

BAIL SLIP

The Appellant/Accused Viz; A.Venkatesan S/o.Solaimuniappa was directed to be released on bail as per direction of this Court dated 14/3/2015 made in MP.1/2013 in Crl.A.No.736/12.

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.736 of 2012

Venkatesan ... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.
[Crime No.306 of 2009]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Krishnagiri, in S.C.No.92 of 2010 dated 05.07.2011.

For Appellant : Mr.Udhaya Shankar for
Mrs.S.Santha Kumari

For Respondent : Mr.M.Maharaja,
Additional Public
Prosecutor

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JUDGEMENT

[Judgment of the court was delivered by S.NAGAMUTHU.J.,]

The appellant is the sole accused in S.C.No.92 of 2010 on the file of the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District. He stood charged for offences under Sections 449 and 302 of IPC. The trial court, by judgement

dated 05.07.2010, convicted the appellant/accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for a further period of five months for offence under Section 449 of IPC; and to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to suffer rigorous imprisonment for a further period of ten months for the offence under Section 302 of IPC. Challenging the said conviction and sentence, the sole accused is now before this court with this Criminal Appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Radha. She was the wife of P.W.3-Mr.Venkatesh. P.W.1 is the brother of P.W.3. The deceased and P.W.3 were residing at Pikkanappalli Village. P.W.1 was residing as their neighbour. The accused also hails from the same village. The marriage between P.W.3 and the deceased had taken place eight years before the occurrence. They had two children. They were running a tea stall. In course of time, the accused had developed illicit intimacy with the deceased. P.W.1 reprimanded the accused and warned him to disconnect his illicit relationship with the deceased. P.W.3 also did so. But, the accused did not stop his illicit relationship with the deceased. While so, on 01.11.2009 at 05.00 p.m., at the house of the deceased, the accused had trespassed and committed the murder of the deceased by strangulation and then, pushed her body into the water tank.

3. The occurrence was not witnessed by anybody. P.W.3 left for Thorappalli for a family function. P.W.1, the younger brother of P.W.3, was away grazing his cattle. By about 05.00 p.m. on the day of occurrence, P.W.1 returned with cattle after grazing. According to him, when he was passing through the house of the deceased, he found the accused coming out of the house of the deceased. Then, P.W.1 went to the house of P.W.4, who is none else than the younger paternal uncle of P.W.1, and informed him about the same. Immediately, they came together to the house of the deceased. At that time, they found the deceased dead. Then, they informed P.W.3 about the occurrence. P.W.2 is a neighbour of the deceased. He has stated that around 04.00 p.m. on the day of occurrence, he found the accused entering into the house of the deceased. On receiving intimation from P.Ws.1 and 4, P.W.3 returned to his house. Then, P.W.1 made a complaint about the occurrence at 10.00 a.m. on the next day, that was on 02.11.2009.

4. P.W.10, the then Sub Inspector of Police of Denkanikottai Police Station, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.306 of 2009 under Section 302 of IPC. Ex.P.15 is the FIR. Then, he forwarded both the complaint and the FIR to the jurisdictional court which were

received by the learned Magistrate at 11.00 a.m. on 02.11.2009. In the mean time, P.W.10 handed over the case diary to the Inspector of Police for investigation.

5. The investigation was taken up by P.W.11, the then Inspector of Police, Denkanikottai. On going over to the place of occurrence, he prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P.16) in the presence of P.W.6 and another witnesses. He conducted inquest on the body of the deceased between 12.00 noon and 02.15 p.m. on 02.11.2009. Ex.P.17 is the inquest report. Then, he forwarded the body for postmortem.

6. P.W.5 Dr.Rajkumar, attached to Denkanikottai Government Hospital, conducted autopsy on the body of the deceased at 02.30 p.m. on 02.11.2009. He found the following injuries on the body of the deceased :-

"External appearance:

(1) Eyes-closed. (2) Nails -
cyanozed. (3) Mouth - closed. (4) Tongue-kept
inside month.

External Injuries:-

(1) Ligature mark 19 cm x 1/4 cm
staring from anterior aspect of neck just
lateral to the thyroid cartilage on the left
side and extending obliquely over the right
side of neck and ending about 7 cms below the
occipital protuberance.

(2) Abrasion 3 x 2 cm over the right
side angle month.

Internal Examination :-

(1) Heart: 150 grams. Chambers filled
with blood. C/S congested

(2) Lungs: right - 480 grams. Left -
480 grams. on pressure blood stained frothy
exudate present. C/S congested.

(3) Hyoid bone: preserved.

(4) Stomach - 150 gms of partially
dissected ragi food particles present. Mucosa
(N).

(5) Liver - 1300 grams. C/S
congested.

(6) Spleen - 90 grams. C/S -
congested.

(7) Kidneys - 100 grams each. C/S
congested.

(8) Uterus: Normal in size; cavity
empty.

(9) Skull and Membranes - Intact.
(10) Brain-1300 grams . C/S
congested."

He preserved the skin around the neck and hyoid bone in formalin and also a portion of lung and sternum and sent them for chemical analysis. After having received the reports from the Forensic Science Department, P.W.5-the Doctor, opined that the death of the deceased was due to manual strangulation by neck. Ex.P.3 is the Postmortem Certificate.

7. P.W.11 during the course of investigation, arrested the accused on 03.11.2009 in the presence of P.W.4 and another witness just in front of the Office of the Andenappalli Village Panchayat. On such arrest, the accused made a voluntary confession. But, however, no discovery of fact was made out of the same. On returning to the police station, P.W.11 forwarded the accused to the court for judicial remand. On completing the investigation, he laid the final report against the accused.

8. Based on the above materials, the trial court framed two charges against the accused one under Section 449 of IPC and the other under Section 302 of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 11 witnesses were examined, 17 documents and 6 materials objects were marked.

9. Out of the said witnesses, P.W.1 has stated that the accused was found coming out of the house of the deceased at 05.00 p.m. on the day of occurrence. P.W.2 has stated that he saw the accused entering into the house of the deceased at 04.00 p.m. on the day of occurrence. P.W.3, the husband of the deceased, has stated that on the day of occurrence, he was away from the village and on hearing about the occurrence he returned home. P.W.4, who is the younger paternal uncle of P.Ws.1 and 3, has stated that P.W.1 informed him about the occurrence and thereafter, along with P.W.1, he went to the house of the deceased where he found the dead body of the deceased.

10. P.W.5 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.6, the Village Administrative Officer has stated that on the next day of occurrence, P.W.1 came to him and made a complaint which he drafted and gave back the same to P.W.1 with a direction to him to go and present the same to the police. P.W.7 is the Head Clerk of the Court of Judicial Magistrate, Denkanikottai. He has stated that he forwarded the material objects to the Forensic Science Department for examination. P.W.8 has spoken about the photographs taken by him at the place

of occurrence. P.W.9 is the Head Constable. He has stated that carried the dead body for postmortem to the Government Hospital at Denikanikottai. P.W.10 has spoken about the registration of the case and handing over of the case diary to the Inspector of Police. P.W.11, the then Inspector of Police has spoken about the entire investigation done by him and the filing of final report against the accused.

11. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was a total denial.

12. Having considered all the above, the trial court convicted the accused under sections 449 and 302 of IPC and accordingly punished him as detailed in the first paragraph of this judgement. That is how, the accused is now before this court with this criminal appeal.

13. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

14. This is a case based on circumstantial evidence. To incriminate the accused there are only two circumstances projected by the prosecution besides the motive. So far as the motive is concerned, it is the allegation that the accused had developed illicit intimacy with the deceased. P.Ws.1 and 3 reprimanded him, still, he did not stop the illicit relationship with the deceased. This fact has been spoken to by P.Ws.1 and 3. Though it is assailed by the learned counsel for the appellant/accused assuming that the accused had illicit intimacy with the deceased and he was reprimanded by P.Ws.1 and 3, that by itself would not give rise to any presumption that it was this accused who caused the death of the deceased.

15. Apart from the above, the prosecution relies on the evidences of P.W.2 and P.W.1 respectively. P.W.2 has stated that at 04.00 p.m. on 01.11.2009, he saw the accused entering into the house of the deceased. P.W.1 has stated that he found the accused coming out of the house of the deceased at 05.00 p.m. on the same day. Thus, from these evidences, the prosecution has tried to prove that on 01.11.2009 at or about the time of occurrence, the accused entered into the house of the deceased and came out.

16. Now, the question is whether P.Ws.1 and 2 can be believed. P.Ws.1 and 4 have admitted that after they have ascertained that the deceased was dead, they informed P.W.3. P.W.3 also returned to his house. P.W.3 has also stated the same

thing. When that be so, on 01.11.2009 itself, P.W.1 and P.W.4 were present at the place of occurrence. But they did not make any complaint at all to the police. On the next day, P.W.1 allegedly had gone to P.W.6 at 08.30 a.m. and as dictated by P.W.1, P.W.6 drafted the complaint. The same was presented to P.W.10 only at 10.00 a.m. on 02.11.2009. Absolutely, there is no explanation as to why the complaint was not made immediately after the occurrence to the police. When P.W.6, the Village Administrative Officer was very much available in the village, according to the case of the prosecution, on the next day of occurrence at 08.30 a.m. P.W.1 had gone to P.W.6 and then complaint was drafted. In the absence of any explanation for the delay of about 16 hours, we find it difficult to believe P.W.2 and P.W.1 respectively who claimed that the accused was found entering into the house at 04.00 p.m. and coming out of the house of the deceased at 05.00 p.m. on the day of occurrence. If the testimonies of these two witnesses are rejected as unbelievable, the prosecution has not let in any other evidence to connect the accused with the alleged crime of murder. Thus, in our considered view, the prosecution has failed to prove its case beyond all reasonable doubts and as such the appellant/accused is entitled for acquittal.

17. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused by the trial court is hereby set aside. The appellant/accused is acquitted from both the charges. Fine, if any, paid by the appellant/accused shall be refunded to him. His Bail Bond shall stand terminated.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional Sessions Judge,
Krishnagiri,
Krishnagiri Dist.

2.The District Munsif cum
The Judicial Magistrate Denkanikottai

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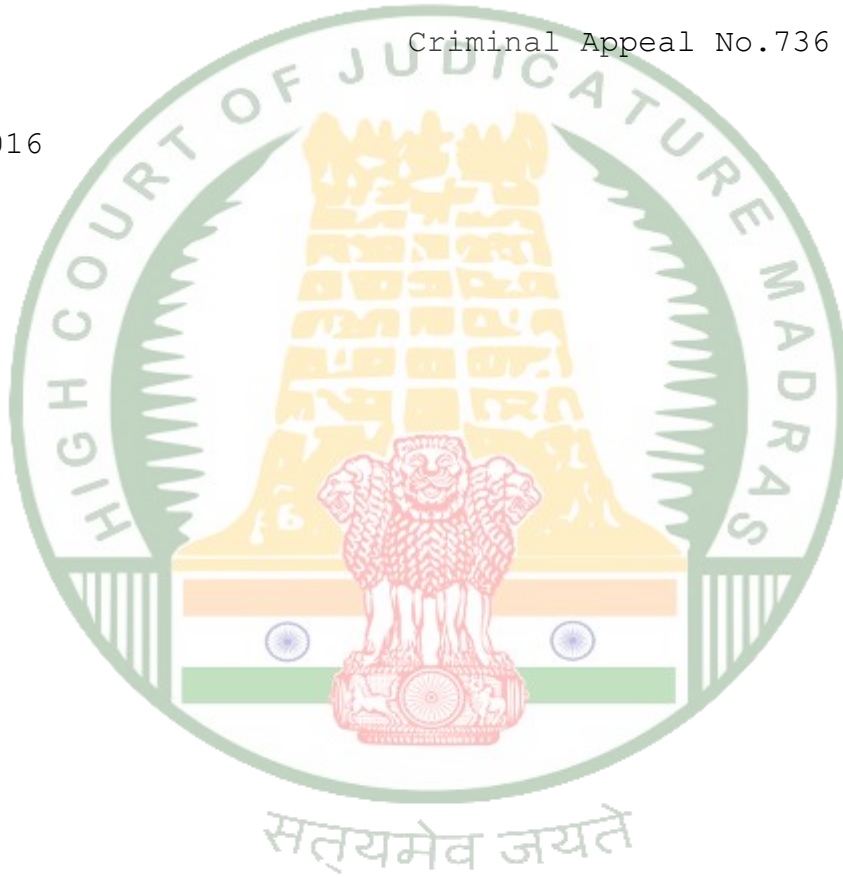
3.The Chief Judicial Magistrate
Krishnagiri (for information)

4.The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.

5.The Public Prosecutor, High Court, Madras.

Criminal Appeal No.736 of 2012

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