

BAIL SLIP

The Appellant/A1 was directed to be released on Bail in and by the order of this Court dated 15.04.2013 made in MP.No.1 of 2013 in Crl.A.No.126/2013 on the file of the High Court Madras

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.03.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CRL.A.No.126/2013

Punitha

..Appellant/A1

Versus

State rep by
The Inspector of Police
Thoppur Police Station
Dhramapuri District.

..Respondent/Complainant

Appeal filed under section 374[2] Cr.P.C., against the Judgment and sentence passed by the learned Principal Sessions Judge, Dharmapuri District in SC.No.52/2009 dated 25.02.2010.

For Appellant : Mr.V.Paarthiban

For Respondent : Mr.M.Maharaja

Additional Public Prosecutor

सत्यमेव जयते

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The first accused in SC.No.52/2009 on the file of the Principal Sessions Judge, Dharmapuri, is the appellant herein. Both the accused, viz., A1 and A2, were charged and tried for the commission of the offence u/s.302 IPC and the Trial Court, vide judgment dated 25.02.2010, has convicted the appellant/A1 herein for the commission of the offence u/s.302 IPC and imposed upon the appellant, sentence of rigorous imprisonment for life and to pay a fine of Rs.1000/-, with a default sentence of three

years rigorous imprisonment and acquitted A2 u/s.235[1] Cr.P.C. Challenging the said conviction and sentence, the appellant/A1 has preferred the present appeal. However, the State did not prefer any appeal, challenging the judgment of acquittal of A2.

2 The facts leading to the filing of this appeal, briefly narrated, are as follows:-

[A] A1 [Punitha] is the daughter of A2 [Kathirvelu]. The deceased, namely, one Munusamy, is said to have developed illicit intimacy with A1 and it was opposed by the family of the accused as well as Munusamy and in this regard, a panchayat was convened and both of them were warned, not to have any contact with each other in future.

[B] On 06.02.2008, at about 14.00 hours, Munusamy had entered into the house of A1 and insisted A1 to have physical relationship with him and at that time, A1 and A2 had developed common intention of causing the death of Munusamy and accordingly, A1 pushed him down and sat on his body and put her hands on the neck of the deceased and strangled. A2 repeatedly kicked on the neck of Munusamy several times and due to the same, Munusamy died on the spot.

[C] P.W.1 [Selvam] is the father of the deceased Munusamy and he know both the accused and according to him, prior to the demise of his son, Munusamy developed illicit intimacy with A1 and in the panchayat convened, severe warning was administered to both of them. On 06.02.2008, at about 10.00 hours, P.W.1 along with his wife [P.W.2] and daughter [P.W.3], went to Vinayagar temple at Thoppur and at that time, P.W.2 [wife of P.W.1 and mother of Munusamy], has advised Munusamy to go for coolie work. When P.W.1 returned home at about 16.00 hours, A1's daughter informed P.W.2 that her mother [A1] called P.W.2 to her residence and however, P.W.2 did go to the house of A1. Subsequently, the dead body of the deceased was found lying on the road and P.W.3 [daughter of P.Ws.1 and 2] had informed her parents about the same and P.Ws.1 to 3 went near the body and found that he was lying with injuries.

[D] Thereafter, P.W.1 proceeded to Thoppur Police Station and lodged a complaint at about 17.30 hours on 06.02.2008 to P.W.12 [Manivannan], the then Inspector of Police attached to the said Police Station. The complaint was marked as Ex.P.1. Based on Ex.P.1 [complaint], a case in Cr.No.106/2008 came to be registered for the offence u/s.302 IPC at 18.00 hours on 06.02.2008. The printed First Information Report was marked as Ex.P.12. He despatched the original complaint [Ex.P.1] and the printed FIR [Ex.P.12] to the Court of the Judicial Magistrate No.2, Mannargudi and forwarded the copies to the higher officials.

[E] P.W.12 went to the scene of crime at about 16.30 hours on 06.02.2008 and in the presence of P.W.4 [Narasimman] and the Village Administrative Officer, prepared the Observation Mahazar, marked as Ex.P.2 and a Rough Sketch marked as Ex.P.13. Thereafter, he conducted inquest on the dead body of the deceased in the presence of the Panchayatdars and prepared the Inquest Report [Ex.P.14]. At about 21.00 hours, he recovered blood-stained earth [M.O.1] and sample earth [M.O.2] under the cover of Mahazar, Ex.P.3. On the same day, he examined P.Ws.1 to 6 and other witnesses and recorded their statements. Through P.W.11 [Thangarasu], Head Constable, he made a requisition under Ex.P.6 for conducting postmortem on the body of the deceased.

[F] P.W.9-Dr.Sivakumar, who was the Assistant Surgeon attached to the Government Hospital, Dharmapuri, at the relevant point of time, on receipt of the body of the deceased viz., Munusamy, has commenced the postmortem at about 11.30 hours on 07.02.2008 and noted the following features:-

"Identification and Caste marks:-

[1]A scar over the right chest.

[2]A scar over centre of forehead.

The body was first seen by the undersigned at 11.30 a.m., on 07.02.2008. Its condition then was rigor mortis present in all four limbs. Postmortem commenced at 11.30 a.m. on 07.02.2008 closed at 12.30 p.m.

Appearance found at the postmortem:- A body of a male lying on its back arms by the side, legs extended, Rigor mortis present in all four limbs. Mouth opened, eyes closed. Frothy discharge from nostrils.

External Examination:-

A black coloured contusion mark from left ear to lower end of 5cm of right neck size 25x1 cm.

Internal Examination:-

Hyoid bone-intact. Ribs-normal. Heart-normal. Chambers-empty. Lungs-congested. Liver, spleen, kidney-congested. Stomach-empty. Intestines-distended with 8 cm. External Genitalis-normal. Skull-base of skull-normal. Skull bones-intact. Brain-normal. Viscera preserved are:- [1]liver [2]kidney [3]stomach

with intestine contents [4]Nacl solution [5]
Hyoid bone [6]skin mark around the neck."

On completion of postmortem, P.W.9 has opined that the time of death was between 12.00 and 24.00 hours prior to autopsy and the deceased died due to asphyxia due to strangulation. The Postmortem Certificate given by P.W.8 was marked as Ex.P.7.

[G] P.W.12, the Inspector of Police, continuing the investigation, had effected the arrest of both the accused and they voluntarily came forward to give voluntary and independent confession statements, which were recorded in the presence of P.W.4 [Narasimman] and one Subramani. Thereafter, both the accused were sent for judicial custody. On 11.02.2008, P.W.12 made a requisition under Ex.P.15 for sending the internal organs of the deceased for chemical analysis and also seized the clothes own by the petitioner and forwarded the same under Form 95 to the jurisdictional Magistrate court and the said material objects were marked as M.Os.3 to 5 respectively. P.W.12 received the Serology Report, marked as Ex.P.18 and on 08.02.2008, he examined P.Ws.7 and 8 [Mohan and Settu] and one Raja and recorded their statements. On 09.02.2008, he examined P.W.9, the doctor who conducted autopsy on the dead body of the deceased and recorded his statement and also the doctor [P.W.10], who has given Ex.P.8 [Bone Base Report]. On 15.03.2008, he once again examined P.W.9 and got his final opinion regarding the cause of death and on 20.05.2008, he examined P.W.11 and another and thereafter, he got transferred.

[H] P.W.13 [Duraishamy], the successor of P.W.12, took up the investigation and on completion of the same, filed the final report against the accused persons on 03.09.2008, charging them for the commission of the offence u/s.302 IPC to the Court of the Judicial Magistrate, No.2, Dharmapuri.

[I] On receipt of the final report, the learned Judicial Magistrate, No.2, Dharmapuri, took it on file in PRC No.40/2008. The Committal Court, had summoned the accused/A1 and A2 and on their appearance, furnished copies of the documents under section 207 Cr.P.C., and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the learned Principal Sessions Judge, Dharmapuri, who took it on file in SC.No.52/2009. The Trial Court, on appearance of the accused, framed charge u/s.302 IPC and questioned the accused/A2 and A2, who pleaded not guilty to the charge framed against them.

[J] The prosecution, in order to sustain their case, has examined P.Ws.1 to 13 and marked Exs.P.1 to 18 and also marked M.Os.1 to 5.

The accused/A1 and A2 were questioned u/s.313 Cr.P.C., with regard to the incriminating circumstances made out against them in the evidence rendered by the prosecution. They denied it as false. They further stated that they are not guilty of the offence. On behalf of the accused/A1 and A2, no oral evidence was let in and no documents were marked.

3 The Trial Court on consideration of the oral and documentary evidence and other materials placed before it, has convicted the appellant/A1 for the offence u/s.302 IPC and sentenced her as mentioned above and acquitted A2. Challenging the legality of the said conviction and sentence, the appellant/A1 is before this Court with this appeal.

4 Mr.V.Paarthiban, learned Counsel appearing for the appellant/A1 made the following submissions:-

[i] P.W.3, at the time of giving evidence, improved her version stating that she saw A1 and A2 dragging the body of the deceased Munusamy from their house and left it on the road.

[ii] Though P.Ws.7 and 8, said to have seen the body of the deceased inside the house of A1, they had left the place without informing the same to anybody, till they were examined by the police after two days of the occurrence and no explanation has been offered by the prosecution as to their belated examination and their conduct was also abnormal.

[iii] The Trial Court, on the same set of evidence, has acquitted A2, ought to have given the benefit of doubt to A1/the appellant herein also. Since the case of the prosecution is bristled with very many infirmities and inconsistencies, A1 should have been acquitted and hence, prays for allowing of the appeal and the acquittal of the appellant/A1.

5 Per contra, the learned Additional Public Prosecutor would contend that the testimonies of the material witnesses corroborate with each other on all material particulars. It is also supported by the scientific evidence in the form of the Postmortem Certificate and the Serology Report as well as the Bone Report. The Trial Court, by assigning proper and tenable reasons, had rightly convicted the appellant/A1 herein and prays for dismissal of the appeal.

6 This Court paid its anxious consideration and best attention to the rival submissions and also perused the oral and documentary evidences and other materials placed before it including the original records and the impugned Judgment of conviction.

7 The question arises for consideration is whether the conviction recorded by the trial court against the appellant/A1 for the commission of the offence u/s.302 IPC and sentencing her to undergo imprisonment for life and fine of Rs.1000/-, with default sentence of three years rigorous imprisonment, is sustainable.

8 P.W.1 [Selvam] has spoken about the illicit intimacy between his son/the deceased herein and A1 and according to him, on the date of occurrence, i.e., on 02.06.2008, at about 16.00 hours, the daughter of A1 has told P.W.2 [mother of the deceased] that her mother [A1] is calling her and since P.W.2 did not go, P.W.3 [daughter of P.Ws.1 and 2/sister of the deceased] had gone out and returned after sometime, stating that her brother [deceased/son of P.Ws.1 and 2] was found lying on the road. P.W.1 would further depose that a nearby resident, told him that A1 and her father Kathirvelu [A2] took the body of the deceased from inside their house and put it on the road. Thereafter, P.W.1 lodged a complaint. In the cross-examination, P.W.1 deposed that he is an illiterate and when he went out along with his daughter and wife [P.Ws.3 and 2], he saw the body of the son lying on the road.

9 P.W.2 [Madhavi] is the wife of P.W.1 and mother of the deceased Munusamy. According to her, her daughter [P.W.3] had told them that both the accused dragged the body of their son [deceased] and put it on the road. In the cross-examination, she would depose about the complaint given by A1 against her son and in the complaint, it has been stated that they went to the house of A1 and had a wordy altercation. She would further depose that on returning to the village, she saw her son lying dead on the road and that, the residents of the locality had assembled already.

10 P.W.3 [Anusia] is the daughter of P.Ws.1 and 2 and sister of the deceased Munusamy and she has spoken about the illicit intimacy between her brother and A1 and also the decision taken by the panchayat. She would further depose that the daughter of A1 came to her house and asked P.W.2 to come to the house of A1, as told by her mother [A1] and since P.W.2 refused to go, P.W.3 went to the house of A1 and she saw both the accused dragging the body of her brother and putting it on the road. In the cross-examination, contradiction was sought to be elicited between her statement recorded during investigation and the oral testimony. She denied the suggestion, stating it as false. P.W.6 [Chennakannu] who is said to have witnessed the dragging of the body of the deceased from the house of A1 and A2, turned hostile. P.W.6 would depose that he knows both the accused and A1 called him and told that Munusamy was in intoxicated state of mind and asked P.W.6 to remove him from her house and when P.W.6 went inside the house of A1, he saw froth

on the mouth of the deceased and A1 was present and on hearing something, he came out and subsequently, A2 [father of A1] had pulled the body of the deceased out and put it on the road. In the cross-examination, P.W.7 [Mohan] would depose that he was examined by the police on the same day and his statement was recorded and he did not state that while he was in the house, A1 called him and when he went, he did not see P.Ws.1 and 2. P.W.8 [Settu] would depose that when he went inside the house of A1, he saw the body of Munusamy with froth on his mouth and contusion on the neck and on hearing something, he came out and later on, he came to know that A1 and A2 had put the body of the deceased on the road. In the cross-examination, contradiction was elicited as regards the statement recorded during investigation. P.W.12 [Manivannan], the investigating officer, in his cross-examination, would, among other things, admit as to the belated despatch of the FIR. He did not state any reason in the final report and the statements of P.Ws.1 to 8 had reached the Court on 25.09.2008. P.W.12 would further depose that during the course of investigation, he did not state anything as to the dragging of the body of the deceased by A1 and A2 and putting it on the road. P.W.12 has offered an explanation, as regard the belated examination of P.Ws.7 and 8 on 08.02.2008, that they were not available and when he examined the other witnesses on 07.02.2008, none of them had spoken about P.Ws.7 and 8 and denied the suggestion that they were added as witnesses subsequently.

11 The case of the prosecution is based upon the circumstantial evidence and it is a well settled position of law that the following circumstances must be established:-

[1] Circumstances from which, the conclusion of guilt is to be drawn, should be fully established ;

[2] Facts so established, should be consistent only with the hypothesis of the guilt of the accused and should not be explainable on any other hypothesis, except the accused is guilty ;

[3] The circumstances should be of a conclusive nature ;

[4] There must be a chain of evidence so complete, as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused on preponderance of probability.

12 The prosecution projects the following circumstances, viz., [a] motive ;

[b] The seeing of the body of the deceased inside the house of A1, as spoken to by P.Ws.7 and 8 ;

[c] The dragging of the body of the deceased from the house of A1, as spoken to by P.W.3 ;

[d] The Scientific evidence.

13 It is the evidence of P.W.12, the Investigating Officer, in the cross-examination, that when the statement of P.W.3 was recorded during his investigation, she did not state anything about the dragging of the body of the deceased by A1 and A2 and putting it on the road. However, during the course of testimony, she would state so. The said portion of the oral evidence, is clearly an improvement from that of her statement recorded during investigation and therefore, it is not safe to rely upon her testimony as to the said crucial aspect. P.Ws.7 and 8, though saw the body of the deceased inside the house of A1 and A2, with froth on his mouth and with a contused injury on the neck, did not report the same to the police immediately and their statements were recorded belatedly two days thereafter. It is very pertinent to point out that as per the evidence of P.W.13, he completed the investigation and filed the final report on 03.09.2008. However, according to P.W.12, the statements of the crucial witnesses, viz., P.Ws.1 to 8, were received by the Court concerned on 25.09.2008 and he would further admit that immediately after recording the statements, it should be dispatched to the concerned court immediately and he would further depose that there is no explanation to offer as to the belated dispatch of the said statements. Therefore, no evidence is available as to the dragging of the body of the deceased from the house of A1 and A2.

14 The prosecution has failed to adduce any evidence as to the commission of murder by A1 and thereafter, putting the body outside the house. The Trial Court, on the same set of evidence, had acquitted A2/father of A1. The State did not challenge the said judgment of acquittal. In the considered opinion of the court, the chain of circumstances projected by the prosecution is not complete and the prosecution case is bristled with inconsistencies and improbabilities and therefore, it is not safe to sustain the conviction and sentence imposed on the appellant/A1.

15 In fine, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/A1, for the offence u/s.302 IPC vide Judgment dated 25.02.2010 made in SC.No.52/2009 by the learned Principal Sessions Judge, Dharmapuri District, are hereby set aside. The appellant is acquitted of the charge leveled against her. Bail bonds executed by the appellant/A1, stand discharged. Fine amount, if any paid, shall be refunded to her.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal Sessions Judge,
Dharmapuri.

2.The Judicial Magistrate No.2,
Dharmapuri.

3.The Inspector of Police
Thoppur Police Station
Dharmapuri District.

4.The Public Prosecutor
High Court, Madras.

5.-do-Thro The Chief Judicial Magistrate
Dharmapuri

6.The Director General of Police
Mylapore Chennai-4

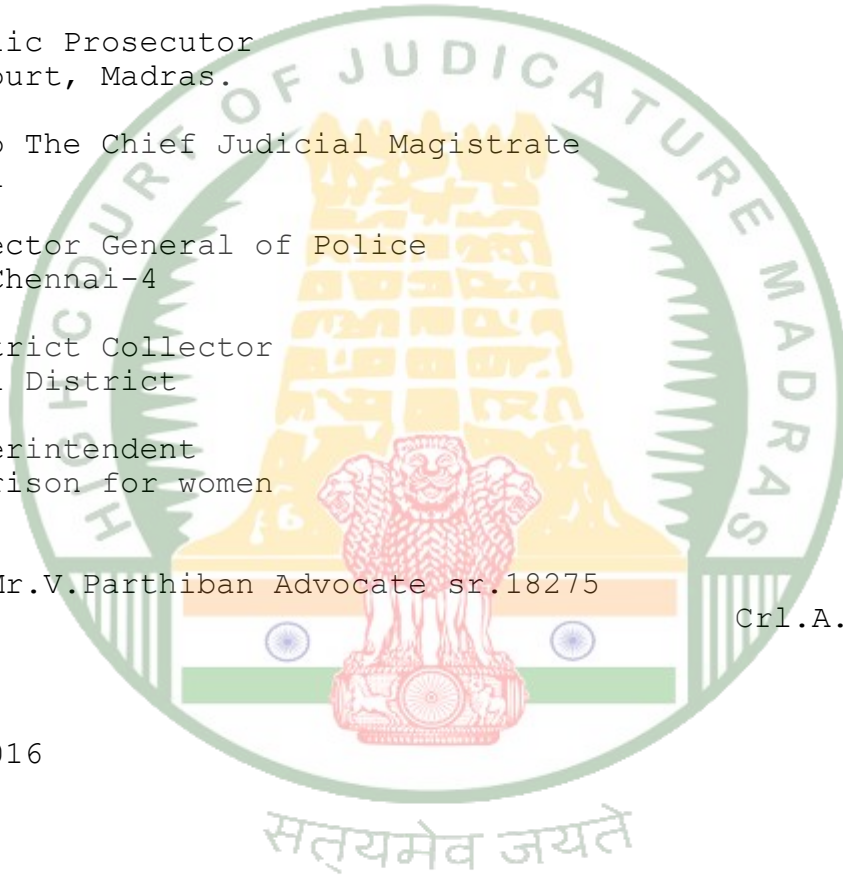
7.The District Collector
Dharmapuri District

8.The Superintendent
Special Prison for women
Vellore

+1 cc to Mr.V.Parthiban Advocate sr.18275

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