

BAIL SLIP

The Appellant namely Kumar in Criminal Appeal No.355 of 2012 (Sole Accused in Sessions Case No.59 of 2011 on the file of the Additional District and Sessions Judge Fast Track Court No.IV Coimbatore at Thiruppur) was directed to be released on bail vide order of this court dated 16/07/2012 made in CrI.Misc.Petition NO.1 of 2012 in CrI.A.No.355 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.2.2016

Coram:

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

CrI.A.No.355 of 2012

Kumar

... Appellant/Accused

vs.

The State rep by
The Inspector of Police
Palladam Police Station
Tiruppur District
(crime NO.944 of 2010)

... Respondent

Criminal Appeal has been filed under Section 374(2) Cr.P.C., against the judgment dated 29.7.2011, passed by the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tirupur, in S.C.No.59 of 2011.

For Appellant : Mr.P.Saravanan

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

J U D G M E N T

(The Judgment of the Court was made by M.JAICHANDREN J.,)

The appellant is the sole accused in Sessions Case No.59 of 2011, on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore, at Tirupur. He stood charged for the offence under Section 302 of the Indian Penal Code. By the Judgment, dated 29.7.2011, the trial Court had convicted him under Section 302 of the Indian Penal Code, 1908, and sentenced him to undergo life imprisonment and to pay a fine of Rs.5000/-, and in default, to undergo rigorous imprisonment for six months, under Section 235 of the Criminal Procedure Code, 1973. 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 Kalamani. The accused is the husband of the deceased. The deceased used to shout at the accused, often, due to his drinking habit and as he was unemployed. This is stated to be the motive of the occurrence. At about 10.40 p.m., on 14.4.2010, the deceased is said to have shouted at the accused stating that he was not earning any money, as he was jobless and that he was not providing any money for the maintenance of the family. Enraged over the said statement made by the deceased, the accused had held her neck and had pushed her towards the slab and had strangled her, resulting in the death of the deceased.

(b) P.W.2, Sundaramurthi, who is a cousin of P.W.1, came to the place of the deceased, on the request of her parents. When he had entered the house in which the accused and the deceased were living, the accused had caught hold of the neck of the deceased and was pressing her against the slab in the kitchen. When P.W.2 had started shouting, the accused had run away. He had found the deceased Kalamani dead. Thereafter, he had rushed out of the house and had called P.W.1-Ayyavu and informed him about the occurrence using the phone of P.W.3-Nagaraj.

(c) P.W.1, who is the elder brother of the deceased, on hearing the news about the death of his sister Kalamani said to have been caused by the accused, proceeded to the Palladam Police Station and had lodged a complaint, marked as Ex.P.1, based on which, a case in Cr.No.944/2010, was registered, at about 10.00 a.m., on 15.4.2010, by P.W.9-Ponnusamy, the then Special Sub Inspector of Police, attached to the Palladam Police Station, for the offence under Section 302 I.P.C. The printed FIR is marked as Ex.P.7.

(d) On receipt of the F.I.R. registered by P.W.9 (Ex.P.3), P.W.13-Periyaiah, who was the Inspector of Police attached to the Palladam Police station at the relevant point of time, had commenced the investigation. P.W.13 proceeded to the place of occurrence, prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.11), at the place of occurrence, in the presence of P.W.5 and another witness. At his request, P.W.8, Photographer, took photographs of the deceased, at the place of occurrence. The photos of the dead body are marked as Ex.P.4 series. The receipt issued for Rs.250/-, being the charge for taking the photos is marked as Ex.P.5. Since the photo was taken through a digital camera, there was no negative. The compact disc of the photos, being electronic record, was marked as Ex.P.6. Then, he conducted inquest on the body of the deceased in the presence of Panchayatdars and prepared the Inquest Report (Ex.P.12) and forwarded the same for postmortem, along with a requisition letter (Ex.P.13). P.W.7-Dr.Saravanakumar, conducted the autopsy on the body of the deceased, on 15.4.2010, at 3.20 p.m. He found the following features:-

"A body of a female lies on back symmetrical. RM present in Lowerlimb absent in upperlimb. Eyes closed. Mouth closed. Tongue within the mouth. An abrasion 13 x 7 cm extending from midline of neck upto left angle of mandible. Abrasion 4 cm x 0.5 cm near left clavicle. Abrasion 7 x 3 cm over upper sternum. Opening of throat: Heart congested C/s chambers contains fluid blood. Lungs intact C/s congested. No rib #. Opening of Abdomen:- Stomach contains 200 gms of partially digested food particles. Liver intact C/s congested. Spleen intact C/s congested. Kidney intact C/s congested. Intestine distended with gas. Bladder empty Uterus normal. Hyoid intact. Spine normal. Skull intact No EDH/SDH. Base of skull normal. Brain intact C/s congested."

(e) On completion of the postmortem, P.W.7, the Doctor had opined that the deceased would appear to have died of asphyxia, due to strangulation. He had further opined that the death would have occurred 12 to 16 hours prior to the autopsy. The said postmortem certificate was marked as Ex.P.3. After the postmortem, P.W.13, obtained the night dress (M.O.1) worn by the deceased, from the woman constable P.W.10, and had also sent the said material object to the Court, under Form-95 (Ex.P.14).

(f) At about 5.00 p.m., on 15.4.2010, P.W.13 had arrested the accused in the presence of P.W.11 and P.W.12 and had obtained the confession statement. The admissible portion of the confession statement had been marked as Ex.P.15. Thereafter, the accused had been sent to the Court for being remanded. On completion of the investigation, the Inspector of Police

(P.W.13), had filed the final report, on the file of the Judicial Magistrate, Palladam, on 25.11.2010, charging the appellant/accused for the commission of offence, under Sections 341 and 302 I.P.C.

3. On receipt of the final report, the Judicial Magistrate, Palladam, took it on file, in P.R.C. No.6/2011. The Committal Court, on the appearance of the appellant/accused, furnished copies of the documents under Section 207 Cr.P.C. Having found that the case is exclusively triable by the Sessions Court, committed the same to the Principal District and Sessions Judge, Coimbatore, who had taken it on file, in S.C. No.59/2011 and had transferred it to the Additional District and Sessions Judge/Fast Track Court No.IV, Coimbatore, at Tiruppur. The trial Court, on appearance of the appellant/accused, had framed the charge, under Section 302 I.P.C. and had questioned the appellant/accused, who pleaded not guilty to the charge framed against him.

4. The prosecution, in order to sustain its case, has examined P.Ws.1 to 13 and had marked Exhibits P.1 to P.15 and had also marked M.O.1.

5. P.W.1, who is the elder brother of the deceased, is the complainant. He had stated that he had gone to the place of occurrence, on getting information about the death of the deceased. P.W.2, who is the cousin of P.W.1 and a resident of Karukkankattupatty village, was examined as an eye-witness. He has said that he had come to the place of occurrence, at 10.30 p.m., on 14.4.2010, on the request of the parents of the deceased. At that time he had witnessed the occurrence. P.W.3, who had been examined as an eye-witness to the occurrence, had turned hostile. As such, he has not supported the case of the prosecution, in any manner. P.W.4, who is the mother of the deceased, and P.W.6, who is the son of the deceased, have spoken about the motive for the murder committed by the accused. P.W.5, has spoken about the Observation Mahazar and the Sketch prepared at the scene of occurrence. P.W.7, Dr.Saravanakumar, has spoken about the Postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of the death. P.W.8 has spoken about the photographs taken and P.W.9 has spoken about the registration of the F.I.R. P.W.10 has stated that, after the postmortem, she had obtained the night dress (M.O.1) worn by the deceased and had submitted the same to the Inspector of Police (P.W.8). P.W.11, has turned hostile and he has not supported the case of the prosecution, in any manner. P.W.12 has spoken about the arrest of the accused. P.W.13, has spoken about the investigation done and the final report submitted by him.

6. The appellant/accused was questioned, under Section 313 Cr.P.C., with regard to the incriminating circumstances made out

against him in the evidence rendered by the prosecution. He had denied the allegations made against him and had stated that the charge made against him is incorrect. However, he did not choose to examine any witness, nor has he marked any document in his favour.

7. Having considered the above, the trial Court had convicted the accused, as detailed in the first paragraph of the Judgment of the trial Court, dated 29.7.2011. Aggrieved by the same, the appellant/accused is before this Court with this appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and we have also perused the records, carefully.

9. It is noted that P.W.1 is the elder brother of the deceased and P.W.2 is the cousin of P.W.1. It is also noted that P.W.2 is the only eye-witness. The other eye-witnesses to the occurrence had turned hostile, including the son of the deceased and they have not supported the case of the prosecution, in any manner. P.W.2 is a resident of Karukkankattupatty village. The occurrence is said to have taken place, at Karaipudur village, Tirupur District. P.W.2 has stated that he had come to the place of occurrence, at about 10.30 p.m., on 14.4.2010, on the request of the parents of the deceased. At that time he had witnessed the occurrence. Immediately, thereafter, P.W.2 had found that the deceased had died. Had it been true that P.W.2 had witnessed the occurrence, going by the natural conduct, he would have informed the Police, immediately, thereafter. Instead, he had gone to the Palladam Police Station, along with P.W.1, the elder brother of the deceased, only at 10.30 a.m., on 15.4.2010. There is no explanation, whatsoever, for such a long delay in preferring the complaint about the occurrence, which is said to have taken place during the previous night. In the absence of any explanation for such delay in preferring the complaint, we are impelled to doubt the veracity of the evidence of P.W.2.

10. From the records available, it is also noted that the First Information Report had reached the hands of the Magistrate concerned only at 5.00 p.m., on 15.4.2010. There is no explanation for the said delay. No proper explanation has been submitted to the Court, by P.W.2, as to what had prompted him to come to the place of occurrence at Karaipudur village at 10.30 p.m., on 14.4.2010.

11. It is a well settled position in law, as reiterated by the Supreme Court, in Thulia Kali Vs. The State of Tamil Nadu (1973 AIR 501), that the unexplained inordinate delay in preferring the complaint and in forwarding the First Information

Report to the Court damages the entire case of the prosecution and makes it unbelievable.

12. If the evidence of P.W.2 is doubtful and when there is no other reliable evidence to corroborate the version of the prosecution, we are of the view that it is not safe to act upon the evidence of P.W.2, to arrive at the conclusion regarding the guilt of the accused, based on such evidence. Therefore, we are compelled to hold that the prosecution has failed to prove its case beyond reasonable doubt.

13. In the present case, there is no confession leading to the recovery of any article in connection with the commission of crime. Only for discovering the scene of occurrence, the admissible portion of the confession made by the accused, marked as Ex.P.15, has been admitted. However, the scene of occurrence had already been discovered by the Investigation Officer. Hence, the portion of the confession, marked as Ex.P.15 would not be admissible in evidence.

14. In the result, the appeal is allowed and the conviction and sentence imposed by the trial Court, on the appellant, are set aside and he is acquitted of all the charges levelled against him. The bail bond, if any, executed, shall stand discharged. The fine amount, if any, paid, shall be refunded to the accused.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The Inspector of Police
Palladam Police Station
Tiruppur District
2. The Additional District and Sessions Judge,
Fast Track Court No.IV, Coimbatore at Tirupur
3. The Public Prosecutor
High Court of Madras
4. The Superintendent
Central Prison, Coimbatore

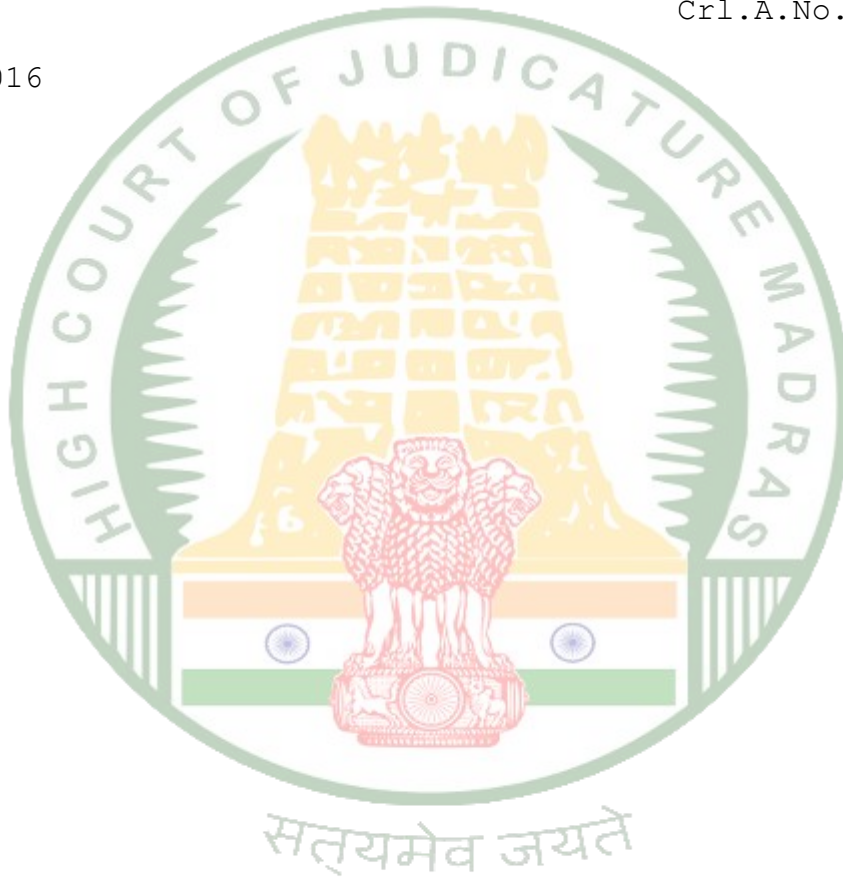
5.The Principal sessions Judge,
Coimbatore at Thirupur

6.The District Collector
Coimbatore

7.The Superintendent of Police
Coimbatore

Crl.A.No.355 of 2012

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