

Bail Slip

Crl.A.573 of 2012

The Appellant i.e.Rabathi, Appellant in Crl.A.573 of 2012 (sole accused in S.C.No.24/2009) was released on bail vide order of this court, dated 05.10.2012 and made in Crl.MP No.1/2012 in Crl.A.573/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Criminal Appeal No. 573 of 2012

Rasathi

..Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
Sankarapuram Police Station,
Sankarapuram,
Villupuram District
(Crime No. 206 of 2008)

..Respondent/Complainant

Prayer: Criminal Appeal against the judgment dated 27.08.2012 passed in S.C. No. 24 of 2009 on the file of Additional District and Sessions Court (FTC No.3), Kallakurichi.

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. 24 of 2009 on the file of Additional District and Sessions Judge (Fast Track Court No.3), Kallakurichi, Villupuram District. She stood charged for the offences under Sections 302, 201 and 203 I.P.C. By judgment dated 27.08.2012, the Trial Court convicted the accused under all the three charges and sentenced her to undergo imprisonment for life for the offence under Section 302 I.P.C., to undergo rigorous imprisonment for 6 months for the offence under Section 201 I.P.C. and to undergo one year rigorous imprisonment for the offence under Section 203 I.P.C. The sentences were directed 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:

(i) The deceased in this case is one Shanmugam and the appellant/accused is his wife. The deceased was a drunkard. Whenever the accused questioned him about his drinking habit, the deceased used to beat her indiscriminately. The deceased was running a small tiffin centre at A. Pandalam Village in a rented place belonging to P.W.5. The accused was helping him in his business. Whenever the customers, who had come to the tiffin centre, to have food, spoke to the accused, in a friendly manner, the deceased, suspecting her conduct, would abuse her in a filthy language and pick up a quarrel with her and beat her. This is said to be the motive for the accused as against the deceased.

(ii) It is further alleged that on 23.03.2008, at about 10p.m, P.W.s 4 and 11, came to the tiffin centre to have tiffin. The deceased prepared an egg omelette, which the accused served to them. At that time, a quarrel arose between the accused and the deceased and P.W.s 4 and 11 are said to have pacified them. Thereafter, at about 12 midnight, when the accused and the deceased had returned home, again, there was a quarrel between the two, during which time, the deceased is said to have beaten the accused holding her tuft. The accused, unable to bear, any longer, had pushed the deceased down with her hands, due to which, the deceased fell on his back, got hit on his head and fainted. Out of fear, that on regaining consciousness, the deceased would attack her, the accused took a brick found there and dashed it against the head of the deceased and killed him. Then, in order to screen the evidence, according to the case of the prosecution, she carried the dead body to a different place and left it near Kidanganpandalam, by the side of the road.

(iii) It is further alleged that thereafter, she went to the Police Station at Sankarapuram and lodged a complaint at 3.30a.m. stating that someone had killed her husband. Based on the said complaint, marked as Ex-P15, a case was registered by P.W.15, the then Sub Inspector of Police, in Crime No. 206 of 2008 under Section 302 I.P.C. Ex-P16 is the First Information Report. He forwarded the copy of the First Information Report to the Inspector of Police, P.W.16.

(iv) P.W.16 took up the case for investigation. He went to the scene of occurrence and prepared an Observation Mahazar (Ex-P17) and rough sketch (Ex-P18) in the presence of P.W.s 4 and 7. In the presence of the same witnesses, he recovered bloodstained earth and sample earth under Ex-P20 mahazar. Then,

at 5a.m., he visited the house of the deceased and prepared an Observation Mahazar (Ex-P2) and also drew a rough sketch, which has been marked as Ex-P19. He recovered M.O. 1, knife, M.O.2 - bloodstained banner and M.O. 3 - bloodstained cement brick block from the said place. In the presence of Panchayatdhars and witnesses, he conducted inquest on the dead body. Ex-P21 is the inquest report. Then, he sent the dead body to the Government Hospital, Sankarapuram, for postmortem.

(v) P.W.13, Senior Civil Surgeon, attached to the Government Hospital, Sankarapuram, conducted autopsy on the dead body and he found the following injuries:

" External Injuries

- 1) An abrasion 2 x 1/2 cms on the Rt temporal region
 - 2) An abrasion 2 x 1/2 cms on the rt. Parietal region.
 - 3) An abrasion 2 x 1/2 x bone deep on the left parietal region
 - 4) An incised wound about 2 x 1/2 cms x bone deep on the left cheek
 - 5) A depressed wound about 3 x 2 cm on the left cheek in front of the above mentioned wound.
 - 6) Rt testicle enlarged measuring about 3 x 2 cms in size
 - 7) There is an abrasion 3 x 1/2 cm x bone deep on the occipital region.
 - 8) Skull - Fracture Rt Temporal bone measuring about 3 x 1/4 cms. Fracture Left Temporal bone measuring about 2 x 1/4 cms underlying blood clot over the brain surface.
- Internal Examination:
- Heart : 350 gms. Chambers empty
- Lungs : Rt 450 gms Left 400 gms/ Pale
- Spleen : 100 gms. Pale
- Kidney: Each 120 gms. Pale
- Stomach contains about 50 ml of undigested food material.
- Urinary bladder - Empty
- Liver : 1500 gms. Pale."

Ex-P11 is the postmortem certificate issued by him. The Doctor opined that the deceased would appear to have died of shock and haemorrhage due to multiple injuries and death would have occurred about 6 to 24 hours prior to autopsy.

(vi) During the course of investigation, according to the prosecution version, it was known that the complaint made by the accused was a false one and that the accused herself was the perpetrator of crime. After completing the investigation, P.W.16 laid the charge sheet against the accused.

(vii) Based on the above materials, the Trial Court

framed charges as detailed in the first paragraph of the judgment. The accused denied the same.

(viii) In order to prove the case, on the side of the prosecution, P.W.s 1 to 16 were examined and as many as 25 documents and 8 material objects were marked. Out of the said witnesses, P.W.s 1 and 2 have stated that, on being informed by the accused that her husband was being attacked, they went to the place where the deceased was residing and they found the dead body of the deceased and they have also stated that it was the accused, who went to the Police Station to give complaint. P.W.3 has stated that on the date of occurrence, on hearing a hue and cry that someone had been cut, he went along with others to the place of occurrence and found the dead body of the deceased. P.W.4 has spoken about the preparation of Observation Mahazar and the recovery of material objects from the place of occurrence. P.W.s 5 and 6 have stated that after the occurrence, they saw the dead body. P.W.7 has stated that he was a witness to the preparation of Observation Mahazar. P.W.8, the Village Menial, has stated that on seeing the dead body, he informed the Village Administrative Officer about the same. But, he has been treated as hostile as he did not say anything about the so-called confession said to have been given by the accused in his presence. P.W.9, who was the Panchayat President, has stated that on hearing about the occurrence, he went and saw the dead body. He has not stated anything incriminating against the accused. P.W.10 has also spoken about the recovery of material objects on the information furnished by the accused. P.W.11 has stated nothing incriminating against the accused. P.W.12 has spoken about the photographs taken and P.W.13 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.15 has spoken about the registration of the case and P.W.16 has spoken about the investigation done and the filing of charge sheet against the accused.

(ix) When the above incriminating materials were put to the accused, she denied the same as false. However, she did not choose to examine any witness nor mark any document. The defence of the accused was one of total denial. Having considered all the above, the Trial Court convicted the accused as stated in the first paragraph of the judgment. That is how, the accused/appellant is before this Court with this appeal.

3. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

4. As stated above, none of the witnesses have stated anything incriminating against the accused. The prosecution case is based on the so-called extra judicial confession said to have

been given by the accused to the Village Administrative Officer, Kolathur Village, by name, Raju, in the presence of P.W.s 8 and 9. But, P.W.s 8 and 9 have turned hostile and they have not stated anything about the extra judicial confession. The Village Administrative Officer, Mr.Raju, has not been examined. Moreover, the extra judicial confession statement said to have been given by the accused has not been marked. Thus, this is a case where there is absolutely no evidence against the accused. The recovered material objects, namely, sarees and shirt, have got no relevance to the case because there is no evidence that either it belongs to the accused or to the deceased.

5. The Trial Court, in paragraph No.41 of its judgment, has extracted the confession allegedly made by the accused, to the Investigating Officer, while in police custody and has acted upon the same, in ignorance of Section 25 of the Evidence Act, which declares such a confession made to a police officer as irrelevant. It is regrettable to note that even a Sessions Judge is not aware of this rudimentary legal position. Let us express our desire that the learned Sessions Judge may apprise himself of the judgment of the Privy Council in Pulukuri Kottaya V. King Emperor reported in AIR 1947 PC 67. In our considered view, the Trial Court has convicted the accused only on mere surmises and the same cannot be sustained.

6. In view of the foregoing discussion, we hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and therefore, she is entitled for an acquittal.

7. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial court are set aside and she is acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the accused/appellant.

Sd/-सतयमेव जयते
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

To

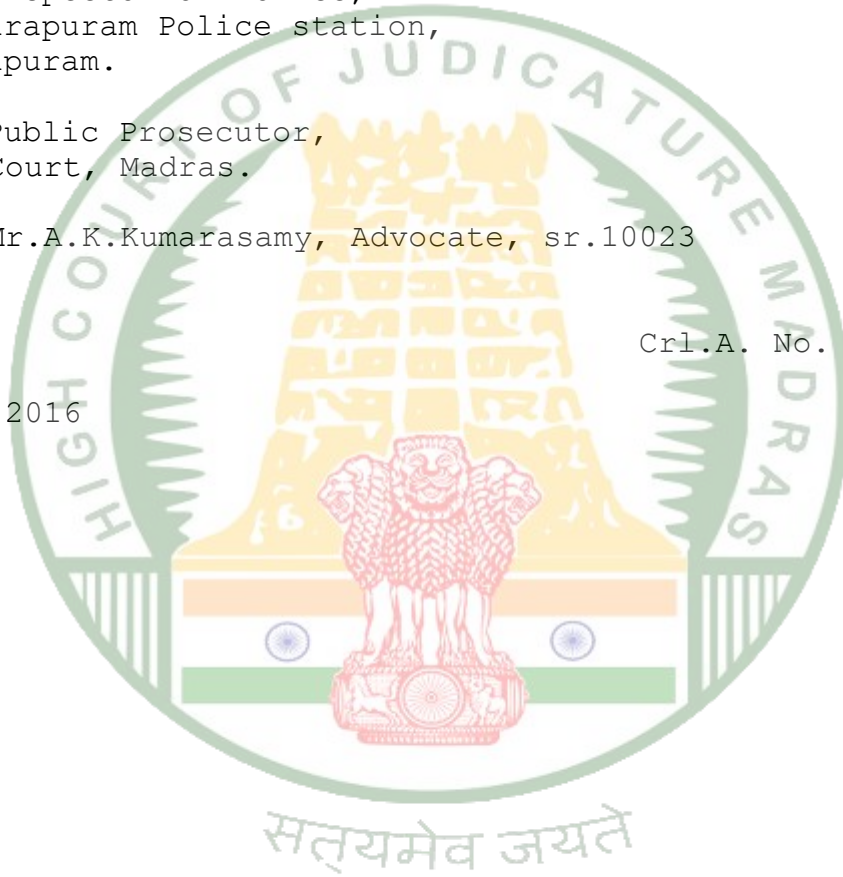
1. The Addl. District & Sessions Judge (FTC No.3), Kallakurichi, Villupuram District.
2. -do- Thro'The Principal Sessions Judge, Villupuram.

3. Mr.A.Kanthakumar
VIII Additional Judge, CBI Cases,
City Civil Court, Chennai.
4. The Judicial Magistrate,
Sankarapuram.
5. The Chief Judicial Magistrate,
Villupuram.
6. The Inspector of Police,
Sankarapuram Police station,
Villupuram.
7. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.A.K.Kumarasamy, Advocate, sr.10023

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gj co
kra 04.03.2016



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