

BAIL SLIP

The Appellant/Petitioner/Accused namely, Rathinam was directed to be released on bail as per the Order of this Court dated 16.04.2013 in Crl.M.P.No.1 of 2013 in Crl.A.No.258 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE P.KALAIYARASAN

CRL.A.No.258 of 2013

Rathinam ... Appellant/Sole Accused

Versus

The State represented by
The Inspector of Police
Kandhikuppam Police Station
Krishnagiri District. ... Respondent/Complainant

Appeal filed under section 374 [2] Cr.P.C., against the order and judgment dated 12.03.2013 made in SC.No.45/2012 on the file of the learned Principal Sessions Judge, Krishnagiri.

For Appellant : Mr.A.Balamurugan,
Legal Aid Counsel assisted by
Mr.Mukund R.Pandiyan

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.45/2012 on the file of the learned Principal Sessions Judge, Krishnagiri. He stood charged for the offences u/s.302, 201 read with 302 IPC. By judgment dated 12.03.2013, the Trial Court convicted the appellant/accused for the offence u/s.302 IPC and sentenced him to undergo imprisonment for life and convicted him u/s.201 read with 302 IPC and sentenced him to undergo two years rigorous

imprisonment. The sentences were ordered to run concurrently. Challenging the said conviction and sentences, 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 Mrs. Banumathi. The appellant/accused is her husband. They were residing together as husband and wife at Kachalikannur village in Krishnagiri District. They had no issue. In due course of time, the accused had developed suspicion about the fidelity of the deceased. This resulted in frequent quarrels between the accused and the deceased. Four days prior to the occurrence, according to the case of the prosecution, the accused alleged that he found the deceased with one Venkateswara Rao in bathroom in a compromising position. The accused called P.W.1, the father of the deceased, over phone and informed him to come and take back his daughter/deceased as she has started leading a wayward life. But her father sent P.W.3, the maternal uncle of the deceased, to go over to the house of the accused and to mediate between the accused and the deceased. Accordingly, P.W.3 went to the house of the deceased and compromised the issue between them.

[B] Thereafter, on 11.03.2010, it is alleged that the accused again questioned the deceased, as to where she had gone before he could return to his house. She told that she had gone with Venkateswara Rao and had sex with him. This infuriated the accused. He attacked her with hands and legs repeatedly. After the deceased had fallen senseless, he poured kerosene and set fire to her. Ultimately, on account of 95% of burn injuries sustained by her, the deceased breathed her last. The accused immediately fled away from the scene of occurrence.

[C] P.W.1, the then Village Administrative Officer of Chinnamattarapalli village, received information on 11.03.2010 at 10.00 hrs, that the deceased was lying with burn injuries all over her body at her house. He immediately rushed to the house of the deceased. He found the deceased lying dead, but the accused was not there. Thereafter, he proceeded to Kandhikuppam Police Station and made a complaint under Ex.P.1.

[D] P.W.8, the then Sub Inspector of Police attached to the said Police Station, on receipt of the said complaint from P.W.1, registered a case in Cr.No.62/2010 for the offence u/s.174 Cr.P.C. [suspicious death]. Ex.P.16 is the F.I.R. He forwarded the documents, viz., Ex.P.1 [complaint] and Ex.P.16 [F.I.R] to the Court, which were received by the learned Judicial Magistrate at 17.15 hrs. on 11.03.2010.

[E] The case was taken up for investigation by P.W.9, the Inspector of Police attached to Kandhikuppam Police Station. He proceeded to the place of occurrence on 11.03.2010 and prepared the Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.17] in the presence of P.W.1 and another witness. P.W.9 recovered a white colour plastic can [M.O.1] and a black coloured woolen blanket [M.O.2] in the presence of the same witnesses under a Mahazar. He forwarded a copy of the FIR to P.W.7, the Revenue Divisional Officer, requesting him to conduct inquest on the body of the deceased. P.W.7, accordingly held inquest on the body of the deceased in the presence of the Panchayatdars and witnesses and prepared the Inquest Report [Ex.P.14]. P.W.7 also examined P.Ws.2 to 4 and few more witnesses and recorded their statements. He then forwarded the body of the deceased for postmortem.

[F] P.W.6, the then Assistant Surgeon attached to the Government Hospital, Hosur, conducted autopsy on the dead body of the deceased on 11.03.2010 at 09.30 hrs. She found 95% burn injuries on the body of the deceased. She gave opinion that the death was due to the burn injuries and the death would have occurred 22 to 26 hours prior to autopsy. Ex.P.12 is the Postmortem Certificate.

[G] When the investigation was in progress, the accused appeared before P.W.5, the Village Administrative Officer of Patrahalli Village on 13.03.2010 at 09.45 a.m. On such appearance, he wanted to make a confession regarding the death of his wife. After having ascertained that the accused was in a mood to voluntarily confess, P.W.5 allowed him to confess orally, which P.W.5 reduced into writing. Ex.P.6 is the said confession. P.W.5 prepared a Special Report under Ex.P.7 and along with Exs.P6 and P7, he took the accused to the Police Station and produced him before P.W.9. P.W.9 arrested the accused around 12.00 noon. On such arrest, he made voluntary confession, in which he disclosed the place where he had hidden the cellphones belonging to the deceased. In pursuance of the said disclosure statement, the accused took the police and the witnesses to the place of hide out, viz., behind the house of one Rajam from where he produced two cellphones [M.Os.3 and 4] were recovered under a Mahazar. On returning to the Police Station, P.W.9 forwarded the accused to the Court for judicial remand and also forwarded the material objects to the court. At his request, the material objects were sent for chemical examination, which revealed that kerosene was found on the material objects. He also altered the offence to u/s.302 IPC and sent the altered FIR [Ex.P.18] to the Court concerned. On completion of the investigation, laid charge sheet against the

accused for the offences u/s.302, 201 IPC and u/s.4[a] of the Dowry Prohibition Act on 03.09.2010.

[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 9 witnesses were examined, 21 documents and 4 material objects were also marked.

[I] Out of the said witnesses, P.W.1, the Village Administrative Officer, has stated that he gave complaint after verifying the fact that the deceased was lying dead with burn injuries. P.W.2 is the brother of the deceased and he has spoken about the frequent quarrels between the accused and the deceased. He has also stated that four days prior to the occurrence, the accused called P.W.2's father over phone and informed him that he found the deceased and one Venkateswara Rao in compromising position in the bathroom. He has further stated that he wanted his father-in-law to come and take the deceased back. However, P.W.2's father has sent P.W.3 to compromise the matter. P.W.3 has also stated so. It is the further evidence of P.Ws.2 and 3 that on 11.03.2010 at 11.00 hrs, they heard that the deceased was lying dead near her house. They have further stated that when they went to the house, the accused was not available. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 has spoken about the extra-judicial confession given by the accused to him on 13.03.2010 at 09.45 a.m. He has further stated that he produced the accused along with the said confession statement before P.W.9. P.W.6, the doctor who conducted autopsy, has given her opinion that the death of the deceased was due to 95% of burn injuries found on the body of the deceased. P.W.7 has spoken about the inquest conducted on the body of the deceased. P.W.8 has spoken about the registration of the case on the complaint [Ex.P.1] made by P.W.1. P.W.9 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. His defence was a total denial. However, on the side of the accused, neither any witness was examined nor was any document marked.

4. Having considered all the above, the Trial Court convicted and sentenced him for the offences 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. This is a case based on circumstantial evidence. The first and foremost circumstance relied on by the prosecution is that the accused had ill-will against the deceased on account of his suspicion over the fidelity of the deceased. This has been spoken by P.Ws.2 and 3. They have stated that the accused, four days prior to the occurrence, had informed the father of the deceased that he found the deceased and one Venkateswara Rao in a compromising position in the bathroom. They have further stated that P.W.3 compromised the matter between the accused and the deceased. After that, the dead body of the deceased was found in the house. But the accused was found missing. The conduct of the accused in absconding from his house until he appeared before P.W.5 [Village Administrative Officer] on 13.03.2010, is inconsistent with the innocence pleaded by him. Absolutely there is no explanation from him as to why he was absconding for such a long time without attending on the deceased and without being present at his house.

7. The next circumstance against the accused is the extra-judicial confession given by him to P.W.5. The learned counsel for the appellant submitted that the so-called extra-judicial confession given by the accused to P.W.5, cannot be true because the accused would not have chosen a total stranger to give such a confession. We do not find any force in the said argument. The reasons for his choosing P.W.5 to confess is found in the confession itself. Thus, for his own reasons, the accused had chosen P.W.5 to confess. We are conscious of the legal position that an extra-judicial confession, if doubtful, cannot be the sole foundation for conviction, unless it draws corroboration from the independent sources and material particulars. Here in this case, we are of the view that the extra-judicial confession given by the accused to P.W.5 is not at all doubtful. Assuming it is doubtful, it can be safely acted upon because it draws corroboration from other sources. The first corroboration comes in the form of the conduct of the accused. According to P.Ws.2 and 3, when he visited the house of the deceased, the dead body of the deceased was lying there, but the accused was not available. It is not the explanation of the accused that he was available in the house at the time of occurrence. In the absence of any such explanation, the conduct of the accused in absconding until he appeared before P.W.5, is adverse to his plea of defence and this act of the accused gives adequate corroboration to the extra-judicial confession. From this, in

our considered view, the prosecution has clearly proved that the accused attacked the deceased and then poured kerosene and set fire, which resulted in her death. In other words, the prosecution has proved that the death of the deceased was caused only by this accused.

8. Now the next question is as to what was the offence committed by the accused by his conduct?

9. In the extra-judicial confession, he has stated that just before the occurrence, he asked the deceased as to where she had gone. For that, the deceased had told him that she went out with one Venkateswara Rao and had sex with him and that was why she returned late to the house. This provoked the accused. He was not armed with any weapon. He attacked her with hands and legs. She fell down and after she became senseless, he poured kerosene and set fire, which resulted in her death. The attacking of the deceased with hands and legs and pouring kerosene and setting fire, took place in one and the same transaction. From this it is crystal clear that the accused was provoked only by the deceased by uttering that she had gone out only to have sex with Venkateswara Rao. This provocation, in our considered view, is not only sudden but also grave. There was also no premeditation. Thus, the act of the accused would squarely fall within the first exception to section 300 IPC, though it would fall under the third limb of section 300 IPC. Therefore, the appellant/accused is liable to be convicted for the offence u/s.304 [Part I] IPC.

10. Now turning to the quantum punishment, the appellant/accused is a poor man and aged person. He had no bad antecedents after the occurrence and he has also not committed any crime. He has got a family to take care of. The occurrence was also not premeditated and he was not armed with any weapon. The provocation is so grave. Having regard to all these mitigating and aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/-, in default, to undergo four weeks rigorous imprisonment, would meet the ends of justice.

11. In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant by the Trial Court for the offences u/s.302 and 201 read with 302 IPC in SC.No.45/2012, vide judgment dated 12.03.2013, are hereby set aside and instead, he is convicted for the offence u/s.304 [Part I] IPC and is sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo four weeks rigorous imprisonment.

12. Since it is reported that the appellant is on bail, the Trial Court shall take steps to secure him and commit him to undergo the period of sentence imposed on him by this Court. The period already undergone by him, shall be given set-off u/s.428 Cr.P.C. The bail bonds executed by the appellant/accused shall stand cancelled.

13. Before parting with the matter, this Court appreciates the role played by Mr.A.Balamurugan, Legal Aid Counsel, in properly projecting the case. The Tamil Nadu State Legal Services Authority, is directed to pay him the remuneration as per norms.

Sd/-
Assistant Registrar(CS III)

//True Copy//

AP

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Krishnagiri.
2. The Inspector of Police
Kandhikuppam Police Station
Krishnagiri District.
3. The Judicial Magistrate No.1,
Krishnagiri.
4. The Chief Judicial Magistrate
Krishnagiri.
5. The Secretary,
Tamilnadu State Legal Services Authority,
High Court, Madras.
6. The Superintendent,
Central Prison, Vellore.
7. The Public Prosecutor
High Court, Chennai.

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.23600

+1cc to Mr.A.Balamurugan, Advocate, S.R.No.24294

CRL.A.No.258 of 2013

SR(CO)

CA(05/05/2016)