

BAIL SLIP

That the Appellant herein/Accused viz., Jagan aged 24 years was directed to be released on bail as per the order of this Court dt.7.6.13 and made in MP.No.1/2013 in CrI.A.No.284/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Criminal Appeal No.284 of 2013

Jagan

.. Appellant/Accused

Vs.

The State rep.by:
Inspector of Police
Vaduvoor Police Station
Thiruvarur District

.. respondent/Complainant

Prayer: CRIMINAL APPEAL filed under section 374 of Cr.P.C. against the Judgment dated 27.2.2013 passed in S.C.No.82 of 2011 on the file of District and Sessions Court, Thiruvarur.

For Appellant : Mr.S.Kingston Jerold

For Respondent : Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by
A.SELVAM, J)

This Criminal Appeal has been directed against the convictions and sentences passed in Sessions Case No.82 of 2011 by the District and Sessions Court, Thiruvarur.

2. The case of the prosecution is that in the year 2008, the accused, by name Jagan has done some masonry work in the house of the deceased Shanmugam. The deceased Shanmugam has worn two Gold rings. On 23.10.2009, in between 3 a.m., and 6 a.m., the accused has stealthily entered into the house of the deceased

and murdered him and subsequently removed the Gold rings. After occurrence, the son of the deceased, by name Aruldoss (P.W.1) has given a complaint to the Sub Inspector of Police (P.W.11) and the same has been registered in Crime No.246 of 2009 under section 174 of the Code of Criminal Procedure, 1973.

3. On 12.2.2011, the accused has voluntarily come to the office of the Village Administrative Officer, Moovanallur (P.W.7) and stated that he committed the alleged offence. The Village Administrative Officer has informed to the police. The police have arrested the accused and the accused has voluntarily given a confession statement and on the basis of admitted portion of confession statement alleged to have been given by the accused, the police have seized two Gold rings from P.W.8 and thereafter, the Investigating Officers have done investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court No.1, Mannargudi and the same has been taken on file in P.R.C.No.16 of 2011.

4. The Judicial Magistrate No.1, Mannargudi, after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the trial court and the same has been taken on file in Sessions Case No.82 of 2011.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed first charge against the accused under Section 302, second charge against him under section 392 r/w 397 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 15 have been examined and Exhibits P.1 to P.19 and Material Objects 1 to 10 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and also after perusing relevant evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo life Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Further, he has been found guilty under section 392 r/w 397 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 10 years with a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences

passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused, as appellant.

9. The sum and substance of the case of the prosecution is that in the year 2008, the accused has done some masonry work in the house of the deceased, by name Shanmugam and on 23.10.2009, between 3 a.m., and 6 a.m., the accused has entered into the house of the deceased with an intention to rob and subsequently attacked him by using a deadly weapon and after his demise, he removed two Gold rings.

10. The entire case of the prosecution hinges upon purely circumstantial evidence. Since the entire case of the prosecution is based upon circumstantial evidence, the Court has to meticulously analyze the available evidence on record.

11. The learned counsel appearing for the appellant/accused has contended that in the instant case, no eye witnesses are available for the purpose of proving that the accused is a real culprit and even the witnesses examined on the side of the prosecution do not support the version of the prosecution and the trial court, without considering the lack of evidence on the side of the prosecution, has erroneously invited convictions and sentences against the appellant/accused and therefore, the convictions and sentences passed by the trial court are liable to be set aside.

12. Per contra, the learned Additional Public Prosecutor appearing for the respondent has contended with great vehemence to the effect that for the purpose of proving the alleged fact that in the year 2008, the accused has done some masonry works in the house of the deceased, the prosecution has let in replete evidence and further on the basis of confession alleged to have been given by the accused, a proper recovery has been made. Under such circumstances, on the side of the prosecution, trustworthy/acceptable evidence is available and the trial court, after considering the overwhelming evidence available on record, has rightly found the appellant/accused guilty under sections 302 and 392 r/w 397 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.

13. As adverted to earlier, the entire case of the prosecution is based upon circumstantial evidence.

14. The son of the deceased, by name Aruldoss has been examined as P.W.1, his wife has been examined as P.W.2 and his mother has been examined as P.W.3 and all of them have spoken about the nature of work done by the accused in the year 2008. The neighbours have been examined as P.Ws.4 and 5 and they have

spoken about the material objects seized from the place of occurrence.

15. It is an admitted fact that the complaint given by P.W.1 has been initially registered in Crime No.246 of 2009 under section 174 of the Code of Criminal Procedure, 1983. After a lapse of two years, P.W.7, the Village Administrative Officer has come to picture and his evidence is that on 12.2.2011, at about 1 p.m., the accused has voluntarily come to his office and stated that he has committed a crime and his further evidence is that he has produced the accused before the concerned Inspector of Police and he has arrested the accused and subsequently, the accused has given a voluntary confession statement. Further, the evidence of P.W.7 is that on the basis of confession alleged to have been given by the accused, the two Gold rings, which have been marked as M.Os.1 and 2 have been recovered from P.W.8, Manohar.

16. The trial court, only on the basis of confession alleged to have been given by the accused, coupled with recovery of M.Os.1 and 2 has invited convictions and sentences against the appellant/accused.

17. It is a settled principle of law that a mere recovery under section 27 of the Indian Evidence Act, 1872 is not at all sufficient to invite convictions and sentences and some more material objects should be available on the side of the prosecution.

18. As pointed out earlier, after a lapse of two years from the date of commission of crime, P.W.7 has come to picture. The specific evidence of P.W.7 is that on 12.2.2011, the accused has voluntarily come to his office and stated that he has committed the crime, but P.W.7 has not at all recorded any statement from the accused. It is a well known principle of law that if a person has appeared before the Village Administrative Officer and thereby admitted any crime, the bounden duty of Village Administrative Officer is to record a statement from him. In the instant case, such a statement is totally absent. Since P.W.7 has failed to record any statement with regard to commission of crime from the accused, the role of P.W.7 has been secured only for the purpose of improving the case of the prosecution.

19. Now the Court has to look into the evidence given by P.W.8, the jewellery shop owner. The evidence given by him is that the Police have come to his jewellery shop and threatened to give two Gold rings and accordingly he has given the same. If really, the accused has either sold or pledged M.Os.1 and 2 in the shop of P.W.8, definitely some documents would have become emerged, but the Investigating Officer has not seized

even a scrap of paper from P.W.8. Further P.W.8 has not virtually supported the case of the prosecution.

20. The trial court, only on the basis of confession alleged to have been given by the accused, coupled with recovery of M.Os.1 and 2, has invited convictions and sentences against the appellant/accused.

21. It has already been pointed out that the role of P.W.7 has been secured subsequently only for the purpose of giving final disposal to the case registered in Crime No.246 of 2009. Further, P.W.7 has not at all done his legal duty. Further, P.W.8 has not supported the case of the prosecution. Since the evidence of P.W.7 and P.W.8 goes out, absolutely there is no evidence on the side of the prosecution so as to point out the alleged crime towards the accused. The trial court, without considering the vital lapses on the part of the prosecution and also without considering that even an iota of evidence is not available on the side of the prosecution so as to prove that the appellant/accused has committed the offence mentioned in the charges, has erroneously invited convictions and sentences.

22. In view of the discussions made earlier, this Court has found considerable force in the contentions put forth on the side of the appellant/accused, whereas the argument advanced on the side of the respondent is sans merit and therefore, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellant/accused in Sessions Case No.82 of 2011 by the trial court are set aside. The appellant/accused is acquitted. Bail bond, if any executed by the appellant/accused, shall stand cancelled. Fine amounts, paid by him, are ordered to be refunded to the appellant/accused forthwith.

सत्यमेव जयते
sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. District and Sessions Court, Thiruvapur.

2.-do- Thro'The Principle Sessions Judge, Tiruvapur.

3. Inspector of Police
Vaduvoor Police Station
Thiruvarur District

4.The Judicial Magistrate
Mannargudi.

5.-do- thro'The Chief Judicial Magistrate, Tiruvarur.

6.The Superintendent, central Prison,
Tiruchirapalli.

7.The District Collector,
Thiruvarur.

8.The Director General of Police,
Mylapore, Chennai.

9. The Public Prosecutor
High Court, Madras.

+1 cc to Mr.S.Kingston jerold, advocate,sr.51972.

ug(co)
krd 22/9

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