

Bail Slip

The appellants/Accused No.1&2 namely 1) Murugesan, 2) Raman were directed to be released , on bail vide under dt. 12.10.2012 made in Crl.MP.No.1/12 in Crl.A.No.630/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01..03..2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.630 of 2012

1.Murugesan [A1]

2.Raman [A2] ... Appellants/Accused 1&2

-Versus-

State by

The Inspector of Police,
Kachirapalayam Police Station,
Villupuram District.

[Crime No.360 of 2010]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned III Additional Sessions Judge, Kallakurichi, Villupuram District in S.C.No.187 of 2011 dated 07.09.2012.

For Appellants : Mr.A.Raghunathan, Senior
Counsel for Mr.S.Prabhu

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

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

The appellants are the Accused Nos.1 and 2 respectively in S.C.No.187 of 2011 on the file of the learned III Additional Sessions Judge, Kallakurichi, Villupuram District. A1 stood charged for offences under Sections 342 and 302 of IPC; and A2 stood charged for offences under Sections 342 and 302 r/w 34 of IPC. By judgement dated 07.09.2012, the trial court convicted A1 for the offence under Section and 302 of IPC and convicted A2 for the offence under Section 302 r/w 34 of IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for one year. A1 and A2 were acquitted of the other charge framed under Section 342 of IPC. Challenging the said conviction and the sentence, A1 and A2 are now 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 Kannan @ Kannu Padayachi. He was a resident of Madhavachery Village. P.W.1 is the wife and P.W.2 is the daughter respectively of the deceased. There was a long standing enmity between the family of the deceased and the accused on account of a land dispute. It is further alleged that on 18.11.2010, at the night, intervening 18.11.2010 and 19.11.2010, P.W.1 was sleeping in her house and the deceased was sleeping in the cattle shed situated just in front of his house. It is further alleged that during midnight, A1 and A2 had come to the house of the deceased, bolted the house from out side and went to the cattle shed and A1 attacked the deceased who was sleeping with a pestle [rice pounder] and killed him instantaneously. It is alleged that A2 assisted him.

3. P.W.1, who was sleeping in the house, in the morning, in the usual course, tried to come out of the house around 05.00 a.m., but she was not able to come out, since the door was bolted from outside. However, she managed to come out of the house through the roof. Thereafter, when she went to the cattle shed, she found her husband dead with injuries. Thereafter, P.W.1 informed her son-in-law [P.W.4] about the occurrence. P.W.4 immediately came to the place of occurrence and took P.W.1 to Kachirapalayam Police Station, where P.W.1 made a complaint. P.W.9, the then Sub Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in crime No.360 of 2010 under section 302 of IPC at 08.00 a.m. on 19.11.2010 against both the accused. Ex.P.7 is the FIR. He forwarded both the complaint and the FIR to the court and handed over the case diary for investigation to the Inspector of Police [In charge] for investigation. Ex.P.1-complaint and Ex.P.7-FIR were received by the learned jurisdictional Magistrate at 12.30 p.m. on 19.11.2010.

3. P.W.14, the then Inspector of Police [In charge], took up the case for investigation and visited the place of occurrence on 19.11.2010 itself at 09.30 a.m. He prepared an observation mahazar (Ex.P.2) and rough sketch (Ex.P.14) in the presence of P.W.5 and another witness. He also recovered some blood stained earth [M.O.4] and ordinary earth [M.O.5] in the presence of P.W.7 and another under a mahazar (Ex.P.3). Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem to Kallakurichi Government Hospital.

4. P.W.12 Dr.Prabhakaran, conducted autopsy on the body of the deceased at 02.00 p.m. on 19.11.2010. He found the following injuries:-

"External Injuries:

(1) A lacerated injury 5 x 2 x 1 cm
over right ear region.

(2) A lacerated injury 5 x 2 x 1 cm
over right frontal region.

(3) Right eye protruded out.

(4) 2 x 1 x 1 cm lacerated injury over right side face in front of right ear.

(5) 4 depression and lacerated injury over right frontal region.

(6) 3 x 2 cm abrasion over right side chest.

(7) 3 x 2 cm abrasion two in No. over right shoulder.

Internal Examination:

Right Lung-450 gm. Left Lung-400 gm. c/s congested.

Heart: empty, wt. 350 gm. c/s congested.

Liver-wt. 1200 gm c/s congested.

Spleen: wt. 90 gm. c/s congested.

Stomach-partially digested food particle about 200 gm present. Yellowish in color.

Intestine: distended with gas. Kidney - each wt. 120 gm c/s congested

Bladder: Empty.

Thoracic cavity: Empty. Ribs - Intact.

Skull - A depressed fracture involving parietal, temporal and frontal bone.

Brain - Membranes not intact. Crush injury over brain present. Right side brain matter exposed. 50 ml of clotted blood present over right side of brain. "

He preserved the visceral organs namely (1) stomach and its content; (2) sample of liver & kidney; (3) sample of intestine and its content; (4) saturated solution of sodium chloride; and (5) Hyoid bone and sent the same examination by the expert concerned. Ex.P.9 is the postmortem certificate. After having received the experts' opinion, he opined that the death was due to shock and hemorrhage.

6. P.W.14, in the course of investigation, examined the Doctor and the Experts from the Forensic Lab and some other witnesses and recorded their statements. P.W.14 arrested both A1 and A2 at 2.30 p.m. on 19.11.2010 near Kachirapalayam New Bus Stand in the presence of P.W.7 and another witness. On such arrest, A1 made a voluntary confession in which, he disclosed the place where he had hidden a pestle. In pursuance of the same, he took P.W.12 and the witnesses to the place of hideout and produced the pestle (M.O.1) in the presence of the same witnesses. P.W.14 recovered the same under a mahazar (Ex.P.4). On returning the police station, he forwarded the accused to the court for remand and forwarded the material objects also to the court with a request to forward the same for chemical examination. P.W.13, the chemical analyst found human blood stains on all the material objects. P.W.14, the

investigating officer, also made a request to the Finger Print Expert to examine Pestle (M.O.1) which was seized on the disclosure statement made by A1. P.W. 8, the Finger Print Expert, lifted chance finger prints from the same. Later on, the alleged admitted finger prints of the accused were taken and they were sent for comparison to the expert. P.W.14, the Expert after having compared the same with that of the chance finger prints, gave a report that chance finger prints tallied with that of the alleged admitted finger prints of A1. Ex.P.6 is the Finger Print Expert's report. P.W.15, the Inspector of Police, Kachirapalayam, who took up charge on 23.11.2010, examined P.W.1 to P.W.6 and few other witnesses including the official witnesses and recorded their further statements and collected postmortem certificate and experts' opinion. On completing the investigation, he laid the charge sheet against both the accused.

7. Based on the above materials, the trial court framed charges as detailed in the first paragraph. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 15 witnesses were examined, 17 documents and 5 materials objects were marked.

8. Out of the said witnesses, P.W.1 is the wife of the deceased. She has stated that on 18.11.2010 she was sleeping in the house and the deceased was sleeping in the cattle shed. She has further stated that on the next day, by around 05.00 a.m., when she tried to come out of the house, she found the door was bolted from outside and, therefore, she came out through the roof. When she went to the cattle shed, she found her husband, the deceased, dead with injuries. She has also stated about the motive between the deceased and the accused. P.W.2 is the daughter of the deceased. She has stated about the motive and she has also stated that her mother (P.W.1) called her over phone at about 05.00 a.m. on 19.11.2010 and informed her that the deceased was found dead in the cattle shed with injuries. Then, she went to the place of occurrence and found the deceased dead. P.W.3 is a relative of the deceased. He has stated about the motive. P.W.4 has also spoken about the motive.

9. P.W.5 has spoken about the preparation of the observation mahazar. P.W.6 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.7, the Village Administrative Officer of Thottiyam Village, has spoken about the recovery of material objects M.O.2 to 5 from the place of occurrence, arrest of the accused and the consequential recovery of M.O.1 in pursuance of alleged the disclosure statement of A1.

10. P.W.8 is the Finger Print Expert. He has stated that on 19.11.2010, M.O.1-Pestle was given to him by the investigating officer for examination. On examination, he found two chance finger prints on the same. Subsequently, on

18.05.2011, from the Judicial Magistrate, Kallakurichi, he received finger prints of one Mr.Murugesan [A1] for the purpose of comparison. On comparison, the finger prints of A1 tallied with the chance finger prints on the pestle (M.O.1).

11. P.W.9 has spoken about the registration of the case and handing over of the case diary to P.W.14, the Inspector of Police. P.W.10 has stated that he took the dead body of the deceased for postmortem to the hospital. P.W.11 has spoken about the photographs taken by him at the place of occurrence including the dead body. PW.12 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.13 is the Scientific Expert from Forensic Lab. He has stated about the examination of the material objects recovered from the place of occurrence as well as the the material object recovered at the instance of A1. According to him, there were human blood in all the material objects.

12. P.W.14 has spoken about the substantial portion of investigation conducted by him, while P.W.15 has spoken about the further investigation done by him and the filing of final report against the accused.

13. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, they denied the same. However, they did not choose to examine any witness on their side nor did they mark any document. Their defence was a total denial.

14. Having considered all the above, the trial court convicted A1 for the offence under section 302 of IPC and convicted A2 for the offence under Section 302 r/w 34 of IPC and accordingly punished them as detailed in the first paragraph of this judgement. A1 and A2 were, however, acquitted of the other charge framed under Section 342 of IPC. That is how, both A1 and A2 are, now, before this court with this criminal appeal.

15. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

16. It is a case based on circumstantial evidence. The first and the foremost circumstance projected by the prosecution is the motive between the accused and the deceased. Of course , P.W.1 and P.W.2 have spoken about the enmity between the families of the accused and that of the deceased. We do not find any reason to reject their evidence. Thus, the prosecution has succeeded in establishing the motive. But, from out of the motive alone one cannot rush to the conclusion that the accused would have committed the murder of the deceased inasmuch as the motive is always a double edged weapon.

17. The next circumstance relied on by the prosecution is that according to P.W.1 and P.W.2, on the night of 18.11.2010 P.W.1 was sleeping inside the house and the deceased was sleeping in the cattle shed. On the next day morning i.e., on 19.11.2010, at 05.00 a.m., when P.W.1 tried to come out of the house, she found the door bolted from outside. Then, she came out through the roof and when she went to the cattle shed, she found her husband, namely, the deceased-Kannu @ Kannu Padayachi, dead with injuries. Thus, the prosecution has proved that the deceased would have died somewhere between 10.00 p.m. on 18.11.2010 and 05.00 a.m. on 19.11.2010.

18. From the evidence of P.W.12-Doctor, who conducted autopsy, the prosecution has succeeded in proving that the death was due to the injuries found on the dead body. Thus, the prosecution has clearly established that the death of the deceased was a homicide.

19. Now, the question is who caused the death of the deceased. In order to prove the same, the prosecution relies only on the recovery of M.O.1-pestle allegedly on the confession of A1 on 19.11.2010 at 04.15 p.m. According to the investigating officer, on the accused being arrested in front of P.W.7 and another witness, M.O.1 was seized from the hideout in pursuance of the disclosure statement made by A1. But, P.W.7 has stated that the pestle was not recovered in his presence. He has further stated that the police told him that pestle had already been recovered by them. He has stated that, for that purpose, he signed the seizure mahazar. This witness has not been treated as hostile by the prosecution for the reasons best known. The prosecution still relies on the evidence of this witness. During cross examination, P.W.7 has further developed and stated that in the police station a pestle was shown to him by the investigating officer and he was told that it was already recovered. Even after this evidence of P.W.7 during cross examination, it did not strike the mind of the learned Additional Public Prosecutor, who conducted trial, to treat him hostile and to seek permission of the court to cross examine him so as to elicit the truth. Since the same has not been done and since the evidence of this witness that the pestle was taken from elsewhere by the police, it was kept in the police and the same was shown to him remains unchallenged, we do not find any reason except to accept this part of the evidence of P.W.7. Therefore, we find it difficult to accept the case of the prosecution that A1 was arrested at 4.15 p.m. on 19.11.2010 and on the disclosure statement made by A1 in the presence of P.W.7, M.O.1 was recovered.

20. The next circumstance relied on by the prosecution is that the pestle contained two chance finger prints. The finger print expert has stated that the pestle was given to

him, in which, on examination, he found chance finger prints. He has further stated that subsequently, he received the admitted finger prints of accused for comparison with that of the chance finger prints. But, the person, who took the alleged admitted finger prints from the accused has not been examined. Ex.P.6 indicates that the finger prints of A1 were taken by a Gr.I Police Constable, but, he has not been examined. Thus, the prosecution has failed to prove that the finger prints, which were sent for comparison with that of the chance finger prints found on M.O.1-Pestle, were taken from A1. Thus, this part of the story of the prosecution is also liable to be rejected.

21. Since the only circumstance upon which the prosecution tries to connect the accused with the crime namely, recovery of M.O.1-Pestle on the disclosure statement made by A1 is rendered unbelievable, we hold that the prosecution has failed to prove the case against both A1 and A2 beyond all reasonable doubts. Thus, we find that absolutely there is no evidence to prove the charges against both the accused and, therefore, they are entitled for acquittal.

22. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the Appellants/A1 and A2 by the trial court is hereby set aside. The Appellants/A1 and A2 are acquitted from all the charges. Fine amount, if any, paid by the appellants shall be refunded to them. Bail Bonds executed by the Appellants shall stand cancelled.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The III Additional Sessions Judge, Kallakurichi, Villupuram District.
- 2.The Inspector of Police, Kachirapalayam Police Station, Villupuram District.
3. The Judicial Magistrate, Kallakurachi.
4. The Chief Judicial Magistrate, Villupuram.
5. The Superintendent of Central Prison, Cuddaore.
- 6.The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.S. Prabhu, Advocate Sr.1351

Criminal Appeal No.630 of 2012

RSI (CO)

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