

Bail Slip

The Appellant Viz. Prasanth, aged 26 years, S/o. Sambanthappa, directed to be released on bail in MP No.1 of 2012 in CrI.A. No.459/2012 dated 27.09.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.02.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.459 of 2012

Prasanth

... Appellant

-Versus-

The Inspector of Police,
Mathigiri Police Station,
SIPCOT, Hosur,
Krishnagiri District.
[Crime NO.63 of 2010]

... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Principal Sessions Judge, Krishnagiri, in S.C.No.132 of 2010 dated 19.07.2012.

For Appellant : Mr.Margabandhu

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

[Judgement of the court was delivered by S.NAGAMUTHU.J,]

The appellant is the sole accused in S.C.No.132 of 2010 on the file of the learned Principal Sessions Judge, Krishnagiri. He stood charged for offence under Section 302 of IPC. By judgement dated 19.07.2012, the trial court convicted him under section 302 of IPC and sentenced him to undergo imprisonment for life. No fine was imposed. Challenging the above sentence, the sole accused is now before this court this criminal appeal.

2. The case of the prosecution in brief is as follows:-
The deceased in this case was one Mr.Ganesan. He was working

as a load-man in a private company. The accused was a friend of the deceased and a co-worker. The deceased was already married and having a child. But, the accused and the deceased had used to visit a lady who was a sex worker. They used to mostly go together. On 04.04.2010 at 09.00 p.m., it is alleged that the accused and the deceased had gone in the motorcycle of the accused somewhere. Thereafter, the deceased did not return home at all. On the next day morning, P.W.1, the father of the deceased came to know that the deceased had not gone for his work. He also came to know that the accused also did not turn up for his work. Later, P.W.1 came to know that the dead body of a male was found on the Mathigiri junction near check post. He also came to know that the dead body was brought by some body in an Ambulance and kept in the mortuary at Government Hospital, Hosur. P.W.1 went to the hospital and found to his shock that the dead body was that of his son-Mr.Ganesan. Thereafter, he went to Mathirigi police station and made a complaint at 11.00 a.m. on 05.04.2010. P.W.8, the then Sub Inspector of Police, received the said complaint and registered a case in Crime No.63 of 2010 under section 302 of IPC. Ex.P.1 is the complaint and Ex.P.9 is the FIR. He forwarded both the complaint and the FIR to the court and handed over the case diary to the Inspector of Police for investigation.

3. P.W.10, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar (Ex.P7) and rough sketch (Ex.P11) at the place of occurrence in the presence of P.W.6 and another witness. He also recovered some blood samples, which were spread on the road where the occurrence had taken place, by using cotton under a mahazar (Ex.P8) from the place of occurrence in the presence of the same witnesses. Then, he conducted autopsy on the body of the deceased at Government Hospital, Hosur, and forwarded the dead body for postmortem. During inquest, he examined a number of witnesses including P.W.1.

4. P.W.5 Dr.Thamayandhi, conducted autopsy on the body of the deceased on 05.04.2010 at 4.35 p.m. She found the following injuries:-

"External Injuries:

- (1) Laceration 5 x 3 x bone deep near right eye.
- (2) Laceration over left side elbow
- (3) laceration 3 x 2 cm left side elbow.
- (4) Abrasion 14 x 6 cm left side elbow .
- (5) Abrasion 8 x 6 cm right cheek.
- (6) Fracture of zygomatic bone.

Internal examination:

- (1) Hyoid bone intact.
- (2) Ribs intact.
- (3) Heart 220 grams. Chambers empty
- (4) Lungs weight right 400 grams, left 350 grams. Cut section pale.
- (5) Liver weight 1400 grams cut section pale.
- (6) Stomach empty
- (7) Kidneys 150 grams each cut section congested
- (8) spleen weight 130 grams cut section congested.
- (9) Bladder empty.
- (10) Skull fracture frontal bone right side.
- (11) Membranes intact.
- (12) Brain weight 1300 grams. Sub dural hemorrhage both lobes.
- (13) Base of skull fracture."

Ex.P.6 is the postmortem certificate. She opined that the injuries would have been caused by a hook used for loading and unloading gunny bags like M.O.1. She further opined the death was due to shock and hemorrhage due to the injuries.

5. P.W.10, in the course of investigation, arrested the accused at 07.00 a.m. at Uzhavar Sandhi Road at Hosur, on 06.04.2010 in the presence of P.W.4 and another witness. On such arrest, the accused gave a voluntary confession in the presence of the said witnesses in which he disclosed the place where he had hidden the, hook and a rose colour full sleeve shirt and also the motor cycle. In pursuance of the same, he took P.W.10 and the witnesses to the said place and produced the hook (M.O.1) and shirt (M.O.3). On returning to the police station, he forwarded the accused to the court for judicial remand and handed over the material objects also to the court. Then, he examined few more witnesses and made a request to the court to forward the material objects for chemical examination. The chemical analysis report revealed that there were human blood stains on all the materials objects. On completing the investigation, P.W.10 laid the final report against the accused before the learned Judicial Magistrate No.II, Hosur.

6. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 11 witnesses were examined, 17 documents and 5 materials objects were marked.

7. Out of the said witnesses, P.W.1, the father of the deceased has stated that on 04.04.2010 at 10.00 p.m., the wife of the deceased came and informed that the deceased had not returned. He has further stated that on the next day, he found the dead body. He has also spoken about the complaint lodged by him. P.W.2 is a resident of Padmavathy Nagar in Hosur. He is the brother of the deceased. He has stated that on 04.04.2010 at 09.15 p.m., the accused and the deceased had gone in a motor cycle and at that time both were fully drunk. Thereafter, the deceased did not return. On the next day, he found only the dead body of the deceased. P.W.3, the wife of the deceased has stated that on 04.04.2010 at 10.30 a.m. the accused came to her house and took the deceased in his motor cycle. But, he did not return in the evening. P.W.4 has stated about the arrest of the accused, disclosure statement made by him and the consequential recoveries of the motor cycle and the blood stained full sleeve shirt. P.W.5 has spoken about the postmortem conducted and the final opinion regarding the cause of death of the deceased. P.W.6 has spoken about the preparation of observation mahazar and the rough sketch at the place of occurrence by the Sub Inspector of Police and also the recovery of blood samples from the place of occurrence by using cotton. P.W.7 has stated that at about 10.00 p.m. on 04.04.2010, the accused and the deceased came to her house and had a non veg dinner and they also had sex with her and then left her house. P.W.8 has spoken about the registration of the case on the complaint of P.W.1. P.W.9 has spoken about the fact that he took the dead body for postmortem. P.W.10 has spoken about the investigation. P.W.11 has spoken about the fact that he forwarded the materials objects for chemical examination on the orders of the learned Judicial Magistrate.

8. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was a total denial.

9. Having considered all the above, the trial court convicted the accused under section 302 of IPC and accordingly punished him as detailed in the first paragraph of this judgement. That is how, the accused is now before this court with this criminal appeal.

10. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

11. This is a case based on circumstantial evidence. According to the evidence of P.W.1 to P.W.3, the deceased left house on 04.04.2010 at 09 to 09.15 p.m. From the evidence of P

.W.7 it is clear that at 10.00 p.m., on 04.04.2010, the accused and the deceased came to her house and had non veg dinner and also had sex with her and left her house. Thus, the prosecution has clearly established that lastly, the deceased was seen alive after 10.00 p.m. on 04.04.2010 and at that time, when he left the house, the accused was with him. After that on 05.04.2010, the dead body was found some where on the Mathirigi Road. Except the above, there is no other evidence against the accused. According to the medical evidence, there were injuries on the body of the deceased and it cannot be ruled out that those injuries would have been caused by any other manner. Though the prosecution has succeeded in establishing its case that the death was caused due to the injuries, absolutely, there is no evidence either direct or circumstantial to prove that the said injuries were caused only by the accused.

12. It is needless to point out that in a case based on circumstantial evidence, the prosecution is required to prove the circumstances projected by it beyond all reasonable doubts and the proved circumstances should form a complete chain so as to unerringly point to the guilt of the accused and such proved circumstances should form a complete chain so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the innocence of the accused. In this case, as we have already discussed, except the circumstances that the deceased left the house of P.W.7 on 04.04.2010 after 10.00 p.m. and that at that time the accused was in his company, there is no evidence against the accused so as to unerringly point to the guilt of the accused. Thus, we hold that the prosecution has miserably failed to prove the case beyond all reasonable doubts and the appellant is entitled for acquittal.

13. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the trial court is hereby set aside and the appellant/accused is acquitted from the charge. The Bail Bond executed by the appellant/accused shall stand cancelled.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Principal Sessions Judge, Krishnagiri.
<https://hcservices.ecourts.gov.in/hcservices/>

2.The Judicial Magistrate II, Krishnagiri.

3. The Chief Judicial Magistrate, Krishnagiri (for information)

4.The Superintendent, Central Prison, Vellore.

5.The Director General of Police, Mylapore, Chennai 4.

6.The District Collector, Krishnagiri.

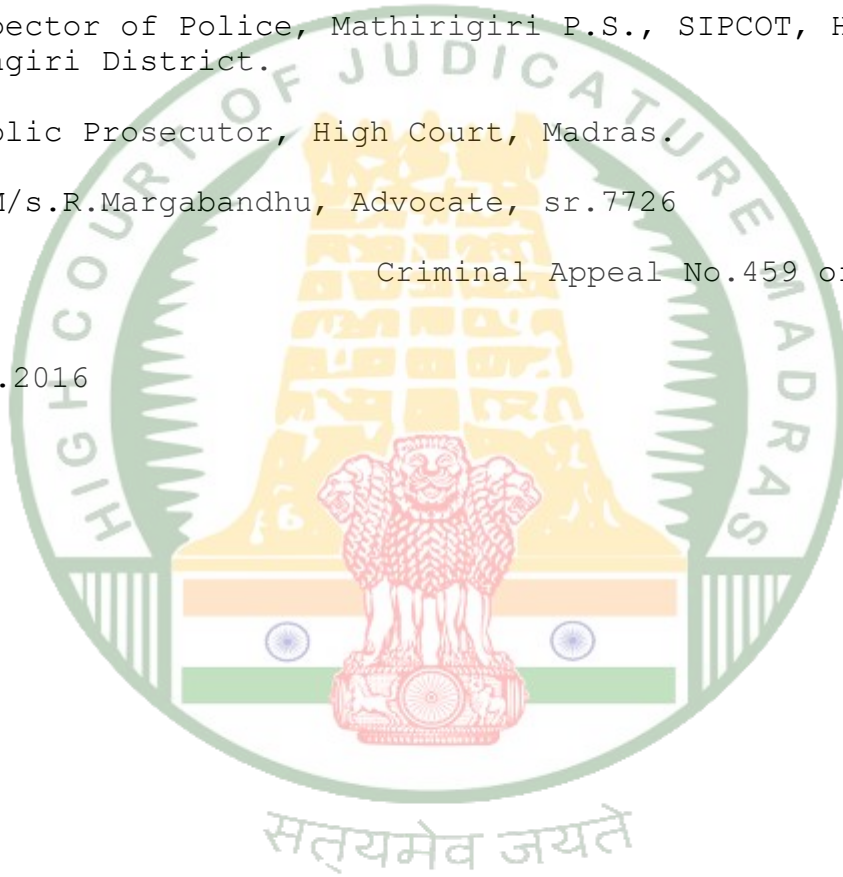
7.The Inspector of Police, Mathirigiri P.S., SIPCOT, Hosur, Krishnagiri District.

8. The Public Prosecutor, High Court, Madras.

+1 cc to M/s.R.Margabandhu, Advocate, sr.7726

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kra 02.03.2016



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