

Bail Slip

The Petitioners/Accused viz., M. Loganathan, aged 25 years S/o Murali (A1) and Settu @ Setturao aged 26 year S/o Kuppusamy (A2) were directed to be released on bail as per order of this Court dated 07.06.2016 and made in CrI.MP.No.4598/2016 in CrI.A.287/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CrI.A.No.287 of 2016

1. M.Loganathan
2. Settu @ Setturao

Appellants

Vs

State represented by
The Inspector of Police
Harur Police Station
Harur Taluk,
Dharmapuri District.

Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Dharmapuri, in S.C.No.116 of 2015 on 15.03.2016.

सत्यमेव जयते

For Appellant-1	:	Mr.M.Baskar
For Appellant-2	:	Mr.D.K.Arun kumar
		Legal - Aid - counsel
For Respondent	:	Mr.V.M.R.Rajentren
		Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused 1 and 2 in S.C.No.116 of 2015 on the file of the learned Principal Sessions Judge, Dharmapuri.

Totally there are three accused and all the accused stood charged for the offences under following Sections:-

Accused	Section of Offences
A1	U/s. 120(b) r/w. 302 IPC
	U/s. 302 IPC
	U/s. 201 IPC
A2	U/s. 120(b) r/w. 302 IPC
	U/s. 302 r/w.34 IPC
	U/s. 201 IPC
A3	U/s. 120(b) r/w. 302 IPC
	U/s. 379 IPC
	U/s. 201 IPC

By judgment dated 15.03.2016, the trial court acquitted A1 and A2 from the charges levelled against them under Sections 120(b) r/w. 302 and 201 IPC and acquitted A3 from all the charges levelled against him. However, the trial Court convicted A1 and A2 and sentenced them as detailed below :

Accused	Conviction	sentence
A1	Under Section 302 IPC	Sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 2 years rigorous imprisonment.
A2	Under Section 302 r/w. 34 IPC	Sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 2 years rigorous imprisonment.

Challenging the said conviction and sentence, A1 and A2 filed this appeal before this Court.

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

(a) The deceased in this case was one Ganesan. The deceased was related to A2 and A3. A2 is brother-in-law of A3 and A1 is a friend of A2. Five years prior to the occurrence, A2 fell in love with one Soundarya, who is the brother's daughter of the deceased. But the deceased family refused to give marriage of said Soundarya to A2. Hence, A2 had a grievance against the deceased. Apart from that, the deceased had illicit intimacy with the wife of A3. In the above circumstances, A2 and A3 along with A1 had entered into a conspiracy to murder the deceased and in furtherance of the conspiracy, on 18.02.2014, A1 and A2 took the deceased to a nearby lake called 'Periya Eri' and all of them consumed liquor together. The deceased heavily drunk and fell asleep and at

that time, A1 cut the deceased in his neck with a knife, A1 and A2 removed the dresses of the deceased, and A3 stolen the chain and watch of the deceased. Then, all the three accused throw the body near a Well belongs to one Sathyanarayanan and went away.

(b) PW.1 - Village Administrative Officer of H.Thottampatti Village, on 21.02.2014 at about 8.45 a.m, received a message from the Village Menial that a dead body was found near the lake. Immediately, she rushed to the place and found the body in a highly decomposed stage and then, she went to Harur police station and lodged a complaint (Ex.P1).

(c) PW.10 - Special Sub-Inspector of Police in Harur police station, on receipt of the complaint, registered a case in Crime No.123 of 2014 under Section 302 IPC and sent the First Information Report (Ex.P12) to the Judicial Magistrate Court, Harur, and copies of the same to the higher officials.

(d) PW.11 - Inspector of Police in Harur police station, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P14) and Rough Sketch (Ex.P13). In the scene of occurrence, he recovered bloodstained earth (M.O.9), sample earth (M.O.10), knife cover (M.O.11), coconut husk (M.O.12), a pair of slippers (M.O.13), a liquor bottle (M.O.14) and a water bottle (M.O.15) under a cover of Seizure Mahazar (Ex.P15). Then PW.11 conducted inquest on the dead body in the presence of panchayatdars and prepared inquest report (Ex.P16) and recorded the statements of witnesses. Thereafter, PW.11 sent the dead body to the Government Hospital, Harur, for autopsy through PW.9 - Head Constable.

(e) PW.2 - Assistant Surgeon working in Government Hospital, Harur, conducted autopsy on the dead body and found the following injuries:-

"EXTERNAL INJURIES:

Lacerated wound 15 x 15 x 5 cm over the anterior aspect of neck extending into the trachea. A lacerated wound 2 x 1x 1 cm over right hand adjacent to the previous wound. A punctured wound over the left shoulder.

INTERNAL EXAMINATION:

Hyoid bone intact. Ribs intact. Heart, lungs, liver, kidney, stomach liquified. Skull bone intact. Brain liquified."

Ex.P11 is the postmortem report and the Doctor was of the opinion that the deceased appeared to have died of shock and hemorrhage due to cut injury in the major blood vessels of neck.

(f) Since nobody claimed the dead body, the body was buried near the scene of occurrence by PW.11 - Inspector of Police, with the help of Panchayat Union staff, and a special police team was formed to arrest the accused.

(g) In the mean time, on 16.06.2014, PW.8, the father of deceased, also a Special Sub-Inspector of Police has given a complaint before the respondent police stating that the deceased was found missing from 18.02.2014. PW.11 registered the case in Crime No.376 of 2014, for 'man missing' and also conducted investigation. In the above investigation, when PW.11 examined A2, A2 voluntarily gave confession before PW.11 admitting the guilt and based on the disclosure statement of A2, PW.11 recovered Jeans Pant (M.O.3), T-shirt (M.O.2) and blue colour shirt (M.O.1) of the deceased. A2 also identified A1. Then, PW.11 arrested A1 and on such arrest, A1 voluntarily gave confession and based on the disclosure statement, PW.11 recovered a knife (M.O.5) and a motorcycle (M.O.8) and arrested A3 at Salem Bus Stand and on such arrest, A3 also voluntarily gave confession and based on the disclosure statement, PW.11 recovered a plastic watch (M.O.6) and an aluminium chain (M.O.7) of the deceased and then, sent the skull of the deceased for superimposition test and also obtained report (Ex.P17) to the effect that the skull is tallied with that of the deceased. Then PW.11 recorded the statements of other witnesses and after completion of investigation, filed charge sheet.

3. Considering the above materials, the trial Court has framed charges against the accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 11 witnesses and marked 18 documents and 15 material objects.

4. Out of the witnesses examined, PW.1 is Village Administrative Officer of H.Thommampatti Village and he saw the dead body and lodged a complaint (Ex.P1); PW.2 - Assistant Surgeon in the Government Hospital, Harur, conducted autopsy on the dead body and also issued postmortem certificate (Ex.P11) and also gave opinion regarding the cause of death. PW.3, a scavenger working in Harur Town Panchayat, assisted the police to bury the dead body near the scene of occurrence. PW.4 has turned hostile. PW.5 has also turned hostile. PW.6 is a person working in Barber shop. According to him, on 18.02.2014, he saw A1, A2 and the deceased consuming liquor near a lake; subsequently, on 20.06.2014, the police examined him. PW.7 has turned hostile. PW.8 is the father of deceased and he is also working as a special Sub-Inspector of Police in the respondent police station. According to him, his son was found missing from 18.02.2014. Hence, he has given a complaint before the respondent police for 'man missing' and subsequently on

31.07.2014, he came to know that his son was murdered and he identified the dresses worn by the deceased. PW.9 - Head Constable in the respondent police, identified the body for postmortem. According to him, he along with others buried the body near the scene of occurrence. PW.10 is the special Sub-Inspector of Police, who registered the complaint. PW.11 is the Investigating Officer and he conducted investigation, arrested the accused, recorded the statement of witnesses and after completion of investigation, he filed charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused neither examined any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the appellants / A1 and A2 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 accused 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. 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.

9. Keeping the above principle in mind, let us consider the instant case. The prosecution mainly relied upon two circumstances.

(i) The first and foremost circumstance is PW.6 has seen A1, A2 and the deceased consuming liquor together. According to PW.6, on 18.02.2014 at about 4.00 p.m, he saw A1, A2 and the deceased consuming liquor together, but he was examined by the police only on 20.06.2014. PW.6 is a stranger and he has not earlier known to the accused and the deceased. Hence, it is difficult to believe the evidence of PW.6, regarding the last seen theory.

(ii) The next circumstance relied upon by the prosecution is the recovery of plastic watch and aluminium chain of the deceased from A3. But the trial Court disbelieved the recovery and acquitted A3.

10. Hence, so far as A1 and A2 are concerned, absolutely, there is no other circumstance available to connect them with

the murder. In the above circumstances, we are of the considered view that the prosecution failed to prove the circumstances beyond any reasonable doubt unerringly pointing the guilt of the accused. In the above circumstances, the appellants are entitled for acquittal.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants on 15.03.2016 in S.C.No.116 of 2015 on the file of the learned Principal Sessions Judge, Dharmapuri, are set aside. Both the appellants/A1 and A2 are acquitted and fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

12. While parting with the case, we appreciate the services rendered by Mr.D.K.Arun kumar, learned Counsel, who appeared on behalf of the second appellant/A2 as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mra

To

1. The Principal Sessions Judge, Dharmapuri.

2 The Judicial Magistrate, No.I, Dharmapuri

3 The Chief Judicial Magistrate, Dharmapuri

4 The Director General of Police
Mylapore, Chennai

5 The District Collector
Dharmapuri District
Dharmapuri

6 Member Secretary
The Tamil Nadu State Legal Services Authority
North Fort Road, High Court, Chennai

7 The Superintendent Central Prison,
Vellore

8 The Inspector of Police
Harur Police Station
Harur Taluk, Dharmapuri District.

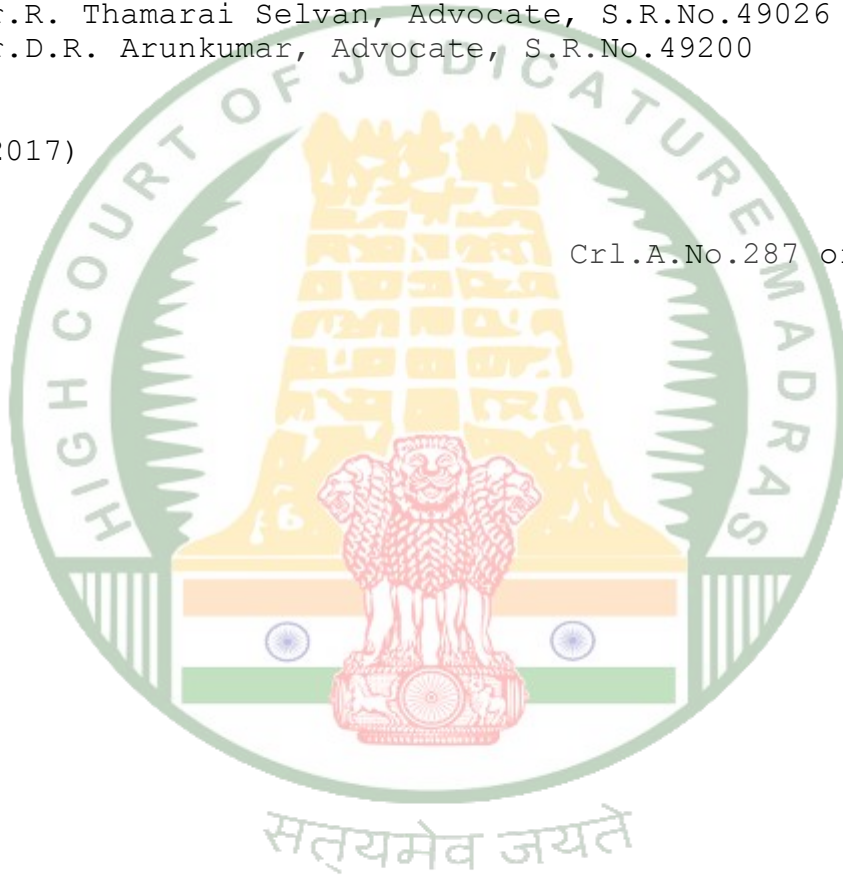
9 The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.R. Thamarai Selvan, Advocate, S.R.No.49026

+1cc to Mr.D.R. Arunkumar, Advocate, S.R.No.49200

mp(CO)
md(24/02/2017)

Crl.A.No.287 of 2016



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