

BAIL SLIP

The Accused viz., Arunkumar (A2 - CA.NO.257/12) and Thameem (A-3 in CA.NO.298/12) were Released on Bail as per the Order of this Court Dated 30.07.2012 and 24.07.2012 respectively and made in MP.NO.1/2012 IN CRL.A.NO.257/2012 AND MP.NO.1.2012 IN CRL.A.NO.298/2012 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.02.2016

CORAM:

THE HONOURABLE MR . JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.257, 298 and 363 of 2012

Arunkumar ..Appellant in Crl.A.No.257/2012/A2

1.Thameem Ansari

2.Murugan ..Appellants in Crl.A.No.298/2012/A3,A4

1.Srinivasan

2.Murugan .. Appellants in Crl.A.No.363/2012

-Vs-

State rep by
Inspector of Police,
Baluchetty Chathiram Police Station,
Kanchipuram.

(Crime No.40/2011) ... Respondent in all the Appeals

These Criminal Appeals have been preferred to call for the records in S.C.No.53 of 2011 on the file of the Sessions Court II, Kanchipuram and set aside the conviction and judgment dated 15.02.2012.

For Appellants [A2,A3 & A4] : Mr.S.Anbalagan
in Crl.A.Nos.257 & 298/2012

For Appellant [A1] : Mr.L.Mahendran
in Crl.A.No.363/2012

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

C O M M O N J U D G M E N T

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

The appellants are the accused 1 to 4 in S.C.No.53 of 2011 on the file of the learned Sessions Judge - II, Kancheepuram. The first appellant in Crl.A.No.363 of 2012 is the first accused, the appellant in Crl.A.No.257 of 2012 is the second accused, the first appellant in Crl.A.No.298 of 2012 is the third appellant. The second appellant in Crl.A.No.298 of 2012 and in Crl.A.No.363 of 2012 is one and the same person who is the fourth accused in the case. They stood charged for offences under Sections 302 and 201 IPC. By judgment dated 15.02.2012, the trial Court convicted them under both the charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.25,000/- each, in default to undergo rigorous imprisonment for three years for the offence under Section 302 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.25,000/- each, in default to undergo rigorous imprisonment for three months for the offence under Section 201 IPC. Challenging the said conviction and sentence, the accused/appellants are before this Court with these appeals.

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

[a] The deceased in this case was one Ravi. The first accused had an aunt by name Lakshmi. The deceased had developed illicit intimacy with Lakshmi. This came to the knowledge of the first accused. Enraged over the same, he decided to do away with the deceased. This is stated to be the motive for the occurrence. On 10.02.2011, at 1.00 p.m., it is alleged that all the four accused took the deceased in a Qualis car and proceeded towards Bangalore, on the Chennai to Bangalore National Highway. When the vehicle reached a place known as Thamul, all the four accused killed the deceased, severed his head and threw his headless trunk into a lake at 6.00 p.m. Then, they took the severed head of the deceased in a cloth and buried the same at Samanthipuram Village near Murugan kundru.

[b] P.W.2, the then Panchayat Board President of Thamul Village found the headless trunk of the deceased at Thamul lake. He informed the same to P.W.1, the then Village Administrative Officer of Thamul. P.W.1 immediately preferred a complaint to the police. P.W.17, the then Inspector of Police of Baluchetty Chathiram Police Station, on receiving Ex.P1, registered a case in Cr.No.40 of 2011 at 3.00 p.m., on 11.02.2011, for offences under Sections 302 and 201 IPC. Neither the identity of the dead body was known nor the assailant was known at that time. Then, he took up the case for investigation.

[c] He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.1 and another witness. He took photograph of the dead body through P.W.15, the police photographer. Then, he made a request to the sniffer dog squad. Accordingly, P.W.6 brought a sniffer dog to the place where the dead body was found, but, it proved futile, as no clue could be obtained.

[d] He made a request to the Forensic Expert to be present at the place of occurrence. One Moorthy, Forensic Expert visited the place of occurrence, but, he was not able to find any clue at the place of occurrence. A Fingerprint Expert was also brought to the place of occurrence, but, no chance print could be recovered at the place of occurrence. Then, he conducted inquest on the headless trunk of the deceased and forwarded the same for post-mortem. He made wide publicity of the photograph of the headless trunk in the local newspapers.

[e] On 12.02.2011, he received intimation from the Valasaravakkam police station, that a person by name Ravi was found missing within the jurisdiction of Valasaravakkam police station and a case has been registered for "man missing" on the complaint of one Kumar [P.W.10].

[f] P.W.10, on seeing the photograph of the headless body from the newspapers, came to Baluchetty Chathiram Police Station. P.W.17 took P.W.10 and other relatives of the deceased to the hospital, where the dead body was preserved. They identified the same as that of the deceased. The investigation done till then could not explore, as to what had happened to the head of the deceased.

[g] On 13.02.2011, at 9.00 a.m., at Mugalivakkam koot road, the first accused was arrested by P.W.17 at 9.00 a.m. On such arrest, he made a voluntary confession statement, in which he disclosed the place where he had buried the head of the deceased. He also disclosed the identity of the accused 2 to 4 and told that he would identify them. In pursuance of the said statement made, he took P.W.17 and the witnesses to Poonamallee bus stand and identified the accused 2 to 4, who were waiting for him. P.W.17 arrested the accused 2 to 4 in the presence of P.W.7 and another witness. On such arrest, the second accused gave a voluntary confession statement, in which he disclosed the place where he had hidden the knife. Following him, the third accused gave a voluntary confession statement, in which he disclosed the place where he had hidden the blood stained clothes. Lastly, the fourth accused gave a voluntary confession statement, in which he disclosed the place where he had hidden the Qualis Car. In pursuance of the disclosure statement made by the first accused, he took the police and the witnesses to the place and identified the place where the head of the

deceased was buried. In pursuance of the disclosure statement made by the other accused, the respective material objects were also recovered.

[h] Then, P.W.17 made a request to the Tahsildar for exhuming the head from the place identified by the first accused. P.W.4, the Deputy Tahsildar arrived at the scene of occurrence on 13.02.2011. P.W.5, the Village Administrative Officer and the Village Assistant were also present at the scene of occurrence. In their presence, the place identified by the first accused was dug, from where the head of the deceased was exhumed. P.W.17 conducted inquest on the severed head of the deceased and prepared Ex.P.30 - Inquest Report. He prepared an Observation Mahazar and a Rough sketch regarding the said place, from where the body was exhumed. Then, he forwarded the severed head of the deceased to the mortuary of the Government Hospital, Kancheepuram. On 14.02.2011, he kept the trunk and the head together and conducted inquest and prepared Ex.P32-Report. Then, he forwarded the trunk as well as the head for post-mortem.

[i] P.W.16-Dr.Parasakthi conducted autopsy on the body of the deceased, including the severed head. She found the following injuries:

"Head:

Found pale and decomposed. Eyeballs found open, nose and lips found flattened with partial exposure of tongue. Muscles and cheek found flattened. Peeling of cuticles seen over the face with avulsion of scalp, moustache and beard hairs. Skull - intact. brain - liquefied.

Following ante mortem injury seen on the neck:

1.Lower part of neck found cut completely at the level of C3, C4, C5 with surrounding areas of contusions. cut end found clear cut with few specks of mud and sand particles in situ. Hyoid bone - intact.

Trunk:

Following ante mortem injury seen on the trunk:

1.Complete cut injury seen on the neck at the level of C4, C5 cervical vertebra with surrounding areas of contusions. Exposed area found clear cut. The cut ends of lower part of neck and upper part of trunk can align well within each other.

2.Contusion reddish brown in colour seen on the front of upper part of left chest measuring 4 cm x 3 cm."

She removed samples from the trunk as well as the severed head and forwarded the same for DNA examination [DNA report has not been received and proved in evidence]. On completing the investigation, P.W.17 laid charge sheet against all the four accused.

3. Based on the above materials, the trial Court framed appropriate charges, which the accused denied. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 38 documents were exhibited, besides 10 Material Objects.

4. 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 nor they did mark any documents in their favour. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted all the four accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with these appeals.

6. The fourth accused Murugan has filed two appeals in CrI.A.Nos.298 and 363 of 2012. Since Cr.A.No.298 of 2012 is the earliest one, CrI.A.No.363 of 2012, insofar as the fourth accused is concerned, is dismissed and his appeal in CrI.A.No.298 of 2012 is disposed of on merits by means of this judgment.

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

8. This is a case based on circumstantial evidence. It is needless to point out that, in a case based on circumstantial evidence, the prosecution has to prove the circumstances projected by it beyond reasonable doubts and all such proved

circumstances, should form a complete chain without any break, so as to unerringly point 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 principle in mind, let us go into the circumstances projected by the prosecution.

9. The first and foremost circumstance projected by the prosecution is the motive. According to the case of the prosecution, the deceased had developed illicit intimacy with the aunt of the first accused. When this came to the knowledge of the first accused, he decided to do away with the deceased. This is stated to be the motive. Absolutely, there is no evidence on record to prove this circumstance. Thus, the motive has not been proved at all by the prosecution.

10. The next circumstance relied on by the prosecution is, that the deceased was lastly found being taken in a Qualis Car by these four accused. This has been spoken by P.Ws.9 and 12. According to P.W.9, on 10.02.2011, at about 2.30 p.m., when the deceased was in his company, the deceased received a cellphone call. The deceased told him that the first accused wanted him to come for having liquor. Accordingly, P.W.9, the deceased and a few others went to a saloon shop. In that shop, the first accused was already standing. He took all the four accused to a nearby TASMAC shop. There, all of them had liquor. Then, the first accused wanted the deceased to go out. Accordingly, the deceased went along with him in a Qualis car. In that Qualis car, all the other three accused were also present. The learned counsel for the appellants would submit that the accused 2 to 4 were not previously known to P.W.9 at all. This has been admitted by P.W.9. But, there was no Test Identification parade conducted, to test the veracity of the evidence of P.W.9. As rightly contended by the learned counsel for the appellants, the identification made for the first time in Court, of the accused 2 to 4 cannot be given any weightage at all, more particularly, because, P.W.9 is an interested witnesses. He did not inform the family members of the deceased about the above fact though he knew very well that the deceased was missing and a case had been registered for the same. He had only told that the deceased had gone with A1. He has further admitted that he did not say anything to the police about A2 to A4. P.W.9 has not even mentioned about the number of the car in which they all went together. His evidence is so vague, which cannot be given any weightage at all.

11. Then comes the evidence of P.W.12. He has stated that he was present along with the deceased and P.W.9 in the TASMAC shop. He has further stated that the deceased was taken in Qualis car by the four accused. He has also stated that the accused 1 to 4 were not previously known to him. There was no Test Identification Parade conducted for him. He has further

stated that the police kept him and P.W.9 in the police station out of suspicion on 11.02.2011 and aggressively interrogated. On 11.02.2011, the first accused was also kept in the police station along with him out of suspicion and interrogated. Only on 12.02.2011, he [P.W.12] was let off. He has further stated that on 11.02.2011 and 12.02.2011, all the four accused were kept in the police station and interrogated along with him. These admissions would certainly create doubts in the veracity of this witness. He has not stated anything about the number of the car. His evidence is also so vague. Therefore, from these two evidences, it cannot be conclusively held that the deceased was in the company of the accused lastly, when he was found alive.

12. Then comes the circumstances spoken by P.Ws.1 and 2. According to them, the dead body of the deceased [headless trunk] was found on 11.02.2011 at 2.30 p.m. without head. According to the Doctor, the death was due to the injuries and thus, it is only a homicide. The accused were arrested on 13.02.2011. Until then, according to the case of the prosecution, the whereabouts of the severed head of the deceased was not known. It was only on the information given by the disclosure statement made by the first accused, the place where severed head was buried came to light. Thereafter only it was exhumed. But, P.W.9, during cross examination has stated that the first accused was seen in the police station on 11.02.2011 at 6.00 p.m. itself and the accused 2 to 4 were seen by him on 12.02.2011. P.W.10 has stated that the first accused was in the custody of the police between 11.02.2011 and 14.02.2011 and interrogated. P.W.12 has stated that on 11.02.2011, in his presence, P.W.17 interrogated all the four accused at the police station and he has further stated that all the accused were kept in the police station between 11.02.2011 and 12.02.2011. From these evidences, it is crystal clear that the so-called arrest of the accused on 13.02.2011 and consequential recovery of the head and the other material objects cannot be true. Therefore, this part of the case of the prosecution is rejected. If this is rejected, then, there is no other evidence against the accused to sustain the conviction. At the most, the evidences of P.Ws.9 and 12 may give raise to a suspicion against these accused, but that suspicion by itself cannot take the place of proof. As we have already pointed out, there is no motive proved against any of the accused and no incriminating circumstance has been proved against the accused and therefore, we have to hold that the prosecution has failed to prove the case beyond reasonable doubts.

In the result, the appeals are allowed and the conviction and sentence imposed on the appellants/accused nos.1 to 4 by the trial Court are set aside and all the four accused are acquitted

of all the charges. The fine amount, if any paid by the accused, shall be refunded to them.

gms

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Inspector of Police,
Baluchetty Chathiram Police Station,
Kanchipuram.
2. The Sessions Court II, Kanchipuram.
3. The Public Prosecutor, Madras High Court, Chennai.
4. The Judicial Magistrate No.II, Kancheepuram.
5. The Superintendent, Central Prison, Vellore.
6. The Chief Judicial Magistrate, Chengelpet.
7. The District Collector, Kancheepuram.
8. The Director General of Police, Chennai-4.

KR/9/3/16

Crl.A.Nos.257, 298 and 363 of 2012

सत्यमेव जयते

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