

BAIL SLIP

The Appellant/Accused Viz A1 Saravanabava S/o.Damodharan and 2) Jaya @ Revathi W/o.Manoharan are directed to be released on bail as per the order of the Court dated 31/7/2012 in CrI.MP.No.1/12 in CrI.A.No.340/2012 and CrI.MP.No.1/12 in CrI.A.No.341/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.Nos.340 & 341/2012

Saravanabava .. Appellant/A1
in CrI.A.No.340/2012

Jaya @ Revathi ... Appellant/A2 in
CrI.A.No.341/2012

Versus

The State represented by
The Inspector of Police
Meenambakkam Police Station
Chennai.

.. Respondent in
both the appeals

Appeals filed under section 374[2] Cr.P.C., against the judgment of the learned Principal Sessions Judge, Chengalpattu, in SC.No.388/2002 dated 26.02.2007.

For Appellants : Ms.N.Premalatha
Legal Aid Counsel

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the Court was delivered by S. NAGAMUTHU, J,]

The appellants are the accused 1 and 2 in SC.No.388/2002 on the file of the learned Principal Sessions Judge, Chengalpattu. The Trial Court framed a lone charge against A1 u/s.302 r/w 34

IPC and as against A2, framed two charges, viz., 109 r/w 302 IPC and 302 r/w 34 IPC. By judgment dated 26.02.2007, the Trial Court convicted both the accused u/s.302 read with 34 IPC and sentenced A1 to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one year and sentenced A2 to undergo imprisonment for life and no fine amount was imposed. Challenging the said conviction and sentence, the appellants/accused are 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 Mr.Manokaran. P.W.2 is his wife. P.W.1 had houses for rent at MGR Nagar. A portion of the said house was vacant in the year 2000. A1 approached P.W.1, introduced himself as an Ex-serviceman and wanted the said portion of the house on rent for the occupation of his daughter and son-in-law. Since he was in possession of the Identity Card, P.W.1 believed him and gave the said portion of the house for rent to him. Within few days thereafter, the deceased and A2 were brought by A1 and he told that the deceased was his son-in-law and A2 as his daughter. A1 also lived with them in the said portion of the house. It is the further case that in the said house, A1 and the deceased used to drink together. Within five days on their occupying the said house, it is alleged that A1 and A2 were found in compromising position by the deceased. Since he questioned, A2 induced A1 to kill the deceased. Accordingly, A1 attacked the deceased with an iron pipe on his head, left side of the chest and other parts of the body. The deceased became unconscious.

[b] Thereafter, it is alleged that A1 and A2 told the neighbours that the deceased had fallen from the first floor of the house in the drunken state by losing his balance and sustained injuries. Then A2 took the deceased in an auto to the Government Hospital at Tambaram. P.W.8-Dr.Elangovan, who was working in the Casualty in the said hospital at the relevant point of time, examined the deceased on 10.04.2000 at about 22.00 hours. The deceased had been brought by A2. On examination, he found him dead. He made entry of the same in the Accident Register [Ex.P.4] and kept the dead body in the Mortuary. He gave intimation to the police about the said occurrence.

[c] P.W.1 is the landlord and P.Ws.2 and 3 are the tenants in different portions of the same house. According to them, at about 22.00 hours on the day of occurrence, they heard that the deceased had fallen from the first floor of the house and he had been taken to the hospital by A2. P.W.1 has further stated that A1 came to him, received money at the crucial time

and went away. P.W.1, thereafter, went to Meenambakkam Police Station on 11.04.2000 and made a complaint under Ex.P.1. P.W.11, the then Inspector of Police, attached to the said police station, received the said complaint and registered a case in Cr.No.72/2000 for the offence u/s.174 Cr.P.C. Ex.P.14 is the printed FIR. He forwarded the complaint and FIR to the jurisdictional Magistrate Court, which was received by the learned Judicial Magistrate concerned at 12.00 noon on 12.04.2000.

[d] P.W.11, the Investigating Officer, took up the case for investigation, proceeded to the place of occurrence on 11.04.2000 at about 13.00 hours and he prepared the Observation Mahazar [Ex.P.15] and a Rough Sketch [Ex.P.16] showing the place of occurrence, in the presence of P.W.5 [Madasamy], one Jaganathan and Selvaraj. He also recovered blood stained lungi [M.O.1] under the cover of Mahazar [Ex.P.17] in the presence of the same witnesses. He examined P.Ws.1, 2, 5, Jaganathan and other witnesses and recorded their statements. Thereafter, he went to the hospital and conducted inquest on the body of the deceased from 15.30 hours and 17.30 hours on 11.04.2000 in the presence of the Panchayatdars and other witnesses and prepared Ex.P.18-Inquest Report. Then he sent the body of the deceased for postmortem.

[e] P.W.9, Dr.Elango, the then Assistant Surgeon attached to Tambaram Government Hospital, conducted the autopsy on the body of the deceased on 13.04.2000 at 15.05 hours. He found the following injuries:-

"Antemortem injuries:-

[1] Face appears swollen. Right half appears to have elevation than the left.

[2] There were 2 lacerations 4 cm in length, one above the other over the right eyebrow 1 cm in width.

[3] There is a laceration wound about 5 cm in length exposing the underlying teeth and gum above the upper lip on the right side.

[4] Contusion seen in front of the right ear about 2 cm in length on the right cheek.

[5] There is a circular contusion mark seen on the left chest.

[6] There is a large contusion seen over the left shoulder, which was irregular in shape.

[7] There were several contusions seen in the centre of chest.

[8] There is a contusion seen about 10 cm on upper side of the chest.

[9] There is another contusion about 10 cm seen on the left side of the chest and abdomen.

On Dissection:- [1] There is a clotting of blood under the skin in front of the bone. Rib cage was fractured. Heart and lungs were normal. Stomach contains 200 ml of brown color fluid. Skull intact. Hyoid bone intact. Trachea intact."

Ex.P.5 is the Postmortem Certificate. He opined that the death was due to shock and hemorrhage due to the injuries found on the deceased. He further opined that the said injuries could have been caused by attack with a weapon like iron pipe.

[f] Continuing the investigation, P.W.11, based on the opinion of the doctor, altered the case into one u/s.302 IPC. Ex.P.20 is the Altered FIR. He sent the same to the Court concerned. On 30.05.2000, he arrested the accused at Mudichur Road in the presence of one Pachaiyappan and one Thandavarayan [both were not examined as witnesses in the Court]. On such arrest, the accused came forward to give a voluntary statement, in which, he disclosed the place where he had hidden the iron pipe [M.O.5] and in pursuance of the same, the accused took the police and the witnesses to the said place of hide out and produced M.O.5-iron pipe, which was recovered under the Mahazar. On returning to the police station, P.W.11 forwarded the accused to Court for judicial remand and the material objects under Form 95 for chemical examination. The report revealed that there were no blood stains noticed on the material objects. On completion of the investigation, he laid the charge-sheet against the accused.

[g] Based on the above materials, the Trial Court framed the charges against the accused, as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 11 witnesses were examined, 22 documents and 5 material objects were also marked.

[h] Out of the said witnesses, P.W.1 is the landlord of the house and he has stated that at about 22.00 hours on 10.04.2000, when he was returning to the house, he heard that the deceased had fallen from the first floor of the house and sustained injuries and that A2 had taken him to the hospital. Further, P.W.1 has stated that A1 and A2 were living along with the deceased in the house for about five days. P.Ws.2 and 3 are the tenants of the different portions of the same house. They have also stated that they heard that by about 22.00 hours, that the deceased had fallen from the first floor of the house and he had been taken to the hospital by A2. P.W.4 is the auto driver

who has stated that he was engaged by A2 to take the deceased to the hospital. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence and about the recovery of the blood stained lungi from the scene. P.W.6 is the sister of the deceased and she has stated that there was an illicit intimacy between A1 and A2 and they were reprimanded to stop with that. P.W.7, a villager, has also spoken about the motive. P.W.8 [Dr.Elangovan] has stated that he examined the deceased at the hospital at 22.00 hours on 10.04.2000 and declared him dead. P.W.9 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.10 is the Head Clerk of the Court and he has stated that he had forwarded the material objects for chemical examination on the orders of the learned Magistrate. P.W.11 has spoken about the registration of the case on the complaint of P.W.1 ; the investigation done by him and his filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side nor marked any document.

4 Having considered all the above, the Trial Court convicted the appellants herein for the aforesaid charges and sentenced him as detailed in the first paragraph of this judgment. That is how, the appellants / accused are before this Court with this appeal.

5 We have heard the learned Senior counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 This is a case of circumstantial evidence. The learned Counsel for the appellants would submit that absolutely there is no circumstances against these accused proved by the prosecution to sustain the conviction.

7 We have considered the said submissions.

8 P.Ws.1 to 3 are not the eyewitnesses to the occurrence. They have only stated that they heard that the deceased had fallen from the first floor of the house and he had been taken to the hospital by A2. From these evidences, the prosecution is not able to draw any support to sustain the conviction. P.W.4 is only an auto driver who took the deceased to the hospital and his evidence also does not go to prove the guilt of the accused. P.Ws.6 and 7 have spoken about the alleged illicit intimacy between A1 and A2. But the Trial Court

has convicted the accused, based on the opinion of P.W.9 [Dr.Elango] who conducted autopsy on the body of the deceased. He has stated that the injuries on the body of the deceased could have been caused by attack with an iron pipe. But the doctor has not excluded the possibility of these injuries having been caused by a fall from the first floor of the house. It is not understandable as to how the Trial Court could come to the conclusion from out of the opinion of the doctor alone that the deceased was killed by these two accused. The Trial Court has invoked section 106 of the Indian Evidence Act and has stated that the burden is upon the accused to explain as to how the deceased sustained injuries and died. But the defence of the accused need not be proved with so much of vigor as is expected of from the prosecution u/s.106 of the Evidence Act. It is enough that the accused is able to probablise the defence by means of preponderance of probabilities. In this case, since the injuries, having been caused by fall from the first floor of the house, as stated at the earliest point of time by the accused, has not been ruled out by the prosecution, the conviction of the accused cannot be sustained. Article 21 of the Constitution of India which guarantees right to life and liberty, states that the same can be deprived of only by following the procedure established by law. In other words, the Court cannot convict a person on mere surmises or suspicion. Suspicion, however strong it may be, cannot take the place of proof. In this case, the prosecution has not even succeeded in establishing the suspicion against the accused. Thus, we hold that the conviction of the accused persons imposed by the Trial Court is based only on surmises and therefore, the same cannot be sustained.

13 In the result, the criminal appeals are allowed. The conviction and sentence imposed on the appellants for the offence u/s.302 read with 34 IPC by the Trial Court in SC.No.388/2002 dated 26.02.2007 are hereby set aside. Bail bonds shall stand terminated. Fine amount, if any paid, shall be refunded to A1 [Saravanabava].

14 Before parting with the matter, we appreciate the service rendered by Ms.N.Premalatha, learned counsel who was appointed as the Legal Aid Counsel by this Court on 14.03.2016, to prosecute the matter. We direct the Legal Services Authority, to pay her the remuneration in accordance with the norms.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal Sessions Judge,
Chengalpattu.

2.The Inspector of Police
Meenambakkam Police Station
Chennai.

3.The District Munsif cum Judicial Magistrate
Alandur.

4.The Public Prosecutor
High Court, Chennai.

5.The Central Prison-I Puzhal Chennai
(Crl.A.No.340/12)

6.The Central Prison for Women Puzhal
Chennai
(Crl.341/12)

7.Vth Metropolitan Magistrate Egmore
Chennai-8

8.The Chief Judicial Magistrate
Chengalpattu

9.The District Collector Chengalpattu
Kancheepuram

+2 ccs to N.Premalatha Advocate sr.16906

+4 ccs to Mr.N.Duraisamy Advocate sr.17638 to 17639

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aa01/04/2016

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