

Bail Slip

Crl.A. 703/2015

The Appellant/Accused NO. 2 namely Viz. Chandran S/O Late Victor directed to be released on bail as per the Order of this Court dated 24/02/2016 made in Crl.MP.1/15 in Crl A. 703/15

Bail Slip

C.A. 748/2015

The Appellant/Accused NO.1 namely ViZ. Uma, W/O late Victor directed to be released on bail Order on this Court 12/02/2016 made in Crl. MP. 1/15 in Crl.A. 748/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.703 & 748 of 2015

Chandran .. Appellant/A.2 in Crl.A.703/2015

Uma .. Appellant/A.1 in Crl.A.748/2015

vs

State represented by
Inspector of Police,
K.V.Kuppam Police Station,
K.v.Kuppam, Vellore District.
Crime No.295 of 2012.

.. Respondent in both Crl.A.

Common Prayer in both Criminal Appeals:- These Criminal Appeals have been filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed upon the appellants

by the learned Principal District Sessions Judge, Vellore, Vellore District in S.C.No.58 of 2014 dated 03.08.2015 for the offence under Section 302 IPC.

In Crl.A.No.703 of 2015:-

For Appellant : Mr. R.John Sathya,
for Mr.M.Kumar
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No. 748 of 2015:-

For Appellant : Mr. R.John Sathya,
for Mr.G.Vinodh Kumar
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

The appellant in Crl.A.No.703 of 2015 is A.2; and the appellant in Crl.A.No.748 of 2015 is A1, in S.C.No.58 of 2014 on the file of learned Principal District Sessions Judge, Vellore. A1 & A2 stood charged for an offence under Sections 302 IPC. After trial, by judgment dated 03.08.2015, the trial Court convicted the accused for the offence under Section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5000/- each in default to undergo simple imprisonment for two months. Challenging the above said conviction and sentence, the appellants are before this Court with these Criminal Appeals.

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

Deceased, in this case, is one Victor. A1 is his second wife and A2 is his son through A1. A1 developed illicit intimacy with somebody. Hence, there was a quarrel between deceased and A1. After some time, deceased went to his first wife, P.W.2's house. On 25.07.2012, the deceased went to the house of the accused and there was a quarrel between the deceased and A1. At that time, P.W.2, first wife of the deceased was suffering from severe stomach pain and hence, P.W.1, brother of the deceased went for getting an auto-rickshaw to take her to the hospital, and P.W.2, and P.W.3, wife of P.W.1, were sitting near a library waiting for the auto. At that time, they saw the quarrel between the deceased and A1. When they questioned A2 about the quarrel, he casually told them that there is nothing much important. Subsequently, deceased was found missing, hence, P.W.1 lodged a complaint, Ex.P.1 before the respondent police on 31.07.2012, at about 6.30 a.m.

the complaint, registered a case in Crime No.295 of 2012 for man missing. Then, he forwarded the First Information Report, Ex.P.21 to the Court and to the higher officials. On receipt of the First Information Report, P.W.19, commenced investigation and proceeded to the scene of occurrence, namely, the house of the deceased and there, he prepared Observation Mahazar, Ex.P.4 and Rough Sketch, Ex.P.30 and recorded the statement of the witnesses.

4. On 31.07.2012, at about 10.00 a.m., both the accused appeared before P.W.9, Village Administrative Officer and A2 has voluntarily given an extra judicial confession stating that A1 asked him to murder the deceased and A1 also gave a knife to him. A2 murdered him and buried the body of the deceased near their house. P.W.9 recorded the statement of A2, Ex.P.2 and produced them before the Inspector of police, P.W.19, along with Special Report, Ex.P.3.

5. P.W.9, arrested the accused at about 12.00 p.m. and on such arrest, A2 has voluntarily given a confession and in the above confession, A2 disclosed the fact that he murdered the deceased along with his mother, A1, and buried the body near their house. Based on the same, P.W.19 altered the First Information report into Section 302 IPC and the alteration report is Ex.P.33. Thereafter, he sent a memo to the Tahsildar, Katpadi for exhuming the body of the deceased. A2 also identified the place, where he buried the body of the deceased and there P.W.19, prepared another Observation Mahazar, Ex.P.32. Based on the disclosure statement of A2, P.W.19 also recovered a crow-bar, M.O.1, garden Hoe, M.O.2 and knife, M.O.3 in the scene of occurrence.

6. In the presence of the Tahsildar, who exhumed the body, P.W.15, doctor, working in the Government Hospital, Kudiyaatham, along with another doctor Mr. Sivan, on 01.08.2012, at 11.30 a.m., conducted postmortem on the dead body of the deceased at the scene of occurrence itself and found the following injuries:-

" Injuries:

1. An incised injury over right collar bone in the right clavicle 3 x 5 x 3 cm.
2. Right ear pinna lacerated injury along outer margin 4 x 0.5 x skin deep.
3. Incised injury over left anterior shoulder 3 x 2 x 1 cm.
4. Contusion over left anterior shoulder 3 x 2 x 2 cm.
5. Incised injury just below left collar bone 1 x 3 x muscle deep "

also gave opinion that the death was due to shock and hemorrhage due to injury to vital organs lungs and major vessels right neck and right collar bone. He was of the opinion that the deceased might to have died 7 days prior to the postmortem.

7. Then, P.W.19, recorded the statement of other witnesses and sent a memo for recording the statement of the accused under Section 164 Cr.P.C. P.W.11, Judicial Magistrate, Ranipet, went to Central Prison, Vellore and recorded the statement of the accused under Section 164 Cr.P.C. P.W.19, recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased. On completing investigation, P.W.19, laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges, as detailed in the first paragraph of this judgment, against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 41 documents were exhibited, besides 8 Material Objects.

9. Out of the said witnesses, P.W.1 is the brother of the deceased. He spoke about the illicit intimacy of A1 with somebody else and on 25.07.2012, there was a quarrel between A1 and deceased, thereafter, deceased was found missing. Hence, he gave a complaint, Ex.P.1 on 31.07.2012. P.W.2 is the first wife of the deceased. She also spoke about the earlier quarrel between accused and deceased on 25.07.2012. P.W.3 is wife of P.W.1. According to her, on 25.07.2012, when she along with P.W.2 sitting in a library, they saw the quarrel between accused and deceased in the house of A1. Thereafter, deceased was found missing. After four days, P.W.1 has given a complaint. P.Ws.4 to 8 are all neighbours of the accused. According to them, there was a quarrel between the accused and deceased on 25.07.2012 at about 10.00 p.m, thereafter, the deceased was found missing. P.W.9 is the Village Administrative Officer, Pasumathur and according to him on 31.07.2012, at about 10.00 a.m., both the accused appeared before him and A2 voluntarily gave a confession stating that he has murdered the deceased and buried the body near his house. After recording the confession of A2, P.W.9 produced them, before the investigating officer along with Special Report.

10. P.W.10 is a witness to the Observation Mahazar. P.W.11 is a Judicial Magistrate, who recorded the 164 Cr.P.C. statement of the accused in the Central Prison, Vellore. P.W.12 is Village Administrative Officer, who is a witness to the confession statement given by the accused before the police and witness to the recovery of M.Os.1 to 5. He is also a witness to the Seizure Mahazar, Ex.P.15. P.W.13, Village

Assistant, is also a witness to the Seizure Mahazar, Ex.P.15. P.W.14, Sub-Inspector of Police, registered the First Information Report for man missing. P.W.15, Doctor, conducted post mortem on the dead body of the deceased at the scene of occurrence and gave postmortem certificate, Ex.P.23. P.W.16, Scientific Officer, Forensic Science Department, Chennai, examined the visceral part of the deceased and gave report Ex.P.26. P.W.17, professor, Government Hospital, Aadukamparai, examined the hyoid bone of the deceased and gave report Ex.P.28.

11. P.W.18, Head Constable, after postmortem, recovered the bloodstained dress of the deceased and handed over the same to investigating officer. P.W.19, Inspector of Police, conducted investigation, arrested the accused and has taken steps to exhumate the body of the deceased and also recorded the statement of the witnesses. After completion of 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., they denied the same as false. However, they did not choose to examine any witness or mark any documents.

13. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with these Criminal Appeals.

14. We have heard Mr. John Sathya, learned counsel appearing for the appellants 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 based on circumstantial evidence. It is a settled principle 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. Keeping this broad principles in mind, we analyze the facts of the present case.

16. In the instant case, prosecution mainly relied upon the extra judicial confession of A2 before Village Administrative Officer, P.W.9. According to P.Ws.1 to 8, on 25.07.2012, there was a quarrel between the accused and the deceased. Thereafter, the deceased was found missing. Hence, P.W.1 has given a complaint on 31.07.2012 at about 6.30 a.m., stating that the deceased was found missing for the past 4 days. Based on that, a case was registered as man missing. On the same day, at about 10.00 a.m., both the accused appeared

before P.W.9, before whom A2 is said to have given an extra judicial confession. P.W.9 recorded the statement of A2 and along with his special report, he produced the accused before P.W.19, Investigating officer, at about 12.00 p.m. P.W.19 arrested them and before whom A2 once again gave a voluntary confession.

17. On a perusal of the First Information Report, it is seen that the First Information Report is said to have registered at 6.30 a.m., on 31.07.2012. But, it reached the Judicial Magistrate Court only at about 4.00 p.m, i.e. in the evening after the arrest of the accused. The suspicious circumstance is that eventhough the deceased was said to have gone missing from 25.07.2012, , the First Information Report was given only on 31.07.2012 i.e. after 5 days and there is no explanation for the delay on the side of the prosecution. There is no explanation by the prosecution for the long delay in sending the First Information Report to the Judicial Magistrate Court. Hence, it also creates a serious doubt about the extra judicial confession given by A2 before P.W.9. P.W.9 is a stranger to the accused and there is no compelling reason for them to appear before him and given a voluntary confession.

18. It is a settled law that extra judicial confession is a very weak piece of evidence , when it is surrounded by suspicious circumstance, its credibility become doubtful and it looses its importance and it requires independent reliable corroboration. But, there is no other corroborating evidence to support the case of the prosecution. Hence, we are of the considered opinion that it is highly unsafe to convict the accused, based on the uncorroborated extra judicial confession , which is surrounded by suspicious circumstances. Apart from that the extra judicial confession was given only by A2. Hence, it is not a substantial piece of evidence against A1. Apart from the extra judicial confession , there is no evidence available to prove the guilt of A1. In the above circumstances, we are of the considered view that the prosecution has miserably failed to prove the circumstances unerringly pointing the guilt of the accused. Hence, the appellants are entitled for acquittal.

19. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/accused by the learned Principal District Sessions Judge, Vellore, in S.C.No.58 of 2014, by the judgment dated 03.08.2015, are hereby set aside. The appellants/accused are acquitted of the charge levelled against them. Bail bond, if any, shall stand discharged.

Sd/-
Asst.Registrar (CS VI)

/true copy/

To

1.The Principal District Sessions Judge,
Vellore

2.The Judicial Magistrate,
Katpadi.

3.The Chief Judicial Magistrate,
Vellore.

4.The Director General of Police,
Mylapore, Chennai.

5.The Superintendent, Central Prison
Vellore.

6.The Superintendent, Central Prison
for Women, Vellore (A1)

7.The District Collector,
Vellore.

8.The Inspector of Police,
K.V. Kuppam Police Station, K.V. Kuppam,
Vellore.

9.The Public Prosecutor,
High Court, Madras.

10.The Record Keeper (Criminal Section)
High Court, Madras.

+1cc to M/S.G. Vinodh Kumar, Advocate for Appellant SR.43632

KJ (CO)
VR (23/02/2017)

Cr1.A.Nos.703 & 748 of 2015

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