

BAIL SLIP

The Appellant/Accused namely Boopathy S/O. Kandaswamy be and hereby was directed to be released or bail in MP 1/2015 in CRA.606/2015 dt 9/2/16.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2016

CORAM:

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

Criminal Appeal No.606 of 2015

Boopathy
Appellant

Vs

State represented by
The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
Cr.No.983/2002
Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed by the Principal Sessions Judge, Salem in S.C.No.95 of 2004, dated 14.02.2014.

For Appellant : Mr.R.Ganesh

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

JUDGEMENT

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

A1 in S.C.No.95 of 2004 on the file of Principal Sessions Judge, Salem, is the appellant herein. Totally, there

are two accused, since A2 was absconding, the case was split up, and A1 alone faced trial. A1/appellant stood charged for the offences under Sections 302 and 201 I.P.C. The trial Court convicted A1/appellant, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC, and sentenced him to undergo rigorous imprisonment for three years for the offence under Section 201 IPC, and the trial Court also ordered the sentence to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Arumugam, is the brother of P.W.6. P.W.1 is another brother's son of the deceased. There is previous enmity between the accused and the deceased. Earlier the deceased owned a lorry, in which, the accused was working as a cleaner. In the year 1996, while the lorry was transporting textile goods to Bangalore, the lorry was totally destroyed by fire along with goods. Earlier the accused on the impression that it was an accident. But, subsequently he had suspicion that the accused was the cause for the said accident. In view of the same, there were frequent quarrel between the accused and the deceased.

3. In the above circumstances, on 09.10.2002, the body of the deceased was found in a well, which belongs to one Perumal Gounder. P.W.1, the brother's son of the deceased, on hearing the news, identified the deceased and immediately, he gave a complaint (Ex.P.1) against the accused before the respondent police.

4. Based on the complaint, P.W.9, the Sub-Inspector of Police, registered a case in Crime No.983 of 2002, for an offence under Section 302 IPC, against both the accused and sent the First Information Report (Ex.P.8), to the Judicial Magistrate and also to the Inspector of Police.

5. On receipt of the First Information Report, P.W.10, the Inspector of police, proceeded to the scene of occurrence, at about 12.30 p.m., and prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.9) in the presence of P.W.3 and another witness and made arrangements for taking photographs of the scene of occurrence. Then, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Inquest Report Ex.P.10, and sent the body of the deceased for postmortem to Government Mohan Kumara Mangalam Medical College Hospital, Salem.

6. P.W.5, the Doctor, working in the Government Mohan Kumara Mangalam Medical College Hospital, Salem, on

09.10.2002, at 5.15 p.m., conducted postmortem on the dead body of the deceased and found the following injuries:-

" Injuries:

1. An oblique lacerated injury present on left side of forehead 8cm x 3.5 cm x 0.5cm.
2. Abrasion on left cheek 4 x 2 cm.
3. Black eye present on left side
4. Fracture of left temporal bone 8 cm in length, comminuted fracture.
5. Subdural and subarachnoid hemorrhage present over both cerebral hemispheres "

Ex.P. 7 is the Postmortem certificate. He was of the opinion that the deceased died of head injuries.

7. P.W.10, recovered the blood stained soil (M.O.6) and sample soil (M.O.2) in the presence of the witnesses and recorded the statement of other witnesses. On 10.10.2002, at about 12.00 p.m., he arrested the accused and on such arrest, the accused voluntarily gave a confession(Ex.P.4), and based on the disclosure statement, P.W.10 recovered the iron rod (M.O.8), and a blood stained full hand shirt (M.O.9) under Ex.P.5, mahazar. After examining the doctor, who conducted postmortem and on completion of investigation, he laid charge sheet against 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, on the side of the prosecution, as many as 10 witnesses were examined and 15 documents were exhibited, besides 11 Material Objects.

9. Out of the witnesses examined, P.W.1 is the brother's son of the deceased. According to him on 09.10.2002, the dead body of the deceased was found in the dried well of one Perumal Gounder and after identifying the body, on suspicion, P.W.1 has given a complaint before the respondent police. He also spoke about the motive between the accused and the deceased.

10. P.W.2 is the person, who knew the accused and the deceased. According to him, before the occurrence, the deceased was talking to him and thereafter, the accused followed him. On the next day, P.W.2 heard the news that the deceased was found dead in the Well. P.W.3 is a witness to the Observation Mahazar and recovery of M.O.6 and M.O.7 and also witness to the arrest of the accused and recovery of M.O.8 and M.O.9. P.W.4, photographer, had taken photographs of the dead body of the deceased at the scene of occurrence. P.W.5 is the Doctor, who conducted postmortem on the dead body of the deceased and gave a postmortem report, Ex.P.7.

11. P.W.6 is one of the brother of the deceased. He spoke about the motive. P.W.7 saw the accused and the deceased together before the occurrence. P.W.8, Head Constable, who accompanied the dead body of the deceased to the Government Mohan Kumara Mangalam Medical College Hospital, Salem and identified the dead body for postmortem. P.W.9, Sub Inspector of Police, registered the complaint. P.W.10, Inspector of Police, conducted investigation, arrested the accused, recovered the material objects and recorded the statement of the witnesses. After completing investigation, he laid charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any of the witnesses nor did he mark any documents on his side.

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

14. We have heard Mr. R.Ganesh, 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. This is a case of circumstantial evidence. It is a settled principle of law that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts 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.

16. Keeping the above principle in mind, we analyze the facts of the present case. In the instance case, the prosecution relied upon the one and only circumstance, viz, P.W.2 and 7 said to have seen the accused following the deceased before the occurrence. Except that circumstance, there is no other circumstance available to connect the murder with the accused. Even as per the evidence of P.Ws.2 and 7, they have not seen the accused and the deceased together. According to P.W.2, he was talking to the deceased for some time. Thereafter, the deceased left and he saw the accused following the deceased. But, according to P.W.7, when he was taking dinner in the hotel, the deceased came and thereafter, both the accused came there.

17. From the above evidence, it cannot be concluded

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that it is only the accused, who has committed the crime. Except that, there is no other evidence available to connect the accused with the crime. 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 accused is entitled for acquittal.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Principal Sessions Judge, Salem, in S.C.No.95 of 2004, dated 14.02.2014, are set aside and appellant/accused is acquitted. Bail bond, if any, shall stand discharged. The fine amount, if any paid, shall be refunded to him.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

To

1. The Judicial Magistrate II, Sangagiri.
 2. -do the chief Judicial Magistrate, Salem.
 3. The Principal Sessions Judge, Salem.
 4. The Inspector of Police, Magudanchavadi Police station, Salem.
 5. The Superintendent, Central Prison, Salem.
 6. The District Collector, Salem.
 7. The Director General of Police, Mylapore-4.
 8. The Public Prosecutor, High Court, Madras.
- + 1CC to Mr.R.Ganesh, Advocate (Sr.No.38520)

CrI.A.No.606 of 2015

KJI (CO)
CB(23-01-2017)