

BAIL SLIP

Appellant/Accused in Crl.A.No.250 of 2013 was released on bail as per Order of this Court dated 16.04.2013 in M.P.No.1 of 2013 in Crl.A.No.250 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.250 of 2013

M.Ramamurthy ... Appellant/Accused

Versus

The State represented by
The Inspector of Police
Vaduvoor Police Station
Tiruvarur District. ... Respondent/Complainant

Appeal filed under section 374 [2] Cr.P.C., against the judgment of the learned District Judge, Tiruvarur in SC.No.61/2011 dated 08.03.2013.

For Appellant : Mr.S.Paneerselvam

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in SC.No.61/2011 on the file of the learned District Judge, Tiruvarur. By judgment dated 08.03.2013, the Trial Court convicted the appellant/accused for the offence u/s.302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant/accused 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 Miss.Yagapriya. P.W.1 is her mother. They were residing at Edamelaiyur village. The accused also belongs to the same village. It is alleged that the accused had fallen in love with the deceased. When this love affair came to light, the mother of the deceased, viz., P.W.1, reprimanded her daughter and wanted her to disconnect all her relationship with the accused. In pursuance of the same, the deceased stopped meeting the accused.

[B] It is further alleged that on 12.09.2010, P.W.1 and other family members had gone elsewhere to attend a function. The deceased alone was at her house. P.W.1 had instructed her to take the cattle for grazing. Accordingly, the deceased had gone to "R.S.Pathy Eucalyptus Grove" of one Mr.Balasubramaniam. It is alleged that by about 12.30 hrs. on the same day, the accused came to the place where the deceased was sitting inside the grove and insisted that she should marry him. Since the deceased refused to agree for such proposal, the accused took out an aruval [M.O.1] and cut the deceased on the back of her head. She fell down and fainted. The accused fled away from the scene of occurrence. P.W.3 is a villager. According to him, at about 12.15 hrs on 12.09.2010, when he was taking his cattle towards the place of occurrence for grazing, he heard the noise from with the Eucalyptus grove. When he rushed to the said place, he found the deceased lying with injuries on her head. She was unconscious. He cried for help and the villagers gathered there and they took the deceased to the Government Hospital, Mannargudi. On examining the deceased, the doctor declared her dead. Thereafter, the body was kept in the Mortuary. Due intimation was also given to the police.

[C] P.W.1, who was in Thiruvallampozhil village, was informed about the occurrence At about 13.30 hrs, she rushed to the Government Hospital, Mannargudi, and found her daughter dead. Thereafter, P.W.1 went to the Vaduvor Police Station and made a complaint under Ex.P.1 on 12.09.2010 at 16.00 hrs.

[D] P.W.11, the then Sub-Inspector of Police attached to Vaduvor Police Station, during the relevant point of time, on receipt of the complaint under Ex.P.1, registered a case in Cr.No.215/2010 for the offence u/s.302 IPC at 16.00 hrs. on 12.09.2010. In the said complaint, the accused was mentioned as "the suspected assailant". Ex.P.14 is the printed First Information Report. He forwarded both the documents, viz., Complaint-Ex.P.1 and the Printed FIR-Ex.P.14, to the Court and to his higher officials. The said documents were received by the learned Judicial Magistrate concerned at 19.00 hrs on the same day.

[E] Taking up the case for investigation, P.W.14, the then Inspector of Police attached to the said Police Station, went to the place of occurrence at 16.45 hrs. on 12.09.2010 and prepared the Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.16] in the presence of P.W.6 and another witness. He recovered the blood-stained earth [M.O.5] and the sample earth [M.O.6] from the scene of crime, under the cover of Mahazar [Ex.P.3]. He examined P.Ws.1, 2 and other witnesses and recorded their statements. On 13.09.2010, he went to the Government Hospital at Mannargudi, where the dead body of the deceased was kept and held inquest on the dead body of the deceased in the presence of the Panchayatdars and the said witnesses between 09.00 hrs. and 11.00 hrs. and prepared the Inquest Report [Ex.P.17]. Then he forwarded the body of the deceased for postmortem through P.W.13, the Head Constable attached to the said police station.

[F] P.W.9-Dr.Geetha, the then Assistant Surgeon attached to the Government Hospital at Mannargudi, at the relevant point of time, conducted the autopsy on the body of the deceased on 13.09.2010 at 14.00 hrs. She found the following injuries:-

"Injuries:-

Scalp:- [1] Midline of the scalp frontal, parietal, occipital area 15 cm in length and 2 cm in width-depth upto skull bone with bone 12 cm length in the mid of the injury x line breadth x bone depth.

[2]Right side neck-led to trachea medial to sternomastoid muscle. 1 ½ cm width x 1 cm depth stab injury.

[3]Medial to Injury No.2 cut injury. 1 ½ cm x ½ cm x 2 cm depty. All the injuries edges are erected edges stained with blood.

C/S skull and bones with sub dural hemorrhage with contused brain. Thorax-lungs-pale. Stomach-empty. No smell. Edges are smooth. And organs are pale. Vessels injured on the right side [vein]. Hyoid bone-intact. External genitalia-Hymen- white discharge present of vagina. Taken for smear examination. Uterus-empty. No evidence of pregnancy. Normal size."

Ex.P.11 is the Postmortem Certificate. She gave the opinion that the death was due to shock and hemorrhage due to the head injury. She has further opined that the said injuries could have been caused by a weapon like M.O.1-aruval.

[G] P.W.14, continuing the investigation, recovered the blood stained cloth from the body of the deceased under the cover of Mahazar. On 14.09.2010, at 15.00 hrs., the accused has gone to P.W.7-Village Administrative Officer. It is alleged that on such appearance, the accused gave a voluntary confession. P.W.7 recorded the same verbatim as spoken by the accused. Then, he took the accused along with the said confession and produced the accused before P.W.14, the Investigating Officer. On such production, P.W.14 arrested the accused. The accused gave a voluntary statement in the presence of P.W.7 and another witness, the admissible portion of which is marked as Ex.P.4. In the said confession, he disclosed the place where he had hidden the arvuval [M.O.1]. In pursuance of the said disclosure statement, he took the police and the witnesses to the place of hide out, viz., to the shed of one Thavakumar, and produced M.O.1-arvuval which was recovered under the cover of Mahazar [Ex.P.5] and on returning to the Police Station, P.W.14 forwarded the to the Court for judicial remand and also handed over the material objects under Form 95. On completion of the investigation, P.W.14 laid charge-sheet against the accused.

[H] 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 16 witnesses were examined, 25 documents and 7 material objects were also marked.

[I] Out of the said witnesses, P.W.1 is the mother of the deceased and she has stated that on the day of occurrence, she had instructed the deceased to take the cattle for grazing. She has further stated that about 13.00 hrs. she received a telephonic message that the deceased was dead. She has also spoken about the complaint made by her to police. P.W.2 is stated to have witnessed the occurrence. According to him, on hearing the alarm raised by the deceased, when he rushed into the Eucalyptus grove, he found the accused attacking the deceased with arvuval. P.W.3 also hails from Edamelaiyur village. He has stated that on 12.09.2010, he heard the noise from within the Eucalyptus grove and when he rushed there, he found the deceased lying with cut injuries. P.W.4 has stated that on 12.09.2010, somewhere he found the accused and he was under so much of tension. P.W.5 has stated that he took the deceased to the hospital for treatment ; but on her way, she breathed her last. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the blood stained earth and sample earth from the scene of

crime. P.W.7 is the Village Administrative Officer, who has stated that on 14.09.2010, at about 14.00 hrs., the accused appeared before him and gave a voluntary confession. He has further stated that he reduced the same into writing and thereafter, went to the Police Station and produced the accused at 16.15 hrs before the Investigating Officer. P.W.8 is the learned Judicial Magistrate No.II, Mannargudi. He has stated that he recorded the statements of P.Ws.1 to 4 under section 164 Cr.P.C., as requested by the Investigating Officer. P.W.9 has spoken about the postmortem conducted by her and her final opinion regarding the cause of death. P.W.10 has stated that he examined the material objects which were sent for chemical examination and found human blood on all the material objects including aruval. P.W.11 has stated about the registration of the case on the complaint [Ex.P.1] of P.W.1 and forwarding of the same to the Court concerned. P.W.12 is the Constable attached to Vaduvor Police Station, who carried the FIR to the Court and handed over the same to the learned Magistrate. P.W.13 is yet another Constable who has stated that he took the dead body of the deceased to the hospital and handed over the same to the doctor for conducting postmortem. P.W.14 has spoken about the investigation done by him and the filing of the final report.

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

4. Having considered all the above, the Trial Court convicted and sentenced him for the offence u/s.302 IPC, as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant/accused is before this Court.

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

6. As we have narrated herein above, the prosecution relies on the eyewitness account of P.W.2 mainly. P.W.2 has stated that when he was grazing his cattle somewhere near the place of occurrence, he heard the cry of the deceased and when he rushed into the Eucalyptus grove, he found the accused attacking the deceased with aruval and on seeing him, the accused escaped from the scene of occurrence. But, unfortunately, during the course of investigation, P.W.2 had stated that he did not witness the occurrence at all. According

to his earliest statement, on hearing the noise from the Eucalyptus grove, when he went inside the grove, he found the deceased lying with injuries. He has not stated anything else about the occurrence. P.W.2 has been duly contradicted with this earliest statement. Similarly, when he was examined u/s.164 Cr.P.C., he has not stated that he witnessed the occurrence. In the 164 Cr.P.C. statement, he has stated that on hearing the alarm, he rushed into the Eucalyptus grove, where he found the deceased lying with injuries. This statement is also duly contradicted. For the first time in the Court, during evidence, he has improved the case and has stated as though he had witnessed the occurrence and as though the accused attacked the deceased. Therefore, no weightage is to be given to his evidence as it is only an improvement.

7. Apart from that, according to the case of the prosecution, P.W.3 has stated that he found the deceased and the deceased sitting together and talking. He has stated during cross-examination that he did not know anything about the occurrence. Therefore, his evidence does not help the prosecution in any manner.

8. Further, the prosecution relies on the evidence of P.W.7-Village Administrative Officer, who has stated that the accused appeared before him on 14.09.2010 at 15.00 hrs and made a confession. Though he has stated that the oral confession of the accused was reduced to writing by him and the same was also handed over to the police at 16.15 hrs., the same has not seen the light of the day. The said confession has been suppressed and the same has not been produced in the evidence. Absolutely there is no explanation as to what had happened to the said extra-judicial confession said to have been given by the accused. In the absence of any explanation for the suppression of the said vital document, we cannot attach any weightage to the evidence of P.W.7.

9. The learned counsel for the appellant would submit that the Trial Court has convicted the accused only on surmise. As we have already pointed out, the evidence of P.Ws.2, 3 and 7 do not advance the case of the prosecution in any manner and once their evidences are rejected, there is no other evidence on record to prove the guilt of the accused. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts. It is rightly contended by the learned counsel for the appellant that the Trial Court has convicted the accused, on mere suspicion. It is too well settled that suspicion, however strong, it may be, shall not take the place of proof. In such view of the matter, the appeal deserves to be allowed and the accused is entitled for acquittal.

10. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant by the Trial Court for the offence u/s.302 IPC in SC.No.61/2011, vide judgment dated 08.03.2013, are hereby set aside and the appellant/accused is acquitted of the charges leveled against him.

11. Since it is reported that the appellant is on bail, the bail bonds executed by him, shall stand discharged. Fine amounts if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Judicial Magistrate No.I,
Mannargudi.
2. Do- Through The chief Judicial Magistrate,
Tiruvarur.
3. The District Judge
Thiruvarur.
4. The Inspector of Police
Vaduvoor Police Station
Tiruvarur District.
5. The Superintendent,
Central Prison, Trichy.
6. The District Collector,
Tiruvallur.
7. The Director General of Police,
Mylapore, Chennai 04.
8. The Public Prosecutor
High Court, Chennai.

CRL.A.No.250 of 2013

TEJ(CO)
CA(28.04.2016)