**Bail Slip**

The Appellant/Accused namely viz., Bharathi, the sole accused aged 31 years son of Mathiyalagan, was released on bail followed by the order of this Court dated 05/08/2015 made in MP(MD)No.1 of 2015 in CrI.A(MD)No.62 of 2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

CRIMINAL APPEAL(MD)No.62 of 2015

Bharathi ... Appellant/Sole Accused

vs.

State by Inspector of Police,
Viralimalai Police,
In Crime No.227 of 2011,
Pudukkottai District. ... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment dated 09.10.2014 passed in Sessions Case No.94 of 2013 by the Mahila Court, Pudukkottai.

For Appellant : Mr.G.Rengasami

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT**(Judgment of the Court was made by A.SELVAM, J)**

The convictions and sentences dated 09.10.2014 passed in Sessions Case No.94 of 2013 by the Mahila Court, Pudukkottai, are being challenged in the present Criminal Appeal.

2.The case of the prosecution is that the deceased Latha has been married to one Mahamani and both of them have been blessed with three children. The accused has worked as a weldor in Boothakudi and resided in Alanthur. At that time, the accused has developed illicit intimacy with the deceased. On 19.04.2011, the accused directed the deceased to get rid of her husband and accordingly, she has done it and subsequently, both the accused and deceased have resided together in a house belongs to one



Tirupathi on monthly rental basis. On 16.06.2011, after knowing the fact that the accused is going to vacate the house, the deceased has made wranglings with him. On 17.06.2011, the accused has directed the persons namely Manikandan and Balasubramani to bring his household articles from the house. But they have been deterred by the deceased. On the same day, during night hours also, a tussle has arisen between the accused and deceased with regard to vacating the house. Having enraged at the conduct of the deceased, on the same day, the accused has attacked the deceased and due to his overtact, she passed away and in order to screen the dead body, on the same day, he has taken the same by using a two-wheeler bearing Registration No.TN-49-AB-7751 and placed the same in a barren land, which situates in Kovilkattupatti and after knowing the factum of death of the deceased, her mother (P.W.1) has given a complaint and the same has been registered in Crime No.227 of 2011. The complaint alleged to have been given by P.W.1 has been marked as Ex.P.1.

3.On receipt of Ex.P.1, the Investigating Officer viz., P.W.27 has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Renuka Devi, P.W.19 has conducted autopsy and she found the following external and internal injuries:-

"1.An oblique dark brown colour ligature abrasion, 24cm X 2.5cm on the front and sides of the neck, at the level of thyroid cartilage on the front of the neck, 5cm from the right angle of mandible, 2cm from the left angle of mandible and at the back of the neck, the ligature mark mergers with the hair line.

On bloodless dissection of neck: The Underlying tissues are pale, firm and glistening.

2.A lacerated wound, 2cm X 1cm X bone deep, on the right frontal region of the scalp.

3.Bruising of right frontal region of the scalp - Dark red.

4.Sub dural haemorrhage and Sub arachnoid haemorrhage on both cerebral hemispheres. The above mentioned wounds are ante - mortem. No other external, internal or bony wound."

The Post-Mortem Certificate has been marked as Ex.P.2.

4.On 24.06.2011, P.W.21-Kanagaraj (Village Administrative Officer) has produced the accused with his confession statement to the Investigating Officer and subsequently, Section of law has been changed and the Investigating Officer has continued investigation. After completing investigation, the Investigating Officer has submitted a final report on the file of the District Munsif cum Judicial Magistrate's Court, Keeranur and the same has been taken on file in P.R.C.No.19 of 2012.



5.The District Munsif cum Judicial Magistrate, Keeranur, after considering the fact that the offences alleged to have been committed by the accused are triable by the Sessions Court, has committed the case to the Court of Sessions, Pudukkottai Division and the same has been taken on file in Sessions Case No.94 of 2013 and subsequently, made over to the trial Court.

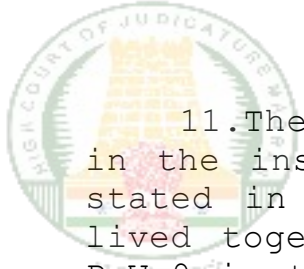
6.The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Section 302 of the Indian Penal Code and second charge against the accused under Section 201 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7.On the side of the prosecution, P.Ws.1 to 27 have been examined and Exs.P.1 to P.21 and M.Os.1 to 12 have been marked.

8.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. However no oral and documentary evidence have been adduced on the side of the accused.

9.The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.10,000/- with usual default clause and the trial Court has also found the accused guilty under Section 201 of the Indian Penal Code and sentenced him to under 7 years rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

10.The learned counsel appearing for the appellant/accused has contended with great vehemence to the effect that the specific case of the prosecution is that from 19.04.2011, both the accused and deceased have resided together in a rental house. Even on the date of occurrence, both of them have lived together and the entire occurrence has taken place inside the said house. But to prove the above aspect on the side of the prosecution no evidence is available and the trial Court, without considering the above lapses, has erroneously invited convictions and sentences simply on the basis of evidences given by P.W.5, P.W.9 and extra judicial confession statement (Ex.P7) alleged to have been given by the accused. Ex.P.21 and therefore, the convictions and sentences passed by the trial Court are liable to be set aside.



11. The learned Additional Public Prosecutor has contended that in the instant case P.W.5, brother of the deceased, has clearly stated in his evidence that both the accused and deceased have lived together prior to occurrence and the specific evidence of P.W.9 is that he warned the alleged illicit intimacy between the accused and deceased and apart from their evidence, the specific evidence by P.W.21, Village Administrative Officer is that on 24.06.2011, the accused has voluntarily come to his office and given a statement and the same has been recorded and also marked as Ex.P.7 and the trial Court, after considering the contents of Ex.P.7 coupled with other evidence, has rightly invited convictions and sentences against the appellant/accused and therefore, the convictions and sentences passed by the trial Court are not liable to be set aside.

12. The sum and substance of the case of the prosecution is that the deceased-Latha has been given in marriage to Mahamani, who has been examined as P.W.2 and both of them have been blessed with three children. Prior to occurrence, the accused has served as a welder in Boothakudi and resided in Alanthur and at that time, he developed illicit intimacy with the deceased and as per his direction, the deceased has left matrimonial abode and subsequently, both of them have lived as husband and wife in a house on monthly rental basis and after some time, the accused has tried to vacate the house and the same been objected to by the deceased and having enraged at the conduct of the deceased, he attacked her and thereby caused fatal injuries.

13. Even though on the side of the prosecution as many as P.Ws.1 to 27 witnesses have been examined, there is no specific evidence on the side of the prosecution for the purpose of showing that immediately prior to occurrence, both the accused and deceased have lived together in the house where such occurrence has taken place. The house owner by name Thirupathi has been examined as P.W.16. But, unfortunately, he has become a hostile witness. Therefore, absolutely there is no evidence on the side of the prosecution for the purpose of establishing that just prior to occurrence both of them have lived together in the house belongs to the said Thirupathi.

14. It is true that the brother of the deceased by name Thulaisamy @ Duraisamy has been examined as P.W.5 and his specific evidence is that his sister has lived with the accused. Except the said portion, he has not adduced evidence to the effect that on the date of occurrence both of them have lived together in the house where such occurrence has taken place and therefore, the evidence given by P.W.5 is of no use.

15. On the side of the prosecution, one Sasikumar has been examined as P.W.9 and he simply stated in his evidence that he warned the deceased with regard to her illicit intimacy with the



accused. The evidence given by P.W.9 is also useless.

16. Now the Court has to look into the role alleged to have been played by P.W.21 and Ex.P.7. The specific evidence given by P.W.21 is that on 24.06.2011, the accused has voluntarily come to his office and given a confession statement wherein he admitted his guilt and subsequently, he has been taken to police station. The extra judicial confession statement alleged to have been given by P.W.21 has been marked as Ex.P.7. Except Ex.P.7, no other connecting/corroborating evidence is available on the side of the prosecution.

17. It has already been pointed out that on the side of the prosecution, there is no evidence with regard to the alleged fact that just prior to occurrence, both of them have lived together in the house, which belongs to the said Thirupathi. If really, both of them have lived together in the said house, definitely, the prosecution would have adduced some reliable/trustworthy evidence. But as stated in many places, no evidence is available with regard to the said aspect. Since on the side of the prosecution the vital aspect that both the accused and deceased have lived together just prior to occurrence has not at all been established merely on the basis of extra judicial confession statement alleged to have been given by the accused, the Court cannot come to a conclusion that he has had connection with the crime. Further, even though the extra judicial confession is admissible in evidence, the same is nothing but a weak piece of evidence and on that basis alone, the Court cannot come to a conclusion that the accused has committed the offences mentioned in the charges.

18. The trial Court, without considering the lapses found on the side of the prosecution, has simply invited convictions and sentences merely on the basis of Ex.P.7 and the evidence given by P.W.21. The conclusion arrived at by the trial Court cannot be accepted and therefore, the present Criminal Appeal is liable to be allowed.

19. In fine, this Criminal Appeal is allowed and the convictions and sentences passed in Sessions Case No.94 of 2013 by the Mahila Court, Pudukkottai are set aside. The appellant/accused is acquitted and fine amount paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar



To

- 1.The Judge, Mahila Court, Pudukkottai.
- 2.Do through The Principal District Judge, Pudukkottai.
- 3.The District Munsif cum Judicial Magistrate, Keeranu, Pudukkottai District.
- 4.Do through The Cheif Judicial Magistrate, Pudukkottai.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Inspector of Police,
Viralimalai Police,
Pudukkottai District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Ps

CSL/KM/SAR-III/16.12.2016:6P/8C

**Judgment made in
Crl.A(MD)No.62 of 2015
05.12.2016**