

BAIL SLIP

The Appellants/Accsed namely 1.Rekha Sweety, D/o.Ramesh, aged 24 years, 2.Syed Hazim, S/o.abdul, aged 29 years, 3.Vinoth, S/o.Natesan, aged 26 years, and 4.Juniath Basha, S/o.Shajahan, aged 26 years were directed to be released on bail, as per order of this Court dt.3.9.2015, made in MP.No.1/15 in Crl.A.No.457/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM:

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

Criminal Appeal No.457 of 2015

1.Rekha Sweety
2.Syed Hazim
3.Vinoth
4.Juniath Basha

..Appellants/Accused

Vs

The State of Tamil Nadu,
Rep. By Inspector of Police,
T-6, Avadi Police Station,
Chennai.

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 05.06.2015 made in S.C.No.311 of 2012 on the file of the learned III Additional Sessions Judge, Thiruvallur.

For Appellants : Mr.T.P.Prabakaran,
Senior Counsel

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

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellants are A.1 to A.4 in S.C.No.311 of 2012 on the file of the learned III Additional Sessions Judge, Thiruvallur. The accused stood charged for offences under Sections 120(B), 302 & 201 I.P.C. All the accused denied the above charges framed against them. By judgment dated 05.06.2015, the trial Court convicted A.1 to A.4 for offences under Sections 120(B), 302 & 201 I.P.C., and sentenced them to

undergo rigorous imprisonment for seven years each for offence under Section 120(B) I.P.C., to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for two years, and to undergo rigorous imprisonment for seven years, each for offence under Section 201 I.P.C. The trial Court has ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/A.1 to A.4 are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Ashok Kumar. A.1 is his wife. The deceased was hardly aged 25 years and A.1 was aged 19 years. After the marriage, for about 6 months, the deceased was living with A.1 at No.3/2, 8th street, Bazar Nagar, Avadi, Chennai - 600 054. There was nobody else in the family. The deceased was working as a Salesman in a local shop. He used to go for his work every day in the morning and to return in the night. During his absence, A.1 alone used to be in the house. It is alleged that even before marriage, A.1 had illicit relationship with A.2. That illicit relationship continued even after the marriage of deceased and A.1.

3.According to the case of the prosecution, since, the deceased was a hindrance for the said illicit relationship, A.1 & A.2 decided to do away with the deceased. It is stated that A.3 & A.4 are associates of A.2. It is further stated that on 26/27.11.2009, around 8.30 pm, all the four accused conspired to do away with the deceased by giving him sleeping tablets. In pursuance of the said conspiracy, it is alleged that A.3 purchased 30 sleeping tablets and gave the same to A.1. Around 9.30 pm on 26.11.2009, the deceased returned home from his work place. A.1 out of 30 sleeping tablets, powdered 26 tablets and mixed the same with milk and horlicks and gave the same to the deceased. After consuming the same, the deceased started sleeping. Shortly, he became unconscious. A.1 thereafter, informed A.2 about the same. Around 3.45 am on 27.11.2009, A.2 to A.4 came to the house of the deceased with a Tata Indica Car bearing registration No.TN 09 AS 0160. A.2 went into the house of the deceased. They found the deceased still alive. Therefore, A.2 strangulated him with hands. A.1, A.3 & A.4 held the deceased. The deceased died. Thereafter, A.2 to A.4 took the dead body from out of the house of A.1 and carried the same in the Car. A.4 drove the Car. A.3 followed the Car in a motorcycle bearing registration No. TN 09 AJ 9462, belonging to the deceased. He also took away the cellphone and a tiffin box belonging to the deceased. A.2 to A.4 carried the dead body in the Car and threw it in Gangadharanallur forest at, Andhra Pradesh State and then, they vanished away from the scene of occurrence. A.1 left for Rajasthan, to her native place, to attend her brother's marriage.

4.P.W.1 is the Cousin of the deceased. On noticing that the deceased had not returned to his house and even the same was locked, he spoke to A.1 on 02.12.2009 over phone and asked her as to where the deceased had gone. A.1 told him that the deceased had promised to come to Rajasthan on 05.11.2009 to attend her brother's marriage. Believing that the deceased would have gone elsewhere, P.W.1 did not take any further steps. He spoke to A.1. A.1 also with anxiety enquired about the deceased. Finally, the father of A.1 wanted P.W.1 to go to the Police Station and to make complaint. Accordingly, on 02.12.2009 P.W.1 made a complaint before the respondent Police. P.W.24, the then Sub Inspector of Police, on receipt of the said complaint registered a case in Crime No.952/2009 for "man missing". Ex.P.1 is the complaint and Ex.P.25 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 12.05 hours on 08.12.2009.

5.P.W.22, the then Inspector of Police took up the case for investigation. On 02.12.2011, he went to the house of the deceased and examined P.Ws.1 to 4 and recorded their statements. Then P.W.22 made extensive publicity regarding the missing of the deceased. In an attempt to locate him, P.W.22, came to know that A.1 had returned from Rajasthan after attending her brother's marriage. During investigation, according to P.W.22, it came to light that all the four accused had conspired and killed and the deceased.

6. Thereafter, the investigation was taken over by P.W.27. He altered the case into one under Sections 302, 201 & 120(B) I.P.C. He went to the house of the deceased and prepared an observation mahazar and a rough sketch in the presence of witnesses. Then, at 5.00 p.m on 02.01.2010 P.W.27 examined A.1. She gave a voluntary confession. Out of the said disclosure statement, P.W.27 recovered an aluminium blender and a pounder from the house of the deceased and also recovered 4 sleeping tablets under Ex.P.3 mahazar. Then he forwarded A.1 to Court for judicial remand.

7. On 31.01.2010, at 6.00 pm, P.W.27 arrested A.2 to A.4 in the presence of witnesses. On such arrest, A.2 gave a voluntary confession in which, he disclosed the place where he had hidden a cellphone of the deceased. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the cellphone (M.O.8). A.2 then identified one Mr. Jafer through whom, P.W.27 recovered the motorcycle bearing registration No. TN 09 AJ 9462 (M.O.9). A.3 also gave a voluntary confession, in which, he disclosed the place where he had hidden a lunch bag in which the letters are in Hindi and it contains a cellphone No. 9414813948 and a still of lord Vinayakar and a ever silver Tiffen box and the other belongings of the deceased. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the lunch bag (M.O.10), ever silver tiffen box (M.O.11) one pair of cut shoe (M.O.12), jeans pant (M.O.13) belt (M.O.14)

and a full hand shirt (M.Os.10 to 15). P.W.27 recovered all these material objects under Ex.P.9 mahazar, in the presence of witnesses. A.4 also gave a voluntary confession in which, he disclosed that he had pledged a gold chain weighing 22.070 grams and a gold bracelet weighing 7.790 grams. In pursuance of the same, he took the Police and witness to the Pawn broker Mr.Rajesh from whom, P.W.27 recovered M.Os.17 & 18 under Ex.P.10 mahazar. Then from the possession of A.4, P.W.27 recovered the Tata Indica Car bearing registration No.TN 09 AS 0160 (M.O.16). Then he forwarded all the accused to Court for judicial remand.

8.On 09.01.2010, P.W.27 took police custody of A.2 to A.4, on the orders of the learned Judicial Magistrate. Then all the three accused took P.W.27 and another witness to Andhra Pradesh State and identified the place at Idharapalayam Village. P.W.27 prepared yet an observation mahazar and rough sketch, at the said place and at his request, A.3 was produced before the learned Judicial Magistrate for recording his judicial confession.

9.On the orders of the learned Chief Judicial Magistrate, Thiruvallur, P.W.16, the then Judicial Magistrate, Thiruvallur directed A.3 to be produced before her. Accordingly, A.3 was produced on 20.01.2010 at 12.20 pm. P.W.16 gave the required warning to A.3 and gave him time to relax. He was again produced on 21.01.2010. On that day, P.W.16 again gave a required warning under Section 164 Cr.P.C. Then A.3 gave a sworn statement. The said statement has been treated as judicial confession (vide Ex.P.13).

10.P.W.27 came to know that the Village Revenue Officer of Ambodhara Palli in Andhra Pradesh State had found an unidentified dead body at the land belonging to one Mrs.Gandhammal. The Village Revenue Officer had made a complaint to the M.R.Palli Police Station, Gangadhara Nallur in Andhra Pradesh State. P.W.25, the Sub Inspector of Police, Gangadhara Nallur Police Station receipt of the said complaint had registered a case in Crime No.147/2009 for offence under Section 174 Cr.P.C. He held inquest in the body of the deceased on the same day. But the identity could not be made out. Then he forwarded the dead body for post mortem. After post mortem, he buried the body in Chithoor Municipality burial ground. He recovered the clothes found on the body and the Polythene cover and also the personal belongings of the deceased from the dead body.

11.P.W.27 collected the said details from P.W.25 and examined the witnesses already examined by P.W.25. Then, he made a request to the Tahsildar (P.W.19) to exhume the body which was buried in the burial ground in Chithoor, Andhra Pradesh. Accordingly, the body was exhumed. P.W.18 conducted autopsy on the body of the deceased. Then the investigation was taken up by one Mr.Madheswaran. The bones were sent for

forensic examination. Then the investigation was taken up by P.W.28. On completing investigation, he laid charge sheet against all the four accused.

12. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 28 witnesses were examined and 37 documents were exhibited, besides 30 Material Objects.

13. Out of the said witnesses, P.W.1 is the Cousin of the deceased. He has stated that from 26.11.2009 onwards, the deceased was found missing. On 28.11.2009, he contacted A.1 over phone who had gone to Rajasthan to attend her brother's marriage. He has further stated that A.1 informed him that the deceased had promised her to come to Rajasthan to attend the marriage of her brother on 05.11.2009. He has further stated that since, the deceased did not return, the father of A.1 wanted him to make complaint to the Police and accordingly, the complaint was made on 02.12.2009 upon which, the present case was registered. P.W.2 is a close relative of the deceased. He has stated that from 27.11.2009 onwards, the deceased was found missing. A.1 returned to her house from Rajasthan on 01.01.2010. She was found very sad. When P.W.2 enquired her, according to him, she confessed to the entire guilt. She also narrated the part played by A.2 to A.4. P.W.3 who was examined to speak about the arrest of A.2 to A.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.4 is a resident of Avadi. He has stated that on one day, around 4.00 am, when he was proceeding to Ramara Theater in Avadi, four persons took the deceased in a Tata Indica Car. He has identified these four accused as those four persons. P.W.5 has stated that on 09.01.2010, he went to Avadi Police Station, Chennai and he found all the four accused in the custody of the Police. According to him, all the four accused disclosed that the dead body of the deceased was thrown in a forest in Chithoor District in Andhra Pradesh State. The Police took the accused along with the witnesses to the said place but the dead body was not found at the said place.

14. P.W.6 is a Driver by profession. He has stated that the fourth accused is his sister's son. According to him, the alleged vehicle was driven by both by him as well as by the fourth accused as a Taxi. He has further stated that once he was called by Avadi Police, to the Police Station. Accordingly, he went to the Avadi Police Station and he found the said Taxi (M.O.16) in the Police Station. He has not stated anything incriminating about these accused. P.Ws.7 & 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has spoken about the arrest of A.1 and the consequential recovery of M.Os.5 to 7. P.W.10 is a Car Broker. He has stated that the Tata Indica Car

bearing Registration No. TN 09 AS 0160 (M.O.16) was purchased by one Mr.Nazir from him on installment basis.

15.P.W.11 is the brother of the deceased. He has stated that on 02.02.2010, the Avadi Police spoke to him when he was in Rajasthan and wanted him to come to Chennai. Accordingly, he came to Avadi Police Station on 02.02.2010. A dead body was exhumed in Chithoor burial ground. He identified the dead body as that of the deceased. P.W.12 is the friend of friend of the deceased. He has spoken about the arrest of A.2 to A.4 and the consequential recoveries of the Material Objects on the basis of their respective disclosure statements. P.W.13 is an employee in Toll gate at Vellore. According to him, as per Ex.P.11 toll gate fee receipt, the Car bearing registration No. TN 09 AS 0160 had crossed the said toll gate on 26.11.2009 at 10.32 am towards Chennai. Again on 27.11.2009 at 12.37 hours, the said vehicle had crossed the toll gate towards Vellore from Chennai. Again the same vehicle had returned to Chennai crossing the said toll gate at 2.04 am. Again at 5.13 am, the said vehicle had crossed the toll gate towards Vellore. Finally, at 2.29 pm on the same day, it had returned to Vellore.

16.P.W.14 is a Pawn Broker. According to him, A.4 sold a chain and a bracelet on 27.11.2009 (He has not identified the jewels). P.W.11 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.16, the then Judicial Magistrate has spoken about the judicial confession given by A.3 on 21.01.2010 vide Ex.P.13. She has further stated that she recorded the statements of the witnesses under Section 164 Cr.P.C. P.W.17 is an employee in a toll gate at Sriperumbudur Nemili. According to him, on 21.11.2009, at 3.28 am, the Car bearing registration No. TN 09 AS 0160 had crossed the toll gate towards Chennai. He has further stated again that on 27.11.2009, at 3.19 am, the said vehicle had crossed the tollgate and finally at 4.37 am, it had crossed the toll gate. P.W.18 was working as an Assistant Surgeon at Chithorr Government General Hospital. On 01.12.2009, as requested by the Investigating Officer in Crime No.147/2009 on the file of the G.T.Nallur Police Station, Andhra Pradesh State. He conducted autopsy on an unidentified male dead body and assessed the age between 35-40 years. He found the following injuries on the said dead body:-

"External Appearance:-

Total body putrified swollen

- Venous congestion present all over body.
- Jaw & eyes are fills of insects & taggors
- Skin lacerated at umbilical region
- Skin peel of both
- No injuries present."

Ex.P.22 is the post mortem certificate. He did not give any opinion regarding the cause of death as, he has not received the forensic report. P.W.19 is a retired Tahsildar. On 01.02.2010, he was the Tahsildar of Chithoor District. On the same day, as requested by the Sub Inspector of Police, G.T.Nallur Police Station, he went to the Municipal burial ground at Nellore. In his presence, the dead body was exhumed. The Doctor (P.W.18) conducted autopsy on the body of the deceased. At his request, some of the bones of the deceased were preserved for identification purposes. According to him, on the same day, again, the dead body was buried in the same place. P.W.20 was the Deputy Tahsildar of Chithoor. On 02.02.2010, he was working as a Revenue Inspector. On the request made by Police on 02.02.2010, he visited to the Chithoor Municipal burial ground. The dead body of the deceased was exhumed. The Doctor who was there conducted autopsy. P.W.21 is the one who made a complaint to G.T.Nallur Police Station with regard to the lying of a male dead body at Idharapalayam Village. He was the Village Administrative Officer of Nambodara Palli Village. According to him, on 30.11.2009, around 12.00 noon, on the land belonging to one Gandhammal, an unidentified dead body of a male aged 35-40 was found. He made a complaint to the Sub Inspector of Police, G.T.Nallur Police Station. Ex.P.14 is the said complaint upon which, the case was registered. P.W.22 is the Sub Inspector of Police who registered a case in Crime No.952/2009 on 02.12.2009. He has spoken about the investigation done by him and the alteration of the case into one of murder. P.W.23 is a Forensic Expert. He conducted super imposition on the skull of the deceased. He found that the skull exhumed from the burial ground at Chithoor Municipal burial ground tallied with the photograph of the deceased.

17.P.W.24 is the Constable who had stated about the exhumation of the body held on 02.12.2010 and he has further stated that he collected the bones of the deceased and handed over the same at the Forensic Lab at Chennai. P.W.25, is the then Sub Inspector of Police G.Nallur Police Station. He has stated about the registration of the case in Crime No.147/2009 under Section 174 Cr.P.C on 30.11.2009. He has further stated about the inquest held by him on the dead body and also the post mortem conducted. He has further stated about the burial of the dead body in the G.T.Nallur Municipality burial ground on the same day. P.W.26, Dr.Venkata Srinivasan has stated that on 02.10.2010, he was present when the dead body was exhumed at Chithoor Municipality burial ground and the same was in a highly de-composed condition. He opined that the death of the deceased would have been due to strangulation. He collected as many as five bones of the deceased for the purpose of forensic examination. P.Ws.27 & 28 have spoken about the investigation done and the final report filed in this case.

18. 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 chose to examine any witness nor did they mark any documents on their side. Their defence was a total denial.

19. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 to 4 are before this Court with this Criminal Appeal.

20. We have heard the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

21. This is a case based on circumstantial evidence. It is needless to point out that, in a case of this nature, the prosecution has to prove the circumstances projected by it, beyond reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution in the present case.

22. There is no denial of the fact that the deceased and A.1 lived together as husband and wife at No.3/2, 8th street, Bazar Nagar, Avadi, Chennai - 600 054. According to P.W.1, the Cousin of the deceased on 26.11.2009, as usual, the deceased had gone to his work place and thereafter, he was not seen by anybody and his house was found locked. A.1 was also not available. A.1 had gone to Rajasthan to attend the marriage of her brother. P.W.1 was reportedly in touch with A.1. A.1 was also speaking to P.W.1 with anxiety since, the deceased did not return home, nor did he go over to Rajasthan to attend the marriage of A.1's brother. The father of A.1 advised P.W.1 to make a complaint and accordingly, on 02.12.2009, the present case was registered on the complaint of P.W.1.

23. According to P.W.21, the then Village Administrative Officer, a dead body of a male aged about 35-40 years was found on the land belonging to one Gandhammal at Ambodhara Palli Village, Chithoor, Andhra Pradesh at 12.00 noon on 30.11.2009. The dead body could not be identified. On his complaint, P.W.25, registered a case in Crime No.147/2009 on the file of the G.T.Nallur Police Station, Andhra Pradesh for offence under Section 174 Cr.P.C. He held inquest and P.W.18 conducted autopsy on the body of the deceased and the body was buried. Later, the body was exhumed and the skull was subjected to super imposition. It has proved that the dead body was that of the deceased. From these circumstances, the prosecution has succeeded in establishing that the deceased had died some time between 26.11.2009 and 30.11.2009.

24.The Doctor who conducted autopsy on the dead body of the deceased on 30.11.2009, did not give any opinion regarding the cause of death as he did not receive the forensic report. The body was then buried by the Tahsildar and Police. It was exhumed again on 01.12.2009. P.W.18 - Dr.Prasanna Kumar who conducted autopsy on the body has stated that the dead body was in a highly de-composed condition. He has given opinion that the deceased would have died due to strangulation.

25.The learned Senior Counsel appearing for the appellants would submit that the said opinion is based only on surmise and not based on any scientific data. We find some force in the said argument. The Doctor who conducted autopsy on 30.11.2009, could not give any opinion regarding the cause of death. P.W.18 who conducted autopsy subsequently, after exhumation of the dead body, has given opinion that the deceased would have died due to strangulation. The said opinion is based on only the fact that the hyoid bone was found broken. But curiously, there is no evidence as to whether fracture of the hyoid bone was ante mortem or post mortem. There was no examination held for the same. Further, since, the dead body was buried about four weeks before and when the body was exhumed which was fully occupied by maggots, in our considered view, the above opinion of the Doctor cannot go to conclusively prove that the death of the deceased was due to strangulation. Thus, we have doubt regarding the cause of the death of the deceased. But, the fact remains that the deceased died some time before 30.11.2009.

26.We are conscious of the fact that if the prosecution is able to prove by means of other evidences including the circumstantial evidences that the death of the deceased was a homicide, even in the absence of medical opinion regarding cause of death, the guilt of the assailant can be held to have been proved.

27.In this case, therefore we have to examine as to whether by means of other evidences, dehors the opinion of the Doctor, who conducted autopsy, the prosecution has proved that the death of the deceased was homicide and the same was caused by these four accused.

28.In order to prove the same, in this case, the prosecution mainly relies on the extra judicial confession allegedly given by A.1 to P.W.2 on 01.01.2010. According to him, on 01.01.2010, A.2 had returned from Rajasthan after attending her brother's marriage. She was found very sad. When P.W.2 enquired her, she narrated the entire occurrence confessing her guilt. According to him, she told that since, the deceased was a hindrance for her illicit relationship with A.2, she decided to do away with the deceased. Accordingly, A.3 had brought 30 sleeping tablets out of which, she powdered 26 sleeping tablets and mixed the same with milk and horlicks and made the deceased to drink the same. After the deceased

went asleep in his house, A.1 called A.2 over phone and then A.2 came along with A.3 & A.4, in a Taxi and since, the deceased was still alive, A.1, A.3 & A.4 held the deceased and A.2 strangled the deceased to death. Thereafter, the dead body of the deceased was taken by A.2 to A.4 in a Car. A.3 took the motorcycle and other personal belongings of the deceased.

29.The learned Senior Counsel appearing for the appellants would submit that it is highly unbelievable that A.1 would have made such a detailed voluntary confession on 01.01.2010 to P.W.2. According to him, P.W.2 cannot be believed. In order to substantiate his contention, the learned Senior Counsel has taken us through the entire evidence of P.W.2 more particularly, certain admissions made by him during cross examination. During cross examination, P.W.2 has tacitly admitted that he belongs to a Traders Association. On 27.12.2009, the representatives of the Traders Association including him went to Avadi Police Station to impress upon the Police to take speedy action to find out the whereabouts of the deceased Mr.Ashok Kumar. On that day, according to him, all the four accused were in the custody of the Police. Having seen them in the Police Station, they requested the Police that they should not be let off and stringent action should be taken against them. P.W.1 has also admitted during cross examination that he saw the accused in custody at the Police station on 28.12.2009. There is no explanation in respect of this admission made by P.W.1 and P.W.2. Thus, it is crystal clear from his evidence that even before the date of arrest, all the four accused were in the custody of the respondent Police and therefore, the story that A.1 gave a voluntary confession to P.W.2 on 01.01.2010 cannot be believed at all. Therefore, we reject the evidence of P.W.2.

30.The prosecution next relies on the judicial confession given by A.3 to P.W.16. P.W.16, the then Judicial Magistrate has stated that A.3 was produced before her on 20.01.2010 at 11.30 am. She gave the statutory warnings to A.3 as required under Section 164 Cr.P.C., she gave time to A.3 to relax. He was again produced on 21.11.2010. P.W.16 again made a statutory warning to him. A.3 having understood the same, wanted to confess. That is how his confession was recorded by P.W.16 under Ex.P.13. But, a reading of Ex.P.13 would go to show that this is not at all inculpatory and it is pure and simple an exculpatory statement. In the said statement, he has stated that on 26.11.2009, A.1 told him that she was suffering from sleeplessness and therefore, she was in need of sleeping tablets. She further told that she was also suffering from bodily pain and also head ache due to the said disease. She wanted A.3 to get sleeping tablets. He in turn told her that since sleeping tablets wont be sold in the medical shop without prescription of a Doctor and so, it was difficult for him to help her. A.1 told him to go to the nearby shop and

inform them that she was in need of the said tablets. Accordingly, he went to the nearby shop, purchased 15 sleeping tablets which could be used for one month and gave the same to A.1

31.The next circumstance relied on by the prosecution is that A.3 conspired with the other accused including A.1 and decided to kill the deceased by administering sleeping tablets. It is as per the conspiracy, it is the prosecution case that only to kill the deceased and knowing that it was going to be administered by A.1 to the deceased, A.3 purchased 30 sleeping tablets and gave the same to A.1. But, the statement of A.3 is quite contrary to the same. As we have already narrated, since A.1 was suffering from sleeplessness, body pain and head ache, as requested by her, he purchased sleeping tablets that too 15 in numbers and gave the same to A.1 only for her use. Thus, this part of the statement does not amount to confession of A.3 and it is pure and simple an exculpatory statement.

32.A.3 has further stated in his statement that P.W.1 gave Rs.500/- to him towards the cost of the sleeping tablets and gave Rs.50/- to him for his bus fare. After giving the tablets, he returned to Koyambedu bus terminus to go over to Villupuram. At that time, when he was about to board a bus, A.2 contacted him over phone and he enquired as to where he was. A.3 told that he was proceeding to Villupuram. A.2 wanted him not to go to Villupuram and instead come to Arcot. Accordingly, around 2.00 am, on 27.11.2009, he went to Arcot. As soon as he got down from the bus at Arcot, A.2 told him that A.1 instead of using the sleeping tablets for herself, had given the same to her husband. A.2 further told that he was apprehensive of the same. He wanted A.3 to accompany him so that they could go and see as to what had happened to the husband of A.1. Therefore, they went to the house of A.1 in a call taxi. This part of the statement is not in tune with the case of the prosecution at all. According to the case of the prosecution, A.2 to A.4 came to the house of the deceased on receiving phone call from A.1 that the deceased had already died. But the statement of A.3 is that A.2 wanted him to accompany him as he had fear that something could happen. Further, according to the statement, A.2 told him that A.1 instead of using the sleeping tablets for herself had given the same to her husband. This statement would clearly go to show that A.2 & A.3 were not parties to the administration of sleeping tablets to the deceased. Thus, this part of the statement is again exculpatory in nature.

33.The said statement further proceeds to say that when they went to the house of the deceased, they found the deceased dead already. A.1 was found weeping. Since, the deceased had already died, according to the statement, A.2 put the dead body in the Car and A.2 alone took the dead body and

the Taxi was driven by a call taxi Driver. The statement further goes to show that he did not go along with the dead body. This is again exculpatory in nature.

34. According to the case of the prosecution, since, the deceased was still alive despite consuming the sleeping tablets, A.1, A.3 & A.4 held the deceased A.2 strangled him to death. Thereafter, all the four accused carried the dead body in the taxi. Quite contrary to the same, in the statement, A.3 had segregated him and made it as though he is innocent. The statement further proceeds to say that thereafter, A.1 begged before him and requested him to help her and she wanted him to take her in the motorcycle belonging to the deceased and drop her at Arcot. Thereafter, A.2 spoke to him over phone that the deceased had been admitted in a hospital. He has further stated that then he went to the hospital but, the deceased had not been admitted in the hospital. Then A.2 took him in the car to an unknown place and stopped the car. When he got down from the Car to pass urine, A.2 threw something. He has not at all stated that he knew that the dead body was thrown. Thus, a reading of the entire statement of A.3 made under Section 164 Cr.P.C., would go to show that he has not made any confession at all. The entire statement runs contrary to the prosecution and virtually, he has expressed innocence at every stage of the statement. Thus, the statement made by A.3 will not come under the purview of Section 24 of the Indian Evidence Act, at all so as to be called as a confession. Therefore, this statement is liable to be rejected as inadmissible and accordingly, the same is rejected.

35. The prosecution then relies on the recovery of material objects recovered from these accused on their arrest. According to P.W.27, A.1 was arrested on 02.01.2010 at 5.00 pm. On such arrest, four sleeping tablets an aluminium blender and aluminium pounder (M.Os.5 to & 7) were recovered. In order to connect these material objects with the crime, absolutely, there is no evidence. Therefore, recovery of M.Os.5 to 7, on the alleged disclosure statement made by A.1 are irrelevant.

36. As we have already seen, all the four accused were in the Police custody from 27.12.2009 onwards, as spoken by P.W.2. P.W.1 has admitted during cross examination on 28.12.2009, A.1 was very much available in the police custody. He has further stated that on 28.12.2009, along with P.W.2 and other office bearers of the Traders Association, when they went to Avadi Police Station, on 28.12.2009, all the four accused were in the custody of the Police. Therefore, the story of the prosecution that A.1 was arrested only on 02.01.2010 and that she made a disclosure statement out of which, M.Os.5 to 7 were recovered, cannot be believed.

37. Similarly, it is the case of the prosecution that on 03.01.2010, at 6.00 pm, A.2 was arrested and on his disclosure

statement, a hero hona motorcycle (M.O.9) and M.Os.10 to 15 were recovered. In view of the admission made by P.Ws.1 & 2 that these accused were in the police custody from 27.12.2009 onwards, the so called arrest of A2 and the disclosure statement allegedly made by him and the consequential recovery of M.Os.9, 10, 15 to 17, also cannot be believed.

38.It is the further case of the prosecution that A.4 was arrested on 03.01.2010 at 9.45 pm and on his confession, M.Os.16, 17 & 18 were recovered. M.Os.17 & 18 are gold jewels allegedly belonging to the deceased. But, unfortunately, no one has identified M.Os.17 & 18 as the jewels belonging to the deceased. Assuming that M.Os.17 & 18 belong to the deceased and the recovery of the jewels were made on the disclosure statement made by A.3 on 03.01.2010, the same cannot be believed in view of the evidence of P.Ws.1 & 2 that A.4 was in the police custody from 07.12.2009 onwards. Thus, the arrest of all the four accused and the consequential recoveries of the material objects cannot be believed.

39.As we have already pointed out, the representatives of the Traders Association including P.Ws.1 & 2 had seen all the four accused in the Police Station while in custody on 27.12.2009 onwards. They have further requested the Police not to let off and to prosecute them. Therefore, this circumstance also does not stand proved by the prosecution.

40.The prosecution has proved through the workers in the toll gates that on the crucial dates, the car bearing registration No.TN 09 AS 0160 had crossed the toll gates on many occasions. On few occasions, proceeded towards Vellore and on few occasions proceeded towards Chennai. After all the same is a Taxi. The learned Senior Counsel appearing for the appellants would submit that as a taxi, the said vehicle could have crossed the toll gate on many occasions and hence, that will not in any manner incriminate the accused in this case. Ofcourse the said vehicle had crossed the toll gate on many occasions. But, there is no other evidence to show that any of the accused had driven the said vehicle or travelled in the said vehicle. Further, no connection between the said vehicle and the crime has been established by the prosecution.

41.Lastly, we have to state few words about the conduct of A.1. A.1 had gone to Rajasthan to attend his brother's marriage. According to P.W.1 when he enquired her over phone she told that the deceased promised to come on 05.11.2009 to Rajasthan to attend the marriage function of her brother. On her return to Avadi, after attending the said marriage, she was found sad and she was anxiously enquiring about her husband. Thereafter also, she did not abscond. This conduct of A.1 is consistent with her innocence.

42. In view of the foregoing discussions, we hold that the

prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In this case, the prosecution has not even able to succeed in creating a very strong suspicion against these accused. For these reasons, we hold that the conviction and sentence imposed on the appellants are not sustainable and hence, the same are liable to be set aside.

43. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A.1 to A.4 by the learned III Additional District & Sessions Judge, Tiruvallur in S.C.No.311 of 2012, dated 05.06.2015, are set aside and the appellants/A.1 to A.4 are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 to A.4, shall stand discharged.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The III Additional District Sessions Judge,
Tiruvallur at Poonamallee.

2.-do- thro' The principle District and Sessions Judge,
Poonamallee.

3.The Judicial Magistrate, Arcot.

4.do thro' The Chief Judicial magistrate,
Vellore.

5.The Inspector of police,
T-6, Avadi Police Station,
Chennai.

6.The superintendent,
Special Prison for Women,
Puzhal, Chennai.

7.The Superintendent,
Central Prison I, Puzhal, Chennai.

8.The District Collector,
Chennai.

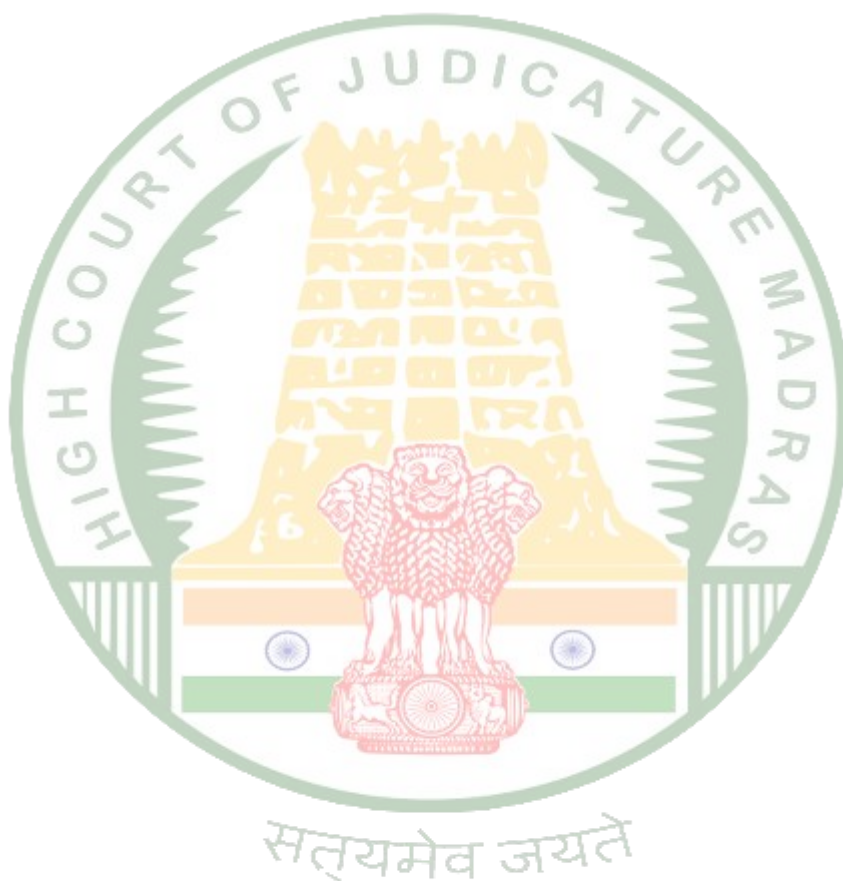
9.The District General of police,
Mylapore, Chennai.

10.The Public Prosecutor,
High Court, Madras.

+5 cc's to Mr.T.P.Prabhakaran,advocate,sr.40341.

gj(co)
krd 30/8

Cr1.A.No.457 of 2015



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