

Bail Slip

The Appellant in Criminal Appeal No.624 of 2015 (Sole Accused in S.C.No.102 of 2013 on the file of IV Additional District and Sessions judge, Coimbatore) was released on bail vide order of this Court, dated 06/01/2016, made in CrI.M.P.No.1 of 2015 in CrI A.No.624 of 2015.

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

Criminal Appeal No.624 of 2015

Sivakumar

... Appellant

-vs-

State Rep. by
Inspector of Police
Kottur Police Station,
Coimbatore.

... Respondent

This Criminal Appeal has been preferred under Section 374(2) of CrI.P.C to set aside the conviction and sentence imposed vide judgment dated 25.08.2015 made in S.C.No.102 of 2013 on the file of the IV Additional District and Sessions Judge, Coimbatore, by allowing this appeal.

For Appellant : Mr.S.Nagarajan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.102 of 2013 on the file of IV Additional District and Sessions Judge, Coimbatore. He stood charged for offence under Sections 302 and 201 IPC. By judgment, dated 25.08.2015, the Trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for one year for the

offence under Section 302 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 201 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

The deceased in this case was one Ms.Sowmiya. The appellant is her husband. Out of the wedlock, they have a son by name Aasath, aged 4 years at the time of occurrence. The accused and the deceased belonged to two different communities. They married out of love for each other. Initially, they lived along with the parents of the accused as a joint family. Later on, the deceased insisted for separate living and accordingly, the accused, the deceased and their son were living together separately.

3. On 05.07.2012, the marriage of cousin of the deceased was to take place in Pappampatti village. On 02.07.2012, to attend the function relating to the said marriage at Pappampatti village, the deceased was getting ready. As a matter of fact, on the previous day, that was on 01.07.2012, the deceased had given Rs.5,000/- to the accused and wanted him to purchase a new saree for her to wear at the time of the function. But the accused did not purchase any such saree as desired by the deceased. Around 2.45 am on 02.07.2012, when the deceased was getting ready to go to Pappampatti village, she demanded back Rs.5,000/- from the accused. She further scolded the accused for his failure to purchase a saree for her. She abused him in obscene language. She then went to the extent of calling him as an impotent and unfit for marital life. It is further alleged that in the said quarrel, the deceased kicked the accused on his private part. Enraged over the same, it is alleged that the accused took a iron rod lying in the house and attacked the deceased on her head. The deceased died instantaneously. In order to make it appear that the deceased had been done to death by somebody, he created a scene as though the valuable properties such as jewels were stolen away by some robbers. He put the clothes from the bureau in disarray on the floor. He tied the deceased and put the body underneath the cot. He removed the Thali chain and other personal apparel of the deceased and put the same on the floor as though they had fallen in a struggle. Then, he gave a bravo that some robbers entered into the house attacked his wife, robbed the jewels and also attacked and tied him.

4. The occurrence was not witnessed by any one. P.W.1 is the brother of the deceased. According to him, on 02.07.2012, around 5.15 a.m., he received a message that the deceased was no more.

Immediately, he rushed to the house of the deceased. The accused told him that four persons trespassed into the house, attacked the deceased and also tied him with wire and decamped with the properties. Believing the said words, P.W.1 went to Kottur Police Station and made a complaint at 9.00 a.m. on 02.07.2012. Since he doubted the statement made by the accused, in the complaint, he stated that the above statement made by the accused may be false. On receipt of the said complaint, P.W.13, the then Sub-Inspector of Police, registered a case in Crime No.155 of 2012 under Sections 302 and 201 IPC. Ex.P13 is the FIR. He forwarded both the documents viz., Complaint [Ex.P1] and FIR [Ex.P13] to the Court, which were received by the learned Magistrate at 10.30 a.m. on 02.07.2012.

5. P.W.14 took up the case for investigation. On 2.7.2012, at 10.00 a.m., he went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.8 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. Then he conducted inquest on the body of the deceased between 11.45 a.m. and 2.45 p.m. and forwarded the same for post-mortem.

6. P.W.9 - Dr.S.Kamalam, conducted autopsy on the body of the deceased on 02.07.2012 at 3.50 p.m. She found the following injuries:-

"1.Laceration 2 x 1.5 x 1 cm noted over upper part of right ear.

2.Laceration 4 x 2 cm Bone deep noted over right tempero occipital region.

3. Abrasion 2 x 0.5 cm in length noted over right side dorsum of nose.

4. A linear pressure abrasion 5 x 0.25 cm (reddish in colour) seen over the middle of lateral aspect of left side neck. "

Ex.P6 is the Post-mortem Certificate. She gave opinion that the injuries found on the body of deceased could have been caused by an iron rod like M.O.7.

7. When the investigation was in progress, it is alleged that the accused on his own appeared before P.W.10, the then Village Administrative Officer of Diwansa Pudur Village. On such appearance, he gave voluntary confession confessing that he only killed his wife. However, P.W.10 did not reduce the same into writing. He took the accused and produced before P.W.14. He arrested the accused at 5.45 p.m. on the same day. On such arrest, he gave voluntary confession, in which he disclosed that

he had hidden the thali chain and lungi beneath the cot, where the dead body was lying. In pursuance of the same, he took the police and other witness and produced the material objects. He recovered the same under a Mahazar. P.W.14 sent the accused to the Court for judicial remand. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges under Sections 302 and 201 IPC against the accused. He denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined; 15 documents were exhibited, besides 12 Material Objects were marked.

9. Out of the said witnesses, P.W.1 is the brother of the deceased. He has stated that after hearing that the deceased was dead, he went to the house of the deceased. The accused told him that four persons barged into the house, attacked the deceased and decamped the jewels and attacked him also after tying him. He has also stated about the complaint made by him. P.W.2 - neighbour of the deceased has stated that on 02.07.2012 around 4.30 a.m., he went to the house of the deceased along with P.W.3. They found that the hands of the accused were tied and he was lying in the house. The dead body of the deceased was also found there. P.W.4 is the mother of the deceased. She has not stated anything incriminating against the accused. P.W.5 is the father of the deceased. He has also not stated anything incriminating against the accused. P.W.6 has stated that on 1.7.2012 when he enquired the deceased as to whether she had any plan to go over to Pappampatti to attend the marriage, the deceased told him that she would come on 2.7.2012. Therefore, around 3.00 a.m., according to P.W.6 when he went to the house of the deceased, he found that there was quarrel between the accused and the deceased. He further stated that he heard the distress call of the deceased also. P.W.7 has also stated the same fact, as according to him, he accompanied P.W.6. P.W.8 has spoken about the preparation of observation mahazar and rough sketch. P.W.9 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.10 has spoken about the surrender of the accused before him on 02.07.2012 and the oral confession allegedly made by him and the disclosure statement made to the Police. He further stated about the recovery of material objects on the disclosure statement made by the accused. P.W.12 has stated that he took the dead body and handed over the same to the doctor for post-mortem. P.Ws.13 and 14 have spoken about the registration of the case, investigation done and the final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, he denied the same as false. On his side, he examined few witnesses and marked as many as

four documents. D.W.1 Thiru.V.Thirumoorthy has stated that on 02.07.2012, at 6.00 a.m., the accused was brought to his hospital for treatment. The accused told him that around 3.00 a.m. on 02.07.2012, at his house, 3 to 4 unknown persons attacked him. He found blunt injuries on the body of the accused and also abrasions. Exs.D1 to D3 are the medical records pertaining to the treatment given to the accused. D.W.2 is the relative of the deceased. He has stated that in the Daily Thanthi, dated 03.07.2012, there was a news item that the deceased had been attacked with a iron rod by her husband. The said news item has been marked through D.W.2.

11. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this Judgment. Aggrieved over the same, the appellant is before this Court with this appeal.

12. As we have already narrated herein above, the only evidence against the accused is that he appeared before P.W.10 on 2.7.2012 at 4.00 p.m. and made a voluntary confession. The further material against the accused is that P.W.10 produced him before P.W.14, before whom he made disclosure statement and out of which, thali chain and other material objects were recovered.

13. The learned counsel for the appellant would submit that these evidences are only fabricated evidences. There is no truth in the same. The learned counsel for the appellant would refer to the evidence of D.W.1, who has stated that on 2.7.2012 the accused was admitted as inpatient in his hospital with injuries and he treated him. It is the evidence of P.Ws.2 and 3 that when they went to the house of the deceased, they found the deceased lying with injuries and this accused was also found lying with injuries and both his hands were tied together with a wire. They had cut and removed the wire and relieved the accused. That is how they had taken him to the hospital. They recovered the jewels which were lying beneath the cot where the dead body of the deceased was also lying. In the light of these evidences, it is difficult to believe that the accused had gone to P.W.10 on 02.07.2012 at 4.00 p.m and made Extra Judicial Confession. It is also not explained to the Court as to why P.W.10 did not reduce into writing, if at all, any such Extra Judicial Confession had been made by the accused. Thus, it is difficult to believe the Extra Judicial Confession. Now the alternative theory propounded by the accused that four persons barged into the house, attacked the deceased as well as him and tied him with rope also appears to be probable. The medical evidence as spoken by D.W.1 probablizes the same. The evidences of P.Ws.2 and 3 also probablize.

14. 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, and there should not be any other hypothesis which would be inconsistent with the guilt of the accused. Here in this case, absolutely, there is no evidence to unerringly point to the guilt of the accused. The alternative hypothesis projected by the defence is probable and the same has not been ruled out.

15. In such view of the matter, we find it difficult to sustain the conviction of the appellant. We hold that the prosecution has failed to prove the case beyond reasonable doubt. Thus, the appellant is entitled to acquittal.

16. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the IV Additional District and Sessions Judge, Coimbatore in S.C.No.102 of 2013 dated 25.08.2015 is set aside. The appellant is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.IV Additional District and Sessions Court,
Coimbatore.
- 2.The Judicial Magistrate No.II,
Pollachi.
- 3.The Chief Judicial Magistrate,
Coimbatore.
- 4.Inspector of Police
Kottur Police Station,
Coimbatore.
- 5.The Superintendent,
Central Prison, Coimbatore.

6.The District Collector,
Coimbatore.

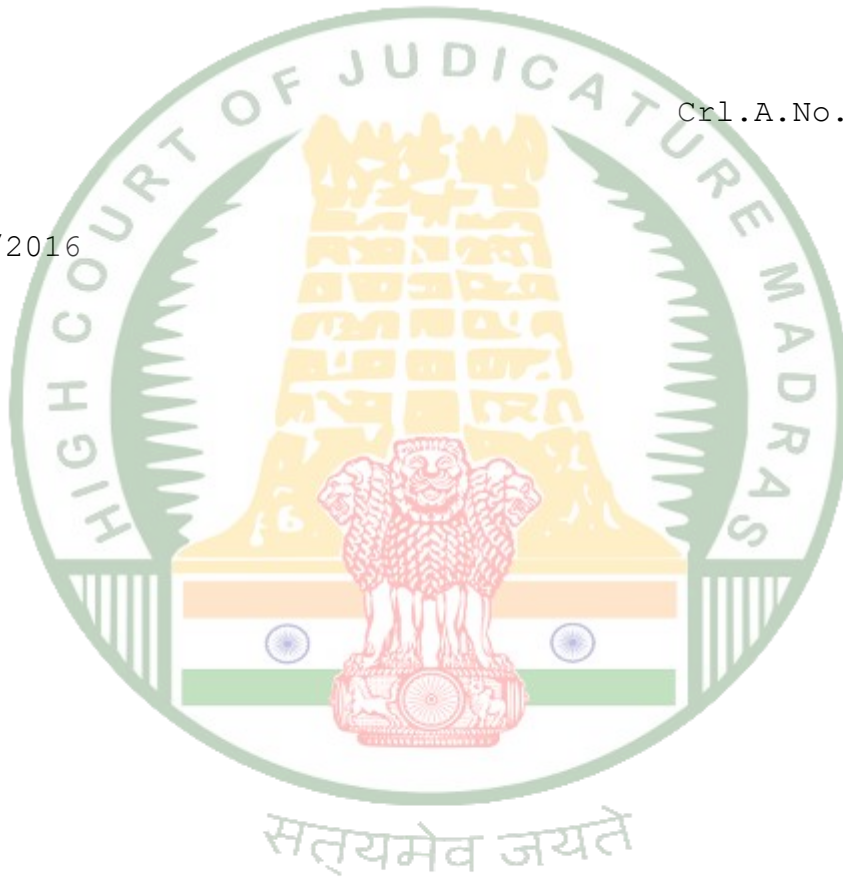
7.The Public Prosecutor
High Court, Chennai.

8.The Principal Sessions Judge,
Coimbatore.

+lcc to Mr.S.Naagarajan, Advocate sr.41370

Cr1.A.No.624 of 2015

GJ[co]
srg 30/08/2016



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