

BAIL SLIP

That the Appellant herein/Accused Viz Mohamed IQBal S/o.Abubekkar was released on bail by order of this Court dated 20/7/2012 made in MP.No.1/12 in Crl.A.No.225/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.225 of 2012

Mohamed Iqbal ... Appellant/Accused

Vs.

State rep. by
The Inspector of Police
Valangaiman Police Station
Tiruvarur District
(Crime No.177 of 2007)

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.22 of 2011 by the learned District and Sessions Judge, Tiruvarur, dated 03.02.2012.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(The judgment of the Court was made by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C. No. 22 of 2011 on the file of the learned District & Sessions Judge, Tiruvarur and he stood charged for the offence under Section 302 IPC. By judgment dated 03.02.2012, the Trial Court convicted the accused u/s. 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months. Challenging the said judgment of conviction and sentence, dated 03.02.2012, the appellant is before this Court with this appeal.

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

(i) The deceased in this case was one Mrs. Jeenathammal. The accused is her husband. The accused was for quite sometime in a foreign country on account of his avocation. The deceased alone was, therefore, residing in a rented house at Bishmi Nagar, Govindhakudi Village. After having spent eight months abroad, he returned to the said Village on 25.08.2007. But, he had suspicion over the fidelity of the deceased. It is alleged that on 20.11.2007, out of the said suspicion, he strangulated the neck of the deceased, at about 5.00 a.m., and hanged the body inside the house by using a saree as a ligature.

(ii) P.W.1-Majeetha Begum is the mother of the deceased. She has stated about the marriage between the deceased and the accused. She has also stated that the accused had suspicion over the fidelity of the deceased. P.W.1 has further stated that on the date of occurrence, around 6.45 a.m., she heard an alarm raised from the house of the deceased and therefore, she rushed there. When she reached the house, she found the accused in the house sitting and the deceased lying on the lap of the accused. The accused told her that she had hanged herself. One Syed Mohammed (P.W.6), who was present at the house of the deceased, also told P.W.1 that on hearing the alarm raised by the accused, when he rushed to the house of the deceased, he found the deceased hanging and the accused was holding her up and then, P.W.6 helped the accused to remove the body from the ligature. The deceased was still alive. Thereafter, they took her to the Pateeswaram Hospital. But, the Doctor declared her dead. Thereafter, P.W.1 made a complaint to the police.

(iii) P.W.14-Devadas, the then Sub-Inspector of Police, on receipt of the complaint-Ex.P.1, registered a case in Crime No.177 of 2007 under Section 174 Cr.P.C. Ex.P.14 is the First Information Report. On 20.11.2007, he proceeded to the place of occurrence and prepared Ex.P.10-Observation Mahazar and Ex.P.12-Rough Sketch in the presence of witnesses at the place of occurrence. Then, he conducted inquest on the body of the deceased, prepared Ex.P.15- Inquest Report. Then, he proceeded to the house of the P.W.1, where, the dead body had been brought from the hospital. He conducted inquest on the body of the deceased and he prepared Ex.P.11-Observation Mahazar and Ex.P.13-Rough Sketch at that place also. Then, he forwarded the dead body for postmortem.

(iv) P.W.12-Dr.Muthukumar of Government Hospital, Valangaiman, conducted autopsy on the dead body of the deceased on 21.11.2007 at 10.00 a.m. According to him, the approximate age of the deceased would have been 30 years. He found the following injuries on the body of the deceased :-

"External Examination:-

- 1.Scalp : Fully covered black hair. No external injury.
 - 2.Ear : No external injury; No discharge.
 - 3.Eye : No external injury; pupils dilates;
Dry conjunctiva; Eye ball not protruded.
 - 4.Nose : Frothy discharge.
 - 5.Oral Cavity: No injury; All teeth are intact;
Tongue not protruded.
 - 6.Neck: (a) Injury 2 x 3 over (Lt) Submandibular region.
(b) Two discriminated lacerated injury
(?Nnail) over (Lt) side neck of 1 x ½ in
size.
(c) Injury over (Rt) Sub-Mandibular region of
7 x 2 in size.
(d) Small injury over (Lt) dorsum of hand of
2x2 cm.
 - 7.Chest: No external injury.
 8. Abdomen: No external injury.
 - 9.Genital : Black pubic hair. No external injury. No semen
deposit.
 - 10.Back : External injury - Two punched out injury over
back between inter scapular region.
- Internal Examination:-
- Heart : Normal appearance and size c/s. shows congestion.
- Lungs: Normal appearance and size.
- Stomach: Wt. 180 grams, contain semiliquid
S/.shows congestion.
- Larynz, Trachea and Bronchi: Small collection of blood
behind the pharynx (x).
- Uternus: Uterus non gravid; empty; hoemorrhagic spots
over endometrium.
- Hyoid Bone: Left horn of Hyoid bone fractured posteriorly
i.e., inward compression fracture of hyoid bone
present."

Ex.P.8 is the Post-Mortem Report. He opined that the deceased would appear to have died of asphyxiation due to manual strangulation.

(v) P.W.14, the then Sub-Inspector of Police, altered the case into one under Section 302 IPC and handed over the case to Inspector of Police for investigation.

(vi) P.W.15-Palanisamy, the then Inspector of Police, took up the case for investigation. He arrested the accused on 23.11.2007, at 11.00 a.m., near Chaparam Puthuroad Bus Stand at Papanasam in the presence of witnesses. He examined few more witnesses including the Doctor and then, forwarded the accused to the Court for judicial remand. The investigation was continued by P.W.16-Jayapal, the then Inspector of Police, and

he laid the chargesheet against the accused.

(vii) Based on the above materials, the Trial Court framed charges as detailed in the paragraph No.1 of this judgment. The appellant/accused denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 16 witnesses were examined and 18 documents and 2 material objects were exhibited. M.Os.1 and 2 are the cut pieces of the saree, which were recovered from the place of occurrence, which had been used as a ligature. Out of the said witnesses, P.W.1-Majeetha Begum is the mother and P.W.2-Jagaper Nachiar is the sister of the deceased. They have stated about the marriage between the accused and the deceased and that the accused was in a foreign country. They have further stated that the accused had suspicion over the fidelity of the deceased. They have further stated that on the date of occurrence, around 6.45 a.m., they heard the alarm raised by the accused and when they rushed to the house, they saw the deceased lying on the lap of the accused. The deceased was still alive. Thereafter, they took her to the hospital, where she was declared died. P.W.3-Jeenathammal is the neighbour of the deceased. She has stated that on the date of occurrence, on hearing the alarm raised, she had rushed to the house of the deceased, where she found the deceased hanging and P.W.6 was removing the body from the ligature. P.W.4-Sheik Dawood is yet another neighbour, who has also stated so like P.W.4. P.W.5-Amanullah is yet another neighbour, who has stated that at about 7.15 a.m., he heard about the occurrence. He has not stated anything incriminating against the accused. P.W.6-Syed Mohamed has stated that he is the neighbour of the deceased and on hearing the alarm raised by the accused at 6.30 a.m., he rushed to the house of the deceased. At that time, he found the deceased was hanging and the accused was holding the deceased up and the saree was found as a ligature around her neck tied to the wooden beam in the house. He has further stated that he has helped the accused to remove the deceased from the ligature and then, he told about the same to the parents of P.Ws. 1 and 2, when they reached the place of occurrence. He has further stated that the deceased was thereafter taken to the hospital, where, she was declared died. P.W.7-Abdul Aziz has spoken about the preparation of the Observation Mahazar and Rough Sketch at the place of occurrence. P.W.8-Mohamed Sabi has spoken about the arrest of the accused. P.W.9-Abdul Mazith is the father of the deceased. He has stated about the marriage between the accused and the deceased and the fact that the accused had suspicion over the fidelity of the deceased. He has further stated that when he was in Dubai, he heard about the occurrence. P.W.10-Mohamed Iliaz is the resident of the opposite side house of the deceased. He has spoken about the general suspicion the accused had over the fidelity of the deceased. P.W.11-Sekar is the Police Constable, who carried the First Information Report to

the Court. P.W.12-Dr.Muthukumar has spoken about the Postmortem conducted and also the final opinion regarding the cause of death. P.W.14-Devadas, the then Sub-Inspector of Police, has spoken about the registration of the case and the initial investigation done by him. P.W.15-Palanisamy and P.W.16-Jayapal, the then Inspectors of Police, have spoken about the investigation done by them and the filing of the final report.

(viii) When the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, he denied them as false. But, he has not chosen to examine any witness nor to mark any document. His defence was a total denial. Having considered all the above, the Trial Court found the appellant/accused guilty and convicted him accordingly. That is how, the appellant/accused is now before this Court with this appeal.

3. We have heard Mr.D.Veerasekaran, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

4. The learned counsel for the appellant would submit that there is enormous evidence available to show that the deceased had committed suicide. We have anxiously gone through the entire evidence let in by the prosecution. P.W.6-Syed Mohamed is the vital witness for the prosecution. He is a neighbour of the deceased. He has stated that, at about 6.30 a.m., on the date of occurrence, when he was in his house, he heard the alarm raised by the accused crying for help. Immediately, he rushed to the house of the deceased, where he found that the deceased was hanging in a ligature. One end of the ligature was tied to the wooden beam and the other end was around her neck. The accused was holding her up to avoid pressure being exerted on her neck. P.W.6, immediately helped the accused to remove the deceased from the ligature. Then, the accused put the deceased on his lap and was trying to save her. There was still life. On hearing the alarm raised, P.Ws. 1 and 2 and others rushed to the house of the deceased. P.Ws.1 and 2 have stated that on hearing the alarm raised by the accused, they rushed to the house of the deceased and they found the accused sitting and holding the deceased on his lap. She was still alive. There was life in the body of the deceased. Then, the accused and all others took the deceased to the hospital to save her. This conduct of the accused is inconsistent with his guilt. Had he been filled with guilty mind, he would not have had this kind of conduct. The inference out of the natural conduct of the accused is that he had not caused any harm to the deceased.

5. We do not come to such a conclusion out of the above inference alone. The medical evidence also supports the said theory. P.W.12, the Doctor, who conducted autopsy, has stated that the death was due to asphyxiation due to manual strangulation. But, during cross-examination, he has admitted that small abrasions were found on the neck of the deceased and the same would have been caused when the deceased was removed from the ligature. The Doctor was more influenced to give the opinion that the death was due to asphyxiation due to manual strangulation, because, there was fracture of the hyoid bone. But, during cross-examination, he has stated that going by the location of the injury on the neck, it is possible that the fracture of hyoid bone would have been caused by suicidal hanging by means of ligature. Thus, the conduct of the accused and the positive admission made by the Doctor that the death would have been caused by suicidal hanging would substantively go to create a doubt in the case of the prosecution. In a case based on circumstantial evidence, it is absolutely necessary for the prosecution to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused.

6. In this case, as we have already pointed out, there are no circumstances unerringly pointing to the guilt of the accused, but, instead, there is a very strong circumstance which is inconsistent with the guilt of the accused. Therefore, we have no hesitation to hold that the prosecution has not proved the case beyond reasonable doubts. Therefore, we find no case to sustain the conviction of the accused. In view of the same, the appellant/accused is entitled for acquittal.

7. In the result,

i. this Appeal is allowed and the conviction and sentence imposed on the appellant by the Trial Court in S.C.No.22 of 2011, dated 03.02.2012, is set aside and the appellant is acquitted;

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

iii. The bail bond, if any executed by the appellant/accused, shall stand discharged.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Inspector of Police
Valangaiman Police Station
Tiruvarur District.

2.The District & Sessions Judge
Tiruvarur.

3.The Additional Public Prosecutor,
High Court, Chennai.

4.The Judicial Magistrate No.V
Mannargudi

5.-do-Thro The Chief Judicial Magistrate
Thiruvarur

6.The Superintendent Central Prison,
Trichy

7.The District collector, Tiruvarur

6.The Director General of Police,
Mylapore Chennai-5

copy to:
The Section Officer,
Criminal Section,
HighCourt, Madras-104

+1 cc to Mr.D.Veerasekaran Advocate sr.12479

CRIMINAL APPEAL No.225 of 2012

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