

BAIL SLIP

The Accused Viz., Palanisamy(A1) and Karthikeyan(A2) released on bail as per Order of this Court dated 16.12.2013 in M.P.No.1 of 2014 in CrI.A.No.666 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.666 of 2013

1. Palanisamy
2. Karthikeyan ... Appellants/Accused

Vs

State rep. By
Inspector of Police,
Mangalam Police Station,
Cr.No.1831 of 2011 ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records in S.C.No.126 of 2012 on the file of the learned I Additional District and Sessions Judge, Tiruppur and set aside the judgment dated 18.07.2013.

For Appellant : Mr.Babu Rangasamy

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

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JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellants are A.1 and A.2 respectively in S.C.No.126 of 2012, on the file of the learned I Additional Sessions Judge, Tiruppur. They stood charged for offences under Sections 302, 201 and 404 I.P.C. By judgment dated 18.03.2013, the trial Court convicted both the accused under all the 3 charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,000/- each in default to undergo simple imprisonment for six months for offence under

Section 302 IPC and to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 3 months for offence under Section 201 IPC and to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month for the offence under Section 404 IPC. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Ravichandran. He was a resident of Vellanchettipalayam village, Soolur Taluk. It is alleged that the accused, who were friends invited the deceased to have liquor together. It is further alleged that on 08.08.2011, the deceased left lastly in his motorcycle after having purchased some eatables for the purpose of drinking. A.1 and A.2 took him near a well at Vellanchettipalayam Samy sizing mill. A.1 threw chilly power on the face of the deceased and put a nylon rope around the neck of the deceased. A.2 removed the lungi of the deceased and tied his hands. Then, both the accused strangled the deceased by means of ligature and caused the death. Then, they took the dead body to the nearby well and threw the same into the water. It is further alleged that both the accused had stolen away the motorcycle belonging to the deceased bearing Registration No.39 AS 9733. The occurrence was not witnessed by anyone.

3.P.W.1 is the brother of the deceased. On 10.08.2011, at about 6.15 a.m, he heard that a dead body was found in the well. He went to the place of occurrence along with one Mr.Easwaran/P.W.2, and on identifying the fact that the dead body was that of the deceased he proceeded to Mangalam Police Station and made a complaint 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.1832/2011 for offence under Section 302 I.P.C. In the complaint, P.W.1 had mentioned that these two accused were the suspects. Therefore, their names were mentioned in the F.I.R., also. P.W.13 forwarded Ex.P.1 Complaint and Ex.P.12 F.I.R., to the Court, which were received by the learned Jurisdictional Magistrate at 09.30 a.m. on 10.08.2011.

4.The case was taken up for investigation by P.W.16, the then Inspector of Police. He proceeded to the place of occurrence at 8.00 a.m on 10.08.2011 and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.12 and another witness. Then, he recovered the personal belongings of the deceased found lying there. He also collected 4 bottles of water from the well for the purpose of examination. Then, he conducted inquest on the body of the deceased and forwarded the same for Post mortem.

5.P.W.15 Dr.Jaisingh, conducted autopsy on the body of the deceased on 10.08.2012 at 1.15 p.m. He found the following injuries.

"Contusion 4 x 3 cm noted over left lower eyelid and cheek. A complete transverse ligature pressure abrasion mark measuring 43 x 4 to 3 cm noted on the middle of the neck.

The anatomical landmarks of the ligature abrasion marks are - 7 cm below to right ear lobe. 8 cm below to chin, 7 cm below to left ear lobe.

On bloodless dissection of neck.

The base of the ligature mark is softened and intermittently bruised. Both side thyroid glands found contused. Contusion 4 x 3 cm noted over left side of the neck and 5 x 2 cm noted over right side of the neck. Fracture noted over junction between the greater cornu and the body of left side hyoid bone with surrounding tissue contusion. Inner aspect of tracheal mucosa found contusion and partially digested food particles noted in the larynx and trachea.

On dissection of Scap. Skull and Dura;

Sub scalp contusion 8 x 3 cm noted over both frontal region and 13 x 8 cm noted over right frontal region. Right temporalis muscle found contused. Sub arachnoid hemorrhage noted over both cerebral hemisphere.

Pleural and Peritoneal cavities empty. Heart-Flabby. Cut section decomposed. Stomach contains about 150 grams of partially digested food particles with smell of decomposed, mucosa decomposed. Small intestine - contains about 10 ml of bile stained fluid, with smell of decomposed, mucosa decomposed. Liver, Spleen, Brain, Lungs and Kidneys - identifiable. Cut section decomposed. Urinary bladder empty. Viscera preserved and set for chemical analysis. Sternum preserved and sent for diatoms test. "

Ex.P.14 is the Post Mortem Certificate and Ex.P.15 is the Final Opinion regarding the cause of death. P.W.15 gave opinion that the death in the case would have occurred due to manual strangulation.

6.P.W.16, during the course of investigation arrested both the accused on 11.08.2011 in the presence of P.W.10 and another witness. At 11.00 a.m on the same day, while in

custody, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden a two wheeler motorcycle. He also produced yet another motorcycle (M.O.17) from his possession. Then A.2 also gave a voluntary confession, in which, he disclosed the place where he had hidden the nylon rope and a motorcycle key. In pursuance of the same, A.1 took the Police and witness to a two wheeler stand at Valipalayam and identified the motorcycle (M.O.20) and that was recovered from the stand by P.W.16 in the presence of the witnesses. Then, on the confession of A.2, a nylon rope and the key of the motorcycle were recovered. On returning to the Police Station, he forwarded both the accused for judicial remand and also handed over the Material Objects to the Court. On completing the investigation, he laid charge sheet against both the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against both the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 18 documents were exhibited, besides 20 Material Objects were marked.

8. Out of the said witnesses, P.W.1, the brother of the deceased has stated that the deceased was found missing from 08.08.2011 onwards and he found the dead body of the deceased early in the morning on 10.08.2011 in the well. He has also spoken about the complaint made by him. P.W.2 is the neighbouring land owner, where the dead body was found and he has not stated anything incriminating against the accused. P.W.3 is a star witness for the prosecution. According to him, on 08.08.2011 at about 7.30 p.m., when he was in the shop, belonging to one Annachi at Vellanchettipalayam, the deceased came to the said shop and purchased some eatables and told him that he was going to have liquor along with these two accused. Then, he went in his motorcycle towards the nearby forest area. Both the accused also followed him. P.W.4 is the wife of the deceased, who has stated only about the motive. P.W.5 has not stated anything incriminating against the accused as he has spoken only on hearsay information. P.W.6 is the owner of the shop, where the deceased purchased some eatables and he has lastly seen the deceased alive. P.W.7 is the employee of the deceased and he has spoken about the motive. P.Ws.8 and 9 have also spoken about the motive. P.W.10 has spoken about the recovery of the Motorcycle (M.O.20) and the key on the disclosure statements made by A.1 and A.2 respectively. P.W.12 has spoken about the preparation of the Observation Mahazar at the place of occurrence and the Rough Sketch. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the fact that he took the dead body of the

deceased from the place of occurrence and handed over the same to Doctor for Post Mortem on 10.08.2011. P.W.15 has spoken about the Post Mortem conducted and his final opinion regarding the cause of death. P.W.16 has spoken about the investigation done by him and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to any of the witnesses on their side. Their defence was a total denial.

10. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

11. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. This is a case based on circumstantial evidence. It is in evidence that the deceased was lastly seen on 08.08.2011 at the shop of P.W.6 at about 7.30 p.m. He was seen by P.W.3 also. Thereafter, the dead body of the deceased was found around 7.00 a.m. on 10.08.2011. The medical evidence shows that the death was due to manual strangulation. Thus, the prosecution has succeeded in establishing that the death was caused sometime between 7.30 p.m on 08.08.2011 and 7.00 a.m on 10.08.2011.

13. Now, the question is, "who caused the death of the deceased?" In order to prove the same, the prosecution relies only on three circumstances. The first circumstance is motive. Assuming that the motive stands proved, on that score alone, we cannot rush to the conclusion that it was these accused who caused the death of the deceased. After all, motive is always a double edged weapon.

14. The next circumstance relied on by the prosecution is the evidence of P.W.3, who has stated that he found the deceased lastly leaving the shop of P.W.6 at 7.30 p.m., on 08.08.2011 and he was followed by these two accused. The learned counsel for the appellants has pointed out that this witness did not say anything about the occurrence until the dead body of the deceased was discovered. After all, he is the uncle of the deceased. There is no explanation as to why he did not disclose the said fact until the dead body was found. Above all, only from out of this evidence that the deceased was lastly seen proceeding towards the well and these accused followed him, we cannot conclusively hold that it was these accused who caused the death of the deceased.

15.The last circumstance relied on by the prosecution is, on the arrest of A.1 and on his disclosure statement, M.O.20 (Motor Cycle) was recovered from the Motorcycle Stand and from the possession of A.2, the motorcycle key was recovered. But, absolutely there is no evidence that the motorcycle belonged to the deceased. Even the witnesses, who had seen the deceased lastly have not stated that M.O.20 was in the possession of the deceased. P.W.3's evidence would go to show that the deceased went on walk followed by these two accused. Even in the F.I.R, nothing has been stated about the missing of the motorcycle. The wife of the deceased has also not stated anything about the ownership of the motorcycle. Thus, it is presumable that the motorcycle story was planted only in an attempt to strengthen the case of the prosecution. At any rate, since, there is no evidence that M.O.20 (Motor Cycle) and the key of the said motorcycle belonged to the deceased and that they were in the possession of the deceased lastly, this can never be an incriminating circumstance against the accused. Apart from these circumstances, about which we have discussed elaborately, absolutely there is no evidence against these accused.

16.In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In this case, the prosecution has not even able to succeed in creating a very strong suspicion against these accused. For these reasons, we hold that the conviction and sentence imposed on the appellants are not sustainable and hence, the same are liable to be set aside. सत्यमेव जयते

17.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A.1 & A.2 by the learned I Additional District & Sessions Judge, Tiruppur in S.C.No.126 of 2012, dated 18.07.2013, is set aside and the appellants/A.1 & A.2 are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 & A.2, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The I Additional District and Sessions Judge,
Tiruppur.
- 2.-Do- Through The Principal Sessions Judge,
Tiruppur.
- 3.The Judicial Magistrate No.II,
Tiruppur.
- 4.Do- Through The Chief Judicial Magistrate,
Tiruppur.
- 5.The Superintendent,
Central Prison,
Coimbatore.
- 6.The Judicial Magistrate No.I,
Tiruchirapalli.
- 7.The District Collector,
Tiruppur.
- 8.The Deputy Superintendent of Police,
Tiruppur.
- 9.The Director General of Police,
Mylapore, Chennai 04.
- 10.The Inspector of Police,
Mangalam Police Station.
- 11.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Babu Rangasamy, Advocate, S.R.No.30096

Cr1.A.No.666 of 2013

BVR(CO)
CA(29/06/2016)