

Bail Slip

1. Manjula Appellant herein/A4 in S.C.NO. 170/14 as the file of the Principal Session Judge, Dharmapuri was released on bail by the Order of this Court dated 15/03/2016 in MP.NO. 1/15 in Crl.A. 797/15 Pending on the file of this Court.

2. Deepa Appellant herein/A3 in S.C.NO. 170/14 as the file of the Principal session Judge, Dharmapuri was released on bail by the Order of this Court dated 28/4/16 in Crl.MP. 4264/16 in Crl.A. 798/15 Pending on the file of this Court.

3. Kalidoss appellant herein/A1 in S.C.NO. 170/14 as the file of the Principal Session Judge, Dharmapuri was released on bail by the Order of this Court dated 28/4/2016 in Crl.MP. 4276/16 in Crl.A. 799/15 Pending on the file of this Court.

4. Logeshwaran appellant herein/A2 in S.C.NO. 170/14 as the file of the Principal Session Judge, Dharmapuri was released on bail by the Order of this Court dated 23/02/2016 in Crl.MP. 129/2016 in Crl.A. 81/16 Pending on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.797, 798, 799 of 2015 & 81 of 2016

Manjula .. Appellant/A.4 in Crl. A. 797/2015
Deepa .. Appellant/A.3 in Crl. A. 798/2015
Kalidoss .. Appellant/A.1 in Crl. A. 799/2015
Logeswaran .. Appellant/A.2 in Crl. A.81/ 2016

vs

State represented by
Inspector of Police,

<https://hcservices.ecourts.gov.in/hcservices/>

Hogenakkal Police Station,
Dharmapuri District.
(Cr.No.416 of 2012)

.. Respondent in all Crl.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed under Section 374 (2) Cr.P.C., to set aside the conviction and sentence imposed by the learned Principal Sessions Judge, Dharmapuri in S.C.No.170 of 2014 dated 03.12.2015.

In Crl.A.No.797 of 2015:-

For Appellant : No appearance
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.798 of 2015:-

For Appellant : Mr.N.Manokaran
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.799 of 2015 :-

For Appellant : Mr.N.Manokaran
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.81 of 2016 :-

For Appellant : Mr.R.Thirugnanam
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

The appellant in Crl.A.No.797 of 2015 is A.4; the appellant in Crl.A.No.798 of 2015 is A3; the appellant in Crl.A.No.799 of 2015 is A1 and the appellant in Crl.A.No.81 of 2016 is A2, in S.C.No.170 of 2014 on the file of the learned Principal Sessions Judge, Dharmapuri. After trial, by judgment dated 03.11.2015, the trial Court convicted and sentenced all the accused as detailed below:-

Accused	Section of law	Sentence
A.1 to A.4	120(B) I.P.C.,	Rigorous imprisonment for two years each.
A.1 & A.2	302 I.P.C.,	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months each
A.3 & A.4	302 r/w.120(b) I.P.C.,	Imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months each

The trial Court has ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/A.1 to A.4 are before this Court with these Criminal Appeals.

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

The deceased, one Thandapani, is the husband of A3. A4 is a friend of A3. A1 was a paramour of A4 and A2 is a friend of A1. The deceased, the husband of A3 consistently harassing A3, and unable to bear the harassments, A3 decided to murder the deceased (husband of A3), and for that purpose, she sought the help of A1. A1 in turn informed A2, and both A1 and A2, took the deceased to Hokenakkal in a car and went into a forest area at Hokenakkal, there A2 stabbed the deceased with knife and A1 dropped a stone on the head of the deceased. After that, they returned back to their native place. On 24.09.2012, at about 3.00 p.m., P.W.1, a forest ranger in Hokenakkal, saw the dead body of the deceased and immediately, he sent a report, Ex.P.1 to the respondent police.

3. P.W.21, Sub-Inspector of Police, on receipt of the report, registered a case in Crime No.416 of 2012 under Section 302 IPC and forwarded the First Information Report, Ex.P.25 to the Court and to the higher officials.

4. P.W.22, Inspector of Police, on receipt of the First Information Report, on 24.09.2012, at about 8.30 p.m., proceeded to the scene of occurrence. Since it was dark, he sent the dead body to the Government Hospital, Pennagaram. On the next day, i.e., 25.09.2012, at 6.00 a.m., again he went to the scene of occurrence, and prepared an Observation Mahazar, Ex.P.26 and a Rough Sketch, Ex.P.27, and also recovered the blood stained earth (M.O.9), sample earth (M.O.10), a pair of

chappal (M.O.3), a citizen watch (M.O.5). Then, he went to the hospital and conducted inquest on the dead body of the deceased between 9.00 a.m. and 12.00 p.m., in the presence of panchayathars and prepared Inquest Report, Ex.P.28. After completion of inquest, P.W.22 sent a memo for postmortem of the dead body through P.W.19.

5. P.W.17, Doctor, working in Government Hospital, Pennagaram, conducted postmortem on the dead body of the deceased at 2.00 pm, on 25.09.2012. He found the following injuries:-

- " All over body maggots found.
1. Lacerated injury left forearm 10 x 6 x bone depth.
 2. Stab injury left hypochondrium 5 x 3 x 8 cm.
 3. Stab injury left axilla 5 x 3 x 8 cm.
 4. Stab injury right axilla 3 x 3 x 10 cm.
 5. Stab injury right side of neck 3 x 3 x 5 cm.
 6. Stab injury right lumbar back 3x3x 10 cm.
 7. Stab injury left side of neck 3 x 3 x 5 cm
 8. Lacerated injury right wrist 3x3x3 cm.
 9. Stab injury in between the neck & sternum 3 x3 x 5 cm."

Ex.P.21 is the post mortem certificate given by P.W.17. He gave opinion that the deceased appears to have died of haemorrhage due to injuries to vital organs, viz., heart, lungs, liver and kidney. and according to P.W.17, the deceased appears to have died about 50 to 56 hours before the autopsy.

6. Since, the identity of the dead body was not found, P.W.22 made paper publication. On 29.09.2012, A3, wife of the deceased came to the police station and identified the deceased, based on the dress, watch and chappals, which was worn by the deceased. Then, P.W.22, recorded the statements of witnesses. Subsequently, on 11.10.2012, at about 18.00 a.m., A1 and A2 appeared before P.W.6, Villlage Administrative Officer, Pennagaram and gave extra judicial confession admitting their guilt . After recording their statement, P.W.6, produced both A1 and A2 along with his Report, Ex.P.7, before P.W.22. P.W.22 arrested the accused. On such arrest, they have given a voluntary confession and based on the disclosure statement of A1, P.W.22, recovered steel knife (M.O.7) and a blade (M.O.6) in the presence of the witnesses under a Mahazar, Ex.P.8.

7. On 17.10.2012, P.W.22 arrested A3 and on such arrest, she has also given a voluntary confession and based on

the disclosure statement of A3, P.W.22 recovered jewels pledged by A3 and also arrested A4. P.W.22 also seized the Maruti car and recorded the statement of the forest officials. After completion of investigation, P.W.22 laid charge sheet.

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 22 witnesses were examined and 31 documents were exhibited besides 11 Material Objects.

9. Out of the witnesses examined, P.W.1 is the Forest Ranger, who saw the dead body on 24.09.2012, and he sent a report, Ex.P.1 to the respondent police. P.Ws.2 & 3 turned hostile. P.W.4, brother of the deceased, identified the deceased. P.W.5, sister of the deceased, also identified the deceased based on the dress worn by the deceased. P.W.6, Village Administrative Officer in Pennagaram village, before whom A1 and A2 appeared on 11.10.2012 and A1 made an extra judicial confession. P.W.7 to P.W.11 turned hostile. P.W.12, tailor, who identified the dress, worn by the deceased.

10. P.W.13 to P.W.15 turned hostile. P.W.16 is a Forest Guard. According to him, on 23.09.2012, at about 5.00 a.m., a Maruti Omni Car bearing registration No.TN20 AT 8167 crossed the check post and A1 signed in the register maintained in the check post. P.W.17, doctor, conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.18, Head Constable, submitted the First Information Report to the Court and to the higher officials.

11. P.W.19, Head Constable, identified the dead body of the deceased for postmortem and since nobody claimed the dead body, he cremated the dead body with the help of municipal employees. P.W.20, Pawn broker, with whom A3 and A4 pledged the jewels and subsequently redeemed it. P.W.21, Sub-Inspector of police, registered the First Information Report and forwarded the same to Court and higher officials. P.W.22, Inspector of Police, conducted investigation, recorded the statement of the witnesses, arrested the accused and after completion of investigation, P.W.22 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 examine any witness or mark any documents on their side.

13. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 to 4 are before this Court with these Criminal Appeals.

14. We have heard Mr. N. Manokaran, learned counsel for the appellants in CrI.A.No.798 & 799 of 2015; and Mr. R. Thirugnanam, learned counsel appearing for the appellant in CrI.A.No.81 of 2016 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. It is a case of circumstantial evidence. The prosecution relied upon the following circumstances to prove the guilt of the accused:-

The first and foremost circumstance is the evidence of P.W.16, Forest Guard, who was working at Pennagaram Pevanur forest check post who said to have seen the Omni Van. who said to have seen the Omni Van. According to him, on 23.09.2012, at about 5.00 a.m., a Maruti Omni Car bearing Registration No.TN 20 AT 8167 crossed the check post and A1 signed the register maintained in the check post. It is not the evidence of P.W.16 that at that time, he saw the deceased along with the accused. Hence, the above evidence is no way helpful to the prosecution to show that the accused were seen along with the deceased.

16. The next circumstance relied upon by the prosecution was the extra judicial confession given by A1 before P.W.6, Village Administrative Officer, Pennagaram. According to him, on 11.10.2012, at about 8.00 a.m., both A1 and A2 appeared before him and A1 has given a voluntary confession admitting his guilt and after recording the statement, P.W.6 produced A1 and A2 before P.W.22. The occurrence is said to have taken place on 23.09.2012. As per the prosecution, A1 belongs to Vellore and A2 belongs to Tiruppur. After the occurrence, they went to their native place, and once again, nearly 18 days after the occurrence, they gone all the way to Pennagaram, and had given the extra judicial confession before the Village Administrative Officer, Pennagaram.

17. It is a settled principle of law that the extra judicial confession even though a substantial piece of evidence, it is a very weak piece of evidence. In the instant case, according to prosecution, after the occurrence both A1 and A2 left Hogenakkal and gone to their native place and after 18 days they have come back to Pennagaram and gave an extra judicial confession to P.W.6, who is a stranger to them. Hence, it creates doubt in the genuineness of the extra judicial confession given by A1 and A2. There is no independent reliable corroboration available to support the extra judicial confession. Now, considering the above circumstances, it is surrounded by suspicion circumstances and hence, its credibility become doubtful and it loses importance. In the above circumstances, it is highly unsafe to convict the accused based on the extra judicial confession given by A1.

18. Apart from that, only A1 has given the extra judicial implicating the other accused. Hence, the extra judicial confession of the co-accused cannot be treated as a substantial evidence against A2, other accused and Court should consider other evidences available against the other accused, excluding the confession altogether from consideration, and on such appreciation of other evidences, if the court is able to come to a conclusion that other accused has committed said offence, the court can look into the confession given by the co-accused, as a last resort to add strength to the said conclusion. But, in the instant case, there is no other evidence available to find the guilt of the accused. As we have already held that the extra judicial confession given by A1 itself is doubtful, hence it is highly unsafe to rely upon the same to convict the accused.

19. In the above circumstances, we are of the considered view that prosecution has failed to prove the circumstances beyond any reasonable doubt unerringly pointing out the guilt of the accused. Hence, the appellants are entitled for acquittal.

20. In the result, these Criminal Appeals are allowed and the conviction and sentence imposed on the appellants by the Principal Sessions Judge, Dharmapuri, in S.C.No.170 of 2014, by the judgment dated 03.11.2015, are hereby set aside. The appellants are acquitted of the charges levelled against them. Fine amount, if any paid by the appellants, shall be refunded to them. Bail bonds, if any, executed by the appellants shall stand discharged.

Sd/-
Asst.Registrar

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

To

- 1.The Principal Sessions Judge,
Dharmapuri
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The judicial Magistrate,, Pennagaram.
- 4.The District Munsif,-Cum- Judicial Magistrate,
Pennagaram.
5. -do-Thro the CJM. Dharmapuri.

6.The Superintendent, Central Prison,
Salem.

7.The District Collector,
Dharmapuri.

8.The Director General of Police,
mylapore, Chennai-4.

9.The Inspector of Police
Hokenakkal Police Station
Dharmapuri District.

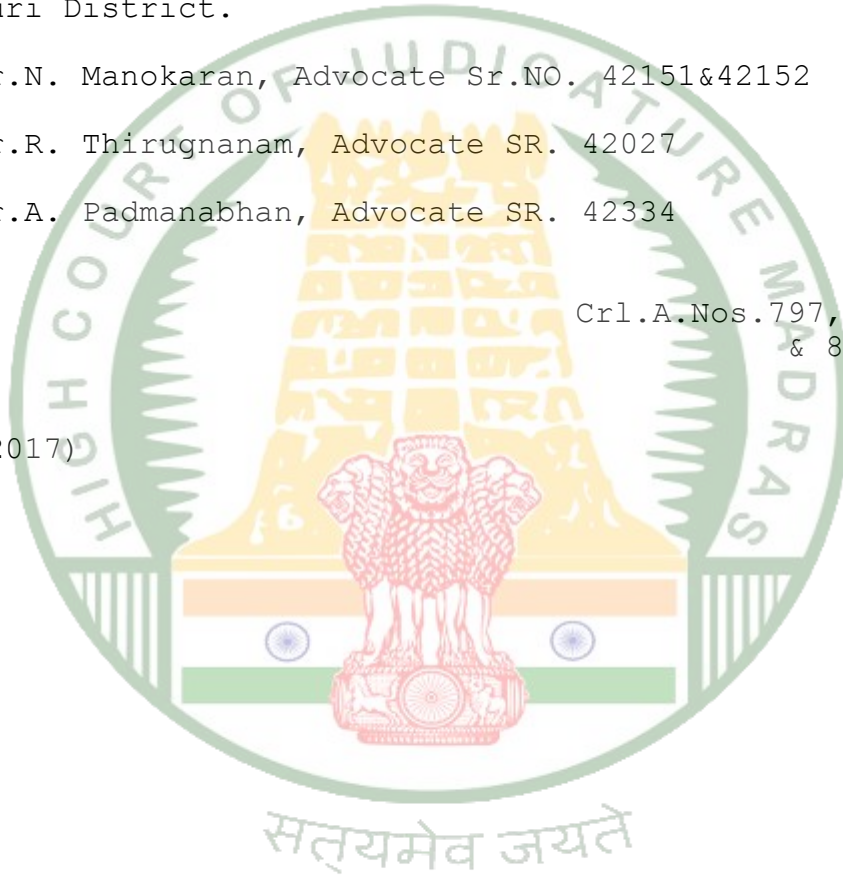
+2cc to Mr.N. Manokaran, Advocate Sr.NO. 42151&42152

+1cc to Mr.R. Thirugnanam, Advocate SR. 42027

+1cc to Mr.A. Padmanabhan, Advocate SR. 42334

CrI.A.Nos.797, 798, 799
& 81 of 2016

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



WEB COPY