

BAIL SLIP

The appelleant herein namely karnal @ selvamani S/o.Kuttiandi, accused in sc n.230/10, on the tile of district of sessions court Nagapatinam was released on bail as per order of this court dated 2/3/2016 in crl Mp.no.1/15 in crl.A.787/15.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22..07..2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.787 of 2015

Karnal @ Selvamani

... Appellant/Accused

VS

State Rep. by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.
[Crime No.151 of 2010]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellant by the learned Sessions Judge, Sessions Division of Nagapattinam, in S.C.No.230 of 2010 dated 09.02.2015.

For Appellant

..Mr.J.Ramkumar
for Mr.J.Jawahar

For Respondent

: Mr.M.Maharaja, APP

JUDGEMENT

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

The appellant is the sole accused in S.C.No.230 of 2010 on the file of the learned Sessions Judge, Sessions Division of Nagapattinam. He stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 09.02.2015, convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for a further period of one year. Challenging the above said conviction and sentence, the accused has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Saminathan. He was a resident of North Street at Keechankuppam in Nagapattinam District. The accused also belongs to the same locality. They were already known to each other. Both were fishermen by profession. It is alleged that about ten days prior to the date of occurrence, in a casual manner, the deceased wanted a matchstick from the accused for lighting a beedi. The accused refused. This resulted in a wordy quarrel between them. This is stated to be the motive for the accused to commit the murder of the deceased.

3. It is alleged that on 19.04.2010, at about 02.45 a.m. the deceased was sleeping on the beach near Kannikoil at Keechankuppam. At that time, it is alleged that the accused hit the deceased with a brick on his head, strangulated him by neck with a nylon rope, and also cut his neck with a knife. It is further alleged that after some time, P.W.1, the brother of the deceased, proceeded to the beach and when he went near the deceased to wake him up and to take him to the high sea for fishing along with him, there was no response from the deceased. The deceased was motionless. When he removed the blanket covering the deceased, he found that the deceased had sustained injuries and he was struggling for life. Therefore, P.W.1, immediately, took him to the Government Hospital at Nagapattinam. After first aid treatment in the said Government Hospital, the deceased was referred to Thanjavur Medical College Hospital, for further treatment, where, unfortunately, despite treatment, the deceased succumbed to injuries at 06.40 a.m. on 19.04.2010. Thereafter, P.W.1 returned to Nagapattinam and made a complaint [Ex.P1] at 09.30 a.m. on 19.04.2010 at Nagapattinam Town Police Station. P.W.14, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in crime No.151 of 2010 under Section 302 of IPC against the accused. Ex.P12 is the FIR. Then, he forwarded both the complaint-Ex.P1 and the FIR-Ex.P12 to the jurisdictional court which were received by the learned Magistrate at 12.30 p.m. on the same

day. In the mean time, P.W.14, handed over the case diary to the Inspector of Police for investigation.

4. P.W.16, taking up the case for investigation, proceeded to the place of occurrence at 10.30 a.m. on 19.04.2010 where he prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P15) at the place of occurrence in the presence of P.Ws.7 and another witnesses. He recovered some blood stained sand [M.O.6] and sample sand [M.O.7], a nylon rope [M.O.5] and a blood stained brick with cement plaster [M.O.4] from the place of occurrence under a mahazar (Ex.P5). Then, on going over to Tanjavur Medical College Hospital, he conducted inquest on the body of the deceased in the mortuary at 02.00 p.m. and thereafter forwarded the dead body for postmortem.

5. P.W.3, Dr.Michel, conducted autopsy on the body of the deceased on 19.04.2010 at 03.45 p.m. He found the following injuries:-

"External Injuries:-

(1) Left ear bleeding noted.
(2) Both nostrils bleeding noted.
(3) A wide curved gaping cut wound noted over front and both sides of whole neck, extending from front of one ear to the other ear measuring. 40 cm x 2 cm x orophary x depth. The above mentioned wound was found 8 cm from supra sternal notch area, 5 cm below the symphysis menti and above the level of hyoid bone, 10 cm from left mastoid process, 10 cm from right mastoid process, noted, exposing all neck muscles, nerves, tendons, pharynx, epiglottis. Hyoid bone and thyroid cartilage intact.

(4) Another wide curved ligature mark over front and both sides of neck - extending from one ear to other ear measuring 33 cm x 1 cm, which was 5 cm above supra sternal notch area, 3 cm below symphysis menti, 13 cm from left mastoid process, 14 cm from right mastoid process, above the level of hyoid bone noted.

(5) A punctured wound of 2 x 0.5 cm on left parietal region noted.

(6) A laceration of 2 x 1 x 1 cm on right pinna noted.

(7) Sub scapular contusion over left temporal, right temporal region noted.

(8) Sub dural haemorrhage over right temporo parietal region noted.

(9) Contusion of 2 x 3 cm on bone of brain noted.

(10) Intra Cerebral haemorrhage over right parietal lobe noted.

(11) Linear fracture of 5 cm on petrous part of left temporal bone noted.

(12) Entire body coated with mud particles.

Extremities	: Cyanosed
Pericardium	: Intact
Heart	: Normal in size All chambers contain fluid blood
Valves, Great Vessels	: Normal
Coronary vessels	: Patent
Lungs	: C/S pale
Larynx, Hyoid bone	: Intact
Stomach	: Empty
Liver, spleen, kidneys	: C/S pale
Small intestine	: Empty
Bladder	: Empty
Pelvis, spinal column	: Intact
Bones, Membranes	: Noted as above

Brain : C/S pale

Ex.P.3 is the postmortem certificate. According to P.W.3, the doctor, all the above injuries were ante-mortem in nature. He opined that the death was due to shock and haemorrhage as a result of multiple injuries involving many of the vital structures. He further opined that the injury Nos.3 and 5 could have been caused by a weapon like knife. He further opined that the injury No.4 could have been caused by strangulation by means of a ligature.

6. P.W.16, during the course of investigation, arrested the accused on 20.04.2010 at 11.00 a.m. near Fish Vending Platform at Keechankuppam in the presence of P.W.8 and another witness. On such arrest, the accused disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the blood stained knife (M.O.8). P.W.23 recovered the same in the presence of P.W.6 and another under a mahazar (Ex.P.7). On returning to the police, he forwarded the accused to the court for judicial remand and handed over the material objects also to the court. At his request, the material objects were forwarded by the court to the Forensic Science Laboratory for chemical examination. The chemical analysis report revealed that there were human blood on all the material objects, except the sample sand. On completing the investigation, P.W.16 laid charge sheet against the accused.

7. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 17 documents and 8 material objects were marked.

8. Out of the said witnesses, P.W.1, who is the brother of the deceased, has stated about the previous quarrel between the accused and the deceased. He has further stated that around 02.45 a.m. on 19.04.2010, he found the deceased lying on beach with injuries. He immediately took him to the hospital for treatment. He has also stated about the death of the deceased and the complaint made by him. P.W.2, Dr.Kamaleshwar, has stated that on 19.04.2010 at 03.15 a.m. when he was in the hospital, the deceased was brought for treatment to the Government General Hospital. At that time, according to him, the deceased was unconscious. He found a cut injury measuring 15 x 6 x 4 cms on the front neck of the deceased. There was bleeding through the injury. He gave first aid treatment and immediately referred the patient to Thanjavur Medical College Hospital for further treatment.

9. P.W.3, the doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.4, the father of the deceased, has also stated about the previous quarrel between the accused and the deceased. He has further stated that P.W.1 informed him that the deceased was lying with injuries on the beach. According to him, when he rushed to the beach, he found the deceased struggling for life with injuries. He has also spoken about the treatment given by the doctor to the deceased in the hospital. He has not stated anything incriminating against the accused. P.W.5 is a

neighbor of the deceased. He has also stated about the quarrel between the accused and the deceased on the previous occasion. He has further stated that around 02.45 a.m. on 19.04.2010, he found the deceased lying in the beach with injuries. He has not stated anything incriminating against the accused. P.W.6 has stated about the previous quarrel between the deceased and the accused.

10. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence and also the recovery of material objects from the place of occurrence. P.W.8 has spoken about the arrest of the accused, the disclosure statement made by the accused and the consequential recovery of material object namely M.O.8 knife. P.W.9 is a Lineman in the Tamil Nadu Electricity Board. He has stated that during the relevant point of time, there was enough light and there was no failure of electricity. P.W.10, the Head Constable has stated that he took the dead body from the hospital to the mortuary and identified the same to the doctor for postmortem as directed by P.W.16. P.W.11, yet another Head Constable, has stated that on 19.04.2010 he carried the FIR and the Complaint to the court and handed over the same to the learned Magistrate at 12.30 p.m. P.W.12 has stated that he took the deceased to the hospital. P.W.13, the Finger Print Expert has stated that he examined the material objects and found human blood on all the material objects, except on sample earth.

11. P.W.14 has spoken about the registration of the case on the complaint made by P.W.1. P.W.15, the doctor, has spoken about the treatment given to the deceased at Thanjavur Medical College Hospital. According to him, on 19.04.2010, when he was on duty in the casualty, the deceased was brought at 06.40 a.m. and he admitted him as inpatient. Ex.P.13 is the accident register. P.W.16 has spoken about the entire investigation done by him in this case and the filling of charge sheet against the accused.

12. After the examination of prosecution side witnesses was over, the accused was questioned under Section 313 of Cr.P.C. in respect of the incriminating materials. He denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

13. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the sole accused is now before this

Court with the present criminal appeal.

14. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

15. As we have already narrated, absolutely there is no evidence against the accused. The only evidence relied on by the prosecution is the evidence of the family members of the deceased who have stated about the quarrel between the accused and the deceased on a previous occasion. According to them, the deceased wanted a match stick from the accused for lighting beedi. Since the accused refused, there arose quarrel between them. Of course, this fact has been proved by the prosecution. Thereafter, according to P.W.1 and other witnesses, at 02.45 a.m. on 19.04.2010, the deceased was lying on the beach with injuries on his body and the body was covered by a blanket. They immediately took him to the hospital and he, later on, died at the hospital as a result of injuries to vital organs. Absolutely, there is no evidence that it was this accused, who caused the injuries on the person of the deceased. The recovery of knife [M.O.8] on the alleged disclosure statement made by the accused, in our considered view, is irrelevant inasmuch as the connection between the knife and the crime has not been established by the prosecuting agency. Thus, we find that there is absolutely no evidence at all against the accused to sustain the conviction. The trial court has convicted the accused on mere surmises which is not legal. In such view of the matter, the appellant/accused is entitled for acquittal.

16. In the result, the criminal appeal is allowed. The conviction and sentence imposed on him by the trial court are hereby set aside and he is acquitted of the charge. Fine amount already paid, if any, shall be refunded to him. The bail bond executed by the appellant shall stand terminated.

Sd/-

Assistant Registrar(ccc)

//True Copy//

Sub Assistant Registrar

To

1. The district and Sessions Judge,
Sessions Division of Nagapattinam,
Nagapattinam District.
2. The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.
3. The Public Prosecutor,
High Court, Chennai.
4. The Judicial Magistrate No.1
Nagapattinam.
5. The Chief Judicial Magistrate,
Nagapattinam.
6. The Superintendent
Central prison cuddalore.

+1 ccto Mr J.Jawahar, Advocate SR.41827

(CO) kgk
CP(24/10/2016)

Crl.A.No.787 of 2015



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