

BAIL SLIP

The Appellants/Accused 1 & 2 namely R.Navaneetha Krishnan(A1) S.Ravikumar (A2) were directed to be released on bail as per order of this Court dated 06/06/2013 made in CrI.MP.No.1/2013 in CrI.A.No.257/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 01.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.257 of 2013

1.R.Navaneetha Krishnan

2.S.Ravikumar Appellants/Accused 1 & 2

vs.

State,by
The Inspector of Police,
Mangalam Police Station,
Crime No.1288 of 2011,
Mangalam,
Tirupur District.

.... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 19.02.2013 passed by the learned II Additional District and Sessions Judge, Tirupur, in S.C.No.103 of 2012.

For Appellant : Mr.P.M.Duraiswamy

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

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

The appellants in this appeal are the accused in Sessions Case No.103 of 2012, on the file of the learned Additional

District and Sessions Judge, Tirupur. They stood charged for offences punishable under Sections 302 and 392 of the Indian Penal Code. The Trial Court, by judgement dated 19.02.2013, convicted the appellants/accused both under Sections 302 and 392 of the Indian Penal Code, and sentenced them to undergo life imprisonment and also imposed a fine of Rs.2000/- each, in default, to undergo rigorous imprisonment for six months for the offence under Section 302 of IPC, and to undergo 10 years rigours imprisonment and also imposed a fine of Rs.1500/- each, in default, to undergo rigorous imprisonment for six months for the offence under Section 392 of IPC. Challenging the above said conviction and sentence, the appellants/accused have filed this present appeal.

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

(i) The deceased one Saraswathi, mother of P.Ws.1 and 6, was aged about 70 years. At the time of occurrence, she was residing alone at Pannaiyar Thottam, Chettipalayam, and P.Ws.1 and 6 were living separately in the same village. On 26.04.2011, P.W.1 went to the house of the deceased, spent half an hour with her and then left her house. Again on 27.04.2011, at about 6.30 am., he went to the house of the deceased but she was not present in the house. So, P.W.1 searched for the deceased and found her chappel near a well. On suspicion, he looked into the well and found the body of his mother inside the well, in between the two pipes attached to pump sets. Immediately, he informed his brother P.W.6 and others then lifted the dead body out of the well and found injuries on her forehead, jaw and knee. P.W.1 also found that 5 sovereign of gold chain belonged to the deceased was missing. Thereafter, he lodged a complaint Ex.P1 before the respondent police at about 12.00 pm.

(ii) P.W.12, Special Sub Inspector of Police, attached to the Mangalam Police Station, received the compliant and registered a case in Crime No.1288 of 2012 under Section 174 Cr.P.C. and sent the FIR Ex.P11 to the higher officials and the Judicial Magistrate Court. After registering the case, P.W.12 visited the scene of occurrence and prepared observation Mahazar Ex.P3 and drew rough sketch Ex.P12 in the presence of witnesses. He conducted inquest over the dead body in the presence of panchayatars. He examined P.Ws.1 to 3 and other witnesses and recorded their statements. Thereafter, he sent the dead body to the hospital for post-mortem through P.W.13, Head Constable. During the investigation of the case, he found that it is a case of murder and altered the case into one under Sections 302 and 392 IPC and sent the altered report, Ex.P14, to the Judicial Magistrate Court. Then, P.W.14, the Inspector of Police, took up the investigation.

(iii) In the meantime, the second accused appeared before P.W.5, a resident of Chettipalayam, and gave extra-judicial confession before him. In the confession statement, the second accused stated that he, along with the first accused, murdered the deceased, stolen the gold chain belonged to the deceased, pledged the jewels and the first accused gave Rs.20,000/- to him. P.W.5, after recording such confession, produced the second accused before the Inspector of Police along with his report Ex.P2. P.W.14 arrested the second accused and recorded his voluntary confession statement. The admissible portion of the said statement is Ex.P24. Based on the disclosure statement, P.W.14 seized Rs.17,000/- M.O.3 (series), under Ex.P21. He arrested the first accused at Palladam Bus Stand, near Aavin, and on such arrest, the first accused voluntarily gave a confession statement Ex.P22, which was recorded in the presence of witnesses and the first accused also submitted Rs.17,000/- M.O.3 and the same was recovered under Ex.P21 Mahazar. Thereafter, based on the disclosure statement of the accused, P.W.14 recovered a sum of Rs.35,000/- and iron rod M.O.2 from his house under Ex.P25 seizure mahazar. Thereafter, the first accused identified the finance company, where he pledged the jewel and P.W.14 seized the gold chain M.O.1 under Ex.P26 in the presence of witnesses from the finance company.

(iv) In the meantime, P.W.11, Doctor, working in Thiruppur Government Hospital, conducted post-mortem on the dead body and he found the following injuries.

"External Injuries:

- 1) 5 cm x 1 cm red coloured abrasion over right side of the forehead. 5 cm above the right eye (Lateral 1/3).
- 2) 3 cm x 1.5 cm abrasion over right cheek (Red in colour).
- 3) 3 cm x 1 cm red coloured abrasion over right side of upper lip, 1 cm above lip margin.
- 4) 2 cm x 1 cm red coloured abrasion in middle part of right side of the nose.
- 5) 3 cm x 1.5 cm x 0.2 cm contusion over right side of mandible 3 cm latero inferior to angle of mouth. contusion red in colour.

Internal Examination: Thorax and neck No fracture of ribs. Heart congested. 15 ml of clotted blood in chamber both lung congested. On pressure, blood stained frothy discharge present in cut section. Hyoid bone intact.

Abdomen: The stomach contain about 700 gm of partially digested food particle. Liver, spleen and kidney congested. Small intestine time distended with Gas. Uterus normal in size and cavity empty.

Head: a subscalpad contusion of 10 cm x 7 cm over left side of head in temperoparietal region. It situated above the left ear. 10 cm from centre of head in parietal region. 10 cm from centre of occipital region. Both intact. Membrane intact. Brain congested.

He has given post mortem certificate Ex.P8. Subsequently, P.W.14 examined the witnesses and recorded their statements. After completing the investigation, he filed a charge sheet for the offence under Sections 302 and 392 of IPC against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 14 witnesses were examined and 28 documents and 5 material objects were marked.

4. In this case, P.W.1 is son of the deceased. He found the dead body of the deceased inside the well and also given the complainant Ex.P1. P.W.2-Shanmugasundaram, is a resident of Chettipalayam Village and he has also seen the dead body in the well. P.W.3 is also a resident of Chettipalayam Village and he saw the dead body in the well and found the chappels of the deceased near the well. P.W.5 is another resident of Chettipalayam Village and he know both A-2 and the deceased. According to him, the second accused appeared before him and gave extra-judicial confession. P.W.6 is the another son of the deceased and brother of P.W.1 and he is also a friend of first accused. According to him, on 26.04.2011 at about 7.00 pm., he saw both the accused consuming liquor and he also joined with them. Thereafter, they took the bike of P.W.6 for purchasing liquor. Once again, he consumed liquor with them and thereafter the accused left for home. P.W.7 is Mahazar witness. P.W.8 is the wife of P.W.1 and daughter-in-law of the deceased. She identified M.O.1 chain, worn the deceased. P.W.9 is the Assistant Branch Manager, working in Mallapuram Gold Finance and Leasing limited. He has spoken about the pledging of jewel (M.O.1) by A-1 on 29.04.2011, and also issuance of receipt for the same. P.W.10 is living near the house of the deceased. He saw the accused taking brandy bottles near the well and after some time both accused leaving place. P.W.11 is the Doctor, who conducted post mortem and issued post mortem certificate Ex.P8. P.W.12, the Special Sub Inspector of Police, has spoken about registration of case on the basis of the complaint given by P.W.1, preparation of observation mahazar and rough sketch and conducting preliminary investigation and alteration of FIR into Sections 302 and 392 of IPC. P.W.13 is the Head Constable. He has spoken about taking the dead body of the deceased to the hospital for post-mortem. P.W.14 Is the investigation officer,

who investigated the case and filed the charge sheet for the offence under Sections 302 and 392 of IPC against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgement. Challenging the above conviction and sentence, the accused are before this Court.

7. We have heard Mr.P.M.Duraiswamy, learned counsel for the appellants and Mr.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned counsel appearing for the appellants would submit that the prosecution did not prove the circumstances relied on by them with clinching evidence. The evidence of P.W.10, said to have last seen the accused and deceased together, cannot be believed, and recovery of M.O.1 chain was also not properly identified. Hence, the accused cannot be found guilty for the offence under Section 392 of IPC and consequently under Section 302 IPC. He further submitted that the body of the deceased was floating in the well and hence the occurrence should have taken place much earlier than the time stated by the prosecution. Hence, in the absence of any other corroborating materials, the Court below, has wrongly convicted the accused based on the recovery of chain alone.

9. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved all the circumstances clinchingly and M.O.1 chain belonged to the deceased was recovered on the basis of the disclosure statement of A-1, which alone is sufficient to noted the accused guilty under Sections 392 and 302 IPC.

10. It is a case of circumstantial evidence and the prosecution has strongly relied upon three main circumstances. The first and the foremost circumstances is that both the accused were found near the scene of occurrence at about 9.15 p.m. P.W.10 is a resident of Chettipalayam Village and residing near the well where the dead body was found. PW10 has deposed that he found the accused consuming liquor near the well. It is the case of prosecution that A-2 is the relative of the deceased and A-1 and A-2, are close friends and they know the deceased very well. The evidence of P.W.10 is not, in any way, shattered by way of cross examination.

11. The next important circumstance is recovery of jewels. Based on the disclosure statement of A-1 and A-2, gold chain M.O.1 and money were recovered. P.W.9, who is the Assistant Branch Manager of Manapuram Gold Finance and Leasing Limited, in his evidence has stated that on 29.04.2011, i.e., two days after the occurrence, the first accused came to their office and pledged M.O.1 gold chain and received a sum of Rs.70,000/- and he issued a receipt for the same. The above said gold chain and receipt were recovered from the finance company under Ex.P.5. At the time of pledging the jewel, A-1 has given 'voter I.D. card' which, was marked as Ex.P.6, and the same was also recovered from the above finance company. Hence, it is clearly established that A-1 alone had pledged the jewel and the said jewel was also identified by P.W.8, the daughter-in-law of the deceased.

12. The question now remains to be decided is whether a presumption of guilt could be drawn against the accused on the basis of recovery made based on his disclosure statement. The Hon'ble Supreme Court Judgment in TULSIRAM KANU Vs. THE STATE reported in A.I.R. 1954 S.C. 1, has held as follows:-

"The presumption permitted to be drawn under Section.114, illu. (a), Evidence Act, has to be read along with the important time factor. If ornaments or things of the deceased are found in the possession of a person soon after the murder, a presumption of guilty may be permitted. But, if several months expire in the interval, the presumption may not be permitted to be drawn having regard to the circumstance of the case."

In yet another judgment, reported in RONNY ALIAS RONALD JAMES ALWARIS AND OTHERS Vs. STATE OF MAHARASHTRA, [(1998) 3 SCC 626], the Hon'ble Supreme Court has held as follows:

"Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased. (Mr.Mohan Ohal, Mrs. Ruhi Ohal and Mr.Rohan Ohal) which possession has remained unexplained by the appellants, the presumption under Illustration (a) of Section 114 of the Evidence Act will be attracted. It needs to discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would, therefore, but that the appellants and no one else had committed the three murders and the robbery."

13. In the instant case, it is clearly established by the prosecution that M.O.1 gold chain, which belonged to the deceased, was pledged by the first accused in the finance company within two days of the occurrence. Hence, the presumption under Section 114(a) of the Evidence Act can be raised that it was the accused, who had committed the crime. The appellants/accused have not come forward with any plausible explanation for the possession of the jewel. The said presumption raised under Section 114(a) of the Evidence Act is of course rebuttable, but the said presumption remains unrebutted. Hence it clearly proves the guilt of the accused.

14. In such circumstances, there is no merit in this appeal and the same fails and consequently it is dismissed. The conviction and sentence passed in S.C.No.103 of 2012 by the learned Additional District and Sessions Judge, Tirupur, stands confirmed. If the appellants/accused are not in custody, the trial Court is directed to take appropriate steps to secure them and commit them to prison so as to serve the sentence imposed on them.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge,
Tirupur.

2.The Inspector of Police,
Mangalam Police Station,
Mangalam,
Tirupur District.

3.The Public Prosecutor,
High Court,
Madras.

4. The Judicial Magistrate NO.II
Tirupur

5.do-Thro The Chief Judicial Magistrate
Tiruppur

6.The Superintendent
Central Prison, Coimbatore

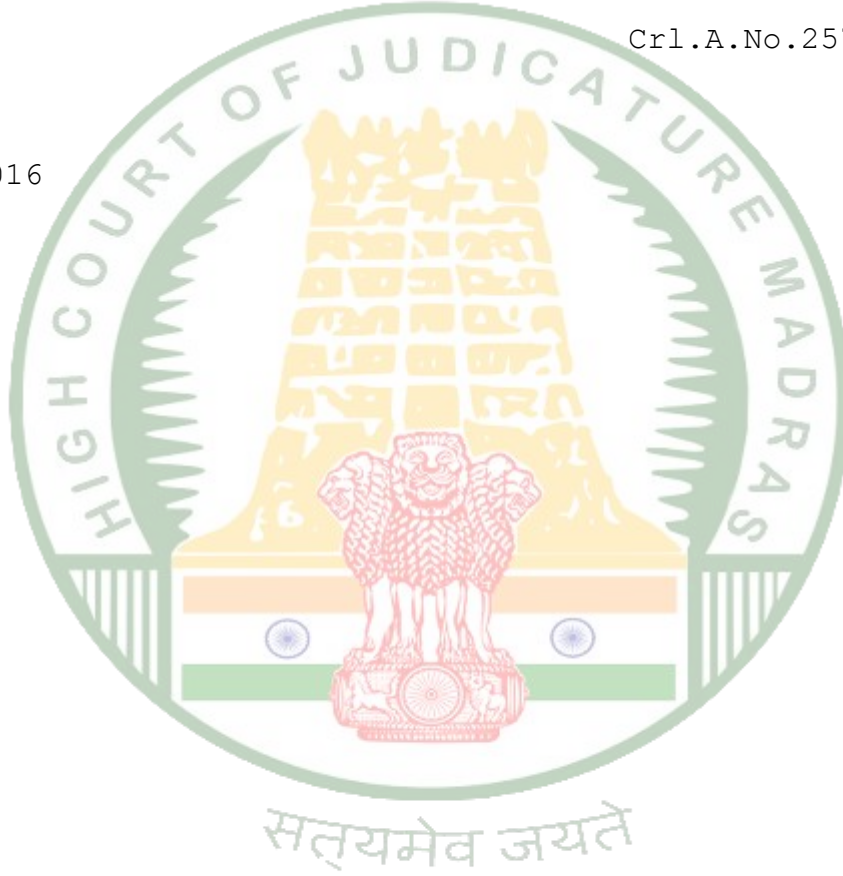
7.The District Collector
Tiruppur District

8.The Director General of Police
Mylapore Chennai-4

9.The Section Officer
Criminal Section High Court Madras

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