

**BAIL SLIP**

The Appellant/Accused namely Palanivel was directed to be released on bail as per the order of this Hon'ble Court made in MP(MD)No.1 of 2013 in CRL A(MD)No.146 of 2013 dated 07.06.2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
AND
THE HONOURABLE MR.JUSTICE V.S.RAVI

Crl.A(MD)No.146 of 2013

Palanivel

.. Petitioner / Sole Accused

Vs.

The State represented by
The Inspector of Police,
Thuraiyoor Police Station,
Trichy District.
(in Crime No.213 of 2012)

.. Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(ii) of Cr.P.C. praying this Court, to call for the records in S.C.No.220 of 2012 dated 19.03.2013 on the file of the learned Principal District and Sessions Judge, Tiruchirappalli and to set aside the Judgment of conviction and allow the appeal.

For appellant	: Mr.T.K.Gopalan
For respondent	: Mr.K.S.Duraipandian Additional Public Prosecutor

Judgment reserved on	: 17.11.2015
Judgment pronounced on	: 25.02.2016

JUDGMENT

The appellant is the sole accused in S.C.No.220 of 2012 (Crime No.213 of 2012) on the file of the learned Principal Sessions Judge, Tiruchirappalli. The appellant has been charged for the offence under Sections 302 and 201 I.P.C. The trial Court, by Judgment dated 19.03.2013, convicted him for the offence under Section 302 I.P.C., and sentenced him to undergo Life Imprisonment and to pay the fine amount of Rs.1,000/- and, in default, to undergo Rigorous Imprisonment for the period of six months and convicted him for the offence under Section 201 I.P.C., and sentenced



him to undergo Rigorous Imprisonment for seven years and also imposed the fine amount of Rs.1,000/- and, in default, to undergo Rigorous Imprisonment for the period of six months. Challenging the conviction Judgment delivered in S.C.No.220 of 2012, the appellant/accused in Crime No.213 of 2012 is before this Court with this present appeal and he has been granted the suspension of sentence, as per the order dated 07.06.2013 passed by this Court.

2.The brief case of the prosecution is as follows;

The appellant / accused Palanivel is the father-in-law of one Uma and the said Uma's husband is working in Andhrapradesh and he used to come to his house once in 3 or 4 months. P.W.1 Sasikala is the Village Administrative Officer of Nagalapuram and on 19.05.2012 at 11.00 a.m., the appellant / accused has come to the P.W.1's office, with an Aruval and informed that he has committed a murder and she has recorded the confession statement of the appellant / accused. Further, in the said confession statement, the appellant / accused has stated that daughter-in-law Uma has developed an illicit intimacy with the deceased Saravanan and he warned both of them. However, the appellant has seen both of them, talking to each other and on 18.05.2012 at 7.00 p.m., he has gone to his field and he has seen the deceased, sitting near the haystack and the deceased has slapped him and at that time, the appellant has brutally assaulted the deceased, with the help of M.O.2 Aruval and dumped the deceased body in a gunny bag and also put some stones into the said bag and dropped it into the well of Ganesan(P.W.4) and also he has taken the cellphone and dresses of the deceased. Hence, according to the prosecution, the appellant / accused in Crime No.213 of 2012, is liable to be punished under Sections 302 and 201, I.P.C.

2.1. In order to prove the case of the prosecution, the prosecution has examined 18 witnesses as P.W.1 to P.W.18 and also marked 40 exhibits as Ex.P.1 to Ex.P.40 and also Material Objects as M.O.1 to M.O.10.

2.2. P.W.1 Tmt.Sasikala, Village Administrative Officer has stated that on 19.05.2012 at 11.00 a.m., the accused Palanivel has come with Aruval in his hand to her office and he has stated to her that he has murdered one person and hence, she has recorded the confession statement as per Ex.P.1 and also she has written the complaint as per Ex.P.2 and submitted to the Inspector of Police and also she has produced the accused with Aruval to the Inspector of Police. Further, the P.W.4 Ganesan has stated that he has already known the accused and on 18.05.2012 at 6.00 p.m., one two wheeler has been seen in the land of one Natarajan, and also, he has seen the same vehicle standing in the same place, on the next day morning also and thereafter, he has informed to the councilor and the said councilor has informed to Padalur police station and in afternoon, the police and fire service men have retrieved a dead body in the
https://hcservicescourts.gov.in/ he has identified the M.O.10, TVS Star City motorcycle and the M.O.1 Photograph with CD.



2.3. Further, the P.W.7 Thiru.Sathishkumar has stated that he is working as Village Administrative Officer in Thuraiyur Town and on 19.05.2012, he and his assistant, have signed in admissible portion of the confession statement of Ex.P.14 and they have also signed in the Seizure Magazar of Ex.P.13, for the recovery of the M.O.2 Aruval. Further, the P.W.10 Dr.Thangadurai has stated that on 19.05.2012, he has served as Assistant Surgeon in Thuraiyur Government Hospital and he has conducted Postmortem on the dead body of the deceased and issued Postmortem Certificate as per Ex.P.16 and also he has identified the M.O.3 Pesticide plastic bottle. Further, P.W.2, P.W.3, P.W.5, P.W.6, P.W.8, P.W.9 and P.W.11 to P.W.14 have been treated as hostile witnesses, as they have not supported the case of the prosecution.

2.4. Further, the P.W.15 Thiru.Jebakumar, Head Constable has stated that on 19.05.2012 at 14 hours, he has submitted the Ex.P.21 F.I.R to the learned Judicial Magistrate, Thuraiyur and concerned Higher Officials. Further, the P.W.16 Thiru.Suresh, Police Constable has stated that on 20.05.2012, he has handed over the dead body of the deceased Saravanan to Thuraiyur Government Hospital, for conducting Postmortem and after the completion of the Postmortem, he has handed over the dead body of the deceased to one Sivapitchai, namely, the father of the deceased. Further, the P.W.17 Tmt.Syamaladevi, Sub Inspector of Police has stated that on 19.05.2012 at 13 hours, she has received the complaint from the P.W.1 Village Administrative Officer and registered the F.I.R as per Ex.P.21 in Crime No.213 of 2012 under Sections 302 and 201 I.P.C., and submitted the said F.I.R to the learned Judicial Magistrate, Thuraiyur and concerned Higher Officials.

2.5. Further, the P.W.18 Thiru.Dinesh Kumar has stated that on 19.05.2012, he has served as Inspector of Police and he has taken up, the case for investigation and he has prepared Rough Sketch and Observation Magazar as per Ex.P.22 and Ex.P.23 respectively, with regard to the place of occurrence and also, he has recovered the M.O.4 bloodstained earth and M.O.5 sample earth in the Seizure Magazar as per Ex.P.24. Further, he has prepared Rough Sketch and Observation Magazar as per Ex.P.26 and Ex.P.27 respectively, with regard to the well, from which, the body of the deceased has been recovered and also he has recovered the M.O.8 and M.O.9, namely, the dresses in the Seizure Magazar as per Ex.P.33 and also he has recovered the M.O.10, TVS Star City motorcycle in the Seizure Magazar as per Ex.P.35. Further, the P.W.18 has recorded the confession statement from the accused and also he has recovered the M.O.2 Aruval in the Seizure Magazar as per Ex.P.13 and also he has enquired the P.W.10 Postmortem Doctor and recorded statement of the P.W.10 and also, perused the Ex.P.40 Chemical Analysis Report and thereafter, he has filed final report on 28.09.2012.

<https://hcservices.ecourts.gov.in/hcservices> On completion of the evidences on the side of the prosecution, the accused/appellant has been questioned under Section 313 of Cr.P.C., as to the incriminating circumstances mentioned in



the evidences of prosecution witnesses and he has stated that he is an innocent person and he is not involved in the said case.

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4. Having considered all the above materials on record, the trial Court has convicted the appellant / accused and sentenced him as mentioned in the beginning of this Judgment and challenging the said conviction and sentence, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the Lower Court ought to have come to the conclusion that the Ex.P.1 statement, given by the appellant is not true and on that ground, that Lower Court ought to have rejected the case of the prosecution. In Ex.P.1, it is stated that the appellant/accused has used Aruval to assault the deceased Saravanan. However, the material evidences of the prosecution do not establish that the appellant/accused has caused the death to the deceased. Even according to the prosecution, the occurrence has happened on 18.05.2012 at about 7.00 p.m., at Nagalapuram Village. The P.W.1 Sasikala, Village Administrative Officer has failed to do her duties, in accordance with the rules and on that ground also, the Lower Court ought to have rejected Ex.P.1 and Ex.P.2, as unbelievable and unreliable and ought to have acquitted the appellant/accused. The P.W.1 has deposed that the appellant/accused has come to the police station with Aruval and she has also deposed in her cross examination that the appellant/accused has come to her office with Aruval. But, the P.W.18 Investigation Officer has stated during his evidence, that he has arrested the appellant and he has only recovered the Aruval, from the thorny bush at Nagalapuram Village, near the well of one Ganesan(P.W.4). Further, in this case, the Lower Court has failed to come to the conclusion that the confession and recovery of Aruval is not established, in accordance with law. The Lower Court has failed to consider the medical evidence of the P.W.10 Postmortem Doctor to effect that, insecticide poisoning, is the cause of death of the deceased Saravanan. The Lower Court ought to have come to the conclusion that there is no legally acceptable evidence to prove the case as against the appellant/ accused. The evidence of P.W.7 Sathish Kumar, Village Administrative Officer has not to be taken into consideration by the Lower Court, to accept the prosecution case of recovery of the M.O.2 Aruval. The P.W.18 Investigation Officer has admitted in his evidence, that even prior to the emergence of Exhibits Ex.P.1 and Ex.P.2, the P.W.18 Investigation Officer has received the information, regarding, the assault made to the deceased with Aruval by the appellant. Further, the case of the prosecution is that the 56 years old appellant/accused has taken the gunny bag and inserted stones into the said gunny bag and also, pushed the whole body of the deceased, inside the said gunny bag and dropped the gunny bag inside the well and the said details are unbelievable and also, artificial descriptions have been submitted by the investigating agency. The Lower Court has failed to consider the case of the prosecution that the eyewitness P.W.2 has not spoken anything as against the appellant/accused. The Lower Court has misapplied the principles of



law in favour of the prosecution and instead of giving the benefit of the principles of doubt, in favour of the appellant, the Lower Court has delivered the Judgment of the punishment to the appellant/accused.

6. The points that arise for consideration in the present Criminal Appeal are as follows:-

1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

2) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

7. Analysis, discussions and findings with regard to the above mentioned points:-

The learned counsel for the appellant has submitted that the Trial Court has committed error in convicting the appellant on the basis is highly unbelievable and insufficient evidences of the prosecution. The appellant/accused has been wrongly implicated in the commission of the said crime, by the prosecution. Further, the learned counsel for the appellant has submitted that there are no eyewitnesses for the occurrence and a whole case rest on the evidences of P.W.1 and her evidence is not clear and cogent. Further, the evidence of P.W.1 has not inspired the confidence to believe the case of the prosecution. There are serious infirmities in the case of the prosecution. Further, the evidences of the prosecution witnesses are not clear and cogent, about the offence alleged to have been done by the appellant. There are no believable evidences on record to establish the case of the prosecution and hence, the case of the prosecution is unbelievable and unreliable.

8. On the other hand, the learned Additional Public Prosecutor has submitted that the reasons given by the Lower Court for recording the Judgment of Conviction against the appellant, are based upon the proper appreciation of the evidences and material records submitted by the prosecution. Further, he has submitted that the evidences of prosecution witnesses coupled with Exhibits and Material Objects are clear and satisfactory and also with hypothesis of the guilt of the appellant and the Lower Court has passed well-reasoned and well-merited judgment.

9. In this matter, the P.W.1 Tmt. Sasikala, Village Administrative Officer has been examined and she has received the statement from the accused on 19.05.2012 at 11.00 a.m., and she has Ex.P.1 statement of the accused and Ex.P.2 complaint to the police. Further, the P.W.1 has categorically deposed in her evidence that she has handed over the accused to the police, and at



that time, the accused has taken along with him the M.O.2 Aruval. However, the P.W.18 Thiru.Dinesh Kumar, Investigation Officer has deposed that in his investigation, he has come to know that the deceased Saravanan has been murdered with the help of the M.O.2 Aruval, by the accused and as per the confession statement, he has recovered the M.O.2 Aruval, used by the accused and that on 20.05.2012, at morning 6.30 a.m., as per the admissible portion of the confession statement given by the accused / appellant, the Investigation Officer has recovered the M.O.2 Aruval, in the Ex.P.13 Seizure Mahazar, near Ganesan's (P.W.4) well at Nagalapuram Village.

10. Further, the P.W.17 Tmt.Syamaladevi, Sub Inspector of Police has evidently deposed that she has received the Ex.P.2 complaint from the P.W.1 Village Administrative Officer on 19.05.2012 at 13 hours and registered a case in Crime No.213 of 2012 and also she has prepared the F.I.R. as per Ex.P.21. However, she has admitted in her cross examination that she has not seen the Aruval along with the accused, at the time of, P.W.1 producing the accused with the Ex.P.2 complaint and also she has not recovered any Aruval from the accused and also, she has not enquired about the Aruval from the accused and also she has not taken any steps to recover the said Aruval.

11. It is pertinent to note that the P.W.18 Investigation Officer has pointed out in his cross examination that only due to the brutal assault made with the help of M.O.2 Aruval, the murder has been caused to the deceased. However, the P.W.10 Dr. Thangadurai has categorically deposed that on 19.05.2012, he has conducted Postmortem on the dead body of the deceased Saravanan and issued Postmortem Certificate as per Ex.P.16 and in the said Postmortem Certificate, he has given the opinion that the deceased would have died due to poisoning. Further, the P.W.1 has clearly admitted in her cross examination that she has not stated in the Ex.P.1 statement or in the Ex.P.2 complaint, that the accused has appeared before her along with the M.O.2 Aruval. Further, the P.W.1 has clearly admitted that she has not obtained the signature of the village assistant in the said complaint. Further, the P.W.1 has obviously admitted that she has not checked the details of the ownership of the well, where the accused has put the dead body of the deceased. Further, the P.W.1 has particularly admitted that she does not know the ownership of lands and surroundings of the place, where the dead body has been put by the accused.

12. Further, in this case, the P.W.2 Duraisamy has been examined to establish the case of the prosecution, more particularly about the motive aspect. However, he has deposed in his evidence that he does not have any knowledge about the death of the deceased. Further, he has been treated as hostile witness, as he has not supported the case of the prosecution. Further, he has plainly admitted in his evidence that he does not know that the accused is the father-in-law of the said Uma. According to the case of the prosecution, the deceased has got illicit relationship with the



daughter-in-law of the accused, namely, Uma, and due to that motive, the accused has murdered the deceased. However, the prosecution has failed to establish the said motive by producing the acceptable, cogent and clear evidences. Further, the P.W.2 has specifically admitted in his evidence, that the M.O.10, TVS Star City motorcycle bearing registration No.TN 48-Y-3726 is not in the name of the deceased Saravanan and the deceased is not having the driving licence.

13. Further, the P.W.18 Investigation Officer has also undeniably admitted that he has not enquired about the ownership of the said vehicle and he has not produced the records to establish the ownership of the said vehicle. Further, the P.W.3 Ilangovan has deposed that he has seen the dead body of the deceased only on 19.05.2012. However, the prosecution has stated that on 18.05.2012 at 7.00 p.m., itself, the accused has caused the said murder of the deceased. Further, the P.W.3 has deposed that after taking out the dead body of the deceased from the well, with the gunny bag, stones have been kept along with the dead body inside the said gunny bag. If, the said stones have been kept inside the gunny bag, then, there is no chance for the dead body to come up to the level of well water. Further, the P.W.4 Ganesan has deposed that on 18.05.2012 at 6.00 p.m., he has seen the M.O.10 two wheeler and he has seen the said two wheeler on the next day morning also and he has informed to the Councilor and the said Councilor has stated to him that he has informed to Padalur police station. However, the P.W.4 has deposed that even though the said information has been given to the police, the police have not come to the place and he has not seen the dead body taken from the well and he has not seen the accused Palanivel, before giving evidence, in the Lower Court. Further, the P.W.7 Thiru.Sathish Kumar has deposed that he is working as Village Administrative Officer in Thuraiyur Town and on 19.05.2012, the P.W.7 and his assistant, have signed in the admissible portion of the confession statement as per Ex.P.14 and also, they have signed in the Seizure Magazar as per Ex.P.13, for the recovery of the M.O.2 Aruval. However, according to the evidence of P.W.10 Postmortem Doctor, the death has happened only due to poisoning. Further, the P.W.18 Investigation Officer has also deposed that the death has happened only due to brutal assault caused with the help of M.O.2 Aruval. Hence, it is found that there are vital contradictions in the evidences of the prosecution.

14. Further, the P.W.10 Doctor, who has conducted Postmortem on the dead body of the deceased, has undoubtedly deposed that, in case, the pesticide has been poured into the mouth of the deceased, by force, then, the deceased would have suffered abrasions, in his mouth area. However, the said Doctor has clearly deposed that he has not noticed any abrasions in the mouth area of the dead body. Further, the P.W.10 Doctor has categorically admitted that the deceased has not expired, due to the wound, caused to the body and the police have not examined him, by showing the M.O.2 Aruval and the deceased would have consumed pesticide, before the death and there



are no chances for the deceased, to take pesticide liquid, before the injuries are caused to his body and the injuries are not very deep and also, not serious in nature. However, the P.W.18 Investigation Officer has evidently deposed in his evidence that the deceased has expired only due to the brutal assault caused with the help of M.O.2 Aruval by the accused. Further, the P.W.15 Thiru.Jebakumar has deposed that he is working as Head Constable and he has submitted the Ex.P.21 F.I.R., on 19.05.2012 at 14 hours to the learned Judicial Magistrate, Thuraiyur. Further, the P.W.16 Thiru.Suresh, Police Constable has deposed that on 20.05.2012, he has handed over the dead body of the deceased Sarvanan to Thuraiyur Government Hospital, for conducting Postmortem, and after the completion of the Postmortem, he has handed over the dead body of the deceased to the relatives.

15. Further, the P.W.18 Investigation Officer has also deposed that the M.O.2 Aruval has been submitted to the Court on 21.05.2012 and M.O.8 and M.O.9, namely, the dresses and M.O.10, two wheeler have been submitted to the Court on 30.05.2012. Hence, it is found that there are long delay in submitting the material objects and records, to the Court. For the said long delay also, the prosecution has not furnished any acceptable and sufficient reasons. Further, the P.W.18 has deposed in his evidence that it is not correct to say that the accused has handed over the M.O.2 Aruval in the police station and the said Aruval has been recovered, as per the confession statement given by the accused. However, the P.W.1, Village Administrative Officer has deposed in her evidence that she has handed over the Ex.P.1 statement along with the Ex.P.2 complaint and also, the accused, to the police station and at that time, the accused has got M.O.2 Aruval in his hand. Further, the P.W.18 Investigation Officer has deposed that the dresses have been kept in plastic bag along with stones and he has not recovered the said stones, with regard to the present case. Further, the P.W.18 has particularly admitted that the witness Duraisamy(P.W.2), has only, seen the occurrence, directly and the said details have been found out, during the investigation. However, the said prime witness, namely, the P.W.2 has not supported the case of the prosecution and he has been treated as hostile witness only. Further, the P.W.18 has specifically admitted that the dead body has been seen by the P.W.1 Village Administrative Officer, at the first instance, and the dead body of the deceased has been seen, lastly, by the wife of the deceased. Further, in the Ex.P.1, the P.W.1 has deposed that due to the illicit intimacy between the deceased and the daughter-in-law of the accused, the deceased has been murdered by the accused on 18.05.2012 at night 7.00 p.m., itself. However, only on 19.05.2012 at 13 hours, the Ex.P.2 complaint has been received by the Sub Inspector of Police. Further, it is relevant to point out that many of the prosecution witnesses, namely, P.W.2, P.W.3, P.W.5, P.W.6, P.W.8, P.W.9 and P.W.11 to P.W.14 have been treated as hostile witnesses, as they have not supported the case of the prosecution. Further, the Ex.P.21 F.I.R has been received by the concerned learned Judicial Magistrate, only, on 19.05.2012 at 2.00 p.m., as per the endorsement made in the said F.I.R.



16. Further, the learned counsel for the appellant has relied upon the Judgment reported in **(2011) 3 SCC(Cri) 457 and (2011) 11 SCC 666 (State of Rajasthan V. Talevar and another)**, wherein, it is significantly held as follows:-

"More so, recovery is either of cash, small things or vehicles which can be passed from one person to another without any difficulty. In such a fact situation, we reach the inescapable conclusion that no presumption can be drawn against the said two respondent-accused under Section 114 Illustration (a) of the Evidence Act. No adverse inference can be drawn on the basis of recoveries made on their disclosure statements to connect them with the commission of the crime."

In this case also, it is found that the case of the prosecution has failed to establish the recovery of the material objects in an appropriate way and also in accordance with law and the prosecution has failed to establish the above mentioned case of the prosecution, beyond reasonable doubts.

17. In view of the above mentioned discussions, this Court has no hesitation to hold that the prosecution has not established the guilt of the appellant beyond reasonable doubts and the above mentioned circumstances also create serious doubts, in the case of the prosecution. The doubts have not been clearly explained by the prosecution in any manner and thus, the appellant is entitled to get the benefit of such doubts. For the above mentioned reasons, facts and circumstances and situations, it is found that the Lower Court has not passed the impugned Judgment, after properly appreciating the materials on record, in proper perspective and the present appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant and thus, the points are answered in favour of the appellant herein.

18. **In the result**, this Criminal Appeal is allowed and the conviction and sentence imposed on the file of the learned Principal Sessions Judge, Tiruchirappalli by Judgment dated 19.03.2013 delivered in S.C.No.220 of 2012 is set aside and the appellant/accused/Palanivel in Crime No.213 of 2012 is acquitted. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him shall be repaid to him.

Sd/-

Assistant Registrar(AS)

/True Copy/



To

WEB COPY

1. The Judicial Magistrate,
Thuraiyur, Trichy District.
2. -Do-Thro' The Chief Judicial Magistrate,
Trichy.
3. The Principal District and Sessions Judge,
Tiruchirappalli
4. The District Collector
Trichy District.
5. The Director General of Police,
Vepery, Chennai -7.
6. The Inspector of Police,
Thuraiyur Police Station,
Trichy District.
7. The Superintendent,
Central Prison, Trichy.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+lcc to Mr.T.K.Gopalan, Advocate Sr.No.10849

akm/02.03.2016/10p-10c/AAL/MPA/SAR-I

JUDGMENT
MADE IN CrI.A. (MD) No.146 of 2013
25.02.2016