

Bail Slip

The Accused namely Rajkumar and Madhesh @ Madheswaran, were released on bail vide order dated 28.06.2013 made in CrI.MP 1 of 2013 in CrI.A.No.302/2012 and dated 16.04.2013 made in CrI.MP No.1/2013 in CrI.A.No.427 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

AND

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL Nos. 302 and 427 of 2012

Rajkumar .. Appellant in CrI.A.No.302 of 2012/
Accused No.1.

Madhesh
@ Madheswaran .. Appellant in CrI.A.No.427 of 2012 /
Accused No.2.

Vs.

State by Inspector of Police
Puduchathiram Police Station
Namakkal District.
Crime No.22 of 2009

... Respondent in both Appeals /
Complainant

Both Criminal Appeals are preferred under Section 374(2) Cr.P.C against the judgment of conviction and sentence passed by the learned Additional District & Sessions Judge, Fast Track Court, Namakkal, made in S.C.No. 68 of 2010, dated 19.03.2012.

For Appellants : Mr.N.Manokaran
in both Appeals

For Respondent : Mr.M.Maharaja
in both Appeals Additional Public Prosecutor

J U D G M E N T

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

The appellants are the accused Nos. 1 and 2 in S.C. No. 68 of 2010 on the file of the Additional District & Sessions Judge, Fast Track Court, Namakkal and they stood charged for the offences as follows:-

Sl.No.	Charge Number	Rank of Accused	Offence
1	Charge No.1	Accused Nos.1 and 2	364 IPC
2	Charge No.2	Accused Nos.1 and 2	302 r/w. 34 IPC
3	Charge No.3	Accused Nos.1 and 2	392 IPC
4	Charge No.4	Accused Nos.1 and 2	201 IPC

By common judgment, dated 19.03.2012, the Trial Court convicted the accused Nos. 1 and 2 under all charges and accordingly, punished them as detailed below:-

Sl.No.	Rank of Accused	Offence	Conviction & Sentence
1	Accused Nos.1 and 2	364 IPC	To undergo seven years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default to undergo one year Rigorous Imprisonment.
2	Accused Nos.1 and 2	302 r/w. 34 IPC	To undergo Imprisonment for Life and to pay a fine of Rs.1000/-, in default to undergo one year Rigorous Imprisonment.
3	Accused Nos.1 and 2	392 IPC	To undergo seven years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default to undergo one year Rigorous Imprisonment.

Sl.No.	Rank of Accused	Offence	Conviction & Sentence
4	Accused Nos.1 and 2	201 IPC	To undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default to undergo six months Rigorous Imprisonment.

Challenging the said judgment of conviction and sentence dated 19.03.2012, the appellants are before this Court with these appeals.

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

(i) The deceased in this case was one Mrs.Sarasu. P.W.3-Rani is her daughter. The deceased was residing at Pachudaiyampatti Puthoor Village in Namakkal District. The 1st accused was doing milk vending business. The deceased was rearing cows at her house and she used to sell milk to the 1st accused. At the end of every month, the 1st accused used to pay the cost of the milk supplied by the deceased. In due course of time, the 1st accused committed default and he did not pay the amount due for three months. The deceased wanted him to pay the money immediately. But the 1st accused was evasive. At one point of time, the deceased started to pressurize the 1st accused to pay the money. This is stated to be the motive for the 1st accused against the deceased.

(ii) On 16.01.2009, at about 5.00 p.m, the 1st accused came to the Village of the deceased. The deceased supplied milk to the 1st accused. At 5.30 p.m., as soon as sale of the milk to the 1st accused, the deceased insisted that the 1st accused should pay the money immediately including the arrears. The 1st accused told her that he had joined a chit in his native place and he wanted the deceased to come with him to his Village and that he would receive the chit amount and pay to her. After so requesting the deceased, the 1st accused went away to his Village. After some time, the deceased informed P.W.3 that she was proceeding to the Village of the 1st accused for the purpose of receiving the amount. While proceeding towards the said Village it was 6.00 p.m., in normal course, the deceased would have returned by 7.00 to 7.30 p.m., but, she did not return.

(iii) P.W.3-Rani, therefore, went in search of her mother along with her relatives. But, she could not find the deceased. She went to Pachudaiyampatti Puthoor Village, where the 1st accused was residing, in search of the deceased, but the deceased was not found anywhere. P.W.5-Govindaraj, who is a native of the said Village, informed P.W.3 that he saw the 1st

accused taking the deceased in his motor-cycle in the evening. Then, P.W.3 and others searched for the deceased at various places, but, they could not trace her at all anywhere. In the meanwhile, P.W.2-Sakthivel, the Village Assistant of Allur Village, found a dead body of woman on the Bank of the lake in the said Village near Pannaiamman Temple on 17.01.2009, at about 10.00 a.m. Immediately, he rushed to his office and informed P.W.1-Mr.Dayalan, the then Village Administrative Officer about the same.

(iv) P.W.1 went to the place of occurrence and found the dead body of the woman in half burnt condition. Below the hip the body was full of burn injuries. There were also burn injuries found on the back of chest, hands, head, face and other parts of the body. The body was beyond recognition. P.W.1 enquired in the neighbourhood. But, he did not get any clue about the identity of the body. Thereafter, P.W.1 proceeded to Puduchathiram Police Station and made a complaint under Ex.P.1.

(v) P.W.27-Mrs.Pushparani, the then Sub-Inspector of Police, Puduchathiram Police Station, on receiving Ex.P.1-Complaint registered a case in Crime No.22 of 2009 under Sections 302 and 201 IPC. Ex.P.16 is the First Information Report. She forwarded both the documents to the Court and handed over the Case Diary to the Inspector of Police for investigation.

(vi) P.W.29-Anburaj, the then Inspector of Police took up the case for investigation. On 17.01.2009, he proceeded to the place of occurrence and prepared Ex.P.2-Observation Mahazar and Ex.P.17-Rough Sketch showing the place of occurrence. There were three keys found nearby the dead body. He recovered the Keys (M.Os. 2 and 3) under a Mahazar in the presence of witnesses. There was a rose colour border clothe on the body of the deceased in a burnt condition. He recovered the same [vide M.O.1]. There were also fire wood in burnt condition found in the dead body. He recovered all the Material Objects. Then, he summoned the Forensic Science Expert to visit the place of occurrence. But, no clue whatsoever could be collected. Then, he shifted the body to the mortuary; conducted inquest on the body of the deceased, prepared Ex.P.18-Inquest Report and forwarded the body to the Government Medical College Hospital at Salem. He made a request to keep the body for sometime awaiting for some clue regarding the identity of the body. He made arrangements to publish the photograph of the dead body in the newspapers. On seeing the photograph in a newspaper, P.W.3 and her relatives went to the Police Station. They identified M.Os. 2 and 3-Keys, as that of the deceased. They also identified the rose colour border clothe on the body as that of the deceased. Though the body was beyond recognition, from these Material Objects, it was

suspected that the dead body was that of the deceased. Thereafter, P.W.21-Dr.Rathinakumar of Government Medical College Hospital at Salem, conducted autopsy on the dead body of the deceased on 18.01.2009 at 12.45 p.m. According to him, the approximate age of the deceased would have been 70 years. He found the following injuries on the body of the deceased. Ex.P.11 is the Post-Mortem Report. He opined that the deceased would have died due to manual strangulation by neck.

"Injuries:-10. 3rd Degree charred female body with heat contracture present over the right upper limb and lower limb scalp hair axillary hair and public hair completely burnt face disfigured the buccal area shows no hyperaemic changes and no inflammatory changes over the right upper and lower limb.

The following part of the body are found missing :

- (1) Left thigh from the middle part to the lower part.
- (2) Left knee joint left leg left ankle joint and left foot.
- (3) Middle part of left upper arm to lower part.
- (4) Left elbow left fore arm left wrist and hand.
- (5) Part of left side chest only few remnant unburnt ribs present.

The following heat fracture are present :

- (1) Fracture of upper end of right humeral head and part of right clavical, multiple fractures on the right side fracture ilium on both sides. Fracture neck, with dislocation on right hip. Fracture with dislocation at L2 Vertabrae level.

O/D Head scalp shows 3rd Degree burnt Cranial Vault intact and friable on opening Skull Brain lost its normal architecture reduced in size and cooked base of skull intact (Post Mortum).

O/D Neck: Neck structure charred involving both sides Hyoid Bone and Ribs separated from the Manubrium Sternum heart and lungs on both side completely charred.

O/D. Abdomen: Stomach, Spleen both Kidneys Bladder completely charred Intestine partly charred Uterus charred (Post Mortum).

Opinion:- Died of effects of compression over the neck.

Post Mortum concluded 2.00 p.m. (Viscera preserved)."

(vii) P.W.29-the then Inspector of Police continued the investigation and examined few more witnesses and collected the medical records. He collected the photograph of the deceased and made a request to forward the skull for superimposition. The superimposition revealed that the dead body was that of the deceased. P.W.5-Govindaraj, during the course of investigation, told that at 4.00 to 5.00 p.m., on the date of occurrence, he had seen the 1st accused taking the deceased in the motor-cycle. But, he did not know the 1st accused before that. Both the accused were arrested on 24.01.2009 in the presence of P.W.6-

Village Administrative Officer and another witness. On such arrest, both the accused gave independent confession statements one after other. In the said confession, the 1st accused disclosed that he had Rs.20,000/- in his possession and he also disclosed that he had sold the jewels for Rs.84,000/-. He further told that he paid Rs.4,000/- to one Tamilselvan and Rs.24,000/- for the motor-cycle loan and he further disclosed the shop where he had sold the jewels and also the place where he had hidden the Bajaj M.80-TN-28-H-9417. In pursuance of the same, he took the police and witnesses to P.W.10-Uma Maheshwari. P.W.10 inturn took the police to the shop of P.W.11-Ananda Nivas, from where the jewels, viz., M.Os. 7 to 9 were recovered in the presence of witnesses. Similarly, he had recovered the motor-cycle (M.O.10) from the 1st accused. On returning to the Police Station, he forwarded the accused to the Court and also handed over the Material Objects to the Court. On completing the investigation, he laid the chargesheet against the accused.

(viii) Based on the above materials, the Trial Court framed charges as detailed in the paragraph No.1 of this judgment. The appellants/accused Nos.1 and 2 denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 29 witnesses were examined and 20 documents and 15 material objects were exhibited. Out of the said witnesses, P.Ws. 1 and 2 have spoken about the finding of the dead body on 17.01.2009 at 10.00 a.m. near the lake. P.Ws. 3 and 4 are the daughter and son of the deceased respectively, who have stated that the deceased left their house on 16.01.2009, at about 5.00 p.m., to go to the house of the 1st accused. P.W.5 has stated that he saw the 1st accused taking the deceased in the motor-cycle at about 4.00 to 5.00 p.m. P.W.6 the Village Administrative Officer has spoken about the arrest of the 1st accused and the consequential recovery of the Material Objects viz., the jewels and motor-cycle. P.Ws. 7 to 9 have stated that they saw both the accused together between 6.00 to 8.00 p.m. in the Village. P.W.10 has stated that the 1st accused handed over M.Os. 7 to 9 to her, which she pledged the same with P.W.11, who is the owner of the jewellery shop. P.W.11 has handed over the jewels, which he had been pledged in his shop. He has stated that after the arrest of the accused Nos.1 and 2, police came there and recovered M.Os.7 to 9. P.Ws. 12 and 13 have turned hostile and they have not stated anything about the occurrence. P.Ws. 14 to 19 have stated that the 1st accused had dues to them also on account of the sale of milk to him by them. P.W.20 has spoken about the photographs taken and P.W.21 has spoken about the Post-Mortem conducted and also the final opinion regarding the cause of death. P.W.22 is the Scientific Assistant, who has stated that he visited the place of occurrence at the request of the Investigation Officer and

examined the dead body and the surrounding circumstances, but, he was not able to get any clue. P.W.23 has spoken about the superimposition conducted. P.W.24 has stated that in the viscera, there was no poison detected. P.W.25 is the Head Clerk of the Magistrate Court, who has spoken about the fact that the Material Objects were sent for chemical examination. P.W.27 has spoken about the Registration of the Case and P.W.29 has spoken about the investigation done by him.

(ix) When the appellants/accused Nos.1 and 2 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied them as false. But, they have not chosen to examine any witness nor to mark any document. Their defence was a total denial. Having considered all the above, the Trial Court found the appellants/accused Nos.1 and 2 guilty and convicted them accordingly. That is how, the appellants/accused Nos.1 and 2 are now before this Court with these appeals.

3. I have heard Mr.N.Manokaran, learned counsel appearing for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the respondent and also I have perused the records carefully.

4. This is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound 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.

5. With this broad principles in mind, let us go to the circumstances projected by the prosecution. According to the P.Ws. 3 and 4, the deceased left her house to go to the house of the 1st accused on 16.01.2009, at about 5.30 p.m. There is no reason to reject their evidence. Thus, the prosecution has clearly established that on 16.01.2009, at about 5.30 p.m., the deceased left her house to go to the house of the 1st accused.

6. The next circumstances is that the deceased was found in the company of 1st accused on 16.01.2009, at 4.00 p.m., at the Village of the 1st accused as spoken by P.W.5. But, P.W.5 has not stated when, where and at what place, he had seen the deceased along with the 1st accused. In a very vague manner, P.W.5 has deposed before the Court that two years before, one day evening at 4.00 to 5.00 p.m., he found the deceased coming to the 1st accused and then the 1st accused took her in a motor-

cycle. P.W.5 had not specifically stated that it was on 16.01.2009 that he found the deceased in the company of the 1st accused. It is also not his evidence that the deceased was found in the company of the 1st accused some where near the place of occurrence at or about the time of the alleged commission of the crime. Thus, the evidence of P.W.5 is of no use to the prosecution.

7. The prosecution has next relied on the arrest of both the accused on 24.01.2009 in the presence of P.W.6 and the consequential recovery of M.Os. 7 to 9. It is alleged that after committing the murder, the accused Nos.1 and 2 had removed M.Os 7 to 9 from the body of the deceased and handed over the same to P.W.10. P.W.10 has identified M.Os. 7 to 9 as jewels handed over to her by the 1st accused. But, she has not stated the place, the date and time at which they were allegedly handed over by the 1st accused to her. P.W.10 inturn has stated that she pledged the jewels at the Pawn Shop run by P.W.11. P.W.11 has stated that on 17.01.2009, P.W.10 pledged M.Os. 7 to 9 at his shop.

8. Admittedly, P.W.11 is a licensed Pawn Broker, but, neither the receipt nor Pawn Register has been recovered and produced. Therefore, it is too difficult to believe the version of P.Ws.10 and 11 that the accused Nos.1 and 2 handed over M.Os. 7 to 9 to P.W.10 and P.W.10 inturn pledged the same with P.W.11. Apart from that, though, it is the case of the prosecution that in the presence of P.W.6, both the accused were arrested on 24.01.2009, at about 7.15 a.m., it is in evidence that the accused Nos.1 and 2 were found in the Police Station, that too, in the custody of police on 17.01.2009 itself. P.Ws.3 and 4 have categorically stated that the accused Nos.1 and 2 were found in the Police Station on 17.01.2009 and 18.01.2009, when they went to the Police Station. It is also in evidence that on 17.01.2009 in the usual course, the 1st accused came to the house of the deceased for purchasing milk. Thus, it is clear that thereafter the 1st accused had been taken into police custody and he was detained in custody on 17.01.2009 and 18.01.2009. However, the records have been created as though both the accused were arrested only on 24.01.2009. Thus, the disclosure statement allegedly made by the 1st accused that he had handed over the jewels to P.W.10 and P.W.10 inturn had pledged the same with P.W.11 and that it was recovered from P.W.11 on 24.01.2009, all become suspicious.

9. Once this circumstances is disbelieved, there is no other circumstance to clinchingly prove the guilt of the accused Nos.1 and 2 beyond reasonable doubt. As we have pointed out, unless the prosecution is able to prove the circumstances

beyond reasonable doubt and unless the proved circumstances unerringly point to the guilt of the accused, it is not possible to sustain the conviction of the accused. Here in this case, we have no hesitation to hold that the prosecution has failed to prove any of the incriminating circumstances against the accused Nos.1 and 2. Therefore, we find no case to sustain the conviction of the accused Nos.1 and 2. In view of the same, the appellants/accused Nos.1 and 2 are entitled for acquittal.

10. In the result,

- i. these Appeals are allowed and the conviction and sentence imposed on the appellants by the learned Additional District & Sessions Judge, Fast Track Court, Namakkal, in S.C.No. 68 of 2010, dated 19.03.2012, are set aside and the appellants are acquitted;
- ii. The fine amount, if any, shall be refunded to them.
- iii. The bail bond, if any executed by the appellants/accused Nos.1 and 2, shall stand discharged.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

paa

To

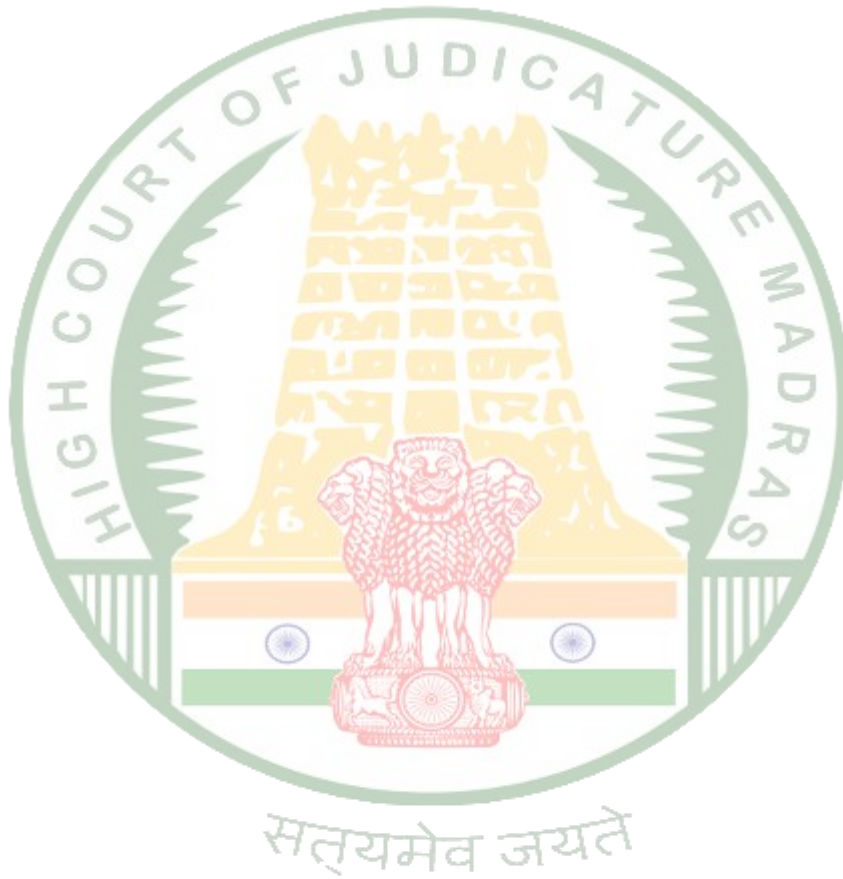
1. The Inspector of Police
Puduchathiram Police Station
Namakkal District.
2. The Additional District & Sessions Judge,
Fast Track Court, Namakkal.
3. The Judicial Magistrate No.2,
Namakkal.
4. The Chief Judicial Magistrate,
Namakkal.
5. The Superintendent,
Central Prison,
Coimbatore.

6.The Public Prosecutor,
High Court, Chennai.

+1 cc to M/s.N.Manokaran, Advocate, sr.6451

CRIMINAL APPEAL Nos.302 and 427 of 2012

rsi co
kra 22.02.2016



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