

Bail Slip

The Appellant/Accused namely Babu was directed to be released on bail as per order of this court dated 2.4.2013 made in Crl.MP.NO.1/2013 in Crl.A.NO.213 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Crl.A.No.213 of 2013

Babu

..Appellant/Accused

vs.

State, rep.by
The Inspector of Police,
Parur Police Station,
Krishnagiri District

..Respondent/Complainant

Criminal appeal preferred under Section 374 Cr.P.C., against the judgement dated 20.02.2013 passed by the Additional Sessions Judge, Krishnagiri, in S.C.No.108 of 2010.

For Appellant : Mr.Mahendran

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.108 of 2010, on the file of the Additional Sessions Judge, Krishnagiri. He stood charged for the offences under Sections 499 and 302 of the Indian Penal Code. By judgement dated 20.02.2013, the trial Court convicted him under Section 302 of the Indian Penal Code alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months. 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:

(a) The deceased in this case was one Mrs.Sakunthala. The accused had illicit intimacy with her for about 14 years, prior to the occurrence. She was residing as a tenant in the

house of one Mr.Rajikannu (P.W.8). It is the further case of the prosecution that in due course of time, the accused had developed suspicion over the fidelity of the deceased. This is stated to be the motive. It is further alleged that on 26.6.2008, at 1.00 a.m., the accused trespassed into the house of the deceased, attacked her with a granite stone on her stomach, face and other parts of the body and cause her death.

(b) P.W.1 is a neighbour. On the next day, at 8.30 a.m., he found a crowd of people in front of the house of the deceased. When he went there, he found the deceased lying dead with serious injuries on her body, inside the house. Immediately, he went to Parur Police Station and made a complaint at 10.30 a.m., on 26.6.2008. P.W.11, the then Sub-Inspector of Police, on receipt of Ex.P1, the complaint, registered a case in Crime No.107 of 2008, under Section 302 of the Indian Penal Code. Ex.P7 is the First Information Report. He forwarded Ex.P1 and Ex.P7 to the Court, which were received by the learned Magistrate at 6.00 p.m. on 26.6.2008. The case was taken up for investigation by P.W.12. He went to the place of occurrence and prepared an observation mahazar, in the presence of P.W.6 and another witness. He also recovered blood stained earth and sample earth from the place of occurrence and also other blood stained materials, such as the blood stained vessels, blood stained clothe etc., under a mahazar, in the presence of the same witnesses. Then, he conducted inquest on the body of the deceased between 1.00 p.m. to 4.00 p.m. on the same day and forwarded the body for post-mortem. P.W.2, Dr.Hariram, conducted autopsy on the body of the deceased on 26.6.2008 at 4.45 p.m. He found the following injuries:

- "Ext.Injury: (1) A cut injury at Rt.ear lobe into pieces of 2 to 3 segments.
- (2) Depressed fracture of Rt Forehead
 - (3) Swelling at occipit 6 x 4 cm.
 - (4) Laceration wound at Rt Forehead, head, eyebrow 6 x 2x 1 cm.
 - (5) Penetrating wound at Right eye left aspect 2 x 2 x 2 m (6) abrasion with Rt. Cheek below eye 4 x 2 m.
 - (7) multiple abrasion at eye, neck - 12 nail marks.
 - (8) abrasion at left forehead area 4x2x 2m
 - (9) Dark, Bluish contain with hyoid regn. of neck.
 - (10) Liner abrasion at Rt. Breast 8x1/2 m.
 - (11) liner abrasion 4 x 12 m - 6 no. 4 nos. on left breast.
 - (12) Dark Bluish contains at upper chest 8x 3 cm.

- (13) Dark bluish contain with abdominal area 15 x 4 m.
 - (14) Dark Bluish contains with left iliac area 4x2 m.
 - (15) Multiple abrasion with left thigh 2x2 m
 - (16) Multiple abrasion with Rt thigh 3 x 3 m
 - (17) Multiple abrasion at left lobe 2x2, 1x1/2, 1x1/2 cm.
 - (18) Multiple abrasion at Rt.lobe.
 - (19) Laceration with pelvic Regn. 4 x 2 c m
 - (20) Bleeding per vagina.
 - (21) Laceration of lobia majora, 2 x 1/2 x 1/2 m.
 - (22) Multiple abrasion at Back 2 x 2 cm. 8 nos.
 - (23) Laceration at left ankle 3 x 2 cm.
- Internal Exam:
- (1) Skull - Forehead bone fracture
 - (2) Brain - occipital lobe blood clot
 - (3) Left fronto - Temporal region bleeding."

Ex.P3 is the post-mortem certificate. The Doctor opined that the deceased would have died due to shock and haemorrhage, due to the injuries. P.W.12, during the course of investigation, arrested the accused, on 28.6.2008, at 4.00 p.m. at Irumathur Village, in the presence of P.W.7 and another witness. On such arrest, the accused made a voluntary confession, in which, he disclosed the place where he had hidden the 'lungi' and the 'banian'. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced the 'lungi' (M.O.1) and 'Banian' (M.O.2) with blood stains. On returning to the police station, P.W.12 forwarded the accused to the Court and handed over the material objects also to the Court. He made request to the Court for forwarding the material objects for chemical examination. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 12 witnesses were examined, 9 documents were exhibited, besides 20 materials objects. Out of the said witnesses, P.W.1, a neighbour of the deceased, had stated that the deceased was residing as his neighbour. The accused used to visit her and quarrel with her. He has further stated that on the day of occurrence, at 8.30 a.m., he found the deceased lying dead, inside the house. P.W.2 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.3 has stated that P.W.1 is her son. She has also stated that the dead body was found at around 8.30

a.m., on the next day. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 has also stated that he found the dead body of the deceased at 9.00 a.m. P.W.6 has spoken about the observation mahazar prepared and the recovery of material objects from the place of occurrence. P.W.8 has spoken about the arrest of the accused and the consequential recovery of the blood stained 'lungi' and the 'banian'. P.W.8 is the landlord of the house, where the deceased was residing. He has stated about the same. P.W.9 is a star witness for the prosecution. He has stated that the deceased had illicit intimacy with several persons. He has further stated that on the day of occurrence at 6.00 a.m., he found the deceased dead. He has also stated that before that, on the previous day at 7.00 p.m., he found the accused, at the house of the deceased, quarrelling with her. P.W.10 has spoken about the fact that he took the dead body for post-mortem. P.W.11 has spoken about the registration of the case. P.W.12 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any one on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused under Section 302 of the Indian Penal Code alone, as detailed in the first paragraph of this judgement and that is how the accused is before this Court.

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

7. This is a case based on circumstantial evidence. At the outset we should say that in a case based on circumstantial evidence, it is the law that all the circumstances projected by the prosecution, are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which would be inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now analyse the circumstances projected by the prosecution. It is in evidence that the deceased was living alone at her house. It is also in evidence that the accused had illicit intimacy with her for the past 14 years. But it is also in the evidence of P.W.9 that the deceased had illicit intimacy with several others. It is the evidence of P.W.1 that the deceased was found lying dead at 8.30 a.m on the day of occurrence. Nobody has seen the accused at the house of the deceased at or about the time of the occurrence. The prosecution relies on the evidence of P.W.9 to prove that the accused was found in the company of the deceased at 7.00 p.m. In chief

examination, P.W.9 has stated that at about 7.00 p.m., on the previous day, when he was returning to his house, via., the house of the deceased, he found the accused and the deceased quarrelling with each other. From this circumstance, the prosecution tries to prove that except this accused, none else would have committed the murder of the deceased. But during the cross-examination, P.W.9 has admitted that again when he went to the house of the deceased at 9.00 p.m. But he had not stated so during investigation. The only circumstance relied on by the prosecution, as spoken by P.W.9 that the accused was found in the company of the deceased is doubtful and assuming that it was true, that by itself would not prove the guilt of the accused as it was not at or about the time of occurrence.

8. Apart from the above, the prosecution has succeeded in establishing that the death of the deceased was a homicide. But, the prosecution has failed to prove that such homicide was caused only by this accused. We find absolutely no evidence against the accused at all. The recovery of the 'banian' (M.O.2) and 'lungi' (M.O.1) also would not help of the prosecution in any manner, because they were not even subjected to chemical examination. Thus, here is a case where there is no evidence at all to unerringly prove the guilt of the accused. In our considered view, the prosecution has miserably failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

9. In fine, this criminal appeal is allowed; the conviction and sentence imposed on the appellant, by the trial Court, in Sessions Case No.108 of 2010, are set aside. The appellant/accused is acquitted. Bail bonds, if any, executed by him shall stand cancelled. Fine amounts, if any, paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Inspector of Police, Parur Police Station,
Krishnagiri District
2. The Chief Judicial Magistrate, Krishnagiri.
- 3.The Additional Sessions Judge,
Krishnagiri.
4. The Superintendent Central Prison, Vellore.
5. The Collector, Vellore District.
6. The Director General of Police, Mylapore, Chennai.
7. The Judicial Magistrate, Krishnagiri Pochampalli.
- 8.The Public Prosecutor,
High Court, Madras

Cr1.A.No.213 of 2013

EV(CO)
Eu 27.4.16



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