

BAIL SLIP

That the Appellants/Accused namely (1) Elumalai (2)Anjalai were directed to be released on bail made in Crl.MP.No.4767 of 2016 in Crl.A.301/2016 in and by the order of this Court dated 10.06.2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.301 of 2016

1. Elumalai

2. Anjalai W/o.Elumalai

... Appellants /
accused 1 and 2

vs

State Represented by,
The Inspector of Police,
Pagandai X-Road Police Station,
Villupuram District
(Crime No.150 of 2012)

.. Respondent / Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the judgment of the learned III Additional Sessions Judge, Villupuram @ Kallakurichi, in S.C.No.394 of 2013, dated 29.03.2016.

For Appellants : Mr. C.R.Malarvannan

For Respondent : Mr. V.M.R.Rajentren, A.P.P.,

J U D G M E N T

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

The appellants are the accused 1 and 2 in S.C.No.394 of 2013 on the file of the learned III Additional Sessions Judge, Villupuram at Kallakurichi. They stood charged for the offences under Section 302 IPC and 302 read with 201 IPC.

2. By judgement, dated 29.03.2016, the trial court convicted them under both the charges and sentenced them to undergo Imprisonment for life and to pay a fine of Rs.3,000/- each, in default to undergo Rigorous Imprisonment for six months, for the offence under Section 302 IPC, and to undergo Rigorous

Imprisonment for one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo three months simple imprisonment for the offence under Section 302 r/w 201 IPC. Challenging the said conviction and sentence, the appellants are before this Court, with this Criminal Appeal.

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

The accused 1 and 2 are the husband and wife, respectively. They were engaged in the work of digging wells, as coolies. The deceased, in this case, was one Jeyakotti @ Jeyachandran. He also joined with these two accused in the said work. In such a way, these two accused and the deceased were closely moving with each other. In due course of time, it is alleged that the deceased had developed an illicit intimacy with the second accused. The accused 1 and 2 had also borrowed a sum of Rs.1,00,000/- from the deceased. When the illicit intimacy between the deceased and the second accused came to light, the first accused quarrelled with the deceased. Therefore, the deceased demanded repayment of Rs.1,00,000/-, which was taken from these two accused. At the intervention of Panchatdhars, the first accused had repaid a sum of Rs.47,000/- and the balance amount was not paid. The deceased was insisting for repayment of the balance amount. This is stated to be the motive for the occurrence.

4. It is alleged that on 07.05.2012, around 7.30 pm, the first accused had instructed the second accused to go and fetch the deceased to Ilayanarkuppam Bus stop, under the guise of paying the balance loan amount. Accordingly, the second accused went in search of the deceased and persuaded him to come with her. The deceased came in his TVS motor cycle. The second accused travelled as a pillion rider. On reaching Ilayanarkuppam bus Stop, the first accused also joined them. Then, all the three went in the same motor-cycle driven by the deceased. When the vehicle was nearing Athiyur Koot Road, the first accused wanted the deceased to drive the vehicle, on the mud road, which branches towards left. Accordingly, the deceased did. At a distance, the accused wanted the deceased to stop the vehicle. Then, all the three went to a nearby neem tree. They sat under the neem tree and they were talking to each other. At that time, it is alleged that, as planned already, the first accused took out a wooden log and attacked the deceased indiscriminately. The deceased died instantaneously. Thereafter, according to the prosecution case, the two accused, with a view to erase the evidence, removed the lungi of the deceased, tied his hands and legs and threw the dead body into the well, belonging to one Mr.Sivalingam, situated somewhere near the said place of occurrence. Thereafter, it is alleged that both the accused dis-appeared from the place of occurrence, along with the motor-cycle. The occurrence was not witnessed by anyone.

5. P.W.1 is the wife of the deceased. On 07.05.2012, she witnessed the deceased going with the second accused. Since the deceased did not return to home, she went in search of him. On 09.05.2012, she came to know that the dead body of the deceased was floating in a well, belonging to Mr.Sivalingam. Immediately, she went near the well, saw the dead body and then went to Pagandai Koot Road Police Station and made a complaint at 02.00 pm on 09.05.2012. Ex.P-1 is the complaint and Ex.P-13 is the First Information Report.

6. P.W.11, the then Sub-Inspector of Police, registered a case on the said complaint and forwarded both the documents to the Court, which were received by the learned Magistrate at 12.15 pm on 10.05.2012. P.W.15, took up the case for further investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of P.W.5 and another witness. He conducted inquest on the body of the deceased at 05.30 pm, on 09.05.2012 and forwarded the same for post-mortem. P.W.10, Dr.Balamurugan conducted autopsy on the body of the deceased, on 10.05.2012 at 12.30 pm. He found the following injuries:-

"External Injuries:-

1. 3x2x2 cm wound over the forehead, exposing the skull which was punctured as a triangular silt.
2. Injury over the right ear extended to middle portion of the right ear.
3. 4x1x1 cm lacerated wound in the backside of the head and brain skull was ruptured.
4. Frontal bone 2x1x1 cm triangular silt incised to brain.
5. Neck, Hyoid Bone preserved. Lungs are congested. Heart, all chamber - contusion and blood. Stomach with contusion sent for analysis. Liver, Kidney Intestine are normal and sent for analysis. Brain skull : Ruptured."

7. Ex.P-8 is the post-mortem certificate and Ex.P-9 is the final opinion of the Doctor. According to the Doctor, P.W.10, the deceased had died due to shock and haemorrhage caused on account of the injuries found on the body of the deceased.

8. P.W.15 examined few more witnesses and recorded their statements. He recovered blood stained cloth from the body of the deceased. On completing the investigation, he laid charge sheet against the accused. He arrested the accused, on 11.05.2012 at 06.30 pm, in the presence of P.W.6 and other witnesses. On such arrest, the first accused made a voluntary confession, in which he had disclosed the place, where he had hidden the motor-cycle. In pursuance of the same, he took the police and the witnesses to the place of occurrence and produced

the motor-cycle, bearing Registration No.TN57-3727. On completing the investigation, he laid charge sheet against the accused.

9. Based on the above materials, the trial court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 15 witnesses were examined and 19 documents were exhibited, besides marking three Material Objects.

10. Out of the said witnesses, P.W.1 is the wife of the deceased and she has stated that, on 07.05.2012, the deceased went along with the second accused and thereafter, the dead body of the deceased was found on 09.05.2012. She has not even identified the motor cycle. P.W.2 is a teacher, by profession, working in Vadamanthur Middle school. He has stated that he heard that a dead body was found in the well. P.W.3 is the brother of the deceased and he has stated that on the day of occurrence, the accused 1 and 3 came to the house of the deceased and wanted him to come with them. According to him, thereafter, he saw only the body of the deceased in the well. P.W.4 is a resident of the Ilayanarkuppam Village and has spoken about the lying of dead body in the well. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch. P.W.6 has spoken about the arrest of both the accused and the recovery of M.O.2-Motor cycle, on the alleged disclosure statement made by the first accused. P.W.7 has spoken about the recovery of material objects from the place of occurrence. P.W.8 has spoken about the preparation of observation mahazar and the rough sketch. P.W.9 has also spoken about the lying of dead body in the well. P.W.10 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the registration of the case, on the complaint made by P.W.1. P.W.12, the Head Constable, has stated that he took the dead body of the deceased from the place of occurrence and handed over the same to the Doctor for post-mortem, as directed by P.W.15. P.W.13 has stated that he examined the visceral organs of the deceased and found that there was neither alcohol nor poison. P.W.14, the Forensic Expert, has stated that he examined the material objects and found that there were blood stains on all the material objects, excepting the lungi. P.W.15 has spoken about the investigation done and the final report filed.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witness nor mark any document, on their side. Having considered all the above, the trial Court convicted them under both the charges. Challenging the same, the appellants are before this

Court with this Criminal Appeal.

12. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. This is a case based on circumstantial evidence. The first and foremost circumstance is that, on account of money transaction and on account of the illicit relationship between the second accused and the deceased, the accused 1 and 2 had motive against the deceased. But contrary to the same, it is stated that the deceased went along with the second accused, in a friendly manner. This created a doubt in the motive projected by the prosecution.

14. The next circumstance is that the deceased was taken by these two accused in a motor cycle belonging to the deceased. P.W.1 has stated that the second accused alone came on 07.05.2012 and went along with the deceased in the motor cycle belonging to the deceased. But P.W.3, the brother of the deceased, has stated that both the accused came to the house of the deceased and took the deceased with them. This contradiction creates doubt in the veracity of these two witnesses. Thereafter, the dead body was found on 09.05.2012. According to the medical evidence, the death of the deceased was homicide about which there can be no doubt.

15. The next circumstance relied on by the prosecution is the arrest of both the accused and the consequential recovery of the motor-cycle. According to Ex.P-6, the first accused was arrested on 11.05.2012 and on his disclosure statement, the motor cycle bearing Registration No.TN57-3727 was recovered. But P.W.15, in chief examination itself has stated that he recovered the motorcycle and blood stained wooden log under Ex.P-10. He has not stated that it was recovered on the disclosure statement made by the first accused. Assuming that the said motor cycle bearing Registration No.TN57-3727 was recovered on the disclosure statement made by the first accused, there is no evidence that the said motor-cycle belonged to the deceased. Neither P.W.1 nor P.W.3 has identified the said motor-cycle. They have not even spoken about the Registration number and the other details of the motorcycle. Thus, absolutely there is no evidence on record to show that the said motor cycle (MO2) belonged to the deceased.

16. Thus, in our considered view, the prosecution has succeeded only in establishing that death of the deceased was a homicide, but has failed to establish that these two accused were the perpetrators of the crime. But the trial court has convicted these two accused without considering the above vital infirmities in the case of the prosecution. Therefore, we hold

that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and therefore, they are entitled for acquittal.

17. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants / accused 1 and 2 by the learned III Additional Sessions Judge, Villupuram @ Kallakurichi, in S.C.No.394 of 2013, dated 29.03.2016 are hereby set-aside. The appellants / accused are acquitted and they are directed to be 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. Bail bonds, if any, shall stand discharged.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

srk

To

1. III Additional Sessions Judge, Villupuram @ Kallakurichi

2. The Judicial Magistrate Tirukoilur

3.The Chief Judicial Magistrate
villupuram

4.The Inspector of Police
Pagandai X Road Police Station
Villupuram District

5.The Superintendent
Central Prison, Cuddalore

6.The Superintendent
Special Prison for women
Vellore

7.The Public Prosecutor, Madras.

+1 cc to Mr.C.R.Malarvannan Advocate sr 48041

Cr1.A.No.301 of 2016

aa14/10/2016