

BAIL SLIP

The Appellant / Accused namely Mathiazhagan, S/o.Dakshinamoorthy, aged about 23 Years was directed to be released on bail as per Order of this Court dated 01.03.2013 made in M.P.No.1 of 2013 in CrI.A.No.132 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.A.No.132 of 2013

Mathiazhagan

... Appellant/Accused

Vs.

State, rep.by
Deputy Superintendent of Police,
Virudhachalam Police Circle,
Virudhachalam District

... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 19.10.2012 passed by the Mahila Court, Cuddalore, in S.C.No.208 of 2011.

For Appellant : Mr.S.Sundar

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.208 of 2011, on the file of the District Mahila Court, Cuddalore. He stood charged for the offences under Sections 302 and 194 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. By judgement dated 19.10.2012, the trial Court acquitted the accused from the charges under Section 194 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act; however convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo

imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for two years. 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.Saraswathi. The accused and the deceased had fallen in love with each other and decided to marry. This was not to the liking to the parents of the deceased. Much against the wishes of their parents, the accused and the deceased got married, on 24.1.2010, at Viruthagireeswarar Temple, Virudhachalam. After the marriage, they were living together as husband and wife. P.Ws.2 and 3 are the parents of the deceased. Initially, they did not like the accused and the deceased to visit their house. After three months of the marriage, they got persuaded and then took the accused and the deceased to the family fold. From that time onwards, the accused and the deceased used to visit the house of P.W.3.

(b) It is further alleged that in due course of time, the accused started demanding dowry from the parents of the deceased. The deceased was not able to get any such dowry, as demanded by him. The parents of the deceased had assured the accused that after some time, they would give sufficient dowry to him. This assurance did not satisfy the accused. In the meanwhile, the deceased had become pregnant. For the delivery of the child, as per the local custom, the deceased was taken to the house of P.Ws.2 and 3 and she gave birth to a child. After that, the accused came to the house of P.Ws.2 and 3 and wanted to take the deceased back along with the child. Accordingly, three days prior to the date of occurrence, the accused took the deceased to his house.

(c) It is alleged that on 1.4.2011 at 7.00 a.m., the accused and the deceased had gone to a nearby cashew grove, belonging to one Mr.Ilangovan, for the purpose of collecting firewood. While they were engaged in the said work, the accused again started demanding dowry and wanted the deceased to go to her parental home to get dowry. This resulted in a quarrel.

(d) It is further alleged that at the end of the quarrel, at 9.30 a.m. at the same place, the accused took out a wooden log lying there and attacked the deceased. The deceased did not die. Thereafter, he strangled her with a duppatta and then to make it appear as though the deceased had committed suicide, he hanged her with the same duppatta in a cashew tree. He returned to the village and after sometime, he informed the villagers as though his wife had committed suicide by hanging. The villagers removed the body of the deceased and brought the same to the house of the accused.

The villagers and the accused decided to give decent burial to the body without informing the police.

(e) P.W.1 is the Village Administrative Officer of the said village. He came to know that the deceased, within seven years of her marriage, had died in suspicious circumstance. He also came to know that still there was no complaint made to the police and therefore, he went to the Karuvepilamkurichi Police Station and made a complaint at 4.00 p.m. on 1.4.2011. Ex.P1 is the complaint and Ex.P17 is the First Information Report. P.W.12, who registered the case, forwarded Ex.P1 and Ex.P17 to the Court, which were received by the learned Magistrate at 2.45 a.m. on 2.4.2011. Then P.W.12 handed over the case diary to P.W.11 for investigation.

(f) P.W.11, took up the case for investigation. He proceeded to the house of the accused, conducted inquest on the body of the deceased and forwarded the same for post-mortem. Then, he visited the place of occurrence, prepared an observation mahazar and a rough sketch and also recovered the material objects. P.W.10 conducted autopsy on the body of the deceased. She found the following injuries.

1. An Irregular Interrupted transverse ligature abrasion measuring 10 cm in length and 2 cm in breadth at the level of thyroid cartilage seen on the front, right side of the neck and back of right side of the neck. On front of the neck the ligature marks were 6 cm above the suprasternal notch 4 cm below the lower surface of symphysis mentis. On the left side of the neck Ligature mark was not seen. On the right side of the neck 8 cm below the right mastoid prominence 2 cm in width. On the back of the neck, the ligature mark was 4 cm below the occipital protuberance. The margins of the ligature marks were intermittently bruised and abraded. On dissection the tissues underlying the ligature marks were congested. Mucosa of the larynx was congested.

Contusions:

1. Contusion over the right chest wall including the right breast measuring about 20 cm X 15 cm anteriorly, contusion over the posterior aspect of the chest wall on the right and left side measuring about 25 cm X 20 cm.

2. Contusion of the entire right and left upper limbs extending from the shoulder level up to the wrist level all around

measuring about 50 cm X 12-15 cm.

3. Diffuse Sub scalp contusion seen over the whole scalp measuring about 30 cm X 25 cm. Contusions mentioned above were reddish brown in colour."

She gave opinion that the deceased would appear to have died of Asphyxia due to compression force over the region of neck (manual).

(g) P.W.11 continued the investigation. While so, on 5.4.2011, it is alleged that at 2.45 p.m., the accused appeared before P.W.6, the Village Administrative Officer of Virudhachalam and wanted to confess. P.W.6 was satisfied that the accused had voluntarily come to make confession. Then, the accused confessed to his guilt, in which he narrated that in the quarrel, as narrated above, he killed the deceased and hanged the body. P.W.6 reduced the same to writing. Ex.P8 is the said confession. Along with a Special report under Ex.P9, he produced the accused before P.W.11. P.W.11 arrested the accused at 4.45 p.m. on 5.4.2011. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden the wooden log, the knife and the cycle. In pursuance of the same, he went to the place of hide out and produced M.Os.2 to 5. P.W.11 recovered the same in the presence of P.W.5 and another witness. During the course of investigation, he examined P.Ws.2 and 3. He made a request to P.W.9, the Revenue Divisional Officer, to conduct inquest. P.W.9 conducted inquest and forwarded the body for postmortem. On completing the investigation, P.W.11 filed charge-sheet against the accused.

3. Based on the above incriminating materials, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 17 documents and 5 material objects were marked. Out of the said witnesses, P.W.1, the Village Administrative Officer has spoken about the complaint made by him to the police. P.Ws.2 and 3 have spoken about the marriage between the accused and the deceased; the demand for dowry made by the accused and the harassment caused to the deceased. They have also stated that the deceased was taken by the accused only three days prior to the occurrence. In respect of the alleged occurrence, they have not stated anything. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has stated about the extra judicial confession given to him on 5.4.2011 at 2.45 p.m. by the accused. P.W.5 has stated about the disclosure statement made by the accused, in which he disclosed the place where he had hidden M.Os.3 to 5 and also the recovery of the same. P.W.7 has not stated anything

incriminating, as he has spoken only the hear say information. P.W.8 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 has stated about the inquest conducted by him, under Section 174 of Cr.P.C., and his report. P.W.10 has spoken about the post-mortem conducted by him and his final opinion regarding the cause of death. P.W.12 has spoken about the registration of the case. P.W.11 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 anyone 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 as detailed in first paragraph of this judgement 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.

7. This is a case based on circumstantial evidence. The first and foremost circumstance is the strained relationship between the accused and the deceased on account of the failure of the deceased to get dowry from her parents. This has been spoken to by P.Ws.2 and 3. The trial Court has acquitted the accused from the charge under Section 4 of the Dowry Prohibition Act, disbelieving this part of the evidence of P.Ws.1 and 2. Therefore, we cannot reverse the said finding, as there is no appeal filed by the State against the same. The next circumstance upon which the prosecution relies on is the extra judicial confession said to have been given by the accused, on 5.4.2011, at 2.45, to P.W.6. The learned counsel for the appellant would submit that the evidence of P.W.6 cannot be believed since the accused was all along in the custody of the police, after the registration of the case and before that he was only in his house.

8. We have anxiously considered the said ground raised by the learned counsel for the appellant. A perusal of the evidence of P.Ws.2 and 4 would go to show that on 1.4.2011, the accused was found at the house. The body was lying, the villagers were attending the condolence. Thus, on the day of occurrence, the accused was very much available. During cross-examination, P.W.2 has admitted that the accused was taken into custody of the police, on the arrival of the police to the house of the accused. He has stated that the accused was kept in the police vehicle on 1.4.2011, he was taken to the place of occurrence and he was thus, in the custody of the police. P.W.4 has also stated that the accused was taken to

the custody by the police. From these evidences, it is crystal clear that the accused was all along in the custody of the police. Therefore, the case projected by the prosecution that the accused appeared before P.W.6, the Village Administrative Officer, on 5.4.2011 and made a voluntary confession cannot be believed.

9. So far as the cause of death is concerned, the Doctor opined that the death was due to manual strangulation. At the same time, going by the ligature marks found on the neck and other circumstances, it is doubtful whether it is not a suicide. At any rate, assuming that it was a case of homicide, absolutely there is no acceptable evidence, upon which the Court can safely hold that it was this accused, who committed the murder. It is a settled law that an extra judicial confession by its very nature is a very weak piece of evidence. Unless it inspires the confidence of the Court, in the absence of any corroboration from other independent source, it is not safe to rely on the said extra judicial confession, to convict the accused. In this case, as already pointed out, it is highly doubtful as to whether the accused had gone to the Village Administrative Officer, on 5.4.2011, to make a confession, because, it is in evidence that the accused was all along in the custody of the police. If once the said extra judicial confession becomes doubtful, unless there is corroboration from any other source, it is not safe to sustain the conviction. In this case, absolutely there is no evidence to corroborate the so called extra judicial confession, said to have been given by the accused, to the Village Administrative Officer. It may be true that there is a strong suspicion against the accused. But, such suspicion cannot take the place of proof and this Court cannot act on mere surmises. In view of all the above, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

10. In the result, this criminal appeal is allowed; the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge,
Mahila Court, Cuddalore.

2.The Additional Sessions Judge,
Mahila Court, Cuddalore.

3.The Judicial Magistrate II,
Virudhachalam.

4.The Chief Judicial Magistrate.
Cuddalore.

5.The Virudhachalam Police Circle,
Virudhachalam District

6.The Superintendent,
Central Prison,
Cuddalore.

7.The Deputy Superintendent of Police,
Virudhachalam.

8.The Public Prosecutor,
High Court, Madras

+1cc to Mr.S.Sundar, Advocate, S.R.No.15085

Cr1.A.No.132 of 2013

SAI (CO)
CA(13/04/2016)

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