

Bail Slip

The Accused namely Viz., Santhi @ Thaiyalnayagi, W/o. Kannan, was directed to released on bail dt. 30.6.2016 made in Crl.MP.No.6358/16 in Crl.A.422 of 2016 of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Criminal Appeal No.422 of 2016

Santhi @ Thaiyalnayagi ... Appellant/Accused

-vs-

State Rep.by
Inspector of Police,
Pagasalai Police Station,
Nagapattinam District. ... Respondent/Complainant

This Criminal Appeal has been preferred u/s. 374 (2) Cr.PC, to set aside the conviction and sentence imposed vide judgment dated 01.06.2016 made in S.C.No.73 of 2014 on the file of the District and Sessions Judge, Nagapattinam.

For Appellant : Mrs.Daisy for
M/s.G.Bala and Daisy

For Respondent : Mr.E.Raja
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.73 of 2014 on the file of the learned District and Sessions Judge, Nagapattinam. She stood charged for offence under Section 302 IPC. By judgment dated 01.06.2016, the Trial Court convicted her under Section 302 IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for

one year. Challenging the said conviction and sentence, the appellant has come up with this appeal.

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

The deceased in this case was one Mr.Kannan. The accused is his wife. The marriage between them was celebrated several years before the occurrence. As a matter of fact, it was a love marriage. They were residing in Sempathaniruppu village in Nagapattinam District. Out of the said wedlock, a male child was born. The child was aged 6 years at the time of occurrence. In due course, after some time of the marriage, the deceased became a drunkard. He used to harass the accused in drunken state both physically and sexually. The accused was unable to bear the same. In the mean while, she was studying a Para medical Course in a local institution. In that way, she was familiar with drugs. On account of the above depression, the accused decided to do away with the deceased.

3. On 29.09.2013, the accused gave Diazepam tablets mixed with milk to the deceased. After taking the said milk mixed with Diazepam tablets, the deceased wet out and returned after some time, after taking liquor. He was in an inebriated condition. He started sleeping at his house. On 30.09.2013, at 4.00 a.m., it is alleged that the accused again gave four more Diazepam tablets to the deceased. The deceased after some time became unconscious. On 01.10.2013, the deceased was taken to the hospital. In the hospital, he died. Thus, according to the case of the prosecution, by administering Diazepam sleeping tablets, the accused had killed her husband.

4. P.W.1 the brother of the deceased made a complaint to Pagasalai Police Station on 02.10.2013 at 3.30 a.m. P.W.11, the then Sub-Inspector of Police on receipt of the said complaint registered a case in Crime No.54 of 2013 under Section 174 Cr.P.C. (suspicious death). Ex.P1 is the complaint and Ex.P10 is the First Information Report. She forwarded both the documents viz., Complaint [Ex.P1] and FIR [Ex.P10] to the Court, which were received by the learned Magistrate on 02.10.2013 at 6.00 a.m.

5. The case was taken up for investigation by P.W.12. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. Then on going over to the hospital, he conducted inquest on the body of the deceased on 02.10.2013 between 9.00 and 11.00 a.m. Ex.12 is the inquest report. Thereafter, he forwarded the body for post-mortem.

6. P.W.3 - Dr.Karthikeyan conducted autopsy on the body of the deceased on 02.10.2013 at 12.15 p.m He found the following: He forwarded the visceral organs for chemical examination. The report revealed that the deceased had died due to over dosage of Diazepam tablets. Ex.P2 is the post-mortem certificate. Ex.P3 is the report on the chemical analysis of visceral organs.

7. P.W.12 collected medical records and examined many more witnesses. On the basis of the opinion of the doctor, he altered the case into one under Section 302 IPC. On 27.10.2013, at 2.00 p.m., he arrested the accused in the presence of P.W.9 and another witness. On such arrest, she gave voluntary confession, in which she disclosed the place where she had hidden the diazepam tablets, syringe and I.V.Set. In pursuance of the same, she took the police and the witnesses to the house and produced the said material objects. P.W.12 recovered the same under a Mahazar. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC against accused. She denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined; 18 documents were exhibited, besides 7 Material Objects were marked.

9. Out of the said witnesses, P.W.1 is the brother of the deceased. He has stated about the marriage between the deceased and the accused, the sore relationship between them and the fact that on 01.10.2013 at 04.00 p.m., when he went to the house of the deceased, he found the deceased in an unconscious state. P.W.2 is the father of the deceased. He has also stated about the same facts as spoken by P.W.1. P.W.3 - Dr.Karthikeyan has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.4 is the Scientific Assistant in the Forensic Lab at Thanjavur. He examined the visceral organs recovered from the accused and gave opinion that there were content of diazepam tablets. P.W.5 has spoken about the frequent quarrel between the accused and the deceased. He further stated that on 01.10.2013, at 10.00 a.m., when he visited the house of the deceased, he found the deceased sleeping. The accused was administering injection through I.V. During cross examination, he stated that on 29.09.2013 at 11.00 a.m., when he went to the house of the deceased, he found the deceased was conscious and was in a position to speak. P.W.6 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.7 has spoken about the preparation of Observation Mahazar and Rough Sketch.

P.W.8 has not stated anything incriminating. P.W.9 has spoken about the arrest of the accused, the confession made and recovery of material objects more particularly, diazepam tablets from her possession. P.W.10 has stated that he handed over the dead body to the doctor for post-mortem. P.W.11 has spoken about the registration of the case and the complaint of P.W.1. P.W.12 has spoken about the investigation done and final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, she denied the same as false. On her side, three witnesses were examined as D.Ws.1 to 3. D.W.1 is the father of the accused. He has stated that as against the deceased, the accused made a complaint to the Police about the harassment meted out to her. D.W.2 is the Sub-Inspector of Police at Pagasalai Police Station. According to her, on 24.08.2012, the accused made a complaint against her husband. Since the allegation made against the deceased by the accused was a matrimonial dispute, she advised both the parties to settle the dispute before the competent civil court. D.W.3 is a resident of Sempathaniruppu village. He has stated that he also participated in the enquiry held by D.W.2 at the relevant point of time. In effect, the accused denied her involvement in the offence.

11. Having considered all the above, the trial Court convicted the accused under Section 302 IPC. Aggrieved over the same, the appellant is before this Court with this appeal.

12. The learned counsel for the appellant would submit that absolutely, there is no evidence in this case even to remotely infer that the deceased had been given diazepam tablets by the accused. However, the Trial Court convicted the accused on mere surmises. The learned Additional Public Prosecutor would however resist the said argument. According to him, since the deceased was lastly sleeping in the house of the accused, it is inferable that the accused alone would have administered diazepam tablets. Thus, according to the learned Additional Public Prosecutor, there is no merit in this appeal.

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

14. It is in evidence that on 01.10.2013, the deceased was found unconscious at his house by P.W.1. P.W.1 admitted him in the hospital, however, he died. But no medical records whatsoever in respect of the treatment given to the

deceased has been marked in evidence. The doctor who treated him also has not been examined. But the doctor - P.W.3 who conducted post-mortem opined that the deceased died due to over dosage of diazepam tablets. Diazepam tablets are nothing but sleeping tablets. From the evidence of P.W.3, it has been clearly established that the deceased died due to over dosage of the said drugs.

15. Now the question is whether the said drugs were administered by the accused or the deceased himself has taken the same in an attempt to commit suicide. As rightly pointed out by the learned counsel for the appellant, absolutely, there is no evidence to show that the diazepam tablets would have been given by the accused to the deceased. It is in evidence that the deceased was a drunkard. From the evidence of D.Ws.1 to 3, it is clear that there was love loss between the accused and the deceased. Though it was a love marriage, there was no cordial relationship between the accused and the deceased. Therefore, the possibility of the deceased having consumed the sleeping tablets to commit suicide cannot be ruled out. Simply because, the accused was sleeping at the house of the accused, it cannot be inferred that it was this accused who administered diazepam tablets. It is in evidence that the accused with her limited knowledge had tried to save him by giving some medicine through I.V. This conduct of the accused would also be consistent with the innocence that she has pleaded. Thus, there is no positive evidence or any circumstances even remotely to infer that the accused had administered diazepam tablets to the deceased. Similarly, the alternative theory that the deceased would have consumed the tablets in an attempt to commit suicide out of drunken mood also cannot be ruled out. In a case of circumstantial evidence, it is the law that if there is some alternative theory which is inconsistent with the guilt of the accused, the same should be clarified by the prosecution. Otherwise, the benefit arising out of the said alternative theory should be given in a case of this nature.

16. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In this case, in our considered view, the Trial Court has convicted the accused on mere surmises and therefore, the same cannot be allowed to sustain. For these

reasons, we hold that the conviction and sentence imposed on the appellant are not sustainable and hence, the same are liable to be set aside.

17. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned District and Sessions Judge, Nagapattinam, in S.C.No.73 of 2014, dated 01.06.2016, are set aside and the appellant is acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellant shall stand discharged.

Sd/-
Assistant Registrar(CS VII)
//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Pagasalai Police Station,
Nagapattinam District.
2. The District and Sessions Judge,
Nagapattinam,
3. The Judicial Magistrate-II,
Mayiladuthurai, Nagapattinam.
4. The Chief Judicial Magistrate, Nagapattinam.
5. The Superintendent,
Special Prison for Women, Trichy.
6. The Superintendent of Police Nagapattinam.
7. The Director General of Police, Mylapore, Chennai.
8. The District Collector, Nagapattinam.
9. The Public Prosecutor High Court, Chennai.

+1cc to M/s. G. Bala & Daisy, Advocate, S.R.No.47390

KJI (CO)

EU(22/09/2016)

CrI.A.No.422 of 2016