

BAIL SLIP

The Appellant/Accused Viz Sathiya W/o.Thangam @ Samidurai was directed to be released on bail as per order dated 26/3/2016 made in CrI.A.No.183/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.183 of 2013

Sathiya

... Appellant/first Accused

Vs

State represented by
The Inspector of Police,
Poolampatti Police Station,
Salem District.
Cr.No.40/2010
Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Salem in S.C.No.344 of 2010, dated 17.06.2011.

For Appellant : Mr.K.Gandhi Kumar

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

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan,J.,)

A1 in S.C.No.344 of 2010 on the file of Additional District Sessions Judge, Fast Track Court No.I, Salem, is the appellant herein. He stood charged for the offences under Sections 302 and 201 I.P.C. The trial Court convicted A1/appellant and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for one year under Section 302 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.100/-, in default to undergo rigorous imprisonment for six months for the offence under Section 201 IPC, and the trial Court also ordered the sentence to run concurrently. Challenging the said conviction and sentence, the appellant/A1, is before this Court with this Criminal Appeal.

2. Totally there are two accused in this case. A2 in this case also convicted for the above charges and he filed a separate appeal in Crl.A.No.458 of 2001 before this Court and this Court by Judgment dated 21.09.2012 allowed the appeal and acquitted A2. The appeal, filed by A1 is now before us.

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

The deceased one Thangam @ Samidurai is the husband of A1. A1 was employed under A2 and they developed some illicit intimacy. After coming to know about the relationship between A1 and A2, the deceased warned A1 and hence, there were frequent quarrel between them and A1 took her children and gone to her mother's house. After some mediation, A1 came back to the matrimonial home and living with the deceased for some time. Since A1 and A2 thought that the deceased was hindrance to their relationship. So, they have decided to finish him. On 16.02.2010, in the early morning, between 3.00 a.m and 4.00 a.m., both the accused strangled the deceased with rope, M.O.6 and the deceased died on account of asphyxia.

4. P.W.1, a close relative of the accused, after hearing the noise, went to the house of the accused and found the deceased hanging and he also found blood in the cot and the rope, when, he enquired P.W.2, daughter of the deceased and A1, she told him that both the accused had strangled the deceased. Immediately, he took P.W.2, to the respondent police

and lodged a complaint.

5. On receipt of the complaint, P.W.10, the Sub Inspector of Police, registered a case in Crime No.40 of 2010 for the offences under Sections 302 and 201 IPC and sent the First Information Report, Ex.P.14 to the Judicial Magistrate Court and to the higher officials.

6. On receipt of the First Information Report, P.W.11, the Inspector of Police, commenced the investigation and proceeded to the scene of occurrence and prepared observation mahazar, Ex.P.2 and rough sketch, Ex.P.17, in the presence of P.W.5 and another witness. He had made arrangements for taking photographs of the scene of occurrence. Thereafter, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Ex.P.18, Inquest Report. Then, he recorded the statement of the other witnesses and sent the dead body for postmortem to the Government Mohan Kumara Mangalam Medical College Hospital, Salem.

7. P.W.9, the Doctor, working in the Government Mohan Kumara Mangalam Medical College Hospital, Salem, on 16.02.2010, at 4.45 p.m., conducted postmortem on the dead body of the deceased and found the following injuries:-

" Injuries :-

A vertical interrupted dark brown ligature mark seen over front and sides of neck above the level of thyroid cartilage measuring 1.0 to 1.25 cms width, 35 cms total length, and it is situated 9 cms above the supra sternal notch, 8.5 cms below mid chin, 7 cms below right mastoid process 8 cms below parchument like. On back there is 3 cms gap between the ligature mark at the level of occipital region.

An oblique faint ligature mark seen over front, right side of neck and it shows no inflammatory reaction, measuring 16 cms length with 1 to 1.2 cms width and underlying skin is dry and pale and it is situated 10 cms above supra sternal notch and 6.5 cms below mid chin and 2 cms below right mastoid process. Tongue protruded between the teeth. "

Ex.P. 11 is the Postmortem certificate. He was of the opinion that the deceased died of asphyxia due to strangulation and the death would have occurred 15 hours + 2 hours prior to the

postmortem.

8. On 18.02.2010, P.W.11, arrested the accused and on such arrest, the accused voluntarily gave confession, Ex.P.19, and based on the disclosure statement, he recovered blood strained saree, blouse and cellphones, and sent the accused for judicial custody. Thereafter, he examined the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. After completing the investigation, he laid a charge sheet against the accused.

9. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 21 documents were exhibited, besides 8 Material Objects.

10. Out of the witnesses examined, P.W.1 is the close relative of the deceased. According to him, on 16.02.2010, in the early morning, he heard the noise from the house of the deceased and he rushed there and found the deceased hanging. He also saw the blood in the rope and also in the cot. Subsequently, he enquired P.W.2 and she told him that both the accused strangled the deceased. P.W.2 is the minor daughter of the deceased and the A1. In the chief examination, P.W.2 has stated that before the occurrence A1 called A2 and informed him that the deceased caused trouble to her and he is a hindrance to their relationship, hence, A1 told A2 to do away with the deceased. Subsequently, in the early morning, P.W.2 saw, both the accused strangulating the deceased and she found her father dead. But, in the cross examination, she has stated that at the time of occurrence, she was staying with his grand mother at Paparapatti and studying there in a school. After receiving the information, she came to the place of occurrence, though she was willing to see her mother, she was not permitted to meet her mother by the relatives, according to her, the local villagers prepared the Ex.P.1, complaint, and where in, P.Ws.1, 2 and 4 put their signature.

11. P.W.3 also speaks about the illicit intimacy between A1 and A2. P.W.4 is the brother of the deceased. P.W.5, Village Administrative Officer, a witness to the Observation Mahazar, Ex.P.2, and also witness to the recovery of material objects. P.W.6, photographer, had taken photographs of the deceased at the scene of occurrence. P.W.7, Head Clerk, in Judicial Magistrate Court, sent the material objects for chemical examination.

12. P.W.8, Head Constable, accompanied the body of the deceased to the Hospital and also identified the dead body for postmortem. P.W.9, the Doctor, conducted postmortem on the dead body of the deceased and gave postmortem certificate, Ex.P.11. P.W.10, the Sub-Inspector of Police, registered the complaint. P.W.11, Inspector of Police, conducted investigation, arrested the accused, recovered the material objects, recorded the statement of the witness and after completing investigation, laid charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side two witnesses have been examined and they did not choose to mark any documents.

14. Having considered all the above, the trial Court found accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, Appellant/A1 is before this Court with this Criminal Appeal.

15. We have heard Mr.K.Gandhi Kumar, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. P.W.2 is the sole eye witness to the occurrence. Even assuming that P.W.2 was present at the time of the commission of the offence, it is doubtful as to whether she could have witnessed the occurrence for the reason that light was not burning at that point of time and it is the evidence of P.W.3 also that only when he called the name of the deceased, the light was switched on.

17. The time of lodging of Ex.P1 complaint is also doubtful for the reason that according to P.W.2, the residents had decided as to the contents of the complaint, Ex.P.1 and it was prepared according to their wish, wherein P.Ws.1, 2 and 4 had subscribed their signature and the police also came to the place of occurrence at the earliest point of time and took the accused along with P.Ws.1, 2 and 4 and to that extent it also corroborates the evidence of D.W.1, who deposed that he only went to the police station and lodged the complaint and police came to the spot at about 7.45 a.m. on that day, police took the accused into custody at about 11.00 a.m. on the same day.

18. In the light of the reasons assigned above, it is

wholly unsafe to rely upon the testimony of P.W.2, a child witness, who according to the prosecution was the sole eyewitness to the occurrence.

19. The appellant/A1 in this case is also similarly placed like A2 and in view of the judgment passed by this Court setting aside the conviction and sentence imposed on A2, this appellant/A1 is also entitled for acquittal, as she is also similarly placed like A2.

20. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Additional District and Sessions Judge, Fast Track Court No.I, Salem, in S.C.No.344 of 2010, dated 17.06.2011, are set aside and appellant/A1 is acquitted. Bail bond, if any, shall stand discharged. The fine amount, if any paid, shall be refunded to him.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

To

1.The Judicial Magistrate No.1 Sankari

2.The Chief Judicial Magistrate Salem

3.Thro The Principal District and Sessions Judge
Salem

4. The Additional District and Sessions Judge,
Fast Track Court No.I,
Salem.

5. The Superintendent Special Prison for Women
Vellore

6.The Inspector of Police,
Poolampatti Police Station
Salem

7.The District Collector Salem

8.The Direcotr General of Police
Mylapore chennai-4

9.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.Gandhi kumar Advocate sr 38381/17

Crl.A.No.183 of 2013

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