

Bail Slip:- Crl.A.No.204 of 2013:- The Appellants/Accused namely Mathiyalagan (A1) Karthikeyan (A2) Radhakrishnan (A3) were directed to be released on bail as per order of this court dated 28.3.2013 made in M.P.NO.1 of 2013 in Crl.A.No.204 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.204/2013

1.Mathiyalagan
2.Karthikeyan
3.Radhakrishnan

...

Appellants/A1
to A3

Versus

The State represented by
The Inspector of Police
Thirukuvalai Police Station
Nagapattinam District.
(Crime No.36 of 2010)

...

Respondent

Appeal filed under section 374 [2] Cr.P.C., to set aside the conviction and sentence imposed upon the appellant by against the judgment of the learned District and Sessions Judge, Nagapattinam, in SC.No.232/2010 dated 04.03.2013.

For Appellants : M/s.Greetha Senthilkumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S. NAGAMUTHU, J,]

The appellants are arrayed as A1 to A3 in SC.No.232/2010 on the file of the learned District and Sessions Judge, Nagapattinam. The Trial Court framed the following charges against the accused:-

Sl.No	Rank of the Accused	Charges Framed
1	A1 to A3	120[B] IPC-Committing criminal conspiracy.
2	A1 and A2	341 IPC-Committing wrongful restraint.
3	A1 to A3	302 IPC-Committing murder.
4	A1 to A3	Alternative charge: 302 r/w 34 IPC-committing murder in furtherance of common intention.
5	A1 to A3	201 IPC-Causing disappearance of evidence of murder.

By judgment dated 04.03.2013, the Trial Court convicted and sentenced the appellants as under:-

Rank of the Accused	Conviction under section	Sentence Awarded
A1 to A3	120[B] IPC	Each of them were sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default, to undergo rigorous imprisonment for 2 years.
A1 and A2	341 IPC	Sentenced to pay a fine of Rs.250/- each, in default, to undergo simple imprisonment for one week.
	302 r/w 34 IPC [alternative charge]	Each of them were sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default, to undergo rigorous imprisonment for 2 years.
	201 IPC [alternative charge]	Each of them were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.250/- each, in default, to undergo rigorous imprisonment for one month.

Challenging the said conviction and sentence, the appellants/A1 to A3 are before this Court with these appeals.

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

[A] The deceased in this case was one Subramanian. The appellants, viz., A1 to A3, are brothers. P.W.2 [Tmt.Vijayalakshmi] is the wife of A1 [Mathiyalagan]. The deceased was the father-in-law of A1 and father of P.W.2. The

marriage between A1 and P.W.2 was celebrated on 26.03.2010. The deceased and P.W.2 hail from Vattakudi village. All

these three accused were the residents of a neighbouring village, known as "Keezhkavalarkudi". After the marriage, P.W.2 and A1 were living together as husband and wife at the house of A1. A2 and A3 were living with A1 in a joint family. Though initially, the marital life of P.W.2 and A1 was joyful for some time, it became strained thereafter. A1 started developing suspicion over the fidelity of P.W.2. This resulted in frequent quarrels between A1 and P.W.2. On many occasions, P.W.2 was sent out of the matrimonial home to her parental home and on all those occasions, the deceased persuaded A1, either directly or through panchayatdars, to take back his daughter [P.W.2] into the matrimonial home. Accordingly, P.W.2 was living with A1.

[B] On 25.03.2010, as per the religious custom, P.W.2 had to be taken to the house of the deceased for ceremoniously changing "thali knot". The deceased came to the house of A1 at about 10.00 hrs. on 25.03.2010, to take P.W.2 to his house for the said purpose. He also invited all the three accused and other family members of A1 to come and participate in the function. But all the accused told the deceased that they were not willing to come as they did not want to have any relationship with the deceased. They further told the deceased that he could take P.W.2 to his house.

[C] After the ceremony was over, in the evening on the same day, i.e., on 25.03.2010, at about 17.30 hrs. the deceased took P.W.2 and P.W.3 [Sindhuja/cousin of P.W.2] in a motorcycle to the house of the accused. P.W.3 is the brother's daughter of the deceased and she was a child, hardly aged about 10 years at the time of occurrence. Leaving P.Ws.2 and 3 at the house of the accused, the deceased left towards his village by about 19.00 hrs. During the stay of the deceased in the house of the accused, A1 and A2 left elsewhere in their motorcycle. After the deceased had left, A3 left the house in his motorcycle. The accused did not return home for the whole night. P.Ws.2 and 3 stayed at the house of the accused.

[D] On the next day, i.e., on 26.03.2010, at about 11.00 hrs. one Mr.Rajendran, the Village Assistant of Ettukudi village, found a male body hanging by means of a ligature in the shed in the graveyard in the said village. He, in turn, informed P.W.1, the Village Administrative Officer of the said village. Immediately, P.W.1 rushed to the place of occurrence and found the dead body still hanging. On enquiry, he came to know that the dead body was that of the deceased. There was neither a shirt nor a dhoti on the body of the deceased. It was almost a bare body. Thereafter, P.W.1 went to Thirukuvalai Police Station and made a complaint under Ex.P.1.

[E] P.W.16, the then Sub-Inspector of Police attached to Thirukuvalai Police Station, during the relevant point of time, on receipt of the complaint under Ex.P.1, registered a case in Cr.No.36/2010 for the offence u/s.174 Cr.P.C. [Suspicious Death] at 11.30 hrs. on 26.03.2010. Ex.P.13 is the printed First Information Report. He forwarded both the documents, viz., Complaint-Ex.P.1 and the Printed FIR-Ex.P.13, to the Court and to his higher officials. The said documents were received by the learned Judicial Magistrate concerned on the same day.

[F] Taking up the case for investigation, P.W.22-Thiru.Rajmohan, the then Inspector of Police attached to the said Police Station, went to the place of occurrence at 12.30 hrs. on 26.03.2010 and prepared an Observation Mahazar [Ex.P.16] and a Rough Sketch [Ex.P.17] in the presence of P.W.18 and one Sridhar. Thereafter, he held inquest on the dead body of the deceased in the presence of the Panchayatdars and the said witnesses and prepared the Inquest Report [Ex.P.18]. Then he forwarded the body of the deceased for postmortem through P.W.14, Head Constable attached to the said police station.

[G] P.W.13-Dr.D.M.Mohanraja, the then doctor attached to the Government Hospital at Nagapattinam, at the relevant point of time, conducted the autopsy on the body of the deceased on 27.03.2010 at 12.00 noon. He found the following injuries:-

"Injuries:-

Abrasion on the left upper arm 2x2 cm. Blisters all over the body specially on the lower abdomen, both upper and lower limbs, scrotum region. Eyelids opened. Eyeballs protrusion present. Tongue outside the mouth. Serons discharge through nose and mouth. Hyoid bone - Intact. A robe around the neck with ligature mark below the thyroid. Cartilage with knots seen on right side of neck. Abdomen distended. Blisters seen. Pentoral cavity fractured. No rib fracture. Heart 350gms c/s congested. Lungs-right-450 gms and left-400 gms. Stomach - empty. Bladder-empty. Liver-1500 gms c/s.black in colour. Spleen-180gms c/s. Congested. No specific fracture. Brain 1350 gm c/s. Congested."

Ex.P.6 is the Postmortem Certificate. He gave the opinion that the death was due to constriction of the neck. He further opined that the death of the deceased would have occurred within 40-42 hours prior to autopsy.

[H] Continuing the investigation, P.W.22, at about 16.30 hrs. on 26.03.2010, recovered the blood-stained earth

[M.O.8] and the sample earth [M.O.9], Nylon rope [M.O.1], Bajaj M-80 motorcycle bearing Registration No.TN-51-A-1530 [M.O.10], left leg chappal [M.O.11], right leg chappal [M.O.12], in the presence of P.W.18 and another witness, under a cover of Mahazar [Ex.P.16]. After getting information from the doctor who conducted autopsy, P.W.22 altered the FIR into one u/s.302 IPC. The altered FIR is marked as Ex.P.19 and forwarded Ex.P.19 to the Court concerned. Then the investigation was taken by the successor of P.W.22.

[I] P.W.23, the then Inspector of Police attached to the respondent Police Station, at the relevant point of time, took up the further investigation in the case. On 29.03.2010, near the Kundaiyur River Bridge, he arrested A1 in the presence of P.W.10-Velayutham and one Mahalingam. On such arrest, A1 came forward to give a voluntary confession statement in the presence of the said witnesses. In the said confession [the admissible portion of which is marked as Ex.P.2], he disclosed the place where he had hidden the blood stained shirt, dhoti and towel. In pursuance of the said disclosure statement, he took the police and the witnesses to the place of hide out and produced M.O.5-shirt ; M.O.4-dhoti and M.O.6-Towel, which were recovered under the cover of Mahazar [Ex.P.3] and on returning to the Police Station, P.W.12 forwarded A2 to the Court for judicial remand and also handed over the material object. On the same day, he arrested A2 and A3. On such arrest, A2 made a voluntary confession [the admissible portion of which is marked as [Ex.P.4]. A2 was in possession of the motorcycle involved in the occurrence at the time of occurrence and the same was recovered the same under the cover of Mahazar [Ex.P.5]. On returning to the Police Station, P.W.23 forwarded all the three accused to the Court for judicial remand and also handed over the material object. P.W.23, on examining the witnesses and recording their statements and on completion of the investigation, laid the charge-sheet against the accused.

[J] Based on the above materials, the Trial Court framed charges against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 23 witnesses were examined, 19 documents and 13 material objects were also marked.

[K] Out of the said witnesses, P.W.1 is the the Village Administrative Officer of Ettukudi Village, who has stated about the fact that on 26.03.2010 at about 11.00 hrs. he found the dead body of the deceased hanging in the shed in the graveyard and regarding the complaint made by him to the P.W.1 [Sub Inspector of Police]. P.W.2 is the wife of A1, who has stated about the strained relationship between the accused and the deceased and the fact that lastly, at around 20.00 hrs on 25.03.2010, the deceased left the house of the accused in his motorcycle. P.W.3 is an important witness for the prosecution, who has stated that she

was at the house of the accused on the crucial date and when she went by the side of the house of the accused for passing urine, she found all the three accused standing there and discussing among themselves. She has further stated that at that time, the discussion was to the effect that they should kill the deceased. This witness has been thus examined to speak about the conspiracy. P.W.4 is the wife of the deceased. She has also stated only about the strained relationship between the two families. P.W.5 is the younger brother of the deceased, who has also spoken about the earlier misunderstanding between A1 and P.W.2 and the compromise reached between them. P.W.6 is a villager of Vattakudi village. According to him, on 25.03.2010, at about 19.15 hrs., when he went near the graveyard, he found A1 and A2 standing there. P.W.7, is a resident of Vattakudi village and he has stated that at about 19.00 hrs., on 25.03.2010, the deceased came to his tea shop and after having tea, he left the place. P.Ws.8 and 9 have turned hostile and did not support the case of the prosecution in any manner. P.W.10 has spoken about the arrest of the accused and the recovery of the material objects. P.W.11 is the Regional Transport Officer of Nagapattinam. He has stated that the vehicle bearing Registration No.TN-51-A-1530, stood in the name of one Chidambara Thevar, son of Vaidyanatha Thevar. P.W.12 is the said Chidambara Thevar, mentioned by P.W.11. He has stated that he sold the said vehicle bearing Registration No.TN-51-A-1530 to the deceased some time before the occurrence. P.W.13 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.14 is the Head Constable attached to Thirukuvalai Police Station, who has stated that he took the dead body of the deceased from the scene of crime to the hospital and handed over the same for postmortem. P.W.15 is the Head Clerk of the Court of Judicial Magistrate, Nagapattinam, at the relevant point of time an he has stated about his forwarding of the material objects for chemical examination, as directed by the learned Magistrate. P.W.16 is the Sub Inspector of Police who has spoken about the registration of the case on the complaint of P.W.1 under Ex.P.1. P.W.17 has spoken about the chemical examination conducted on the internal organs of the deceased. According to him, there was no poison or alcohol found in the said internal organs. P.W.18 is the Forensic Expert who has stated that he has examined the material objects sent for chemical examination. According to him, human blood stains were found on all the properties. P.W.19 has turned hostile and he did not support the case of the prosecution in any manner. P.W.20 is the Motor Vehicle Inspector [Grade I], attached to Thiruvarur Regional Transport Corporation, who has stated that the vehicle bearing Registration No.TN-50-B-0338, stood in the name of one Usha. P.W.21 is yet another Motor Vehicle Inspector [Grade I], attached to Tanjavur Regional Transport Corporation, who has stated that the vehicle bearing Registration No.TN-49-E-8230, stood in the name of one Manokaran. P.W.22 and P.W.23 have spoken about the investigation done by them and filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side nor marked any document.

4 Having considered all the above, the Trial Court convicted and sentenced them as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellants/accused are before this Court.

5 We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 As we have already pointed out, A3 has been convicted for the offence of conspiracy. According to the case of the prosecution, all the three accused conspired on 25.03.2010 at about 16.00 hrs., which was witnessed by P.W.3. The learned counsel appearing for the appellants would submit that the evidence of P.W.3 is not believable for more than one reason. According to him, P.W.3 is a child witness, who is prone to tutoring. In our considered view, because a child is prone to tutoring, the evidence of the child, cannot be outright rejected. The prudence requires only a close scrutiny of the evidence of a child. Applying the said yardstick, if we look into the evidence of P.W.3, it is crystal clear that the evidence of P.W.3 does not inspire the confidence of this Court at all. The main reason for rejecting the evidence of P.W.3 is that though she claims that at about 16.00 hrs. on 25.03.2010, when she went by the side of the house of the accused to attend the nature's call, she found all the three accused standing together and discussing and conspiring to commit the murder of the deceased. But, she did not inform the same either to P.W.2 or to anybody else. Had it been true that such a serious matter was heard by her, by all means, she would have informed P.W.2, with whom she stayed for the whole night at the house of the accused. According to her, she disclosed about the said occurrence only on 29.03.2010. Thus, there is absolutely no explanation for her silence for such a long time. It is highly unbelievable that these three accused would have conspired in the presence of P.W.3 and be heard by her. There is no other evidence to infer that there was such a conspiracy between these three accused. Thus, in our considered view, it is highly difficult to act upon the evidence of P.W.3 alone, so as to hold that all the three accused are guilty of conspiracy. Thus, we are impelled to acquit all the three accused from the charge of conspiracy.

7 A1 and A2 have been convicted for having allegedly committed the murder of the deceased. There is no direct eyewitness account for the same. The prosecution relies only on

the circumstantial evidence. The first and foremost circumstance is that the deceased left the house of the accused by about 19.00 hrs. on 25.03.2010 in his motor cycle. There is no much of dispute about the same. Thereafter, the deceased was found at Thirukuvalai village by P.W.7. P.W.7 has stated that the deceased came to his tea shop and had tea and left towards his village in his Bajaj M80 motorcycle. Thus, the deceased was seen alive in Thirukuvalai Village at 19.00 hrs. by P.W.7 on 25.03.2010. Thereafter, the deceased was not seen anywhere. It is the evident of P.W.6 that these two accused, viz., A1 and A2, were found near the graveyard at Ettukudi village, at about 19.15 hrs. on 25.03.2010. He has not stated that the deceased was found anywhere near the place of occurrence. It cannot be safely concluded from these two circumstances that the deceased had been killed by these accused and then, the body was hanged in the shed in the graveyard.

8 Apart from that, as rightly contended by the learned Counsel for the Appellants, the time of death is also under serious dispute. The doctor, viz., P.W.13 [Dr.D.M.Mohanaraja], who conducted autopsy, has stated that all over the body of the deceased, blisters were found extensively. It is common knowledge that formation of blisters on the dead body occurs after a minimum of three days from the time of death. It is also well known in the field of Forensic Medicine, that in temperature climates, the skin of lower right abdomen turns green after 3-4 days. Bacteria multiplies within the vasculature and their presence leads to haemolysis and decomposition of the blood with those vessels. This process can be seen as discolouration of the vessels [Marbling], skin breaks down, leading to blistering and skin slippage and bacterial growth in soft tissues with gaseous formation, leads to bloating of the body. The internal pressure built up forcing decomposition fluids from the lungs through mouth and nose [Purge fluid]. Thus, it is crystal clear that the formation of blisters on the body, which is on account of decomposition, in temperature climate, normally takes 3-4 days to occur. Here, in the instant case, according to the findings of P.W.13 [Postmortem doctor], the blisters were found all over the body, which means, the deceased would not have been alive on 25.03.2010 at 19.00 hrs. as it is claimed by P.W.7. This creates some doubt in respect of the time of death. Assuming that the deceased was seen alive on 25.03.2010 at 19.00 hrs. lastly, absolutely there is no evidence to connect the accused with the crime. Above all, according to P.W.13 [doctor] who conducted autopsy, the death was due to constriction of neck. The doctor has not ruled out the possibility of death due to hanging. Thus, in our considered view, the prosecution has not even proved that the death was on account of homicidal violence, beyond reasonable doubt. For these reasons, we hold that the prosecution has failed to prove its case beyond reasonable doubts. Therefore, the appellants/A1 to A3 are entitled for acquittal.

9 In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellants by the Trial Court for the aforesaid offences, in SC.No.232/2010, vide judgment dated 04.03.2013, are hereby set aside and the appellants/A1 to A3 are acquitted of the charge leveled against them.

10 Since it is reported that the appellants/A1 to A3 are on bail, the bail bonds executed by them, shall stand discharged. Fine amounts if any paid, shall be refunded to the appellants.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

AP

To

1.The Judicial Magistrate No.II,
Nagapattinam.

2. The Chief Judicial Magistrate
Nagapattinam

3.The District and Sessions Judge,
Nagapattinam.

4. The Superintendent
Central Prison, Trichy

5. The District Collector
Tiruchirapalli

6. The Director General of Police
Mylapore, Chennai-4

7.The Inspector of Police
Thirukuvalai Police Station
Nagapattinam District.

8.The Public Prosecutor
High Court, Chennai.

1 cc to Mr.,T.P. Senthilkumar, Advocate, Sr. 21157

CRL.A.No.204/2013

EV (CO)
kk 25/4