

Bail Slip

The appellant i.e, M.Gopi in Criminal Appeal NO.577/13 (Accused in S.C.No.259/12 on the file of the Principal District and Sessions Judge, Tiruvallur) was directed to be released on bail vide order of this court dated 15.04.2015 and made in Crl.Misc. petition NO.2 of 2014 in Crl.A.No.577 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2016

CORAM

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

CRIMINAL APPEAL No. 577 of 2013

M. Gopi ..Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
T-4, Maduravoyal Police Station,
Maduravoyal,
Chennai - 600 095. ..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of CrI.P.C. seeking to admit the appeal and call for the records in S.C.No. 259 of 2012 passed by the learned Principal District & Sessions Judge, Tiruvallur and set aside the Judgment and order of Conviction, dated 28.6.2013 acquit the appellant/accused;

For Appellant :: Mr.R.Sankarasubbu

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. 259 of 2012 on the file of learned Principal District & Sessions Judge, Tiruvallur. He stood charged for the offence under Section 302 I.P.C. By judgment dated 28.06.2013, the Trial Court convicted the accused for the offence under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine

of Rs. 5000/-in default to undergo simple imprisonment for 6 months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(i) The deceased, in this case, was one Ganesan. It is alleged that the accused had illicit intimacy with one Vasanthi, who is the wife of the deceased. When it came to light, the deceased Ganesan expressed his dissent. This is said to be the motive for the occurrence.

(ii) It is further alleged that on 11.03.2012, the accused came to the house of the deceased and took him along with him for the purpose of taking liquor. It is further alleged that after taking liquor, he took the deceased near Seemathamman Temple ground and killed him by dropping a huge stone on his head.

(iii) Further, it is alleged that the body of the deceased was found at 4.30p.m. on 11.03.2012. P.W.1, a Villager, after having seen the same, went to Maduravoyal Police Station and gave a complaint at 5.30p.m. on 11.03.2012. Since the assailant was unknown, he did not mention the name of the assailant in the complaint. Ex-P1 is the complaint.

(iv) P.W.13, the then Inspector of Police, at Maduravoyal Police Station, on receipt of the said complaint, registered a case in Crime No. 119 of 2012 for the offence under Section 302 I.P.C. Ex-P9 is the printed First Information Report. He forwarded Exs-P1 and P9 to the Court and took up the case for investigation. He proceeded to the place of occurrence at 6.15p.m. and prepared an Observation Mahazar (Ex-P10) and a rough sketch (Ex-P11) in the presence of P.W.6 and another. Then, he recovered bloodstained earth (M.O.2), sample earth (M.O.3), bloodstained broken cement stone (M.O.1) and an empty beer bottle, with the label "KINGFISHER" (M.O.4), under Ex-P2, from the place of occurrence, in the presence of the same witnesses. Then, between 7.30p.m. and 9.30p.m., he conducted inquest on the body of the deceased, in the presence of Panchayatdhars and witnesses. Ex-P12 is the inquest report. Thereafter, the dead body was sent to Government Kilpauk Medical College & Hospital for postmortem.

(v) P.W.8, Dr.T. Perungo, who was in the Emergency Ward of the said hospital, received the body of Ganesan, at about 10.10p.m. on 11.03.2012 and noted down the information furnished by Grade I Police Constable, with regard to the deceased, in the Accident Register. Ex-P6 is the Accident Register. Then, he sent the dead body for postmortem.

(vi) P.W.9, Dr.R. Selvakumar, Professor of Forensic Medicine in Government Kilpauk Medical College & Hospital, conducted autopsy on the body of the deceased at 2.55p.m. on 12.3.2012. He found the following injuries:

"Injuries: (I) Reddish Brown Abrasions seen over - 4 x 2 cm in outer aspect of Right Hip, 2.5x1.5 cm over outer aspect of left hip, 4 x 2 cm over left side of face outer to left eye, 2.5 x 0.5 cm below the chin on the Right Side, 3 x 2 cm over right side of the face outer to right eye, 3 x 1 cm back of left elbow, 1 x 0.5 cm in lower 1/3rd of inner aspect of left arm. Two small abrasions 1.5 x 1cm, 0.5 x 0.5 cm in the back of Left Thumb; 1 x 0.5 cm on the back of middle of left middle finger, 1 x 0.5 cm on the back of Right Index Finger proximal part were present. Two linear oblique abrasions one below the other seen over outer aspect of upper part of Right side of abdomen measuring 10 x 0.5 and 6 x 0.5 cm respectively; Linear abrasions measuring 3 x 0.3 on front of upper 1/3rd of Right Thigh.

(II) Laceration 1.2 x 0.5 cm on outer aspect of Right upper eyelid.

(III) On Dissection of Head, Dark red contusion 3 x 2 x 0.5 cm over Right temporal Region of the scalp; Dark red contusion 4 x 2 x 0.5 cm in left frontal region of scalp seen. Subdural Hematoma 3 x 2 x 0.5 cm over brain stem; SDH seen over Right Temporal lobe of brain; Thin film of SAH seen over both cerebral and cerebellar hemispheres; Hinge fracture seen extending from right anterior cranial fossa to left middle cranial fossa.

Larynx and trachea: normal. Hyoid Bone: Intact

Heart: Normal in size, chambers contain fluid blood; Coronaries and Great Vessels : NAD

Lungs: Normal in size. C/S congested.

Stomach: 120 ml light brown coloured fluid. No specific smell. Mucosa normal.

LIVER & SPLEEN: Normal in size; C/S congested Kidney: Normal in size; C/S congested.

Small Intestine: Chyme Present; Large Intestines: Distended with Gas. Bladder: Empty.

Spinal Column: Intact."

Ex-P7 is the postmortem certificate. He gave opinion that death was due to shock and haemorrhage due to head injuries.

(vii) P.W.13, during the course of investigation, arrested the accused on 12.03.2012 at 10a.m. near a wine shop, opposite to Sakthi Bhavan Hotel in Alapakkam Ground, in the presence of P.W.7 and another. On such arrest, the accused gave a voluntary confession statement, pursuant to which, TVS XL Super

motor cycle, produced by the accused, came to be recovered under Ex-P4 mahazar, in the presence of the same witnesses. The accused had also produced bloodstained pant, which was recovered under Ex-P5 mahazar. Then, P.W.13 sent the accused to judicial remand and forwarded the case properties to the Court. He gave a requisition, Ex-P13, to the Court to subject the case properties for chemical examination. Ex-P14 is the Serology Report and Ex-P15 is the Chemical Report. The report revealed that there were human bloodstains on all the material objects, including the trousers recovered from the accused. He examined further witnesses and recorded their statements. On completing the investigation, he laid charge sheet against the accused on 02.04.2012 for the offence under Section 302 I.P.C.

(viii) Based on the above materials, the Trial Court framed the lone charge under Section 302 I.P.C. against the accused. The accused denied the same as false.

(ix) In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 15 exhibits and 8 material objects were marked. Out of the said witnesses, P.W.1 is a villager of Maduravoyal Village. According to him, on 11.03.2012, at about 4.30p.m., he found the body of the deceased near Seemathamman Temple ground and then, he gave a complaint, Ex-P1, in Maduravoyal Police Station. P.W.2 is the wife of the deceased. It is her evidence that on 11.03.2012, the accused came to her house at 1.30p.m. and took her husband, i.e, the deceased, for the purpose of taking liquor. She has further stated that she came to know that her husband's dead body was lying near Seemathamman Temple ground at about 5.30p.m. P.W.3 is the sister-in-law of the deceased. She has also stated that at 1.30p.m., on the date of occurrence, the accused took the deceased along with him. P.W.4 is a shop owner, who has a petty shop in a place called Shivabootham, near Vaanagaram. He has stated that in the month of September, 2012, two people came to his shop, bought cigarettes and went away. The accused was one among the two. P.W.5 was working in a TASMACH shop on Alapakkam Road, Maduravoyal, during the relevant time. According to him, on 11.03.2012, the accused came along with another person and purchased a beer bottle and went away. He has not identified the deceased. P.W.6 has spoken about the preparation of Observation Mahazar, rough sketch and recovery of material objects from the place of occurrence. P.W.7 has spoken about the arrest of the accused and the consequential recovery of material objects, on his disclosure statement. P.W.8 is the Doctor in the Emergency Ward of Kilpauk Medical College and Hospital, who has spoken about receiving the body of the deceased at about 10.10p.m. on 11.03.2012 and sending the same for postmortem. P.W.9 has spoken about the autopsy conducted and his final opinion regarding the cause of death. P.W.10 has stated that on 11.03.2012, when he went to the wine shop, near bypass road, he found the accused and

the deceased together having liquor. According to him, at 6p.m., he came to know that the body of the deceased was lying near Seemathamman Temple ground. P.W.11 is the Forensic Expert, who visited the place of occurrence and assisted the Inspector of Police to recover blood stained earth and other material objects from the place of occurrence. P.W.12 has spoken about carrying the dead body to the hospital for postmortem. P.W.13 has spoken about the investigation done and filing of final report against the accused.

(x) When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor mark any document. The defence of the accused was one of total denial. Having considered all the above, the Trial Court convicted the accused for the offence under Section 302 I.P.C. That is how the accused is before this Court with this appeal.

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

4. This case is based on circumstantial evidence. At the outset, we should say that in cases, based on circumstantial evidence, it is absolutely necessary that the circumstances projected by the prosecution should be proved beyond reasonable doubts and such proved circumstances should form a complete chain, without any break and the same should unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping the said principle in mind, let us now have a look at the circumstances projected by the prosecution.

5. The first and foremost circumstance projected by the prosecution is the motive. According to the prosecution, the accused had developed illicit intimacy with the wife of the deceased, which was opposed by the deceased and that is the reason, why, the accused took the deceased along with him and murdered him. In order to prove the said motive, there is absolutely no evidence let in by the prosecution. Thus, the prosecution has failed to prove the motive.

6. The next circumstance, relied on by the prosecution, is that according to P.W.s 2 and 3, the deceased was taken by the accused at 1.30p.m. on 11.03.2012 for the purpose of taking liquor. From the wine shop, P.W.10, the accused and the deceased had gone to the temple ground in a motor cycle where they consumed liquor together. It is the further evidence of P.W.10 that at that time, there arose a quarrel between the accused and the deceased as the deceased questioned the accused about his illicit relationship with his wife. Thereafter,

according to P.W.10, he left the place of occurrence. Much reliance is placed on this evidence to prove that lastly, the accused was at the place of occurrence with the deceased. But, we find it difficult to act upon the said evidence of P.W.10, as P.W.10, during cross-examination, has stated that the motorcycle in which they travelled to the temple ground dashed against a lorry in which the deceased sustained injuries. He has further stated, during cross-examination, that there was no quarrel at all between the accused and the deceased. He has also stated that he, at first, left the place of occurrence, followed by the accused. Thus, P.W.10, has given a complete go-by to his evidence spoken in chief-examination. Therefore, we are unable to believe P.W.10. He is unworthy of credit. In the absence of any other circumstance against the accused, it is difficult to sustain the conviction.

7. Under Article 21 of the Constitution of India, life and personal liberty of an individual cannot be deprived of, except by following the procedure established by law. Courts of Law cannot convict the accused and deprive him of his life and liberty, on mere surmises. Here in this case, though the only circumstance that the accused had gone along with the deceased to the wine shop may create some suspicion, that suspicion, however strong, it may be, shall not take the place of proof. Thus, in our considered view, the Trial Court was wrong in convicting the accused on mere surmises. As we have already pointed out, P.W.2, the wife of the deceased, has stated that there was no illicit relationship between her and the accused.

8. In view of the above, we hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and hence, he is entitled for an acquittal.

9. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial court are set aside and he is acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the appellant/accused. Bail bond, if any, executed by him shall stand cancelled.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

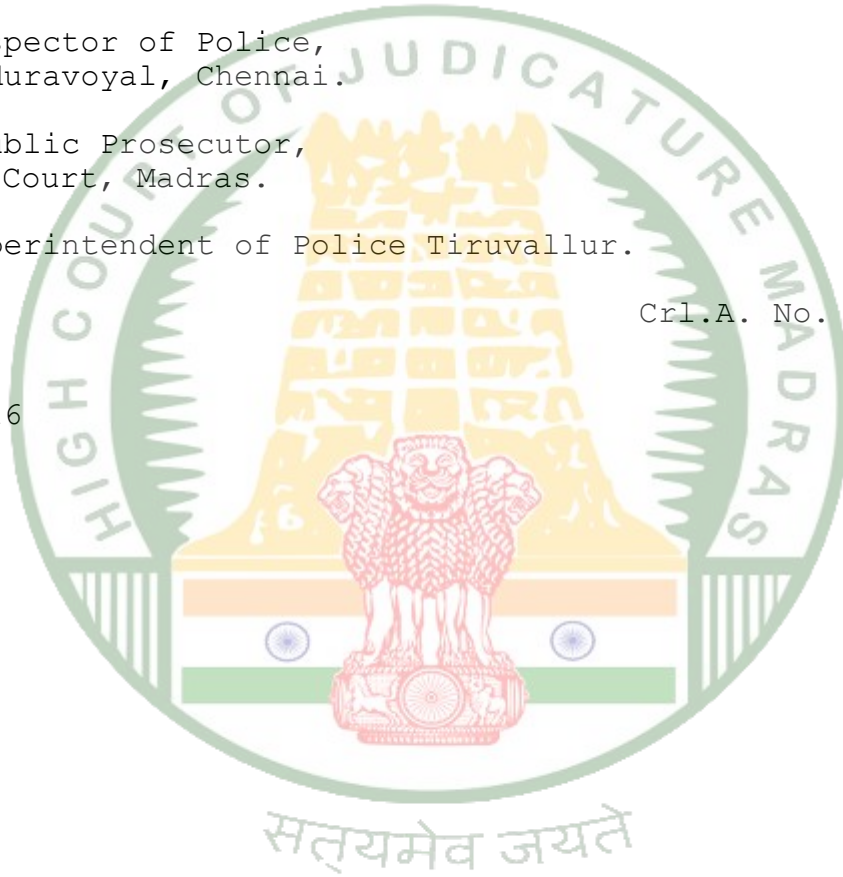
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To

1. The Prl. District & Sessions Judge,
Tiruvallur.
2. The Judicial Magistrate No.II, Poonamallee.
3. The Chief Judicial Magistrate, Tiruvallur.
4. The Superintendent, Central Prison,
Puzhal, Chennai.
5. The Inspector of Police,
T.4 Maduravoyal, Chennai.
6. The Public Prosecutor,
High Court, Madras.
7. The Superintendent of Police Tiruvallur.

Crl.A. No. 577 of 2013

GJ(CO)
Eu 20.05.16



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