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BAIL SLIP

The Appellant/A1 namely Sathya was directed to be released on bail as per order of this Court dt.28.4.2015 made in CrI.OP.No.1/2015 in CrI.A.No.87/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.87 of 2015

Sathya

.. Appellant / A-1

vs

State, Rep. By
Inspector of Police,
Parangipettai Police Station,
Cuddalore District
Crime No.17/2012

.. Respondent / Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, against the judgement of the learned II Additional Sessions Court, Chidambaram, in S.C.No.66 of 2012, dated 12.12.2014.

For Appellant : Mr. V.Paarthiban, for,
Mr. K.G.Senthilkumar
For Respondent : Mr. M.Maharaja, A.P.P.,

J U D G M E N T

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

The appellant is the first accused in S.C.No.66 of 2012 on the file of the learned II Additional Sessions Judge, Chidambaram. The second accused was one Appu @ Shanmugam. They stood charged for the offence under Sections 120-B and 302 IPC.

2. By judgment, dated 12.12.2014, the trial court acquitted the second accused from both the charges and acquitted the appellant / first accused from the charge under Section 120-B IPC, however, convicted her under Section 302 IPC and sentenced her to undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of three months. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Shanmugam, S/o.Kaliarasu. The appellant / first accused is his wife. They were residing at Agaram Village. It is alleged that, in due course, the appellant



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had developed an illicit intimacy with the second accused. This came to the knowledge of the deceased. He warned both of them. But they did not stop their intimacy. The accused felt that the deceased was the hindrance for their illegal intimacy. Therefore, according to the case of the prosecution, these two accused conspired to do away with the deceased.

4. It is the further case of the prosecution that, on 09.01.2012, at about 09.30 am, the deceased returned to his house and at that time, to his shock, he found the accused 1 and 2 in a compromising position together, in his house. The deceased questioned them. Immediately, in pursuance of the above conspiracy, the second accused pushed the deceased down and closed his mouth with his hands. The first accused, using her hands, closed his nose and mouth. Due to suffocation, the deceased died. The occurrence was not witnessed by anyone.

5. According to the case of the prosecution, P.Ws.1 and 2 are the brothers of the deceased. P.W.2 had a tiled house in the same village. P.W.2 had requested the deceased and P.W.1 to help him to change the tiles in the house. Therefore, at 07.00 am, on 09.01.2012, P.W.1 and the deceased had gone to the house of P.W.2 and from then onwards, they were engaged in changing the tiles on the roof. At 01.30 pm, P.W.1 and the deceased had lunch. At 02.00 pm, the deceased told P.Ws.1 and 2 that he would go to his house and return immediately, after attending an urgent work. Accordingly, he left the house of P.W.2 at 02.00 pm. Till 03.00 pm, he did not return. While so, there is a phone call to P.W.1 that there was some commotion in the house of the deceased. Therefore, P.W.1 immediately rushed to the house of the deceased and he found the house of the deceased locked. He tapped at the door. There was no response from inside the house. P.W.1 tapped the door again and still there was no response from inside. P.W.1 and the neighbours went to the backyard of the house and tapped the back-door of the house also. Still, there was no response. Then they opened the door of the window, through which they peeped through and they found the first accused / appellant lying on the floor, inside the house. They threw water on the face of her through the window. Then the appellant / first accused got up. They wanted her to open the door. She opened the door. They entered into the house and then found the deceased lying in motionless, in a different room. They tried to wake him, but there was no response. Therefore, with the help of 108 Ambulance they took the deceased to a private hospital. The Doctor, P.W.7, examined him at 03.00 pm and declared him dead. Therefore, they brought back the dead body of the deceased to the house of the deceased. Then, they informed the relatives. P.W.2 also rushed to the house of the deceased. Then, on the advise of P.W.2, P.W.1 went to Parangipettai Police Station and made a complaint at 09.00 pm on 09.01.2012.

6. P.W.15, the Special Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.17 of 2012 under Section 174 (3) Cr.P.C., Ex.P-11 is the First Information Report.



He forwarded both the documents to the Court and handed over the case diary to P.W.16, the Inspector of Police, for investigation. Taking-up the case for investigation, P.W.16 went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.8 and another witness and examined few more witnesses. Then, he conducted inquest on the dead body of the deceased and forwarded the same for post-mortem.

7. P.W.13, Dr.Geethajali, conducted autopsy on the body of the deceased on 10.02.2012 at 11.15 pm. She found the following injuries on the body of the deceased:-

"The following injuries were noted:

1. Contusion of size 3.5 x 3 x 0.5 cm over lower half of nose involving the dorsum and sides.
2. Linear abrasion of size 1 cm, over right cheek.
3. Three injuries over an area of 3 x 3 cms, left side of face, just above mouth - (a) Curvilinear abrasion of length 1.5 cm (b) curvilinear abrasion of length 1 cm (c) contusion of size 0.5 cm x 0.75 cm x 0.5 cm.
4. Contusion of inner aspect of lower lip, right side - 2 x 0.5 x 0.5 cm.
5. Linear interupted abrasion of length 6 cm x 2 cm on aspect of middle 1/3rd of left arm (1.5 cm interupted seen).
6. Abrasion 2 cm x 1 cm back of left shoulder.
7. Contused abrasion of size 9 cm x 1 cm x 0.75 cm lower back left side.
8. Contused abrasion 4 cm x 4 cm x 0.5 cm lower back right side.

On opening of the Head: Scalp contused in the under-surface. (a) 2 cm x 2 cm x 0.5 cm over vertex (b) 2 cm x 1 cm x 0.5 cm right parietal region. Bones of the cranium intact. Membranes intact. Brain Normal size c/s congested. Base of skull : Intact.

On opening the thorax: Rib cage intact. Left lung normal in size and shape. Right lung - adherent to rib cage. Multiple parietal haemorrhages seen over. The lateral surface, base and interlobular tissues of lungs cut section intensely congested. Heart: appears normal in size and shape, cut section great vessels, valves and coronaries intact. Chambers contain few grams of partially clotted blood.

On opening of the abdomen: Stomach contains about 750 gms of partially digested cooked rice particles yellow in colour. No specific smell. Intact. Liver, spleen and both kidneys - normal in size and shape and section intensely congested. Bladder : Empty.

On opening of the neck: Neck muscles intact. Larynx and trachea intact. Hyoid bone and thyroid gland - intact.

Pelvis and spinal column : Intact."

8. The Doctor, P.W.13, gave opinion that the death was due to suffocation (asphyxia). Ex.P-10 is the post-mortem certificate.



9. P.W.16, based on the above information of the Doctor, altered the case into one under Sections 302 and 120-B IPC. Ex.P-15 is the alteration report. At 01.00 pm, on 11.02.2012, he arrested the first accused at Chidambaram, in the presence of P.W.9 and another witness. On such arrest, she gave a voluntary confession, in which she disclosed the place, where the second accused was hiding. In pursuance of the same, she took the police and the witness to the place of hideout and identified the second accused. The second accused was accordingly arrested. From out of the disclosure statement made by the first accused, M.O.1-Baniyan was also recovered. On returning to the Police Station, he forwarded the accused to the Court and forwarded the material object also to the Court. On completing the investigation, he laid a charge sheet against the accused.

10. Based on the above materials, the trial court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 17 witnesses were examined, 15 documents were marked and the cloth recovered from the first accused was marked as M.O.1.

11. Out of the said witnesses, P.Ws.1 and 2 are the brothers of the deceased, who have stated that the deceased left the house of P.W.2 at 02.00 pm, on the day of occurrence, and thereafter, P.W.1 received a phone call that he was motionless at the house of the deceased. P.W.3 is the neighbour of the deceased. P.Ws.1 and 3 have stated that they knocked the front door of the house of the deceased. But there was no response. They went back to the backyard of the house and knocked the back-door of the house and there was no response and they opened the door of the window, through which they peeped through and they found the first accused / appellant lying on the floor, inside the house, and the first accused was unconscious and they threw water on her and thereafter, the first accused became conscious and she opened the door and then they found the deceased also unconscious. The deceased was taken to the Doctor, where he was declared dead.

12. P.W.4 has spoken about the illicit relationship between the accused. P.W.5 has stated that he found a man running away from the house of the deceased at 02.30 pm, on the day of occurrence. He has further stated about the fact that the accused was lying unconscious and the deceased was also lying unconscious. He corroborated the evidence of P.Ws.1 and 3. P.W.6 is the neighbour of the deceased, who has stated that on 09.01.2012, at 02.30 pm, the second accused was found moving from the house of the deceased. P.W.7 has stated that he declared the deceased dead at 03.00 pm on 09.01.2012. P.W.8 has spoken about the preparation of the Observation Mahazar and the rough sketch, at the place of occurrence. P.W.9 has spoken about the arrest of the first accused and the consequent recovery of M.O.1. P.W.10 has spoken about the arrest of the second accused.



13. P.Ws.11 and 12 are the Forensic Experts. According to their evidence, there was no poison or alcohol found in the internal organs of the deceased. P.W.13 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.W.16 has spoken about the investigation done in this case and the final report filed. P.W.17 has spoken about the arrest of the second accused.

14. When the above 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 of the witness nor marked any document, on their side. Having considered all the above, the trial Court acquitted the second accused and convicted the first accused under Sections 120-B and 302 IPC. Challenging the same, the appellant is before this Court with this Criminal Appeal.

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

16. This is a case based on circumstantial evidence. Though it is alleged that there was illicit intimacy between the accused 1 and 2 and since the deceased was a hindrance for the same, they conspired to kill the deceased. For want of evidence, the trial court has acquitted both the accused from the said charge.

17. It is the further case of the prosecution that the accused 1 and 2 jointly killed the deceased by suffocating him. But the trial court has acquitted the second accused for want of evidence. So far as the appellant / first accused is concerned, the only evidence available is that, she was alone in the house, where the deceased was lying unconscious. The trial court has convicted her, by holding that she has not discharged her burden under Section 106 of the Indian Evidence Act, as to how the deceased died. In our considered view, the said conclusion arrived at by the trial court is not correct. P.W.5 has stated that around 02.30 am, on 09.01.2012, one man was running away from the house of the deceased. But P.Ws.1 and 2 have stated that the deceased left the house of P.W.2 only at 02.00 pm. Therefore, the deceased would have been done to death only at 02.00 pm, on the day of occurrence. By 03.00 pm, he declared dead. Inside the house, according to P.Ws.1 and 3, they knocked the front door of the house of the deceased and it was found locked. There is no evidence whether it was locked from inside or outside. They went to the back-door and they knocked at the same. There was no response and they found that the accused was lying in the room unconsciously. P.Ws.1 and 3 found the same through the window. They shouted, but there was no response from her. Then, they threw water, through the window, on the first accused. Then only, she regained consciousness. Therefore, it is crystal clear that when the first accused was unconscious, something would have happened to the deceased. Thus, one cannot expect the first accused to explain as to how the



occurrence had taken place. She has only pleaded innocence. The prosecution has not explained as to how and why the first accused became unconscious. In the absence of the same, in our considered view, from out of the said witnesses and on the above circumstances, we cannot conclusively hold that this accused, i.e., the first accused, has caused the death of the deceased. It is also to be mentioned that the trial court has acquitted the second accused, whom according to him, played a vital role along with the first accused in suffocating the deceased.

18. In these circumstances, we are of the view that the conviction of the appellant / first accused cannot be sustained. We cannot afford to sustain the conviction of the appellant on mere surmise. In such view of the matter, we find that the prosecution has not proved the case against the accused beyond all reasonable doubts. For these reasons, we hold that the accused is entitled for acquittal.

19. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / first accused by the learned II Additional Sessions Judge, Chidambaram, in S.C.No.66 of 2012, by the judgement, dated 12.12.2014, are hereby set-aside. The appellant / first accused is acquitted and she is directed to be set at liberty, forthwith, unless her presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to her. Bail bonds, if any, shall stand discharged.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1. II Additional District & Sessions Judge, Chidambaram

2.The Inspector of Police,
Parangipettai Police Station,
Parangipettai,
Cuddalore.

3.The Superintendent,
Special Prison for women,
Vellore.

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

5.The District Collector,
Cuddalore.



6.The district Judge,
Cuddalore.

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7.The Public Prosecutor, Madras.

8.The Section Officer,
Crl.Section, High Court, Madras.

+1 cc to Mr.K.G.Senthilkumar, Advocate,sr.36547.

ev(co)
krd 21/7

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