

Bail Slip

The Appellant/Accused Viz Manjunath, S/o. Krishnappa, as directed to be released on bail in MP.NO.1 of 2013 in Crl.A.No.300 of 2013 as per order of this Court dated 26.04.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.03.2016

CORAM:

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

Crl.A.No.300 of 2013

Manjunath ...Appellant/Accused

vs.

State, rep.by
The Inspector of Police,
Bagalur Police Station,
Krishnagiri District ...Respondent/Complainant
(Crime No.115 of 2005)

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 04.08.2009 passed by the Principal Sessions Judge, Krishnagiri, in S.C.No.226 of 2006.

For Appellant : Mr.R.John Sathyan

For Respondent : Mr.V.M.R.Rajendran, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu, J.)

The appellant is the sole accused in Sessions Case No.226 of 2006, on the file of the Principal Sessions Judge, Krishnagiri. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 4.08.2009, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months. 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:

(a) The deceased in this case was one Mrs. Lakshmidevi. P.W.1 is her husband and P.W.2 is her son. P.W.2 was then studying in a local school. P.Ws.1, 2 and 3 were living together. The accused also belongs to the same village. Six months prior to the occurrence, the accused had developed illicit intimacy with the deceased and the accused and deceased eloped. They did not return for many days. Thereafter, the deceased was located, a panchayat was held and the deceased was thereafter restored to the family fold of P.W.1. Subsequently, on one occasion, when the deceased was taking water in a public tap, it is alleged that the accused came there and again wanted her to elope with him. According to P.W.1, the deceased informed the same to him. This is stated to be the motive for the occurrence.

(b) On 24.6.2005, in the morning itself, P.W.1 had gone for his work. P.W.2 had gone to the school. Thus, the deceased alone was in her house. It is further alleged that at around 12.30 p.m., on the same day, the accused entered into the house of the deceased. Thereafter, at 4.00 p.m., the accused was found sitting on the roof top of the tiled house of the deceased and was removing some tiles. When it was noticed, the accused ran away from the said place. After 5.00 p.m., P.W.2 returned from the school. He found the house bolted from inside. But the door could be opened by unlocking the door from inside by means of a stick being inserted through the gap between the two doors. Accordingly, P.W.2 opened the door and went inside. To his shock, he found the deceased in a half naked position and she was dead. He immediately raised alarm, which attracted the neighbours. P.W.4 and few others rushed to the house of the deceased and found her dead. P.W.4 and the neighbours remained there itself. P.W.1 returned to his house from his work spot by around 7.30 p.m. He came to know about the occurrence. Then he informed all his relatives, including his mother-in-law (P.W.5) of the same village. All the relatives had come in the night itself. The next day morning at 8.00 a.m. he went to the police station and made complaint under Ex.P1. P.W.15, the then Sub-Inspector of Police of Pagalur Police station, on receipt of Ex.P1, registered a case in Crime No.115 of 2005, under Section 302 of the Indian Penal Code, against the accused. Ex.P26 is the First Information Report. He forwarded Ex.P1 to the jurisdictional Court. It was received by the learned Magistrate at 1.00 p.m. on 25.06.2005. P.W.16 took up the case for investigation.

(c) P.W.16 went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.6 and another witness. He recovered a nylon saree from the house of the accused under a mahazar. Then, he conducted inquest on the body of the deceased and then forwarded the

same for postmortem. P.W.11 conducted autopsy on the body of the deceased at Hosur Government Hospital, on 26.6.2005 at 11.30 a.m. He found the following injuries:

"Internal examination:- (1) Hyoid - preserved (2) Ribs - Intact (3) Heart - 250 gms Rt.Chamber of full of blood. Lt.Chamber empty (4) Lungs - Rt. 450 gms Lt.400 gms. c/s congested (5) Liver - 1500 gms c/s.congested (6) Stomach - 150 gms of partially digested ragi and rice (7) Kidney - 150 gms each (8) Spleen 150 gms c/s congested (9) Bladder - empty (10) uterus - normal, - cavity empty (11) skull - normal (12) Membranes - Intact. Haematoma + both sides (13) Brain - blood clot present on both sides (14) Base of skull - intact (1) One kidney (2) A portion of liver with gall bladder (3) Stomach and its contents (4) A loop of small intestine (5) Preservative solution (6) Hyoid bone (7) Blood sample (8) Neck tissue (9) Pubic hair (10) Vaginal liquid"

He forwarded the viscera for chemical examination as well as the hyoid bone. Ex.P8 is the postmortem certificate. According to him, the death was due to Asphyxia.

(d) P.W.16, during the course of investigation, arrested the accused on 18.7.2005, at 4.00 p.m., in the presence of P.W.10 and other witnesses. On such arrest, he disclosed the place where he had hidden the cloth and also the shop where he had pledged the jewels. In pursuance of the said disclosure statement, he took the police and the witnesses to the place of hide-out and produced the half-sleeve shirt and a green colour under garment. Then, he took the police to the shop of P.W.14 and identified P.W.14, a pawn broker, to whom he had pledged the jewels. In pursuance of the same, P.W.14 produced a pair of ear studs, made of gold and a pair of silver anklets (M.Os.1 and 2). P.W.16 recovered the same. On returning to the police station, he forwarded the accused to the Court and handed over the material objects also to the Court. Then, he made a request to the Court to forward the material objects for chemical examination. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge against the accused under Section 302 of the Indian Penal Code. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 17 witnesses were examined, 28 documents and 9 materials objects were marked. Out of the said witnesses, P.W.1 is the husband of the deceased, he has stated about the fact that the accused eloped with the deceased six months prior to the occurrence

and he had further stated that the deceased told subsequently that on an earlier occasion, the accused wanted her to come with him again. He has further stated that when he returned to the house at 7.30 p.m., he came to know about the occurrence on 24.06.2005. P.W.2 is the son of the deceased, who has stated that on the crucial date of occurrence, he had gone to the school and when he had returned to the house at 5.00 p.m., the house was found bolted inside. He removed the lock, entered into the house and found the deceased dead. P.Ws.7 and 9 have stated that at about 12.30 p.m., on the same day, they found the accused going to the house of the deceased. P.Ws.3 and 8 have stated that at 4.00 p.m., on 24.06.2005, they found the accused sitting on the roof top of the tiled house of the deceased, removing some tiles. They have further stated that when they shouted, he ran away from the scene of occurrence. P.W.4 is a neighbour, who has stated that on hearing the alarm raised by P.W.2, when he went to the house of the deceased, he found the dead body. P.W.5 is the mother of the deceased, who has stated that on receiving the information about the death of her daughter, she along with her relatives came to the place of occurrence on the night of 24.06.2005 itself. P.W.6 has spoken about the observation mahazar and the rough sketch prepared and the recovery of material objects, from the place of occurrence. P.W.10 has spoken about the arrest of the accused and the consequential recovery of the material objects, more particularly, M.Os.1 and 2. P.W.11 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.12, the head clerk of the Court, has spoken to the fact that he forwarded the material objects for chemical examination. P.W.14 is the Pawn Broker, to whom, it is alleged that the accused pledged M.Os.1 and 2, on 24.06.2005. He has further stated that the same was pledged in the name of one Raja @ Raja Raja. He has also stated that it was only this accused, who pledged the jewels in the said name. He has further stated that when the accused came along with the police, he returned the same to the police. P.W.15 has spoken about the registration of the case. P.Ws.16 and 17 have spoken about the investigation done, and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any one on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused under Section 302 of the Indian Penal Code, as detailed in first paragraph of this judgement and that is how the accused is before this Court.

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

7. This is a case based on circumstantial evidence. The first and foremost circumstance is the relationship between the deceased and the accused. P.W.1 as well as P.W.5 have stated that six months prior to the occurrence, the accused and the deceased had eloped and thereafter, the deceased was brought back into the family fold, by means of panchayat. We are of the view that the prosecution has established this circumstance. But, this itself would not be sufficient to convict the accused.

8. Next comes the evidences of P.Ws.7 and 9. According to them, at 12.30 p.m. on 24.06.2005, they found the accused entering into the house of the deceased. They have also stated that they came to know about the occurrence by about 5.00 p.m. in the evening. But they did not disclose anything about the event to anybody, including the family members of the deceased. They disclosed about the fact only for the first time to the police. They were examined only on 28.6.2005. There is no explanation as to why they did not disclose about the vital facts to anybody for such a long time. Therefore, we find it very difficult to believe these two witnesses. Thus, we hold that the prosecution has failed to prove this circumstance.

9. The next circumstance relied on by the prosecution is that according to P.Ws.3 and 8, the deceased was found sitting on the roof top of the house of the deceased at 4.00 p.m. on 24.06.2005. They have also admitted during cross-examination that they came to the place of occurrence by about 5.00 p.m. on the same day. It is highly unacceptable that they did not disclose about the said vital fact to anybody that the deceased had been done to death. They were also examined very belatedly by the police. As a matter of fact, P.W.3 was examined on 26.6.2005, whereas, P.W.8 was examined only on 19.07.2005. Absolutely there is no explanation for the said delay. This again creates about in the case of the prosecution. We hold that this circumstance has also not been proved.

10. Then comes the evidence of P.Ws.1 and 2. P.W.2 has stated that by 5.00 p.m. when he returned from the school, he found the deceased dead. On hearing his alarm, the neighbours, including P.W.4 had come. However, P.W.1 returned to his house only by 7.30 p.m. It is in the evidence of P.W.1 that when he returned to his house, the Village Administrative Officer had already arrived at the scene of occurrence. Even after that P.W.1 did not prefer any complaint to anybody. When he was cross-examined, he has stated that he informed his mother-in-law and the other relatives about the occurrence and all the relatives had come in the night itself. Even after that he did not choose to go to the police, to lodge any complaint. Only on the next day at 8.00 a.m., he had gone to

the police, made a complaint. Further, the First Information Report reached the hands of the Magistrate only at 1.00 p.m. on 25.06.2006. Absolutely there is no explanation about the said delay. This creates enormous doubt in the case of the prosecution.

11. After the registration of the case, it is alleged that the accused was arrested on 18.07.2005 and on the disclosure statement made by him, M.Os.1 and 2 were recovered from P.W.14. According to the case of the prosecution, these jewels were worn by the deceased lastly and they were found missing from the body of the deceased. This has been stated even in the complaint. Thus, as per the case projected by the prosecution, M.Os.1 and 2 would have been removed from the dead body of the deceased around 4.00 p.m. on 24.06.2005. But the evidence of P.W.14 is quite contrary to the said case of the prosecution. According to him, on 24.06.2005, at 7.00 a.m., (morning), the accused came and pledged M.Os.1 and 2, in the name of one Raja @ Raja Raja. Had it been true that the accused was found moving into the house of the deceased at 12.30 p.m., had it been true that the accused was found sitting on the roof top of the house by 4.00 p.m., had it been true that M.Os.1 and 2 had been removed only between 12.30 p.m. and 4.00 p.m., it would not have been possible for the accused to pledge M.Os.1 and 2 with P.W.14 at 7.00 a.m. on 24.06.2005 itself. This completely destroys the case of the prosecution. Apart from that, the pawn receipt, which has been marked as Ex.P25, is in the name of one Raja. The person, who has pledged the jewels, has signed the said document as Raja @ Raja Raja. It is the evidence of P.W.14 that this accused only gave his name as Raja @ Raja Raja and pledged the jewels. P.W.14 had no acquaintance with the accused. He had seen the accused only once, even according to his own version. If it has been so, in the absence of Test Identification Parade, it is difficult to believe the identity made by him. At any rate, since the jewels were in the hands of P.W.14, at 7.00 a.m. itself, on 24.06.2005, the case of the prosecution that the accused removed these jewels, after committing murder between 12.30 p.m. and 4.00 p.m., cannot be true. This doubt has not been cleared by the prosecution at all.

12. In a case based on circumstantial evidence, it is the law that all the circumstances projected by the prosecution, are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which would be inconsistent with the guilt of the accused. Here in this case, except the motive, there is no other circumstance proved against the accused and thus, in our considered view, the prosecution has miserably failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

13. In fine, this criminal appeal is allowed; the conviction and sentence imposed on the appellant, by the trial Court, in Sessions Case No.226 of 2006, are set aside. The appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Inspector of Police,
Bagalur Police Station, Krishnagiri District.
 2. The Principal Sessions Judge, Krishnagiri .
 3. The Judicial Magistrate, No.I, Hosur,
 4. The Superintendent of Police, Krishnagiri District
 5. The Superintendent of Police Krishnangiri District.
 6. The District Collector, Krishnagiri District.
 7. The Secretary to Government, Home Departmen,
Fort St. George, Chennai 600 009.
 - 8.The Public Prosecutor, High Court, Madras.
- + 1 cc to Mr.R. Johnsathyan, Advocate SR.15756

Cr1.A.No.300 of 2013

BVR(CO)
EU 15.04.16