

Bail Slip

That the accused Sathiyaseelan, namely S/O Ponnusamy was directed to be released on bail on this Court dated in Crl.M.P.No.2857 of 2016 in Crl A 699/2015 on the file of this Court.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.699 of 2015

Sathiyaseelan .. Appellant/Accused

- Vs -

State rep by Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi Post, Thiruvarur District.
(Cr.No.369 of 2014) ... Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Principal District and Sessions Judge, Tiruvarur in S.C.No.46 of 2015 dated 28.10.2015.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

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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.46 of 2015 on the file of the learned Principal District and Sessions Judge, Thiruvarur. He stood charged for offence under Section 302 I.P.C. By judgment dated 28.10.2015, the trial Court convicted

him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for one year. 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:

2.1. The deceased in this case was one Mr.Kumaraguru aged about 42 years. He was a resident of Pillaiyar Kovil Street in Veerapuram village, Thiruthuraipoondi taluk, Tiruvarur district. The accused also hails from the same village. There was a long standing enmity between the accused and the deceased on account of the boundary dispute between the lands belonging to them. This is stated to be the motive for the occurrence.

2.2. It is further alleged that on 01.07.2014 at 08.30 p.m. when the deceased was standing in front of Madapuram wine shop on the Manarguid road, the accused developed quarrel with the deceased, pushed him down and stabbed him with a knife on the stomach and other parts of the body of the deceased. He was taken to the Government hospital at Thiruthuraipoondi. The doctor declared him dead. P.W.1 the wife of the deceased, who had heard about the occurrence, went to the hospital and after the doctor declared the deceased dead, proceeded to the Thiruthuraipoondi police station and made a complaint at 11.00 p.m. on 01.07.2014 under Ex.P1.

2.3. P.W.13 the then Sub Inspector of Police registered a case in Crime No.369 of 2014 under Section 302 I.P.C. against the accused. Ex.P12 is the F.I.R. She forwarded both the documents to Court and the same was received by the learned Magistrate at 08.35 a.m. on 02.07.2014.

2.4. P.W.14 took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar in the presence of P.W.10 and another witness. Then he recovered bloodstained earth and sample earth from the place of occurrence in the presence of the same witnesses. He examined few more witnesses at the place of occurrence. On going over to the Government hospital at Thiruthuraipoondi at 08.00 a.m. on 02.07.2014, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.5. P.W.12 Dr.Devenderan, conducted autopsy on the body of the deceased at 12.30 p.m. on 02.07.2014. He found the following injuries on the body of the deceased :

"External Injuries: (1) Deep abrasion over left foot 2nd toe to 3rd toe (2) 3x2x8 cms

sized 7 stab injuries over both groins, clean cut sharp edge injury.

Internal examination: Hyoid thoracic cavity - ribs intact. Lungs - congested, Heart - congested and empty, liver - congested, stomach - semisolid yellowish material 20 ml present. Intestines - congested, kidneys - congested, spleen - congested, bladder - empty, Head - on opening of skull - membranes and brain matter mixed with mild haemages no extra and intracranial haemage present. Base of skull no fracture found."

Ex.P11 is the postmortem certificate and he gave opinion that the deceased had died due to shock and hemorrhage due to the injuries found on the body of the deceased.

2.6. When the investigation was in progress, the accused surrendered before the learned Judicial Magistrate Court at Thiruthuraipoondi. On 04.07.2014, P.W.14 took police custody of the said accused on the orders of the learned Magistrate. While in custody, in the presence of P.Ws.8 and 9, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden a knife, a shirt and a lungi. In pursuance of the same, he took the police and the witnesses to his house and from the shed behind his house M.Os.1 to 3 viz., knife, bloodstained shirt and bloodstained lungi respectively were produced from the hideout. P.W.14 recovered the same under a mahazar. Then he produced the accused before the Court for judicial remand and also forwarded the material objects to the Court. At his request, the material objects were sent for chemical examination and the report revealed that there were bloodstains on all the material objects including the knife. On completing the investigation, he laid chargesheet against the accused.

2.7. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., which the accused denied. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 19 documents and 7 material objects were marked.

2.8. Out of the said witnesses, P.W.1 is the wife of the deceased. She has stated about the previous enmity between the accused and the deceased. She has further stated that on 01.07.2014 at 08.00 p.m. she was informed that the deceased had been stabbed by the accused near wine shop. She immediately rushed to the place of occurrence and took the deceased to the hospital along with one Jeeva and Murali. At 11.00 p.m, the doctor declared him dead at the Government hospital at Thiruthuraipoondi. Therefore, according to her, she made

complaint to the police. P.Ws.2 and 3 have turned hostile and they have not stated anything about the occurrence.

2.9. P.W.4 is the brother of P.W.1, he has stated that on hearing about the occurrence he went to the place of occurrence and took the deceased to the hospital, where the doctor declared the deceased dead. P.W.5 is the brother of the deceased, he has also stated about the previous enmity between the accused and the deceased and he has stated that he went to the place of occurrence on information and then took the deceased to the hospital.

2.10. P.W.6 has stated that on 01.07.2014, at around 08.30 p.m. when she was proceeding near the wine shop at Madapuram, she found the deceased with injuries. P.Ws.1 and 4 were also there and they took the help of P.W.6 to take the deceased to the hospital. P.W.7 is the son of the deceased, he has also not stated anything incriminating. P.W.8 has turned hostile, he was excepted to speak about the disclosure statement made by the accused, out of which M.Os.1 to 3 were allegedly recovered. P.W.9 the village assistant has spoken about the confession given by the accused to the police and the recoveries of said M.Os.1 to 3 on the disclosure statement.

2.11. P.W.10 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.11 has spoken about the chemical examination conducted on the internal organs of the deceased. He has opined that there was no poison or alcohol found on the body of the deceased. P.W.12 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the registration of the case on the complaint made by P.W.1. P.W.14 has spoken about the investigation done and the final report filed.

3. 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 witness nor mark any document on his side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. The learned counsel for the appellant would submit that absolutely there is no evidence against the accused, still the trial Court convicted the accused out of suspicion. We find force in the said argument. As we have narrated, no witness has

stated that they saw the deceased being stabbed by the accused. The family members of the deceased have spoken only about the enmity. From out of the enmity between the accused and the deceased, we cannot rush to the conclusion that the death of the deceased would have been caused by the accused. The trial Court has relied on the recovery of the material objects 1 to 3 based on the disclosure statement allegedly made by the accused to P.W.14. In our considered view, the said disclosure statement itself is inadmissible in evidence because it is not every fact that is discovered out of a disclosure statement that is admissible in evidence under Section 27 of the Indian Evidence Act. It is the law that the disclosure statement which led to the discovery of a relevant fact alone makes the statement admissible under Section 27 of the Indian Evidence Act. Here, in this case, the link or the connection or nexus between the material objects 1 to 3 and the crime or the deceased has not been established. Thus, the alleged disclosure statement out of which M.Os.1 to 3 were recovered is not admissible in evidence at all.

6. Further from out of the recovery of these material objects alone it cannot conclusively proved that it was this accused who caused the death of the deceased. It needs to be mentioned that in a criminal trial, since the life and liberty of an individual is involved, conviction can be had only by following the procedure established by law as guaranteed under Article 21 of the Constitution of India. There cannot be any conviction on mere surmises or even on mere suspicion as any amount of surmises or suspicion shall not take the place of proof.

7. Here, in this case, the trial Court has convicted the accused only on mere surmise, which is illegal. Thus, we find that the prosecution has failed to prove the case beyond reasonable doubts and the conviction and sentence imposed by the trial Court is not sustainable.

8. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned Principal District and Sessions Judge, Tiruvarur in S.C.No.46 of 2015 dated 28.10.2015 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) The bail bond, if any executed, by him, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Tiruvarur.
2. The Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi Post,
Thiruvarur District.
3. The Public Prosecutor,
Madras High Court.
4. The Judicial Magistrate,
Thiruthuraipoondi.
5. The Chief Judicial Magistrate,
Tiruvarur.
6. The Superintendent,
Central Prison,
Trichy.
7. The District Collector,
Thiruvarur District.
8. The Director General of Police,
Mylapore, Chennai-4.

+1cc to M/S.D.Veerasekaran, Advocate Sr.42387

Cr1.A.No.699 of 2015

ctr[co]
srg 17/10/2016