

BAIL SLIP

The Appellans/Accused No.1,2 & 3 namely parimala, Aged 42 years, W/O Iyyanar, Kannan, Aged 30 years S/o Moorthy and Vel @ Murugan, Aged 23 years S/o Thandavarayan was directed to be released on Bail as per order dated 25.08.2015, 03.03.2016 and 09.03.2016 in Criminal M.P. No 1 of 2015, CRL. M.P.No 1/2015 and CRL.A. No. 491,685 and 697 of 2015 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.Nos.491, 685 and 697 of 2015

Parimala .. Appellant/Accused-1 in Crl.A.491 of 2015
Kannan .. Appellant/Accused-2 in Crl.A.685 of 2015
Vel @ Murugan ... Appellant/Accused-3 in Crl.A.697 of 2015

Vs

The State represented by
Inspector of Police
Sooramangalam Police Station
Salem District.
[Crime No 574/2012]

.. Respondent/Complainant
in all Crl. Appeals

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned III Additional District and Sessions Judge, Salem, in S.C.No.60 of 2014 on 27.07.2015.

For Appellant in Crl.A.491/15 : Mr.R.Nalliyappan

For Appellant in Crl.A.685/15 : Mr.R.Muniyapparaj

For Appellant in Crl.A.697/15 : Mr.A.Karthikeyan

For Respondent in all Appeals : Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

The accused in S.C.No.60 of 2014 on the file of the learned III Additional District and Sessions Judge, Salem, are the appellants herein. The first accused is the appellant in CrI.A.No.491 of 2015, and the second accused is the appellant in CrI.A.No.685 of 2015 and third accused is the appellant in CrI.A.No.697 of 2015. A1 stood charged for an offence under Section 302 r/w.34 IPC and A2 and A3 stood charged for an offence under Sections 364 and 302 IPC. The trial Court convicted A1 under Section 302 r/w.34 IPC, and sentenced her to undergo life imprisonment and also to pay a fine of Rs.2,000/-, in default to undergo three months simple imprisonment. A2 and A3 were convicted under Section 364 IPC and sentenced to undergo ten years rigorous imprisonment and also to pay a fine of Rs.1000/- each, in default to undergo three months simple imprisonment and further convicted under Section 302 IPC and sentenced to undergo life imprisonment and also to pay a fine of Rs.2,000/- each, in default to undergo three months simple imprisonment. Challenging the above conviction and sentence, the present Appeals have been filed.

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

(i) The deceased in this case one Ayyanar was the husband of A1, A1 was already married and through his first marriage, she got two children and after the death of her first husband, she married the deceased. The deceased is a drunkard and there were frequent quarrels between the deceased and A1 and the deceased harassed A1. Unable to bear the harassment, A1 decided to finish off the deceased. Hence, she engaged A2 and A3 and she paid Rs.10,000/- to murder the deceased and on 10.09.2012, both A2 and A3 took the deceased in their bike and all the three consumed liquor. When the deceased was in a highly intoxicated mood, A2 and A3 attacked him with wooden log on his head and dropped a stone on his leg and throw the deceased near a bush and went away.

(ii) On the next day morning, the deceased was found unconscious and on information, PW.8 - Driver of 108 Ambulance took the deceased to Dr.Karthik Rajan, who gave first aid to the deceased and thereafter, they admitted the deceased in the Government Hospital, Salem.

(iii) PW.20 - Doctor then working in Mohan Kumaramangalam Medical College Hospital, Salem, admitted the deceased in unconscious condition and found a fracture and stab injury in the right leg and issued Accident Register (Ex.P26).

(iv) PW.1, the brother of the deceased after hearing the news that the deceased was admitted in the hospital, reached the

hospital and at about 1.10 p.m on 11.09.2012 the deceased succumbed to injuries. Thereafter, PW.1 went to the police station and lodged a complaint (Ex.P1).

(v) PW.15, Special Sub-Inspector of Police in the respondent police station, on receipt of the complaint registered a case in Crime No.574 of 2012 for the offence under Section 302 IPC and prepared First Information Report (Ex.P17) and sent the same to the Judicial Magistrate Court and also to the higher officials.

(vi) PW.18 , in-charge Inspector of the respondent police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and at about 4 p.m. prepared Observation Mahazar and rough sketch (Ex.P18), and recovered material objects under the cover of Mahazar, received death memo (Ex.P19) from the hospital, thereafter, conducted inquest on the dead body in the presence of panchayatdars. The inquest report is Ex.P20. Thereafter, PW.18, sent a memo to the hospital for conducting postmortem on the dead body and recorded the statement of witnesses.

(vii) PW.13 Assistant Professor in Government Mohan Kumaramangalam Medical College Hospital, Salem, conducted postmortem autopsy on the dead body and found the following injuries:-

- " INJURIES: Abrasion dark brown in colour
1. 2 x 0.5, 0.5 x 0.5 cm over right mid thigh
 2. 2 x 1 cm over back of right knee
 3. 4 x 1, 3 x 2 cm over inner aspect of right leg
 4. 2 x 1 cm over inner aspect of left knee.
 5. 10 x 0.5 cm over left middle of thigh
 6. contusion over back of middle thigh 3 x 2 cm
 7. laceration over lateral aspect of right thigh M-2x1x2 cms
 8. laceration below right knee 2 x 1.5 cm x bone deep
 9. fracture and dislocation of right knee joint with surrounding soft tissue contused.
 10. Swelling with deformity over lower 3rd of right thigh o/d fracture involving lower 3rd of right femur with surrounding soft tissue contused.
 11. Swelling with deformity over upper 3rd of right leg o/d fracture involving upper 3rd of right tibia and fibula with surrounding soft tissue contused.

1. O/d Head (1) scalp contusion over left fronto region measuring 3 x 2 cm and occipital region M-3 x 2 cm. Dura membrane - intact. Cranial vault - intact. Brain - sub arachnoid and sub dural haemorrhage seen over right cerebral hemisphere. Base of skull - intact.
 2. O/d Neck :- Contusion over upper part of lateral aspect of right side of neck M- 4 x 3 cm, hyoid bone - intact.
 3. O/d. Thorax - No ribs fracture. Heart - normal in size. Chambers contained fluid blood. Valves and Coronaries - Normal. Lungs - c/s congested.
 4. O/d. Abdomen : Stomach contains 250 ml of brown colour fluid with no specific odour. Mucosa c/s congested. Liver, Spleen and kidneys c/s congested. Bladder - empty.
 5. O/d. Pelvis : Pelvic cavity contains 200 ml fluid blood and 50 gms of clotted blood. Contusion over right side hip M- 6 x 4 cm. Fracture and dislocation of right side of pelvis with surrounding soft tissue contused.
 6. Spinal column - intact.
- The above mentioned 1 to 11 injuries and head, neck, pelvis injuries are antemortem in nature."

The postmortem report is Ex.P14, and the Doctor was of the opinion that the deceased appeared to have died of multiple injuries. The visceral parts of the deceased were also sent for chemical examination. As per the Toxological Report (Ex.P13), no alcohol or poison was deducted in the visceral parts of the deceased.

(viii) In the mean time, on 12.09.2012 at about 1 p.m, A3 appeared before PW.11 - Village Administrative Officer, Kandampatti Village and gave extra-judicial confession admitting his guilt. PW.11 recorded the confession (Ex.P6) given by A3 and along with the Special Report, he produced A3 before PW.18 - Inspector of Police.

(ix) PW.18 - Inspector of Police arrested A3 and on such arrest, A3 voluntarily gave confession and based on the disclosure statement, he recovered blood stained stone (M.O.8). He also arrested A2 and on such arrest, A2 also voluntarily gave a confession, and based on the disclosure statement, he recovered wooden log (M.O.2) and bike (M.O.1) in the presence of

witnesses and based on his confession, he also arrested A1 and recovered material objects, viz., blood stained soil (M.O.5) and sample soil (M.O.6) and sent the same for chemical examination, thereafter, he handed over the investigation to PW.19.

(x) PW.19 - Inspector of Police recorded the statements of postmortem Doctor and other witnesses. In the mean time, as he was transferred, the investigation was continued by PW.21.

(xi) PW.21, recorded the statement of Scientific Officer, Forensic Department and other witnesses and after completion of investigation, he 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 as many as 21 witnesses and exhibited 29 documents and 10 material objects.

4. Out of the witnesses examined, PW.1 is one of the brother of the deceased. He spoke about the quarrel between A1 and deceased and lodging of complaint Ex.P1, by him, after the death of the deceased. PW.2 is another brother of the deceased. According to him, on 10.09.2012, at about 9 p.m, he saw both A2 and A3 along with the deceased went in a bike (M.O.1) and he also found a wooden log in the bike. PW.3 is a nephew of the deceased. According to him, on 10.09.2012 at about 12 p.m, he saw A2 and A3 walking near the deceased's house, and subsequently, they went away. PW.4 is a petty shop owner. According to him, both A2 and A3 along with another person purchased water bottles and pickle from his shop on 10.09.2012 at about 9.40 p.m. PW.5 is a Salesman in TASMACH shop. According to him, on the date of occurrence at about 9.30 p.m, A2 and A3 purchased liquor from the shop. PW.6 is a watchman nearby the scene of occurrence and according to him, on the date of occurrence, he saw A2, A3 and another person consuming liquor in a vacant site. PW.7 is a witness to the Observation Mahazar (Ex.P2) and also recovery of material objects M.O.3 - water bottles, M.O.4 - plastic tumbler. PW.8 is the Driver in 108 Ambulance. He took the deceased to the Government Hospital and admitted him. PW.9 is a Head Constable, who submitted the First Information Report to the Court. PW.10 - Head Constable submitted the material objects for chemical examination to the Forensic Lab. PW.11 - Village Administrative Officer of Kandampatti village, before whom A3 appeared and voluntarily gave confession. PW.12, is a Scientific Officer in the Forensic Department. She examined the visceral parts of the deceased and gave a report (Ex.P13). PW.13 - Doctor conducted postmortem (autopsy) on the dead body. PW.14 is the Photographer, who had taken photographs of the dead body. PW.15 - Special Sub Inspector of Police, registered the complaint.

PW.16 turned hostile. PW.17 is a person living near the scene of occurrence. PW.18, Inspector of Police commenced investigation. PW.19 - Inspector of Police continued investigation. PW.20 - Doctor admitted the deceased in the Hospital and issued Accident Register (Ex.P26). PW.21 - Inspector of Police concluded the investigation 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 as false. The accused examined one Dr.G.Sivakumar as DW.1 and marked case sheet of the deceased to show the treatment given to the deceased as Ex.D1.

6. Considering the above materials, the trial Court convicted the accused and sentenced them as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

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 a 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 case in hand. In the instant case, the prosecution mainly relies upon the extra-judicial confession given by A3, apart from the evidence of PW.2, who has stated to see A2 and A3 along with the deceased together before the occurrence. According to the Prosecution, A1 is the wife of the deceased; she, unable to bear the harassment of the deceased, engaged A2 and A3 to murder the deceased and also paid money to them; A2 and A3 took the deceased and all of them consumed liquor and thereafter, A2 and A3 attacked the deceased with wooden log and stone and caused his death. Thereafter, A3 appeared before PW.11 and gave a confession admitting his guilt and also the involvement of A1 and A2 in the crime. It is settled position of law that the extra-judicial confession cannot be used against the co-accused {1952 AIR 159 (Kashmira Singh ..vs.. State of Madhya Pradesh)}. Hence, the above confession cannot be used against A1 and A2. Even the confession of A3 also does not inspire the confidence of this Court. PW.11 - Village Administrative Officer is a stranger to A3 and there was no reason for the accused to repose confidence on PW.11, and to give confession before her. Apart from that, as per the confession, A2, A3 and deceased consumed liquor and when the deceased was in intoxicated mood, A2 and A3

attacked him. But the medical evidence does not corroborate the above statement. The Toxicological Report (Ex.P13) shows that there was no alcohol and no poison deducted in the visceral part. The postmortem Doctor also gave opinion that the deceased would appeared to have died of multiple injuries. Hence, it also creates a doubt whether the extra-judicial confession was voluntary, and the extra-judicial confession suffers from material discrepancies. Hence it is highly unsafe to rely upon the extra-judicial confession to convict the accused.

10. Apart from that, the another circumstance relies upon by the prosecution is 'last seen theory'. PW.2 one of the brothers of the deceased, according to him on 10.09.2012, at about 9 p.m, he saw A2, A3 and the deceased went in a motor bike near one Ponnamma gate. But PW.3, a nephew of the deceased stated to have seen A2, A3 and the deceased in the night at about 12 p.m, near the house of the accused. Hence, there is a contradiction between the evidences of PW.2 and PW.3 regarding the same. Hence, their evidences cannot be relied upon to come to a conclusion that A2, A3 and deceased were together at or about the occurrence. Therefore, the prosecution did not unerringly prove the guilt of the accused.

11. 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, unerringly pointing the guilt of the accused. Hence, the accused are entitled for acquittal.

12. In the result, the Criminal Appeals are allowed. The conviction and sentence imposed on the accused on 27.07.2015 in S.C.No.60 of 2014 on the file of the learned III Additional District and Sessions Judge, Salem are set aside. All the accused are acquitted and fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

सत्यमेव जयते

s/d-

Assistant Registrar (CS-IV)

//True Copy//

Sub-Assistant Registrar

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To

1. The III Additional District and Sessions Judge,
Salem.
2. The Inspector of Police
Sooramangalam Police Station
Salem District.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Director General of Police,
Mylapore.
5. The District collector, Coimbatore.
6. The District collector, Vellore
7. Judicial Magistrate No II, Salem
8. -do- Thro The Chief Judicial Magistrate, Salem.
9. The Superintendent, Special Prison for Women, Vellore
10. The Public Prosecutor,
High Court, Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras

+2 CC to Mr. R. Nalliyappan, Advocate, sr 41415 & 40356
+1 CC to Mr. A. Karthikeyan, Advocate sr 41408

WEB COPY Common Judgment in
Crl.A.Nos.491, 685 and 697 of 2015

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