

Bail Slip

The Petitioner/Accused V.Jagan @ Jagannathan, aged about 37 years, is directed to be released on bail as per the order of this court dated 26.04.2003 made in MP No.1 of 2013 in CrI.A.No.297 of 2013.

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2016

PRONOUNCED ON : 08.06.2016

CORAM:

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

Criminal Appeal No.297 of 2013

V.Jagan @ Jagannathan ... Appellant/Accused

- Vs -

The State Rep. by its
The Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri District.
(Crime No.894 of 2011) ... Respondent/Complainant

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Principal District and Sessions Judge at Krishnagiri in S.C.No.50 of 2012 dated 02.04.2013.

For Appellant : Mr.R.Sankara Subbu

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, the sole accused in S.C.No.50 of 2012 on the file of the learned Principal Sessions Judge, Krishnagiri, stands convicted for offences under Sections 302 and 404 I.P.C. By judgment dated 02.04.2013, the Trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life (no fine was imposed) for offence under Section 302 I.P.C. and to undergo rigorous

imprisonment for two years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months for offence under Section 404 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:

2.1. The deceased in this case was one Mrs.Venkatamma aged about 56 years. She was a resident of Madanapalli village. She was married to one Mr.Srinivasan. She had two sons and two daughters. All the four children have settled in life after marriage. The deceased had loose character and she used to visit a lodge by name Mohan Lodge at Krishnagiri for the purpose of prostitution.

2.2. On 07.07.2011, during midnight, the deceased came along with the accused to the said lodge. The accused was hardly aged 36 years. P.W.6 was a room boy in the said lodge. They woke him up and wanted him to allot a room to them for their stay. The deceased paid a sum of Rs.500/-, he in turn paid the same to the manager. He took the key of Room No.108, led the deceased and the accused to the said room, opened it and leaving them inside, he came out and slept in the office. The next day morning at 08.00 a.m., he found Room No.108 bolted from outside. He opened the door and found the deceased lying on the bed in the room in a nude position. A white colour petticoat was placed on her private part covering the same. He immediately informed the manager of the lodge and others. Information was passed on to the local Village Administrative Officer (P.W.1).

2.3. P.W.1 went to the said lodge and verified the said fact. On enquiry, he came to know the identify of the deceased, then he went to Krishnagiri Town Police Station at 01.00 p.m. and made a complaint to the police. P.W.9 on receipt of the said complaint from P.W.1, registered a case in Crime No.894 of 2011 under Sections 302 and 380 I.P.C. In the complaint, since the assailant was not known to anybody, the case was registered mentioning in the F.I.R. that the assailant was not known. Ex.P.1 is the complaint and Ex.P6 is the F.I.R. P.W.9 forwarded both the documents to the Court which was received by the learned Judicial Magistrate at 11.20 p.m. on 08.07.2011, i.e. after a delay of about ten and half hours.

2.4. P.W.12 the then Inspector of Police took up the case for investigation. He proceeded to the place of occurrence at 03.00 p.m. on 08.07.2011 and prepared an observation mahazar and a rough sketch in the presence of P.W.1 and another witness. He recovered the material objects found in the room by the side of the dead body numbering 21 at the place of

occurrence under Ex.P3 mahazar. Then, he conducted inquest on the body of the deceased. Ex.P13 is the inquest report. P.W.12 and the panchayadars had come to a preliminary conclusion that the deceased would have died while engaged in sexual intercourse with a man while she was fully drunk and they also preliminarily concluded that the death would have been a natural one. The body was then sent for postmortem.

2.5. P.W.11 conducted autopsy on the body of the deceased on 09.07.2011 at 3.30 p.m. she found the following injuries.

"External injuries: (1) Ear lobe on both side was torn by 1/5 c.ms. length and the margin of the earlobe is irregular with blood stain. (2) lacerated injury over the lip 1 x 1/2 x 1/2 cms. No external injury over the face and neck was made out. Some places skin was peeled and blistered. public area is completely shaved and no hair is present. Anal and around the thigh area no external injuries is seen. There is no foreign body seen underneath the nails and both hands.

Internal injuries: Ribs are intact, heart contains 100 ml fluid blood e/s enlarged lungs, hyoid bone intact, stomach 100 ml of partially digested food with alcohol smell. Liver, spleen, kidney - size normal e/s congested. bladder - empty, uterus - normal, skull - intact, brain semisolid base of the skull - intact."

She gave opinion that the deceased would have died of smothering, 36 to 48 hours prior to the commencement of the postmortem.

2.6. After the above medical opinion, P.W.12 altered the case into one under Section 302 I.P.C. On 15.07.2011, P.W.12 arrested the accused at 10.00 a.m. in the presence of P.W.7 and another witness at Krishnagiri Palayapettai Angalamman Temple. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden the blood stained shirt, a pant, and a pair of covering ear studs and a cell phone. In pursuance of the same, he took P.W.12, P.W.7 and another witness to his house and produced blood stained covering ear studs (M.O.22), blood stained shirt (M.O.23), blood stained pant (M.O.24) and cell phone bearing No.8122206307 (M.O.25).

2.7. On returning to the Police Station, he forwarded the accused to the Court and the material objects also to the Court. He collected the clothe materials from the body of the

deceased and forwarded the same also to Court. On his request, the material objects were sent for chemical examination, which revealed that there were bloodstains on the shirt, pillow covers and there was no blood stain found on the ear studs. On completing the investigation, he laid the chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed appropriate charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 20 documents and 25 material objects were marked.

2.9. Out of the said witnesses, P.W.1 the Village Administrative Officer has stated that when he visited the place of occurrence on 08.07.2011, he found the dead body of the deceased in Room No.108 and then he proceeded to the police station and gave a complaint on 01.00 p.m. on the same day. P.W.2 is a friend of the owner of the lodge. It is stated that on information, he visited the place of occurrence and found the dead body in Room No.108. P.W.3 is the manager of Mohan Lodge where the dead body have been found has stated that on 08.07.2011, when he returned to the lodge, at 08.00 a.m. he found the dead body of the deceased at Room No.108. P.W.5 has stated that he was running a motor repair shop at Anna Nagar, Paparapatti village, Krishnagiri. He has stated that on the day of occurrence when the dead body was found in the lodge, the accused came to his shop in a drunken state and behaved in an disorderly manner under the influence of alcohol. At the same time, the police came to the spot and took the accused into their custody. P.W.6 is the room boy of Mohan Lodge. He has stated that on the midnight of the day of occurrence the deceased and the accused came together and the deceased paid a sum of Rs.500/- and wanted a room, he in turn gave the money to the manager and taking the key for Room No.108, he led them to the room, opened the room, upon leaving them inside the room and he came to the office. In the next day morning, he found the dead body of the deceased. P.W.7 has spoken about the arrest of the accused and the consequential recovery of the material objects. P.W.8 is the head of the sniffer dog squad and he has stated that at the request of P.W.12, he went along with a sniffer dog to the place of occurrence. No clue could be obtained from the same. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.W.10 has spoken about the identification parade conducted. According to her, on 04.08.2011 at the request of P.W.12, she conducted test identification parade of the accused. P.W.6 and one Ganesan participated. According to the identification parade proceedings, P.W.6 identified the accused on all the three occasions. P.W.11 has spoken about the postmortem conducted

and his final opinion that the death of the deceased was due to smothering. P.W.12 has spoken about the investigation done and the final report filed by him.

2.10. 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 on his side. His defence was total denial. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

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

4. This is a case based on circumstantial evidence. It is the admitted case of the prosecution that the deceased was of a loose character involved in prostitution. It is also in evidence that the deceased used to visit Mohan lodge frequently for the purpose of prostitution. There is no serious denial of these facts.

5. The next circumstance relied on by the prosecution is the evidence of P.W.6 the room boy. According to him, on 08.07.2011 by about 12.30 a.m., the deceased came to the lodge with the accused. The deceased paid Rs.500/- and wanted a room for them to stay. He has further stated that having received the said amount he handed over the same to the manager and then took them to Room No.108, where they stayed together.

6. The learned counsel for the appellant would vehemently dispute the evidence of P.W.6. According to him, P.W.3 the manager has admitted during cross examination that as has been instructed by the police, everyday they used to send a copy of the register showing the persons who stayed in the lodge on the previous night. He has further stated that whenever any room was booked by any customer, the same would be entered in the appropriate registers and for payment of the tariff, bill would be issued to the parties. Here, in this case, no register has been produced and no such bill has been produced. P.W.3 the manager of the lodge has not stated that he received Rs.5,000/- from P.W.6 for allotting Room No.108. He has not even stated that he was in the lodge during the relevant time. P.W.3, the manager has stated that he returned to the lodge only on the next day morning at 10.00 a.m. for duty and at that time he found the dead body of the deceased.

7. In our considered view, the evidence of P.W.6 is doubtful for two reasons. The first reason is that no record has been produced to prove the stay of the accused in Room

No.108. Further P.W.3 the manager has not at all stated that the accused came to the lodge. Therefore, we find it difficult to make full reliance on the evidence of P.W.6.

8. Thereafter, the accused was allegedly arrested on 15.07.2011 at 10.00 a.m. and based on his disclosure statement, M.Os.22 to 25 were recovered. The learned counsel would submit that this part of the story of the prosecution cannot be true in view of the positive evidence spoken by P.W.5. P.W.5 has stated that on the date of occurrence, when the dead body was found in the lodge, the accused came to his workshop at Paparapatti village in drunken state and behaved in a disorderly manner. He has further stated in his chief examination itself that at that time the police came to the spot and took the accused into their custody and took him to the police station. During cross examination, he has stated that around 10.00 am to 10.30 a.m. on the date of occurrence, the accused was so taken into police custody. Thus, according to the learned counsel, the accused was in police custody from 08.07.2011 onwards. We find no reason to reject the said argument of the learned counsel because it is the positive evidence of the prosecution through P.W.5 that the accused was taken into police custody on 08.07.2011 at 10.00 a.m. itself. Therefore, the arrest of the accused on 15.07.2011 the disclosure statement made on that date and the consequent recovery of M.Os.22 to 25 based on his disclosure statement as spoken to by P.Ws.7 and 12 cannot be believed.

9. It is the case of the prosecution that the deceased was found lying dead and there was no dress on her body indicating thereby that she had sexual intercourse with somebody. A preliminary conclusion was arrived at the time of inquest that the deceased would have died while she was fully drunk due to excessive and forcible sexual intercourse. In order to obviate this doubt and in order to verify the correctness of this allegation, the Doctor who conducted autopsy took vaginal smear and forwarded the same for chemical analysis. But unfortunately, the analysis report of the vaginal smear has not been proved in evidence and the same has been suppressed. Had it been true that the accused visited the lodge, had it been true that he had sexual intercourse with the deceased, certainly the vaginal smear taken could have been used for extracting the D.N.A. so as to prove that it was the D.N.A. of the accused. It was not known as to why even the chemical analyst report of the vaginal smear was suppressed by the prosecution and as to why the D.N.A. examination was not conducted.

10. The Doctor has further opined that the brain of the deceased was found liquefied. Had it been true that the deceased had come to the lodge alive at 12.30 a.m. on 08.07.2011, at the time when the autopsy was conducted on

09.07.2011 at 3.30 p.m. brain would not reached the stage of decomposition viz., liquefaction. P.W.11 has not explained as to how she came to the conclusion that the death could have been occurred 36 to 48 hours prior to the postmortem de hors the fact that the brain was liquefied. The liquefaction of the brain, in our considered view, creates doubt regarding the time of death. We have reasons to infer that the death would have occurred at least 2 to 3 days prior to the time of postmortem.

11. Lastly, the learned public prosecutor relies on the recovery of M.O.22 ear studs from the possession of the accused. But nobody has identified M.O.22 the ear stud as that of the deceased. P.W.4 the daughter of the deceased has not identified the same. There is no evidence at all that lastly the deceased was wearing any ear studs at all. Thus the recovery of M.Os.22 to 25, even assuming that they were recovered based on the disclosure statement made by the accused, that would not be relevant as the link between these material objects and the crime, has not been established. At any rate, in our considered view, the prosecution has not proved the case beyond reasonable doubt. Therefore, he is entitled for acquittal.

12. In the result,

(i) The appeal is allowed; the conviction and sentence imposed on the appellant by the learned Principal District and Sessions Judge at Krishnagiri in S.C.No.50 of 2012 dated 02.04.2013 is set aside and the appellant is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) The bail bond, if any executed, by the appellant / accused, shall stand discharged.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Krishnagiri.

2. The Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri District.

3. The Public Prosecutor,
Madras High Court.

4.The Judicial Magistrate No.1, Krishnagiri

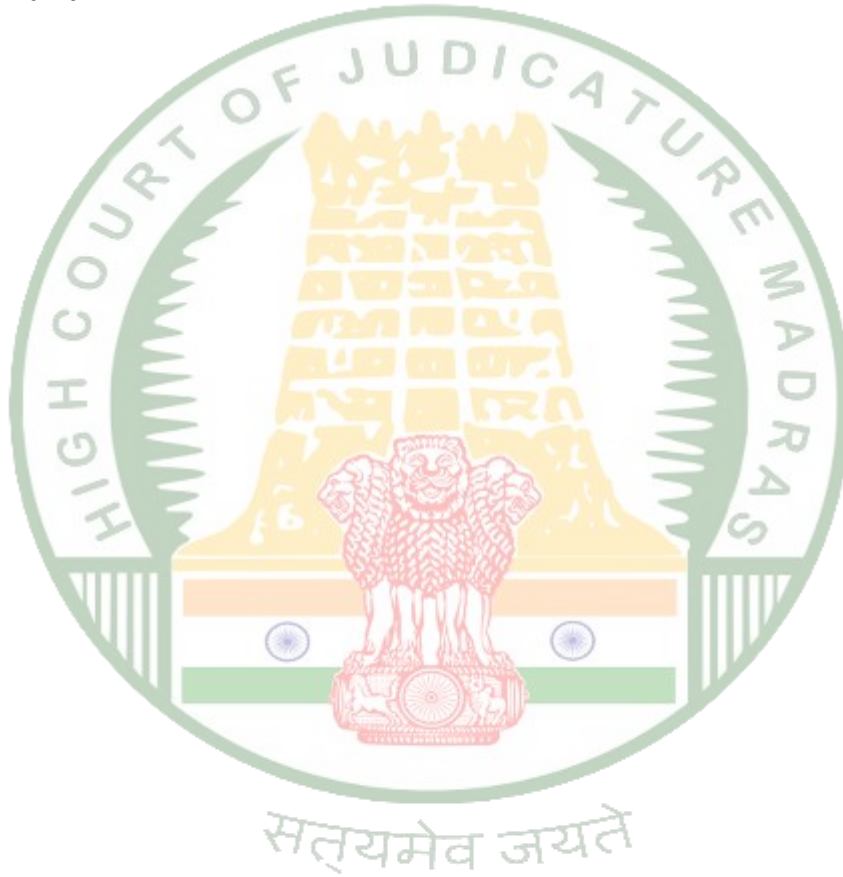
5.The Chief Judicial Magistrate, Krishnagiri

6.The Superintendent, Central Prison, Vellore.

1 cc to M/s.R.Sankarasubbu, Advocate, sr.31146

in CrI.A.No.297 of 2013

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