

BAIL SLIP

The Accused/Appellant, namely Sivakami @ Kanimozhi, was directed to be released on bail as per Order of this Court dated 17.04.2013, made in M.P.No.1 of 2013 in Crl.A.No.772 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU  
AND  
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CRL.A.No.772 of 2012

Sivakami @ Kanimozhi ... Appellant/Sole Accused

Versus

State rep by  
The Inspector of Police  
Orleanpet Police Station  
Pudhucherry.

... Respondent/Complainant

Appeal filed under section 374[2] Cr.P.C., against the Judgment dated 16.12.2005 passed by the learned Principal Sessions Judge, Puducherry in SC.No.16/2003.

For Appellant : Mr.S.Chandrasekaran

For Respondent : Mr.V.Balamurugane  
Additional Public Prosecutor  
[Puducherry]

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellant/sole accused is the wife of the deceased Kumar. She was charged and tried for the commission of the offence u/s.302 IPC in SC.No.16/2003 and vide Judgment dated 16.12.2003, the learned Principal Sessions Judge, Puducherry, convicted her for the offence u/s.302 IPC and sentenced her to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- with a default sentence of six months simple imprisonment. Challenging the said legality of the conviction and sentence, the appellant/accused has preferred the present appeal.

2. The facts in brief necessary for the disposal of this appeal are as follows:-

[A] P.W.1 - Sundararaj, is the brother of the deceased Kumar and brother-in-law of the appellant/accused. According to him, marriage between the appellant/accused and the deceased was solemnised about 8 years back and out of the said wedlock, they begot a son and daughter. The appellant/accused, suspecting the character of her husband, often used to quarrel with him and in this regard, a complaint was lodged on the file of the jurisdictional All Women Police Station by the appellant/accused alleging that her husband often quarreled and harassed her and he had also developed illicit intimacy with other woman. The matter has ended in compromise and thereafter, they started living together happily. The deceased / husband of P.W.1 rented a house nearby his father-in-law's house. Both the appellant/accused and her family were living in that place.

[B] On 26.04.2002 at about 03.30 hours, the father of the accused, viz., Krishnan [P.W.2] woke him up and told that his daughter [appellant/accused] had killed her husband by dropping a grinding stone. Immediately, P.W.1 rushed to the spot and found his brother was lying in a pool of blood and a grinding stone was also found nearby.

[C] P.W.1-Sundararaj [brother of the deceased/brother-in-law of the appellant/accused] proceeded to Orleanpet Police Station and lodged a complaint under Ex.P.1, based on which, a case in Cr.No.109/2002 was registered at about 05.00 hours on 26.04.2002 by P.W.14-Angappan, the then Sub-Inspector of Police attached to the respondent Police Station, for the offence u/s.302 IPC. Printed FIR is marked as Ex.P.13. He despatched the original complaint [Ex.P.1] and the printed FIR [Ex.P.13] to the Court of the jurisdictional Magistrate and forwarded the copies to the higher officials.

[D] P.W.16-V.Deivasigamani, was the Inspector of Police, attached to Orleanpet Police Station at the relevant point of time and on receipt of the FIR registered by P.W.14, commenced the investigation. He went to the scene of crime at about 06.30 hours on 26.04.2002 along with his police team and he summoned P.W.13-Kannan, Police Photographer as well as the Finger Print Expert to take finger prints, if any, available at the occurrence spot and in the presence of P.W.7 [Jayabalan] and another witness, viz., Natarajan, he prepared a Rough Sketch marked as Ex.P.15. He also conducted inquest on the dead body of the deceased in the presence of the Panchayatdars and prepared the Inquest Report [Ex.P.4]. He examined P.Ws.4, 5,

Kanniyappan and Antonisamy, who are the neighbouring residents residing nearby to the scene of crime and recorded their statements. He recovered M.O.1 [grinding stone], M.O.2 [blood-stained pillow], sample blood [M.O.3] under the cover of Mahazar, marked as Ex.P.3, in the presence of P.W.7. P.W.16 also sent the body for postmortem along with a requisition.

[E] P.W.11-Dr.R.Balaraman, who was a Specialist, Grade-II, Head of Department of Forensic Medicine, Government General Hospital, Puducherry, at the relevant point of time, on receipt of the body of the deceased viz., Kumar, has commenced the postmortem at about 14.30 hours on 26.04.2002 and noted the following features:-

"Body of moderately well nourished male height 160 cms with  $\frac{1}{2}$  cm black scalp hair. Rigor Mortis present all over body, Tongue bitten and protruded wearing coffee brown underwear, dried blood stain present over nostrils, chest, ant bite marks present over body.

External Injuries:- [Ante mortem]

[1] V shaped lacerated injury each limb measuring 2x0.5x1 cm deep present over right frontal region of head 2 cm above right eyebrow.

[2] Lacerated injury 3x0.5x0.5cm over inner end of right eyebrow.

[3] Vertically placed lacerated injury 5x0.5cmxbone deep present above left eyebrow.

[4] Horizontally placed 4x0.5x0.5 cm lacerated injury present over left eyebrow.

[5] Lacerated injury 2cmx0.5cm over root of nose on left side with fracture of underlying bones.

[6] Lacerated injury 3x0.5cmx0.5cm 1cm below left eye.

[7] Lacerated injury 3x0.5cmx0.5cm over left parietal region of head.

[8] Horizontally placed lacerated injury 9x0.5cmx0.5cm present 1cm below chin.

Internal Examination:-

Head [scalp, skull brain, meninges and blood vessels]:

Brain-Subdural haemorrhage present all brain. Sub Arachnoid haemorrhage present over right side of brain.

Skull:- Commuted fracture of front of base of skull [anterior cranial fossa] both sides with fracture of nasal bones and maxilla.

Thorax:- Lungs-pale, Heart and pericardium -normal size. Few Ccs of fluid blood present. Stomach-dark red fluid blood 100 ml. No specific smell. "

On completion of postmortem, P.W.11 opined that the deceased died of head injuries and issued Medico Legal Postmortem Examination Report, marked as Ex.P.8.

[F] P.W.16, the Inspector of Police, continued the investigation and seized blood-stained half-pant [M.O.4] and blood stained towel [M.O.5] under the cover of Mahazar [Ex.P.5] in the presence of P.W.10 and another. At about 15.00 hours on the same day, he effected arrest of the accused near the new Bus Stand, Puducherry with the help of women police, brought her to the Police Station and she voluntarily came forward to give a confession statement which was recorded in the presence of P.W.10, pursuant to which, M.Os.6 and 7 [blood stained saree and blouse] were seized under the cover of Mahazar [Ex.P.6]. The accused was sent for judicial custody. On 27.04.2002, P.W.16 examined P.W.7 and others and recorded their statements and also sent the material objects under Form 95 to the Court for chemical examination. He also sent the blood sample to the Central Forensic Science Laboratory, Hyderabad, who have given a report marked as Ex.P.14. On 20.08.2002, he examined the doctor [P.W.16] who conducted the autopsy and also the other witnesses. He examined the Inspector of Police, All Women Police Station, Puducherry and recorded her statement and after completion of the investigation, filed the final report on the file of the learned Judicial Magistrate, No.2, Puducherry, on 04.02.2003, charging the appellant/accused for the commission of the offence u/s.302 IPC.

[G] On receipt of the final report, the learned Judicial Magistrate, No.2, Rasipuram, took it on file in PRC No.3/2003. The Committal Court, on the appearance of the appellant/accused, furnished copies of the documents under section 207 Cr.P.C., and having found that the case is exclusively tried by the Sessions Court, committed the same to

the Court of the learned Principal Sessions Judge, Puducherry, who took it on file in SC.No.16/2003. The Trial Court, on appearance of the appellant/accused, framed charge u/s.302 IPC and questioned the appellant/accused, who pleaded not guilty to the charge framed against her.

[H] The prosecution, in order to sustain their case, has examined P.Ws.1 to 16 and marked Exs.P.1 to 16 and also marked M.Os.1 to 8. The appellant/accused was questioned u/s.313 Cr.P.C., with regard to the incriminating circumstances made out against her in the evidence rendered by the prosecution. She denied it as false. On behalf of the appellant/accused, Ex.D.1 - Petition u/s.173[8] Cr.P.C., in Cr.MP.No.586/2003 dated 07.02.2005 for further investigation came to be marked. No oral evidence was let in.

3. The Trial Court on consideration of the oral and documentary evidence and other materials placed before it, has convicted the appellant/accused for the offence u/s.302 IPC and sentenced her as mentioned above. Challenging the legality of the said conviction and sentence, the appellant/accused is before this Court with this appeal.

4. Learned Counsel appearing for the appellant/accused would contend that except the fact that the father of the appellant/accused [P.W.2] had gone to the house of P.W.1 and informed him that his daughter has committed the murder of the deceased, no other material is available and though there was recovery of material objects and the scientific evidence pointing out that the deceased died on account of the homicidal violence, the prosecution has failed to adduce any tenable evidence to incriminate the appellant/accused with the commission of crime and the Trial Court, without appreciating the oral and documentary evidences in proper perspective, has reached an erroneous conclusion to convict and sentence the appellant/accused and hence, prays for interference.

5. Per contra, the learned Additional Public Prosecutor appearing for the Union Territory of Puducherry would contend that the testimony of P.W.2 coupled with the scientific evidence and the recovery of incriminating articles, has proved the case of the prosecution beyond any reasonable doubt and the Trial Court, on proper appreciation of the evidence, has rightly reached the conclusion and prays for dismissal of the appeal.

6. This Court paid its best attention to the rival submissions and also perused the material objects placed before it.

7. The question arises for consideration is whether the conviction recorded by the trial court against the appellant/accused for the commission of the offence u/s.302 IPC and sentencing her to undergo imprisonment for life and fine of Rs.2000/- with the default sentence of six months simple imprisonment, is sustainable.

8. It is the categorical testimony of P.W.1 that on 26.04.2002 at about 03.30 hours, when he was sleeping, P.W.2 [father of the appellant/accused - father-in-law of the deceased] knocked the door and woke him up and told him that his daughter committed murder of her husband by putting a grinding stone on him. P.W.1 immediately rushed to the house of the deceased and found that the deceased was lying in a pool of blood and a grinding stone was found nearby. P.W.2 [father of the appellant/accused] deposed about the torture meted out to his daughter at the hands of his son-in-law, the deceased herein and there used to be frequent quarrel between them. P.W.2 would further depose that at about 03.00 hours or 04.00 hours, he received a phone call informing him that his son-in-law was murdered by somebody else and he immediately went to the house and found him dead and his daughter did not say anything about the occurrence. In the cross-examination, P.W.2 deposed that his son-in-law is a drunkard, used to borrow money and incur unnecessary expenses and the persons who lent money to his son-in-law, used to come to his house and had quarreled and his son-in-law was also beaten once. His son-in-law has shifted the residence since the creditors started troubling him for getting their money back. It is the further deposition of P.W.2 that the deceased / son-in-law used to torture and beat his daughter to get money and also sold his vehicle. P.W.2 has also parted with some amount to redeem the vehicle and his son-in-law has got very many enemies on account of the habit of heavy borrowing.

9. It is to be pointed out at this juncture that the edifice of the prosecution is built up on the testimony of P.W.1 and it is his testimony that the father of the appellant/accused told him that it was his daughter who murdered her husband. However, the evidence of P.W.2-father of the appellant/accused [father-in-law of the deceased], is otherwise and even in the chief examination, he did not state anything about the heinous act done by his daughter in murdering her husband. The prosecution, best known to it, did not treat P.W.2 as a hostile witness.

10. P.W.6 has spoken about the difference of opinion between the deceased and his wife/the accused herein and the deceased told P.W.6 that suspecting his character, the appellant/accused used to quarrel frequently with him. P.W.10

is the witness to arrest and recovery. According to him, he along with one Jayakodi was taken to the Police Station and the Inspector of Police asked them to be the witnesses with regard to the confession statement to be given by the appellant/accused and the appellant/accused took the Inspector of Police and P.W.10 to the scene of crime and they saw the place with blood stains and subsequently, came back to the police station and the grinding stone was found in the police station and in the confession statement, the appellant/accused had signed it and thereafter, P.W.10 along with Jayakodi has subscribed their signatures. It is to be noted at this juncture that it is not even the testimony of P.W.10 that the appellant/accused voluntarily came forward to give a confession statement which was recorded in their presence and the said witness merely stated that the appellant/accused had signed the confession statement in his presence in the police station and M.O.1-grinding stone was found in the police station. As per Ex.P.3-Property Search and Seizure Form, the grinding stone was recovered from the scene of occurrence itself and it was sent to the Court of Judicial Magistrate No.2, Puducherry and however, the testimony of P.W.10 is quite contra to the said documentary evidence and therefore, the confession recorded, cannot be believed at all.

11. No doubt, the scientific evidence in the form of Postmortem Certificate marked as Ex.P.8 would disclose the fact that the deceased died due to head injuries and Ex.P.9-Viscera Report found that the sample of viscera contained 0.02 gm% of alcohol and as per the final opinion marked as Ex.P.10, the deceased has consumed alcohol and as per Ex.P.14-Report of the CFSL, Hyderabad, human blood was detected on M.Os.1 to 6 and 8 and blood group of "B" was detected on M.Os.2, 5 and 8.

12. Merely because the deceased died due to head injuries and the Chemical Analysis Report would disclose that on certain articles, blood was detected and found to be of "B" Group, it cannot lead to the conclusion that it was the appellant/accused who committed the murder of her husband. As already pointed out, except the testimonies of P.Ws.1 and 2, no incriminating materials, whatsoever, has been produced by the prosecution to sustain the appellant/accused and admittedly, P.W.1 is not an eyewitness to the occurrence and according to P.W.2, his daughter did not inform anything about she committing the murder of her husband. The case of the prosecution is bristled with very many infirmities and inconsistencies. Therefore, it is not safe to rely on the oral and documentary evidence to sustain the conviction and sentence of the appellant/accused and as a consequence, the benefit of doubt shall enure in favour of the appellant/accused.

13. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused for the offence u/s.302 IPC vide Judgment dated 16.12.2005 made in SC.No.16/2003 by the learned Principal Sessions Judge, Puducherry, are hereby set aside and the appellant/accused is acquitted of the charge levelled against her.

14. It is reported that the appellant/accused is on bail. The bail bond stand terminated. Fine amount, if any paid, shall be refunded to her.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Judicial Magistrate No.II,  
Puducherry.
2. The Chief Judicial Magistrate,  
Pondicherry.
3. The Principal Sessions Judge,  
Puducherry.
4. The Superintendent,  
Central Prison Women Wing,  
Kalapattu, Pondicherry.
5. The Inspector of Police  
Orleanpet Police Station  
Puducherry.

+1cc to Mr.S.Chandrasekaran, Advocate, S.R.No.10306  
+1cc to the Public Prosecutor(Pondy), S.R.No.10684

Cr1.A.No.772 of 2012

EV(CO)  
CA(08/03/2016)