

Bail Slip

Crl A.No.813 of 2013:

The Accused Namely Palanisamy (A2) was directed to be released on bail by the order of this Hon'ble Court made in MP 1 of 2015 in Crl A No.813 /13 dated 15/4/2015.

Crl A.No.818 of 2013:

The Accused namely R.Sellakodi (A1) was directed to be released on bail by the order of this Hon'ble Court made in M.P.No.2 of 2014 in Crl A.818 /13 dated 28/11/2014

Crl A.19/2013:

The Accused Namely 1.Kumar alias Senthil Kumar 2.Shanmugam alias Azhagan (A3 & A9) were directed to be released on bail by the order of this Hon'ble Court made in M.P.No.1 of 2014 in Crl A No.19/14 dated 10/01/2014.

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

CRL.A.Nos.813/2013, 818/2013 and 19/2014

Palanisamy ..Appellant/A2 in Crl.A.No.813/2013
R.Sellakodi ..Appellant/A1 in Crl.A.No.818/2013
1.Kumar @ Senthilkumar
2.Shanmugam @ Azhagan ...Appellants/A3&A9 in Crl.A.No.19/2014
Versus

The State represented by
The Inspector of Police
Kadathur Police Station
Erode District.

..Respondent in all the appeals

Appeals filed under section 372[4] Cr.P.C., against the conviction imposed in the judgment dated 26.11.2013 made in Sc.NO.187/2010 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam.

For Appellants in all
the appeals :Mr.N.Manokaran
For Respondent in all
the appeals :Mr.M.Maharaja
Additional Public Prosecutor

COMMON JUDGMENT

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

The appellant in Crl.A.NO.818/2013 is the first accused ; the appellant in Crl.A.No.813/2013 is the second accused and the appellants in Crl.A.No.19/2014 are accused 3 and 9 in SC.No.187/2010 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam. They stood charged for the offences as detailed below:-

Sl.No.	Rank of the Accused	Charges framed under section
1	A1 and A2	120 [B] IPC
2	A1, A2, A3 and A9	120 [B] IPC
3	A3 to A8	364 IPC
4	A3 to A8	302 r/w 34 IPC
5	A1, A2 and A9	302 r/w 120 [B] IPC
6	A3 to A8	201 IPC
7	A1	177 IPC
8	A1	182 IPC
9	A1	203 IPC

By judgment dated 26.11.2013, the Trial Court convicted them for various offences as detailed below:-

सत्यमेव जयते

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Sl.No .	Rank of the Accused	Conviction under section	Sentence Awarded
1	A1	120-B IPC [2 counts]	To undergo 6 months simple imprisonment for each count
		302 r/w 120-B IPC	To undergo life imprisonment and to pay a fine of Rs.3000/-, in default, to undergo 6 months simple imprisonment.
		177 IPC	To undergo 6 months simple imprisonment.
		182 IPC	To undergo 6 months simple imprisonment
		203 IPC	To undergo 2 years simple imprisonment.
2	A2	120-B IPC [2 counts]	To undergo 6 months simple Imprisonment for each count.
		302 r/w 120 [B] IPC	To undergo life imprisonment and to pay a fine of Rs.3000/-, in default, to undergo 6 months simple imprisonment.
3	A3 and A9	120 [B] IPC	Each of the accused were sentenced to undergo 6 months simple imprisonment.

Challenging their conviction and sentences, the appellants are before this Court with these appeals.

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

[A] The deceased in this case was one Mr.Senthilkumar. He was a resident of Karattadipalayam village in Erode District. A1, Mrs.Sellakodi, is his wife. They were living together as husband and wife in the same village and out of the said wedlock, a male child was born. But, in due course of time, A1 developed illicit intimacy with A2. A2 used to visit the house of A1 frequently in the absence of the deceased to meet A1. They also had frequent contact through cellphone and on one occasion, the deceased found A1 and A2 together in a compromising position at his house. He reprimanded both of them. From then onwards, according to the case of the prosecution, A1 and A2 had a feeling that the deceased was a hindrance for their continuance of the illicit intimacy. Therefore, they decided to do away that the deceased. This is stated to be the motive for the occurrence.

[B] It is the further case of the prosecution that in pursuance of that, which culminated into conspiracy between them, engaged A3 for executing murder of the deceased and A3 engaged A4 to A9 for the said purpose and during the conspiracy hatched between A2 to A9 to kill the deceased, it was agreed upon A2 and A3 that for executing the murder of the deceased, A2 should pay a sum of Rs.1.50 lakhs and a sum of Rs.40,000/- was immediately paid as advance. Thus, the conspiracy was completed between all the nine accused to kill the deceased.

[C] It is further alleged that on 15.02.2009, at about 17 00 hrs., A3 to A8 came in an Ambassador car bearing Registration No.TN-45-B-8577, driven by A5 to Karattadipalayam village near Jayamaruthi Theatre. A2 had come there in his motorcycle. They proceeded to the farm belonging to the deceased at Karattadipalayam village at 19 00 hrs, where they abducted the deceased in the car. When the car was moving, A3 to A8 killed the deceased by strangulating him. They took the dead body to Kadapalli Channel. They tied the hands and legs of the deceased to a big stone and threw the same into the channel. The occurrence was not noticed by anyone. They disappeared from the place of occurrence after receiving the balance of consideration.

[D] P.W.1 is the father-in-law of the deceased. As a matter of fact, on the day of occurrence, from the morning to evening, the deceased was engaged in some agricultural work in his field. P.W.1 was with him. Around 18.00 hrs on 15.02.2009, the deceased told P.W.1 that he wanted to go to his farm to supervise watering of the crops. Accordingly, he proceeded to the farm. Till 19.00 hrs., the deceased did not return. P.W.1 took one Palanisamy [P.W.18] and went in search of the deceased. The deceased was not seen in the farm. There was no response from the cellphone of the deceased also. But the motorcycle of the deceased in which he had gone to the farm was found near the temple. They took the bike and returned home. A1 did not disclose anything about the occurrence. She pretended as though she was innocent. Thereafter, A1 went to Kadathur Police Station on 16.02.2009 at 11.15 a.m. and made a complaint, alleging that her husband, the deceased, was missing from 18.00 hrs on 15.02.2009 onwards.

[E] P.W.20, the then Sub Inspector of Police received the said complaint and registered a case in Cr.No.31/2009 for "Man Missing". Ex.P.24 is the FIR. He forwarded both the documents, viz., the complaint and FIR [Ex.P.24] to the Court, which were received by the jurisdictional Magistrate at 19.15 hrs on 17.02.2009.

[F] P.W.22, the then Inspector of Police, attached to Kadathur Police Station, took up the case for investigation, proceeded to the farm at 13.00 hrs on 16.02.2009 and prepared the Observation Mahazar [Ex.P.1] in the presence of P.W.6 and another and also prepared a Rough Sketch [Ex.P.27]. He recovered a chappal [M.O.2] found at the said place in the presence of the same witnesses. He examined few witnesses and recorded their statements. On 17.02.2009, at about 13.00 hrs., the body of the deceased was found near the bridge of Kadapalli channel. A1, P.W.1 and others went to the said place and found that the body was that of the deceased. A1 came to the Police Station at 13 00 hrs on 17.02.2009 and made a written statement that the deceased was found dead and the dead body was in the channel. Based on the said statement, P.W.22 altered the case into one under section 364 and 302 IPC. He forwarded the altered report to the Court concerned. Then he prepared the Observation Mahazar [Ex.P.3] and a Rough Sketch [Ex.P.28] at the place where the dead body was found, in the presence of P.W.8 and another witness. He arranged for a photographer [P.W.14] to take photographs of the dead body at the place of occurrence in various angles. M.O.16 series are the photographs. Thereafter, he held inquest on the dead body of the deceased in the presence of the panchayatdars and witnesses and prepared Ex.P.29-Inquest Report. He also recovered M.Os.3 to 8 and 10 from the dead body of the deceased in the presence of the same witnesses under a Mahazar. He sent the body of the deceased for postmortem.

[G] P.W.13, Dr.Sangeetha, the then Assistant Surgeon attached to the Government Hospital, Gobichettipalayam at the relevant point of time, conducted autopsy on the body of the deceased on 17.02.2009 at 16.15 hrs. He found the following injuries:-

"External Injuries:-

Body blotted. Skin peeled off on touching, both eye balls, eye lids, both lips, both ears:- fish bite mark seen. Washerman's appearance on both hands and both feet. Partially decomposed body. Moderately nourished. Simirical body. Lies on its back at GH Mortuary. Upper and Lower lips bitten by fish and partly missing. Abdomen-distended opening of thorax. No.8 ribs. Internal Organ-partially decomposed. Hyoid-Right corpe of hyoid. Intestine distended with gas. Stomach - empty. Brai-liquified. Viscera-preserved along with hyoid bone."

Ex.P.21 is the Postmortem Certificate. He gave his final opinion that the death of the deceased was due to manual strangulation.

[H] When the investigation was in progress, A2 voluntarily appeared before P.W.9, the Village Administrative Officer, at 16 00 hrs on 20.02.2009. His Assistant one Murugan was by his side at that time. On such appearance, A2 wanted to voluntarily confess. Having ascertained that the accused was voluntarily confessing, he allowed him to confess orally and reduced the same into writing. A2 signed the same. Ex.P.6 is the said extra-judicial confession. Then, he prepared a Special Report [Ex.P.5] and along with the Special Report and the Extra-Judicial Confession, P.W.9 took A2 to the Police Station and produced him before P.W.22. P.W.22 arrested A2 and on such arrest, he gave a voluntary confession, in which, he disclosed that he had hidden a cellphone bearing No.9443372756 at his house. Similarly, he disclosed that he had kept yet another cellphone bearing No.9842765566 at his house. In pursuance of the same, he took the police and witnesses to his house and produced M.Os.21 and 22 [cellphones], which were recovered under a Mahazar. Then A2 took the police to the house of A4 and identified A4 and A3. P.W.22 arrested A3 and A4 and on such arrest, A3 and A4 gave separate confession statements voluntarily, in pursuance of which, a cellphone [M.O.23] bearing No.9750595840, cash of Rs.3000/- [M.O.13] and a gold ring [M.O.12], were recovered from the house of A3 under a Mahazar ; and a cellphone [M.O.24] bearing No.9894322712 and cash of Rs.3000/- [M.O.14] were recovered under a cover of Mahazar in the presence of the witnesses. Then P.W.22, took A2 to A4 to the house of A7 and identified him. P.W.22 arrested A7 and on such arrest, he disclosed that he had hidden a cellphone [M.O.25] bearing No.9942419954 and cash of Rs.2000/- [M.O.26] and in pursuance of which, they were recovered under a cover of a Mahazar from the house of A7. Then the arrested accused identified A8 at his house. P.W.22 also arrested him. On such arrest, A8 disclosed that he had hidden a cellphone [M.O.27] bearing No.9367771814 and cash of Rs.2500/- under a cover of Mahazar in the presence of the same witnesses. Then all the accused identified A6 at his house. Upon his arrest by P.W.22, he disclosed that he had hidden a cellphone [M.O.28] bearing No.9715481229 and cash of Rs.3000/- and in pursuance of the same, he produced the said material objects which were recovered under a Mahazar. All the accused, then took P.W.22 and the witnesses to the house of A5, where P.W.22 arrested A5 in the presence of the witnesses and upon such arrest, he disclosed the place where he had hidden a cellphone bearing No.9842598441 ; cash of Rs.2500/- and the Ambassdor Car bearing Regn.No.TN-45-B-8577. In pursuance of the same, he took the police and witnesses to the place of hide out and produced M.O.1-Car and Cellphone [M.O.29] and also the cash [M.O.30]. P.W.22 recovered the same under a Mahazar. All these accused thereafter, took the police and the witnesses to the house of A9 and identified him. P.W.22 arrested A9. Thereafter, on the same day, P.W.22

arrested A1 at her house and on such arrest, she gave a voluntary confession, in which he disclosed that she had hidden two cellphones at her house, bearing Nos.94807048091 and 9750033951. In pursuance of the same, she produced M.O.31-cellphone bearing No.9750033951 alone. Then A3 was arrested and he gave a voluntary confession, in which she disclosed the place where he had hidden M.O.32-cellphone. In pursuance of the same, he produced M.O.32 and the same was recovered under a Mahazar. On returning to the Police Station, he forwarded all the accused to the Court for judicial remand. He examined the doctor, collected medical records and he forwarded all the material objects to the Court.

[I] The investigation was thereafter taken over by P.W.23. He examined few more witnesses and on completing the investigation, he laid the charge sheet against all the accused on 05.06.2009.

[J] Based on the above materials, the Trial Court framed charges against the accused 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 23 witnesses were examined, 31 documents and 32 material objects were also marked.

[K] Out of the said witnesses, P.W.1, the father of A1, has spoken about the marriage between A1 and the deceased. He has further stated that on the day of occurrence, the deceased was with him in the field engaged in harvesting and at about 18.00 hrs on 15.02.2009, the deceased went by his motorcycle to the other farm to oversee the watering of the crops. But, as told by him, he did not return even beyond 19 00 hrs. Therefore, he along with one Palanisamy went in search of the deceased ; but the deceased was not seen anywhere. But the motorcycle belonging to the deceased was found parked near the local temple. P.W.1 brought the same back under the belief that the deceased would have gone elsewhere and he would return. But, since the deceased did not return, on 16.02.2009 at 11.15 hrs., his daughter, viz., A1, made the complaint. He has further stated that he also signed the complaint. P.W.2 is the vital witness for the prosecution. He has stated that by around 18.00 hrs on the day of occurrence, near the farm of the deceased, he found a car parked and there were three people in the car and one of them was A3. They enquired P.W.2 as to whether it was the farm of the deceased Senthilkumar. P.W.2 answered affirmatively and went away. The car bearing Registration No.TN-45-B-8577 went into the farm. P.W.3 has stated that one or two years before giving deposition before the Court, on one day, he found the deceased going to his farm. His evidence is in no way helpful to the prosecution. P.W.4 has stated that one year before his deposition before the Court, he

went to the local Petrol Bunk. There, A2 and A9 also had come and they purchased petrol. His evidence is also not specific about the date and time at which A2 and A9 had come to purchase the petrol. Thus, his evidence is also not much helpful to the prosecution. P.W.5 has stated that he found the body of the deceased at about 13 00 hrs to 13 30 hrs. P.W.6 has stated that he went along with P.W.1 in search of the deceased. He has further stated that on 17.02.2009, the dead body of the deceased was found at Karungaradu Channel. P.W.7 has stated about the matrimonial misunderstanding between A1 and the deceased. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.9 is the star witness for the prosecution. According to him, on 20.02.2009 at about 16.00 hrs., when he was at his office along with his assistant, A2 appeared before him and he wanted to confess. P.W.9 allowed him to confess orally, which he reduced into writing. Ex.P.6 is the said extra-judicial confession. Then, along with Ex.P.5-Special Report, he produced A2 to P.W.23, the investigating officer. In pursuance of the same, two cellphones were recovered and other accused were arrested and many material objects were recovered from each accused as detailed already. P.W.10 has turned hostile and he did not support the case of the prosecution in any manner. P.W.11 has spoken about the arrest of the accused and the recovery of the material objects, on their confessions. P.W.12 is an Expert from the Forensic Department who has stated that he examined the internal organs of the deceased which revealed that there was no poison. P.W.13 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.14 has spoken about the photographs taken by him at the place of occurrence. P.W.15, a constable, has stated that he took the alteration report on 17.02.2009 at 23.30 hrs and handed over the same to the jurisdictional Magistrate. P.W.16, an Expert in the Forensic Department has stated that he examined the hyoid bone of the deceased which revealed that there is no fracture. P.Ws.17 and 18 have spoken about the call details between the cellphones allegedly used by the accused among themselves and the call details of the cellphone used by the deceased. P.W.19 has stated that he handed over the dead body to the doctor for postmortem. P.W.20, the Special Sub Inspector of Police has spoken about the registration of the case. P.W.21 has spoken about the call details of the cellphones allegedly used by the accused and the deceased during the relevant period. P.Ws.22 and 23 have spoken about the investigation done by them and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. On their side, they examined one Chandramouli as DW1. DW1 is an official from the Aircel Company, Coimbatore. He has stated that he appeared before the Court in response to the summons to speak about the call details of the cellphone No.9578682738. He

has not spoken about the same. However, they did not chose to mark any documents on their side.

4 Having considered all the above, the Trial Court convicted and sentenced the accused persons as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

5 We have heard Mr.N.Manokaran, learned counsel for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 This is a case based on circumstantial evidence. There is no denial of the fact that A1 was the wife of the deceased Senthilkumar and they were living together. It is also in the evidence that there were frequent quarrels between them on account of the alleged illicit intimacy between A1 and A2. Though the evidence in this respect is not clear, to some extent, we are of the view, that the prosecution has proved this circumstance.

7 The next circumstance is that according to P.W.1, on the day of occurrence, the deceased went by his motorcycle to his other farm by about 18.00 hrs. on 15.02.2009. Thus, the deceased was lastly seen alive at 18.00 hrs on 15.02.2009. As told by him, since the deceased did not return even beyond 19.00 hrs., P.W.1 along with others, went in search of him. The motorcycle alone was found somewhere, which was taken back by P.W.1 to home. But the deceased was not seen. The dead body of the deceased was found lying in the channel on 17.02.2009 by about 13.00 hrs. According to the medical evidence, the death of the deceased was due to manual strangulation. Thus, the prosecution has succeeded in establishing that the deceased died of homicidal violence some time between 18.00 hrs on 15.02.2009 and 13.00 hrs on 17.02.2009.

8 Now, the next question is as to who caused the death of the deceased. In order to prove the same, the prosecution mainly relies on the extra-judicial confession said to have been given by A2 to P.W.9. P.W.9 [Village Administrative Officer] has stated that on 20.02.2009 at about 16.00 hrs A2 appeared before him and made a voluntary confession which was reduced to writing under Ex.P.6. Learned counsel for the appellants would submit that the accused was continuously in

the police custody from 17.02.2009 onwards and therefore, the story propounded by the prosecution that A2 appeared before P.W.9 only on 20.02.2009 and made a voluntary confession, cannot be true. Learned counsel would further submit that even otherwise, A2 had no reason to repose confidence in P.W.9 to make such a voluntary confession. We have considered this submission seriously. We have gone through the evidences of P.Ws.5, 6 and 7. During the cross-examination, they have categorically admitted that both A1 and A2 were taken into custody by the police on 17.02.2009 as soon as the dead body was found and they were continuously in the custody of the police. We do not find any reason to reject this part of the evidences of these three witnesses. If once these evidences are accepted, then we have no option except to reject the evidence of P.W.9 that A2 appeared before him at 16.00 hrs on 20.02.2009. Further, as rightly argued by the learned counsel for the appellants, it is not as though A2 had any acquaintance with P.W.9. P.W.9 was a total stranger to A2. When that be so, it is highly unbelievable that A2 thereafter went to P.W.9, reposing confidence, so as to confess to him. For these reasons, the evidence of P.W.9 that A2 appeared before him on 20.02.2009 at 16.00 hrs and made a voluntary confession, deserves to be rejected and consequently, Ex.P.6 is also rejected.

9 The other circumstance is the evidence of P.W.2 who has stated that on the day of occurrence, around 18.00 hrs, there was a car parked near the farm of the deceased. One of the persons in the car was A3. There were two other persons in the car. They enquired as to whether the farm belongs to the deceased. P.W.2 told in the affirmative and left the place. Learned counsel for the appellants would submit that the conduct of this witness in not disclosing about this vital fact would make his evidence unbelievable. P.W.2 is not a stranger. He is the uncle's son of the deceased. He was aware of the fact that the deceased was found missing from 18.00 hrs on 15.02.2009 onwards. Though he was also engaged in search along with others, he did not disclose about the fact that he found the car bearing TN-45-B-8577 and the fact that A3 was in car at 18.00 hrs on 15.02.2009 near the farm. Even in the chief examination, he has stated that when the relatives of the deceased were going in search of the deceased in various directions, he also joined hands from 08.00 a.m. on 16.02.2009 onwards. But, he did not disclose about the vital fact to any of the relatives or to the police. He was examined by P.W.23 only on 26.05.2009. He has admitted that he saw the dead body on 17.02.2009. Even after that, he did not disclose about the occurrence to anybody. He has disclosed about the vital aspect for the first time, after three months, that was on 26.05.2009. There is no explanation as to why he was keeping silent for such a long time. Therefore

we find it difficult to believe him and so we reject his evidence.

10 Then comes the evidence of P.W.4, who is the employee in the Petrol Bunk, where it is alleged that A2 and A9 came and purchased petrol and A2 paid money to A3. There is no mention as to when and at what time, this occurrence had taken place. He was also not examined immediately. He did not disclose about the occurrence to anyone until 26.05.2009 when he was examined for the first time by the police. There is no explanation as to why he did not disclose about the same to anybody. Above all, he has not stated that he saw A2 and A3 in the Petrol Bunk together on the day of occurrence. For these reasons, the evidence of P.W.4 also deserves rejection.

11 The last piece of evidence relied on by the prosecution is the evidences of P.Ws.17 and 21, who have stated about the call details between the cell phones allegedly used by the accused and the deceased. The call details have been marked as Exs.P.25 and 26. These documents cannot be admitted as evidence as they do not carry any certificate as required under section 65-B of the Indian Evidence Act. In this regard, we may refer to the decision of the Hon'ble Apex Court in Anwar Vs. P.K.Basheer and others reported in 2014 [10] SCC 473, wherein the Hon'ble Apex Court has held that unless the electronic records carry certificate from the competent authority, they are not admissible as primary evidence. Here in the instant case, Exs.P.25 and 26, viz., the call details, cannot be admitted as the primary evidence. There is also no secondary evidence available and therefore, these evidences are rejected.

12 From the foregoing discussion, it is crystal clear that the prosecution has succeeded only in proving that the deceased had left his field around 18.00 hrs on 15.02.2009 and was strangulated to death by somebody before 13.00 hrs on 17.02.2009. But, absolutely there is no evidence to clinchingly prove that these accused were the perpetrators of the crime. But, the Trial Court has however convicted these accused on mere surmise. Therefore, the conviction and the sentence imposed on the appellants cannot be sustained.

13 In the result, the criminal appeals are allowed and the conviction and sentences imposed on the appellants by the Trial Court in SC.No.187/2010 dated 26.11.2013 are set aside. They are acquitted of all the charges levelled against them.

14 It is reported that the appellants are on bail. Accordingly, the bail bonds executed by them, shall stand terminated. Fine amounts, if any paid, shall be refunded to them.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1 The III Additional District and Sessions Judge
Erode at Gobichettipalayam.
- 2 -Do- Thro the Principal District & Sessions Judge,
Erode District.
- 3 The Judicial Magistrate No.2,
Gobichettipalayam.
- 4 The Chief Judicial Magistrate
Erode.
- 5 The Inspector of Police
Kadathur Police Station
Erode District.
- 6 The Director General Of Police,
Mylapore, Chennai.
- 7 The Superintendent,
Central Prison,
Coimbatore.
- 8 The District Collector,
Erode District.
- 9 The Public Prosecutor
High Court, Madras.

+3cc to M/S.N.Manoharan, Advocate Sr.30089, 30090, 30091

Common Judgment in
Crl.A.Nos.813, 818/2013 & 19/2014

ssk[co]
srg 30/06/2016