

Bail Slip

The Appellant/A1 & A2 was directed to be released on Bail in and by the order of this Court 11.07.2013 made in CrI A.No.245 of 2013 on the file of the Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.245 of 2013

1.Manju @ Manjunath

2.Duraisamy

..Appellants/A1 and A2

Vs

State represented by
The Inspector of Police,
Denkani Kottai Police Station,
Cr.No.332/2009.

... Respondent/Complainant

Common Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment and conviction passed by the learned Additional District Sessions Judge, Krishnagiri District, Krishnagiri in S.C.No.104/2010 dated 20.03.2013.

For Appellants : Mr.S.Haroon Al. Rasheed

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

JUDGEMENT

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

The appellants are the accused 1 and 2 in S.C.No.104 of 2010 on the file of the learned Additional District Sessions Judge, Krishnagiri. They stood charged for offences under Sections 302, 394 r/w 397 I.P.C. By judgment dated 20.03.2013, the trial Court convicted both the accused under all the charges and

sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for six months for offence under Section 302 I.P.C., and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for six months for offence under Section 394 r/w 397 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Nagaraj. On 21.11.2009, at about 7.30 pm, the deceased was proceeding in his motor cycle on the Thenkanikottai - Anjetti Road. When he was nearing the Tamil Nadu Civil Supplies godown, the accused 1 and 2 intercepted him. On stopping the vehicle, the deceased questioned the accused as to why they had stopped him. Immediately, it is alleged that A.1 pulled the helmet of the deceased and A.2 pushed him down. Then, A.1 and A.2 attacked the deceased with helmet as well as stones on his head and other parts of the body. They also strangled the deceased with rope. The deceased died on the spot. Abandoning the dead body and the motor cycle as well as the helmet at the place of occurrence, both the accused ran away from the scene of occurrence. The occurrence was not witnessed by anyone. The dead body of the deceased was found on 21.11.2009 at 7.30 am by P.W.1, who went to the place of occurrence for morning exercise. On seeing the dead body at 8.00 am on 21.09.2009, he made a complaint to Thenkanikottai Police Station. P.W.7, the then Sub Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.332 of 2009 for offence under Section 174 Cr.P.C. Ex.P.14 is the F.I.R. P.W.7 forwarded both the documents (Ex.P.1 and Ex.P.14) to the Court and the same was received by the learned Judicial Magistrate at 6.00 pm on 21.11.2009.

3.The case was taken up for investigation by P.W.8. He visited the place of occurrence on 21.11.2009 at 10.00 am and prepared an observation mahazar and a rough sketch in the presence of P.W.2 and another witness. Then he made arrangements for the photographer to take photographs at the place of occurrence. Then he conducted inquest on the body of the deceased in the place of occurrence and forwarded the body for post mortem.

4.P.W.5, the Doctor conducted post mortem on the body of the deceased and found the following injuries:-

"External Injuries:-

- 1.Lacerated injury of 3x2x bone deep over right ear side of forehead
- 2.Lacerated injury of 7x3xbone deep over a right supra orbital region lateral side
- 3.Right zygoma fracture
- 4.Lacerated injury of 3x3xbone deep over right zygoma present
- 5.Punctured wound of 2x3xbone deep right side cheek
- 6.Punctured wound of 4x3xbone deep over right side madibular region
- 7.Right side madible body fractured exposing bone
- 8.Punctured wound of 2x2 over right side submandibular region
- 9.Cut injury 4x4 cm over right lobule of ear
- 10.Lower central and lateral incisor contusion present
- 11.Left side body of mandible fractured
- 12.Contusion of 10x3 over left side of face present
- 13.Multiple pressure abrasions present over anterior aspect of neck present.
- 14.Lacerated injury of 6x2xbone deep over right side of parietal region of skull
- 15.Multiple pressure abrasions over left infra clavicular region, sternum, right infra clavilular region
- 16.left side shoulder dislocation present."

5.In continuation of the investigation, P.W.8 recovered the broken helmet; one pair of chappal; blood stained earth; sample earth and Titan watch from the place of occurrence under a mahazar. The broken pieces of the indicator light of the motor cycle were not recovered. The motor cycle was left near a Petrol Bunk and the same was recovered on the same day by P.W.8.

6.The investigation was subsequently taken up by P.W.9. During the course of investigation, he came to know that A.1 had surrendered before the learned Judicial Magistrate at Pochampalli on 22.12.2009. He took police custody of A.1, on the orders of the learned Magistrate concerned. While in custody, he made a voluntary confession, in which, he disclosed the place

where he had hidden a stone (M.O.6) and a shirt (M.O.10). Both were recovered on being produced by A.1 under a Mahazar.

7.A.2 similarly surrendered before the learned Judicial Magistrate, Krishnagiri on 01.12.2009. P.W.9 took police custody of A.2 on the orders of the learned Magistrate concerned. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden a brick stone. In pursuance of the same, he took Police and witness to the place of hide out and produced the brick stone (M.O.9). P.W.9 recovered the same under a mahazar. On completing investigation, he laid charge sheet against these accused.

8. 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 9 witnesses were examined and 23 documents were exhibited, besides 16 Material Objects.

9. Out of the said witnesses, P.W.1 has stated that on 21.11.2009, at 7.30 a.m., he found the dead body of the deceased at the place of occurrence. He has also spoken about the complaint made by him. P.Ws.2 & 3 have also spoken about the fact that the dead body of the deceased was found at the place of occurrence. P.W.4 is the star witness for the prosecution case. According to him, on 20.11.2009, at 10.30 pm, he found these two accused and the deceased quarreling with each other near the Tamil Nadu Civil Supplies godown. P.W.5 has spoken about the post mortem conducted on the body of the deceased and his final opinion regarding the cause of the death of the deceased. P.W.6 has spoken about the disclosure statement made by the accused and the consequential recoveries. P.W.7 has spoken about the registration of the case. P.Ws.8 & 9 have spoken about the investigation done and the final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witnesses nor did they marked any documents on their side. Their defence was a total denial.

11. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph of this

judgment. Aggrieved over the same, the accused 1 and 2/appellants are before this Court with this Criminal Appeal.

12. When this Criminal Appeal came up for hearing on 22.03.2016, there was no representation on behalf of the appellants/A.1 & A.2. Therefore, this Court appointed Mr.S.Haroon - Al-Rasheed, learned counsel, to argue the case on behalf of the appellants as a legal aid counsel.

13. We have heard the learned Counsel appearing for the accused 1 & 2/appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. This is a case based on circumstantial evidence. According to the case of the prosecution, the dead body of the deceased was found on 21.11.2009 at 7.30 am. The evidence reveals that the death of the deceased was due to homicidal violence. But, "who had committed the murder ?". In our considered view, the same has not been proved by the prosecution. In order to prove the same, the prosecution relies on two circumstances. The first one is according to P.W.4 on 20.11.2009 at 10.30 pm, these two accused were found quarreling with the deceased. But, this witness has not disclosed about the same to anybody. The conduct of this witness in not disclosing about the same would make his evidence unbelievable.

15. Apart from this, the prosecution relies on recovery of the stones on the disclosure statements made by the accused. In our considered view, the connection between the stones and the crime has not been established. Though, the case of the prosecution is that the stones were recovered at the instances of the accused, the same would not in any manner incriminate the crime.

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 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, the prosecution has not even succeeded in creating a very strong suspicion against these accused. At any rate, we hold that the conviction

and sentence imposed on the appellants 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 accused 1 & 2/appellants by the learned Additional District Sessions Judge, Krishnagiri in S.C.No.104 of 2010, dated 20.03.2013, is set aside and the accused 1 & 2/appellants are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the accused 1&2/appellants, shall stand discharged.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Denkanikottai.

2.The Chief Judicial Magistrate,
Krishnagiri (for Information)

3.The Superintendent,
Central Prison,
Vellore.

4.The Additional District Sessions
Judge, Krishnagiri.

5.The Principal Sessions Judge,
Krishnagiri.

6.The Inspector of Police,
Denkanikottai Police Station.

7.The Suprintendent of Police,
Krishnagiri.

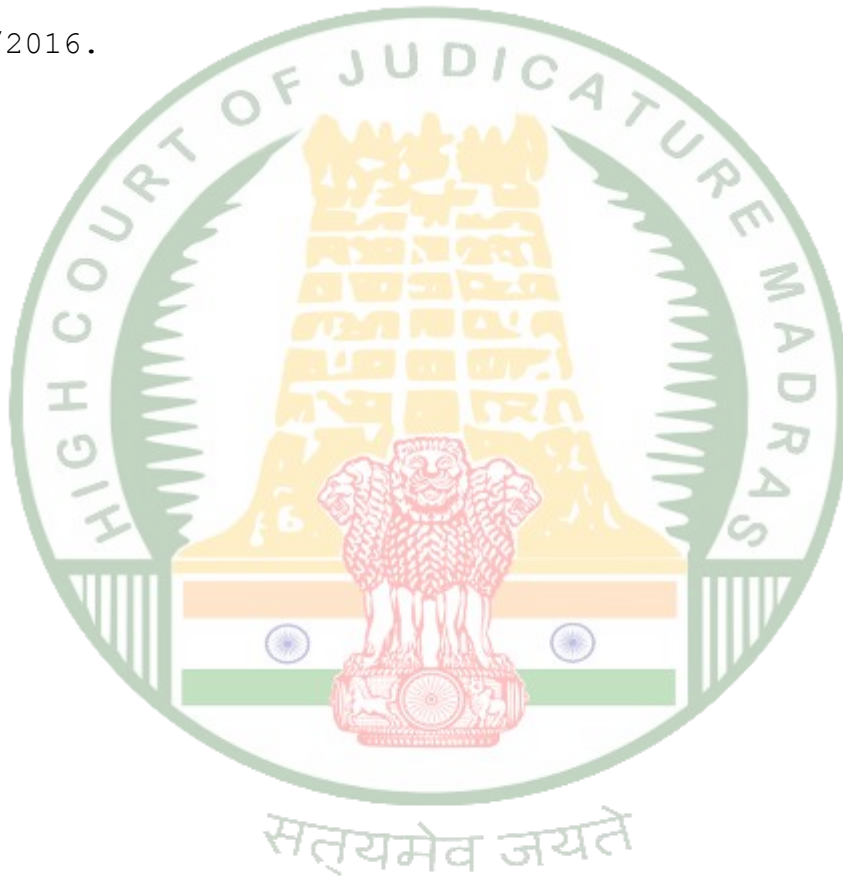
8.The District Collector,
Krishnagiri. District.

9.The Section officer,
Criminal Section,
High Court, Madras.

10.The Public Prosecutor,
High Court, Madras.

Crl.A.No.245 of 2013

ctk[co]
srg 20/04/2016.



WEB COPY