

BAIL SLIP

The Appellant/Accused namely Paramasivam, S/o.Arumugam aged 38 years was directed to be released on bail as per Order of this Court dated 25.04.2013 made CrI.M.P.No.1 of 2013 in CrI.A.No.283 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRIMINAL APPEAL No. 283 of 2013

Paramasivam

... Appellant/Accused

Vs.

State: rep. by  
The Inspector of Police,  
Periyanaickenpalayam Police Station,  
Crime No. 500 of 2010  
Coimbatore District.

... Respondent/Complainant

Prayer: Criminal Appeal as against the judgment dated 07.02.2013 made in S.C. No. 217 of 2011 by the learned IV Additional District and Sessions Judge, Fast Track Court No.2, Coimbatore.

For Appellant : Mr.R. John Sathyan

For Respondent : Mr.M. Maharaja  
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C. No. 217 of 2011 on the file of IV Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore. He stood charged for the offences under Sections 364 & 302 I.P.C. By judgment dated 07.02.2013, the Trial Court convicted the appellant under both the charges and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/-, in default to undergo simple

imprisonment for 2 months for the offence under Section 364 I.P.C. and to undergo imprisonment for life and to pay a fine of Rs.1000/- for the offence under Section 302 I.P.C. However, no default sentence was imposed for the offence under Section 302 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(i) The deceased, in this case, is one Mr. Balakrishnan. P.W.1 is his wife. Prior to the marriage, P.W.1 and the deceased were working in a private company known as "PRICOL" in Coimbatore. The accused was also working in the said company for some time. After marriage, P.W.1 resigned her job in the said company. Since her husband Balakrishnan participated in a General Strike of the workers of the said company, he lost his employment. Thereafter, the deceased joined the company of one Baskaran and started manufacturing spare parts for grinders. The accused, who was also an employee of "PRICOL" Company, took voluntary retirement and went to Sullur. The deceased frequently went to Sullur to meet the accused in his house and in course of time, they became friends. While so, the accused developed a suspicion that the deceased had developed illicit intimacy with his wife. A week prior to the date of occurrence, the accused had come to the house of the deceased and told P.W.1 that the deceased was trying to misbehave with his wife and threatened P.W.1 that if the deceased did not mend his ways, he would face dire consequences. About two days prior to the occurrence, at 8a.m., it is stated that the accused had told the deceased over cellphone that he would even go to the extent of killing him, if he tried to misbehave with his wife in future. This is said to be the motive for the occurrence.

(ii) On 01.07.2010, at about 5p.m., the parents of P.W.1 had come to her house. At 8p.m., the deceased had also returned home. While they were so together in the house, at about 9.30p.m., the deceased received a call on his cellphone. After that, the deceased told P.W.1 that the motor cycle of the accused had stopped on the way due to paucity of petrol and that the accused had asked him to buy some petrol and come to the spot immediately. Saying so, the deceased left the house, with an empty water bottle for the purpose of purchasing petrol. Since the deceased did not return, even after half an hour or so, P.W.1 tried to contact him through his cellphone. As she could not reach him on his phone, she informed Sakthivel, a friend of the deceased, about the deceased going to meet the accused and that he was yet to return. The said Sakthivel, at about 10p.m., came to the house of P.W.1 and informed her that her husband Balakrishnan was found lying dead with injuries near GKD Road. Immediately, P.W.1 along with her parents, rushed to the place of

occurrence where she found the deceased lying dead with injuries on his face and neck. It looked as if the deceased had been attacked by a weapon and P.W.1 found a stone lying by the side of the deceased. Thereafter, P.W.1 went to Periyanaickenpalayam Police Station and gave a complaint at 11.30p.m. on 01.07.2010. Ex-P1 is the said complaint.

(iii) P.W.12, the then Sub Inspector of Police, Periyanaickenpalayam Police Station, on receipt of the complaint, Ex-P1, registered a case in Crime No. 500 of 2010 under Section 302 I.P.C. Ex-P13 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate No.VI, Coimbatore, only at 7.30a.m. on 02.07.2010. P.W.12 also forwarded copies of the said documents to P.W.13, the Inspector of Police.

(iv) P.W.13 took up the case for investigation. He proceeded to the place of occurrence at about 12.30a.m. on 02.07.2010 and prepared an Observation Mahazar (Ex-P2) and a rough sketch (Ex-P14) in the presence of P.W.5 and another. At the request of P.W.13, P.W.11 came to the scene of occurrence at 1 a.m. and took photographs of the dead body. Between 1.30.a.m. and 4.30a.m., P.W.13 conducted inquest on the body of the deceased in the presence of Panchayatdhars and witnesses. Ex-P15 is the inquest report. Then, the body was sent to Coimbatore Medical College & Hospital, for postmortem.

(v) P.W.10, the Assistant Professor of Forensic Medicine, attached to Coimbatore Medical College & Hospital, conducted autopsy on the body of the deceased at 1p.m. on 02.07.2010. He found the following injuries:

"The following antemortem injuries noted on the body:

1. Laceration noted on the following regions:

- 5 x 3 cm x scalp deep noted on right postero parietal and occipital region.
- 7 x 3 cm x scalp deep noted on mid parietal region.
- 12 x 10 cm x bone deep noted on left parieto tempo occipital region.
- 3 x 2 cm x scalp deep noted on mid occipital region.
- 3 x 2 cm x skin deep noted on right pre auricular region.
- 2 x 1 cm x muscle deep noted on upper part of right ear lobule.
- 2 x 1 cm x bone deep noted on outer aspect of left eyebrow.
- 3 x 1 cm x skin deep noted on left eyebrow.
- 2 x 1 cm x skin deep noted on left side of neck, 6 cm above to left mid clavicle.

- 2 x 1 cm x bone deep noted on the base of left little finger exposing the underlying fractured bone with surrounding tissue contusion.

2. A vertical cut injury 5 x 1 cm x bone deep noted on mid frontal and root of nose. The wound cutting the underlying muscles, vessels and partially cutting the underlying mid frontal bone.

3. Stab wound 4 x 2 cm x bone deep noted on lower part of left pre auricular region, the wound passing inwards medially along the muscle plane upto 2cm in depth. The tailing of the wound is 3 cm in length passing forward over the anterior aspect of cheek.

4. Horizontal stab wound 3 x 1 x 4 cm muscle deep noted on lower part of left side neck, the medial blunt end is 2cm left to midline, outer sharp end is 12 cm medial to acromine process, on dissection, the wound passes downwards and backwards, piercing the underlying muscles, nerves and vessels including the carotid sheath.

5. Pressure ligature abrasion 14 x 0.5 cm noted on left side upper neck, starting from the midline of neck, the outer end is 2cm below left mastoid, the medial end is 5 cm below to chin. The medial part of the wound is found lacerated measuring 3x0.5 cm x muscle deep. On bloodless dissection of the neck. The underlying muscle of Pressure ligature mark found intermittently contused. Left side sternomastoid muscle found contused over the area of 3 x 0.5cm. Hyoid bone intact.

6. Transverse pressure abrasion 6 x 0.25cm noted on middle of neck, the left end is 4 cm above to the medial end of left clavicle and the right end is 6 cm below to mandible.

7. Transverse pressure abrasion 6 x 0.25cm noted on front of middle of neck, left end is 3cm above to medial end of left clavicle and the right end is 3 cm above to right clavicle.

8. Stab wound 3 x 1 cm x joint deep noted on back of base of right ring finger. The wound passes inwards and piercing the underlying muscles and passes upto the joint.

9. Incised wound 2 x 0.25 cm x muscle deep back of base of right middle finger.

10. Multiple abrasions in varying sizes and shapes noted on back of left hand.

11. Graze abrasion 10 x 4cm noted on lateral aspect and back of left side of lower chests.

On dissection of Scalp, Skull and Dura: Sub Scalpal

contusion 20 x 15 cm noted on left fronto parieto temporo occipital region, the underlying bone found fractured into multiple pieces over the area of 15 x 10 cm and another. Sub Scalpal contusion 15 x 10 cm right occipital and parietal region. Diffuse sub dural and sub arachnoid haemorrhages noted on entire brain. Laceration of brain 5 x 3 x 1 cm noted on left temporal region. Skull base fracture noted on left anterior cranial fossa and left middle cranial fossa.

OTHER FINDINGS:

- Peritoneal and pleural cavities - empty.
- Heart: All chambers contains about few cc of fluid of blood. Coronaries present.
- Stomach contains about 50ml of light yellow colour fluid, no specific smell, mucosa pale.
- Small Intestine: contains 20ml of bile stained fluid, no specific smell, mucosa pale.
- Liver, Spleen, Lungs and Brain, cut section pale.
- Urinary bladder empty."

Ex-P8 is the postmortem certificate issued by him. He gave opinion that the deceased died due to shock and haemorrhage due to multiple injuries sustained by him. He further opined that the injuries would have been caused by hitting with a stone.

(vi) Continuing the investigation, P.W.13 recovered bloodstained earth (M.O.4), sample earth (M.O.3), a pair of slippers (M.O.6), a plastic bottle containing some petrol (M.O.1), a Hero Honda vehicle bearing Registration No. TN 37 AA 0759 (M.O.2) and a bloodstained stone (M.O.5) from the place of occurrence. On 05.07.2010, P.W.13 received information that the accused surrendered before the learned Judicial Magistrate, Kovalur. On 15.07.2010, he obtained orders from the Court and took custody of the accused. While in custody, on 16.07.2010, when the accused was examined in the presence of P.W.s 5, 9 and others, he gave a voluntary confession statement, the admissible portion of which has been marked as Ex-P4. Pursuant to the said statement, on 17.07.2010, he took the police party and the witnesses to a bush near a transformer in Vadapuram and produced a bloodstained stone (M.O.7), which was recovered, in the presence of same witnesses, under Ex-P5. Thereafter, a knife (M.O.8), an accelerator wire (M.O.9) and bloodstained shirt of the accused (M.O.10) were recovered from the house of the accused, in the presence of P.W.s 5 and 9 under Ex-P-6. In the presence of the same witnesses, the Yamaha motorcycle (M.O.11) of the accused also came to be recovered under Ex-P7. P.W.13 forwarded the case properties to the Court for chemical

examination. The report revealed that there was human blood on the material objects. On completing the investigation, P.W.13, laid the charge sheet against the accused, on 01.12.2010, for the offences under Sections 364 & 302 I.P.C.

(vii) Based on the above materials, the Trial Court framed appropriate charges as detailed in the first paragraph of the judgment and the accused denied the same.

(viii) In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 18 documents and 14 material objects were marked. Out of the said witnesses, P.W.1, the wife of the deceased, has spoken about the motive and the fact that at 9.30p.m., on 01.07.2010, the deceased left the house on receiving a call from the accused. P.W.2 is the younger brother of the deceased. He has stated that he came to the place of occurrence after hearing about the same. P.W.3 is the elder brother of the deceased and P.W.4 is the father-in-law of the deceased, who have stated that they went along with P.W.1 to the place of occurrence and found the dead body and that thereafter, P.W.1 went to the Police Station and lodged a complaint. P.W.5 has spoken about the preparation of Observation Mahazar and rough sketch and also the recovery of M.O.s 1 to 6 from the place of occurrence. P.W.s 6, 7 and 8 are vital witnesses for the prosecution. P.W.6, a cashier in Rangasamy Naidu & Sons petrol bunk, has stated that on 01.07.2010, between 9 and 10p.m., when he was in the petrol bunk, he saw the accused and the deceased together on a motorcycle and that they bought petrol in a plastic bottle. When enquired, they told him that as the motorcycle of the accused had got stuck near GKD road, they came to buy petrol. P.W.7, who is an employee of a tea shop, near Periyanaickenpalayam Police Station, has stated that on 01.07.2010, between 9 and 10p.m., the accused and the deceased came to his shop and had tea. P.W.8 is a lorry driver. He has stated that on 01.07.2010, while he was returning home, he saw the accused and the deceased talking at about 10.15p.m. near Duraisamy Garden. P.W.9 is the Village Administrative Officer, who has spoken about the statement made by the accused, while in custody and the consequential recovery of M.O.s 7 to 11. P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the photographs taken at the place of occurrence. P.W.12 has spoken about the registration of the case and P.W.13 has spoken about the investigation done and the filing of final report against the accused.

(ix) When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor mark any document. The defence of the

accused was one of total denial. Having considered all the above, the Trial Court convicted the accused as stated in the first paragraph of the judgment. That is how, the accused is before this Court with this appeal.

3. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

4. This case is based on circumstantial evidence. It is the evidence of P.W.1 that the accused had complained about the deceased misbehaving with his wife and that is stated to be the motive for the accused to murder the deceased. To prove the said fact, except the evidence of P.W.1, there is no other evidence. Assuming that the said fact stands proved, on that score alone, we cannot conclude that this accused caused the death of the victim in this case.

5. In order to prove that this accused caused the death of the victim in this case, the prosecution relies on the evidence of P.W.s 6, 7 & 8. As already stated, P.W.6, a cashier in a petrol bunk, has stated that between 9 and 10p.m., on 01.07.2010, the accused and the deceased came together on a motorcycle for purchasing petrol. Similarly, P.W.7, an employee of a tea shop near Periyanaickenpalayam Police Station, has stated that on 01.07.2010, between 9 and 10p.m., he saw the accused and the deceased together. P.W.8 is a lorry driver, who has stated that when he was returning home, on 01.07.2010, he saw the accused and the deceased talking, at about 10.15p.m. near Duraisamy Garden.

6. Learned counsel for the appellant would submit that these three witnesses had been planted to improve the case of the prosecution, which is evident from the fact that they were examined only on 03.07.2010. We find force in this submission of the learned counsel for the appellant. As already pointed out, the FIR was registered on the night of 01.07.2010 itself, the inquest was held on 02.07.2010 and investigation was going on for the whole day. But, P.Ws. 6, 7 & 8 did not speak anything to the Police, about the above facts spoken to, by them, during trial. There is absolutely no explanation as to why they remained silent for such a long time. It was only on 03.07.2010, according to P.W.13, these three witnesses came forward to inform the above facts to him. This conduct of P.W.s 6 to 8 creates a lot of doubt regarding the veracity of these witnesses. Apart from the evidence of these three witnesses, there is no other evidence, let in by the prosecution, to connect this accused with the death of the deceased. The dead body was found elsewhere around 11p.m. on 01.07.2010. Nobody had seen the movement of the accused and the deceased near the place of occurrence, at or about the time,

when the occurrence had taken place. In cases based on circumstantial evidence, it is absolutely necessary that the circumstances projected by the prosecution should be proved beyond reasonable doubts and such proved circumstances should form a complete chain, without any break and the same should unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. This Court cannot act on mere surmises. Fair Trial, being a fundamental right, guaranteed under Article 21 of the Constitution of India, unless, the prosecution is able to prove beyond reasonable doubts, that it was this accused and this accused alone, who caused the death of the deceased, it shall not be legal for this Court to convict the accused on mere surmises. In this case, by examining these witnesses, the prosecution has only succeeded in creating a strong suspicion against the accused. It is settled law that suspicion, however, strong it may be, cannot take the place of proof.

7. In such view of the matter, we hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and hence, he is entitled for an acquittal.

8. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial court are set aside and he is acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the appellant/accused.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.6,  
Coimbatore.
- 2.The Chief Judicial Magistrate,  
Coimbatore. (For Information)
- 3.The IV Additional District and Sessions Judge,  
Fast Track Court No.2,  
Coimbatore.

4.The Inspector of Police,  
Periyanaickenpalayam Police Station,  
Coimbatore District.

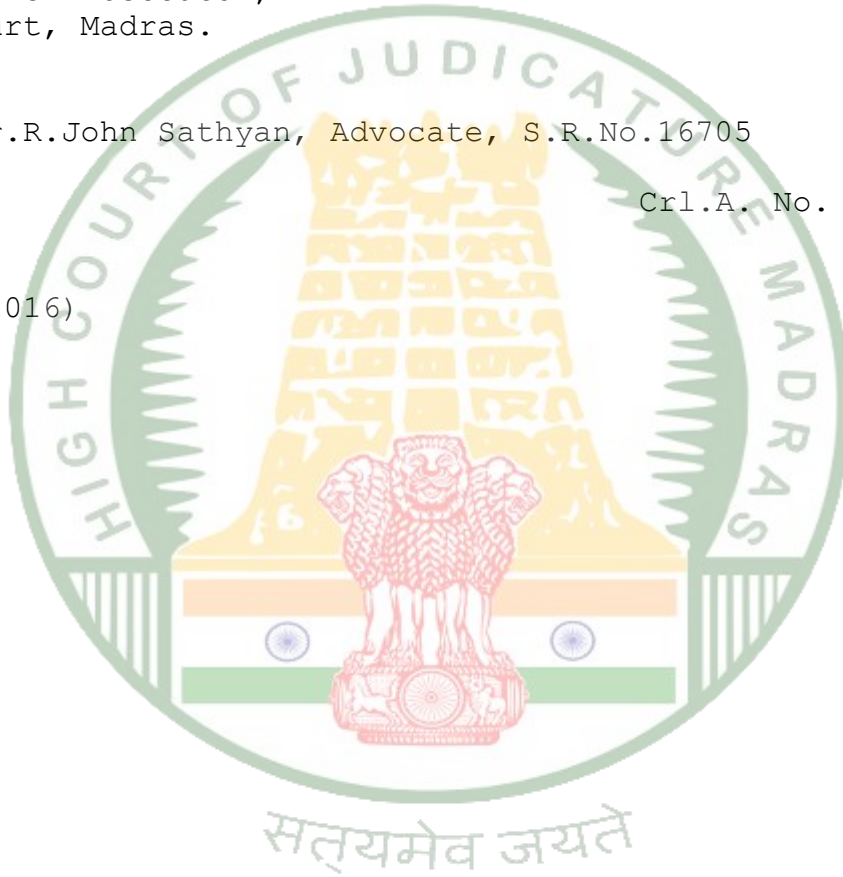
5.The Superintendent,  
Central Prison,  
Coimbatore.  
(In duplicate for Communication  
to the Detenue)

6.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.R.John Sathyan, Advocate, S.R.No.16705

Crl.A. No. 283 of 2013

SAI (CO)  
CA(13.04.2016)



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