

Bail Slip

The Appellant/Accused Viz, Palani and Rani were released on bail as per order of this court in Mp.Nos.1 of 2012 & 1 of 2013 in CrI.A.No.307/2012 dated 22.06.2012 & 05.03.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE P.DEVADASS

CrI.A.No.307 of 2012

1.Palani
2.Rani

... Appellants

vs.

State, rep.by
The Inspector of Police,
Singarapettai Police Station,
Krishnagiri District ... Respondent
(Cr.No.477 of 2006)

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 02.08.2011 passed by the Principal Sessions Judge, Krishnagiri, in S.C.No.89 of 2008.

For Appellant : Mr.G.Udhayashankar

For Respondent : Mr.M.Maharaja, Addl.P.P.
Public Prosecutor

JUDGMENT

(Judgement of the Court was delivered by Dr.P.Devadass, J.)

A1 and A3 in the Sessions Case No.89 of 2008, on the file of the learned Principal Sessions Judge, Krishnagiri, are challenging their conviction and sentence.

2 The trial Court, while acquitting A-2 from a charge under Section 201 r/w Section 302 I.P.C. convicted and sentenced the appellants/A-1 and A-3 as under:

Accused	Conviction under Section	Sentence
A-1	(i) Sec.302 IPC	Life imprisonment + fine Rs.2000/-, i/d 6 months R.I.
	(ii) Section 201 r/w.302 of IPC	7 years R.I. + fine Rs.1000/- i/d 3 months R.I.
A-3	Section 201 r/w.302 of IPC	7 years R.I. + fine Rs.1000/- i/d 3 months R.I.

The sentences awarded to A-1 were directed to run concurrently. The accused have paid the fine amounts.

3. Briefly the case of the prosecution may be put as under:

(i) Deceased is the husband of P.W.2. They have resided in Pavakkal Village, Gandhi Nagar, Kollaikotta, Singarapettai limit in Krishnagiri District. A-1 is husband of A-3. A-2 is close to A-1. A-1 and A-2 belongs to the same Village. In spite of the advice of P.W.2 the deceased continued his illegal affair with A-3;

(ii) On 1.6.2007, Murugesan left the house for Bangalore to eke out his livelihood. That was the last time P.W.2 had seen her husband alive;

(iii) A-1 had seen the deceased coming out of his house, after having affair with A-3. A-1 cut the deceased thrice on his neck. Neck and trunk were severed. P.Ws.4 and 5 have witnessed this occurrence. They have also seen A-1 and A-3 carrying the dead body of the deceased in M.O.6 gunny bag. The frightened P.Ws.4 and 5 left the place;

(iv) On that day, around 9 p.m., P.W.6, with the help of a torch light, seen A-1 to A-3 carrying a gunny bag. It had blood stains. They have buried the gunny bag parcel in the Sugarcane field of P.W.3;

(v) On 7.8.2008, when Madhu, V.A.O., Pavakkal Village and his Assistant/P.W.1 were in their office, A-1 came and gave extra-judicial confession revealing his wife's (A-3) illegal affair with the deceased, his murdering of the deceased and concealing of the dead body in the Sugarcane field of P.W.3. P.W.1 attested the extra judicial confession. (Ex.P1);

(vi) Madhu, V.A.O. handed over A-1 along with his extra judicial confession and Ex.P2 complaint to P.W.11 Sub-Inspector of Police, Uthangarai. She registered this case (Ex.P21 F.I.R.). She sent the express F.I.R. to the Court, to Revenue Officials;

(vii) P.W.12 Inspector took up his investigation. He had arrested A-1 in the presence of Madhu, V.A.O. and P.W.1. He

recorded the confessional statement of A-1 (Ex.P8). In pursuance of that, A-1 took them to P.W.3's Sugarcane field and showed the place where he had buried the dead body of the deceased and also the weapons. P.W.12 gave Ex.P19 letter to P.W.10, Tahsildar, Uthangarai to exhume the dead body of the deceased.

(viii) On 8.8.2006, in the presence of P.W.10, P.W.2, P.W.6, P.W.1, Madhu, V.A.O. M.O.6 gunny bag was taken out. It found contained severed parts of the dead body of the deceased. It was identified by P.W.2. P.W.12 prepared Ex.P2 Observation Mahazar in the presence of said witnesses. Drew Rough Sketch Ex.P22.

(ix) On the same day, P.W.7 conducted postmortem on the dead body of Murugesan and noticed the following:

"Internal Exam: Ribs intact, Heart, Lungs Semi solid stage, Cut section pale, Stomach Empty, Liver, Spleen, Kidneys Semi solid stage, Cut section pale, Bladder, Intestine Empty, Semi solid stage. Skull detached from the neck at the level of Hyoid bone in front and C2 Vertebra at back. Penis, Scrotum, Public hair detached from the Public region."

(x) P.W.7 opined that the deceased would appear to have died of haemorrhage and shock due to injuries 68 to 70 hours prior to autopsy, due to the cut on the neck. (Ex.P11 postmortem Certificate). In the presence of Panchayatdars, P.W.10 conducted inquest over the dead body of the deceased;

(xi) P.W.12 arranged the photographing of the skull. He gave Ex.P.25 requisition to Government Hospital, Vellore. Through Court, the skull was sent to Lab for analysis. The skull and the trunk were of the same body (Ex.P12 report).

(xii) On the same day, at about 2.45 p.m. from the Sugarcane field of P.W.3, in the presence of Madhu, V.A.O. and P.W.1, A-1 produced M.O.1-Aruval. P.W.12 seized it under Mahazar. From the haystack, near a bush in P.W.3's land, A-1 produced M.O.2-Crowbar and M.O.3 Spade. P.W.12 seized them under Mahazar.

(xiii) P.W.12 visited the scene of place. Prepared Mahazar in the presence of Madhu, V.A.O. and P.W.1. He had recovered bloodstained bedsheet (M.O.4) in the presence of the said witnesses. P.W.12 examined the witnesses and recorded their statement. P.W.12 arrested A-2 and A-3. He sent A-1 to A-3 to the Court for judicial custody. He had also produced the case-properties for being sent to Lab for analysis. Completing his investigation, P.W.12 filed the Final Report in this case before the Court for offences under Sections 302, 302 r/w. Section 302 I.P.C.

4. The committal Magistrate committed the case to the Court of Sessions, Krishnagiri.

5. The learned Principal Sessions Judge, after hearing both sides and on perusing the case-records, framed charges under Section 302, 201 r/w Section 302 I.P.C. as against A-1 and under Section 201 r/w Section 302 I.P.C. as against A-2 and A-3. They have pleaded not guilty to the charges.

6. Prosecution examined P.Ws.1 to 12, marked Exs.P1 to P25 and exhibited MOs.1 to 6.

7. On the incriminating aspects appearing in the prosecution evidence, the accused were examined by the learned Sessions Judge under Section 313 Cr.P.C. They have denied the offences. They did not examine any witness nor produce any document on their side.

8. Appreciating the said evidence and considering the submissions of both sides, the trial Court has acquitted A-2 from a charge under Section 201 r/w Section 302 I.P.C., however, convicted and sentenced A-1 and A-3 as already stated in paragraph No.2 supra.

9. The learned counsel for the appellants contended that the appellants were implicated in this case. The alleged eye witnesses/P.Ws.4 and 5 and after the occurrence P.W.6 are chosen witnesses of the prosecution. They did not tell anyone about they having witnessed the occurrence for more than two months. Their such silence discredit their testimony. Further, when exhumation was conducted, they did not reveal the same to P.W.10 the Tahsildar.

10. The learned counsel for the appellants further submitted that the motive alleged is not established. The extra-judicial confession is a weak piece of evidence. Police had already arrested A-1 produced him before the V.A.O. and P.W.1 and obtained extra-judicial confession from A-1. It is manufactured. It is obtained from A-1 under duress. It is not genuine. It is not voluntary.

11. The learned counsel for the appellants further submitted that Section 27 Evidence Act recovery is stage-managed.

12. The learned counsel for the appellants contended that the alleged eyewitnesses are unreliable. The circumstances projected by the prosecution are not established. There were missing links. The chain is not complete. The prosecution has failed to establish the case beyond all reasonable doubts.

13. The learned Additional Public Prosecutor submitted that since in spite of advice A-1, P.W.2 and the Panchayatdars, the deceased continued his illegal intimacy with A-1's wife A-3. In the circumstances, when A-1 had seen the deceased coming out of his (A-1's) house. A-1 had cut him and with the assistance of A-2 and A-3 he buried the dead body in P.W.3's Sugarcane field.

14 The learned Additional Public Prosecutor further submitted that P.Ws.4 and 5 have witnessed the actual occurrence and P.W.6 witnessed A-1 to A-3 carrying the deadbody in M.O.6 gunny bag. Since they were very much frightened they did not reveal it to others till 7.8.2006.

15 The learned Additional Public Prosecutor further submitted in this case there are many tell-tale circumstances. The illegal intimacy between the deceased and A-3 has been spoken to by P.W.2 and others. A-1 gave extra-judicial confession to Madhu, V.A.O. and his Assistant/P.W.1. On that basis, V.A.O. lodged the police complaint. They are independent witnesses. The extra-judicial confession is voluntary and genuine.

16 The learned Additional Public Prosecutor further submitted that at a place in P.W.3's Sugarcane field, the deadbody of the deceased was exhumed. It was witnessed to by P.W.10 Tahsildar and many other persons. Further, based on the disclosure statement of the accused, the weapon of offence has been recovered.

17 The learned Additional Public Prosecutor further submitted that all goes to show that the accused have committed the offences. In the circumstances, the trial Court has rightly convicted and sentenced them.

18 We have given our anxious consideration to the arguments of both sides, perused the trial Court's judgment and the entire materials on record.

19 Now, the question is whether the charges under Section 302, 201 r/w 302 I.P.C. as against A-1 and the charge under Section 201 r/w 302 I.P.C. as against A-3 have been proved by the prosecution beyond all reasonable doubts.

20 The deceased is the husband of P.W.2. A-1 is the husband of A-3. They have acquaintance with A-2. They all belongs to Pavakkal Village, Gandhinagar Kollaikotta, Krishnagiri District.

21 On 1.6.2006 the deceased left his home for Bangalore to eke out a livelihood. That was the last time then his wife/P.W.2 seen him alive. After that on 7.8.2006, in P.W.3's

Sugarcane field, she had seen the mutilated dead body of her husband.

22 According to prosecution, A-1 has cut the deceased and with the assistance of A-2 and A-3 A-1 had parcelled the dead body in M.O.6 gunny bag and concealed it in P.W.3's land.

23 This case is based on the evidence of certain eye-witnesses and also certain tell-tale circumstances.

24 P.Ws.4 to 6 were examined as eyewitnesses. They belongs to the same Village. According to P.Ws.4 and 5, on 1.6.2006, between 7.30 to 8 a.m., the deceased came out of A-1's house, A-1 cut the deceased with M.O.1 Koduval three times he fell down, A-1 and A-3 have parcelled the dead body in a gunny bag and they have left. P.W.6 would say that on that day at about 8 to 9 p.m., he had seen A-1 to A-3 carrying something in a gunny bag, when he had noticed it with the help of a torch light, there was bloodstains in the gunny bag. A-2 has been acquitted by the Court.

25 According to P.Ws.4 to 6, they have seen the said occurrence on 1.6.2006 itself. They belongs to the same Village. However, they did not reveal it to anyone till 7.8.2006. They have informed the same to police only on 7.8.2006. Further, they did not reveal it to P.W.10, Tahsildar on 7.8.2006. In P.W.3's Sugarcane field when the exhumation was conducted, they were not examined. P.Ws.4 to 6 does not inspire confidence in them. The evidence of P.Ws.5 and 6 is artificial and unreliable and we reject their testimony.

26 In this case, certain incriminating circumstances are relied on by the prosecution. They are (1) Motive, (2) Extra-judicial confession of A-1, (3) Section 27 Evidence Act recovery and (4) Exclusive knowledge of A-1 as to the place where the dead body of the deceased was concealed.

27 Each circumstance must be proved like any other fact. The proved circumstances must form a complete chain unerringly proceeding towards the accused as the perpetrator of the crime excluding any hypothesis of innocence in his favour

28 In this case it is alleged that since the deceased had illegal intimacy with his wife, A-1 had enmity towards the deceased.

29 P.W.2 is the wife of the deceased. She had confirmed that her husband had illegal intimacy with A-3. She advised her husband several times to avoid this but they went in vain.

P.Ws.3 to 6 also spoken about this aspect. Thus, in this

case, the motive stated is clearly established.

30 In a case based on the evidence of eyewitnesses, the motive may not be relevant. But in a case based on circumstantial evidence, motive will play a key role. Motive lend assurance to the prosecution version of the case and the testimony of prosecution witnesses. In such cases, motive will also act as a guide to assess the quality of the evidence of prosecution witnesses.

31 Confession to police is inadmissible except to the extent provided in Section 27 of the Evidence Act. But, confession to a non-police person, a person other than police is admissible under Section 24 of the Evidence Act. It is a good form of admission because it emanates from the mouth of the maker. But it must be genuine. It must be voluntary. When it satisfies these tests it becomes a relevant piece of legal evidence.

32 During June, 2006, one Madhu was V.A.O. of Pavakkal Village. P.W.1 was his Assistant. A-1 also belongs to the same area. 33 According to P.W.1, on 7.8.2006, he and the V.A.O. were in their office. A-1 came and told them that in spite of his advice and the advice of the panchayatdars, the deceased carried on his illegal intimacy with his wife (A-3) and on 1.6.2006, when the deceased came out of his (A-1's) house. A-1 had cut the deceased three times with M.O.1 Koduval, the head and trunk fell apart, thereafter he took the mutilated dead body in a gunny bag and buried it in P.W.3's Sugarcane field. P.W.1 added that the V.A.O. had recorded it, signed in it and he attested it. And along with A-1's extra-judicial confession, they have produced A-1 on the same day at about 4 p.m. at the Police Station to P.W.11 S.I. of Police. The said report is Ex.P20. Based on that P.W.11 registered this case (Ex.P21 F.I.R.)

33 As already stated, A-1 belongs to the said area. The extra-judicial confession speaks about motive which we have already seen and it also speaks about the other aspects of the case. There is nothing to show that A-1 was arrested by police or he was in their custody before 7.8.2006. In the facts and circumstances, the extra-judicial confession pressed into service in this case is reliable and acceptable.

34 In his extra-judicial confession to V.A.O. and P.W.1, A-1 stated that he has concealed the mutilated dead body of the deceased in P.W.3's Sugarcane field. This information is specifically known to the accused. He took the V.A.O., P.W.1 and P.W.12 to the said place. In the presence of P.W.10 Tahsildar, the place pointed out by A-1 has been dug up. It found contained the severed head and trunk of the deceased. This was witnessed to by several persons. As this aspect is specifically known to A-1, it becomes an incriminating

circumstance as against A-1.

35 V.A.O. and P.W.1 have handed over the accused along with extra-judicial confession to P.W.1 Sub-Inspector. He registered F.I.R. (Ex.P21). A-1 was arrested. P.W.12 the Inspector recorded Ex.P8 confessional statement of A-1 in the presence of V.A.O. and P.W.1. In pursuance to the information contained therein A-1 took them to a place where accused produced them M.O.1 Bill book, M.O.2 Crowbar, M.O.3 Spade. He took them to his house and produced M.O.4 bed-sheet and P.W.12 seized it under Mahazar. The evidence of P.W.1 has been corroborated by P.W.12.

36 It is pertinent to note that in this case, the extra-judicial confession is reliable. Thereafter, Ex.P8 confessional statement of A-1, recoveries effected at the instance of A-1 and Section 27 Evidence Act recovery have been established in this case.

37 On a cumulative consideration of the proved circumstances viz., that A-1 had motive to kill the deceased, there is extra-judicial confession of A-1 and A-1 revealed from his knowledge the place where the dead body was concealed and it was dug out and there is seizure of weapons and other implements used in the commission of offence at the instance of the accused. All goes to show that the prosecution has established the case beyond all reasonable doubts.

38 The charge against A-3 is based on the evidence of P.Ws.4 to 6. We have rejected their testimony. Thus, charge under Section 201 r/w 302 I.P.C. framed as against A-3 falls to ground.

39 A-1 has already warned the deceased to avoid his illegal intimacy with A-3/wife of A-1. But, the deceased continued the same. On the occurrence day, A-1 had seen the deceased coming out of A-1's house. Naturally, it would provoke him and he had cut his wife's paramour, the deceased. In such circumstances, the overtact established as against him would fall under Section 304(1) I.P.C.

40 The evidence on record clearly establishes that in order to screen the offence, A-1 had concealed the mutilated dead body of the deceased in P.W.3's Sugarcane field. Thus, an offence under section 201 r/w 302 I.P.C. as against A-1 has been made out.

41 In view of the foregoing, this Criminal Appeal is partly allowed. The conviction and sentence imposed upon A-3 are set aside. Hence, she is acquitted. The conviction and sentence awarded to A-1 under Section 302 I.P.C. are set aside. Instead, A-1 is convicted under Section 304(1) I.P.C.

and sentenced to undergo 7 years R.I. and fine Rs.2000/- i/d 4 years R.I. Further, his conviction under section 201 I.P.C. is confirmed and his sentence of imprisonment is reduced to 3 years R.I. Both sentences are directed to run concurrently. He is entitled to set off under section 428 Cr.P.C.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv/vaan

To

1. The Principal District Sessions Judge,
Krishnagiri.
2. The Public Prosecutor,
High Court, Madras.
3. The Inspector of Police,
Singarapettai Police,
Krishnagiri District.
4. The Superintendent,
Special Prison of Women, Vellore.
5. The Chief Judicial Magistrate, Krishnagiri.
6. The District Collector, Vellore.
7. The Director General of Police, Mylapore, Chennai.

सत्यमेव जयते

Cr1.A. No.307 of 2012

rsk co
kra 09.05.2016

WEB COPY