

BAIL SLIP

The Petitioner Viz., Saritha @ Sangeetha @ Sona, aged about 35 Years was directed to be released on bail in MP No. 371 of 2016 dated 01/03/2016 in crl A 655/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.655 of 2015

Saritha @ Sangeetha @ Sona Appellant

Vs

State represented by
Inspector of Police
R-8, Vadapalani Police Station
Chennai - 600 026. Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned XV Additional Sessions Judge, Chennai, in S.C.No.10 of 2015 on 24.04.2015.

For Appellant : Dr.G.Krishnamurthy

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

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.10 of 2015 on the file of the learned XV Additional Sessions Judge, Chennai, is the appellant herein. She stood charged for an offence under Section 302 IPC. The trial Court convicted the appellant for the above charge and sentenced her to undergo life imprisonment and also to pay a fine of Rs.5,000/-, in default to undergo one year

simple imprisonment. Challenging the above said conviction and sentence, the present Appeal has been filed.

2. The case of the prosecution in nut shell is as follows:-

(i) The deceased in this case one Selva was a cine director and he was running an office at Door No.54/87 Vivekanandha Colony, Vadapalani, Chennai. The accused, aspiring to become a cine actress, joined with the deceased and worked under him as his Assistant, she used to stay with the deceased in the office and used to drink together. After some time, the deceased compelled the accused to stay with him. Hence, there was a frequent quarrel between the accused and the deceased. In the above circumstances, the accused decided to finish him off, so that she can be freed from his clutches, and pursue her dream to become a cine actress. Hence, on 05.03.2007 at about 11 p.m, she attacked the deceased with a wooden log on his head and also strangulated him with a screen cloth and escaped.

(ii) PW.1 is the owner of the building in which the deceased running the cine office. According to him, he saw the frequent quarrel between the accused and the deceased and therefore, he asked the deceased to vacate the room; on 06.03.2007, while he was standing in the ground floor of the building, PW.4 informed him that the deceased was found unconscious in his room; immediately, he rushed to the room along with PW.2 and PW.3 and found the deceased dead; hence, he gave a complaint (Ex.P1), before the respondent police.

(iii) PW.18 - Inspector of police of the respondent police station, on receipt of the complaint, registered a case in Crime No.346 of 2007, for the offence under Section 174 Cr.P.C. and Ex.P14 is the First Information Report, he commenced investigation and reached the scene of occurrence, prepared Observation Mahazar and also rough sketch (Exs.P15 and P16), and conducted inquest on the dead body in the presence of panchayatdars. The inquest report is Ex.P17. After recording the statement of other witnesses, he sent the body for postmortem to Government Hospital, Royapettah, through PW.10 - Head Constable.

(iv) One Dr.K.Mathiharan, who was then working as Assistant Surgeon in Royapettah Government Hospital conducted postmortem (autopsy) on the dead body and found the following injuries:

" An oblique, complete interrupted faint ligature abrasion encircling the neck above the level of thyroid measuring 40 cms in length and 2 to 3 cms in breadth situated 3.5 cms below right mastoid process, 4 cms

below left mastoid process and 7.5 cms above supra spermal notch, from the outer land marks the ligature abrasion ascends to merge with the hairline over back of head. The abraded skin appear panchment like. On dissection of neck extravasation of blood in the subcutaneous tissues under the legature abrasion as well as in the adjacent muscles of the neck. Hyoid bone and thyroid cartilage intact.

Thoracic cage intack

On Dissection of Head Sub-scalpal bruising over anterior and parietal area of both sides 11 x 10 cms separation of sagital suture in the parietal area 12 cms in length noted. Brain oedematous, sub-dural and sub-arachnoid hemorrhage seen over both parietal areas and right frontal area.

Heart : Normal in size, chambers contained fluid blood, both coronaries patent.

Lungs : congested c/s exudes frothy fluid.

Stomach: contained 200 grams of partly digested semi solid food material. Mucosa congested.

Liver, Spleen and kidneys : c/s congested

Intestines : distended with gas.

Bladder : Empty

Pelvis and Spinal column: Intact."

and he gave the postmortem report (Ex.P9).

(v) Based on the postmortem report, PW.18 altered the case into under Section 302 IPC and prepared an altered First Information Report (Ex.P18) and recorded the statement of postmortem Doctor, and other witnesses, on 07.03.2007 at about 2.30 p.m, he arrested the accused and on such arrest, the accused voluntarily gave confession, based on the disclosure statement, he recovered a plastic screen (M.O.1) and wooden stick (M.O.2). Subsequently, he sent a request to XIV Metropolitan Magistrate to record the statement of the accused and another witness. But the accused refused to give any statement before the Magistrate. After conclusion of investigation, he filed charge sheet.

(vi) In the mean while, as per the order passed by the Director General of Police, investigation was handed over to CBCID. PW.19 - Inspector of Police working in CBCID received the case records and commenced re-investigation and on 08.05.2007, he proceeded to the scene of occurrence and prepared

Observation Mahazar and also rough sketch and recovered a pillow, bed sheet pieces, blood stained mosaic pieces and sample mosaic pieces, apart from empty liquor bottles and other materials available in the room and sent the material objects for chemical examination and since he retired from service, he handed over the investigation to PW.20.

(vii) PW.20 continued the investigation and recorded the statement of Assistant Scientific Officer in the Forensic Lab and other witnesses and after completion of investigation, he confirmed the investigation done by PW.18 and filed additional 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 as false. In order to prove the same, the prosecution examined 20 witnesses and exhibited 18 documents and 2 material objects.

4. Out of the witnesses examined, PW.1 is the owner of the building, where the deceased was running his cine office. According to him, the accused used to come to the office of the deceased quite often and there was a frequent quarrel between them, hence, he asked the deceased to vacate the room, and on 06.03.2007, he found the deceased dead in the room, so he gave a complaint (Ex.P1). PW.2 is the brother of PW.1, he saw the accused, deceased and PW.4 consuming liquor together in the office of the deceased at about 8 p.m on 05.03.2007, on the next day, he saw the deceased found dead in the room. PW.3 is another brother of PW.1 and PW.1 told him about the death of the deceased. PW.4 is a person, who is running an employment office next to the office of the deceased. According to him, on 05.03.2007, the accused complained to him that the deceased has quarrelled with her and beaten her and at about 8 p.m on the same day, he purchased liquor and the accused, deceased and PW.4, consumed liquor together, thereafter, he took the deceased for dinner and after having dinner, the deceased purchased dinner parcel for the accused, thereafter, he left for his house. On the next day morning, he found the room locked outside, then, he opened the door and found the deceased dead. PW.5 is a witness to the Observation Mahazar. PW.6 is a person known to the accused and the deceased, according to him, on 05.03.2007, the deceased borrowed some amount from him. PW.7 is the owner of the house, where the accused stayed, according to her, on 06.03.2007 at about 5.45 a.m, she saw the accused came to the house, and the accused got injuries in her cheek and hand, she told him that she has to vacate the house, subsequently, she vacated the house. PW.8 is the witness to the arrest of the accused and recovery of material objects. PW.9 is the photographer who has taken photographs of the dead body. PW.10 - Head Constable, identified the dead body for postmortem.

PW.11 is the Metropolitan Magistrate and he recorded the statement of P.Ws.1 to 3. PW.12 is the Scientific Officer in Forensic Lab, Chennai. She examined the visceral part of the dead body and filed her report. PW.13 is also a Scientific Officer in Forensic Lab, Chennai. She examined blood stained material objects and filed her report. PW.14 is the Doctor working in Government Royapettah Hospital. He spoke about the postmortem (autopsy) conducted by one Dr.Mathiharan and also about the postmortem report. PW.15 is a witness to the recovery of empty liquor bottles and other material objects in the room of the deceased by CBCID. PW.16 is the mother of the deceased. According to her, there was a quarrel between the deceased and one Natarajan. PW.17 is the wife of the deceased. She also spoke about the quarrel between the deceased and Natarajan, regarding the purchase of a movie directed by the deceased. PW.18 - Inspector of Police in the respondent police, conducted investigation and filed the charge sheet. After the investigation was transferred to CBCID, PW.19 - Inspector of Police in CBCID, conducted re-investigation and on his retirement, handed over the investigation to PW.20. PW.20, after investigation, confirmed the investigation done by PW.18, and filed additional charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. The accused did not examine any witnesses nor she mark any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced him as stated in paragraph-1 of the judgment. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

8. It is a case of circumstantial evidence. The deceased was the cine director and running his office in the building owned by PW.1. According to PW.1, the accused used to come to the office of the deceased frequently and they used to consume liquor, and quarrelling with each other; since other tenants made complaint, he asked the deceased to vacate the room; on 06.03.2007, he found the deceased dead in the room, hence, he gave a complaint. PW.2 is the brother of PW.1, and also running an office in the very same building, according to him, on 05.03.2007 at about 8 p.m, he saw the accused, deceased and PW.4 consumed liquor, then, he left for his house. PW.4 is a tenant in the same building, according to him, on 05.03.2007 the deceased asked him to purchase some liquor, he along with the deceased and the accused consumed liquor in the room of the

deceased, thereafter, he took the deceased out for dinner and they had dinner, the deceased also purchased some dinner parcel for the accused; then, he left for his house; only in the next day morning, he saw the deceased dead in his room. Except the above witnesses, there is no other evidence available to link the accused with the murder. Even as per the evidence of P.Ws. 2 and 4, PW.2 saw the accused, deceased and PW.4 consuming liquor together in the room of the deceased. As per PW.4, after consuming liquor, he took the deceased out for dinner and after having dinner, he left the deceased and went to his house. From the evidence of P.Ws.2 and 4, the prosecution has established that the accused was seen together with the deceased before the occurrence. It is the only circumstance established by the prosecution.

9. It is settled principle that in a 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. In the instant case, except the last seen theory, there is no other link available. It is settled law that the last seen theory is an important link in a chain of circumstances, which would point towards the guilt of the accused with some certainty. But it is also well settled that it is not prudent to base the conviction solely on the last seen theory alone. The Hon'ble Supreme Court in a judgment reported 2016 (1) SCC (Cri.) 386 (Nizam and another ..vs..State of Rajasthan) has held as follows:-

"14. Courts below convicted the appellants on the evidence of PWs. 1 and 2 that deceased was last seen alive with the appellants on 23.01.2001. Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen."

10. In the instant case, as per the evidence of PW.4, after consuming liquor, he took the deceased to the hotel and after having dinner, he left him there and proceeded to his

house. Thereafter, there is no evidence available to show whether the accused was in the room of deceased after consuming liquor. In absence of any such definite evidence, whether the accused was still in the room when the deceased came back to his room, We cannot presume that the accused was still in the room, thereafter, she committed the crime. Hence, in the above circumstances, it is highly unsafe to convict the accused based on the last seen theory alone. Hence, we are of the considered view that the prosecution failed to prove the circumstances unerringly pointing the guilt of the accused beyond any reasonable doubt. Hence, the appellant is entitled for acquittal.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused on 24.04.2015 in S.C.No.10 of 2015 on the file of the learned XV Additional Sessions Judge, Chennai, are set aside. The accused is acquitted and the fine amount already paid, if any, shall be refunded to her. Bail bond executed by her shall stand terminated.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The xv Additional Sessions Judge, Chennai.
2. The xvii Metropolitan Magistrate, Saidapet, Chennai-600 015.
3. -do- through The Chief Metropolitan Magistrate' Chennai.
4. The Director General of Police, Mylapore, Chennai.
5. The Collector, Office of the Collectorate, Chennai.
6. The Superintendent, Special Prison for Women, Puzhal, Chennai-26.
7. The Inspector of Police, R-8, Vadapalani Police Station, Chennai- 600 026.
8. The Public Prosecutor, High Court, Madras.

+1cc ti M/S.J.B. Solomon Peter Kamaldoss, Advocate (29441)

Cr1.A.No.655 of 2015

PPA (CO)
VR (13/02/2017)