

BAIL SLIP

Criminal Appeal No.383 of 2013

The Appellant, i.e. Govindan in Criminal Appeal No.383 of 2013 (1st accused in SC No.213 of 2012 on the file of I Additional District and Sessions Judge, Salem) was directed to be released on bail vide order of this Court, dated 29/11/2013 and made in MP.No.1 of 2013 in CrIa.NO.383 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2016

CORAM:

THE HONOURABLE MR . JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.383 of 2013

Govindan

... Appellant/Accused-1

-Vs-

State by
The Inspector of Police
Tharamangalam Police Station
Salem District
(Crime No.460 of 2010)

... Respondent/Complainant

This Criminal Appeal has been preferred to set aside the judgment passed by the I Additional District & Sessions Judge, Salem in S.C.No.213 of 2012 by judgment dated 27.03.2013.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the first accused in S.C.No.213 of 2012 on the file of the learned I Additional District and Sessions Judge, Salem. He stood charged for offences under Sections 364 r/w 34, 302 and 201 IPC. Including the appellant, there were two accused. By judgment dated 27.03.2013, the trial Court convicted both the accused. The trial Court, however, acquitted the accused from the charge under Section 364 r/w 34 IPC. So far as the first accused/appellant is concerned, he was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one year and for the offence under Section 201 IPC, he was sentenced to undergo rigorous imprisonment for 2 years and pay a fine of Rs.500/-, in default to undergo six months simple imprisonment. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

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

[a] The accused 1 and 2 are brothers. They are residents of Lakshimayur Village in Omalur Taluk. The first accused had a son by name Selvam and another son by name Venkatesan. The first accused was living with his family members, including his sons. Mr.Selvam (since deceased) was involving in petty thefts. Despite the warning and advice given by the first accused, he had not stopped the same. It is further alleged that because of the said bad conduct of the deceased Selvam, the first accused decided to do away with him.

[b] On 24.10.2010 at about 10.00 p.m. the first accused had gone to Thuvaraikadu and he was waiting there. He had asked his another son Venkatesan to bring Selvam to Thuvaraikadu. Accordingly, Venkatesan [juvenile accused] took the deceased to Thuvaraikadu. By about 12 midnight, the first accused pushed the deceased down and Venkatesan killed him. Then, the first accused cut the deceased with koduval on his head. The deceased succumbed to the injuries instantaneously. Then, the accused 1 and 2 returned to their house. After concealing the koduval at his house, the first accused met his brother the second accused and informed him about the same. Then the accused 1 and 2 decided to cause disappearance of the body. Therefore, together they went to Thuvaraikadu with a gunny bag, put the dead body into the gunny bag, hid the same with stones and pushed it into a well. This occurrence was not noticed by anyone.

[c] On 25.10.2010, at about 8.00 a.m., the first accused went to P.W.1, the then Village Administrative Officer of Taramangalam and wanted to confess about the above occurrence. P.W.1 agreed to record the same. The first accused then gave a voluntary confession narrating the above events and admitting his guilt as well as the guilt of his son Venkatesan and the second accused. P.W.1 reduced the same into writing under Ex.P1. The first accused subscribed his Left Thumb Impression to the same. P.W.1 then prepared a Report under Ex.P2. He took the first accused along with Exs.P1 and P2 and produced him before P.W.11 - the Sub Inspector of Police, Taramangalam Police Station at 9.30 a.m. on 25.10.2010. P.W.11, the Sub Inspector of Police on receipt of Exs.P1 and P2, registered a case in Cr.No.460 of 2010 under Sections 302 and 201 IPC against all the three accused, including the juvenile. Ex.P16 is the FIR. Then, he forwarded Exs.P1, P2 and P16 to the Court, which were received by the learned Judicial Magistrate at 4.50 p.m. on 25.10.2010.

[d] The case was taken up for investigation by P.W.15. P.W.15 arrested the first accused in the presence of P.W.1 and another witness. On such arrest, at 10.00 a.m., he made a voluntary confession, in which he disclosed the place where he had thrown the dead body of the deceased. In pursuance of the same, he took the police and the witnesses to the well and identified the same. P.W.15 prepared an Observation Mahazar and a Rough Sketch showing the place of occurrence [Exs.P25 and 26] in the presence of the same witnesses. Then he gave intimation to the Fire and Rescue Service for help. P.W.9 came to the place of occurrence with people from his department around after 10.15 a.m. on 25.10.2010. When his men climbed down the well, they found a gunny bag immersed in water. They brought it out. When it was opened, the dead body of the deceased was found inside. P.W.15 then conducted inquest on the body of the deceased and forwarded the same for post-mortem.

[e] P.W.5 conducted post-mortem on the body of the deceased on 26.10.2010 at 1.00 p.m. He found the following injuries:

"An oblique wide open chopped injury involving front and right side of neck M-20 x 10 x bone deep with exposing of trachea and oesophagus with underlying pre and para vertebral muscle contused. O/D Underlying blood vessels, soft tissue, nerves, right side carotid, vertebral artery, external and internal jugular vein severed, with sternomastoid muscle severed. The cut fracture of cervical spine C2 with severance of underlying spinal cord served. This

injury is situated at the level of 8 cms above supra sternal notch and 5 cms below mid chin on right side."

He opined that the death of the deceased was due to effects of shock and haemorrhage due to neck injury. According to him, the death would have occurred 36 hours prior to the autopsy.

[f] P.W.15 continued the investigation. On the disclosure statement made by the first accused, he produced a blood stained shirt and a blood stained pant from his house. At 6.15 p.m., on 25.10.2010, P.W.15 recovered the same. On the same day, at 5.00 p.m., he arrested the juvenile accused Venkatesan and the second accused Raja. On such arrest, the juvenile accused Venkatesan gave a voluntary confession, in which he disclosed the place where he had hidden M.Os.4 and 5 [multiple colour full hand shirt and grey colour pant]. On returning to the police station, P.W.15 forwarded the accused to Court for judicial remand and handed over all the material objects to the Court, with a request to send the same for chemical examination. The Chemical Analysis Report reveals that these material objects, including the aruval which was recovered at the instance of the first accused contained human blood. On completing the investigation, he laid charge sheet against the accused.

[g] Since Mr.Venkatesan was found to be a juvenile in conflict of law, he was proceeded against before the appropriate Juvenile Justice Board. These two accused alone faced the trial before the trial Court.

4. Based on the above materials, the trial Court framed the above charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 29 documents were exhibited, besides 11 material objects.

5. Out of the said witnesses, P.W.1 has spoken about the extra judicial confession given by the first accused. P.Ws.2, 6, 7 and 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.3 is the owner of the well. He has stated that the gunny bag was found in the well. P.W.4 also has stated that the dead body was taken from the well. P.W.5 has spoken about the post-mortem conducted and the Final Report regarding the cause of death. P.W.9 - Fire service man has stated that he lifted the dead body from the well with the help of his men. P.W.10 has spoken about the photographs taken at the place of occurrence. P.W.11 has spoken about the registration of the case. P.W.12 has stated that he handed over the FIR registered by the Sub Inspector of Police on 25.10.2010 at about 10.00 a.m., to the learned Judicial Magistrate, Omalur. He has not stated anything about the time

at which he handed over. He has also not stated as to the mode of his transport. P.W.13 has stated that he took the dead body from the place of occurrence to the hospital and handed over the blood stained cloth found on the body of the deceased to the Inspector of Police. P.W.14 the Head Clerk of the Magistrate Court has stated that he forwarded the material objects for chemical analysis on the orders of the learned Judicial Magistrate. P.W.15 has spoken about the investigation done and his Final Report.

6. 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 choose to examine any witness nor he did marked any documents in his favour. His defence was a total denial.

7. Having considered all the above, the trial Court convicted the first accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant/accused is before this Court with this appeal.

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

9. This is a case based on circumstantial evidence. The prosecution relies only on the extra-judicial confession said to have been given by the appellant to P.W.1 and consequential recovery of the dead body from the well. The learned counsel for the appellant would submit that the said extra judicial confession cannot be believed. He would point out that P.W.1 was a stranger to the appellant and therefore, he would have had no reason to repose confidence in P.W.1 to confess. He would further submit that the appellant is an illiterate person and the Inspector of Police, using his authority, had obtained the thumb impression of the appellant in Ex.P1 and forwarded the same to the Court. The learned counsel would further submit that there is absolutely no explanation as to why the FIR along with Ex.P1 had reached the Court at 4.50 p.m. on 25.10.2010.

10. The learned Additional Public Prosecutor would however, oppose the appeal. According to him, the appellant, for his own reason had gone to P.W.1 to confess. He would further submit that the recovery of the dead body itself was made on the confession of the accused and thus, according to the learned Additional Public Prosecutor, there is no reason to reject the extra judicial confession given by the appellant.

11. We have considered the above submissions.

12. The extra judicial confession though is substantive in nature, by its very nature, is a weak piece of evidence and unless it inspires the fullest confidence of this Court, the same cannot be the sole foundation for the conviction. If there are doubts about the extra judicial confession, then the Court should look for corroboration from any other independent source. In this case, as rightly submitted by the learned counsel for the appellant, the accused had no reason to have confidence in P.W.1, so as to confess to him. This creates initial doubt in the so called extra judicial confession.

13. According to the case, at 9.30 a.m. itself, the extra judicial confession was in the hands of the Sub Inspector of Police and the case was registered immediately. But, the FIR [Ex.P16] and the extra judicial confession [Ex.P1] have reached the hands of the learned Judicial Magistrate only at 4.50 p.m. on 25.10.2010. Thus, there was enormous delay in forwarding these two documents to Court. Absolutely there is no explanation for the same. Had it been true that Ex.P1 was made available to the police at 9.30 a.m. itself, nothing would have prevented them to immediately hand over the same to the learned Judicial Magistrate. P.W.12 - the Constable who took the FIR from the Sub Inspector of Police and has handed over the same to the learned Judicial Magistrate has not offered any explanation for the delay. Thus, the inordinate delay which remains unexplained creates enormous doubt in the genuineness of Ex.P1.

14. We find force in the argument of the learned counsel that Ex.P1 had been prepared after the dead body was lifted from the well and the Left Thumb Impression of the appellant was obtained by the police. The learned counsel would further point out that in the Observation Mahazar prepared on the spot, it is mentioned that the dead body had already been taken out from the well, whereas, according to the case of the prosecution, the accused identified the well and thereafter, the Fire and Rescue Service men came to the place of occurrence and then lifted the body. The contents of the Observation Mahazar would falsify the said theory of the prosecution. It gives an inference that the dead body had already been taken out from the well and thereafter only the accused was taken to the well and Observation Mahazar was prepared. All these circumstances make Ex.P1 a doubtful document.

15. As we have already pointed out, there is no other corroboration for the same. In such view of the matter, in our considered view, it is not safe to sustain the conviction based on the above doubtful uncorroborated extra judicial confession. Thus, we find that the prosecution has failed to prove the case beyond reasonable doubts, and therefore, the appellant is entitled to acquittal.

In the result, the appeal is allowed and the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted of all the charges. Fine amount, if any paid by the appellant, shall be refunded to him. The bail bond, if any executed, shall stand discharged.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Inspector of Police
Tharamangalam Police Station
Salem District
2. I Additional District & Sessions Judge,
Salem.
- 3.The Public Prosecutor
High Court, Chennai.
- 4.-do-Thro Principal Sessions Judge,
Salem
- 5.The district Munsif cum Judicial Magistrate
Omalur
- 6.The Chief Judicial Magistrate, salem
- 7.The Judicial Magistrate No.1
Tiruchirappalli
- 8.The Superintendent Central Prison
Coimabtores
- 9.The Superitendent of Police, Salem
- 10.The District Collector, Salem

+1 cc to Mr.B.Vasudevan Advocate sr.21577

aa28/04/2016

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