

Bail Slip

The 2nd Appellant/2nd Petitioner/2nd Accused namely Kongugu Poonkodi W/O Chandiran @ Devachandiran was directed to be released on bail as per the Order of this Court dated 04/04/2016 in CrI.M.P.NO. 2490/2016 in CrI.A.NO. 179/2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.179 of 2016

1. Chandiran @ Devachandiran

2. Kongugu Poonkodi .. Appellants/Accused

Vs

State rep. By
Inspector of Police,
Namakkal Police Station,
Namakkal.

(Crime No.19 of 2011) ..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed in S.C.No.4 of 2014 by the learned Principal Sessions Judge, Namakkal, in S.C.No.4 of 2014 dated 23.02.2016.

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

The appellants are A1 and A2 in S.C.No.4 of 2014, on the file of the Principal Sessions Court, Namakkal. They stood charged for the offences under Sections 302 and 201 r/2.302 I.P.C. By judgment dated 23.02.2016, the trial Court

convicted the accused for offences under Sections 302 and 201 r/w. 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each in default to undergo simple imprisonment for one year for the offence under Section 302 IPC and to undergo rigorous imprisonment for five years for the offence under Section 201 r/w.302 IPC and to pay a fine of Rs.5,000/- each in default to undergo imprisonment for 6 months. The trial Court ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2.The case of the prosecution, in brief, is as follows:-

The appellants are husband and wife. A2 is third wife of A1 . A1 was running a grocery shop and he used to go to Namakkal for purchase of groceries. At that time, the deceased developed illicit intimacy with A2 and the deceased openly proclaimed that she is having illicit intimacy with A2. Being agitated over the same, A1 decided to finish of the deceased. In the above circumstances, on 24.01.2011, at about 8.30 a.m., A1 asked A2 to call the deceased to his house saying that A1 already left to Namakkal and she was alone. A2 also called the deceased over cell phone to come to her house. Believing the words of A2, the deceased came to the house of the accused and A2 and deceased had intercourse in the house. At that time, A1 came there and strangled the deceased with a towel and A2 poured insecticide into the mouth of the deceased and caused his death. Thereafter, A1 and A2 took the dead body of the deceased to the land of P.W.3 and threw it near a bush. P.W.1, mother of the deceased, found the deceased missing. Hence, she has given a complaint, Ex.P.1, before the Vazhavanthinadu Police Station on 07.02.2011.

3. P.W.8, Special Sub-Inspector of Police, attached to the respondent police, registered a case in Crime No.17 of 2011 for man missing. Subsequently, on 17.02.2011, P.W.5, Revenue Inspector, Vazhavanthinadu circle, received information from Village Administrative Officer, Sellunadu village, that a human skeleton was found near the land of P.W.3. On receipt of the above information, P.W.5 went there and found the skeleton. Immediately, he gave a complaint, Ex.P.4, before the respondent police at 4.00 p.m.

4. On receipt of the complaint, P.W.8, Special Sub-Inspector of Police, registered a case in Crime No.19/2011 under Section 174 Cr.P.C. and sent the First Information Report to the Judicial Magistrate court and copy of the same to higher officials.

5. P.W.14, Inspector of Police, on receipt of First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.3 and Rough sketch, Ex.P.26

in the presence of witnesses. He recovered a cotton lungi (M.O.3) and blue jeans shirt (M.O.2) under the cover of Mahazar, Ex.P.2. He also conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared inquest Report, Ex.P.29 and sent the skeleton through Head Constable with requisition for postmortem.

6. P.W.7, Doctor, working in the Government Hospital, Sendamangalam, on 17.02.2011, at 1.30 p.m., conducted postmortem on the dead body of the deceased and found the following injuries:-

"A lightly decomposed body exposing the bones was present. Soft tissues were absent except little over neck, little of both shoulders and little tissue over vertebral column and tissue in the upper abdomen maggots present. Chest - 24 ribs, sterum was absent. Hyoid bone preserved. Head - no fracture skull-brain liquified, mandible present. 32 teeth present. Abdomen- little tissues over liver, stomach, intestine area. Extremities "both femur, humans both sides present. Both tibia, fus bothsides proximal portions present. Vertebral column intact. All bones present were partially damaged and eroded."

Ex.P.16 is the Postmortem certificate. He also sent the hyoid bone and visceral parts of the body of the deceased for chemical examination. After receipt of the report, he gave an opinion that the deceased appears to have died of organo phosphorus type insecticide and the death appears to have occurred more than 7 days prior to autopsy.

7. In the meantime, both accused appeared before P.W.5, on 18.02.2011, at about 10.00 a.m., and voluntarily gave a confession admitting their guilt. After recording their statement, P.W.5 produced both accused before the respondent police along with a special report, Ex.P.7. P.W.14 arrested the accused and on such arrest A1 and A2 voluntarily gave confession statement and based on the disclosure statement, P.W.14 seized half burnt cellphone of the deceased (M.O.4), insecticide (M.O.5). Based on their confession statements, P.W.14 altered the case into 302 IPC and the alteration report is Ex.P.30 and he sent the same to the Judicial Magistrate-II, Namakkal. P.W.14 recorded the statement of the witnesses. He also closed the earlier complaint given by P.W.1 for man missing. Since he retired, he handed over the investigation to P.W.15. P.W.15 recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. After completing investigation, P.W.15 laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same.

In order to prove its case, on the side of the prosecution, as many as 15 witnesses were examined and 35 documents were exhibited, besides 6 Material Objects.

9. Out of the witnesses examined, P.W.1 is the mother of the deceased. According to her, the deceased was found missing. Hence, he lodged a complaint, Ex.P.1, on 07.02.2011 to the respondent police. Based on that, a case was registered for man missing. Subsequently, P.W.3 informed her that a skeleton was found near his agricultural land. Then, P.Ws.1 and 2 reached the place and identified the body from the shirt and lungi worn by the deceased. They also informed the same to the police. P.W.2 is the brother of the deceased. He also identified the body from the lungi and shirt worn by the deceased. P.W.3 turned hostile.

10. P.W.4 is a witness to the observation mahazar and also seizure of shirt and lungi (M.Os.2 and 3) of the deceased. P.W.5 is the Revenue Inspector in the Valavandhinadu circle. According to him, one Chandran, Village Administrative Officer, informed him that a skeleton was found near the agricultural field of P.W.3 and after seeing the skeleton, he lodged a complaint, Ex.P.4 before the respondent police on 17.02.2011. Subsequently, on 18.02.2011, both the accused appeared before him and voluntarily gave a confession and after recording their statement, he produced the accused before the respondent police with special report. P.W.5 was also a witness to the confession statements of the accused and recovery of M.Os.4 and 5.

11. P.W.6, Head Constable, sent the material objects for chemical examination. P.W.7, Doctor, conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.8, Special Sub-Inspector of Police, earlier, registered the complaint in Crime No. 17 of 2011, which was given by P.W.1 for man missing. Subsequently, based on the complaint given by P.W.5, P.W.8 registered a case in Crime No.19 of 2011 under Section 174 Cr.P.C and sent the First Information Report to Judicial Magistrate Court and copies of the same to higher officials. P.W.9, Special Sub-Inspector of Police, accompanied the dead body of the deceased to Government Hospital, Sendamangalam, for postmortem and identified the body for postmortem.

12. P.W.10, Doctor, working in the Forensic Department, Chennai, examined the visceral parts of the deceased and gave report, Ex.P.23. According to him, in the visceral parts of the body he found a poisonous organo phosphorus type insecticide. P.W.11 is the Deputy Director in the Serology department of Forensic Department. He examined the bloodstained material objects and gave a report, Ex.P.24. P.W.12 is Scientific Officer in Forensic Department, Chennai, conducted super imposition test on the skull of the deceased and gave a report, Ex.P.25. P.W.13 is the sister of the

deceased. She identified the dead body from the Lungi and shirt worn by the deceased. P.W.14, Inspector of Police, conducted investigation, arrested the accused, recovered material objects and recorded the statement of the witnesses, and handed over the case records to P.W.15. P.W.15, Inspector of Police, completed investigation and laid a charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, one Subramani, was examined as D.W.1, however, they did not choose to mark any documents.

14. D.W.1 is brother of A1. He has spoken about the motive between A1 and the police. According to him, A1 has already been detained under Goondas Act by the respondent Police. Already the police arrested A1 and two other persons and kept them in police custody. Subsequently, they also brought A2 to the police station and after keeping A1 and A2 for some time in the station, they let out other two persons.

15. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellants/accused are before this Court with this appeal.

16. We have heard Mr. R.Sankarasubbu, learned Counsel appearing for the appellants/accused and Mr. E.Raja, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

17. It is a case based on circumstantial evidence. The prosecution mainly relied on the extra judicial confession given by the accused before P.W.5, Revenue Inspector in the Valavandhinadu circle. It is a settled principle of law that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping the above principle in mind, we have to analyze the facts of the present case.

18. According to the prosecution, on 17.02.2011, the skeleton was found near the land of P.W.3. P.W.5, Revenue Inspector of the Valavandhinadu circle, on receipt of information from the Village Administrative Office gave a complaint. Subsequently, on 18.02.2011, both the accused appeared before P.W.5 and voluntarily gave a confession admitting their guilt. P.W.5 recorded the statement and obtained their signature and along with a special report, he produced them before the respondent police. Ex.P.6 is the

extra judicial confession. A perusal of Ex.P.6, it was found that only A1 has given a confession and wherein, both A1 and A2 have signed. It is a settled principle of law that the extra judicial confession even though a substantial evidence, that is a very weak piece of evidence. It can be made basis for conviction provided it must be true, voluntary and trustworthy and if it is surrounded by suspicious circumstance, its credibility become doubtful and loses its importance and it requires independent reliable corroboration.

19. In the above context, it is worthwhile to notice a decision of the Hon'ble Supreme Court reported in 2012 (6) Supreme Court cases 403 (Sahadevan and another /vs/ State of Tamil Nadu) , wherein , the Apex Court held as follows:

"The Principles

16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

20. P.W.5, Revenue Inspector, is totally a stranger to the accused. There is no strong reason for the accused to repose confidence on P.W.5 and gave a voluntary confession before him. Even as per the prosecution case, the occurrence is said to have taken place on 24.01.2011 and both the accused are said to have appeared before P.W.5 only on 18.02.2011 and gave a confession.

21. Even as per the evidence of D.W.1, the respondent police had already taken custody of both the accused and they were seen in the police station. D.W.1 also says that along with the accused two other persons were already taken by the police for investigation.

22. In the above circumstances, the extra judicial confession said to have been given by the accused creates some doubt. Hence, it requires some reliable independent corroboration. But, in the instant case, except the extra judicial confession, there is no other circumstance relied upon by the prosecution to prove the guilt of the accused. Hence, it is highly unsafe to convict the accused based on the doubtful and uncorroborated extra judicial confession of the accused. Hence, we are of the considered view that the prosecution has failed to prove the circumstances beyond any reasonable doubt. Hence, the appellants are entitled for acquittal.

23. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused by the learned Principal Sessions Judge, Namakkal, in S.C.No.4 of 2014 by the judgment dated 23.02.2016 are hereby set aside. The appellants/accused are acquitted of the charges levelled against them and they are directed to set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal Sessions Judge,
Principal Sessions Court,
Namakkal.
- 2.The Judicial Magistrate,
NO.2, Namakkal.
- 3.-do- through the Chief Judicial Magistrate,
Namakkal.
- 4.The Inspector of poliice,
Namakkal Police Station, Namakkal.

5.The Superintendent,
Central Prison, Coimbatore.

6.The Superintendent,
Women Prison, Vellore.

7.The Public Prosecutor,
High Court,Madras.

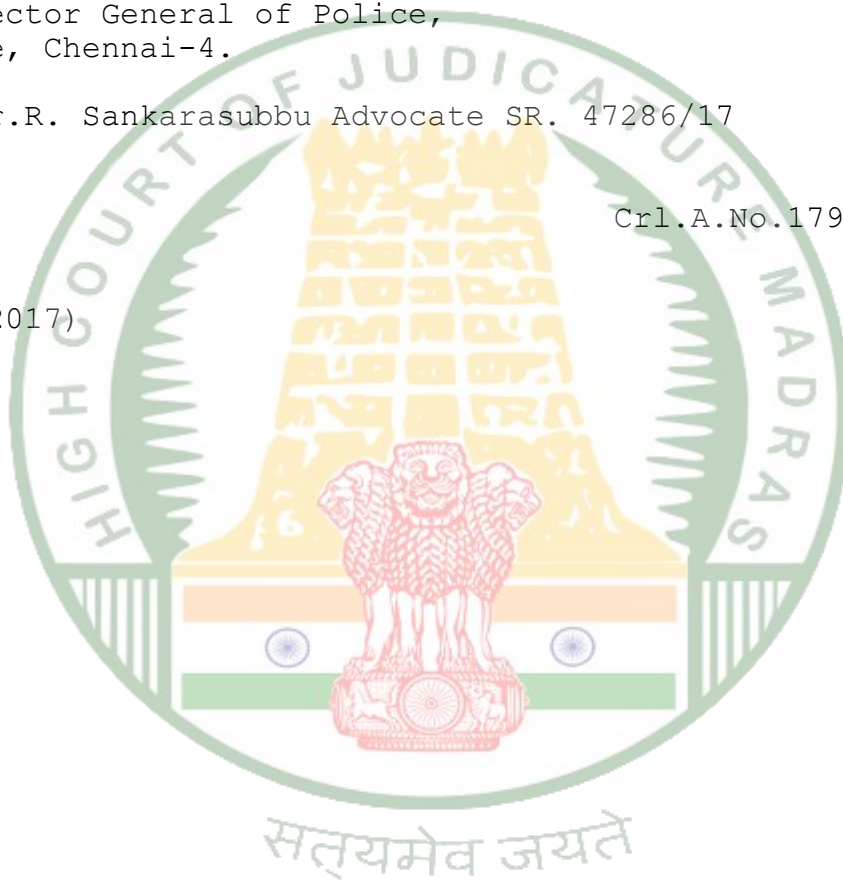
8.The District Collector,
Namakkal.

9.The Director General of Police,
Mylapore, Chennai-4.

+1cc to Mr.R. Sankarasubbu Advocate SR. 47286/17

Crl.A.No.179 of 2016

SR(CO)
VR(27/02/2017)



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