

Bail Slip

The Accused/A1 namely P.Murugesan was released on bail as per order of this court dated 01.07.2014 and made in MP No.1 of 2014 in Crl.A.No.584 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE Mr. JUSTICE P.KALAIYARASAN

Criminal Appeal No.584 of 2013

P.Murugesan ... Appellant

Vs.

The State represented by
Inspector of Police
Kamanaikkampalayam Police Station.
[Crime No.75/2009] ... Respondent

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure, against the Judgment dated 18.12.2012 passed in S.C.No.296 of 2011 on the file of the II Additional District and Sessions Judge, Tiruppur.

For Appellant : Mr.S.Manoharan

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

J U D G M E N T

[Judgment of the Court delivered by P. KALAIYARASAN, J]

This Criminal Appeal is against the Judgment, dated 18.12.2012 made in S.C.No.296 of 2011 on the file of the II Additional District and Sessions Judge, Tiruppur.

2. The appellant is the first accused in the case. The second accused died. The appellant / accused has been convicted for the offence under Sections 341 and 302 r/w 34 IPC and sentenced to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for six months for the offence under Section 302

r/w 34 IPC and to undergo one month Simple Imprisonment for the offence under Section 341 IPC. The sentences were ordered to run concurrently.

3. The short facts leading to the filing of the appeal are as follows :

[a] The deceased Mayilsamy, accused Murugesan and one Thangamani were friends. They were going for work together. Mayilsamy was residing with his mother, P.W.5, Veerammal. In 2009, on one sunday, the accused came to the house of mayilsamy in the evening and took him for weaving work. For about 10 days, he did not return home. On 01.03.2009, when P.W.7 was consuming liquor in a brandy shop at Karnampet, he saw the deceased along with the accused and one Thangamani taking liquor together nearby and he also saw the deceased mayilsamy angrily left the place in a TVS 50, after wordy altercation between them. P.W.8, Mr.Subban, saw the deceased with the accused and one Thangamani at about 7 p.m, just two days prior to the spotting of the dead body in the nearby place. He saw all the three talking with each other in the bus stop and then went towards eastern side land. P.W.9, Mr.Vellivel, at about 7.30 p.m on 01.03.2009, just 2 or three days prior to the detection of the dead body, saw the accused and Thangamani in the bus stop.

[b] P.W.1, Mr.Mathiazhagan, the Village Administrative Officer, on information, found the dead body in Odai poromboke, near a mill at 11 a.m on 03.03.2009. He went to the police station and lodged the complaint, Ex.P.1. P.W.12, Mr.Abdul Kayub, Sub-Inspector of Police, received the complaint and registered FIR, Ex.P.6. P.W.16, Mr.Loganathan, Inspector of Police, took up the case for investigation, went to the place of occurrence at 12.15 p.m and prepared an observation mahazar, Ex.P.3 in the presence of P.W.2, Gandhi and another witness. He also drew a rough sketch, Ex.P.9. He recovered cheppals and the comb under mahazar. The photographer, P.W.15, also took photograph, M.O.8 series. He sent the dead body to the Government Hospital. On 04.03.2009, he held inquest over the dead body in the Hospital in the presence of panchayatdars and prepared Inquest Report, Ex.P.10. Then, he gave requisition to the Doctor for autopsy.

[c] P.W.11, Doctor, Edwin Joe, conducted autopsy over the dead body at 11.15 a.m and found the following external injuries :

Complete ligature abrasion seen encircling the neck in two rounds each measuring 36 x 0.5 cms one above the other.

The anatomical location of the ligature mark is as follows :

Upper

- 9 cms below right ear
- 8 cms below chin, and
- 6 cms below left ear

Lower

- 11 cms below right ear
- 8.5 cms below chin, and
- 6.5 cms below left ear.

On bloodless dissection of neck : The base of the ligature abrasion is soft with no extravasation of blood seen in the superficial and deep planes of neck. Hyoid bone intact.

Internal Injuries :

Reddish contusion 8 x 6 cm noted over anterior aspect of scrotal sac with hematoma about 25 gm. Subscalpal contusion 26 x 20 cms seen in the entire scalp sparing right parietal region.

After getting the Viscera Report, the Doctor opined that the deceased would appear to have died of shock due to multiple and scrotal contusions, about 48 to 78 hours prior to the autopsy examination. The postmortem certificate is Ex.P.4

[d] After postmortem, P.W.14, Head Constable, handed over the body to the relatives. He also recovered the clothes from the dead body and handed over to the Investigating Officer. The Investigating Officer sent the properties to the Court. On 16.03.2009 at 6 a.m, the Investigating Officer, arrested the accused and Thangamani in the Kattakaranampettai bus stop. He recorded the confession statement voluntarily given by the accused and Thangamani in the presence of P.W.10, Ganesan and another witness. He also sent requisition along with the photograph of the deceased for chemical examination of the properties and superimposition test. P.W.13, Scientific Officer of the Forensic Science Department, examined and sent report, Ex.P.7 along with laser copies and photographs. The Investigating Officer recorded the statement of the witnesses and laid charge sheet against the accused.

4. During the course of trial, on the side of the prosecution, 17 witnesses were examined and 13 exhibits, apart from 8 material objects were marked. The accused, while being questioned under Section 313 Cr.P.C, with reference to the incriminating materials, denied his complicity in the crime.

5. The trial Court, after having considered the evidence placed on record, concluded that the accused is liable to be convicted for the offence under Section 302 r/w 34 IPC and 341 IPC and sentenced him as aforesaid.

6. Mr.S.Manohar, learned counsel appearing for the appellant would contend that the trial court based conviction only on the circumstantial evidence and those evidence are not

complete unerringly pointing towards the guilt of the accused.

7. We have heard the learned Additional Public Prosecutor on these aspects.

8. Before advertng to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case, there is no direct evidence to connect the accused with the offence. The prosecution rests its case solely on circumstantial evidence.

9. The Hon'ble Supreme Court has held that circumstantial evidence must satisfy certain tests when the prosecution case rests upon circumstantial evidence. In *Gambhir v. State of Maharashtra*, reported in (1982) 2 SCC 351, the Hon'ble Supreme Court has held as follows :

"The law regarding circumstantial evidence is well settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests : (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused."

10. Keeping in mind the above broad principle in mind, let us now go into the circumstances projected by the prosecution. The prosecution relies on the following circumstances :

(1) The accused and Thangamani took the deceased from the house and he did not return home for about 10 days, till the body was discovered, as disclosed from the evidence of P.W.5 and P.W.6, mother and brother of the deceased.

(2) Just two days prior to the finding out the dead body of the deceased, P.W.7 saw the deceased taking liquor with the company of the accused and Thangamani in a liquor shop and the deceased left the place in his TVS 50 vehicle, after wordy altercation.

(3) Just two days prior to the detection of dead body, P.W.8, Subban, saw the deceased in the company of the accused and Thangamani in the bus stop at 7 p.m and he also saw them

going to the land side towards east. He heard after two days about the death in the ditch.

(4) P.W.9, Vellivel saw the accused and Thangamani at 7.30 p.m on 01.03.2009 talking with each other in the bus stop.

11. P.W.5, mother of the deceased has stated that 10 days before the dead body was found, her son went along with the accused and he was found missing during interregnum period.

12. If the evidence of P.W.7, P.W.8 and P.W.9 are analysed thoroughly, we are of the considered view that it is not trustworthy. P.W.7 says that the deceased left in his vehicle after quarrelling with the accused in the liquor shop. P.W.8 says that he saw the deceased in the company of the accused and Thangamani at 7 p.m in a bus stop. There is no explanation to show how the deceased joined the accused at 7 p.m again after quarrel. Again another witness, P.W.9 says that he saw the accused and Thangamani were talking each other in the bus stop at 7.30 p.m.

13. There is nothing in evidence, how P.W.7, a stranger residing 15 kms away from the place knew the deceased and accused. Two different witnesses, i.e., P.W.8 and P.W.9 have said that one saw the deceased with the accused and Thangamani at 7 p.m in the bus stop and another saw the accused talking with Thangamani in the same bus stop at 7.30 p.m.

14. The above evidence of P.W.7 and P.W.8 is highly unbelievable and unacceptable to infer that the accused along with his accomplice took the deceased from the bus stop at 7 p.m and were seen without the deceased at 7.30 p.m in the same bus stop.

15. Though the prosecution attempted to prove last seen theory through the above evidence, it has miserably failed. Therefore, we are of the view that the circumstances shown by the prosecution is not based on the acceptable evidence and the circumstances attempted to be established do not point to the guilt of the accused, without leaving for any other hypothesis.

16. As per the evidence of the Doctor, who conducted postmortem and issued postmortem certificate, apart from complete ligature abrasion, encircling the neck, reddish contusions 8 x 6 cm over anterior aspect of scrotal sac and Subscalpal contusion 26 x 20 cms in the entire scalp were noticed on the body of the deceased. The Doctor also opined that the deceased would appear to have died on shock due to multiple and scrotal contusions. Therefore, the medical

evidence is also not corroborating the case of the prosecution.

17. Therefore, we are of the view that the accused is entitled to be given benefit of doubt and accordingly, given the same. Consequently, the accused is acquitted from the charges. The appeal is allowed. The conviction and sentence of the trial court is set aside. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The II Additional District and Sessions Judge
Tiruppur.
2. The Inspector of Police
Kamanaikkampalayam Police Station.
Tirupur District.
3. The Public Prosecutor, High Court, Madras.
4. The Judicial Magistrate,
Palladam, Tirupur District.
5. The Chief Judicial Magistrate, Tirupur.
6. The Principal Sessions Judge, Tirupur.
7. The Superintendent of Central Prison,
Coimbatore.
8. The Collector, Tirupur.
9. The Director General of Police,
Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

CRL.A.No.584 of 2013

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kra 15.06.2016