

BAIL

The appellant i.e.A.Amarajothi in Crl.Appeal No.527 of 2015 was directed to be released on bail vide order of this Court, dated 09.09.15 made in Crl.M.P.No.1 of 2015 in Crl.A.527 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.527 of 2015

A.Amarajothi ... Appellant/Accused

Vs

State represented by
The Inspector of Police,
Velipalayam Police Station,
Nagapattinam District,
Cr.No.46/2013 ... Respondent/Complainant

Common Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records relating to the proceedings in S.c.No.133 of 2013 on the file of District and Sessions Judge, Nagapattinam and set aside the order of conviction, dated 29.07.2015.

For Appellant : Mr. G.Sankaran

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

JUDGEMENT

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

A1, in S.C.No.133 of 2013 on the file of the learned District & Sessions Judge, Nagapattinam, is the appellant

herein. He along with another accused stood charged for an offence under Section 302 I.P.C. The trial Court found the appellant/A1 guilty for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years and acquitted the second accused from the charge under Section 302 IPC. Challenging the said conviction and sentence, the appellant/A1 is before this Court with this Criminal Appeal.

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

The deceased one Arivazhagan in this case was the husband of A1/appellant. A2 in this case is sister of A1. A2 was married to one Rajendran, she deserted him and living along with A1 and the deceased. Since the deceased was leading a wayward life, there were frequent quarrels between A1 and the deceased. The deceased also demanded money from A1 and A2. On 19.01.2013, there was a quarrel between the deceased and A1 and the deceased had beaten the accused. Hence, at about 12.00 p.m., both the accused attacked the deceased with aruval and knife indiscriminately and caused his death.

3. P.W.1 is the brother's son of the deceased. At about 6.30 p.m., he went to the house of the deceased and found him dead and A1, A2 along with children were missing from the house. Hence, he has given a complaint(Ex.P.1) before the respondent police.

4. On receipt of the above complaint, P.W.13, Inspector of Police, attached to the respondent police, registered a case in Crime No. 46/2013 under Section 302 IPC. Ex.P.15 is the First Information Report and he forwarded both the documents (Ex.P.1 and Ex.P.15) to the Court. Then, P.W.13 proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.16) and Rough Sketch (Ex.P.17) and also recovered the blood stained tiles (M.O.5), sample tiles (M.O.6), blood stained pillow(M.O.7), blood stained Saree(M.O.8) and two blood stained bed sheets (M.Os.9 & 10) under Mahazar, Ex.P.19, from the scene of occurrence, in the presence of P.W.5 and another witness. Subsequently, he conducted inquest on the body of the deceased in the presence of panchayathars and prepared inquest report Ex.P.20 and sent the body for postmortem to Government General Hospital, Nagapattinam.

5. P.W.8, the Doctor, conducted postmortem on the body of the deceased and found the following injuries:-

" External injuries:

1.Laceration in the right side of scrotum 10x5x2 cm, testis protruding out hanging by the cord.

2. Scalp Lacerations:

Laceration in the occipital region, lower part, central near hairline 3 x 1 x 1 cm.

3. Laceration in the occipital region, central portion in midline 4 x 1 x 1 cm.

4. Laceration in the left parieto occipital region 14 x 2 x 1 cm.

5. Laceration in the left fronto parietal region 3 x 1 x 1 cm

6. Laceration below the previous laceration in parietal region 2 x 1 x 1 cm.

7. Laceration in left parieto-temporal region 6 x 1 x 1 cm.

8. Laceration in left parieto temporal region below the previous laceration 5 x 1 x 1 cm.

9. Laceration in the left occipito temporal region 3 x 1 x 1 cm.

10. Laceration in the left side of neck 14 x 5 x 4 cm large vessels are seen cut.

11. Laceration in right ear just above the ear lobe 2 x 0.5 x 0.5 cm.

12. Laceration in right index finger distal phalanx 1x0.5x0.5 cm.

13. Laceration in left elbow 1 x 0.5x0.5 cm.

14. Laceration in left wrist dorsum 1 x 0.5 x 0.5 cm.

15. Abrasion present in right side of forehead 5 x 4 cm and right cheek 3 x 3 cm.

16. Multiple scratch marks present in both sides of neck, shoulder "

Ex.P.7 is the Postmortem certificate. He gave opinion that the deceased appears to have died of injury to large vessels in the neck leading to blood loss, and hypovolemic shock due to injury

to vital organ, brain.

6. In the meantime, on 20.01.2013, at about 11.30 a.m., both the accused appeared before P.W.12, the Village Administrative Officer and gave extra judicial confession admitting their guilt and P.W.12 recorded the statement given by both the accused and produced them before P.W.13.

7. P.W.13 arrested both the accused and on such arrest, A1 voluntarily gave a confession statement and based on the disclosure statement, P.W.13 recovered blood stained nighty (M.O.2), and aruval (M.O.1) under the cover of Mahazar, Ex.P.13, in the presence of witnesses. A2 also had given a voluntary confession and based on the disclosure statement of A2, he recovered blood stained knife (M.O.3), and a saree (M.O.4) under the cover of Mahazar, Ex.P.14. P.W.13, proceed with the investigation, recorded the statement of witnesses and the doctor, who conducted postmortem and after completion of investigation, he laid charge sheet against both the accused.

8. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 13 witnesses were examined and 21 documents were exhibited, besides 10 Material Objects.

9. Out of the witnesses examined, P.W.1 is the brother's son of the deceased. According to him, there were frequent quarrel between the deceased and both the accused. On the date of occurrence, in the morning, there was a quarrel between the deceased and A2 and P.W.1 intervened and compromised them. At about 6.30 p.m., P.W.1 along with his father, P.W.6, went to the house of the deceased and found him dead with multiple injuries. Hence, immediately, P.W.1 gave a complaint (Ex.P1).

10. P.W.2 is the brother of P.W.1. He also spoke about the quarrel between the accused and the deceased. P.W.3 is the warden in the Government backward class ladies hostel, where A2 was also working. P.W.4 is the Mahazar witness and he turned hostile. P.W.5 also turned hostile. P.W.6 is the brother of the deceased. He has spoken about the quarrel between the accused and the deceased and he along with P.W.1 saw the deceased in his house with severe injuries and also found the accused along with children missing from the house.

11. P.W.7 is the Head Constable, working in the sniffer dog division of the Armed Reserve Police at Nagapattinam. He engaged sniffer dogs to identify the accused, it yielded no result. P.W.8, the doctor, conducted postmortem autopsy on the dead body of the deceased and gave postmortem certificate Ex.P.7. P.W.9 is the Assistant Director in the Forensic Science

department. He examined blood stained material objects. P.W.10 is the Scientific Officer in the Regional Forensic Department, Tanjore. He examined the visceral parts of the deceased and gave a report Ex.P.8. P.W.11, Head Constable, identified the dead body of the deceased for postmortem autopsy. P.W.12 is the Village Administrative Officer, before whom the accused gave extra judicial confession. P.W.13 is the investigating officer, conducted investigation, recorded the statement of the witnesses and recovered the material objects and after completion of investigation, he 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 of the witnesses nor did they mark any documents on their side. Their defence was a total denial.

13. Having considered all the above, the trial Court found A1/Appellant guilty under the said charge and accordingly, sentenced him as detailed in the first paragraph of this judgment and acquitted A2. Aggrieved over the same, A1/Appellant is before this Court with this Criminal Appeal.

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

15. It is a case of circumstantial evidence. The prosecution mainly relies on the extra judicial confession given by the appellant/A1, before P.W.12, the Village Administrative Officer. It is seen from the records that both the accused appeared before P.W.12 20.01.2013, at about 10.00 a.m. and A1 had given a confession admitting the guilt. After recording the statement, he produced both the accused before P.W.13 and he arrested them on 20.01.2013, at about 11.30 a.m.

16. According to P.W.1, on the date of occurrence, namely 19.01.2013 itself, the respondent police arrested both the accused and taken them to police Station and the police also handed over the children of the deceased and key of the house to P.W.1. From the evidence of P.W.1, it is clear that on 19.01.2013 itself both the accused were arrested and hence, the extra judicial confession said to have been given before P.W.12 on the next day, i.e., on 20.01.2013 cannot be voluntary because at the time of giving the extra judicial confession, both the accused were in the custody of the police, hence it cannot be accepted. Hence, the subsequent recovery of the weapon used in the occurrence also cannot be believed. In the above circumstances, the arrest of the accused and recovery of M.Os.1 to 4 on 20.01.2013 also cannot be believed. Except that, there is no other circumstance available to prove the guilt of the

accused. In the above circumstances, we are of the considered view that the prosecution failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the appellant/A1 is entitled for acquittal.

17.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the A1/appellant by the learned District and Sessions Judge, Nagapattinam in S.C.No.133 of 2013, dated 29.07.2015, is set aside and A1/appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by A1/appellant, shall stand discharged.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

- 1.The District and Sessions Judge,
Nagapattinam.
- 2.The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate NO.2 , Nagapattinam.
4. Do thro the Chief Judicial Magistrate,
Nagapattinam.
5. The Inspector of Police,
Velipalayam Police station,
Nagapattinam District.
6. The Superintendent, Central Prison,
Trichy.
- 7 The Section officer, Criminal Section,
High Court, Madras.
- 8 The Director General of Police,
Mylapore, Chennai 4.
- 9 The District Collector,
Nagapattinam.

+1 cc to Mr.G.Sankaran, Advocate vide SR.NO. 38359

Crl.A.No.527 of 2015

MMP 30.12.2016