

BAIL SLIP

The Appellant/Accused NO.2 namely Senthilkumar aged 36 years S/o.Anandaraj was directed to be released on bail as per order of this Court dated 06.01.2012 in MP.1/2012 in CRL.A.No.10/2012.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06..06..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No. 452 of 2012

and

Criminal Appeal No.10 of 2012

Santhi

... Appellant in Crl.A.No.452 of
2012/Accused No.1

-Versus-

Senthilkumar

... Appellant in Crl.A.No.10 of 2012 /
Accused No.2

State Rep. by
The Inspector of Police,
Thalaignayar Police Station,
Nagapattinam District.
[Crime No.448 of 2005]

... Respondent in both Criminal
Appeals/complainant

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned Sessions Judge, Nagapattinam, in S.C.No.294 of 2008 dated 02.11.2011.

For Appellant (s) : Mr.G.Pugazenthi for
Appellant/A1 in CrI.A.No.452
of 2012
: Mr.John Sathyan for
Appellant/A2 in CrI.A.No.10
of 2012
For Respondent : Mr.M.Maharaja, APP for
respondents in both Criminal
Appeals

COMMON JUDGEMENT

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

The appellant in CrI.A.No.452 of 2012 is the Accused No.1 and the appellant in CrI.A.No.10 of 2012 is the Accused No.2 in S.C.No.294 of 2008 on the file of the learned Sessions Judge, Nagapattinam Division, Nagapattinam. They stood charged for offences under Sections 302 r/w 34 and 201 of IPC. The trial court, by judgement dated 02.11.2011, convicted A1 under both the charges and sentenced her to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for three years for offence under Section 302 r/w 34 of IPC and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for one year for offence under Section 201 of IPC; and convicted A2 for the offence under Section 201 of IPC and sentenced him to undergo rigorous imprisonment for seven year and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for one year. The trial court, however, acquitted A2 from the charge under Section 302 r/w 34 of IPC. Challenging the conviction and sentence imposed by the trial court, A1 has come up with Criminal Appeal in CrI.A.No.452 of 2012 and A2 has come up with Criminal Appeal in CrI.A.No.10 of 2012.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Palanidurai. A1 is his wife. They were living together along with their child (P.W.5) at Naluvadapathy Village. There were frequent quarrels between A1 and the deceased. The deceased used to keep always an aruval with him and criminally intimidate A1 with direct consequences. A1 was enraged over the same. Therefore, she planned to kill the deceased.

3. It is further alleged that six months prior to 06.10.2005, at the house of the deceased, A1 held the legs of the deceased and A2 pressed a pillow against the face of the deceased causing smotheration and as a result the deceased died. After having, thus, caused the death of the deceased, they

buried the dead body of the deceased by making a pit just behind the house of A1. A1 and A2 did not disclose about the occurrence to anybody. A1 was passing rumour that the deceased was found missing.

4. While so, on 06.10.2005, at about 02.00 p.m. P.W.1 , the then Village Administrative Officer of Naluvadapathy was at his house. At that time, A1 appeared before him voluntarily and on such appearance, she wanted to confess. P.W.1 reduced the confession given by A1 orally into writing. In that confession, she disclosed that she killed her husband and buried the body by digging a pit behind her house. However, she did not implicate A2 in any manner.

5. P.W.1, thereafter, prepared a special report and proceeded to the police station and produced A1 along with the special report under Ex.P.2 and the extra judicial confession under Ex.P.1 at Thalaigayar Police Station, at 02.35 p.m.

6. On such complaint from P.W.1, the then Sub Inspector of Police (P.W.10) registered a case in Crime No.448 of 2005 under Sections 302 and 201 of IPC against A1 alone. Ex.P.3 is the FIR. He forwarded both the complaint (Ex.P.2) and the FIR (Ex.P.3) to the court which were received by 04.30 p.m. on 06.10.2005. Thereafter, P.W.10 handed over the case diary to P.W.14 for investigation.

7. The investigation was taken up by the then Inspector of Police Mr.Velayudham. Mr.Velayudham proceeded to the place of occurrence, prepared an observation mahazar (Ex.P5) and a rough sketch (Ex.P9) in the presence of P.W.7 and another witness. Thereafter, on due intimation, the Tahsildar/Executive Magistrate of Vedaranyam had arrived at the scene of occurrence. In the presence of Tahsildar (P.W.13), at the place pointed out by A1, the body of the deceased was exhumed. Mr.Velayudham, recovered some blood stained earth and ordinary earth from the place where the body was exhumed under a mahazar (Ex.P6) and forwarded the same to the court along with a request for chemical examination. Thereafter, the investigating officer gave a request to the doctor to come to the place of occurrence to conduct post-mortem. In the mean time, the Tahsildar conducted inquest on the body of the deceased.

8. P.W.3 Dr.Khader had come to the place of occurrence where the body was buried and after inquest was over , as per the request made by the Tahsildar , he conducted autopsy on the body of the deceased. The body was highly decomposed and it was beyond recognition. There were dress materials on the dead body of the deceased which were all recovered by the investigating officer. As a matter of fact, what was exhumed was only the skeletal. There were small amount of hairs still available on

the back of the head. The muscles were all highly decomposed. He collected the skull and hyoid bone and send them for chemical examination. The photographs of the deceased was sent for comparison. P.W.12, an anthropologist attached to the Government Forensic Sciences Laboratory, Chennai, conducted superimposition test on the skull of the deceased with the use of the photograph of the deceased. Ex.P.8 is his report. Ex.P.8 is the photograph used for the purpose of comparison. According to his report, the photograph of the deceased tallied with the skull which was exhumed from the place of occurrence. After Mr.Velayudham, the investigation was taken over by P.W.14. On completing the investigation, P.W.14 laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed two charges against both the accused as detailed in the first paragraph of this judgement. Both A1 and A2 denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 13 documents were exhibited, besides 3 Material Objects.

10. Out of the said witnesses, P.W.1, the Village Administrative Officer, has spoken about the confession given by A1 on 06.10.2005 wherein A1 had admitted that it was she who killed the deceased and buried the body. P.W.2 is the President of Naluvadapathy Panchayat. He has stated that the deceased was in the habit of drinking and he used to torture his wife (A1) in drunken state. A1 had informed him about the same on few occasions. He has further stated that there were trivial family disputes between A1 and the deceased. Prior to his death, the deceased had gone to Malasiya and returned only in the month of April, 2005. After the Chitra Pournami festival in the month of April 2005, the deceased was found missing. He has further stated that on 06.10.2005, the body of the deceased was exhumed from behind the house of A1 by the Tahsildar from the place identified by A1. P.W.3 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.4 is a resident of the same village. He has also stated about the ill-feelings between the deceased and A1. He has further stated that on 06.10.2005 the body of the deceased was exhumed. P.W.5 is the son of the deceased. At the time of examination in court in the year 2001, he was 21 years old and he was studying II year B.Com,. He has stated that before the deceased was murdered, the deceased had gone to Malyasia and after working there for about eight or nine months, he returned to India. A2 and the deceased were friends. When the deceased was in Malaysia , A2 used to visit the house of A1. For some days, it is alleged that, he used to stay at her house. It turned out later that A1 had developed illicit intimacy with A2. Thereafter, his father was not found in the village. When he enquired A1, she told him that the deceased was found missing.

P.W.6 is the Village Assistant in whose presence, A1 gave confession to P.W.1.

11. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch. P.W.8 is a neighbour of the deceased. He has also spoken about the illicit relationship between A1 and A2. He has further stated that one day, he found A2 digging a pit behind the house of the deceased. P.W.9 has also spoken about the extra judicial confession given by A1 to P.W.1. P.W.10 has spoken about the registration of the case. P.W.11 has stated that he took the skull and hyoid bone to the Forensic Lab for scientific analysis. P.W.12 has spoken about the superimposition test conducted and his final opinion that the photograph of the deceased tallied with the skull sent for superimposition test. P.W.13 is the Tahsildar in whose presence the dead body of the deceased was exhumed from the place identified by A1. P.W.14 has spoken about the investigation done by his predecessor and the further investigation done by him and also the filing of charge sheet against the accused.

12. When the above incriminating materials were put to both A1 and A2, they denied the same as false. However, they did not choose to examine any witness nor they did mark any document on their side. Their defence was a total denial.

13. Having considered all the above, the trial Court convicted both A1 and A2 as detailed in the first paragraph of this judgement. Challenging the conviction and sentences, both A1 and A2 are now before this Court with these criminal appeals.

14. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/state and we have also perused the records carefully.

15. For the sake of convenience, let us first take up the case against A2-Senthilkumar. It is the case of the prosecution that A1 and A2 had illicit intimacy and that was the reason why A2 had assisted A1 in committing the murder of the husband of A1, the deceased. The first charge reads that A1 held the legs of the deceased and A2 pressed a pillow against the face of the deceased and smothered him to death. Absolutely there is no evidence to prove the same. Even in the extra judicial confession said to have been given by A1 to P.W.1 in the presence of P.W.6 and another, he has not stated anything against A2. The only piece of evidence available against him is the evidence of P.W.5 and P.W.8. P.W.5 has stated that few days after the chitra pournami festival in the village, when he was sleeping in his house, he heard a murmur and therefore, he went behind his house where he found A2 digging a pit and A1 was

found talking to him. But, he did not disclose the above said vital information until the body was exhumed. Similarly, P.W.8, a neighbour who claims to have seen the digging of pit by A2 has also not disclosed about the same for about eight months. In our considered view, it is too difficult to sustain the conviction of A2 based on the above evidences of P.W.5 and 8 alone. Thus, according to us, there is no convincing evidence against A2 and so he is entitled for acquittal.

16. Now, turning to the case against A1, the alleged occurrence was six months prior to 06.10.2005. A1 went to P.W.1 on 06.10.2015 and made a confession wherein, she has stated that since the deceased was torturing her physically, she decided to kill him and accordingly, she killed him by smothering and then buried the body in a pit behind her house. In her confession before P.W.1, she has not stated anything about A2. The learned counsel appearing for the Appellant/A1 would submit that the confession of A1 cannot be believed as it was made after about six months of the occurrence. The learned counsel would further submit that there was no reason for A1 to repose confidence in P.W.1 to make such a confession. We find some force in the above said argument. But, the above said circumstance would only create a slightest doubt in the extra judicial confession said to have been given by A1 to P.W.1. If the extra judicial confession is the only piece of evidence available against A1, then, we may be hesitant to act solely on the said extra judicial confession as it is the settled law that the retracted extra judicial confession is a very weak piece of evidence and the same cannot be the sole foundation to convict an accused unless the same draws corroboration from independent sources. Here, in the instant case, in our considered view, the extra judicial confession given by A1 to P.W.1 is not the only piece of evidence as there are other circumstances which duly corroborate the same. After the said confession was made to P.W.1, he took the accused to the police and in the presence of police, the accused made a disclosure statement in which she disclosed the place where the body had been buried. In pursuance of the same, she identified the place where the body was buried. Until such time, the fact that the body was buried behind the house of A1 was not known to any one. Though it was only out of the said disclosure statement, the body of the deceased was exhumed from the place of occurrence, A1 has not explained this to the court, had she been innocent, as to how, she had come to know about the burial of the body of her husband behind her house. This, in our considered view, is a very strong circumstance against A1.

17. The conduct of A1 also assumes much importance. Though the deceased was found missing, had she been innocent, she would not have rested without making a complaint to the police. She did not make any attempt to search for her husband, the

deceased. She has got no explanation to offer as to how she was keeping mum for about six months. This unnatural conduct of A1 is yet another incriminating circumstance which is a strong circumstance against her.

18. So far as identification of the body of the deceased is concerned, the learned counsel for the appellant/A1 would submit that there is no proof that the photograph used for superimposition test was that of the deceased. But, during trial, there was no dispute raised in respect of the identity of the photograph of the deceased which was used for the purpose of comparison by means of superimposition test. Thus, from the superimposition test, the identity of the deceased has also been established.

19. From the above proved circumstances, in our considered view, the prosecution has clinchingly and clearly proved that it was A1 who caused the death of the deceased and buried the body behind her house by digging a pit to cause disappearance of the evidence. Thus, A1 is liable to be punished for offence under Section 302 of IPC for murder of her husband and under Section 201 of IPC for causing disappearance of evidence of murder of her husband.

20. Now, turning to the quantum of punishment, the trial court itself has imposed only a minimum punishment and so it also does not require any interference at the hands of this court.

21. In the result, (i) Criminal Appeal No.452 of 2012:- (a) This criminal appeal is dismissed and the conviction and sentences imposed on the Appellant/A1-Santhi by the trial court are hereby confirmed.

(b) It is directed that the sentences imposed on the Appellant/A1-Santhi shall run concurrently.

(c) The period of detention already undergone by the appellant/A1-Santhi shall be set off under Section 428 of Cr.P.C.

(ii) Criminal Appeal No.10 of 2012:- (a) This criminal appeal is allowed.

(b) The conviction and sentence imposed on the Appellant/A2-Senthilkumar are hereby set aside and he is acquitted of the charge under Section 201 of IPC.

(c) Fine amount already paid, if any, shall be refunded to him.

(c) The bail bond executed by the Appellant/A2 shall stand terminated.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

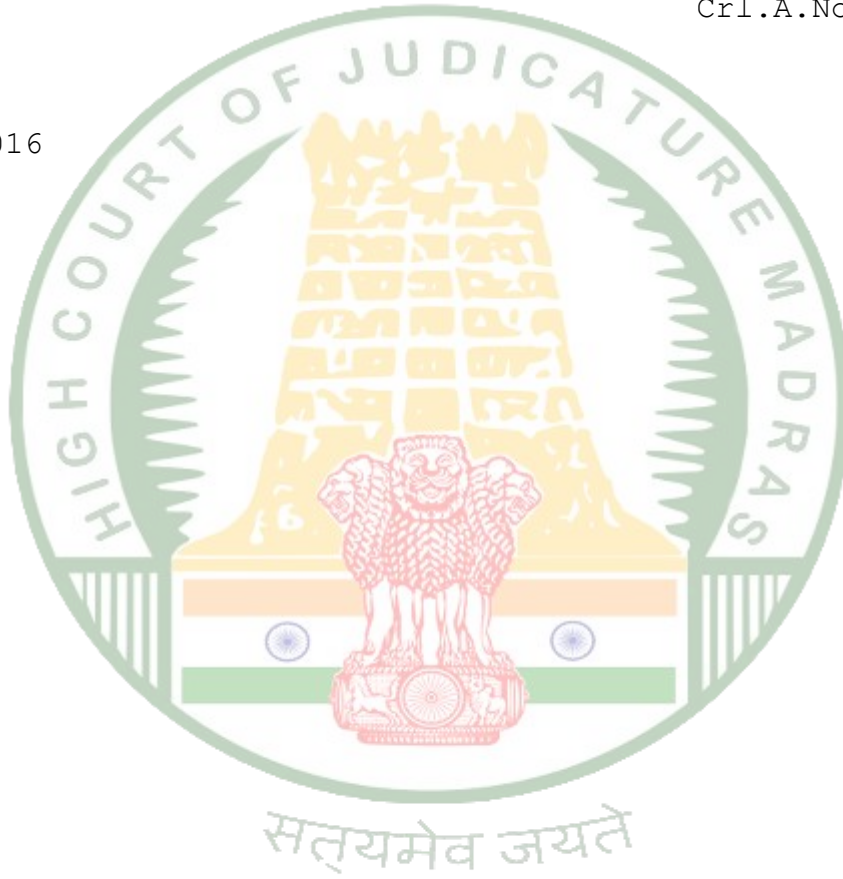
- 1.The Sessions Judge, Nagapattinam
Nagapattinam District.
- 2.The Judicial Magistrate Vedranyam
- 3.Through The Chief Judicial Magistrate
Nagapattinam
- 4.The Judicial Magistrate No.II Nagapattinam
- 5.The Superintendent Central Prison
Trichy
- 6.The District Collector Nagapattinam
- 7.The Superintendent of Police
Nagapattinam
- 8.The Director General of Police,
Mylapore Chennai-4
- 9.The Inspector of Police,
Thalaignayar Police Station,
Nagapattinam District.

10.The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.G.Pugazhendhi Advocate sr.30047

Crl.A.No.452 of 2012
and
Crl.A.No.10 of 2012

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