

BAIL SLIP

The Substantive Sentence of imprisonment imposed on the Petitioner/Accused namely Susila & Vinayagam were suspended in pursuance of the order of this Court made in MP.No.1/2014 in Crl.A.No.788/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.788/2013

1.Susila
2.Vinayagam

... Appellants/A1 and A2

Vs

State by
The Inspector of Police,
Padalur Police Station,
Perambalur District.

... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence made in S.C.No.91 of 2011, dated 01.10.2013 by the learned Sessions Judge, Mahila Court, Perambalur.

For Appellants : Mr.R.Subramanian
For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused 1 and 2 in S.C.No.91 of 2011 on the file of the learned Sessions Judge, Mahila Court, Perambalur. They stood charged for offence under Section 120-B read with 302 of I.P.C. By judgment, dated 01.10.2013, the

trial court convicted them under the said offence under Section 120-B read with 302 of IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,000/- each, in default, to undergo rigorous imprisonment for two years. Challenging the said conviction and sentence, the appellants 1 and 2/Accused 1 and 2 are before this Court with this appeal.

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

(a) The deceased in this case was one Mr.Subramanian. The first accused is his wife. They have three children. The marriage between them was celebrated around 15 years from the occurrence. They were living along with their children at Thenur in Perambalur District. The deceased, once, had engaged the 2nd accused, who also belongs to the said village, for the first time for digging a Well in his land. Thereafter, the deceased and the 2nd accused used to go for digging Wells for coolie together. On account of the same, it is alleged that the 2nd accused used to visit the house of the deceased frequently. In course of time, the 2nd accused, became very friendly towards the 1st accused, which resulted in an illicit intimacy between them. This came to the knowledge of the deceased. He warned the 1st accused and wanted her to cut off her ties with the 2nd accused. But the 1st accused did not stop the same. This resulted in frequent quarrels between the 1st accused and the deceased. It is alleged that the 1st accused informed the same to the 2nd accused. They thought that the deceased was a hindrance for their continuance of the illicit intimacy. Therefore, according to the case of the prosecution, the accused 1 and 2 conspired to do away with the deceased. It is further alleged that on 19.03.2011, at about 3.00 a.m., when the deceased was at his house, the 2nd accused came to his house and when the deceased was sleeping, the accused 1 and 2 committed murder of the deceased. More precisely, it is alleged that the 1st accused held the deceased, while he was sleeping, to facilitate the 2nd accused to strangle him. The 2nd accused with a rope strangled the deceased. The deceased died. Then, they abandoned the body in a cattle shed. The 2nd accused, thereafter, fled away from the scene of occurrence. The 1st accused remained in the house as though she was unaware of the above happenings.

(b) Early in the morning between 04.30 a.m. and 05.00 a.m. on 20.03.2011, the 1st accused wanted her daughter (P.W.7) to go and fetch water from the public tap. When she went there, she found the deceased lying dead in the cattle shed. She came and informed the same to the 1st accused. The 1st accused, without disclosing her involvement in the occurrence, simply wanted P.W.7 to go and inform the same to the parents of the deceased. P.W.7 immediately rushed to the house of P.W.1, the father of the deceased and informed the same. P.W.1 and other neighbours rushed to the house of the deceased. They found the deceased

lying dead in the cattle shed. They believed that it was a natural death. Since it was a day of 'Panguni Uthiram Festival', as per the village custom, in order to celebrate the festival, they decided to give a decent burial to the dead body of the deceased. They wanted to cremate the dead body by about 07.30 a.m. on 20.03.2011. They took the dead body of the deceased to the cremation ground. Before laying the body to rest, when they opened the dress found on the dead body of the deceased, they found that there were injuries on the neck of the deceased. P.W.1 and other villagers doubted some foul play. Therefore, P.W.1 and others, namely, P.Ws.2 to 6, came to the house of the deceased. When they enquired the 1st accused as to how the deceased died, she told that she only killed the deceased because he caused intolerable torture to her. When they further doubted that she alone would not have caused the death of the deceased, the 1st accused again told that only with the help of the 2nd accused, both of them killed the deceased. This was a shocking information to P.W.1 and others. Therefore, P.W.1, immediately went to the Padalur Police Station and made a complaint at 12.00 noon on 20.03.2011.

(c) P.W.15, the Special Sub-Inspector of Police of the said police station, on receipt of the said complaint, registered a case in Crime No.61 of 2011 under Section 302 of IPC against the 1st accused alone. Ex.P.1 is the Complaint. Ex.P.11 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 04.20 p.m. on 20.03.2011.

(d) The case was taken up for investigation by P.W.16, the then Inspector of Police. He proceeded to the place of occurrence at 01.15 p.m. on 20.03.2011 and in the presence of P.W.8 and another witness, prepared an Observation Mahazar and a Rough Sketch. On going over to the cremation ground where the body was lying, he conducted inquest on the dead body of the deceased and prepared Ex.P.13 Inquest Report. During inquest, he examined P.Ws.1 to 7 and few more witnesses. Then, he forwarded the body for postmortem.

(e) P.W.11 Doctor Arul Selvan conducted autopsy on the body of the deceased at 05.00 p.m. on 20.03.2011. He found the following injuries:

'External injuries

- A ligature mark extending horizontally from the midpoint of anterior aspect of neck with 8x0.5cm on the left and 7x0.5cm on the right
- On cut section of ligature mark, blood oozing from the side.

Internal examination

Hyoid bone: Fractured, pronold and sent for expert opinion

Thorax Ribs: Intact on both sides
Lungs: Intact and congested
Heart : Intact chambers contact 10ml fluid blood
Abdomen
Liver : Intact and congested
Spleen: Intact and congested
Kidney: Intact and congested
Stomach contains 500ml of undigested food particles
Intestines: Intact and congested
Bladder : empty.''

Ex.P.8 is the Postmortem Certificate. The visceral organs were sent by him for chemical examination. The report revealed that there was no poison in the internal organs. Finally, he gave opinion that the deceased would appear to have died of asphyxia due to strangulation about 12 to 24 hours prior to the postmortem.

(f) On 21.03.2011 at 12.00 noon, P.W.16 arrested the 1st accused near the Pillaiyar Temple at Thenur. On such arrest, she gave a voluntary confession in which she disclosed the place where she had hidden a rope. In pursuance of the same, she took the police and the witnesses to the place of hide out and produced the Nylone rope M.O.1. He recovered the same under a Mahazar and on returning to the police station, he forwarded the 1st accused to court and also handed over the M.O.1 to court.

(g) When the investigation was in progress, it is alleged that the 2nd accused voluntarily appeared before P.W.10, the Village Administrative Officer of Nakka Salem, T.Kalathur Village on 23.03.2011 at 10.00 a.m. According to P.W.10, the 2nd accused wanted him to take him to the police in connection with a murder case. Accordingly, P.W.10 took the 2nd accused to the police station and produced him before P.W.16. P.W.16 arrested him at 12.30 p.m. on 23.03.2011 in the presence of P.W.10 and another witness. On such arrest, he gave a voluntary confession in which he disclosed the place at where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.2 knife. P.W.16 recovered the same under a Mahazar. On returning to the police station, he forwarded the 2nd accused to court and handed over the material objects also to court. On completing the investigation, he laid charge sheet against both the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 15 documents and 3 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the father of the deceased and P.Ws.2 to 6 are the neighbours of P.W.1. They have

stated that they found the dead body of the deceased in the cattle shed of the deceased and then, they arranged for cremating the body, since it was a day of 'Panguni Uthiram Festival'. They have further stated that when they opened the dress found on the dead body of the deceased, they found injuries on the neck of the deceased. It was happened in the cremation ground. Then, leaving the dead body at the cremation ground, they all returned to the house of the deceased and enquired the 1st accused. The 1st accused confessed that she along with the 2nd accused caused the death of the deceased. Thereafter, according to P.W.1, he went to the police station and made the complaint. Thus, P.Ws.1 to 6 have spoken about the extra-judicial confession said to have been made by the 1st accused to them. P.W.7, the daughter of the deceased has stated that at about 04.30 a.m. on 20.03.2011, the 1st accused wanted her to go and fetch water from the public tap and when she went there, she found the dead body of the deceased was lying in the cattle shed. She has further stated that when she informed the same to the 1st accused, the 1st accused wanted her to inform to P.W.1. She has also stated that after the body was laid in the cremation ground, when P.Ws.1 and 6 enquired her mother, namely, the 1st accused, she confessed to her guilty. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch in the place of occurrence. P.W.9 has spoken about the arrest of the 1st accused and the recovery of M.O.1 on the disclosure statement made by her. P.W.10 has spoken about the arrest of the 2nd accused and the recovery of M.O.2 and the disclosure statement. P.W.11 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.12 Photographer has spoken that he took photographs at the place of occurrence in various angles and also the dead body of the deceased as instructed by P.W.16. P.W.13 has stated that he handed over the First Information Report to the learned Judicial Magistrate at 04.20 p.m. on 20.03.2011. P.W.14 has told that he took the dead body from the cremation ground to hand over the same to the doctor for postmortem. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.W.16 has spoken about the investigation done and the final report filed by him.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on their side.

6. Having considered all the above, the Trial Court convicted both the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants 1 and 2/accused 1 and 2 are before this Court with this appeal.

7. We have heard the learned Counsel appearing for the appellants/ accused 1 and 2 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. This is a case based on circumstantial evidence. The foremost circumstance projected by the prosecution is that there was illicit intimacy between the 1st accused and the 2nd accused and on account of the same, there were frequent quarrels between the 1st accused and the deceased. This has been spoken by P.W.1 and P.W.2 and few other witnesses also. We do not find any reason to reject the evidence of P.W.1 on this score. Thus, we hold that the prosecution has proved that there was illicit intimacy between the 1st accused and the 2nd accused and on account of the same, there were frequent quarrels between the deceased and the 1st accused.

9. The next circumstance is that the deceased was found alive on 19.03.2011 at about 9.00 p.m. by P.W.7, the daughter of the deceased. The deceased was sleeping in the house. According to her, on 20.03.2011 at about 5.00 a.m., when the 1st accused told her to go and fetch water from the public tap, the dead body of the deceased was found in the cattle shed. This is not seriously disputed by the 1st accused. The prosecution has, thus, proved that the deceased had died some time between 09.00 p.m. on 19.03.2011 and 04.30 a.m. on 20.03.2011.

10. P.W.11 Doctor Arul Selvan, who conducted autopsy on the body of the deceased, has stated that he found external injuries on the neck indicating manual strangulation. He has further opined that the death was due to asphyxia due to strangulation. This opinion is based on sound reasons. Therefore, we accept the opinion of P.W.11 and hold that the deceased did not die a natural death, but died due to asphyxia due to strangulation.

11. The next question to be decided is that who was the one, who caused the death of the deceased. According to the case of the prosecution, the death of the deceased was caused by the 2nd accused by strangulating him with a rope. In order to prove this fact, the prosecution is left only with the extra-judicial confession alleged to have been given by the 1st accused to P.Ws.1 to 7. There is no other evidence against the 2nd accused. As per Section 30 of the Indian Evidence Act, the extra-judicial confession of the co-accused cannot be treated as a substantive evidence against the other. As per the law laid down by the Hon'ble Supreme Court in in Kashmira Singh vs State of Madhya Pradesh reported in 1952 AIR 159, the confession of the co-accused, cannot be taken as a substantive evidence. The

proper approach to the confession of the co-accused is to keep the same aside first and then, to marshal the other evidences available against the accused excluding the confession altogether from consideration and on such marshaling and on such appreciation, if the court is able to come to the conclusion that the accused has committed the said offence, the court can look into the confession given by the co-accused as a last resort to add strength to the said conclusion.

12. Here in this case, except the alleged extra-judicial confession, said to have been made by the 1st accused to P.Ws.1 to 7, there is no other evidence against the 2nd accused. The prosecution relies on the recovery of M.O.2 knife from the possession of the 2nd accused. The link between M.O.2 and the crime has not been established and thus, the recovery of M.O.2 on the disclosure statement made by the 2nd accused is of no consequence. Thus, there is no evidence at all against the 2nd accused. Therefore, the so called extra-judicial confession said to have been made by the 1st accused is of no consequence and therefore, the 2nd accused is entitled for acquittal.

13. Now turning to the case against the 1st accused, the prosecution relies only on the oral extra-judicial confession said to have been given by the 1st accused to P.Ws.1 to 7. According to these evidences, after the body was taken to the cremation ground, they found the injuries on the neck and therefore, they returned to the house of the 1st accused leaving the dead body in the cremation ground. When they enquired about the same to the 1st accused, she told that the 2nd accused committed the murder and she assisted him by holding the deceased. The initial question is as to whether P.Ws.1 to 7 could be believed in this regard. As we have already concluded that there was illicit intimacy between the 1st accused and the 2nd accused and this was opposed not only by the deceased but also by P.W.1 and other relatives. Thus, P.W.1 and the others had motive against the 1st accused. In these circumstances, the question is as to whether to believe P.Ws.1 to 7 or not.

14. In our considered view, it is difficult to believe P.Ws.1 to 7 in this regard. Assuming that such a statement had been made by the 1st accused to P.W.1 to P.W.7, the next question is as to whether that by itself is sufficient to convict the 1st accused. According to the said confession, the death of the deceased was caused by strangulating him only by the 2nd accused. So far as this 1st accused is concerned, she did not cause the death of the deceased. She only assisted the 2nd accused. Since the 2nd accused is acquitted for want of evidence, it is not possible to convict the 1st accused based on the extra-judicial confession alleged to have been given by her which is shrouded with doubts. At any rate, since the extra-judicial confession by its very nature is a weak piece of

evidence, unless it draws corroboration, it is not safe to act upon the same. Here in this case, it is clear that except the said oral extra-judicial confession said to have been given by the 1st accused to P.Ws.1 to 7, which is shrouded with doubts, there is no other evidence to corroborate the said extra-judicial confession. Hence, we hold that it is not safe to act upon the said extra-judicial confession alone and convict the 1st accused.

15. Article 21 of the Constitution of India guarantees that the life and liberty of the individual cannot be deprived of except by following the procedure established by law. The courts of law cannot deprive a person's life or liberty on mere surmises and conjectures. The suspicion, however strong it may be, cannot take the place of proof. Here in this case, the prosecution has only succeeded in creating doubt and suspicion against the 1st accused and that by itself would not amount to proof of the guilt of the 1st accused. For these reasons, we do not want to sustain the conviction and sentence imposed on the 1st accused by the trial court and therefore, she is entitled for acquittal.

16. In the result, the appeal is allowed and the appellants/accused 1 and 2 are acquitted. The conviction and sentence imposed on the appellants/ accused 1 and 2 are set aside and they are acquitted from all the charges. The bail bonds, if any, executed by them shall stand discharged. The fine amount, if any, paid, shall be refunded to the respective accused.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate,
Perambalur

2.The Chief Judicial Magistrate,
Perambalur(for Information)

3.The Judicial Magistrate No.I, Salem

4. The Sessions Judge,
Mahalir Court, Perambalur.

5.The Inspector of Police,
Padalur Police Station,
Perambalur District.

6.The Superintendent,
Central Prison,

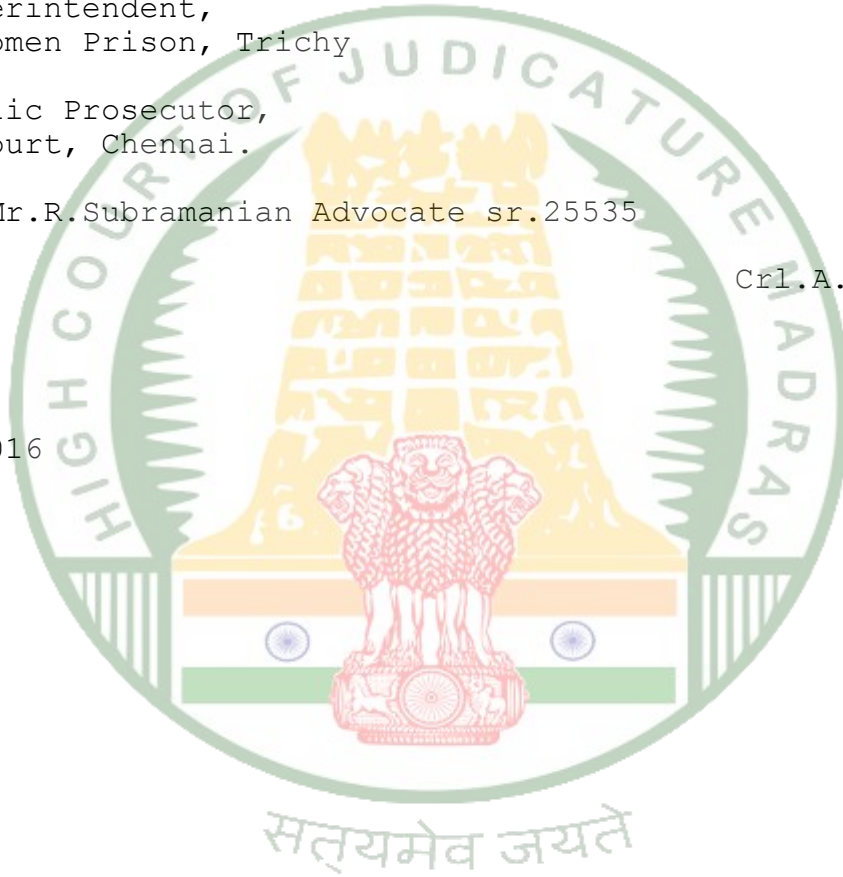
7.The Superintendent,
Central Women Prison, Trichy

8.The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.R.Subramanian Advocate sr.25535

Cr1.A.No.788/2013

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