

Bail Slip

That the Appellant herein/Accused Viz. Ganesan @ Mohammed Riyaz was directed to be released on bail as per the order of this court dated 12.02.2013 and made in MP No.1 of 2012 in Crl.A.No.846 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.846/2012

Ganesan @ Mohamed Riyaz ... Appellant/sole accused

Vs

State by
The Inspector of Police,
Nagoor Police Station,
Nagappattinam District. ... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Nagappattinam, in S.C.No.180 of 2009 dated 24.09.2012.

For Appellant : Mr.V.Sathish
for Mr.T.P.Senthilkumar

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.180 of 2009 on the file of the learned Sessions Judge, Nagappattinam. He stood charged for the offences under Sections 498-A and 302 of IPC. By judgment dated 24.09.2012, the trial court convicted him under both the charges and sentenced him to undergo imprisonment

for life and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for two years for the offence under Section 302 of IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/-, in default, to undergo rigorous imprisonment for four months for the offence under Section 498-A of IPC. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Govindammal @ Ayisha Parveen. The accused is her husband. The marriage was celebrated five months prior to the date of occurrence. After the marriage, the accused and the deceased were living together as husband and wife at Nagoor. But, within one month of the marriage, the accused developed a suspicion about the chastity of the deceased. On account of the same, it is alleged that he started harassing her. Finally, out of the said motive, on 06.09.2008 around 03.00 a.m., the accused strangled the deceased by means of a ligature and caused her death.

(b) The occurrence was not witnessed by anybody. P.W.1 is the mother of the deceased. P.W.1 heard about the occurrence and went to the house of the deceased, where she found the dead body of the deceased. At 10.30 a.m. on 06.09.2008, she made a complaint to the Nagoor Police Station under Ex.P.1. P.W.13, the then Sub-Inspector of Police, on receipt of the said complaint registered a case in Cr.No.467 of 2008 under Sections 302 of IPC and Section 174 of Cr.P.C. Ex.P.9 is the First Information Report. He forwarded Ex.P.1 and Ex.P.9 to court which were received by the learned Magistrate at 10.55 p.m. on 06.09.2008.

(c) The investigation was then taken up by P.W.14. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.8 and another witness. Then, he arranged for a photographer to take photos of the dead body. He forwarded a copy of the First Information Report to the Revenue Divisional Officer/Executive Magistrate to hold inquest on the body of the deceased. P.W.4 conducted inquest on the body of the deceased and then forwarded the body for postmortem. P.W.15 conducted autopsy on the body of the deceased on 06.09.2008 at 3.30 p.m. She found the following injuries:

"External Injuries:

1. 3 ½ cm. size reddish wound mark with edges are congested seen in front of the neck. 1 cm x 1 cm size center point is congested;
2. Froth discharge from the nose seen; and

3. Right eye shows 2 sub-conjunctival hemorrhage $\frac{1}{2}$ c.m. x $\frac{1}{2}$ c.m. size seen.
Internal Examination:

Bleeding in Thyroid gland. Congested strap muscles present. Hyoid bone in tact. Liver, lungs, spleen congested. Stomach contain 400 ml of partially digested rice. Uterus 22 week size, twin pregnancy of both male baby with weight of 300 grams seen. Skull intact. Brain membranes intact.''

Ex.P.11 is the Postmortem Certificate. She gave opinion that the death of the deceased was due to strangulation by means of ligature. She further opined that the said mark found on the dead body would have been caused by a clothe like M.O.1.

(d) P.W.14, during the course of investigation, arrested the accused on 10.09.2008 at 08.15 a.m. in the presence of P.W.10 and another witness. On such arrest, the accused gave a voluntary confession in which he disclosed the place where he had hidden a Nighty. In pursuance of the same, he took the police and witnesses to the said place of hide out and produced M.O.1. Nighty. P.W.14 recovered the same under a Mahazar. On returning to the police station, he sent the accused to court for judicial remand and handed over the material object also to court. Further, he recovered the dress materials from the body of the deceased and forwarded the same also to the court. He made a request to the court for forwarding the material objects for chemical examination. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined and 12 documents and 7 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the mother of the deceased who has stated about the marriage between the accused and the deceased and the fact that on the date of occurrence, early in the morning, she heard about the death of the deceased and went to the house of the deceased and found the dead body of the deceased and then, went to the police station and made a complaint under Ex.P.1. P.W.2 and P.W.3 are neighbours of the deceased. They have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4, the then Revenue Divisional Officer of Nagoor has spoken about the inquest conducted by him. P.W.5 is a neighbour of P.W.1. He has stated that he only took P.W.1 to the police station to make a complaint. P.W.6 has stated that on 29.05.2008, the accused

came and pledged 23 ½ sovereigns of gold jewels for a sum of Rs.12,000/- at his shop. P.W.7 is the father of the deceased who has stated about the frequent quarrels between the accused and the deceased. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.10 has spoken about the arrest of the accused, the consequential recovery of M.O.1 Nighty from the place of hide out and the disclosure statement made by the accused. P.W.11 has spoken about the fact that he took the F.I.R. to the Revenue Divisional Officer. P.W.12 has spoken about the fact that he took the dead body for postmortem and P.W.13 has spoken about the registration of the case and P.W.14 has spoken about the investigation done and filing of the final report by him.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was that on the night of the date of occurrence, he had gone to Fort for work and when he returned to the house on the next day morning, he found the dead body of the deceased. Thus his defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

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

8. The learned Counsel for the appellant would submit that in this case, absolutely, there is no evidence against the accused to sustain the conviction.

9. We have gone through the evidences very carefully. As we have already narrated, except the fact that the dead body was found on the early morning on 06.09.2008, there is no other evidence against the accused. Of course, P.W.1 has stated about the frequent quarrels between the husband and wife. But, P.W.1 has turned hostile. Except this piece of evidence, there is no other evidence against the accused. The recovery of M.O.1 Nighty would not in any manner help the prosecution to sustain the conviction. The link between M.O.1 and the crime or the deceased has not been established by the prosecution. Thus, as rightly pointed out by the learned Counsel for the appellant, this is a case where there is no evidence at all against the accused to prove the guilt of the accused.

10. Article 21 of the Constitution of India guarantees that the life and liberty of the individual cannot be deprived of except by following the procedure established by law. The courts of law cannot deprive a person's life or liberty on mere surmises and conjectures. The suspicion, however strong it may be, cannot take the place of proof. Here in this case, the prosecution has not succeeded even in establishing the suspicion against the accused. Thus, in our considered view, the trial court has convicted the accused on mere surmises, which is illegal. Therefore, the appellant is entitled for acquittal.

11. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant by the trial court is set aside and he is acquitted from all the charges. The bail bond, if any, executed by him shall stand discharged. The fine amount, if any paid, shall be refunded to the accused.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Nagoor Police Station,
Nagappattinam District.
2. The Sessions Judge,
Nagappattinam.
3. -do- Thro' The Principal Sessions Judge,
Nagappattinam.
4. The Judicial Magistrate No.2,
Nagappattinam.
5. -do- Thro' The Chief Judicial Magistrate,
Nagappattinam.
6. The Superintendent,
Central Prison, Trichirapalli.
7. The District Collector,
Nagappattinam.

8. The Director General of Police,
Mylapore, Chennai.

9. The Superintendent of Police,
Nagapattinam.

10. The Public Prosecutor,
High Court, Chennai.

+1 cc to M/s.T.P.Senthilkumar, Advocate, sr.19238

Crl.A.No.846/2012

ug co
kra 21.04.2016



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