

Bail Slip

Crl.A.Nos.360 and 542 of 2015

That the Appellant(1st Accused namely Muthavel S/o. Neelamegam and the Appellant/2nd Accused namely J. Veeramani S/o. Jeyaraman, were released on bail by the order of this court dated 31.07.2015 made in MP.1/2015 in Crl.A.360 of 2015 and 09.09.2015 made in Crl.MP.No.1 of 2015 in Crl.A.No.542/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.Nos.360 and 542 of 2015

Muthavel ... Appellant in Crl.A.360 of 2015

J.Veeramani ... Appellant in Crl.A.542 of 2015

Vs

State represented by
Inspector of Police
Kuvagam Police Station
Ariyalur District.
appeals

... Respondent in both

Appeals filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge and Chief Judicial Magistrate, Ariyalur, in S.C.No.48 of 2014 on 23.03.2015.

For Appellant : Mr.K.Selvarangan
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The accused 1 and 2 in S.C.No.48 of 2014, on the file of the learned Additional District and Sessions Judge and Chief Judicial Magistrate, Ariyalur, are the appellants in the above

appeals. A1 is the appellant in CrI.A.No.360 of 2015 and A2 is the appellant in CrI.A.No.542 of 2015. Both the accused stood charged for the offences under Sections 364 and 302 IPC and the trial Court convicted the appellants under Section 364 IPC and sentenced them to undergo ten years rigorous imprisonment and also to pay a fine of Rs.10,000/-, in default to undergo one year simple imprisonment and convicted them under Section 302 IPC and sentenced them to undergo life imprisonment and also to pay a fine of Rs.10,000/-, in default to undergo one year simple imprisonment. Challenging the above conviction and sentence, the appellants filed the above appeals.

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

(i) The deceased in this case is one Kumar. Both the deceased and the accused are residents of Edayakurichi village. On 12.05.2013, there was a quarrel between the accused and brother of A1. Due to the same, the appellants came to the house of the deceased in search of him and enquired the whereabouts of the deceased from PW.1, the brother of the deceased. Since the deceased did not return home, P.Ws.1 and 2, went in search of him. At that time, they saw both the accused came from a cashew nut grove in a mud road. After seeing PW.1, A1 told him that they already murdered his brother and they also warned him with dire consequences. Then PW.1 searched for the deceased and found him dead. Immediately, PW.1 lodged a complaint (Ex.P1).

(ii) PW.17, Sub-Inspector of Police in the respondent police on receipt of the complaint, registered a case in Crime No.53 of 2013, for an offence under Section 302 IPC and prepared First Information Report EX.P10, and sent the same to the higher officials.

(iii) PW.19 in-charge Inspector of the respondent police, on receipt of the First Information Report, commenced investigation and reached the scene of occurrence at about 2 a.m, and sent the body for postmortem to the Government Hospital, Jayankondam and at 6 a.m, prepared Observation Mahazar and rough sketch in the presence of witnesses and also recovered empty liquor bottle and chappel.

(iv) PW.16, Doctor working in Government Hospital, Jayankondam conducted postmortem (autopsy) on the dead body and found the following injuries.

External injuries:

1. 2 cm x 1 cm bone depth lacerated injury present over the (Lt) fore head above (Lt) eyebrow.
2. Lacerated injury of 1 cm x 0.5 cm x 0.5 cm over (Lt) upper lip.

3. 0.5 cm x 0.5 cm abrasion over (Rt) knee.
4. 10 cm x 0.5 cm contusion over right side of neck at the level of thyroid cartilage.
5. 1 cm x 0.5 cm contusion over (Rt) chest below (Rt) Eye.

Internal Examination:

Neck : Hyoid bone preserved for Chemical report.

Thorax : No # of ribs on both sides.

Lungs : both sides congested.

Heart : All chambers empty.

Abdomen : Stomach contains 50 ml of brownish liquid with alcoholic odour present.

Liver, Spleen and Kidneys : all are congested.

Bladder : Empty.

Scrotum : No evidence of injury.

Skull : 1 cm x 0.5 cm linear fracture of left frontal bone present.

Brain : Clotted blood present (Lt) frontal lobe of brain.

and he had also given the postmortem report Ex.P9 and he was of the opinion that the deceased appeared to have died of shock and hemorrhage following injuries to vital organs, namely brain, and the deceased was also under alcoholic influence. He was also of the opinion that the injuries are also likely to occur in a motor accident.

(v) In the mean time, both the accused appeared before PW.12, Village Administrative Officer and gave extra-judicial confession on 14.05.2013, at about 2 p.m. PW.12 recorded the extra-judicial confession under Ex.P6, and produced the accused before PW.19. PW.19 arrested them and on such arrest, they voluntarily gave confession, based on the disclosure statement, he seized a motorcycle bearing registration No.TN-61-D-1667 and also seized the pant (M.O.8), shirt (M.O.9) and T-shirt (M.O.10) and he remanded the accused to the judicial custody. Then PW.19 handed over the investigation to the regular Inspector of Police (PW.20). PW.20, after completion of investigation, filed the charge sheet.

3. Based on the above materials, the trial Court has framed charges as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the same, the prosecution examined 20 witnesses and exhibited 14 documents and 10 material objects.

4. Out of the witnesses examined, PW.1 is the brother of the deceased. According to him, there was a quarrel between the deceased and brother of A1 and police also came in search of the deceased; subsequently, A1 came to his house and threatened him, when the deceased was not returning home, PW.1 and PW.2 went in search of him, at that time, the accused came out from a cashew nut grove and told him that they have murdered his brother, and also warned him with dire consequences; thereafter, he found the body of the deceased, immediately, he gave complaint (Ex.P1). PW.2 also accompanied PW.1. PW.3 is only a hearsay evidence. PW.4 is also a hearsay evidence. PW.5 is the wife of the deceased. According to her, PW.1, called her and told that the deceased found missing, subsequently, he informed about his death. PW.6, is a witness to the Observation Mahazar and also recovery of material objects. PW.8, saw the accused and the deceased in a motorcycle before the occurrence. PW.9 also saw the accused and the deceased together before the occurrence. PW.10 also saw the accused and deceased lastly, before the occurrence, going in a bike near a wine shop. PW.11 also said to have seen the accused and the deceased going in a bike at about 8.45 p.m. PW.12 is a Village Administrative Officer, before whom the accused appeared and gave voluntary extra-judicial confession and she recorded the same and produced them before the police. PW.13 is the Head Constable identified the body for postmortem. PW.14 is the Head Constable submitted the First Information Report to the Judicial Magistrate Court. PW.15 is an Assistant Director, Forensic Department, Trichy. She examined the visceral parts of the deceased and gave a report (Ex.P8). PW.16 is the Doctor conducted postmortem autopsy on the dead body and gave postmortem report (Ex.P9). PW.17 is the Sub-Inspector of Police, registered the First Information Report and PW.18 is the Doctor working in the Government Medical College Hospital, Trichy. He examined hyoid bone of the deceased. PW.19 in-charge Inspector commenced the investigation and arrested the accused. PW.20 regular Inspector conducted investigation and recorded the statement of other witnesses and filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same. The accused did not examine any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced them as mentioned in paragraph-1 of the judgment. Aggrieved over the same, the appellants are before this Court with these appeals.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. It is the case of circumstantial evidence. It is settled principle of law that in the case of circumstantial evidence, the prosecution should prove all the circumstances beyond any reasonable doubt and the proved circumstances should form a chain unerringly pointing the guilt of the accused.

9. Keeping the above principle in mind, let us consider the instant case. PW.1 is the brother of the deceased and according to him, there was a quarrel between the brother of A1 and the deceased, and A1 also came to his house and warned him; subsequently, he found his brother missing; then he along with PW.2 went in search of him; at that time, both the accused came out from a cashew nut grove and told him that they murdered the deceased; subsequently, he found the dead body and filed the complaint. P.Ws.8, 9, 10 and 11 are the witnesses said to have seen the accused and the deceased going in a motorcycle at or about the time of occurrence. From their evidence, it is clear that the accused and the deceased were going together near a wine shop in a bike. Their evidence itself clearly shows that prior to the occurrence, both the accused and the deceased were going together in a bike.

10. The next circumstance relied upon by the prosecution is the extra-judicial confession given by the accused before the Village Administrative Officer, PW.12. According to PW.12, on 14.05.2013 at about 2 p.m, both the accused had appeared before her and had voluntarily given extra judicial confession, and she recorded the statement and handed over them to PW.19 Inspector of Police. But PW.1, brother of the deceased, in his cross examination, has clearly stated that he has given the complaint at about 11.30 p.m and the police reached the scene of occurrence between 11.45 and 12 p.m., and he also went to the scene of occurrence, at that time, he saw both the accused were arrested and they were taken in the police van and he saw both the accused in the police van. In view of the above, the extra-judicial confession said to have been given before PW.12 on 14.05.2013 at about 2 p.m cannot be voluntary, since already both the accused were under the police custody. Hence, the alleged extra-judicial confession cannot be believed.

11. Apart from that, there is a long delay in giving the complaint. The occurrence said to have been taken place at about 10.30 p.m, whereas the complaint was given to the respondent police at about 1 p.m and the First Information Report reached the Judicial Magistrate Court only on the next day at about 9.30 a.m. The long delay in filing the complaint and also the delay in sending the First Information Report also creates a doubt over the prosecution case. Therefore, the prosecution did not prove the circumstances, beyond any

reasonable doubt, which unerringly pointing the guilt of the accused. The only remaining circumstance is the last seen theory as spoken by PWs.8, 9, 10 & 11. Even though it is an important link in a chain of circumstances, but it is not prudent to base the conviction solely on the last seen theory alone and it is highly unsafe to convict the accused based on the last seen theory alone. In the above circumstances, we are of the considered view that the prosecution failed to establish the guilt of the accused beyond any reasonable doubt. Hence, the accused are entitled for acquittal.

12. In the result, both the Criminal Appeals are allowed. The conviction and sentence imposed on the accused on 23.03.2015 in S.C.No.48 of 2014 on the file of the learned Additional District and Sessions Judge and Chief Judicial Magistrate, Ariyalur are set aside. Both the accused are acquitted and the fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mra

To

1. The Additional District and Sessions Judge and Chief Judicial Magistrate, Ariyalur.
- 2 The Chief Judicial Magistrate, Perambalur
3. The Inspector of Police
Kuvagam Police Station
Ariyalur District.
- 4 The Superintendent
Central Prison, Trichy
- 5 The Public Prosecutor
High Court, Chennai
- 6 The Judicial Magistrate,
Jayankondam

7 do The Chief Judicial Magistrate
Ariyalur

8 The District Collector
Ariyalur

9 The Director General of Police
Mylapore Chennai 600 004

+lcc to Mr.R. Venkatesh, Advocate, S.R.No.39289

nm(CO)
md(27/01/2017)

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