



BAIL SLIP

Accused No.1-P.Albert aged 33yrs S/o.Periya Nadar
Accused No.2 - P.Mannaennai @ Selvam aged 38 years,
S/o Ponnu Nadar

WEB COPY

were released from Jail followed by the order of this Court dated
20/1/16 made in MP(MD)No.1/15 in CRLA(MD)358/15

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2016

CORAM:

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

CRIMINAL APPEAL (MD) .No. 358 of 2015

1. P.Albert
2 P. Mannaennai @ Selvam : Appellants/ Accused Nos.1&2

Vs.

The State of Tamilnadu represented by
The Inspector of Police
Panakudi Police Station
Tirunelveli District.
in Crime No.77/ 2012

:Respondent/Complainant

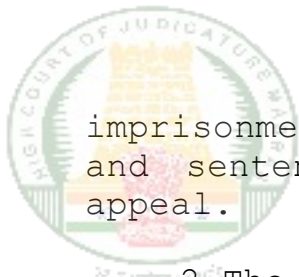
PRAYER: Appeal is filed under Section 374(2) of the Code of
Criminal Procedure against the judgment passed by the IV
Additional District and Sessions Judge, Tirunelveli, in S.C.No.99
of 2013 dated 13.08.2015.

For Appellant : Mr.T.Lajapathi Roy

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

Judgment**(Judgment of the Court was delivered by S.NAGAMUTHU, J.)**

The appellants are the accused 1 and 2 in SC No.99/2011 on the
file of the 4th Additional District & Sessions Judge, Tirunelveli.
They stood charged for offence under Section 302 IPC. By judgment
dated 13.08.2015, the trial Court convicted them under Section 302
IPC and sentenced to undergo imprisonment for life and to pay a
fine of Rs.1,000/- each, in default, to undergo rigorous



imprisonment three months each. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

The deceased in this case was one Mr. Robert. He was a drunkard. He used to take liquors by sitting on the Ghat situated in a Tank known as New Tank in the village in question. On 11.02.2012, around 9.45 p.m., as usual, the deceased was sitting on the Ghat and was taking liquor. At that time, it is stated that these two accused have also gone there with liquor bottles to take liquor. When they were taking liquor, it is stated that there was wordy quarrel arose between both the accused on one side and the deceased on the other side. It is stated that in the said quarrel, these two accused attacked the deceased with hands and pushed him into the water in the Tank. The deceased died due to drowning. The accused ran away from the scene of occurrence. The occurrence was not witnessed by anyone. The dead body of the deceased was found in the Tank on 12.02.2012 around 4.00 p.m. Thereafter, P.W.1 went to the police station and made a complaint at 5.00 p.m. P.W.9 the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.77/2012 under Section 174 Cr.P.C. Ex.P1 is the complaint; Ex.P7 is the FIR. He forwarded the same to the Court, which were received by the learned Magistrate on 13.02.2012.

2.1. The case was taken up for investigation by P.W.10. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. After conducting inquest on the body of the deceased, he forwarded the same to the Doctor for postmortem.

2.2. P.W.6 - Dr. Rajesh conducted autopsy on the body of the deceased on 13.02.2012 at 11.05 a.m. He found the following injuries:

1. $\frac{1}{2}$ x $\frac{1}{2}$ cm abrasion seen over the inner aspect of lower half of right arm.
2. 10 x 1 cm abrasion seen over the outer aspect of upper half of right thigh.
3. 7 x 1 cm abrasion seen in front of middle of right leg.
4. $\frac{1}{2}$ x $\frac{1}{2}$ cm abrasion seen over the inner aspect of lower half of left fore arm.

2.3. The chemical analysis conducted on the visceral organs revealed that there was ethyl alcohol. P.W.6 finally gave opinion that the deceased would appear to have died of drowning, as the postmortem findings were consistent with that of death due to drowning. P.W.10 based on the opinion of the Doctor altered the

<https://hccs.e-courts.gov.in/services>

2.4. On 16.02.2012, he arrested both the accused in the



presence of both witnesses and forwarded them to the Court for judicial remand. The investigation was conducted thereafter by the successor (P.W.11).

2.5. P.W.11 examined the Doctor, who has conducted autopsy, collected postmortem certificate and finally laid charge sheet against the accused under Section 302 IPC on 04.07.2012.

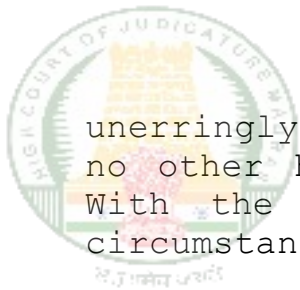
2.6. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 11 witnesses were examined, 9 documents and 6 material objects were marked.

2.7. Out of the said witnesses, P.W.1 is the father of the deceased, who has stated that on 11.02.2012, around 7 p.m., the deceased, who used to return home, did not return. He went in search of the deceased on 11.02.2012 as well as on 12.02.2012. He has further stated that P.W.2 informed him that he found the accused also in the Ghat around 9 p.m. on 11.02.2012, where the deceased was sitting and taking the drinks. He has further stated that he has found the dead body of the deceased around 4 p.m. on 12.02.2012 and thereafter, he made a complaint to the police. P.W.2 - the villager has stated that on 11.02.2012, at around 9.30 p.m., he saw the deceased sitting in the Ghat and taking liquor and he has also found these two accused also taking liquor. P.Ws.3 and 4 have also stated the same facts. P.W.5 is the witness for preparation of observation mahazar and rough sketch. P.W.6 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.7 - a police constable has stated that he handed over the dead body to the Doctor for postmortem, after inquest was over, as directed by P.W.10. P.W.8 has stated that he handed over the FIR to the learned Magistrate. P.W.10 has spoken about the registration of the case. P.W.11 has spoken about the investigation of the case and final report filed.

3. When the incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witnesses nor marked any documents. Their defence was a total denial. Having considered all the above, the trial Court convicted them under Section 302 IPC and that is how, they are before this Court with this appeal.

4. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the respondents and we have also perused the records carefully.

5. It is a case based on circumstantial evidence. In a case of circumstantial evidence, it is for the prosecution to prove the circumstances projected by it beyond reasonable doubt and such proved circumstances should form a complete chain so as to



unerringly point to the guilt of the accused and there should be no other hypothesis inconsistent with the guilt of the accused. With the said broad principle in mind, let us go into the circumstances projected by the prosecution.

6. The first circumstance is that according to P.Ws.2 to 4, the deceased was found alive lastly around 9 p.m. on 11.02.2012. The dead body of the deceased was found on 12.02.2012 around 4.00 p.m. The Doctor, who conducted autopsy, opined that the deceased died due to drowning. Though it is the case of the prosecution that the deceased was pushed into the water by the accused, there is no direct evidence to the same. The defence of the accused that the deceased in a drunken state would have accidentally fallen into the water and died due to drowning cannot be ruled out. Though there were abrasions on the body of the deceased, these injuries could have been caused, while falling due to drunkenness from the Ghat. At any rate, in our considered view, the prosecution has not proved the case beyond reasonable doubts that the death of the deceased was due to homicide.

7. Apart from that, the prosecution relies on the evidence of P.Ws.2 to 4, who have stated that on 11.02.2012, around 9 - 9.30 p.m., the deceased was sitting in the Ghat and taking liquor. They have further stated that they found these two accused also sitting in a different place in the same Ghat taking liquors. Thus, in our considered opinion, assuming that these witnesses could be believed, it would not go to conclusively prove that the deceased was pushed by these accused into the water. There is no evidence even to infer that the deceased would have fallen into water around 9.30 p.m. itself on the same day. Thus, in our considered view, the prosecution ruled out the possibility of death due to accidental fall into the water. The prosecution has failed to prove the circumstances projected by it against the accused. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubt. Thus, we cannot afford to convict the accused on mere surmise.

8. In the result, the criminal appeal is allowed; the conviction and sentence imposed on the appellants are set aside and they are acquitted. Bail bonds shall stand cancelled. Fine amount, if any, paid by them shall be refunded to them.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar



To

1. The 4th Additional District & Sessions Judge,
Tirunelveli.

2. The Principal Sessions Judge,
Tirunelveli District

3 The Judicial Magistrate, Valliyoor.

4. The Inspector of Police
Panakudi Police Station
Tirunelveli District.

5 The superintendent ,
Central Prison,
Palayamkottai

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

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No. 67831

JAM/25.11.16/SKS-RR/SAR 3/5p-8c

judgment made in
Crl.A. (MD) .No.358 of 2015
10.11.2016