

BAIL SLIP

That the Appellants/Accused Nos.2 & 3 namely A2.Balappan S/o.Koothappan @ Balappan, A3.Raji, W/o.Balappan were directed to be released on bail as per order of this Court dated 24.06.2015 in M.P.No.1 of 2015 in CrI.A.No.306 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2016

CORAM:

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

Criminal Appeal No.306 of 2015

1. Paulraj
2. Balappan
3. Raji

... Appellants

- Vs -

State rep by Inspector of Police,
Gurubarapalli Police Station.
(Cr.No.71 of 2010)

.... Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional Sessions Judge, Krishnagiri in S.C.No.98 of 2011 dated 12.02.2015.

For Appellants : Mr.K.S.Rajagopalan
for Mr.P.Ezhil Nilavan

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 accused 1 to 3 in S.C.No.98 of 2011 on the file of the learned Additional Sessions Judge, Krishnagiri. The trial Court framed as many as four charges against the above stated three accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 & A3	302 of IPC

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
2	A2 & A3	302 r/w 109 of IPC
3	A1 to A3	201 r/w 34 of IPC
4	A1	506(2) of IPC

By judgment dated 12.02.2015, the trial Court convicted these appellants / accused 1 to 3 for various offences as detailed below:

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A1	302 of IPC	Imprisonment for life and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for one year.
	201 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2000 in default to undergo simple imprisonment for three months.
A2	302 of IPC	Imprisonment for life and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for one year.
	201 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2000 in default to undergo simple imprisonment for three months.

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A3	302 of IPC	Imprisonment for life and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for one year.
	201 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2000 in default to undergo simple imprisonment for three months.

The trial Court acquitted these appellants from the rest of the charges. 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 Mrs.Girija. The first accused is her husband and the accused 2 and 3 are her father-in-law and mother-in-law respectively. The marriage between the first accused and the deceased was celebrated three years before the occurrence. After the marriage, the deceased and the first accused were living as husband and wife at Talavaipalli village.

2.2 But shortly after sometime of the marriage, the first accused developed suspicion over the fidelity of the deceased. On account of the same, there arose frequent quarrels. In consequence of the same, the deceased used to return to her parental home often. Lastly, she stayed so at the house of her parents for three months at Beerpalli village. Thereafter, the issues were sorted out by the elders and the deceased was taken back into the matrimonial home. Thus, the deceased again started living with the first accused. The accused two and three were also living as joint family with them.

2.3. It is further alleged that on 05.03.2010 at 3.00 p.m. the deceased spoke to P.W.1 - the brother of the deceased that she was harassed by the accused. One Chinnasamy intervened and pacify them.

2.4. On 06.03.2010, P.W.1 along with P.W.2 wanted to see the deceased. Therefore, he was coming along with P.W.2 from

bus at Bangarapalli bus stop and from there P.Ws.1 and 2 were proceeding towards Thalavaipalli village on walk. When they were passing through the bank of a lake, at around 08.00 a.m., from the pump shed of the first accused situated somewhere near the said lake, P.Ws.1 and 2 heard the cry of the deceased. Therefore, they rushed towards the said shed, where they found the gory incident. The accused 2 and 3 held the deceased and the first accused strangulated the deceased with a nylon rope. P.Ws.1 and 2 witnessed the same. After the deceased breathed her last and having ensured that the deceased was no more, all the three accused took the dead body to a nearby tree and hanged the dead body with a nylon rope to make it appear as though she died by committing suicide. With petiole of a coconut leaf, caused injuries on her private parts also. P.Ws.1 and 2 could not do anything out of fear.

2.5. P.W.1, thereafter, went to Gurubarapalli Police Station, which is situated at a distance of about 10 kilometers from the place of occurrence and made a complaint at 09.30 a.m. P.W.12 the then Sub Inspector of Police on receipt of the said complaint, registered a case in Crime No.71 of 2010 under Section 302 I.P.C. against all the three accused. Ex.P1 is the complaint and Ex.P11 is the F.I.R. He forwarded both the documents to Court, which was received by the learned Magistrate at 01.00 p.m. on 06.03.2010.

2.6. P.W.17 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.7 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.7. P.W.14, Dr.Devendiran conducted autopsy on the body of the deceased on 07.03.2010 at 10.30 a.m. He found the following injuries:

"External Injuries: Oedema all over the body, swollen fact with contussion. Peelant skin with multiple blisters filled with fluids. Hairs easily plucked out, veins distention over forearm, axilla and thighs. Neck swollen and rope impression seen, vaginal orifice swollen with edemation and blackish coloured vaginal folds with laceration.

Internal examination: Ribs and thorax intact. Heart empty, 350 gms, congested. Lungs - congested, hyoid bone - intact, stomach - congested, liver 1200 gms, spleen - 100 gms, kidneys - 100 gms congested, uterus - empty, opening of scalp - occipital - brain matter liquefied state."

He gave opinion that the deceased would have died due to head injury and also due to suffocation between 24 to 36 hours prior to the postmortem. Ex.P13 is the postmortem certificate.

2.8. During the course of investigation on 07.03.2010, P.W.17 arrested all the three accused. On such arrest, on the disclosure statement made by the first accused, a stone, a aruval and the petiole of a coconut leaf were recovered. He forwarded the accused for judicial remand and also handed over the material objects to the Court. On completing the investigation, he laid chargesheet against all the three accused.

2.9. 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 18 witnesses were examined, 22 documents and 8 material objects were marked.

2.10. Out of the said witnesses P.Ws.1 and 2 are the eyewitness to the occurrence. They have stated that they were proceeding to Thalavaipalli village after getting down from the bus at Bangarapalli bus stop. They witnessed the entire occurrence. P.W.1 has further spoken about the complaint made by him. P.W.3 is the mother of the deceased. She has stated only about the earlier quarrel between the first accused and the deceased. P.W.4 is the cousin of the deceased. He has stated that he went to the place of occurrence on hearing about the same. Similarly, P.W.5 has also stated that he went to the place of occurrence on hearing about the same and found the dead body hanging in a tree with a rope.

2.11. P.W.6 has spoken about the photographs taken by him at the place of occurrence. P.W.7 is the Village Administrative Officer of the said village. She has stated that on 06.03.2010 at around 12.30 p.m. she had information that a woman had committed suicide by hanging. She went to the place of occurrence, found the same and submitted a report to the Tahsildar at 12.30 p.m. After the arrival of the police, according to her, she witnessed the preparation of the observation mahazar and a rough sketch by P.W.17. P.W.8 has stated about the arrest of the accused and the consequent recovery of the material objects. P.W.9 the Head Clerk of the Court has stated that he forwarded the material objects for chemical examination. The report states that there was human blood on the saree pieces, blouse and in-skirt of the deceased.

2.12. P.W.10 is a Constable attached to the police station received the F.I.R. and the complaint at 09.30 a.m. from P.W.12 and handed over the same to the learned

Magistrate. According to him, the distance between the police station and the Court of the learned Magistrate is hardly 13 kilometers. He has further stated that it took only 15 minutes for him to reach the Court of the learned Magistrate. He has further stated that he handed over the F.I.R. to the learned Magistrate at 01.00 p.m. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.13, 15 and 16 have turned hostile and they have not stated anything incriminating. P.W.14 has spoken about the postmortem conducted and the final opinion regarding the cause of death. P.Ws.17 and 18 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., they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. Having considered all the above, the trial Court convicted the accused 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. In this case, there is no dispute that the marriage between the deceased and the accused was celebrated hardly three years before the occurrence. It is also in evidence that there was no cordial relationship between the first accused and the deceased and the deceased was staying at her parental home for about three months. It is also in evidence that the first accused had suspicion over the fidelity of the deceased. Thus, the prosecution has proved that the deceased was not happy over the marital life and equally, the first accused was also not happy with the marital life because he had suspicion over the fidelity of the deceased.

6. The medical evidence in this case as spoken by P.W.14 would go to show that the death of the deceased would not have been due to suicide by hanging. There was head injury and there were also injuries to the private parts of the deceased. If it is a simple case of suicide, by hanging, these injuries would not have happened. P.W.14 has opined that the death was not only due to asphyxia but also due to head injury. Thus, the prosecution has clearly established that the death of the deceased was not by suicide but it was only a homicide.

7. Now the question is who all are the perpetrators of the crime. In order to prove that these three accused were the perpetrators of the crime, the prosecution relies on the eyewitness account of P.Ws.1 and 2. P.Ws.1 and 2 have stated

that they were proceeding to the house of the deceased at Thalavaipalli village, they got down from the bus and when they were proceeding to Thalavaipalli village, and when they were passing through the bank of a lake, they heard the distress cry of the deceased and when they rushed to the motor shed of the accused, according to them, they found that the accused 2 and 3 were holding the deceased and the first accused strangulating her with a nylon rope. Then, according to them, all the three accused took the dead body, hanged it and made it appear as though it was a case of suicide.

8. In this regard, the learned counsel appearing for the appellants would submit that the conduct of P.Ws.1 and 2 is highly unnatural and the same would go to prove that they would not have been present at all at the time of the alleged occurrence. We find every force in the said argument. P.W.1 is none else than the brother of the deceased, who was aged about 30 years at the time of occurrence. P.W.2 is the brother-in-law of P.W.1. He was aged around 58 years. Thus, they were highly interested in the deceased. It is highly unbelievable that all the three accused would have committed the murder of the deceased in the bore well shed in the presence of P.Ws.1 and 2. It is also highly unbelievable that P.Ws.1 and 2 would have been patiently witnessing the entire occurrence, which would have gone for a long time. It is the case that after killing the deceased and after having ensured that the deceased was no more, all the three accused, hanged the dead body in the tree by using a nylon rope. This would have again taken some more time. P.Ws.1 and 2 have stated that they were standing and simply watching patiently the entire occurrence until the accused disappeared from the said place after hanging the dead body. Had it been true that they were present at the scene of crime, after all the three accused fled away from the scene of occurrence, P.Ws.1 and 2, by all natural human conduct, with an anxiety to save the deceased, would have gone near the dead body lifted the same and tried to remove the dead body from the noose so as to revive her, that also they did not do. They did not even go near the dead body. They simply went to the police station and made a complaint. They claimed to be present at the place of occurrence by chance. As we have already pointed out that they are interested witnesses. Their conduct is highly unnatural. For these reasons, we find it difficult to believe P.Ws.1 and 2.

9. It is stated that the complaint was made at 09.30 a.m. at Gurubarapalli Police Station. But the F.I.R. reached the hands of the learned Magistrate at 01.00 a.m. on the same day. Absolutely there is no explanation as to why it took such a long time for the F.I.R. to reach the hands of the learned Magistrate. The Constable who took the F.I.R. to the Court has stated that it took only 15 minutes for him to reach the Court

from the police station. The F.I.R. had reached the hands of the learned Magistrate, as we have already pointed out at 01.00 p.m. The F.I.R. would have been handed over to him only around 12.30 p.m. at least. Thus, the very origin of Ex.P1 is doubtful.

10. Apart from that, P.W.7 the Village Administrative Officer concerned has stated that on 06.03.2010, at around 12.30 p.m., she had information that the deceased had committed suicide by hanging. According to her, she went to the place of occurrence some time before 12.30 p.m. and after having found the dead body hanging, she submitted a report to the Tahsildar and also to the police. It was only on her complaint, the police immediately arrived at the scene of occurrence at around 12.30 p.m. From this evidence, it is clear that until the arrival of the police, it was not known to anybody as to how the deceased was killed. The impression at the place of occurrence till 12.30 p.m. was it was a case of suicide. It was only after removal of the dead body, the injuries would have been noticed and thereafter, F.I.R. would have come into being by implicating all the three accused as assailants.

11. For the foregoing reasons, we find it difficult to sustain the conviction. We hold that the prosecution has failed to prove the case beyond reasonable doubts.

12. Before concluding, we want to highlight certain unethical practices adopted in this case by the defence. P.Ws.1 to 4, in this case were examined in chief on 23.04.2013. Though the learned counsel for the accused was very much present in the Court, he did not cross examine any of these witnesses for no reason whatsoever. On the request made by the accused, these witnesses were again recalled and cross examined only on 16.08.2013.

13. P.Ws.5 to 10 were examined in chief on 27.06.2013. On that date, none of the witnesses were cross examined by the defence counsel. P.Ws.5 and 7 were recalled on a request made by the accused and cross examined on 29.11.2013 i.e. after about four months. During cross examination, many answers were elicited from the witnesses virtually quite contrary to their evidences in chief examination on certain vital facts.

14. The learned counsel appearing for the appellant referred to these vital answers elicited during cross examination and wanted us to disbelieve the case of the prosecution giving weightage for these answers. We refused to do so for the reason that we have got every doubt that the learned counsel, though was present on the date when these vital witnesses were examined in chief examination, did not choose to cross examine them only with a view to allow the

accused to win over these witnesses. Section 309 of Cr.P.C. mandates that the witness in attendance shall be examined and there shall be no postponement of examination unless there are unavoidable extreme reasons.

15. Here, in this case, the learned counsel had not stated any reason as to why he was not prepared to cross examine these witnesses on the date when these vital witnesses were examined. This practice of not cross examining witnesses on the same day as mandated in Section 309 I.P.C. recalling them any number of times at the whims and fancies of the accused is unfair to the witnesses.

16. Nowadays, a common man is reluctant to go over to the police station to give a statement of facts which he knows about a crime because he is apprehensive that he would be dragged to Court for many hearing as it has happened in this case and cross examination would also be unethical and unfair so as to humiliate him. Fair trial is not a concept known only to the accused. It is equally applicable to the victim, his family members, the witnesses and the society at large. If the witnesses are repeatedly summoned to the Court and put to unnecessary harassment at the hands of the accused by grueling unethical cross examination, we are sure that it would amount to unfair treatment violative of Article 21 of the Constitution of India. Such kind of unethical practice is adopted by the accused obviously either with a view to win over the witnesses or to make them forget the facts by lapse of time, so that when they are recalled for cross examination, they may not be in a position to state the facts precisely either out of fading memory or because of the influence of the accused. Therefore, we are of the view that in such a situation, when a witness who had narrated the entire facts in chief examination, during cross examination, which is held after several days or months, makes some contradictory statements, the Court may, for these reasons, decline to act upon the facts elicited during cross examination.

17. In the instant case, for the said reasons, we have not given any weightage to the answers elicited on certain vital facts during cross examination of these witnesses mentioned above. We have appreciated only the facts spoken by these eye witnesses and other witnesses during chief examination and since we find that the prosecution has not proved the case, we are forced to acquit the accused.

18. We are only hopeful that the trial Court, shall not give either adjournment or postponement of the examination of any witness if the witness is in attendance as mandated in Section 309 Cr.P.C. unless there are extreme unavoidable reasons for the accused to seek such adjournment or postponement.

19. In the result, the appeal is allowed and the conviction and sentence imposed by the learned Additional Sessions Judge, Krishnagiri in S.C.No.98 of 2011 dated 12.02.2015 on them are set aside and they are acquitted of all the charges leveled against them. Since the first appellant is in jail, he is directed to be set at liberty forthwith, unless his presence is required in connection with any other case. The bail bond, if any executed, by the appellant 2 and 3, shall stand discharged. The fine amount, if any, paid by them shall be refunded.

Sd/-
Assistant Registrar(CS II)

//True Copy//

svki/kk
To

Sub Assistant Registrar

1. The Judicial Magistrate II,
Krishnagiri.
2. Do Through The Chief Judicial Magistrate,
Krishnagiri.
3. The Additional Sessions Judge,
Krishnagiri.
4. Do Through Principal Sessions Judge,
Krishnagiri.
5. The Superintendent,
Central Prison, Vellore.
6. The Superintendent,
Women Prison, Vellore.
7. The Inspector of Police,
Gurubarapalli Police Station.
8. The District Collector,
Vellore District.
9. The Director General of Police,
Chennai.
10. The Public Prosecutor,
Madras High Court.

+1cc to Mr.P.Ezhil Nilavan, Advocate, S.R.No.40073

CrI.A.No.306 of 2015

MG(CO)

CA(05/10/2016)

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