

Bail Slip

The Appellant/Accused No.1 was enlarged on bail and in by the order dated 18.09.2007 made in CrI.MP.1/2007 in CrI.A.759/2007 on the file of this Hon'ble High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.759 of 2007

Stalin @ Mohamed Ali Jinna ..Appellant/Accused No.1

Vs

State rep. By
Inspector of Police,
Karaikal Police Station,
Karaikal
Crime No.365/2005 ..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment of conviction and sentence imposed upon the appellant by the learned Additional Sessions Judge, Puducherry at karaikal in S.C.No.69 of 2006 dated 22.03.2007.

For Appellant : Mr. T.P.Sekar
For Respondent : Mr.M.R.Thangavel,
P.P. (Pondy.)

JUDGEMENT

The appellant is A1 in S.C.No.69 of 2006 on the file of the learned Additional Sessions Judge, Puducherry at Karaikkal. Totally, there are two accused. A1 and A2 stood for offences under Sections 201 r/w. 34 IPC and A1 stood charged for the offence under Sections 302 and 316 IPC. By judgment, dated 22.03.2007, the trial Court convicted the appellant/A1 under Section 304(1) IPC and sentenced him to undergo Rigorous imprisonment for 7 years and also to pay a fine of Rs.1000/- in default to undergo six months Rigorous Imprisonment and convicted him under Section 316 IPC, and sentenced him to undergo Rigorous Imprisonment for 7 years and also to pay a fine of Rs.1000/- in default to undergo six months Rigorous

Imprisonment and also convicted the appellant under section 201 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and also to pay a fine of Rs.1000/- in default to undergo six months Rigorous Imprisonment. The trial Court ordered the above sentences to run concurrently. The trial Court acquitted A2 from all the charges. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Ummal Jariya @ Sellapappa, is the wife of the appellant/A1. Both the accused and the deceased were residing at kallaraipet, Karaikal. The appellant/A1 was working as a driver under a Member of Legislative Assembly. Since the appellant was not attended duty continuously for two days, i.e., on December 24th and 25th, 2005, the employer, namely, the M.L.A., directed P.W.1, who is also an employee under him to bring the accused. In order to bring him, P.W.1 went to the house of the accused and found lot of people gathered there, and he enquired the accused. At that time, the accused voluntarily has given a confession that since his wife left to Puducherry without the knowledge of the appellant, he assaulted her, and murdered her, also burried her body inside the compound of his house. Thereafter, P.W.1 took the accused to the respondent police and produced him before P.W.22 in the police Station. P.W.22, sub-Inspector of Police, working in the Karaikal town police Station recorded the statement of P.W.1 and registered a case in Crime No.365 of 2005 for the offences under Sections 302 and 201 IPC. He sent the First Information Report, Ex.P.18 to the Court and higher officials.

3. P.W.23, the then Inspector of Police, attached to the respondent police, on receipt of the First Information Report, commenced investigation, arrested the accused and he also informed the Tahsildar, P.W.17 and on his instruction, P.W.4 Revenue Inspector went to the respondent police. Before them, the accused voluntarily given a confession and based on the confession statement, he came to know about the involvement of A2. Hence, he altered the First Information Report into 302, 201 r/w.34 IPC and sent the alteration Report, Ex.P.20 to the Judicial Magistrate Court. Thereafter, he made a request to the Sub-Collector, seeking permission to exhume the body. On the next day morning, at about 9.00 a.m., P.W.23 took the accused to the scene of occurrence, where he prepared Observation Mahazar (Ex.P.8), Rough Sketch (Ex.P.7). At about 10.15 a.m., P.W.17 Tahsildar also came to the scene of occurrence and he exhumed the body in the place identified by the accused.

4. Thereafter, P.W.23 conducted inquest on the dead body of the deceased in the presence of panchayathar and prepared Inquest Report, Ex.P.19. He also recovered blood stained lungi, bloodstained gunny bag, bricks and concrete from the place where the body was recovered. Apart from that he also recovered other material objects in the house of the accused.

5. In the meantime, A2 surrendered before the police station and P.W.23 arrested A2 and based on his confession, he also identified the place, where the body was buried. Then, he recorded the statement of other witnesses.

6. P.W.16, Doctor, working in the Government Hospital, Karaikal, conducted postmortem on the dead body of the deceased and found the following injuries :

" External injuries:

1. Lacerated injuries 13 x 2 cm x pulp deep exposing skull bone seen on ® frontal region of scalp and forehead.
2. Contusion 12 x 8 cm on chin and (L) lower jaw... and anti-mortem in nature. "

Ex.P.15 is the Postmortem certificate. In the postmortem, it was found that a 3 to 4 months old fetus remained in the womb of the deceased. Based on the postmortem certificate, P.W.23 altered the First Information Report into 302 , 201 r/w.34 and 316 IPC. He also sent the alteration report to the concerned Court. After completion of investigation, he filed a charge sheet.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 23 witnesses were examined and 25 documents were exhibited, besides 24 Material Objects.

8. Out of the witnesses examined, P.W.1 is a co-employee of A1. Both P.W.1 and A1 were working in the office of the local member of the Legislative Assembly. According to him, since the accused did not return work for 4 days, on the instruction of the employer, he went to the house of the accused, where he saw lot of people. When he enquired A1, he voluntarily has given a confession admitting that he has committed murder of his wife and also buried the body inside the campus of his house. Hence, P.W.1 took A1 to the police and has

given a statement before the respondent police and based on his statement, a case was registered against the appellant.

9. P.W.2 is a neighbour of A1. According to him, there were frequent quarrel between the appellant and the deceased. On 25.12.2005, at about 10.00 a.m., when he came out of the house, he saw both A1 and A2 were digging a pit inside their house. When he enquired A1, he told him that he is going to construct a motor shed and also a shed for pigeons. Thereafter, at about 12.30 p.m., he saw both A1 and A2 putting a gunny bag inside the pit and closing it and he also found the varanda of the deceased with blood stains. When he enquired A1, he informed him that he got injured by a spade.

10. P.W.3 is also a neighbour. According to him, on the date of occurrence, he went to the house of the deceased and the deceased was not there and A1 informed him that she left for her parental house. Subsequently, P.W.2 informed her that A1 murdered his wife and buried her body in his house. P.W.4 is the Revenue Inspector in Karaikal. According to him, on the instruction of Tahsildar, he went to the police station, where A1 voluntarily has given a confession and based on the disclosure statement, he along with the Tahsildar, P.W.17 went to the scene of occurrence, where he identified the place where he buried the body of his wife and also on the basis of his confession, bloodstained clothes and other materials have been recovered. P.W.5 is the witness to the surrender of A2 in the police station. P.W.6 is the witness to the confession given by A2. P.W.7 is the witness to the Observation Mahazar and also the Rough sketch. P.W.8 is a neighbour of A1 and according to him, on 25.12.2005, at about 9.30 a.m., A1 asked him to provide a spade to dig a pit in his house and he also provided the same. P.W.9 is working as a electrician and at the request of the police, he exhumed the dead body near the house of A1/appellant and he is also a witness to Ex.P.9 Mahazar and also recovery of M.Os.12 to 17. P.W.10 is working as a part time assistant in the Government Hospital and he is a witness to the recovery of blood stained dress of the deceased under Ex.P.10 Mahazar. P.W.11, a neighbour of A1, went to the house of A1 at about 8.45 a.m., and found the deceased missing and when questioned, A1 informed her that the deceased went to her mother's house. P.W.12 turned hostile. P.W.13, who is an auto driver, is a witness in the inquest. P.W.14 & 15, are Photographers, who took photographs of the dead body of the deceased. P.W.16, Doctor, working in the Government Hospital, Karaikal, has spoken about the postmortem conducted and the final opinion given regarding the cause of death. P.W.17 is a Tahsildar in Karaikal. According to him, he went to the police station at the request of the respondent police and also went to

the scene of occurrence and present at the time of exhuming the body. He is also a witness to the confession statement given by the accused.

11. P.W.18, Head Constable, who accompanied the dead body of the deceased to the Government Hospital, Karaikal and he also identified the dead body for postmortem. P.W.19 is a Police Constable, working in the respondent police, handed over the visceral part of the dead body for chemical examination in the Lab. P.W.20, Head Constable, also accompanied the dead body for postmortem and handed over the dead body of the deceased to his relatives. P.W.21 is the Head Constable, attached to the respondent police, before whom, A2 has surrendered and he informed the same to the Inspector of Police. P.W.22 is the Sub-Inspector of Police, who registered the complaint. P.W.23, the Investigation Officer, has spoken about the investigation done by him and filing of final report in this case.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any documents.

13. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

14. We have heard Mr.T.P.Sekar, learned counsel appearing for the appellant and Mr.M.R.Thangavel, learned Public Prosecutor(Pondy) appearing for the State and I have perused the records carefully.

15. The learned counsel for the appellant would submit that it is the case of circumstantial evidence and prosecution failed to prove the case beyond reasonable doubt and none of the circumstances pointing the guilt of the accused. In the above circumstances, he sought for acquittal.

16. Per contra, the learned Public Prosecutor, appearing for the respondent would contend that the deceased is the wife of A1 and both the accused and the deceased were residing in the same house and the body was also burried near the house and only on the basis of the confession of the accused, body was exhumed. All the above circumstances clinchingly establishes the guilt of the accused and the prosecution has proved its case beyond reasonable doubt and prayed for dismissal of the appeal.

17. I have considered the above submissions.

18. It is the case of circumstantial evidence. The deceased is the wife of A1/appellant and both of them were residing in the same house. Later the deceased was found dead and the body was buried inside the compound of A1's house. P.W.1, who was a co-employee of A1 went to the house of A1 and wherein, he saw lot of people standing there. On enquiry by P.W.1, A1/ appellant has voluntarily gave a extra judicial confession admitting his guilt and he was taken to the police station, where he has given a voluntary confession and he also identified the place, where the body of the deceased was buried. Only based on the statement of the accused, the body was exhumed by the police. It is the case of the appellant that except the appellant and the deceased, nobody else residing in the house of the accused. Hence, the burden is upon the accused to prove the circumstances under Section 106 Evidence Act. Apart from that the body was also recovered based on the extra judicial confession of the accused, which is in the exclusive knowledge of the accused and all those circumstances unerringly pointing the guilt of the accused in the occurrence. In the above circumstances, in the absence of any explanation, it could only presumed that it is only the accused, who has murdered the deceased and buried the body near his house. Hence, I am of the considered view that the prosecution has clearly proved that it is only this accused who has committed the murder.

19. The next question is what was the offence committed by the accused. From the evidences of P.Ws.2 and 3, there were frequent quarrel between A1 and the deceased and only out of sudden provocation, he attacked the deceased and caused serious injury on her head. During the quarrel, being provoked by the words of the deceased, accused lost his mental balance and attacked the deceased and caused head injury to the deceased. Eventhough the accused would not have any intention to cause the death of the deceased, certainly, he had the intention to cause head injury, which was sufficient in the ordinary course of nature, to cause the death of the deceased. In our considered view, the said act of the accused would squarely fall within the third limb and first exception of Section 300 I.P.C. Therefore, he is liable to be convicted under Section 304(i) IPC.

20. So far as the quantum of sentence is concerned, he is a poor man and he has no bad antecedent and only out of sudden provocation, the accused had attacked the deceased. The accused have also 3 children and he has to take care of them. In the above circumstances, sentenced him to undergo Rigorous Imprisonment for 5 years is sufficient to meet the ends of

justice. Consequently, while confirming the conviction imposed on the appellant under Section 304(i) and also under Sections 316 and 201 IPC, the sentence in each of the offences shall be modified from rigorous imprisonment for 7 years to rigorous imprisonment for 5 years.

21. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellant for the offences under Sections 304(i), 316 and 201 I.P.C. is confirmed, and the sentence in each of the offences is modified to Rigorous Imprisonment for 5 years. Fine amounts imposed by the court below are confirmed. The above sentences imposed on the appellant shall run concurrently. The period of sentence already undergone by appellant/accused shall be set off under Section 428 Cr.P.C. Since the appellant is on bail, the trial court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The learned Additional Sessions Judge, Puducherry at karaikal
- 2 The Principal Sessions Judge, Puducherry (for information)
- 3 The Officer Incharge Sub Jail, Karaikkal
- 4 The Inspector of Police Karaikal Police Station, Karaikal
- 5.The Public Prosecutor, (Pondicherry) High Court, Madras.
- 6 Copy to The Record Clerk, Criminal Section, High Court, Madras

+1cc to the Government Pleader, S.R.No.74655

ak(CO)
md(10/02/2017)

Cr1.A.No.759 of 2007