

**BAIL SLIP**

The Appellant / Accused namely Umanath, S/o.Radhakrishnan aged 55/2015 was directed to be realised on bail as per order of this Court dated 04.01.2016 made in MP(MD)No.1 of 2015 in CrI.A(MD) No.309 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.309 of 2015

Umanath

... Appellant/Sole Accused

Vs.

The State rep. by
Inspector of Police,
Samarasampettai Police Station,
Trichy District.
(Crime No.337 of 2011)

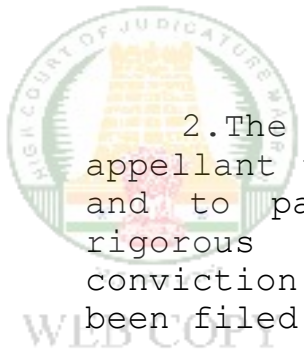
.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to allow the Appeal and acquit the appellant by set aside the judgment dated 20.12.2012 in S.C.No.163/2012 passed by the learned Special and Sessions Judge, Tiruchirappalli.

For Appellant : Mr.P.Ganapathi Subramanian
For Respondent : Mr.K.S.Durai Pandian
Additional Public Prosecutor

JUDGMENT**(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)**

The appellant is the sole accused in S.C.No.163/2012 on the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli. The trial court framed charges under Section 302 of I.P.C against this Appellant/Accused.

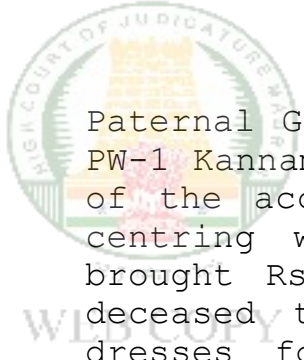


2.The Trial Court by Judgment dated 20.12.2012 convicted the appellant under Section 302 of I.P.C to undergo Life Imprisonment and to pay a fine of Rs.1,000/- in default further undergo rigorous imprisonment for 6 Months. Challenging the said conviction and sentence passed against him, the present appeal has been filed by the appellant/accused.

3.The case of the prosecution is that the accused Umanath is the husband of the deceased Malar and their Marriage was a love marriage. Out of their marriage, they had two children one male and another female. The deceased Malar was an adopted daughter of the PW-1 brought up by the said Malar from her childhood. The accused was addicted to liquor and he could not provide money to the family. Hence the deceased Malar used to go for work as construction labour. The accused used to spend the money earned by his deceased wife and due to that frequent quarrel between the deceased and the accused. The accused was also suspecting the character of his wife. On 25.10.2011, the accused after completing his work returned to home with Rs.1,000/- and hanged his shirt in hanger and the deceased took that money and went to the bazaar and purchased dresses for herself and her children for Deepavali. The next day morning on coming to know about the same, the accused beat the deceased. On the day of Deepavali i.e., on 26.10.2011 at 3.30 P.M, when the accused was returning home, he saw the deceased talked with one person and laughed and then went inside the house. The accused went inside the house and kicked his wife repeatedly with an intention to murder her and the accused strangled her neck with his two hands and committed murder. Thereafter the accused took the piece of Saree and inserted in the roof and the same was witnessed by his two children and mother-in-law. The accused flee away from the house. The PW-1 Kannammal went to Somarasampettai Police Station and gave Ex-P1 Complaint. The PW-8 Sub Inspector of Police recorded the oral complaint given by PW-1 Kannammal, registered a case in Cr.No.37/2011 for the offences under Section 302 of IPC.

4.After filing the charge sheet before the Learned Judicial Magistrate No.V, Tiruchirappalli in P.R.C.No. 9 of 2012, the case was committed to the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli and came to be numbered as S.C.No.163/2012. In this case, 11 witnesses were examined as prosecution side witnesses and 11 Exhibits were marked on the side of prosecution and there is one material objects produced before the Trial court. There was no witness and exhibits on the side of the accused.

5.In this case, PW-1 Kannammal deposed that she is the Foster Mother of deceased Malar and the accused Umanath is her husband. <https://hcservices.ecourts.gov.in/hcservices/cases.html> was a love marriage. They have two children by name Arunkumar and Durgadevi. The PW-2 Arunkumar is residing in his



Paternal Grandmother's house. The PW-3 Durgadevi is residing with PW-1 Kannammal. The PW-1's house is situated adjacent to the house of the accused and the deceased. The accused is doing building centring work. On the previous day of Deepavali, the accused brought Rs.1,000/- to home and hanged his shirt in hanger. The deceased took the amount from his shirt pocket and purchased dresses for Deepavali and due to the same, the accused was quarreled with the deceased. Last year on the day of Deepavali, the accused quarreled with the deceased from 7 A.M. to 11 A.M and at about 3.30 P.M, PW-3 came and informed to her that the accused assaulted her mother. Therefore PW-1 & PW-3 went to the house of the accused and she questioned the accused for assaulting the deceased for which the accused twisted their hands and pushed them down and went inside the house and locked the door. After some time, when PW-1 & PW-3 opened the door, they saw the accused strangulating the neck of the deceased with the tail end of the saree and caused burn wound on her hands and private parts with the cigarette. When PW-1 reprimanded, the accused ran away. Thereafter she went to the police station and gave Ex-P1 Complaint.

6.The PW-2 Arunkumar deposed that he is the son of the accused and the deceased. The PW_2 further deposed that he and his father has lived in his paternal mother house. On the day of Deepavali, his mother died and when he was playing Kabadi in the street, his neighbour Rudhra informed him about the death of his mother. Thereafter he went to the house and saw the dead body of his mother and at that time his father was not there.

7.The PW-3 Durgadevi deposed that her mother Malar took Rs.1,000/- from her father's shirt pocket and purchased dresses for them for the Deepavali. When her mother returned to home in the night, her father quarreled with her mother by beaten up her and caused burn wounds on her hands with cigarette. On the day of Deepavali at 7 A.M PW-3 went to PW-1's house and brought PW-1 to her house. At that time, the accused was beating her mother and hence PW-1 questioned the accused as to why he was assaulting her mother. Then the accused went away and PW-3 also went away for playing. At about 3.15 P.M, she returned home and at that time, the door and windows were closed and she opened the window and saw her father sitting on her mother and strangulating her neck with the Saree. When PW-3 asked her father as to what he was doing, the accused told her that her mother was sleeping and asked her to wake up her. Thereafter she sprayed water on her face, but she did not wake up and hence she went to PW-1's house and brought her. When PW-1 asked the accused, he told that she had consumed rat poison and ran away. Then they informed the accused's mother, but they refused to come. Thereafter PW-1 gave complaint to the police.



8.The PW-4 Vijaya and PW-5 Subam deposed that they are the neighbours of the deceased Malar and they came to house of the accused after the occurrence and saw the dead body of the Malar.

9.The PW-7 Veeranan deposed that he is working as VAO at Aathavathur East Village. While he was working as VAO at Thayanur Village, on 27.10.2011 he was called by the police and therefore he and his assistant Velu went to the police station. In the police station, the Inspector has examined the accused and recorded his voluntary confession statement. The admitted portion of the confession statement is Ex-P4. Thereafter the PW-7 and his assistant, along with the Inspector and accused at 3.30 P.M went to the accused house, where the accused handed over M.O.1 Black white designed saree which was seized under Ex-P3 Mahazar.

10.The PW-9 Doctor Renugadevi deposed that on 27.10.2011, while she was in duty at Government Hospital, Tiruchirapalli at 10.15 A.M, the dead body of the deceased Malar was brought and she conducted the autopsy on the dead body of the deceased and noted the injuries. According to PW-9, there were five external injuries. And she opined that the death would have been caused by strangulation of M.O.1 Saree.

11.The PW-10 A.Samuel Gnanam deposed that he is the investigation officer of Cr.No.337/2011. After taking investigation of the above said crime, he visited the place of occurrence on 26.10.2011 and prepared Observation Mahazer Ex-P2 and Rough Sketch Ex-P9 in the presence of witnesses. He further deposed that he conducted inquest over the dead body of the deceased Malar and prepared Ex-P10 Inquest report. The PW-10 further deposed that on 27.10.2011 when he searched the accused Umanath and watching near by the Northern side of Thayanur School, the accused came there and he was arrested. The accused has admitted the crime committed by him and examined him in the presence of PW-7 and Velu and recorded voluntary confession statement of the accused. Thereafter he has seized M.O.1 Saree under Ex-P3 Mahazar in the presence of PW-7. On 11.11.2011, he has examined Doctor and recorded the statements. Thereafter due to his suspension, he has handed over the case file to PW-11 Inspector of Police. The PW-11 after completion of investigation, has filed charge sheet on 31.12.2011 for the offence under section 302 of IPC.

12.On the evidence taken by the trial court namely the Sessions Judge of Tiruchirapalli Division, Tiruchirappalli came to the conclusion that the charges laid against the accused were proved by the eye witness led by the prosecution.

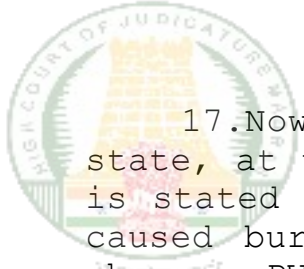


13. In the above circumstance that there is direct eye witness to the occurrence, the learned Trial Judge convicted the accused for the offences under section 302 of I.P.C holding that the prosecution case was proved by eye witness. Against the said conviction, the present appeal has been filed.

14. We have heard Mr.P.Ganapathi Subramanian, learned counsel for the appellant and Mr.K.S.Durai Pandian, learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

15. In this case, going through the evidences and documents produced by the prosecution that PW-1 to PW-3 stated to be the eye witness of the crime. We have carefully perused the evidences of PW-1 to PW-3. As per the version of PW-1, who is the adopted mother of the deceased Malar that on the date of occurrence at 3.30 P.M, when PW-3 Durgadevi informed to her that her mother was beaten by her father. Immediately thereafter PW-1 and PW-3 went to the house of the accused and PW-1 questioned the accused for assaulting the accused for which the accused twisted their hands and pushed them down. It is the further case of the prosecution that the PW-1 seen the crime when she and PW-3 opened the door, they saw the accused strangulating the neck of the deceased with the tail end of the saree and caused burn wounds on her hands and private parts with cigarette. Whereas PW-3 Durgadevi stated that she called PW-1 to her house after her father strangulating her mother's neck with the Saree. According to PW-3, her Maternal Grandmother namely PW-1 came to the occurrence place i.e., the house of the accused only after the death of her mother and therefore PW-1 is not the eye witness.

16. The Trial Court has committed an error in coming to the conclusion that PW-1 to PW-3 have clearly stated that the accused quarreled with the deceased since she had taken the money from his shirt pocket and purchased dresses for Deepavali. The Trial Court further held that according to PW-2's evidence that the accused was in the house till 4 P.M. But a perusal of PW-2's evidence go to show that he do not know how his mother died. On the day of Deepavali, when he was playing Kabadi in the street his neighbour Rudhra informed him about the death of his mother. The PW-2 further deposed that he and his father were living in his paternal mother's house. Therefore the prosecution has not established the PW-1 and PW-2 are eye witness to the crime and further the prosecution failed to prove that PW-2 saw the accused in the house till 4 P.M on the date of occurrence.



17. Now coming to the evidence of P.W 3 we are constrained to state, at the outset, that her evidence is also not impressive. It is stated by P.W.3 that a day prior to the Deepavali, the accused caused burn injury on the hands of the deceased with cigarette whereas PW-1 stated that the accused caused burn injury on the hand and private parts of the deceased at 3.30 P.M after she came to the house of the accused. The further case of the PW-3 is that after her father strangulating her mother's neck with the saree, she sprayed the water on her face. When that be the case of PW-3, definitely wet floor could be mentioned in Ex-P9 Rough Sketch and also wet saree on the body of the deceased would have been recovered by the respondent police. But the police have not recovered such kind of material objects. That apart, it is the case of the PW-1 and PW-3 that the accused has caused burn injuries on the hands and private parts of the deceased Malar with cigarette. But in Ex-P7 Postmortem Certificate there was no such injuries are mentioned. Therefore we could safely come to the conclusion that PW-3 is also not an eye witness and she is a tutored witness by the prosecution for the purpose of proving their case.

18. The infirmities, inconsistencies and improbabilities in the evidence of P.Ws.1 and 3 coupled with the unexplained delay in registering the First Information Report raises serious doubt about the veracity of the prosecution version. Therefore, we have no hesitation to hold that it is most unsafe and hazardous to place reliance on the evidence of P.Ws.1 and 3.

19. Now let us come to the M.O.1 Saree. It is the case of the prosecution that the deceased Saree was ragged by the accused and it was used for the purpose of hanging the deceased Malar. The Police have recovered only a piece of Saree under M.O.1 and the remaining piece of saree was not recovered. Therefore the non recovery of the remaining portion of the saree is a fatal to the case of the prosecution.

20. The versions of PW-1 to PW-3 are discrepant and contrary to each other and hence not trustworthy. The prime factor that remain fatal to the prosecution case is that there is no clear say about the presence of the accused committed the crime and there is no independent witness was examined. As discussed above, the presence of PW-3 is also doubtful. Therefore the benefit of doubt is given to the accused and he is acquitted from the charges.

21. The learned Judge has convicted the accused on assumption and presumption and on the evidences of PW-1 to PW-3 by holding the accused guilty.

<https://hcservices.ecourts.gov.in/hcservices/>



22. In view of the above narration and discussion, we hold that the conviction of the appellant/accused on the basis of evidences of PW-1 to PW-3 by the trial court is by presumption and summaries, since the prosecution has not proved the same beyond all reasonable doubts. Therefore the accused is acquitted from all the charges by giving benefit of doubt.

23. For the reasons stated above, we are constrained to come to the inevitable conclusion that the impugned judgment of conviction is unsustainable and accordingly, the appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Tiruchirappalli Division, Tiruchirappalli in S.C.No.163/2012 dated 20.12.2012 are set aside.

24. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Fine amount paid if any by the appellant shall be refunded to him.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Special and Sessions Judge,
Tiruchirappalli.
2. The Principal District and Sessions Judge,
Tiruchirappalli.
3. The Judicial Magistrate No.5,
Trichy.
4. -do- thro' the Chief Judicial Magistrate,
Trichy.
5. The District Collector, Trichy District.
6. The Director General of Police, Chennai.



7. The Inspector of Police,
Samarasampettai Police Station,
Trichy District.

8. The Superintendent of Central Prison,
Tiruchirapalli.

9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.GANAPATHI SUBRAMANIAN, ADVOCATE IN SR No. 69552

VSA/SKN

TE/PM-PN/SAR-I : 22/02/2017 : 8P/11C

Criminal Appeal (MD) No.309 of 2015
15.11.2016