

BAIL SLIP

THE Appellants/Petitioners/Accused namely 1. Silambu @ silambarasan - S/o. Murugan 2. Karpagam, W/o Late Shanmugam were directed to be related on bail as per the order of this court dated 21.07.2015 in CRL.M.P.No. 1 of 2015 in CRL.A.No.410 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.410 of 2015

1. Silambu @ Silambarasan

2. Karpagam

... Appellants

Vs

State rep. By
Inspector of Police,
Uthiramerur Police Station,
Uthiramerur,
Kancheepuram District.
(Crime No.583 of 2012)

..

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment of conviction passed by the learned Sessions Judge, Sessions court No.II, Kanchipuram, in S.C.No.63 of 2013 dated 24.04.2015.

For Appellant : V.Rajamohan

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

JUDGEMENT

A1 and A2, in S.C.No.63 of 2013, on the file of the learned Sessions Judge, Sessions Court No.II, Kancheepuram, are the appellant herein. They stood charged for offences under Sections 120(B), 302 and 201 I.P.C. After trial, by judgment dated 24.04.2015, the trial Court convicted the accused for offences under Sections 120(B), 302 and 201 IPC and sentenced both of them to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1000/- each in default to undergo rigorous imprisonment for three months for the offence under Section 120 (B) IPC, to undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for three months for the offence under Section 302 IPC and to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months for the offence under Section 201 IPC and the trial Court ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

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

The deceased, in this case, one Shanmugam, is the husband of A2. A1 is a paramour of A2. The marriage between A2 and the deceased took place 8 years before the occurrence. Subsequently, A2 developed a illicit intimacy with A1 and A1 eloped with A2. Then, after compromise before the Panchayathars, A2 was living with the deceased for some time. Thereafter, on 26.06.2012, once again, both of them left the village and they were living at Koyilambakkam village. Since, deceased warned A1 for the above said Act, A1 and A2 decided to finish him of.

3. On 01.07.2012, deceased left the village to bring A2 once again to his house, thereafter, he was found missing. Subsequently, on 07.07.2012, P.W.1, father of the deceased, heard the news that a dead body was found near a lake at Kaliyampoondi village. P.W.3, brother of the deceased, identified the dead body and on 08.07.2012, P.W.1 lodged a complaint before the Sub-Inspector of Police, G-11-Perunagar Police Station.

4. Based on the complaint, Sub-Inspector of Police, registered a case in Crime No.583 of 2012 and forwarded First Information Report to Inspector of Police, P.W.13.

5. On receipt of First Information Report, P.W.13, commenced investigation, proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2 and a Rough Sketch, Ex.P.12 in the presence of witnesses. Then, he recorded the

statement of witnesses and conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared an Inquest Report, Ex.P.13. Thereafter, P.W.13 sent the dead body of the deceased for postmortem to Government Hospital, Chengalpattu.

6. P.W.12, Doctor, working in the Government Hospital, Chengalpattu, conducted postmortem on the dead body of the deceased and found the following injuries :-

" Injury No.1 : Transverse ligature mark seen on front, sides and back of lower part of neck measuring 32 cm in length and 1 cm breadth with surrounding areas of contusion. Mark like 9 cm. Below chin 2 cm., above supra sternal notch, 3 cm. Below right and left mastoid and 5 cm., below occipital protuberance. On discussion - areas below the mark found congested. Contusion seen over the external and mucosal surface of trachea corresponding with ligature mark.

Injury No.2: second to fifth left side ribs found fractured along the mammary line. Both lungs "

P.W.12 gave Postmortem certificate, Ex.P.9 and also gave Final Opinion, Ex.P.10, that the deceased would appear to have died of asphyxia due to compress force over the region of neck and chest.

7. On 10.04.2013, at 8.00 a.m., at Kaliyampoondi bus stop, P.W.13 arrested both the accused in the presence of Village Administrative Officer, P.W.7. On such arrest, both the accused voluntarily gave confession and based on their disclosure statements, Ex.P.14 and Ex.P.15, P.W.13 recovered Iron rod (M.O.1) and remanded both the accused to judicial custody. P.W.13 recorded the statement of doctor, who conducted postmortem and other witnesses. After completion of investigation, P.W.13 laid the charge sheet against both the accused.

8. Based on the above materials, trial Court framed the charges as detailed in the first paragraph of this judgment against the accused and accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined and 16 documents were exhibited, besides one Material Object.

9. Out of the said witnesses, P.W.1 is the father of the deceased. According to him, A1 and A2 developed illicit intimacy and left the village, then, after compromise, A2 was living with the deceased for some time. Once again on 26.06.2012, she left the village along with A1. Hence, on 01.07.2012, deceased went

to bring her back, thereafter, deceased was found missing. P.W.2, brother of P.W.1, also corroborates the evidence of P.W.1. P.W.3, brother of the deceased saw the dead body of the deceased in the Kaliamboondi lake, Uthiramerur. P.W.4, a resident of A1, has spoken about the quarrel between the deceased and A2 and also spoken about the elopement of A2 with A1. P.W.5 is the owner of the house, where A1 and A2 were residing for some time. P.W.6 is an employer of A1. According to him, A1 was employed in his brick-kiln. P.W.7, Village Administrative Officer, is a witness to the Observation mahazar. He is also a witness to the arrest of the accused and recovery of M.O.1.

10. P.W.8, Constable, identified the dead body of the deceased for postmortem and also handed over the same to the relatives. P.W.9, Scientific Officer of the Forensic Science Lab, Chennai, examined the bloodstained cloth and gave report Ex.P.6. P.W.10, Assistant Director of Forensic Science Lab, examined the visceral parts of the deceased and gave report Ex.P.7. P.W.11, then Assistant Director of Forensic Science Lab, examined the sternum and sample water and gave report, Ex.P.8.

11. P.W.12, Doctor, conducted postmortem on the dead body of the deceased and gave postmortem certificate, Ex.P.9. P.W.13, took up the case for further investigation, arrested the accused, recorded the statement of the witnesses and after completing investigation, P.W.13 laid charge sheet against both the accused.

12. 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 or mark any documents.

13. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellants/accused are before this Court with this appeal.

14. We have heard Mr.V.Rajamohan, learned Counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. It is a case of circumstantial evidence. On perusal of the records, we find no evidence to connect the accused with the murder. It is a well settled law that in a case of circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such

proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused.

16. Keeping the above principle in mind, we carefully analyze the facts of the present case. In the instant case, except recovery of M.O.1, based on the disclosure statements of A1 and A2, no other circumstance has been produced by the prosecution to connect the murder with the accused. All the available evidence only show that A1 eloped with A2 and they were living separately in another village. Apart from that, no other circumstance has been established by the prosecution unerringly pointing out the guilt of the accused and the trial Court convicted the accused based only on assumption and without any evidence.

17. In the above circumstances, the judgment of the trial Court is suffered from illegality and hence, it is liable to be set aside, and, the appellants are entitled for acquittal.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants by the learned Sessions Judge, Sessions Court No.II, Kanchipuram, in S.C.No.63 of 2013 by the judgment dated 24.04.2015 are hereby set aside. The appellants are acquitted of the charges levelled against them. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

s/d-
Assistant Registrar(CCC)

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Sub-Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate
Uthiramerur.
2. The Chief Judicial Magistrate,
Chengalpattu.
3. Sessions Judge,
Sessions Court No.II,
Kanchipuram,

4. The Inspector of Police,
Uthiramerur Police Station
Uthiramerur, Kancheepuram District.

5. The Superintendent Central Prison,
Vellore.

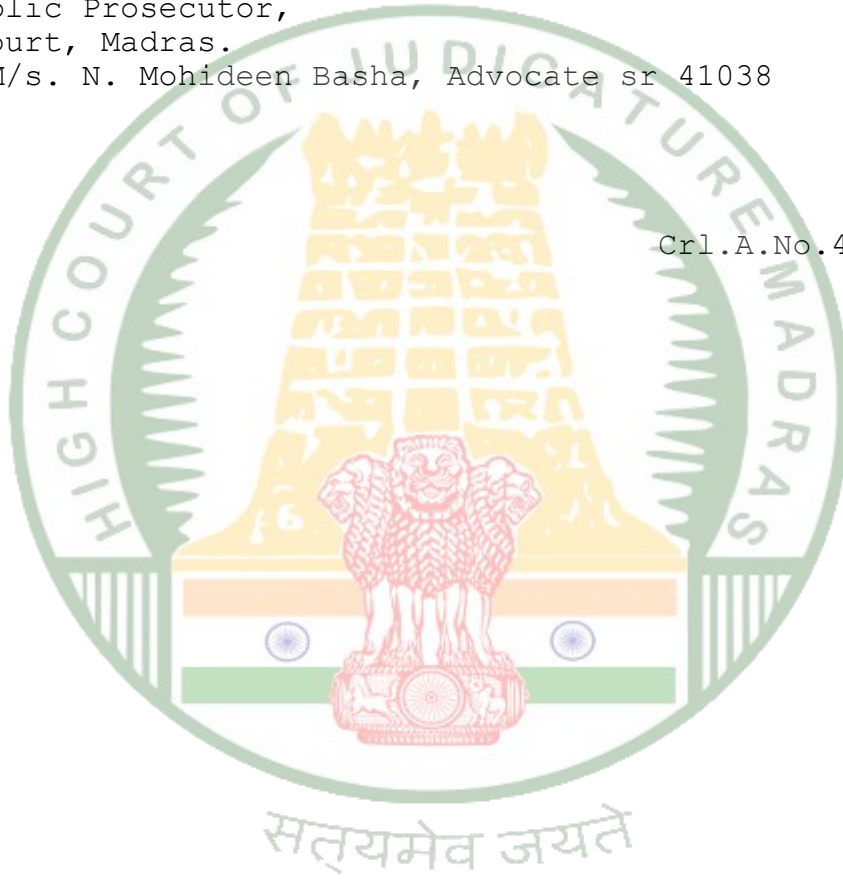
6. The Superintendent,
Special Women Prison,
Vellore.

7. The Public Prosecutor,
High Court, Madras.

+1 CC to M/s. N. Mohideen Basha, Advocate sr 41038

Cr1.A.No.410 of 2015

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