

Bail Slip

That the Appellant/Accused/ namely M.Sakthivel was directed to be released on bail as per order of this Court dated 05.10.12 and made in CrI M.P.No. 1 of 2012 in CrI A.No.562/2012.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.562 of 2012

M.Sakthivel

... Appellant

- Vs -

The State by
Inspector of Police,
Yercaud Police Station,
Salem District,
Crime No.290/2009.

... Respondent

Prayer:- Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned Principal Sessions Judge, Erode, in S.C.No.146 of 2012 dated 17.08.2012.

For Appellant : Mr.A.Navaneethakrishnan
SC for Mr.R.Nalliyappan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.146 of 2012 on the file of the learned Principal Sessions Judge, Erode at Erode District. He stood charged for offences under Sections 302, 364 and 201 IPC. By judgment dated 17.08.2012, the trial Court

convicted him under all the charges. For the offence under Section 302 IPC, the trial Court sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three years and for the offence under Section 364 IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three years and for the offence under Section 201 IPC, sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.3,000/- in default, to undergo simple imprisonment for one year. The above sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The deceased in this case was one Annakili @ Annalakshmi. P.Ws.2 and 3 are the father and mother, respectively, of the deceased. The deceased was already married to one Mr.Gandhi of Mannarpalayam Village. P.Ws.2 and 3 were residing in Thodda Village in Gangavalli Taluk. The deceased had a son born through Mr.Gandhi. But Mr.Gandhi married another woman as his second wife. As a result, the deceased returned to her parental home. Three years thereafter, the issue was compromised between Mr.Gandhi and the deceased and the deceased again joined her husband. Mr.Gandhi set up a separate family for him and the deceased at Somapatti Village, whereas, the second wife of Mr.Gandhi was living at Thodda village. The deceased was working as an Accountant in a company. Since her son was unwell for about 15 days prior to 22.08.2009, the deceased was residing with her parents at her parental home and from there, she was attending her job. On 22.08.2009, the deceased had gone to her concern for work. At about 09.00 p.m. on that day, when P.W.2 was in Trichy, the deceased called him over phone and informed him that she was proceeding along with her husband to attend the marriage of one Amala, a friend of her husband. P.W.2 believed the same to be true. On 23.08.2009, P.W.2 returned to his village. But the deceased had not returned. When he tried to contact her over cellphone, it was found switched off. Thereafter, P.Ws.2 and 3 went in search of the deceased to various places, but could not find her.

2.2. On 27.08.2009, at about 11.00 am, few workers in Yercaud came to the office of P.W.1, the then Village Administrative Officer of Yercaud, and informed him that a dead body of a woman, in a highly decomposed condition, was lying under a bridge on the Yercaud road. Immediately, P.W.1 along with his menial went to the said place and found a dead body of a woman in a highly decomposed condition. Maggots were crawling

all over the body. The body was half burnt. There were also stones dropped on the body of the deceased. Immediately, P.W.1 went to Yercaud Police Station and made a complaint in this regard.

2.3. P.W.10, the then Inspector of Police, Yercaud Police Station on receiving the said complaint, registered a case in Crime No.290 of 2009 under Section 174 Cr.P.C. Ex.P1 is the complaint and Ex.P.15 is the F.I.R. He forwarded both the documents to Court and took up the case for investigation.

2.4. On 28.08.2009, at about 9.30 a.m. he visited the place of occurrence along with P.W.1 and a Village Assistant. He prepared an observation mahazar and a rough sketch in the presence of the said witnesses. Then he conducted inquest on the body of the deceased and prepared Ex.P.17 inquest report. He recovered some material objects Viz., M.Os.1 to 5 and 18 to 26 from the body and by the side of the body under a mahazar. Since the body was in a highly decomposed condition, he made a request to the Doctor to come over to the spot and conduct postmortem.

2.5. Accordingly, P.W.7 Dr.S.S.Meera of Mohan Kumaramangalam Government Medical College and Hospital, Salem arrived at the scene of occurrence on 28.08.2009 and conducted autopsy on the body of the deceased at 3.20 p.m. She found the following injuries :

"Injuries : (1) A continuous, uninterrupted, complete ligature mark seen over front, side and back of neck - below the level of Thyroid cartilage - measuring 10 cms from chin and both mastoid process; 7 cms about supra sternal notch. The ligature mark measured 34 cms. in total length and 1 to 1.5 cms in breadth. On opening the neck, contusion (bluish black) seen over right side of neck 4x3x0.5 cms and left side of neck 5x4x0.5 cms. Hyoid bone - decomposed, bluish black contusion seen over right horn of hyoid bone over an area of 1x1x0.5 cms with a blood clot adherent to it

(2) Dark reddish blue contusion seen over right side of the chest measuring 4x3x0.5 cms (antemortem injuries)."

Ex.P8 is the postmortem certificate. In the Viscera report (Ex.P9) it is stated that no poison was detected. P.W.7 opined that the cause of death was due to the effects of strangulation. She also opined that the burn injuries were postmortem injuries.

2.6. On 06.09.2009, P.W.10 arrested the accused at Ondikadai near Yearcaud in the presence of P.W.1 and another witness. On such arrest, he made a voluntary confession in which he disclosed that he had hidden the sonata ladies watch (M.O.6), a gold ring (M.O.7), a gold chain (M.O.8), a pair of gold stud (M.O.9), one gold nose screw (M.O.10), gold ear stud big size 2 Nos (M.O.11), Gold ear stud small size 2 Nos (M.O.12), Gold Mattel 2 Nos (M.O.13), Aircell Sim Card with Nokia cell phone (M.O.14), one sim card (M.O.15), one China cellphone (M.O.16) and a Kwasaki motor cycle bearing Registration No.TN 28 S 6891 (M.O.17). P.W.10 seized the same under a mahazar. P.W.10 collected the call details (Ex.P.14). Finally he laid the charge sheet against the accused under Sections 364, 302 and 201 on 29.10.2009.

2.7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 10 witnesses were examined, 17 documents and 26 material objects were marked.

2.8. P.W.1, the Village Administrative Officer, has spoken about the fact that the dead body was found in a highly decomposed condition on 27.08.2009, at about 11.00 am. He has further spoken about the observation mahazar, complaint made by him, recovery of material objects from the scene of occurrence. He has also spoken about the arrest of the accused on 06.09.2009. He has also spoken about the disclosure statement made by the accused and the recovery of M.Os.6 to 17 at his instance. P.W.2 is the father of the deceased, he has stated that the deceased left the house on 22.08.2009 and that she contacted him at about 9.00 p.m and informed him that she was going to attend the marriage of one Amala along with her husband. He has also identified the belongings of the deceased. P.W.3, the mother of the deceased, has spoken about the very same facts. P.W.4 is a resident of Thodavur village. He has spoken that on 22.08.2009, at about 9.00 p.m. when he was standing at Sundara Lodge bus stop in Salem, the deceased came from Athur in a bus and got down from the bus at the said bus stand. Immediately thereafter, according to him, the accused came in a motorcycle in which he took the deceased with him. He has further spoken that after ten days, he came to know that the deceased was done to death. During the test identification parade, according to him, he identified the accused. P.W.5 is the constable who took the body for postmortem. P.W.6 is yet another constable who carried the F.I.R. to the Court. P.W.7, an Assistant Professor in the Government Medical College Hospital, has spoken about the postmortem conducted by her and the final opinion regarding the cause of death. P.W.8, the then Judicial Magistrate No.6, Salem, has spoken about the identification parade conducted by her in which P.W.4 identified

the accused. P.Ws.9 and 10 are the police officers who registered the case and conducted investigation, respectively.

2.9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any document. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment and that is how, the accused is before this Court with this appeal.

3. We have heard the learned senior counsel Mr.A.Navaneethakrishnan, appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

4. This case is based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused.

5. With this broad principle in mind, let us go into the circumstances projected by the prosecution. The first and the foremost circumstance is that on 22.08.2009 the deceased left her house for job. P.W.2, the father of the deceased, has spoken about the same. He has further stated that at around 9.00 p.m. she contacted him over phone and told him that she was going to attend the marriage of one Amala along with her husband. Thus, the prosecution has established that the deceased was alive on 22.08.2009.

6. The next circumstance is that the deceased was found at Salem Sundara Lodge bus stop by P.W.4. It is the evidence of P.W.4 that the deceased got down from the bus at the bus stop and from the bus stop she went along with the accused in a motorcycle. The time at which the deceased was seen by P.W.4, according to him, was 9.00 pm. Admittedly the accused was not personally known to him. Identification parade was therefore conducted on the request made by the investigating officer by P.W.8. on 16.09.2009, during which, P.W.4 identified the accused on all the three occasions.

7. But the learned senior counsel appearing for the appellant would submit that P.W.4 had not given the identifying features of the accused during investigation and therefore no importance can be attached to the identification made by him. The learned senior counsel would further submit that P.W.4 was

not immediately examined by the police after the occurrence. As a matter of fact, according to P.W.10, he was examined only on 04.09.2009. The learned senior counsel would submit that absolutely there is no explanation as to why P.W.4 did not disclose the above fact to anybody including the family members of the deceased. We find force in the said argument of the learned senior counsel.

8. The learned counsel for the appellant would submit that the deceased would have died long prior to 22.08.2009 and not on 22.08.2009 as it is projected by the prosecution. This argument is founded on the fact that the dead body of the deceased was highly decomposed and maggots were crawling all over the body, peeling of skin was seen all over the body, tooth loosened and other symptoms found on the body. We find some force in the said argument of the learned counsel, though we are not able to fully agree with the said argument.

9. In this regard, we may only refer to an article authored by Messers Ruchi Sharma, Rakesh Kumar Garg and J.R.Gaur under the title "Various methods for the estimation of the post mortem interval from Calliphoridae : A review" published in Egyptian Journal of Forensic Sciences, March 2015.

10. In the said article, the experts have stated that insects play the fundamental ecological role in the decomposition of organic matter. It is the natural tendency of sarcosaprophagous flies to find and colonize on a food source such as a cadaver as a natural means of survival. Sarcosaprophagous fly larvae are frequently encountered by forensic entomologists during postmortem investigations. The most relevant colonizers are the oldest individuals derived from the first eggs deposited on the body. The age of the oldest maggots provides the precise estimate of the postmortem interval. With advancement in technology, various new methods have been developed by scientists that allow the data to be used with confidence while estimating the time since death. Forensic entomology is recognised in many countries as an important tool for legal investigations. Unfortunately, it has not received much attention in India as an important investigative tool. The maggots of the flies crawling on the dead bodies are widely considered to be just another disgusting element of decay and are not collected at the time of autopsy. They can aid in death investigations (time since death, manner of death, etc.,). The authors have further observed that the correct estimation of the postmortem interval is one of the most important aspects of legal medicine. The authors have dealt with various methods to estimate the time of death. For illustration, one of the methods stated by the authors is the calculation made from the stage of the insect present on the cadaver by using the formula: $T = A + B \times C$, where 'A' is the stage of invasion, 'B'

is the stage of the life cycle and 'C' represents the climatic factor correction. At the end of the study paper, the authors after having dealt with so many methods which are available in Indian conditions for establishing the time of death based on the presence of maggots have concluded that a new approach for estimating time since death seems more reliable and can be used with confidence in medico-legal cases given the inherent difficulties in generating a precise postmortem interval estimate are considered. The authors have expressed their hope in the following words:

"The study will make the officials and the criminal investigation team aware of and familiar with forensic entomology, a step which may initiate future studies and interest in the application of insect evidence in legal investigations in India."

They also expressed their anguish that the maggots are not collected and used for estimation of the time of death.

11. The case on hand is yet another illustration where, though maggots were crawling all over the body, there was no attempt made by the investigating agency to collect the maggots by engaging the services of an entomologist to get precise opinion regarding the time of death. Had it been done, in the instant case, there would have been no scope for the learned counsel for the appellant to advance an argument disputing the time of death and in such event, this Court also would have, with confidence come to the conclusion regarding the reliability of the evidence of the prosecution as to whether the deceased was lastly found alive on 22.08.2009 or not. We only state that the best scientific proof of the time of death had been lost by the prosecution because of the inadequate investigation done.

12. A perusal of the evidence of P.W.4 would go to show that he did not disclose about the above fact immediately after the occurrence. He has stated that only after ten days of the occurrence, he disclosed the above fact for the first time to the police. It is not his evidence that he disclosed the said fact to anybody, including the family members of the deceased. Absolutely there is no explanation for the same. Had it been true that he saw the deceased being taken by the accused, after having come to know that the deceased had been done to death, he would have certainly disclosed the above fact either to the police or to the family members of the deceased. The silence kept by P.W.4 for such a long time, which is highly unnatural, would only make his evidence unbelievable. Apart from that, during the course of investigation, he did not give any identification features of the accused. Therefore, we cannot

attach much importance for the identification made by him during the identification parade. For these reasons, we find it difficult to accept the evidence of P.W.4 as a gospel truth. Therefore, we reject the evidence of P.W.4.

13. The next circumstance relied on by the prosecution is the recovery of M.Os.6 to 17 based on the alleged confession made by the accused on 06.09.2009. So far as these jewels are concerned, a perusal of the evidence of P.W.2 would go to show that he has not stated that these jewels were worn by the deceased lastly when she left the house. Though he has identified M.Os.6 to 17 as the belongings of the deceased, in the absence of evidence that the deceased was wearing these jewels lastly, it is difficult to believe the evidence of P.W.2 in this regard.

14. Assuming that M.Os.6 to 17 belong to the deceased, the next question is whether they were recovered from the custody of the accused. P.W.10, the investigating officer has stated that these jewels were recovered from the possession of the accused in the presence of P.W.1 and another witness on 06.09.2009. But P.W.2 has stated that he witnessed all the jewels even on 28.08.2009 itself on the dead body. In the chief examination, P.W.2 has stated that he identified the personal belongings of the deceased including M.Os.6 to 17, at the police station long before 06.09.2009. If that be so, the case of prosecution that these material objects were recovered at the instance of the accused only on 06.09.2009 cannot be believed. Thus, there is material contradiction to the effect as to whether these material objects viz., M.Os.6 to 17 were recovered from the accused or not. Therefore, much importance cannot be given to the evidence of P.Ws.1 and 10 to the effect that M.Os.6 to 17 were recovered only from the custody of the accused in pursuance of the disclosure statement made by him.

15. Then, the prosecution relies on the evidence of P.W.10, wherein, he has stated that the deceased was using cellphone bearing No.9788595185 and he collected the call details for the period between 01.08.2009 and 22.08.2009 from one Mr.Baskaran, the Special Branch Inspector of Police, Salem district who had obtained the same from Aircel company. Neither Mr.Baskaran nor any official from Aircel company has been examined by the prosecution. There is also no evidence that the cellphone No.9788595185 was used by the deceased. P.Ws.2 and 3 have stated that they have forgotten the cellphone number of the deceased. It is the further evidence of P.W.10 that apart from cellphone number 9788595185, the deceased also used another cell phone number viz., 9698246100. It is further stated by him that the IMEI number of the cellphone was 355358000250970 and the sim card number 9865649757 was used in the cellphone instrument. It is further stated that the cellphone No.9865649757 was

registered in the name of the accused. P.W.10 has stated that he collected all these details only from the Special Branch Inspector of Police, Salem District. But, neither the Inspector of Police was examined nor any material has been produced to prove the said fact. The prosecution relies only on the call details which has been marked as Ex.P14. But a perusal of Ex.P14 would go to show that it was not obtained from any authorised officer with a certificate as required under Section 65B of the Evidence Act to show that it is a true copy. It is only a copy attested by the Inspector of Police, Yercaud Police Station.

16. The learned senior counsel appearing for the appellant would submit that the same is not admissible in evidence in view of the judgment of the Hon'ble Supreme Court in Anvar P.V. Vs. P.K.Basheer reported in (2014) 10 SCC 473. In the instant case, since there is no certificate obtained from the competent authority as provided under Sections 65A and 65B of the Evidence Act, we hold that Ex.P14 is not admissible in evidence. Further the same is only a true copy attested by the Inspector of Police. There is no evidence as to what had happened to the original. In the absence of the primary evidence and in the absence of compliance of the provisions of the Information Technology Act, Ex.P14 cannot be admitted in evidence. Above all, P.W.10 has no personal knowledge about the entries in Ex.P14. He collected these details only from Mr.Baskaran, Inspector of Police, Special Branch, Salem District. Neither the said official nor any officer from the cellphone service provider has been examined. In such view of the matter, no reliance can be made on Ex.P14.

17. Apart from the above, the prosecution has also not proved the motive for the occurrence. Though it is alleged that the accused had illicit intimacy with the deceased, absolutely there is no evidence for the same. P.W.2 has stated that he heard about the illicit intimacy of the deceased with the accused. Thus, this part of evidence of P.W.2 is hit by hearsay Rule. Thus, the motive has also not been proved by the prosecution.

18. In view of the forgoing discussion, we hold that the prosecution has failed to prove the circumstances beyond reasonable doubt and the proved circumstances do not unerringly point to the guilt of the accused. So, it is not possible to sustain the conviction of the accused and the accused is therefore entitled for acquittal. We hold that the prosecution has failed to prove the case beyond reasonable doubts.

19. In the result,

(i) The appeal is allowed and the conviction and sentence

imposed on the appellant by the learned Principal Sessions Judge, Erode in S.C.No.146 of 2012, dated 17.08.2012 is set aside and the appellant is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) The bail bond, if any executed, by the appellant / accused, shall stand discharged.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
No V, Salem.
2. -Do- Thro The Chief Judicial Magistrate,
Salem.
3. The Principal Sessions Judge,
Erode.
4. The Superintendent Central Prison,
Salem.
5. Inspector of Police,
Yercaud Police Station,
Salem District.
6. The Public Prosecutor,
Madras High Court.

+1cc to Mr.Nalliyappan, Advocate SR.6754

Cr1.A.No.562 of 2012

mg(CO)
srg(11/04/2016)