

BAIL SLIP

The Appellant/Accused Viz., Dhayabalan, S/o. Arunachalam was directed to be released on bail as per the Order of this Court dated 21.09.2015 and made in M.P.No.1 of 2015 in CrI.A.No.526 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 29.06.2016

CORAM:

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

CrI.A.No.526 of 2015

Dhayabalan

... Appellant

Vs.

State, by

The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram.
(Crime No.685 of 2012)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 29.12.2014 passed by the learned Sessions Judge, Magila Neethimandram, (Fast Track Mahila Court), Villupuram, in S.C.No.461 of 2013.

For Appellant : Mr.M.L.Ramesh

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

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant, in this appeal, is the sole accused in Sessions Case No.461 of 2013, on the file of the learned Sessions Judge, Magila Neethimandram, (Fast Track Mahila Court), Villupuram. He stood charged for offences under Sections 302 and 201 IPC. The Trial Court, by judgement dated 29.12.2014, convicted the appellant/accused for the offence under Section 302 IPC, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.1000/-, in default, to undergo simple imprisonment for one year and convicted the appellant/accused for the offence under Section 201 IPC, and sentenced him to undergo 7 years rigorous imprisonment and

also imposed a fine of Rs.1000/-, in default, to undergo simple imprisonment for one year. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased, in this case, one Alamelu is the wife of the accused. The accused is a drunkard and suspecting the fidelity of the deceased, he used to quarrel with her, frequently. The deceased was working in a brick chamber at Thirupachanur. On 10.06.2012, at about 5.00 p.m., the accused went to the said brick chamber to see the deceased and there was a quarrel between them and during the quarrel, the accused chased the deceased and strangled the deceased with a towel and caused her death. Thereafter, he carried the body to a casuarina grove and threw it near a water channal. P.W.1, is the father of the deceased and after noticing that the deceased was missing, he searched for her and on the next day, he got a message from P.W.1 that his daughter was found dead. Immediately, he reached the place where the body was found and thereafter gave a complaint, Ex.P1, before the respondent police.

(ii) P.W.14, the Sub Inspector of Police, working in the respondent police, on 12.06.2012, received the complaint from P.W.1 and registered a case in Crime No.685 of 2012 for the offence under Section 302 IPC and prepared FIR, Ex.P11 and sent the same to the Judicial Magistrate Court concerned and copies thereby to higher police officials. P.W.15, the Inspector of Police, working in the respondent police, on 12.06.2012 at about 11.30 a.m., on receipt of the FIR, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P2], a Rough Sketch [Ex.P12] and recovered Bloodstained soil, M.O.2 and Sample soil, M.O.3, in the presence of witnesses. Thereafter, he conducted inquest over the dead body in the presence of panchayatars in the casuarina grove between 1.30 p.m., and 3.00 p.m., and prepared an inquest report, Ex.P13 and examined the witnesses and recorded their statements. Then, he sent the body to the Government Hospital, Villupuram, for post mortem through P.W.12, the Head Constable. On 12.06.2012 at about 5.00 p.m., the accused appeared before P.W.8, V.A.O, and gave an extra-judicial confession admitting his guilt. P.W.8 recorded the confession statement, Ex.P4 and he produced the accused before the Inspector of Police, P.W.15. P.W.15 arrested the accused and on such arrest, he voluntary gave a confession, based on the disclosure statement, Ex.P5, P.W.15 seized a piece of cloth, M.O.1, used for strangulating the deceased and thereafter remanded the accused for judicial custody.

(iii) P.W.9, Doctor, working in the Government Hospital, Villupuram, conducted postmortem on the dead body of the deceased and found the following injuries:-

"External examinations:

All finger nails are flush in colour. Patchy feeling of Antilles seen over face, neck and abdomen. Upper and lower limbs Bullae of varying size and shape seen over chest abdomen, Right upper limb and thighs. Face swollen, eyes propounded out. Tongue and protruding out between the teeth - 2 cm long dark brown colour. Abdomen swollen. Maggots seen over the body surface. A transverse ligature mark of length 18 cm seen over the front sides of the centre of the neck. Breadth of the ligature 3-4 cm the upper border of the ligature is 8 cm below the elvis and the lower border is 6 cm above the supernaternal notch. The right end of ligature mark is surface from right ear and the Left end is 7 cm below Left ear. On opening of the neck: contusion of muscles on both sides."

He opined that the deceased would appear to have died of asphyxia due to strangulation. He issued Post-mortem report, Ex.P8.

(v) P.W.15, continued the investigation, examined the Doctor who conducted postmortem and recorded his statement and after completion of investigation, he laid the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 15 witnesses were examined, 18 documents and 4 material objects were marked.

4. Out of the above witnesses examined, P.W.1 is the father of the deceased. He has spoken about the quarrel between the accused and deceased and according to him, the accused suspecting the fidelity of the deceased, murdered her and therefore he gave a complaint, Ex.P1. P.W.2, a resident of Tirupachanur, saw the dead body of the deceased in the casunaria grove and immediately informed the same to P.W.1. P.W.3, another resident of Tirupachanur, who knew both the accused and the deceased has stated that on 10.06.2012, he saw the accused and the deceased quarrelling with each other and after hearing the death news, he saw the dead body, but, he did not inform anybody about the quarrel. P.W.4 turned hostile. P.W.5 is the brother of the deceased. He has spoken about the quarrel between the accused and the deceased. P.W.6 is a resident of Tirupachanur Village. He has spoken about the quarrel between the accused and the deceased. P.W.7 is a witness to the observation mahazar, Ex.P2 and also for recovery of bloodstained soil, M.O.2 and sample soil, M.O.3., P.W.8, is the Village Administrative Officer, Tirupachanur Village, before whom the accused is said to have appeared and gave extra judicial confession and he is also a witness to the

recovery of M.O.1, towel. P.W.9, Doctor, working in the Government Hospital, Villupuram, has stated that he conducted postmortem on the dead body of the deceased and issued postmortem certificate, Ex.P8. P.W.10, Scientific Officer, working in the Forensic Department, Chennai, has deposed that he examined the bloodstained material objects and gave report, Ex.P10. P.W.11, is the Village Assistant, working along with P.W.8. According to him, he was also present when the accused gave extra judicial confession. P.W.12, is the Head Constable working in the respondent police. According to him, he accompanied the dead body to the Hospital and identified the same for postmortem. P.W.13, is the Head Constable, working in the respondent police, and according to him, he submitted the FIR to the Judicial Magistrate Court. P.W.14, is the Sub Inspector of Police, working in the respondent police, who, on receipt of the complaint, registered the case. P.W.15, is the Investigating Officer, and he has stated that he conducted investigation, examined the witnesses and recorded their statements, arrested the accused, recovered material objects and after completion of investigation, filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the appellant/accused for the offences as stated in the first paragraph of this judgement. Challenging the above conviction and sentence, the appellant/accused is before this Court.

7. We have heard Mr.M.L.Ramesh, learned counsel for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

8. It is a case of circumstantial evidence. It is settled principle of law that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubt 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. Keeping this broad principles in mind, we analyse the facts of the present case. The first circumstance relied upon by the prosecution is the motive. P.W.3 is a person said to have seen the accused and the deceased quarrelling with each other before the occurrence. According to him, on 10.06.2012 at about 6.00 p.m., he saw both the accused and the deceased quarrelling with each other and he went away, and then, he heard the news about the death of the deceased. But, he did not inform anybody about the quarrel and only after a long time, during

the investigation, he has disclosed about it. Hence, it is difficult to believe the evidence of P.W.3 and there is no acceptable reason as to why he did not disclose the same, for such a long time.

9. The next circumstance relied upon by the prosecution is the extra judicial confession said to have been given by the accused before the Village Administrative Officer. P.W.8 is a stranger. There is no need for the accused to go before him and to make any such confession before P.W.8. It also creates serious doubt about the genuineness of the said extra judicial confession. Extra judicial confession, being a weak piece of evidence, unless it is corroborated from any other independent source, it is difficult to believe extra judicial confession. In this case, there is no other independent source to corroborate the extra judicial confession said to have given by the accused before P.W.8. Therefore, it is unsafe to rely upon the said extra judicial confession for convicting the accused. In the above circumstances, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the appellant is entitled for acquittal.

10. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned Sessions Judge, Villupuram, in Sessions Case No.461 of 2013 is set aside and the appellant/accused is acquitted from the charges levelled against him and bail bond, if any, executed by him shall stand cancelled, and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Sessions Judge,
Magila Neethimandram,
(Fast Track Mahila Court),
Villupuram.
2. Do Through the Chief Judicial Magistrate,
Villupuram (For Information)
3. The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram.

4. The Superintendent,
Central Prison,
Cuddalore.
5. The District Collector,
Villupuram.
6. The Director General of Police,
Mylapore, Chennai 04.
7. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.L.Ramesh, Advocate, S.R.No.36568

Cr1.A.No.526 of 2015

VD(CO)
CA(12/01/2017)



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