

Bail Slip

That the Appellant herein/Accused No.1,2,4 viz., Muniammal W/o Late Paramasivam (A1) Ganesan, S/o Dasarathan (A2) & Karthi S/o Theethan A4 were directed to be released on bail as per order dated.26.08.2015 made in MP.No.1/2015 in Cr1.A.453/2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Cr1.A.No.453 of 2015

1. Muniammal
 2. Ganesan
 3. Karthi
- Appellants/Accused No.1,2, & 4

Vs

State represented by its
Station House Officer
Dharmapuri Police Station
Dharmapuri District.

Respondent/Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Dharmapuri, in S.C.No.126 of 2014 on 27.03.2015.

सत्यमेव जयते

For Appellants : Mr.I.C.Vasudevan
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

WEB COPY

JUDGMENT

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

A1, A2 and A4 in S.C.No.126 of 2014 on the file of the learned Additional District and Sessions Judge, Dharmapuri, are the appellants in this appeal. Totally there are five accused

in this case. A2 to A5 stood charged for an offence under Section 302 r/w.34 IPC. A1 stood charged for an offence under Section 302 r/w.109 IPC. The trial Court convicted A1 under Section 302 r/w.109 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment. A2 and A4 were convicted under Section 302 r/w. 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment. The trial Court acquitted A3 and A5. Challenging the above conviction and sentence, A1, A2 and A4 have filed the present appeal before this Court.

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

(i) The deceased in this case one Paramasivam is the husband of A1. A2 is the sister's son of the deceased. A3 is the close friend of A2. A4 and A5 are the friends of A3. A1 and A2 have illicit intimacy. After came to know about the same, the deceased was living separately at Dharmapuri. The deceased was employed at TASMACH and he has gone to Chidambaram on Education Leave to do his M.Sc., degree course. Feeling the presence of deceased as a hindrance to her illicit intimacy, A1 and A2 decided to finish him off. For that purpose, A1 gave a sum of Rs.50,000/- to A2. A2 in turn engaged A3, A4 and A5 to murder the deceased. Pursuant to the same, on 08.09.2012 at about 10.30 p.m, A2 to A5 came in a motorcycle and A2 identified the deceased and A5 attacked the deceased with bill hook, then A2 and A4 attacked him with the same bill hook indiscriminately and caused his death.

(ii) Subsequently, A1 appeared before PW.24, the Special Sub-Inspector of Police in respondent police station and gave a complaint stating that on 08.09.2012, at about 10.40 p.m, her husband/deceased was attacked by some unknown persons in front of his house and she suspected his uncle's sons due to previous enmity. On receipt of the above complaint, PW.24 registered a case in Crime No.1442 of 2012 for the offence under Section 302 IPC, prepared FIR and sent the same to the learned Judicial Magistrate No.I, Dharmapuri and also to the higher officials. Ex.P12 is the First Information Report.

(iii) PW.26 - Inspector of Police, on receipt of the above FIR proceeded to the scene of occurrence and prepared Observation Mahazar and also rough sketch. PW.26 conducted inquest on the dead body in the presence of panchayatdars and prepared inquest report Ex.P14 and sent the dead body for postmortem to the Government Hospital, Dharmapuri, through PW.22 Head Constable. During investigation, PW.26 came to know that it was the first accused has committed the murder through hirelings. Therefore, PW.26, arrested A1 on 11.09.2012 at about

4 p.m and A1 identified A2 and PW.26 also arrested A2. On 15.09.2012, PW.26 arrested A3 and A5 and based on the confession of A5, he recovered a motorcycle (M.O.8) and a bill hook (M.O.9). PW.26 handed over the investigation to PW.25.

(iv) In the mean time, PW.21 - Doctor working in the Government Medical College Hospital, Dharmapuri, conducted postmortem on the dead body and found the following injuries:-

"External Injuries:-

1. Incised wound over Lt. Side of the head, face, exposing all muscles, Lt. Temporal bone and part of brain exposed and with left ear absent, that severed ear seen near the body.
2. An incised wound over the centre of the forehead 10 x 1.5 cm bone depth.
3. Incised wound with sharp margin from the Rt. Side of the neck 20 x 6 x 8 cm width to front of the neck with neuro vascular bundle excised.
4. Incised wound seen in front of the neck (12 x 3 x 4 cm) in all muscles and neuro vascular bundle excised.
5. Incised wound just below the above said wound No.4, 14 x 4 x 6 cm all muscles and trachea are severed.
6. Incised wound just below the wound No.5, 6 x 3 x 2 cm.
7. Incised wound Lt. Fore arm 6 x 9 cm x bone depth with both the bone # and all muscles and bone were incised till end and seen loosely hanging.
8. Incised wound in the Rt. Fore arm 15 x 12 x bone depth with both bone # all muscles are excised till end and seen loosely hanging.

Internal injuries:

Lt. Temporal bone 12 cm., Lt. Parietal occipital bone 15 cm base in the skull (N), Tear brain 100 gm clotted blood, Hyoid bone intact, Ribs Rt, Lt (N), Lungs Rt, Lt Pale. Heart empty, Stomach 150 gm of food particles present. Liver, Spleen, Kidney C/s. Pale. Urinary Bladder - empty. Ext. genitalis (N)."

Ex.P9 is the postmortem report and PW.21 - Doctor was of the opinion that the deceased appeared to have died of shock and hemorrhage, due to cut injuries.

(v) PW.25 - Inspector of Police continued investigation and

on 15.09.2012, A4 in this case surrendered before the Judicial Magistrate No.I, Dharmapuri and PW.25 took A4 under the police custody and A4 voluntarily gave confession and based on the disclosure statement, PW.25 recovered an Aruval. Then, PW.25 handed over the investigation once again to PW.26.

(vi) PW.26, after recording the statement of postmortem Doctor and other witnesses and after conclusion of investigation, filed the charge sheet in Crime No.1442 of 2012, for the offence under Section 302 IPC against the accused.

3. Based on the above materials, the trial Court framed charges against the accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined as many as 26 witnesses and marked 20 exhibits and 12 material objects.

4. Out of the witnesses examined, PW.1 is the brother of the deceased. He has spoken about the illicit intimacy between A1 and A2. According to him, after hearing the news, they went to the Government Hospital, Dharmapuri and saw the deceased with injuries. PW.2 is another brother of the deceased and he has also spoken about the earlier quarrel between the deceased and his other brothers and also the illicit intimacy between A2 and the wife of the deceased (A1). PW.3 is the wife of A2, and she has also spoken about the quarrel between the brothers and also the illicit intimacy between A1 and A2. PW.4 to PW.8 turned hostile and PW. 9 is the witness to Observation Mahazar. PW.10 to PW.14 turned hostile. PW.15, another brother of the deceased is a hearsay witness. PW.16 and PW.17 turned hostile. PW.18 - Village Administrative Officer, is a witness to the Mahazar and recovery of material objects. PW.19 - Village Assistant is also a witness to the Mahazar and also recovery of material objects. PW.20 is the photographer, who took photographs of the dead body. PW.21 - Doctor, conducted postmortem on the dead body. PW.22 - Head Constable, identified the body for postmortem and after postmortem, he handed over the body to the relatives. PW.23 - Head Constable, assisted PW.26 Inspector of Police. PW.24 special Sub-Inspector of Police registered the First Information Report. PW.25 - Investigating Officer, took A4 under police custody and recovered the bill hook. PW.26 - Investigating Officer initially conducted investigation, before handing over the case to PW.25, and arrested the accused and recovered the material objects. Once again the investigation was handed over to PW.26. PW.26, after recording the statement of other witnesses and on completion of investigation, filed charge sheet for the offence under Section 302 IPC against the accused.

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

6. Considering the above materials, the trial Court convicted the appellants and sentenced them as stated in paragraph-1 of the judgment. As against the conviction and sentence, the appellants are before this Court with this appeal.

7. We have heard the learned counsel appearing for the appellants 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. It is a case of no evidence. Most of the material witnesses turned hostile. P.Ws.1, 2 and 15 are the brothers of the deceased. They have spoken about the alleged illicit intimacy between A1 and A2 and also the previous quarrel between themselves and the deceased. PW.3 is the wife of A2 and she has also spoken about the illicit intimacy between A1 and A2. All the above witnesses have spoken only about the motive for murder. Except the same, there is no other circumstance available to prove the guilt of the accused. Apart from that, the prosecution did not sent the bill hook (M.O.1) stated to have been used for attacking the deceased, for chemical examination, to find out whether any bloodstain was there and also to find out whether the bloodstain in the bill hook was tally with the blood group of the deceased. Hence, the prosecution failed to prove the circumstances unerringly pointing to the guilt of the accused. Apart from that, the trial Court also acquitted similarly placed accused A2 and A5, disbelieving the prosecution version. In the said circumstances, the appellants are also entitled for acquittal.

10. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants on 27.03.2015 in S.C.No.126 of 2014 on the file of the learned Additional District and Sessions Judge, Dharmapuri are set aside. All the appellants are acquitted and 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

To

1. The Additional District and Sessions Judge,
Dharmapuri.
- 2 do thro The Principal Session Judge, Dharmapuri
- 3 The Judicial Magistrate No.I, Dharmapuri
- 4 The Chief Judicial Magistrate Dharmapuri
- 5 The Superintendent Central Prison, Vellore
- 6 The Superintendent Central Prison for Women, Vellore
- 7 The District Collector, Dharmapuri
- 8 The District General of Police
Mylapore, Chennai 4
- 9 Copy to: The Section officer,
Crl. Section, High Court, Madras 104
10. The Station House Officer
Dharmapuri Police Station
Dharmapuri District.
- 11.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.I.C. Vasudevan, Advocate, S.R.No.41824

rj(CO)
md(23/02/2017)

Crl.A.No.453 of 2015