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Bail Slip

The Sole Appellant/Accused name Elayaraja, was released on bail as per order of this court date 5.3.2013 made in Court dated 5.3.2013 made in MP.1/2013 in CrI.A.No.58/2013.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.58 of 2013

Elayaraja

.. Appellant

- Vs -

State rep by
The Inspector of Police,
Ariyalur Circle,
Kairlabad Police Station,
(Cr.No.116 of 2011)

.. Respondent

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional District and Sessions Judge, Ariyalur in S.C.No.68 of 2012 dated 14.09.2012.

For Appellant : Mr.T.Muruganantham

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 sole accused in S.C.No.68 of 2012 on the file of the learned Additional District and Sessions Judge, Ariyalur. He stood charged for offences under Sections 302 I.P.C. and 404 I.P.C. By judgment dated 14.09.2012, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for two years for the offence under Section 302 I.P.C. and to undergo rigorous imprisonment for three years and pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for six months for the offence under Section 404 I.P.C.



Court which was received on 28.08.2011 at 04.00 p.m.

2.4. The investigation was taken up by P.W.16, the Inspector of Police. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

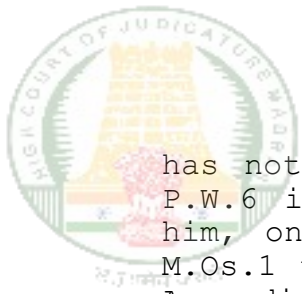
2.5. P.W.12 Dr.T.Kanmani, conducted autopsy on the body of the deceased on 25.08.2011 at 04.00 p.m. (Ex.P7) is the postmortem certificate. She gave opinion that the deceased could have died due to asphyxia.

2.6. When the investigation was in progress, the accused was arrested on 27.08.2011 at 03.00 p.m, in the presence of P.W.3 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed that he had given M.Os.1, 3 and 4 to P.W.6 Mr.Chandrasekar. In pursuance of the said confession, he took the police and witnesses to the house of P.W.6 and identified him. P.W.6, in turn told that as requested by the accused, he received M.Os.1, 3 and 4 from the accused and pledged the same with the Kumbakonam Benefit Fund Limited, Jayakondam branch. P.W.6 also produced the receipt for the same. In pursuance of the same, he took the police and others to the said bank from where M.Os.1, 3 and 4 were recovered. M.O.2 Pattai chain was recovered from the possession of P.W.6. On returning to the police station, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court.

2.7. The investigating was subsequently taken over by P.W.17 his successor on 24.09.2011. He completed the investigation and laid the charge-sheet against the accused on 10.12.2011.

2.8. Based on the above materials, the trial Court framed appropriate charges. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined, 14 documents and 4 material objects were marked.

2.9. Out of the said witnesses, P.W.1, the Village Administrative Officer, has spoken about the fact that the dead body was found at 08.30 a.m. on 25.08.2011 and he has also spoken about the complaint made by him to P.W.15. P.W.2 is the second husband of the deceased. He has stated that on 27.08.2011, he made a complaint to P.W.16 alleging that someone had killed his wife and taken away the jewels. The said complaint has been marked as Ex.P2. P.W.3 has spoken about the arrest of the accused on 27.08.2011 at 3.00 p.m. and consequential recovery of M.Os.1 to 4. P.W.4 has spoken about the preparation of an observation mahazar and a rough sketch at the place of occurrence. P.W.5 has turned hostile and he



has not supported the case of the prosecution in any manner. P.W.6 is a vital witness for the prosecution. According to him, on 25.08.2011, the accused came to him and handed over M.Os.1 to 4 and wanted him to pledge the same and give money. Accordingly, he pledged M.Os.1, 3 and 4 with the bank and retained M.O.2 alone. Out of pledging, he received Rs.98,000/- which he gave to the accused. Ex.P6 is the said receipt. He has further stated that on the disclosure statement made by the accused, the Inspector of Police along with the accused came to him and then he handed over M.O.2 chain to the police. The M.Os.1,3 and 4 are redeemed from the bank and given to the police. P.W.7 is the cousin of the appellant, who has stated that the sim card was purchased by him in his name and he handed over the same to the accused and the accused was using the same. He has not stated anything about the number of the sim card. P.W.8 is the manager of Jaykondam branch of Kumbakonam Benefit Fund and he has stated that M.Os.1, 3 and 4 were pledged by P.W.6 under Ex.P6 and later they were returned to the police. P.W.9 is the cashier of the said branch and he has stated the same facts. P.W.10 has spoken about the relationship between the accused and the deceased. P.W.11 Dr.Kasturi Bai has stated that she handed over M.O.2 to the deceased on 24.08.2011 at 05.00 p.m. which belonged to the deceased. P.W.12 has spoken about the postmortem conducted by her and her final opinion regarding the cause of death. P.W.13 is the constable who took the F.I.R. to Court and he has spoken about the same. P.W.15 the then Sub Inspector of Police has stated about the registration of the case on the complaint of P.W.1. P.Ws.16 and 17 have spoken about the investigation done and the final report filed by P.W.17.

2.10. 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. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

3. 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.

4. It is a case based on circumstantial evidence. The first and foremost circumstance is that the deceased was lastly seen on 24.08.2011 at 5.00 p.m. at Killapalavur Village by Dr.Kasturi Bai (P.W.11). According to this witness, earlier, the deceased had handed over M.O.2, which she had received to take it as a model for purchasing a similar gold ornament for herself. She has further stated that on 24.08.2011, at 5.00 p.m. the deceased came to her residence and received back M.O.2 gold chain and went away. We do not find any reason to reject this evidence of P.W.11, who is an



independent witness. Thus, P.W.11 has proved that M.O.2 was lastly in the possession of the deceased.

5. The next circumstance is the evidence of P.W.1, who has stated that on 25.08.2011 at 08.30 a.m. he was informed by the Karibad Village Assistant that a dead body was lying behind Annalakshmi Marriage Hall. At the time when he made a complaint to the police, the identity of the dead body was not known. The identity of the dead body came to be known only during investigation. Thus, the prosecution has proved that the deceased would have died sometime between 05.00 p.m. on 24.08.2011 and 08.30 a.m. on 25.08.2011. The evidence of P.W.12, the Doctor who conducted postmortem would go to prove that the deceased died due to asphyxia due to strangulation and suffocation. Thus, there can be no dispute that the death of the deceased was a homicide which had occurred somewhere between 5.00 p.m. on 24.08.2011 and 08.30 a.m. on 25.08.2011.

6. The next circumstance is that according to P.W.11, M.O.2 was in the possession of the deceased on 24.08.2011 at 5.00 p.m. According to the evidence of P.W.2, M.Os.1, 3 and 4 were worn by the deceased lastly. On the dead body on 25.08.2011, M.Os.1 to 4 were found missing. Thus, the prosecution has succeeded in establishing that the homicide and the removal of M.Os.1 to 4 from the body of the deceased had taken place in one and the same occurrence. Therefore, the presumption is that the person who removed M.Os.1 to 4 from the body of the deceased would have caused the death of the deceased also.

7. The next circumstance is that the accused was arrested on 27.08.2011 at 03.00 p.m. in the presence of P.W.3. On such arrest, the accused gave a voluntary confession in which he disclosed that he had handed over M.Os.1 to 4 to P.W.6. He further disclosed that he wanted P.W.6 to pledge the jewels in a bank and give him money to go abroad. It was out of this disclosure statement, P.W.6 was discovered and the accused took P.W.16 and P.W.3 and another witness to the house P.W.6 and identified him. This disclosure statement of the accused squarely falls within the ambit of Section 27 of the Evidence Act and the conduct of the accused in taking the police to the house of P.W.6 and identifying him is also relevant under Section 8 of the Evidence Act.

8. P.W.6 admitted that the accused gave M.Os.1 to 4 to him on 25.08.2011, with a request to him to pledge the jewels. He retained M.O.2 alone and pledged M.Os.1, 3 and 4 with the Jayakondam branch of Kumbakonam Benefit Fund under Ex.P6. P.Ws.8 and 9 have stated that P.W.6 came and pledged M.Os.1, 3 and 4 under Ex.P6 for Rs.98,000/- M.Os.1, 3 and 4 were recovered from the bank and M.O.2 was recovered from P.W.6. Thus, from the evidence of these three witnesses, it has been clearly established by the prosecution that M.Os.1 to 4, which belonged to the deceased were in the possession of the accused

on 25.08.2011



9. The learned counsel for the appellant would submit that there are some discrepancies in respect of the date and time between the evidence of these three witnesses, at which, the jewels were recovered from the bank. This, in our considered view, is only a natural discrepancy out of loss of memory. Ex.P6, the receipt clearly speaks of the date on which M.Os.1, 3 and 4 were pledged with the bank. Kumbakonam Mutual Benefit Fund is not a private concern and it is a company which maintains its accounts properly. Ex.P6 is the receipt issued by the bank in the regular course of business. Thus, we do not find any reason to doubt the genuineness of Ex.P6. Thus, Ex.P6 would go to prove that M.Os.1, 3 and 4 were really pledged on 25.08.2011 and was later on recovered. Thus, we do not find any reason to reject the evidence of these three witnesses, from which the prosecution has clearly established that on 25.08.2011, the accused was found in possession of M.Os.1 to 4 and as requested by the accused, P.W.6 had pledged M.Os.1, 3 and 4 and retained M.O.2 alone. These jewels were recovered later on based on the disclosure statement made by the accused. Thus, the prosecution has clearly proved that soon after the commission of the crime, the accused was found in possession of these stolen properties.

10. In view of the proof of the said fact, the presumption arising out of the same is that it was this accused who caused the death of the deceased and removed the jewels. Of course, this presumption is rebuttable, but the accused has not rebutted the said presumption either by means of any positive evidence or by means of any other circumstance culled out from the materials available on record. Thus, the said presumption raised under Section 114 of the Evidence Act remains unrebutted and out of the said presumption, the prosecution has clearly proved that it was this accused who caused the death of the deceased and removed the jewels. The very fact that the deceased was done to death by suffocating her would go to prove the intention of the accused. Thus, the act of the accused in causing the death of the deceased would clearly fall within the first limb of Section 300 I.P.C. and therefore he is liable to be punished under Section 302 I.P.C. For having removed the M.Os.1 to 4 from the body of the deceased, he is liable for punishment under Section 404 I.P.C.

11. Now, turning to the quantum of punishment, the trial Court has imposed only lesser punishment, which is fair and just. Therefore, the quantum of punishment also does not require any interference at the hands of this Court. At any rate, we do not find any merit at all in this appeal.

12. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the accused by the learned Additional District and Sessions



Judge, Ariyalur in S.C.No.68 of 2012 dated 14.09.2012, is hereby confirmed and the bail bond shall stands cancelled. The Trial Court shall take steps to secure the accused and commit him to prison so as to undergo the remaining sentence.

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Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

gms/kk



To

1. The Additional District and Sessions Judge,
Ariyalur.

2. The Judicial Magistrate, Ariyalur.

3. The Principal District and Sessions Judge, Ariyalur.

4. The Chief Judicial Magistrate-I, Ariyalur.

5. The Superintendent Central Prison, Trichy.

6. The The Inspector of Police,
Ariyalur Circle,
Kairlabad Police Station.

7. The Public Prosecutor,
Madras High Court.

Crl.A.No.58 of 2013

VSN(CO)
Eu 27.4.16