

Bail Slip

Crl.A.282 of 2012

The Appellants/Accused namely Chinnasamy S/O Govinda Naidu, was directed to be released on bail as per the order of this Court dated in M.P.No.1 of 2012 in Crl.A.No.282 of 2012, on the file of this Court

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM:

THE HONOURABLE MR . JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.282 of 2012

Chinnasamy

... Appellant

-Vs-

State by
The Inspector of Police
Mathur Police Station
Krishnagiri District
Crime No.602 of 2007.

... Respondent

This Criminal Appeal has been preferred to set aside the judgment passed against the appellant on 20.03.2012 in S.C.No.45 of 2008 on the file of the learned Principal District Judge, Krishnagiri and acquit him from the charges.

For Appellant : Mr.A.Thiyagarajan
For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.45 of 2008 on the file of the learned Principal Sessions Judge, Krishnagiri. He stood charged for offences under Section 302 IPC [2 counts]

and Section 201 r/w 302 IPC [2 counts]. By judgment dated 20.03.2012, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life for each count and pay a fine of Rs.2,000/- for each count, in default to undergo rigorous imprisonment for six months for each count for the offence under Section 302 IPC [2 counts] and sentenced him to undergo rigorous imprisonment for 7 years for each count and pay a fine of Rs.2,000/- for each count, in default to undergo six months rigorous imprisonment for each count for the offence under Section 201 r/w 302 IPC [2 counts]. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

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

[a] The appellant was residing at Kannandahalli Kurugapalli village during the year 2007 along with his second wife Mrs.Anuradha and their child Divya. The accused had suspicion regarding the chastity of his second wife Anuradha. On account of the same, there were frequent quarrels between them. While so, it is alleged that on 12.10.2007, at about 2.30 p.m. out of the above stated motive, the accused killed his second wife Anuradha [hereinafter referred to as 'D1'] and the child Divya [hereinafter referred to as 'D2'] with a pen knife and caused their death. It is further alleged that, with a view to cause disappearance of the evidence, he buried the dead bodies in the land belonging to one Salammal in the same place.

[b] P.W.1 is the father of D1. He was engaged in rearing cattle. According to him, the accused and the deceased were residing in the same place. After some time, there arose misunderstanding between D1 and the accused, and therefore, D1 along with D2 had returned to her parental home. While at her parental home, D1 used to go for rearing cattle to the field. The accused again slowly started visiting the village and talking to D1 while she was in the field. On 11.10.2007, at about 12 noon, near the river in Kannandahalli village, the accused and D1 were found together engaged in chatting. Thereafter, D1 came back to her parental home. On the next day, i.e., on 12.10.2007, by about 12 noon, D1 along with her child, had again gone out. P.W.1 came to know of the same by about 6.00 p.m. on the same day. But, thereafter, D1 did not return with the child. P.W.1 and other family members went in search of them, but they could not find them anywhere. While so, on 13.10.2007, at 10.00 a.m., when they were searching for the deceased, they found that sand was newly filled in a pit in the land belonging to one Mr.Krishnamurthy. When they removed the sand slightly, they found the head of D1. Without making further digging, they returned and P.W.1 went to police station and made a complaint in this regard. P.W.12-the then Inspector of Police received the said complaint at 12.30 p.m. on

13.10.2007 and registered a case in Cr.No.602 of 2007 under Sections 302 and 201 IPC. Ex.P1 is the complaint and Ex.P17 is the FIR. Then, he forwarded both the documents to the Court and made a request to the Tahsildar, Pochampalli Taluk, to arrange for exhuming the dead bodies. Accordingly, P.W.10 came to the place of occurrence at 2.10 p.m. In his presence, when the pit was further dug, the dead bodies of D1 and D2 were found. P.W.12 prepared an Observation Mahazar and a Rough Sketch showing the place of occurrence. He also recovered the Material Objects such as, dress materials found on the dead bodies in the presence of the same witnesses. Then, the Tahsildar, conducted inquest on the bodies of the deceased. Then, he forwarded the bodies for post-mortem.

[c] P.W.11 conducted autopsy on the body of D1 on 14.10.2007 at 8.30 a.m. He found the following:

"External injuries:

1. Incised wound measuring 9 cm x 4 cm x 5 cm front of the neck just about the supra sternal notch exposing bisected trachea with cut right sternomastoid and jugular and carotid vessel. Blood stained mud was present in Trachea. 2. Old, healed partial amputation of left index finger. Maggots present over left side of face.

Internal injuries:

1.Hyoid intact; 2.Ribs Intact; 3.Heart - 250gms empty; 4.The lungs : rt.300gms; left 250 gms. C/s pale; 5. Stomach contains 200 grams of partially digested food particles. 6.Liver 1200gms c/s pale; 7.Spleen 120 grams c/s pale; 8.Kidney 110 grams each. 9.The bladder empty; 10.Uterus - normal; 11.Skull intact; 12. Membranes intact; Brain partially liquefied."

Ex.P15 is the Post-mortem Certificate with regard to D1. He gave opinion that the death would have occurred 48 to 72 hrs. prior to post-mortem. He further gave opinion that the death was due to shock and haemorrhage due to the cut injuries on the neck.

[d] On the same day, he conducted autopsy on the body of D2 at 10.00 a.m. He found the following:

"External injuries:

1. Incised wound present over the front of the neck 2cm above the suprasternal notch measuring 8cm x 3cm x 5cm exposing bisected trachea with both side carotid artery and jugular vein, also sternomastoid cut.

Internal injuries:

1.Hyoid intact; 2.Larynx-Mud present;3.Thorax-Ribs intact;4.Heart-70gm empty;5.Lungs-right 150g left 100g pale;6.Stomach-contains 100g of partially digested food particles;7.Liver-200g pale;8.Spleen-40g pale;9.Kidney-40g each;10.Bladder-empty;11.Skull-intact;12.Brain-partially liquefied weight 400g."

Ex.P16 is the Post-mortem Certificate with regard to D2. He gave opinion that the deceased would have died 48 to 72 hrs. prior to post-mortem. He further gave the opinion that the death was due to shock and haemorrhage due to the injuries.

3. During the course of investigation, on 14.10.2007 at 3.30 p.m., in the presence of P.W.8 and another witness, P.W.12 arrested the accused at 3.30 p.m. As a matter of fact, the accused, according to P.W.8, surrendered before him on 14.10.2007 at 1.00 p.m. and made voluntary confession. Ex.P4 is the confession statement. Along with the confession statement, he produced the accused before P.W.12 at 3.30 p.m. on 14.10.2007. On such production, P.W.12 arrested the accused and recorded his confession. In the same, he disclosed that he had hidden a green colour lungi at his house. At 6.30 p.m., the accused took the police and witness to the house and produced the same from his house. P.W.12 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused to the Court and handed over the Material Objects also. At his request, the Material Objects were sent for chemical examination. It revealed that there were blood stains on the Material Objects seized from the bodies of the deceased. But, there were no blood stains on the lungi allegedly recovered from the accused. On completing the investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court framed the above charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the

case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 25 documents were exhibited, besides 11 material objects.

5. Out of the said witnesses, P.W.1 is the father of D1. He has stated about the strained relationship between the accused and D1 and he has also stated that the deceased have left his house lastly on 12.10.2007 at 12.00 noon and that the dead bodies were found on 13.10.2007 at 10.00 a.m. P.W.2 is the daughter-in-law of P.W.1. She has stated that, she saw D1 taking the child and leaving the house on 12.10.2007 at 12 noon. She has further stated that thereafter, they did not return. P.W.3-a villager has stated that, 1-1/2 year before his deposition, on one day, he found D1 and the accused talking together when D1 was rearing cattle. P.W.4. has stated that, he joined P.W.1 to go in search of the deceased. He is the husband of P.W.2 and son of P.W.1. He has stated that on 13.10.2007 at 10.00 a.m., he found the dead bodies at the place of occurrence. P.W.5 has turned hostile and he has not stated anything incriminating the accused. P.W.6 has also stated that, four years prior to his deposition before the Court, he found the accused talking to D1. P.W.7 has spoken about the Observation Mahazar prepared on the spot and the recovery of the Material Objects from the bodies of the deceased. P.W.8 - the Village Administrative Officer has spoken about the fact that, he was present at the time the dead bodies were exhumed and he has also stated about the extra-judicial statement given to him by the accused. P.W.9 has spoken about the photographs taken at the place of occurrence. P.W.10 is the Tahsildar of Pochampalli Taluk. He has stated about the examination of the dead bodies. P.W.11 has spoken about the post-mortem conducted on the bodies of both the deceased and his final opinion regarding the cause of death. P.W.12 has spoken about the registration of the case and the investigation done by him. P.W.13 has spoken about the fact that he carried the FIR and handed over the same to the Court. P.W.14 is yet another police constable who has stated that he took the dead body to the hospital for post-mortem and P.W.15 has also spoken about the same fact.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor he did marked any documents in his favour. His defence was a total denial.

7. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant/accused is before this Court with this appeal.

8. 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.

9. This is a case based on circumstantial evidence. At the outset, we should say that, in a case of circumstantial evidence, the prosecution should 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 our mind, let us now go into the facts of the case.

10. There is no denial of the fact that D1 was the second wife of the accused and D2 was their child. There is also no much of dispute that D1 and D2 left the house on 12.10.2007 at 12.00 noon. This has been spoken to by P.W.2. Thereafter, the decomposed dead bodies were found on 13.10.2007 at 10.30 a.m.

11. The positive case of the prosecution is that, both the deceased were seen lastly on at 12.30 p.m. on 12.10.2007 by P.W.2. This is very seriously disputed by the accused. The medical evidence as spoken to by P.W.11 would go to show that both the dead bodies were highly decomposed, maggots were crawling and brains were liquefied.

12. In our considered view, the decomposition to this state would not have occurred within such a short span of time, when especially both the bodies were buried. It is the accepted medical dictum in the Forensic Medicine that, liquefaction of brain takes place at least 4 to 5 days after the death. In this case, had it been true that the deceased were lastly seen alive on 12.10.2007 at 12 noon, certainly, on 14.10.2007, the dead bodies would not have suffered such amount of decomposition. This creates doubt in the evidence of P.W.2 that, the deceased were lastly seen alive on 12.10.2007.

13. Now comes the extra judicial confession said to have been given by the accused to P.W.8 on 14.10.2007. It is in evidence of P.W.8 that, he was with the Tahsildar when the dead bodies were exhumed and he was assisting the investigation throughout. It is also in his evidence that the accused had no acquaintance with him at all. If that be so, it is too difficult to believe that the accused would have gone to such a stranger to make such a confession. Therefore, it is difficult to believe the evidence of P.W.8 that the accused gave such a voluntary confession to him. Above all, according to the confession, the deceased were done to death on 12.10.2007. As we have already pointed out, the death of the deceased would not

have occurred on 12.10.2007 at all. The death would have occurred a few days prior to 12.10.2007.

14. Apart from that, the General Diary of the police station was summoned by the trial Court. The learned Sessions Judge has recorded in paragraph 34 of the judgment that, according to the entries in the General Diary, complaint in respect of this occurrence was made to the police on 12.10.2007 itself and the same was duly recorded by P.W.12. Similarly, in the General Diary, on 12.10.2007, an entry has been made that the accused appeared before P.W.8 and made a confession. There is absolutely no explanation in respect of these entries made in the General Diary of the police station on 12.10.2007. These entries would completely falsify the case of the prosecution that the dead bodies were found only on 13.10.2007 and that the accused surrendered before P.W.8 and made a voluntary confession on 14.10.2007. Had it been true that the dead bodies were found only on 13.10.2007, there would have been no occasion at all to make entry on 12.10.2007 itself about this occurrence. Had it been true that the accused surrendered before P.W.8 only on 14.10.2007 and made a confession, there would have been no occasion for police to make entry on 12.10.2007 in the General Diary that the accused had already surrendered before P.W.8 and made a confession. These entries in the General Diary as recorded in paragraph 34 of the judgment would clearly falsify the case of the prosecution.

15. Therefore, we hold that the prosecution has not proved any of the circumstances against the accused beyond reasonable doubts and thus, the prosecution has failed to prove the case beyond reasonable doubt and therefore, the appellant is entitled to acquittal.

In the result, the appeal is allowed and the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted of all the charges. Fine amount, if any paid by the appellant, shall be refunded to him.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police
Mathur Police Station
Krishnagiri District.

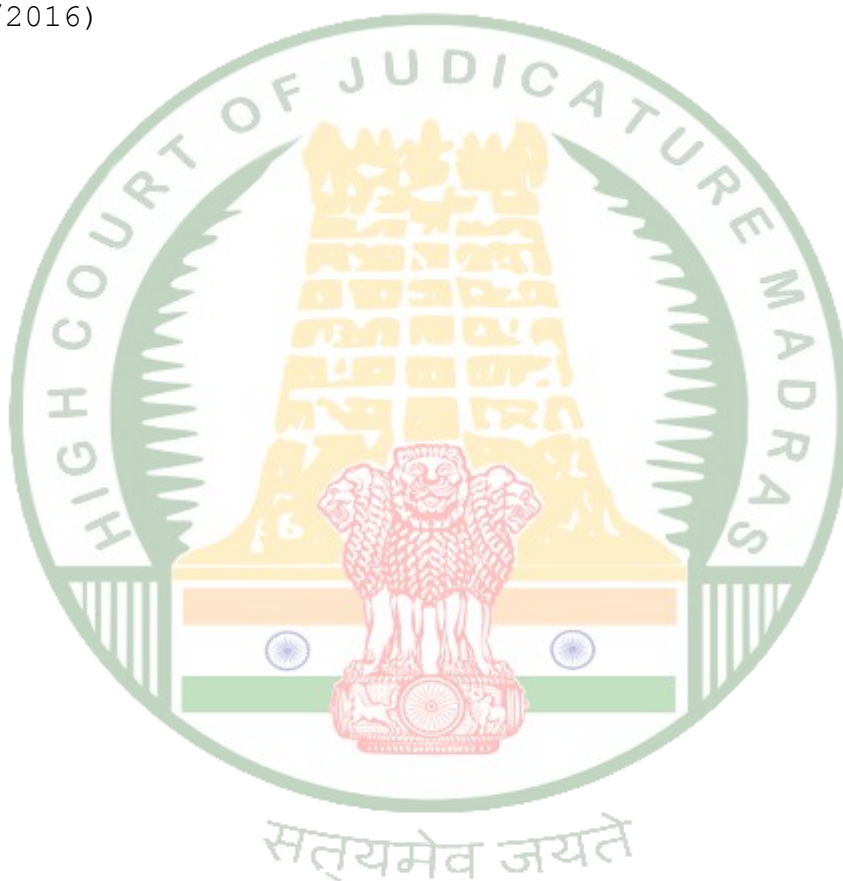
2. Principal District Judge,
Krishnagiri .

3.The Public Prosecutor
High Court, Chennai.

1cc to Mr.A.Thiyagarajan, Advocate Sr.7075

CrI.A.No.282 of 2012

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



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