

Bail Slip

The Appellant/Accused namely Pachaiyappan @ Ramesh aged 31 S/O Selvaraj was released on bail in M.P.No.1 of 2013 in Cr1 A No.714 of 2013 by order dated 11/11/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.A.No.714 of 2013

Pachaiyappan @ Ramesh ... Appellant

vs.

State, rep.by
The Inspector of Police,
T-5,Thiruverkadu Police Station,
Chennai Police ... Respondents
Crime No.209 of 2011

Criminal appeal preferred under Section 374 Cr.P.C., against the judgement, dated 30.09.2013, passed by the 2nd Additional District and Sessions Judge, Thiruvallur at Poonamallee, in S.C.No.86 of 2012.

For Appellant : Mr.C.Santhoshkumar
Legal Aid counsel

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.86 of 2012, on the file of the II Additional Sessions Judge, Thiruvallur, at Poonamallee. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 30.09.2013, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one year. Challenging the said conviction and sentence, the appellant has come up with this appeal.

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

(a) The deceased in this case was one Mr.Parasuraman. He used to visit the house of the accused in a friendly manner. In due course of time, the accused had a suspicion that the deceased had developed illicit intimacy with his mother Mrs.Salammal. The accused, on few occasions, reprimanded the deceased and wanted him not to visit his house. But, the deceased did not stop. Therefore, the accused decided to do away with the deceased. This is stated to be the motive for the occurrence.

(b) While so, on the night intervening 4.6.2011 and 5.6.2011, when the deceased was near an electric post, on the road leading to Paruthipattu, Ayappakkam, the accused hit him with a granite stone on his face and head. Having received serious injuries, the deceased died on the spot. Then, the accused dragged the body of the deceased and pushed it into the Koladi Lake.

(c) P.W.1, the son of the deceased, came to know on 5.6.2011, at 7.00 a.m. that the dead body of the deceased was found in Thiruverkadu lake. He immediately rushed to the place of occurrence and found the dead body, with number of injuries all over his body. Immediately, he went to Thiruverkadu Police Station and made a complaint at 10.30 a.m. on 5.6.2011. P.W.14, the then Inspector of Police, Thiruverkadu Police station, on receipt of the said complaint, under Ex.P1, registered a case, in Crime No.209 of 2011, under Section 302 of the Indian Penal Code. Since, the assailant was not known, in the complaint, P.W.1 has not mentioned the name of the accused. P.W.14, forwarded Ex.P1, the complaint and Ex.P19, the First Information Report, to the Court, which were received by the learned Magistrate at 3.00 p.m. on 5.6.2011.

(d) The case was taken up for investigation by P.W.14. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of P.W.4 and another witness. At a distance of 300 meters away from the place, where the deceased was found, P.W.14 found M.Os.1 to 4, the dress materials of the deceased. He recovered the same under Ex.P3 mahazar, in the presence of the same witnesses. Then between 12.00 noon and 1.30 p.m., he conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.12, Dr.Murugesan, conducted inquest on the body of the deceased, on 6.6.2011, at 11.00 a.m. He found the following injuries.

"Abrasion: Reddish brown in colour

(1) 5 x 2 cm on the outer aspect of left shoulder.

- (2) 4 x 2 cm on the inner aspect of left upper arm.
- (3) 5x 4 cm on the front of left side of rear side of abdomen.
- (4) 2 x 1 cm in the front of outer portion, left side abdomen.
- (5) 13 x 10 cm on the back of left upper arm
- (6) 30 x 15 cm on both side gluteal region
- (7) 21 x 14 cm on back of left side chest
- (8) 20 x 15 cm on back right side chest.
- (9) 7 x 2 cm on the outer aspect of right shoulder

Lacerated injuries:

- (1) 3 x 1 cm x bone deep on the outer side of the left eyebrow.
 - (2) 6 x 4 cm x bone deep on the left mastoid area
 - (3) 6 x 2 cm x bone deep lacerated wound on the outer side of the left side fore head.
 - (4) 5 x 2 cm x bone deep on the middle part of forehead as o/d subscalp haematoma on the frontal tempera paseval area scalp 6 cm long an oblique fissured fracture on the frontal bone.
 - (5) 5 x 2 cm x bone deep on the right side forehead.
 - (6) 2 x 1 cm x bone deep in the right eye brow.
 - (7) 5 x 2 cm x bone deep on the right mastoid region
 - (8) 4 x 2 cm x bone deep on the left side upper lip
 - (9) 3 x 2 cm x bone deep in the right lower lip.
 - (10) 7 x 3 cm x bone deep in the right lower jaw O/D.multiple comminuted fracture on the right mandible bone.
 - (11) 3 x 2 cm bone deep in the vertex at the scalp. O/d.subscalp Haematoma seen. o/D.Sub arachnoid Haematoma 16 x 8 x 1 cm on both side tempera parietal frontal lobe on the brain. Intra cerebral hge on both cerebrum.
- Contusion : 10 x 8 cm on the frontal left side chest o/D.fracture on the 3rd, 4th and 5th ribs at their corticosteroid fraction.
- Other findings: Hyoid bone intact. Trachea empty. Mucosa pale. All vital midbone structures in the neck were intact. lungs - Normal size. Great vessels not mal, coronary vessels patent. Coronary ostiae normal. All

chambers empty. Stomach contained 100 gms of partly digested cooked rice."

Ex.P15 is the post-mortem certificate. The Doctor opined that the injuries found on the deceased could have been caused by a stone, like M.O.9. P.W.14 arrested the accused on 7.6.2011, at 3.30 p.m., at Chinnakoladi, near New Bridge, in the presence of P.W.9 and another witness. On such arrest, the accused made a voluntary confession, in which, he disclosed the place where he had hidden the stone and also a Hero-Honda motor-cycle, bearing Registration No.TN.20-BS-3705. In pursuance of the said disclosure statement, he produced M.O.9, the stone and M.O.12, the motor cycle, from the place of hide-out. P.W.14 recovered the same under a mahazar. He also produced M.O.10, the shirt and M.O.11, the pant, from the place of hide-out. P.W.14 recovered the same under a mahazar. On returning to the police station, he forwarded the accused to the Court. Then, he forwarded all the material objects to the Court and made a request to the Court to forward the same for chemical examination. The report revealed that there were blood stains on all the material objects. Then, the investigation was taken over by his successor, P.W.15. On completing the investigation, P.W.15 laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge against the accused, under Section 302 of the Indian Penal Code, as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 15 witnesses were examined, 19 documents were exhibited besides 16 material objects. Out of the said witnesses, P.W.1, the son of the deceased, had stated that he came to know, on 5.6.2011, at 7.00 a.m. that the dead body of his father was found in Thiruverkadu lake. Then, he made a complaint to the police. P.W.2, is the yet another son of the deceased. He has also stated that he heard about the death of the deceased and found the dead body. P.W.3 is the daughter-in-law of the deceased. She has also stated that, on 5.6.2011, at 7.00 a.m., she heard that the dead body of the deceased was found in the lake; she went there and found the dead body. P.W.4 is a villager, he has stated that on 5.6.2011, at 11.00 a.m., he went to the place of occurrence, where he witnessed the preparation of the observation mahazar, the rough sketch and the recovery of material objects. P.W.5 is a star witness for the prosecution, who has stated that on 4.6.2011 at 11.00 p.m., the accused and the deceased were fully drunk and at the drunken state, the accused slapped the deceased once and thereafter, they went together, towards Ayappakkam. On the next day morning at 10.00 a.m., the dead body of the deceased was found. P.W.6, has stated the same fact, as spoken by P.W.5. P.W.7 has spoken about the chemical analysis conducted by him. He has stated that there were human blood on

all the material objects. P.W.8 has spoken about the fact that he took the dead body to the hospital and handed over the same for post-mortem. P.W.9 has spoken about the arrest of the accused and the consequential recovery of M.O.9, the stone and M.Os.10 and 11, the shirt and the pant. P.W.11, the learned Magistrate has stated that she recorded the statements of certain witnesses under Section 164 of the Code of Criminal Procedure. P.W.12 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the registration of the case and P.Ws.14 and 15 have spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any one on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused under section 302 of the Indian Penal Code and that is how he is before this Court.

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

7. As we have already pointed out, in this case, P.Ws.1 to 3 have stated that they found the dead body of the deceased, on 5.6.2011, at 7.00 a.m., in the lake. They have not stated anything incriminating against the accused. P.Ws.5 and 6 have stated that on 4.6.2011 at 11.00 p.m., the accused and the deceased were fully drunk, during which, the accused slapped the deceased. They have further stated that thereafter, the accused and the deceased went together. Except these evidences, absolutely there is no evidence against the accused. From these two witnesses, it cannot be concluded that it was this accused, who caused the death of the deceased. The fact that the accused and the deceased were found together at their work spot is not incriminating and it is too remote to connect the accused with the death of the deceased. Thus, in our considered view, here is a case where absolutely there is no evidence against the accused. Under Article 21 of the Constitution of India, the life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court of law, cannot convict an accused on mere surmises and conjectures, as it would be violative of Article 21 of the Constitution of India. Here, in this case, the prosecution has not succeeded even in establishing a suspicion against the accused. The judgement of the trial Court would reveal that the trial Court has convicted the accused only on mere surmises, which is

illegal. In such view of the matter, we find that the conviction and sentence imposed on the appellant, are liable to be set aside and the appellant is entitled to be acquitted.

8. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted. The fine amount, if any, paid by the accused/appellant, shall be refunded to him forthwith.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
T-5, Thiruverkadu Police Station,
Chennai Police.
2. The 2nd Additional District and Sessions Judge,
Thiruvallur at Poonamallee.
3. The Judicial Magistrate No. II,
Poonamallee.
4. Through the Chief Judicial Magistrate,
Thiruvallur.
5. The Judicial Magistrate No. I,
Thiruchirapalli
6. Through The Chief Judicial Magistrate,
Thiruchirapalli.
7. The Superintendent,
Central Prison,
Puzhal, Chennai.
8. The District Collector,
Thiruvallur.
9. The Superintendent of Police,
Thiruvallur.

10.The Director General of Police,
Mylapore, Chennai-4.

11.The Public Prosecutor,
High Court, Madras.

+1cc to A.M.Rahamath Ali, Advocate Sr.25156
+1cc to Mr.C.Santhosh Kumar, Advocate Sr.24897

Crl.A.No.714 of 2013

pvs[co]
srg 14/07/2016



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