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Bail Slip

The Accused viz., Jayakannan directed to be released on bail as per order of this court dated 7.2.12 made in M.P.No.1 of 2012 in CrI. A.No.26 of 212

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.A.No.26 of 2012

Jayakannan ... Appellant
vs.

State, rep.by
The Inspector of Police,
Kolathur Police Station,
Kolathur,
Mettur Taluk,
Salem District ... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 11.06.2009 passed by the Additional Sessions Judge (Fast Track Court No.II), Salem, in S.C.No.72 of 2009.

For Appellant : Mr.D.Selvaraju
For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

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

The appellant is the accused in Sessions Case No.72 of 2009, on the file of the Additional Sessions Judge(Fast Track Court No.II, Salem). He stood charged for the offence under Sections 302 of the Indian Penal Code and Section 201 r/w.Section 302 of the Indian Penal Code. By judgement dated 11.06.2009, the trial Court convicted him under Section 302 of the Indian Penal Code alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for ten months. The trial Court acquitted him for the charge under Section 201 r/w.Section 302 of the Indian Penal Code. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.



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

(a) The deceased in this case was one Jambu @ Archunan. P.Ws.2, 3 and 4 are the father, wife and sister respectively of the deceased. P.Ws.2 and 3 were residing at Palamalai Village in Mettur Taluk and P.W.4 was residing at Kemmampatti Village, Mettur Taluk. The accused is none other than the brother's son of P.W.2. On account of partition of the joint family properties, long time ago, there arose misunderstanding between the accused and the deceased and his family members. Thus, the accused was inimical towards the deceased and his family members. This is stated to be the motive for the occurrence.

(b) According to P.Ws.2 to 4, the deceased left his house on 26.4.2008 to sell tamarind. According to the case, at 3.00 p.m., when the deceased was passing through a place known as Pasipalipaarai at Kuruvareddiyur, the accused intercepted him and cut him with aruval on his neck, left shoulder and other parts of the body. The deceased died instantaneously. Then, he dropped the body near a bush and escaped from the scene of occurrence.

(c) It is the further case of the prosecution that after the occurrence, on 26.4.2008, at about 10.30 p.m., the accused came to the office of P.W.1, who was the then Village Administrative Officer of Kannamuchi Village. On appearance, he wanted to confess to his guilt. Accordingly P.W.1 reduced in writing the statement of the accused. The said statement is Ex.P1. Since it was too late in the night, P.W.1 informed the Inspector of Police over Phone about the occurrence. P.W.12, the Inspector of Police, along with the Police people, came to the place of occurrence at 3.45 a.m. P.W.1 had also arrived at the scene of occurrence. Then he handed over Ex.P1 and the accused to P.W.12. On returning to the police station, P.W.12 registered a case, in Crime No.137 of 2008, under Section 302 of the Indian Penal Code. Ex.P14 is the First Information Report. He forwarded both the documents to Court and took up the case for investigation. He prepared an observation mahazar and a rough sketch at the place of occurrence, in the presence of P.W.1 and another witness. Then he recovered blood stained earth, sample earth and a pair of cheppals from the place of occurrence and prepared a mahazar in the presence of the same witnesses. Then between 11.00 a.m. to 1.00 p.m., he conducted inquest on the body of the deceased and forwarded the body for post-mortem. P.W.8 conducted autopsy on the body of the deceased on 27.4.2008 at about 3.55 p.m. He found the following injuries:

External injuries: (a) A cut injury over nape of neck 6 x 0.5 x 1 cm extending upto



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right sternomastoid muscle, underlying muscle, subcutaneous tissue exposed. Maggots present.

(2) A cut injury 12 cm in length extending from right sternomastoid anterior aspect of neck and upto 1 cm below the right angle of jaw, underlying trachea, oesophagus, major blood vessels, cervical bone (C4) 1 spinal cord injured and exposed. Maggots present. Skin and subarachnoid tissue intact over the posterior aspect of neck.

(3) A lacerated wound 2 x 1 x 1 cm above manubrium sterni.

(4) A cut injury 10 x 15 cm below the (L) shoulder joint along the lateral aspect of the arm exposing underlying muscle.

(5) A cut injury 10x15 cm over (R) shoulder joint exposing (R) humerus head with tracheal dislocation of right shoulder joint present. Underlying muscle exposed, maggot is present.

(6) Abrasion 7 X 0.5 cm cut the (R) hip at upper 1/3 of thigh lateral aspect.

Internal Examination

- (1) Ribs intact hyoid bone intact
- (2) stomach - empty intestine - empty
- (3) lungs - (R) 280 gms c/w pale (L) 260 gms c/s pale
- (4) Heart - 300 gms c/s pale
- (5) Liver - 1000 gms c/s pale
- (6) Kidney - Each 90 gms c/s pale
- (7) Bladder - Empty, Spleen - wt.90 gms C/s pale
- (8) Skull - No fracture, membrane intact Brain - wt.1000 gm c/s.pale

He gave opinion that the death was due to haemorrhagic and neurogenic shock.

(d) During interrogation, at 1.15 p.m. on the same day, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden the aruval. In pursuance of the same, at 4.30 p.m. he identified the place and produced the aruval-M.O.5. On returning to the police station, P.W.12, the Inspector of Police, forwarded the accused to the Court and



handed over the material objects also to the Court. Then he gave a request to the Court to forward the material objects for chemical examination. The report revealed that there was blood stains in all the material objects. But the knife was not sent for chemical examination. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above incriminating materials, the trial Court framed the charges as detailed in first paragraph of this judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 18 documents and 8 material objects were marked. On the side of the accused, two documents, namely, the general diaries of Kolattur Police Station were marked.

4. When the above incriminating materials were put to the accused, he denied the same as false. His defence was a total denial.

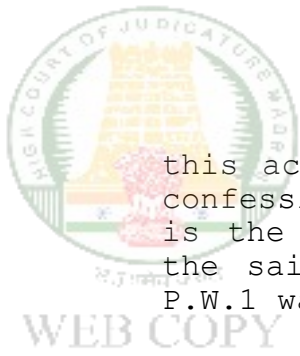
5. Having considered all the above, the trial Court convicted the accused as detailed in first paragraph of this judgement that is how the accused is before this Court.

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

7. This is a case based on circumstantial evidence. By examining the family members of the deceased, the prosecution has proved the enmity between the accused and the deceased. P.W.7, the then Inspector of Police, Kolattur Police Station, has spoken about the earlier case, in which, there was a compromise between the two families. It is in evidence that the accused had enmity against the deceased. To this extent, the prosecution has successfully proved the motive.

8. From the evidence of P.Ws.2 to 4, the prosecution has proved the next circumstance, namely, the deceased was lastly seen alive on 26.4.2008, when he left the house. Thereafter, the dead body of the deceased was found in the hill. It has been proved that the death was caused by the cut injuries found on the body. Thus, undoubtedly, it is a case of homicide.

9. Now, in order to prove that the death was caused only by



this accused, the prosecution relies only on the extra judicial confession, said to have been given by the accused to P.W.1. It is the contention of the learned counsel for the accused that the said confession cannot be true for the simple reason that P.W.1 was a stranger to the accused.

10. We find force in the said argument. It is too difficult to believe that the accused would have chosen a total stranger to make the confession about his guilt. This creates some doubt in the veracity of the evidence of P.W.1.

11. It is the further case of the prosecution that after recording confession from the accused, P.W.1 informed the police and the Inspector of Police came to the place of occurrence early in the morning at 3.45 a.m. itself. It is his further evidence that the observation mahazar was prepared at 8.00 a.m. on 27.4.2008. It is the evidence of the Inspector of Police that on the confession, said to have been given by the accused, the weapon was recovered at 4.30 p.m. on 27.4.2008. From the records, all the recoveries were completed before 4.00 p.m. at least. But the First Information Report along with Ex.P1 statement had reached the hands of the learned Magistrate only at 4.00 p.m. on 27.4.2008. For this, absolutely there is no explanation on the side of the prosecution. This would only go to indicate that after completing the investigation, Ex.P1 had been created as though the accused had gone to P.W.1 to make confession and then, the same has been forwarded to the Magistrate. This is the only inference, which could be drawn out of this unexplained delay. Thus, in our considered view Ex.P1 is a doubtful document and it is difficult to believe that the accused had gone to P.W.1 and made the confession.

12. Above all, an extra judicial confession by its very nature is a very weak piece of evidence. Unless it inspires the confidence of the Court, in the absence of any corroboration from any independent source, it is not safe to rely on the said extra judicial confession, to convict the accused.

13. In the instant case, we have already held that Ex.P1 is a doubtful document, for which we have given more than one reason. Thus, it does not inspire the confidence of this Court at all. There is no other evidence against the accused either independently or to corroborate Ex.P1. The recovery of M.O.5-aruvai itself is immaterial because, the link between M.O.5 and the crime has not been established. The weapon was not even sent for chemical examination. For all these reasons, we find that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.



14. In the result, this criminal appeal is allowed; the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any, paid by him shall be refund to him forthwith.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

1. The Judicial Magistrate,
Mettur.
2. The Chief Judicial Magistrate,
Salem.(for information)
3. The Additional Sessions Judge
(Fast Track Court No.I), Salem.
4. The Superintendent,
Central prison,
Coimbatore.
5. The Public Prosecutor,
High Court, Madras.
6. The Inspector of Police,
Kolathur Police Station,
Kolathur,
Mettur Taluk,
Salem District.

Cr1.A.No.26 of 2012

ctk(CO)
srg(25/02/2016)