

Bail Slip

MP No.1 of 2012 in CrI.A No.790 of 2012

Manivel, Appellants/Accused is directed to be released on bail as per the ordered of this court dated 30.11.2012 made in MP No.1 of 2012 in CrI.A No.790 of 2012.

Bail Slip

MP No.1 of 2012 in CrI.A No.766 of 2012

1. Kumar @ Sivakumar 2. Kunjan @ Thangaraj
Appellants/Accused 1 & 2 are directed to be released on bail as per the ordered dated 01.11.2012 made in MP No.1 of 2012 in CrI.A No.766 of 2012.

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

CrI.A. Nos. 766 & 790 of 2012

1. Kumar @ Sivakumar

2. Kunjan @ Thangaraj ..Appellants/Accused 1&2 in CrI.A.
NO.766 of 2012

Manivel ..Appellant/3rd Accused in CrI.A.
No.790 of 2012

Vs.

State rep. by
Inspector of Police,
Magudanchavadi Police Station,
Salem District.

..Respondent/Complainant
in both the appeals.

Prayer: Criminal Appeals filed Under Section 274(2) of CR.P.C. as against the judgment dated 19.10.2012 in S.C. No.10 of 2012 passed by the learned II Additional District and Sessions Judge, Salem.

For Appellants

in CrI.A. No.766/2012:: Mr.R. Ezhilarasan
in CrI.A. No. 790/2012:: Mr.D. Shivakumaran

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

J U D G M E N T

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

The appellants are accused Nos. 1 to 3 in S.C. No. 10 of 2012 on the file of II Additional District and Sessions Judge, Salem. They stood charged for the offences under Sections 449, 302 r/w 34 and 404 I.P.C. By judgment dated 19.10.2012, the Trial Court convicted them under all the three charges and sentenced each one of them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for one year for the offence under Section 449 I.P.C., to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for one year for the offence under Section 302 r/w 34 I.P.C. and to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for 3 months for the offence under Section 404 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

(i) The deceased, in this case, was one Mrs. Vasanthi. She was working as a Manager in a concern, by name, "Siva Textiles" at Naduvaneri Anjakkadu Village. All the accused are employees of the said concern, working under the deceased. "Siva Textiles" was situated in the ground floor of the building. In the first floor of the building, the deceased was living with her family members. P.W.2 is her daughter and P.W.3 is her husband. As the Manager of the Concern, the deceased was very strict towards these accused and she extracted more work from the accused. This was not to the liking of the accused. The deceased and the first accused had purchased 30 cents of land, six years prior to the date of occurrence in Naduvaneri Mettukkadu Village. The first accused had paid a sum of Rs.50,000/- for the said purchase. The document, relating to the said purchase, stood registered in the name of the deceased. P.W.3 and the deceased had assured the first accused that they would give 10 cents of land out of 30 cents to him. On several occasions, the first accused demanded transfer of 10 cents of land in his name. But, the deceased was

very evasive and she told him that since she was very busy in her job, she was not able to make arrangement for execution of a sale deed in his favour. However, she assured that she would soon execute the sale deed in his favour. Since the deceased did not come forward to execute the sale deed, at the earliest, and since she was very strict towards all the accused, it is alleged that they decided to do away with the deceased.

(ii) It is further alleged that, on 27.10.2010, at about 3p.m., when the deceased was sleeping on a cot in her house, ie. in the first floor of the building, these three accused had trespassed into the house and strangled her with a nylon rope and killed her. Then, they also removed 2 ½ sovereigns of gold chain worn by the deceased. Abandoning the dead body on the cot, it is alleged that all the three accused left the place of occurrence. P.W.2, the daughter of the deceased, had gone to school at 9a.m. on 27.10.2010 and when she returned at 5.30p.m. from the school, she found her mother, Vasanthi, lying dead. Immediately, she went and informed her uncle Vijaygopal, P.W.8. P.W.8 and others rushed to the house of the deceased. Believing that there was life in the body of the deceased, P.W.8 and others, rushed her to the nearby hospital. On examination, the Doctor declared her dead. Thereafter, the dead body was brought back to the house of the deceased.

(iii) P.W.1, the Village Administrative Officer, who was incharge of Naduvaneri Village, heard about the occurrence. He rushed to the scene of occurrence at 4p.m. on 27.10.2010. P.W.1 was told that the deceased had died due to lightning. He went to Magudanchavadi Police Station and made a complaint at 9.30p.m. on 27.10.2010. Ex-P1 is the complaint given by him.

(iv) On receipt of the said complaint, P.W.14, the Inspector of Police, Magudanchavadi Police Station, registered a case in Crime No. 465 of 2010 under Section 174 Cr.P.C. (Lightning). Ex-P13 is the First Information Report. He forwarded Exs-P1 and P13 to the Court, which were received by the learned Judicial Magistrate No.II, Sankari, at 10.30a.m. on 01.11.2010.

(v) Thereafter, P.W.14 took up the case for investigation. He proceeded to the place of occurrence at 10.15p.m. on 27.10.2010, where he prepared an Observation Mahazar (Ex-P2) and a rough sketch (Ex-P14) in the presence of P.W.1 and another. He examined P.W.s 1, 2, and others recorded their statements. He sent the dead body to the Government Mohan Kumaramangalam Medical College Hospital, Salem. On 28.10.2010, at about 8a.m., he went to the said hospital and conducted inquest on the body of the deceased between 8a.m. and 10a.m. Ex-P15 is the inquest

report. Then, the body of the deceased was sent for postmortem through P.W.12, Head Constable.

(vi) P.W.5, the Professor of Forensic Medicine in Government Mohan Kumaramangalam Medical College Hospital, Salem, conducted autopsy on the body of the deceased at 10.10a.m. on 28.10.2010. He found the following injuries:

Injuries:

1. A reddish brown abrasion seen over the outer and lower aspect of right side of neck -0.6 x 0.5cms.

2. A Horizontal reddish brown ligature mark seen encircling the entire neck completely below the level of thyroid cartilage -measuring 32 cms in length and width of about 1.5cms on the right side of neck, 1.25cms in the centre and 1cm on the left and posteriorly. 2 separate ligature marks are seen over a length of about 10cms with a gap of 0.5cms and merges again on the outer aspect of both sides of neck posteriorly. The upper border of ligature mark in the front is 7cms from the midline and the lower border is 8 cms from the suprasternal notch. The upper border on the right side is 7cms from the right mastoid and on the left side is 7 cms from the left mastoid. O/D The tissue under the ligature mark is contused and haemorrhagic. A contusion seen over the muscle below the hyoid posteriorly measuring 4 x 5 x 1 cms. Another contusion over the right para tracheal muscles measuring 9 x 2 x 1 cms and over the left para tracheal muscles measuring 4 x 1 x 1 cms. Another contusion seen over the lower aspect of left side sterno mastoid measuring 4 x 2 x 1 cms. Bruising seen over the tracheal mucosa in the upper and anterior aspect over an area of 2.5 x 2 x 0.5 cms. Larynx and Trachea appeared congested and haemorrhagic. Hyoid Bone - Intact. All the above injuries are antemortem in nature.

OTHER FINDINGS:

1. General Findings: Face appeared congested and cyanotic. Sub conjunctival Haemorrhages seen over both the eyes. Finger Toe, Nails found cyanosed.

2. O/D. Head: Scalp, vault, duramater, Base of Skull - Intact. Brain - Oedematous. Vessels - Congested.

3. O/D Neck: Vide injury column.

4. O/D Thorax: No ribs fracture. Lungs -

C/S congested. Heart - Normal in size. Chambers - Right side contained fluid blood and left side empty. Valves and Great vessels - Patent. Multiple Petechial Haemorrhages seen over the visceral surface of Pleura and pericardium.

5. O/D Abdomen: Stomach contains 80ml of brown colour fluid with no specific odour. Mucosa C/S congested. Liver, Spleen, Kidneys : C/S Congested. Capsule - Intact. Anal Canal - Normal. Genitalia - No injuries made out. Uterus - Normal in size. Cavity empty. Pelvis and Spinal column - Intact."

Ex-P10 is the postmortem certificate. Ex-P11 is his final opinion regarding the cause of death. According to him, the deceased would appear to have died of effects of asphyxia due to strangulation.

(vii) P.W.14 recovered the clothes from the body of the deceased. He collected the medical records and examined the Doctors, including one Dr. Gokula Ramanan. He altered the section of offence to Section 302 I.P.C. and prepared the altered report, Ex-P16. He examined further witnesses and recorded their statements. When the investigation was in progress, on 31.10.2010, P.W.1 produced the first accused before P.W.14 along with the extra judicial confession statement of the first accused, Ex-P3, and his special report, Ex-P4. On such production, P.W.14 arrested the first accused at 10.15a.m. and recorded the confession statement of the first accused in the presence of P.W.1 and another, the admissible portion of which has been marked as Ex-P5. Pursuant to the same, the first accused took the police and the witnesses to the place of hideout and produced the nylon rope (M.O.1), which was recovered under a mahazar, Ex-P6, in the presence of the same witnesses. On prior information, P.W.14 arrested the second accused and the third accused in the presence of P.W.1 and another at 12.45p.m. near Ilampillai Bus Stand. On such arrest, the second accused gave a voluntary confession statement in the presence of the same witnesses, the admissible portion of which has been marked as Ex-P17. In pursuance of the same, the second accused took the police and the witnesss to a bush near his house and produced the gold chain (M.O.2), which was recovered under Ex-P7 mahazar. On returning to the Police Station, he sent the accused for judicial remand and forwarded the case properties to the Court. On completing the investigation, he laid charge sheet against the accused for offences under Sections 449, 302 r/w 34 and 404 I.P.C.

(viii) Based on the above materials, the Trial Court framed appropriate charges as detailed in the first paragraph of the judgment. The accused denied the same as false.

(ix) In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 17 documents and 4 material objects were marked. Out of the said witnesses, P.W.1 is the Village Administrative Officer, who has spoken about the complaint given by him, the preparation of Observation Mahazar, the arrest of the accused and the extra judicial confession statement given by the first accused on 31.10.2010. P.W.2 is the daughter of the deceased, who has stated that on 27.10.2010, when she returned from school at 5.30p.m., she found her mother lying dead on the cot. She has further stated that she informed P.W.8, her uncle, about the same and P.W.8 took the deceased to the hospital. P.W.3 is the husband of the deceased. He has stated that he was informed by his daughter, P.W.2, about the occurrence over phone at about 5.30p.m. on 27.10.2010. He has spoken about the motive and has stated further that the gold chain (M.O.2), which the deceased was wearing, was found missing when he saw the body of the deceased. P.W.4 is an employee of "Siva Textiles", who has spoken about the deceased being taken to the hospital, where she was declared dead. P.W.5 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.6 is the brother of the deceased, who has spoken about the motive. P.W.7 has stated that on 27.10.2010, at 3p.m., he found all the three accused standing in the balcony of the house of the deceased. P.W.8 has also stated the same fact. P.W.9 is an employee of "Siva Textiles", who has spoken about the money lent by the first accused towards purchase of 30 cents of land by the deceased and about the deceased stating that she would execute a sale deed in respect of 10 cents of land, out of 30 cents purchased by her, in favour of the first accused. P.W.10 is a milk vendor. He has stated that in the usual course, on 27.10.2010, at 3p.m., when he went to the house of the deceased to supply milk, the first accused, stating that the deceased was sleeping upstairs, received the milk from him. He has also stated that he came to know that the deceased was no more at 6p.m. on that day. P.W.11 has stated that on 27.10.2010, at 3.30p.m., he found the first accused throwing a nylon rope from the upstairs of the house of the deceased and the other accused were also seen standing by his side. P.W.12 has stated that he took the dead body to the hospital for postmortem. P.W.13 has spoken about forwarding the material objects for chemical examination, as per the orders of the learned Magistrate. P.W.14 has spoken about the registration of the case, investigation done and the filing of final report against the accused.

(x) When the above incriminating materials were put to the accused, they denied the same as false. On their side, as many as four witnesses were examined as D.W.s 1 to 4. However, no documents were marked.

(xi) D.W.1 is the sister-in-law of the deceased and she is the wife of P.W.8. She has stated that on 27.10.2010, there was a heavy downpour, accompanied by lightning and thunder. She has further stated that at about 2.30p.m., on that day, she went to the house of the deceased and was talking with her for sometime. She has further stated that at 5.30p.m., the daughter of the deceased came and informed her husband that the deceased was lying unconscious. It is her evidence that thereafter, her husband went to the house of the deceased and took her to the hospital, where she was declared dead. D.W.2, who was the Revenue Divisional Officer, Sankari, at the relevant point of time, has stated that though the First Information Report, Ex-P13 was sent to the Court, from his office, on 01.11.2010, he did not receive the said report. D.W.3 is the Doctor, to whom the deceased was taken by P.W.8, at the first instance. He has stated that he did not assess the cause of death. D.W.4 is an Office Assistant in the office of the Revenue Divisional Officer at Sankari. He has stated that since in Ex-P13, FIR, the death of the deceased was mentioned as one due to lightning, he submitted a report to the Tahsildar for payment of compensation.

(xii) Having considered all the above, the Trial Court convicted the appellants as stated in the first paragraph of the judgement. That is how, the appellants are before this Court with these appeals.

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

4. This case is based on circumstantial evidence. The deceased was lastly seen alive at 9a.m. by her daughter, P.W.2. At 5.30p.m., when P.W.2 returned home from school, she found her dead. Thus, the prosecution has proved that the death of the deceased had occurred, sometime between 9a.m and 5.p.m. on the date of occurrence.

5. The prosecution, in order to prove that these accused are the perpetrators of the crime, relies on the evidence of P.W.s 7, 10 and 11. P.W.7 has stated that he found all the three accused, around 3p.m., on the date of occurrence, standing in the balcony of the third floor of the building, where "Siva Textiles" was located. From this evidence, the prosecution

tries to prove that these three accused were found, at or about the time of occurrence, near the place of occurrence. But, during cross-examination, this witness has admitted that, on 27.10.2010, when the Police arrived at the scene, he did not disclose about the said fact to anybody and for the first time, he disclosed the said fact only after two days to the Police. There is no explanation as to why he did not disclose about the above vital information to anyone including the Police, though he was present on 27.10.2010, when the Police made interrogation of witnesses. This conduct of P.W.7 would make his evidence unbelievable.

6. Coming to the evidence of P.W.10, who is a milk vendor, by profession, he has stated that on 27.10.2010, at 3p.m., he went to the house of the deceased to supply milk in the usual course. The first accused came downstairs and collected the milk from him. At that time, he found him very tensed. When P.W.10 enquired, the first accused told him that the deceased was sleeping in her house. From his evidence, the prosecution tries to prove that the first accused was available at the place of occurrence, at or about the time of occurrence. But, during cross-examination, P.W.10 has stated that at 6p.m., on the same day, he came to know that the deceased was no more and when he went to the house of the deceased, about 20 to 30 people were already present there and the Police had also arrived at the spot. But, he did not disclose the above vital information to anyone present there including the Police. He has admitted that for four days, he remained silent and only thereafter, he informed about this fact to the Police. Though, he was invited to offer an explanation with regard to his unusual silence for four days, he has given no explanation for the same. This conduct of P.W.10 casts a doubt with regard to the credibility of his evidence.

7. Then comes the evidence of P.W.11. He has stated that on 27.10.2010, at about 3.30p.m., he found the first accused throwing a nylon rope from the balcony of the building where "Siva Textiles" was located. The second and the third accused were also by his side. He has further stated that at 5.30p.m., on the same day, he came to know that the deceased was no more. But, during cross-examination, he has admitted that he went to the place of occurrence on the same day at about 7p.m. At that time, the Police had arrived. But, he did not disclose the above vital particulars either to the Police or to anyone else. He informed the above vital information to the Police only on 31.10.2010, ie., after four days. Though, he was invited to offer an explanation regarding the same, he has offered no explanation. This unusual silence on the part of P.W.11 makes his evidence unbelievable. Thus, the evidence of P.W.s 7, 10

and 11 are only liable to be rejected.

8. Then comes the extra judicial confession, said to have been given by the first accused, to P.W.1, on 31.10.2010. During cross-examination, P.W.3 has stated that the Police arrested the first accused on 28.10.2010 itself. When that be so, it is not understandable as to how the first accused would have gone to P.W.1 on 31.10.2010 to give a voluntary confession statement. Further, P.W.1 is a total stranger to the first accused. When that be so, the first accused would have had no rhyme or reason to go over to P.W.1 to confess about his guilt. Once it is found that the first accused was in police custody from 28.10.2010, the extra judicial confession stated to have been given by the first accused to P.W.1 on 31.10.2010 and the arrest of the first accused and the recovery of nylon rope, cannot be given any credence. The gold chain, which was found stolen from the deceased was allegedly recovered by P.W.14 on 31.10.2010 at 2.50p.m. on the confession made by the second accused. But, in the confession statement said to have been given by the second accused, the signature of the first accused is found in the third page. It is not explained to the Court as to how the signature of the first accused was found in the confession statement, alleged to have been given by the second accused. When this was brought to the notice of P.W.14, he has admitted that in the alleged confession statement of Thangaraj, the second accused, consequent upon which the gold chain was recovery, the signature of the first accused is found. But, P.W.14, has got no explanation to offer as to how the confession statement of the second accused could carry the signature of the first accused. This creates a serious doubt regarding the recovery of gold chain at the instance of the second accused.

9. Now, turning to the cause of death, the opinion of P.W.5, the Doctor, who conducted autopsy, is that death was due to effects of asphyxia on account of strangulation. There is no doubt regarding the same. The prosecution has, thus, succeeded in proving that death of the deceased was due to homicidal violence. However, as we have already concluded, the prosecution has failed to prove that these accused were the perpetrators of the said crime. Thus, we hold that the prosecution has failed to prove the case beyond all reasonable doubts.

10. In the result, the appeals are allowed. The conviction and sentence imposed on the appellants/accused by the Trial court are set aside and they are acquitted of all the charges.

Fine amount, if any, paid, shall be refunded to the appellants/accused.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nv

To

1. The II Addl. Dist. & Sessions Judge, Salem.
2. The Judicial Magistrate No.2, Sankari.
3. The Chief Judicial Magistrate, Salem.
(for information)
4. The Principal Sessions Judge, Salem.
5. The Public Prosecutor, High Court, Madras.
6. The Inspector of Police, Magudanchavadi Police Station, Salem District.
7. The Superintendent, Central Prison, Coimbatore.
8. The District Collector, Salem.
9. The Director General of Police, Mylapore, Chennai 4
10. The Criminal Section, Section Officer, High Court, Chennai 104.

+1 cc to M/s.R.Ezhilarasan, Advocate, sr.13830

+1 cc to Mr.D.Shivakumaran, Advocate, sr.13967

CrI.A.Nos. 766 & 790 of 2012

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kra 28.04.2016