

Bail Slip

The Appellants 2 and 3 herein/Accused 2 & 3 viz., 1.Shanmugham Male aged 32 years S/O Narayanan @ Narayanappa and 2.Usha Female aged 62 years W/O Narayanan @ Narayanappa were directed to be released on bail by the order of this Court dated 31/10/12 and made in M.P.No.1/12 in crl.A 738/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.738 of 2012

1.Srinivasan
2.Shanmugam
3.Usha

... Appellants/Accused 1 to 3

Vs

The State rep. By
Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District
(Crime No.824/2009).

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the order of the learned Principal District Sessions Judge, Krishnagiri in S.C.No.102/2010 dated 15.09.2012 and acquit the appellants.

For Appellant : Mr.A.Ragunathan, Senior Counsel
for Mr.M.Mohammed Rafi

For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor

JUDGEMENT

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

The appellants are the accused 1 to 3 in S.C.No.102 of 2010 on the file of the learned Principal Sessions Judge, Krishnagiri. They stood charged for offence under Section 302 r/w 34 I.P.C. By judgment dated 15.09.2010, the trial Court convicted the accused for offence under Section 302 r/w 34 I.P.C., and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo six months rigorous imprisonment. Challenging the said conviction and sentence, the appellants are 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.Valliammal. A.1 is her husband. A.2 and A.3 are the brother and mother respectively of A.1. A.1 and the deceased were residing together as husband and wife in a Housing Board Quarters at Kaveripattinam Village at Door No.142, MIG. A.2 and A.3 were residing together in a different house. It is alleged that there were frequent quarrels between A.1 and the deceased. On 30.11.2009, on account of such a quarrel, the deceased had gone to her parental home. A.1 went all the way to the parental home of the deceased and persuaded her family members as well as the deceased to forget all the differences and asked the deceased to come back to the matrimonial home.

3.P.Ws.1 and 2 are the brother and sister respectively of the deceased. On 03.12.2009, it is alleged that P.Ws.1 and 2 took the deceased to the house of A.1. They reached the house of A.1 at 8.30 am. At that time, in the house of A.1, A.2 and A.3 were present. A.1 was not available. A.2 informed A.1 about the arrival of the deceased and P.Ws.1 and 2. At 9.45 am, A.1 returned home. On reaching the house, after making some courtesy enquiries to P.Ws.1 and 2, A.1 took the deceased into a room of the house and A.2 and A.3 also followed. Within 15 minutes, that was at 10.00 am, in the room in the house, some noise emanated which was unusual. Suspecting some foul play, P.Ws.1 and 2 rushed towards the room. It is further alleged that P.W.1 found that the deceased was lying; A.2 was holding her legs; A.3 was holding her hands and A.1 stabbed the deceased on her neck by shouting and calling the deceased as an "unchaste woman". On seeing P.Ws.1 and 2, it is alleged that all the three accused fled away from the scene of occurrence. The occurrence was witnessed by P.W.3 also. The deceased died instantaneously.

4. Thereafter, P.W.1 rushed to Kaveripattinam Police Station and made a complaint at 11.30 am on 03.02.2009. P.W.7, the then Sub Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.824 of 2009 for offence under Section 302 I.P.C., against all the three accused. He forwarded both the documents to Court through P.W.8. P.W.8, the Head Constable attached to the said police station handed over Ex.P.1 and Ex.P.8 (F.I.R.,) to Court at 5.30 pm on 03.12.2009.

5. P.W.9, took up the case for investigation. He proceeded to the place of occurrence; prepared an observation mahazar; a rough sketch and recovered blood stained earth and the sample earth in the presence of witnesses. He conducted inquest on the body of the deceased and forwarded the same for post mortem.

6. P.W.5 - Dr. Hariram who conducted autopsy on the body of the deceased on 03.12.2009 at 4.00 pm found the following injuries:-

"1. Deep cut injury at left side of face from left side of nose to left ear about 12x6x3cm. Exposed muscle and bone. Zygomatic bone fractured.

2. Deep cut injury at left side of neck about 20x2x5cm from 6cm below right ear lobe to 5 cm below the mouth. Muscles are damaged blood vessels are cut.

3. At the right side back of neck 4 no cut injury at about 10x2x1cm 8x2x1cm 3x2x1 3x2x1cm.

4. At right shoulder joint - cut injury abrasion 6x2x2cm.

5. At right hand fracture and ... (not clear) joint cut injury on index finger skin attached

6. Cut injury at middle finger exposed bone.

7. At knee front (left) abrasion 6x1/2cm and center abrasion 10x6cm

8. Cut injury at left leg below knee 10x3x2 cm

9. At the knee joint 3x1/2 cm abrasion"

7.Ex.P.5 is the post mortem certificate. P.W.5 gave opinion that the death was due to shock and hemorrhage due to stab injuries found on the body of the deceased. He has further opined that the said injuries would have been caused by a weapon like M.O.1 knife.

8.During the course of investigation, P.W.9 arrested all the three accused at 4.30 pm on 03.12.2009 at Paiyur Bus Stop. On such arrest, A.1 gave a voluntary confession, in which, he had disclosed the place where he had hidden a knife near Veda Nursery School in a bush. P.W.9 reduced the same into writing. Then A.1 took P.W.9 and P.W.6 to the said place and produced M.O.1 knife from the hide out. P.W.9 recovered the same under a mahazar.

9.On returning to the Police Station, P.W.9 forwarded all the three accused to Court and also handed over the Material Objects to Court. On completing investigation, he laid charge sheet against all the three accused.

10.Based on the above materials, the trial Court framed a lone charge against all the three accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 9 witnesses were examined; 10 documents were exhibited and 9 Material Objects were marked.

11.Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence who have vividly spoken about the entire occurrence. P.W.1 has also spoken about the complaint made by him to P.W.7. P.W.3 who has examined as an eye witness has turned hostile and he has not supported the case of the prosecution in any manner. P.W.4 has spoken about the preparation of observation mahazar, rough sketch and recovery of M.O.9. P.W.5 has spoken about the post mortem conducted by him and he has given his final opinion regarding the cause of death of the deceased. P.W.6 has spoken about the arrest of all the three accused and the subsequent disclosure statement made by A.1 and also the recovery of M.O.1, knife. P.W.7 has spoken about the registration of the complaint of P.W.1 and P.W.8 has spoken that he carried the F.I.R., and the complaint to the Court of learned Judicial Magistrate and handed over the same on 03.12.2009 at 5.00 pm. P.W.9 has spoken about the investigation done by him and the final report filed by him.

12.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side.

13. Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced them to undergo imprisonment for life. Aggrieved over the same, the accused/appellants are before this Court with this appeal.

14. We have heard the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. The learned Senior Counsel appearing for the appellants would submit that P.Ws.1 and 2, who are interested witnesses, would not have been present at the time of occurrence at all. The learned Senior Counsel would further submit that F.I.R., in this case had reached the learned Judicial Magistrate only at 5.00 pm on 03.12.2009 for which, the explanation offered by P.W.8, cannot be accepted. He would further submit that having persuaded the deceased to come back to the matrimonial home, it is highly unbelievable that these three accused would have chosen to commit murder of the deceased that too in the presence of P.Ws.1 and 2. This story, according to the learned Senior Counsel, is highly unbelievable. At any rate, according to the learned Senior Counsel, the evidences of P.Ws.1 and 2 are liable to be rejected and therefore, the appellants are entitled for acquittal. So far as the recovery of M.O.1 knife is concerned, the learned Senior Counsel would submit that there is no link between M.O.1 and the crime.

16. The learned Additional Public Prosecutor would vehemently oppose this Criminal Appeal. He would submit that P.Ws.1 and 2 are the natural witnesses whose evidences cannot be disbelieved. Though, there is delay in forwarding the F.I.R., to the Court, the same has been duly explained away by P.W.8. Thus, on the ground of delay, the case of the prosecution cannot be doubted, he contended.

17. It is true that M.O.1 was not sent for chemical examination, but, on that score, according to the learned Additional Public Prosecutor, the disclosure statement made by A.1 to P.W.9 in the presence of P.W.6 cannot be disbelieved. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubt.

18. We have considered the above submissions.

19. Admittedly, in the house of A.1, where the occurrence had taken place, A.1 and the deceased alone were residing. It is in evidence that A.2 and A.3 were living together but, separately, in a different house. It is also in evidence that the deceased had gone to her parental home on account of some domestic

quarrel between her and A.1. So between 30.11.2009 and 03.12.2009, it is stated that the deceased was in the house of her parents. It is in evidence that A.1 had gone all the way to the house of the parents of the deceased, persuaded them as well as the deceased to forget the difference of opinion and asked the deceased to return to the matrimonial home. Having invited the deceased to come back to the matrimonial home, it is difficult to believe that A.1 would have committed the murder of the deceased.

20. Further, according to the evidence of P.Ws.1 and 2, they took the deceased to the house of A.1 at 8.30 am on 03.12.2009. A.1 was not there but, A.2 and A.3 alone were there. At that time also, A.2 and A.3 did not even quarrel with the deceased or with P.Ws.1 and 2. A.2 informed A.1 over phone about the arrival of the deceased, P.Ws.1 and 2. It is the evidence of P.Ws.1 and 2 that at 9.45 am, A.1 returned to his house. Even at that time, A.1 did not quarrel either with the deceased or with P.Ws.1 and 2. It is their evidence that A.1 made courtesy enquiries with P.Ws.1 and 2 and then, in a happy mood, he took his wife inside the room and A.2 and A.3 also followed. All these things happened only inside the house of A.1. Then, within 15 minutes, it is stated that P.Ws.1 and 2 heard some unusual noise from the room and when they rushed to the room, they found A.2 and A.3 holding the legs and hands of the deceased and A.1 stabbing the deceased with knife.

21. In our considered view, it is highly unbelievable that the accused would have chosen to commit murder of the deceased when P.Ws.1 and 2 were just sitting by the side of the room, inside the house for about 15 minutes. It will not strike the prudence of a reasonable man that the accused would have chosen to commit murder of the deceased in the very presence of P.Ws.1 and 2, that too without there being any quarrel or any other immediate cause for doing such a cruel act. Therefore, we find it difficult to believe the very presence of P.Ws.1 and 2 at the time of occurrence. The said doubt is further strengthened by the delay in the F.I.R., reaching the Court of the learned Judicial Magistrate. Though, it is alleged by P.W.8 that the case was registered at 11.30 am on 03.12.2009, it reached the learned Judicial Magistrate only at 5.00 pm on 03.12.2009. The explanation offered by P.W.8 is that he reached the Court of the learned Judicial Magistrate at 12.30 pm on 03.12.2009 itself but, since, the Magistrate was in the dias discharging his judicial functions, he handed over the same to the staff of the Magistrate and he was waiting for him. According to him, the learned Judicial Magistrate did not even get down for lunch. It was only at 5.00 pm, the learned Judicial Magistrate got down from the dias and then, at 5.00 pm he received the F.I.R., and the Complaint. This explanation cannot be believed at all for the simple reason, neither the staff nor any other witness has

been examined to prove the said fact. Even the passport; pocket note book; general diary and the other documents which would prove the said explanation have not been marked by the prosecution. Further, the Investigating Officer did not even verify the correctness of the said explanation offered by P.W.8. Thus, we hold that the delay in forwarding the F.I.R., to the Court remains unexplained and the said delay creates enormous doubt in the case of the prosecution.

22.Now, turning to the recovery of M.O.1 (knife), which was recovered on the basis of the disclosure statement made by A.1, in the presence of P.W.6, knife (M.O.1) was not sent for chemical examination, for the reason best known to the Investigating Officer. There is no link established between the knife and the Crime. Therefore, recovery of M.O.1 does not carry any weightage at all.

23.In view of the foregoing discussions, we hold that it is not safe to act upon the evidence of P.Ws.1 & 2 who claim to have witnessed the entire occurrence. We are inclined only to reject their evidences. Therefore, we hold that the prosecution has failed to prove the case beyond reasonable doubt and thus, the appellants are entitled for acquittal.

24.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the accused 1 to 3/appellants by the learned Principal Sessions Judge, Krishnagiri, in S.C.No.102 of 2010, dated 15.09.2012, are set aside and the accused 1 to 3 /appellants are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the accused 2&3/appellants, shall stand discharged.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Krishnagiri.

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

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3.The Judicial Magistrate,
No.1, Krishnagiri.

4.The Chief Judicial Magistrate,
Krishnagiri (For Information)

5.The District Principal Sessions Judge,
Krishnagiri.

6.The Superintendent,
Central Prison,
Vellore.

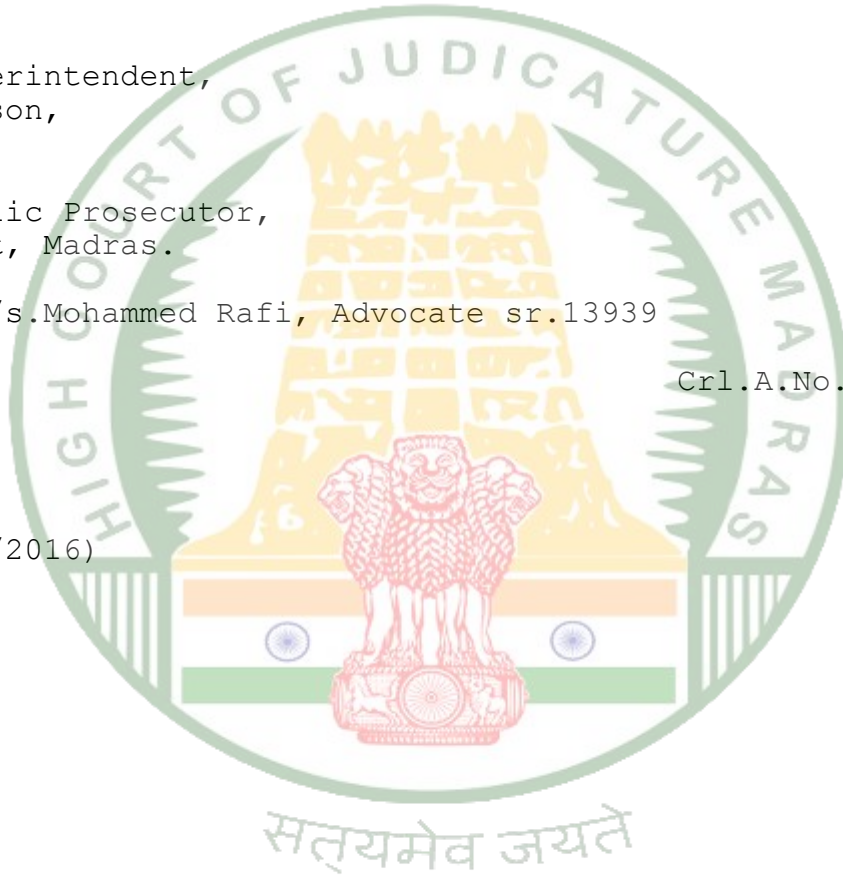
7.The Superintendent,
Women Prison,
Vellore.

8.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.Mohammed Rafi, Advocate sr.13939

Crl.A.No.738 of 2012

ala(CO)
srg(21/03/2016)



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