

Bail Slip

CRL MP No.4419 of 2016 in CRL A No.283 of 2016.

That the Appellant herein/ Accused Anbalagan. S/O. KannuValli Madurai Village, Keeraripatti Post, Harur Tk, Dharmapurai Dist. He and hereby is directed to be released on bail as per the order of the court dated 27/04/2016 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.283 of 2016

Anbalagan

... Appellant/ Single Accused

Vs

State represented by
Inspector of Police
Harur Police Station
Dharmapuri District.

... Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Fast Track Court, Dharmapuri, in S.C.No.161 of 2014 on 22.03.2016.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.161 of 2014 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Dharmapuri, is the appellant herein. He stood charged for an offence under Section 302 IPC. The trial Court convicted him under Section

302 IPC, and sentenced him to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. Challenging the above conviction and sentence, the present Appeal has been filed.

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

(i) The deceased in this case one Theerthammal was the

wife of the accused. Later on, the accused developed illicit intimacy with PW.5 - Govindammal, and lived with her for some time, and one week prior to the occurrence, the accused came back to his house and lived with the deceased. On 20.08.2010, both the accused and the deceased went to a Dam for washing clothes and there was a quarrel between the accused and the deceased. The accused strangled the deceased and throw her in the Dam and then, left the village. Next day on 21.08.2010, the body of the deceased was found in the Dam.

(ii) PW.1, brother of the deceased, went to the police station and lodged a complaint (Ex.P1) on 21.08.2010 at about 10.00 a.m.

(iii) PW.18, then Sub-Inspector of Police in the respondent police station, on receipt of the complaint, registered a case in Crime No.524 of 2010 under Section 174 Cr.P.C (Ex.P8) and sent the copies of the First Information Report to the higher officials.

(iv) PW.19 - Inspector of Police then working in the respondent police station, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, prepared Observation Mahazar (Ex.P2) and rough sketch (Ex.P9) and recovered water (M.O.1) from the Dam, one Bed Sheet (M.O.2), two full hand shirts (M.O.3 and M.O.4), one in-skiirt (M.O.5) and one jacket (M.O.6) and also recovered bloodstained soil (M.O.7) and sample soil (M.O.8). Thereafter, conducted inquest on the dead body in the presence of panchayatdars and sent the body for postmortem to the Government Hospital, Harur, through PW.17 - Head Constable.

(v) On 21.08.2010 at about 4 p.m, the accused appeared before PW.9 - Village Administrative Officer, Dhatharavalasu village and gave extra-judicial confession admitting his guilt. PW.9 recorded the statement (Ex.P6) of the accused and produced the accused before PW.19 along with a special report. PW.19 arrested the accused and remanded him to judicial custody and recorded the statement of Village Administrative Officer and other witnesses.

(vi) PW.16 - Doctor then working at Harur Government Hospital conducted postmortem on the dead body and found the following injuries:-

"Internal Examination:

Hyoid bone : Left side #, Rt. Side intact,
ribs Intact. Heart Chambers empty - c/s
congested. Lungs - c/s congested. Liver -

c/s congested. Kidney - c/s congested.
Stomach - undigested rice particles present
about 100gms. Uterus - empty. Skull bone -
intact. Brain - semi solid."

Ex.P7 is the postmortem report. PW.16 Doctor was of the opinion that the deceased appeared to have died due to asphyxia secondary to drowning.

(vii) PW.19 - Inspector of Police, sent the visceral parts of the dead body and the hyoid bone for chemical examination. Thereafter, he handed over the investigation to PW.20.

(viii) PW.20 - then Inspector of Police, continued the investigation and recorded the statement of witnesses and after completion of investigation, filed charge sheet on 09.02.2012.

3. Based on the above materials, the trial Court has framed charges against the appellant/accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined as many as 20 witnesses and exhibited 15 documents and marked 8 material objects.

4. Out of the witnesses examined, PW.1 is the brother of the deceased. He has spoken about the illegal intimacy between the accused and PW.5. According to PW.1, he saw the dead body on 21.08.2010 at about 6 a.m and lodged the complaint before the respondent police at 10.00 a.m . He had deposed in his cross examination that at about 10.00 a.m on 21.08.2010, while he went to the police station to lodge the complaint, he saw the accused in the police station. PW.2 is the mother of the deceased. According to her, both the accused and the deceased went to the Dam for washing clothes, and only the accused returned back, on the next day morning, she saw the dead body in the Dam. PW.3 is another brother of the deceased. He has also spoken about the illicit intimacy between the accused and PW.5. PW.4 is a staff working in Public Works Department and maintaining the Dam. According to him, on the date of occurrence at about 1.00 to

3.00 p.m, he saw both the accused and the deceased in the Dam and they were quarrelling between themselves. PW.5 is a concubine of the accused, in the cross examination, she has stated that on 21.08.2010, the respondent police took her to Harur police station at about 11.00 a.m and she saw the accused in the police station. PW.6 is sister of the deceased. According to her, the deceased left for the Dam at about 3.00 p.m and she did not return back. PW.7 is a villager, he knows both the accused and the deceased. He is a witness to the Observation Mahazar and also recovery of material objects. According to him, he along with other villagers went to the police station at about 10.00 to 11.00 a.m, and PW.9 - Village Administrative Officer was there in the police station and he saw the accused in the police station and PW.9 - Village Administrative Officer informed that the accused already surrendered before him. PW.8, another villager, saw the dead body. PW.9 - then Village Administrative Officer of Dhatharavalasu village. According to him, on 21.08.2010 at about 4.00 p.m, the accused appeared before him and voluntarily gave extra-judicial confession admitting the guilt and he recorded the statement of the accused and produced the accused before the Investigating Officer (PW.19) along with the special report. Based on that, PW.19 altered the charge under Section 302 IPC and the altered First Information Report is Ex.P15. PW.10 has turned hostile. PW.11 is another brother of the deceased and according to him, the accused used to told him that one day or other, he will murder the deceased. PW.12, another villager, saw the dead body in the Dam. P.Ws.13, 14 and 15 have turned hostile. PW.16 - Doctor conducted postmortem autopsy on the dead body and issued postmortem certificate and also gave final opinion. PW.17 - Head Constable then working in the respondent police station, handed over the body to the relatives of the deceased, after postmortem. PW.18 - then Head Constable, submitted the copy of the First Information Report to the Tahsildar and also to the higher officials. PW.19 - Inspector of Police conducted the investigation and recorded the statement of witnesses, recovered material objects and sent the body for postmortem and arrested the accused, subsequently, altered the charge into 302 IPC, recorded the statement of postmortem Doctor and other witnesses and handed over the investigation to PW.20. PW.20, Inspector of Police after completing investigation, filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced them as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the appellant before this Court.

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

8. It is a case of circumstantial evidence. The prosecution mainly relied upon the extra-judicial confession given by the accused before PW.9 - Village Administrative Officer. According to PW.9, on 21.08.2010, at about 4 p.m, the accused appeared before him and voluntarily gave extra-judicial confession admitting his guilt. He recorded the statement (Ex.P6) of the accused and then, produced the accused along with the Special Report before PW.19 - Inspector of Police and based on that, the Inspector of Police arrested the accused. PW.1 in his cross examination has categorically stated that on 21.08.2010 at about 10.00 to 11.00 a.m, he along with other villagers went to the police station to lodge the complaint and at that time, the accused was in the custody of the police. PW.5 also in her cross examination has stated that on 21.08.2010 at about 10.00 a.m, when the respondent police took her to Harur police station, at about 11.00 a.m she saw the accused in the police station, but he did not talk with him. PW.7, another villager was also went along with others to lodge the complaint. According to PW.7, When he went to the police station between 10.00 to 11.00 a.m, he saw the accused in the police station and PW.9 - Village Administrative Officer was also there and PW.9 informed him that the accused surrendered before him. Hence it is the consistent evidence of PWs.1, 5 and 7, that on 21.08.2010 at about 10.00 to 11.00 a.m, the accused was in the police custody and as per the testimony of PW.7, Village Administrative Officer (PW.9) was also present in the police station and the Village Administrative Officer told him that already the accused surrendered before him. The extra-judicial confession was stated to have been given by the accused at about 4.00 p.m before PW.9, but at that time, as per the other witness, the accused was in the custody of the police. Hence, the alleged extra-judicial confession stated to have been given by the accused cannot be true and voluntary, as he was already under the police custody, and therefore, the same cannot be relied upon.

9. The next circumstance relied upon by the prosecution is that the evidence of PW.4, a staff of Public Works Department

and maintaining the Dam. He only saw the accused and the deceased washing clothes and they were quarrelling between themselves. The above circumstance alone cannot be considered to find the accused guilty of murder. The medical evidence also does not support the prosecution case as the opinion of the Doctor is the deceased appeared to have died of asphyxia and he did not find any strangulation mark on the deceased.

10. It is settled principle of law that in the case of circumstantial evidence, the prosecution should prove all the circumstances beyond any reasonable doubt and the proved circumstances should form a chain unerringly pointing the guilt of the accused.

11. Keeping the above principle in mind, if we consider the instant case, we are of the considered view that the prosecution did not prove the circumstances beyond any reasonable doubt pointing the guilt of the accused. In the above circumstances, the appellant is entitled for acquittal.

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant on 22.03.2016 in S.C.No.161 of 2014 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Dharmapuri, are set aside. The appellant is acquitted and the fine amount already paid, if any, shall be refunded to him. His bail bond shall stand terminated.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mra

To

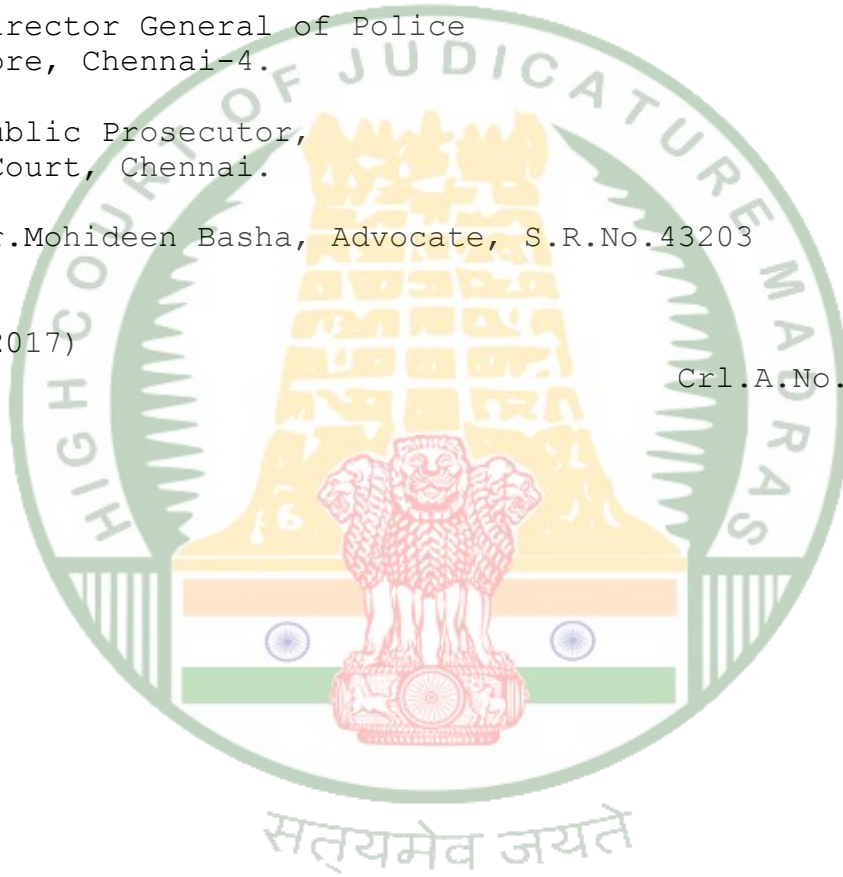
1. The Sessions Judge,
Mahalir Fast Track Court,
Dharmapuri.
2. -do- Thro The Principal Sessions Judge,
Dharmapuri.
3. The Judicial Magistrate Harur.
4. -do- Thro The Chief Judicial Magistrate,
Dharmapuri District.

5. The Inspector of Police
Harur Police Station
Dharmapuri District.
6. The Superintendent,
Central Prison,
Vellore.
7. The District Collector,
Dharmapuri District.
8. The Director General of Police
Mylapore, Chennai-4.
9. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.Mohideen Basha, Advocate, S.R.No.43203

UG(CO)
RS(11/01/2017)

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