) .. Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Namakkal, made in S.C.No.90/2012 dated 11.02.2014.

For Appellants : Mr.A.Raja Mohamed

For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

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

The appellants are the accused 1 and 2 in S.C.No.90 of 2012 on the file of the learned Principal Sessions Judge, Namakkal. The 1st accused stood charged for offences under Sections 449, 302 and 404 of IPC and the 2nd accused stood charged for offences under Sections 302 and 404 of IPC. By judgment dated 11.02.2014, the trial court convicted both the accused 1 and 2 under Sections 449, 302 and 404 of IPC and sentenced them to undergo rigorous imprisonment for 5 years and to pay a fine of

Rs.5,000/- each, in default, to undergo imprisonment for 6 months for the offence under Section 449 of IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each, in default, to undergo imprisonment for one month for the offence under Section 404 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to undergo imprisonment for one year for the offence under Section 302 of IPC. Challenging the said conviction and sentence, the appellants are 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 Saraswathi. The 1st accused is her husband. He was a drunkard and he lost everything in gambling. He was not taking care of the family and because of this behaviour of the 1st accused, there arose frequent quarrels between the 1st accused and the deceased. Because of the said quarrel, the deceased had returned to her parental home and she was staying with her parents. The accused also came to the house of the parents of the deceased and stayed with the deceased. During the year 2011, the 18th day of Adi was celebrated ceremoniously. The deceased carried fire pot in the temple. The deceased had invited for the said festival all her relatives and she did not invite the relatives of the 1st accused. The 1st accused shouted on the deceased as to why she had not invited his relatives. This resulted in a quarrel. This is stated to be the motive for the occurrence.

(b) On 08.08.2011 at 02.30 p.m., the 1st accused had returned home in a full drunken state. The deceased got wild. She did not serve him food. Therefore, the 1st accused went out, sought the help of the 2nd accused and both of them trespassed into the house of the deceased at about 04.45 p.m. on 08.08.2011. The 1st accused pushed the deceased down and the 2nd accused closed the mouth and nose of the deceased with a Sari. Then with a cotton rope, the accused 1 and 2 strangled the deceased and killed her. Then, the 1st accused has removed the Thali from the body of the deceased. The accused 1 and 2, thereafter, ran away from the scene of occurrence.

(c) It is alleged that the occurrence was witnessed by P.Ws.1 to 3. P.W.1 went to Pallipalayam Police Station at 05.00 p.m. on 08.08.2011 and made a complaint in respect of the above occurrence.

(d) P.W.15, the then Sub-Inspector of Police, registered a case in Crime No.811 of 2011 under Section 302 of IPC against the accused. Ex.P.21 is the First Information Report. He forwarded the complaint Ex.P.1 and the First Information Report Ex.P21 to the court which were received by the learned Magistrate at 03.30 a.m. on 09.08.2011.

(e) Then, the case was taken up for investigation by P.W.17. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. He recovered the broken bangles from the place of occurrence under a Mahazar. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(f) P.W.7 Doctor Jayanthi conducted autopsy on the body of the deceased on 09.08.2011 at 09.45 a.m. She found the following injuries on the body of the deceased:

''External injuries:-

A ligature mark 1/2 cm broad and 25 cm long seen low down in the neck and partially in the middle of neck over the thyroid cartilage. The ligature mark is transverse and almost completely encircling the neck except a small part over the back of neck. The base of the mark soft and pale. Abrasions (? nail mark) of 1X1 cm of about 3 abrasions and echymoses are seen about the edges of the ligature mark.

Internal examination: Skull: In tact, Brain: Congested, Wt.1200 grams, Thorax: Bony cage intact. Both lungs congested. Right Lung: Wt.450 gm, Left Lung: wt.350gm. Heart:Congested-150gm. Chambers filled with blood.

Abdomen: Liver: Congested, Wt.1200gm., Spleen:Congested. Wt.120gm.

Stomach: Contains 150ml of partially digested food particles.

Kidneys:Both kidneys congested. Each 90gm.

Uterus and Ovaries : Appeared normal. Cut section of Uterus: Cavity empty.

Urinary bladder:Empty.

Externally face appeared congested, bluish and with petechiae.

Inside of the mouth - behind the upper and lower lips contusion at the inner side present.

Bloodless dissection of neck shows multiple contusion/bruising at different levels of the strap muscles of the neck. The sub cutaneous tissue under the ligature mark shows ecchymoses.''

Ex.P.8 is the Postmortem Certificate and Ex.P.9 is her final opinion regarding cause of death. She further opined that the death of the deceased was due to shock and hemorrhage due to the effects of strangulation.

(g) When the investigation was in progress, both the accused surrendered before P.W.14, the then Village Administrative Officer of Elanthakuttai Village at 5.00 p.m. on 08.08.2011. On such surrender, both the accused have given independent voluntary confessions. P.W.14 reduced the same into writing. Ex.P.14 is the extra-judicial confession of the 1st accused and Ex.P.15 is the extra-judicial confession of the 2nd accused. Then, along with Ex.P.16 a Special Report, he produced the accused to P.W.17.

(h) P.W.17 arrested the accused at 11.30 a.m. on 09.08.2011. On such arrest, the 1st accused gave a voluntary confession in the presence of the same witnesses followed by the confession of the 2nd accused. In the said confession, the 1st accused disclosed the place where he had hidden a Rose Colour Sari and a cotton Rope. In pursuance of the same, he took P.W.17 and the witnesses to the place of hide out and produced M.Os.6 and 7. The 2nd accused in his disclosure statement disclosed the place where he had hidden the Gold Thali weighing 1 1/2 sovereigns. In pursuance of the same, he took the police and the witnesses to his house and produced the same. On returning to the police station, P.W.17 forwarded the accused to court for judicial remand and handed over the material objects also to court. 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 17 witnesses were examined and 26 documents and 8 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 to 3 claimed to have witnessed the occurrence. They have stated that these accused strangled the deceased by using a rope as a ligature. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough Sketch in the place of occurrence. P.W.6 also claims to have witnessed the occurrence. P.W.7 Doctor has spoken about the postmortem conducted and her final opinion regarding cause of death. P.W.8 has spoken about the previous motive. She has further stated

that on 08.08.2011 around 04.30 p.m., when he was proceeding to a shop, he found these two accused going towards the house of the deceased. P.W.9 has spoken about the fact that there were blood stains on the dress materials of the deceased. P.W.10 Head Clerk of the Judicial Magistrate Court has stated that he forwarded the material objects to the Forensic Lab as directed by the learned Magistrate. P.W.12 is the relative of the deceased. He has spoken only about the hearsay information and he has not stated anything incriminating against the accused. P.W.13 has stated that he handed over the FIR and the complaint to the learned Magistrate. P.W.14 is the Village Administrative Officer who has stated about the extra-judicial confessions said to have given by the accused 1 and 2 and also the disclosure statements made by the accused based on which the material objects have been recovered. P.W.15, the then Sub-Inspector of Police has spoken about the registration of the case on the complaint of P.W.1. P.W.16 has stated that she examined the hyoid bone of the deceased and gave opinion that there was no fracture of the hyoid bone. P.W.17 has spoken about the investigation done and the filing of the final report.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their 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 appellants are before this Court.

6. 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.

7. In this case, P.Ws.1 to 3 and 6 claim to have witnessed the occurrence. They are all not residing anywhere near the house of the deceased. They are closely related to the deceased. Their presence at the place of occurrence is highly doubtful, the learned Counsel for the appellants contended.

8. We find some force in the said argument of the learned Counsel for the appellants. The alleged occurrence had taken place around 04.45 p.m. on 08.08.2011. These witnesses have stated that they went to the house of the deceased at the time of occurrence in a casual manner. In the case where the witnesses are highly interested and closely related to the deceased and they also claimed to have been present at the place

of occurrence by chance, they should explain to the satisfaction of the court, as to why and how they came to the place of occurrence at the crucial time. In this case, absolutely, there is no explanation by any of these witnesses as to what made them to come to the place of occurrence at the crucial point of time. Above all, had it been true that these witnesses had witnessed the entire occurrence, the FIR would not have been given with such a delay for the occurrence which allegedly had taken place at 04.45 p.m. on 08.08.2011. The FIR came to be registered only at 12.00 mid night on 08.08.2011. Absolutely, there is no explanation for the 07.00 hours delay.

9. The learned Counsel for the appellants would further submit that the First Information Report would not have come into existence at the time as it is projected by the prosecution. We find some force in the said argument of the learned Counsel for the appellants. The FIR reached the hands of the learned Magistrate only at 03.30 a.m. on 09.08.2011. Absolutely, there is no explanation for the delay in preferring the complaint and the FIR being handed over to the Judicial Magistrate. This also creates enormous doubt in the case of the prosecution. For these reasons, we find it difficult to believe these witnesses.

10. Next comes the Extra-judicial confessions allegedly made by the accused 1 and 2 to P.W.14. Admittedly, the accused had no acquaintance with P.W.14. Thus, there was no reason for these two accused to repose confidence in P.W.14. Thus, it is highly doubtful as to whether these two accused had gone to P.W.14 to make extra-judicial confession. Above all, when the extra-judicial confession is doubtful, the rule of prudence requires that the court should look for corroboration from independent sources. In this case, absolutely, there is no evidence to corroborate the so called extra-judicial confessions of the accused. In our considered view, these two extra-judicial confessions are highly unbelievable.

11. Yet another fact also needs to be mentioned. The narration of the facts would go to show that the 2nd accused had no motive against the deceased. According to the case of the prosecution, the 2nd accused came along with the 1st accused. There was a quarrel between the 1st accused and the deceased and suddenly the 1st accused pushed the deceased down and the 2nd accused started strangulating her. When there was no previous motive, it is difficult to believe that the 2nd accused would have joined the 1st accused in the above occurrence. Thus, there are lot of doubts in the case of the prosecution and the said doubts have not been cleared. Quite naturally, the benefit

of doubt should go in favour of the accused. Thus, we hold that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts and therefore, they are entitled for acquittal.

12. In the result, the appeal is allowed and the appellants are acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bonds, if any, executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the respective accused.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
- 2.The Principal Sessions Judge,
Namakkal.
- 3.The Judicial Magistrate,
Tiruchengode.
- 4.-Do- Thro' The Chief Judicial Magistrate,
Namakkal.
- 5.The Superintendent,
Central Prison,
Salem.

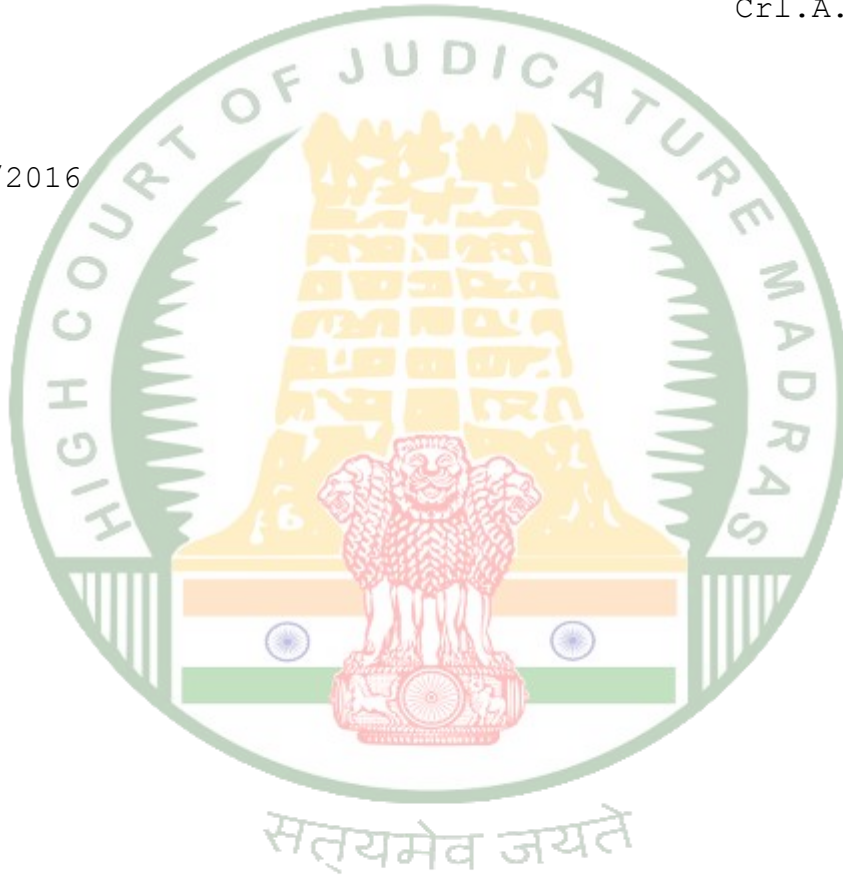
6.The Public Prosecutor,
High Court, Chennai.

7.The District Collector,
Salem.

+1cc to M/S.A.Raja Mohamed, Advocate Sr.42261

Cr1.A.No.305/2015

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