

Bail Slip

1.The Accused Namely K.Nagarathinam (A1) directed to be released on bail by the order of this Hon'ble Court dated 27/06/2016 made in Crl.M.P.No.5680 of 2016 in Crl A 374 of 2016.

2.The Accused Namely P.Suresh alias Suresh Kumar (A2) directed to be released on bail by the order of this Hon'ble Court dated 29/7/2016 made in Crl M.P.No.8006 of 2016 in Crl A.375 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.Nos.374, 375 and 578 of 2016

1. K.Nagarathinam ... Appellant in C.A.No.374/2016/A1
2. P.Suresh @ Sureshkumar ... Appellant in C.A.No.375/2016/A2
3. P.Srinivasan ... Appellant in C.A.No.578/2016/A3

Vs

State by
The Inspector of Police, Kinathukkadavu Circle,
Chettipalayam Police Station,
Chettipalayam,
Coimbatore District.
(Crime No.445 of 2010)

.. Respondent in all C.As.

Appeals filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Coimbatore, made in S.C.No.57 of 2011, dated 25.04.2016.

For Appellants :Mr.J.John
in C.A.Nos.374&375/2016
For appellant in C.A.578/2016:Mr.A.D.Jagadish Chandira

For Respondent in all C.As. :Mr.E.Raja,
Addl. Public Prosecutor

COMMON JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused 1 to 3 in S.C.No.57 of 2011 on the file of the learned I Additional District and Sessions Judge, Coimbatore. They stood charged for offences under Sections 364 and 302 of IPC. By judgment dated 25.04.2016, the trial court convicted all the three accused under both the charges and sentenced them to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for 3 months for the offence under Section 364 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for 6 months for the offence under Section 302 of IPC. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mr.Venkatesh. The 1st accused was working as a Line Inspector in Tamil Nadu Electricity Board at Echanari in Coimbatore District. The accused 2 and 3 were also working in the same department under the 1st accused. The deceased was a Contract Labour under the 1st accused. It is alleged that the 1st accused wanted to marry one Sivaranjani, the sister of the deceased. But the family members of Sivaranjani rejected the said proposal. The 1st accused came to know that it was the deceased who objected the said proposal very strongly. Therefore, the 1st accused developed grudges against the deceased. On account of the said ill-feeling, it is alleged that the 1st accused decided to do away with the deceased along with the accused 2 and 3.

(b) On 01.07.2010, around 03.30 p.m., the deceased was at his house at Malumichampatti Village, Ambedkar Nagar in Coimbatore District. It is alleged that at that time, the 1st accused called the deceased over phone and wanted him to come to a place near Karpagam College at Coimbatore under the guise of doing some electrical work there. Accordingly, the deceased went there. From there, it is alleged that as already plotted, the accused 2 and 3 took the deceased in the Motor Cycle bearing Registration No.TN 37 AM 3432 to Madhukarai Market. Thereafter, it is stated that all the three accused took the deceased to Kerala State and near Malampuzha Dam pushed him into the dam. The deceased died due to drowning. Thereafter, all the three accused fled away from the place of occurrence. The occurrence was not noticed by anyone.

(c) P.W.1 the mother of the deceased was present on 01.07.2010, when the deceased left her house in his vehicle to go over to Karpagam College. Thereafter, he did not return. Therefore, she made a complaint to Chettipalayam Police Station on 06.07.2010 at 10.00 a.m. P.W.12 the then Special Sub-Inspector of Police of Chettipalayam Police Station, on receipt of the said complaint, registered a case in Cr.No.445/2000 for 'Boy Missing'. Ex.P.1 is the complaint and Ex.P.14 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 09.00 p.m. on 09.07.2010.

(d) P.W.14 took up the case for investigation. He examined P.W.1 and many more witnesses and recorded their statements. He went to Karpagam College and prepared an Observation Mahazar and a Rough Sketch in the place where the deceased was lastly taken in a Motor Cycle.

(e) In the meanwhile, one Mr.Samseer (P.W.8), who was residing at Mandakadu Village near Malampuzha Dam in Kerala State, on 02.07.2010 around 09.00 a.m. was informed by one Suresh that when he was fishing in the dam with a net, a male human dead body was collected in the said net. Immediately, P.W.8 went to the dam, found a dead body of a male. Then, he went to Malampuzha Police Station and made a complaint in respect of the same.

(f) P.W.11, the then Sub-Inspector of Police of Malampuzha Police Station, on receipt of the said complaint, registered a case in Crime No.220/2010 under Section 174 of Cr.P.C. Ex.P.10 is the complaint and Ex.P.9 is the First Information Report in Crime No.220 of 2010. He went to the Malampuzha Dam, conducted inquest on the body of the deceased in the presence of panchayatdars. He prepared an Observation Mahazar and a Rough Sketch in the said place. The identity of the dead body could not be made out. Therefore, he forwarded the dead body to the District Headquarters Hospital at Palacode for being kept in mortuary. He made wide publicity of the photographs of the dead body of the deceased in the newspapers.

(g) When the said investigation was in progress, it is stated that P.W.14 arrested the 1st accused on 09.07.2010 in the presence of witnesses. He was found moving in his motor cycle. On such arrest, he made a voluntary confession. He recovered the motor cycle belonging to the 1st accused bearing Registration No.TN 37 BE 8969 under a Mahazar. Then, P.W.14 went to Malampuzha Police Station and confirmed that the dead body was lying there. The dead body was, later on, identified by the family members of the deceased. Thereafter, the dead body was sent for postmortem. P.W.10 Doctor P.C.Ignatius gave opinion that the death of the deceased was due to drowning. Thereafter,

he altered the case into one under Sections 364 and 302 of IPC. He arrested the other accused also. Thereafter, the investigation was continued by P.W.15. On completing the investigation, P.W.15 laid charge sheet against the accused.

3. 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, on the side of the prosecution, as many as 15 witnesses were examined and 19 documents and 7 material objects were also marked.

4. Out of the said witnesses, P.W.1 the mother of the deceased has stated about the motive. She has further spoken to the fact that on 01.07.2010, around 03.30 p.m., the deceased left the house in his cycle on receiving a telephonic call from the 1st accused. Thereafter, the deceased did not return. She has also stated about the complaint preferred by her to the police. P.W.2 is an important witness for the prosecution. He was working as a Security in Karpagam College at Coimbatore on the Pollachi Main Road. According to him, on 01.07.2010, he was on duty in the main outer gate of the college. Around 02.30 p.m., these three accused and the deceased came there and they were doing some electrical work. Thereafter, the deceased and the accused 2 and 3 went in a motorcycle bearing Registration No.TN 37 AM 3432. The first accused had already left the place. When P.W.1 came and enquired, he informed the same to her. Thus, according to him, the deceased was lastly taken by the accused 2 and 3 in a motorcycle.

5. P.W.3 is a close relative of the deceased. He has spoken about the motive between the 1st accused and the deceased. He has not stated anything incriminating more against the accused. P.W.4 is a resident of Ambedkar Nagar. He has turned hostile and he has not stated anything incriminating against the accused. P.W.5 has spoken about the arrest of the 1st accused and the recovery of the Motor Cycle from him. This witness has also been treated as hostile as he has not fully supported the case of the prosecution. P.W.6 is an employer of the 1st accused. He has stated that the accused 1 to 3 were employed in the Tamil Nadu Electricity Board. He has further stated that on 06.07.2010 and 07.07.2010, these three accused did not turn up for duty. P.W.7 has stated that the Motorcycle bearing Registration No.TN 37 AM 3432 was purchased by the 3rd accused by raising loan from Everest Finance Company. P.W.8 is a resident of Mandakadu Village near Malampuzha Dam. He has stated that the dead body of the deceased was collected in a fishing net of one Mr.Suresh who has spoken about the complaint made to the Malampuzha Police Station.

6. P.W.9 the then Head Constable attached to Malampuzha Police Station has stated that he took the dead body from the

occurrence to the hospital as directed by the Inspector of Police for postmortem. P.W.10 has spoken about the postmortem conducted and his final opinion regarding cause of death. According to him, there was no external or internal injuries found on the dead body of the deceased. From the postmortem findings, according to him, the deceased died due to drowning. P.W.11 has spoken about the registration of the case in Crime No.220 of 2010 on the file of the Malampuzha Police Station and the investigation done by him. P.W.12 has spoken about the registration of the case in Crime No.445/2010 on the file of Chettipalayam Police Station for 'Boy Missing'. P.W.13, the then Special Sub-Inspector of Police has stated that he handed over the FIR to the learned Magistrate. P.Ws.14 and 15 have spoken about the investigation done and the final report filed.

7. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. On their side, two witnesses have been examined as D.Ws.1 and 2 and two documents have been marked.

8. D.W.1 was an Assistant Executive Engineer of the Tamil Nadu Electricity Board. He has stated that the 1st accused was placed under suspension on 12.07.2010 vide Ex.D2. He has further stated that in the said document, it has been stated that the 1st accused was arrested by the police as early as on 08.07.2010 itself. Ex.D.1 is the Suspension Order for the 3rd accused in which also it has been stated that he was arrested by the police in connection with the present case as early as on 08.07.2010 itself. P.W.2 was also an employee of the Tamil Nadu Electricity Board. He has stated that he came to know that the 1st accused was taken into custody by the police on 07.07.2010.

9. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court.

10. 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.

11. As we have already narrated herein above, the only piece of evidence available against the accused is that of the evidence of P.W.2 - the Watchman of Karpagam College, who has stated that the accused 1 to 3 and the deceased were working just in front of the college for some time and thereafter, the 1st accused left the place and the accused 2 and 3 left the place along with the deceased in the Motorcycle. Except this evidence, there is no other evidence against the accused. From out of this evidence alone, it cannot be said that all the three

accused had abducted the deceased and killed him. Above all, the death of the deceased is due to drowning. The possibility of accidental fall or fall into the dam with a view to commit suicide cannot be ruled out. The prosecution has failed to collect the investigation details on a case registered on the file of Malampuzha Police. Absolutely, there is no clinching evidence collected as to how the deceased had gone to Malampuzha. Even the person, who noticed the dead body of the deceased, when it was collected in the fishing net, has not been examined. The investigation in this case is so shady. Thus, the prosecution has failed to prove that the death of the deceased was a homicide and the prosecution has further failed to prove that it was these three accused who killed the deceased. But the trial court has convicted these accused on mere surmise which is not permissible in law. We hold that the prosecution has failed to prove the case against these accused beyond reasonable doubts and therefore, they are entitled for acquittal.

12. In the result, the appeals are allowed and the appellants are acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bonds, if any, executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the respective accused.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
Chettipalayam Police Station,
Chettipalayam,
Coimbatore District.

2.The I Additional District and Sessions Judge,
Coimbatore.

3.The Principal Sessions Judge,
Coimbatore.

4.The Superintendent of Police,
Coimbatore.

5.The Director General of Police,
Mylapore, Chennai.

6.The District Collector,
Coimbatore.

7.The Superintendent,
Central Prison, Coimbatore.

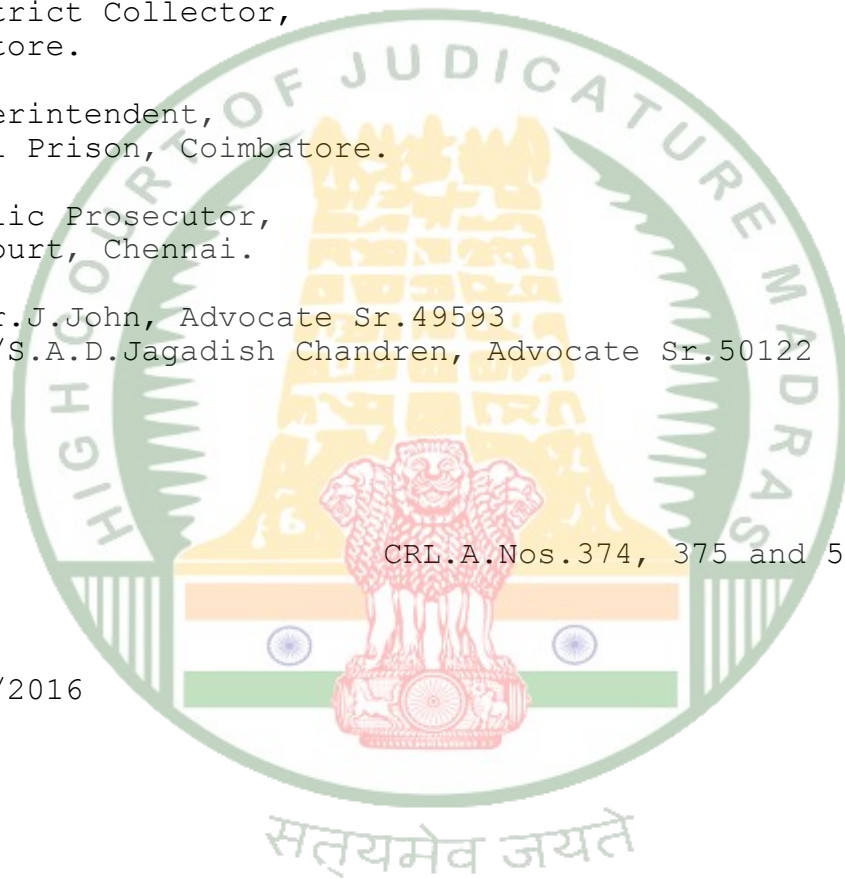
8.The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.J.John, Advocate Sr.49593

+lcc to M/S.A.D.Jagadish Chandren, Advocate Sr.50122

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