

BAIL SLIP

The Appellant/Accused No.1 namely Lalitha Wife of Muniappan, was released on bail vide order dt.8.3.12 in MP.1/12 in CrI.a.No.149/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 11.01.2017

Delivered on : 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.149 of 2012

Lalitha Appellant/Accused No.1
Wife of Muniappan

-vs-

The State of Tamilnadu
Rep. by Inspector of Police
Penagaram Police Station
Dharmapuri District.
(Crime No.607 of 2010) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 13th day of February 2012 in SC.No.65 of 2011 on the file of the Principal & Sessions Judge, Dharmapuri.

For appellant : Mr.R.Selvakumar
For Respondent : Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

The appellant is the 1st accused in SC.No.65 of 2011 on the file of the Principal District Judge, Dharmapuri. She stood charged for offences under Sections 364 & 302 IPC along with three other accused, who were charged under Section 364 IPC. By Judgment dated 13.02.2012, the trial Court, while acquitting A1 to A4 U/s 364 IPC convicted the appellant / 1st accused under Section 304(i) IPC instead of U/s 302 IPC and sentenced her to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.2,000/- in default to undergo Rigorous Imprisonment for 30 months. Aggrieved over the same, the appellant / 1st accused has come forward with this appeal.

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

The appellant/1st accused is the wife of the deceased Muniappan. While the 2nd accused is brother of the appellant/1st accused. The 3rd accused is relative of the 1st accused and his son is the 4th accused. After marrying the deceased Muniappan, the appellant/1st accused has begotten three children and the deceased Muniappan was addicted to alcohol. He used to quarrel with the 1st accused, continuously abused her and physically tortured her. While so, on 26.12.2010 as the deceased under the influence of alcohol assaulted the 1st accused in his house and due to subsequent quarrel, the deceased Muniappan with bleeding injuries went to the house of P.W.4-Periya Kannaiyan and stayed there over night. On the next day i.e. on 27.12.2010 at about 5.30 a.m. the deceased Muniappan went to the tea shop at Chinnakadamadai Village and at that time, the accused 2 to 4 came there, tied the hands of the deceased and took him away in a Auto to the 1st accused parents home at Mudhukampatti, Kalimankadu Village. On the same day, at about 11.30 a.m. as the deceased again quarreled with his wife/1st accused, unable to bear the same the 1st accused took the iron pipe and assaulted the deceased Muniappan on his head causing his death. Thus, according to the prosecution, due to such act of the 1st accused the said Muniappan died on the spot due to shock and hemorrhage and thereby the 1st accused committed the offence punishable under Section 302 IPC and A1 to A4 by kidnapping the victim from the tea shop committed the offence punishable under Section 364 IPC.

3. The Village Administrative Officer of Mudhukampatti Village who deposed as P.W.1, has stated that while he was in his office on 27.12.2010 at about 12.30, the 1st accused-Lalitha came there and stated about the murder of her husband Muniappan in her parents home at about 10.00 a.m. and voluntarily gave statement in that regard, the same was recorded by him and the said statement is produced as Ex.P1. After recording the same, P.W.1 took the 1st accused to the Pennagaram police station at around 2.00 p.m. along with his Assistant and handed over the 1st accused to the police as well as Ex.P1-Statement and his Special Report, which is marked as Ex.P2. Thereafter, the 1st accused voluntarily gave statement to P.W.10/the Inspector of Police and the same was taken down by him wherein, PW1/VAO/Sakthivel and his Assistant signed as witnesses.

4. The Inspector of Police who deposed as P.W.10 stated, while he was on duty in Pennagaram Police Station on 27.12.2010 at 14.00 hours, P.W.1-VAO, Sakthivel came to the police station with the 1st accused Lalitha and produced her with a Special Report and the statement which was given by the said 1st accused to him. On receipt of the same, P.W.10, the Inspector of Police registered a case in Pennagaram Police Station Crime No.607 of

2010 under Section 302 IPC and the said FIR is marked as Ex.P9. According to P.W.10, he recorded the statement of the 1st accused in the presence of PW1/VAO and his Assistant and arrested the 1st accused at 14.00 hours. Thereafter, he took the 1st accused with PW1 and his Assistant Sakkaraiappan to the occurrence spot at Mudhukampatti, Kalimankadu Village at about 15.00 hours and in the presence of the witnesses, he prepared a rough sketch of the occurrence spot in front of the house of one Munusamy Naidu and the same is marked as Ex.P10. Further, P.W.10-Inspector of Police stated that from the occurrence spot, he recovered a Iron Pipe measuring 52 x 5 cms with blood strains, which is marked as M.O.1 under Ex.P4 Seizure Mahazar. Further P.W.10 stated that on the same day at around 16.00 hours in the presence of PW1 and his Assistant he secured few blood strained sand and plain sand which is marked as M.O.2 and M.O.3 from the occurrence spot under Ex.P5 Seizure Mahazar.

5. The Village Administrative Officer who deposed as P.W.1 stated that after he produced the 1st accused before the police, P.W.10, the Inspector of Police recorded the statement of the 1st accused and at 3.00 p.m. he took them to the occurrence spot in Mudhukampatti, Kalimankadu Village and recovered the Iron Pipe - M.O.1 from the occurrence spot under Ex.P4. He also stated that under Ex.P5 Mahazar, blood strained sand and plain sand was recovered by P.W.10 and marked as M.O.2 and M.O.3. Further P.W.1 has also stated that himself and his Assistant signed as witnesses in the Observation Mahazar, which is marked as Ex.P6.

6. On 27.12.2010, P.W.10-the Investigating Officer conducted inquest on the body of the deceased at the occurrence spot from 15.30 hours to 19.00 hours and prepared the Inquest Report, which is marked as Ex.P11. After completing the inquest, P.W.10 sent the body of the deceased Muniappan to Pennagaram Government Hospital through P.W.9-Head Constable for post-mortem. P.W.10 thereafter examined and recorded Statement of other witnesses on the same day. Thereafter on 28.12.2010, he gave requisition letter for Chemical Analysis of the materials objects recovered by him and the same is marked as Ex.P12. On the basis of the said requisition, the Judicial Magistrate, Pennagaram sent the case properties to the Forensic Lab for Chemical Analysis, which is marked as Ex.P13. The Inspector of Police however stated that after enquiry, it came to light that all the accused were involved in committing offences under Section 364 and hence he submitted Alteration Report and the same is marked as Ex.P14. On receipt of the Chemical Analysis Reports / Serological Reports, which is marked as Ex.P15 and Ex.P16. P.W.10 completed enquiry and filed the charge sheet against A1 to A4 under Section 364 and against the 1st accused under Section 302 IPC.

7.1 Based on the above materials, the trial Court framed

charges as detailed in the impugned Judgment and the same was denied by the accused. To establish, the guilt of the accused, the prosecution examined P.W.1 to P.W.10, marked Ex.P1 to Ex.P16 and M.O.1 to M.O.3 to prove the charges against the accused. The defendants has not examined any witnesses or marked any documents on their side.

7.2 On the basis of the materials placed before the trial court, the 1st accused alone was found guilty as stated above and convicted by the trial court for the offence under Section 304 (i) IPC. Aggrieved over the same, the 1st accused has come forward with this appeal contending that the trial court finding is not based on proper appreciation of the materials placed before it. It is contended that the alleged extra-judicial confession was not given by the 1st accused and the same is inadmissible in evidence. The finding of the trial court that the extra-judicial confession of the 1st accused is corroborated by the evidence of P.W.1 and P.W.8 is not sustainable. The trial court failed to appreciate the medical evidence properly. The prosecution failed to explain the multiple injuries found on the body of the deceased, since the allegation against the 1st accused is that she assaulted the victim on his head only. The finding of the trial court in other aspects is not supported by material evidence and the same is sought to be set aside.

8. Admittedly, there is no eye witness to the alleged occurrence. P.W.10-the Investigating Officer himself registered the case, investigated and also filed the charge sheet in this case. As stated above, according to the prosecution, the deceased Muniappan quarreled with his wife/1st accused/appellant herein and due to that the 1st accused went away to her parents home at Mudhukampatti, Kalimankadu Village, the deceased Muniappan followed her and again quarreled with the 1st accused in her parents home and enraged over the same, the 1st accused took over the M.O.1-Iron Pipe which was lying in her parents home and assaulted the deceased in his head causing injuries which ultimately resulting in the death of the deceased. As per Ex.P9-FIR, the occurrence took place around 10.00 a.m. at Mudhukampatti, Kalimankadu Village. According to P.W.1-VAO on 27.12.2010 while he was in his office at about 12.30 p.m. the 1st accused/Lalitha came there and voluntarily gave Ex.P1-Statement disclosing all the facts about the occurrence resulting in death of her husband Muniappan. As per the contents of Ex.P1-Statement, the 1st accused Lalitha is the daughter of Munusamy Naidu and Sundarambal of Mudhukampatti, Kalimankadu Village. She got married to the deceased Muniappan 22 years ago and out of the wedlock, they have begotten two sons and one daughter. It is further stated in Ex.P1-Statement that the deceased Muniappan was alcoholic, used to drink daily and assaulted the 1st accused regularly. As per the Statement-Ex.P1, the 1st accused along with her elder son Umashankar left

the matrimonial home on 27.12.2010 at 5.00 a.m. and went to her parents home, on the same day, at about 10.00 a.m. her husband came in search of her to Mudhukampatti, Kalimankadu Village and quarreled with the 1st accused and beat her up. As she was unable to bear the same, she took out the iron pipe and assaulted her husband. Thus, as per Ex.P1-Statement the 1st accused left the matrimonial home on 27.12.2010 at 5.00 a.m. and on the same day at about 10.00 a.m. the occurrence took place in her parents home. Nothing is stated in Ex.P1-Statement about what happened after the victim was beaten up by the 1st accused with the iron pipe. There is no eye witness to the said occurrence which took place in the residential area. The voluntary statement given by the 1st accused to PW1/VAO is not corroborated by any other independent witness. In such circumstance, it is to be seen, whether the alleged voluntary confession statement of the 1st accused alone is sufficient to prove the guilt of the accused.

9. As stated earlier all the four accused were charged under Section 364 IPC on the ground that the victim was taken away by them forcibly. The trial Court has found that no sufficient material is placed before it to prove the said charge and acquitted all of them. It is therefore clear, that the charge against the accused that they took away the victim forcibly is not established. Now it is to be seen, whether the victim was assaulted by the 1st accused with iron pipe resulting in his death as alleged by the prosecution.

10. The Doctor/P.W.8 who conducted post-mortem on the deceased body has stated that on 28.12.2010 while she was on duty at Pennagaram Government Hospital, the body of one Muniappan relating to Pennagaram Police Station Crime No.607 of 2010 was brought to the hospital by P.W.9-Head Constable to conduct post-mortem and she commenced post-mortem on the said body at 1.30 p.m. According to her, the following injuries were found:

External Injuries:

- 1) Injury on the right side of the skull measuring 2x5 cm
- 2) Puncture wound measuring 1x1 cm near right ear.
- 3) Contusion injury in right side shoulder.
- 4) A lacerate injury in right elbow measuring 2x2 cm.
- 5) Contusion injury on both wrist.
- 6) Right side multiple abrasion injury measuring 1x2 cm and 1x1 cm.
- 7) Contusion injury on the back of knee left measuring 3x4 cm.
- 8) Right knee punctured wound 1 x 1 cm.

Internal Injuries:

- 1) Hyoid bone, ribs, lungs, heart intact.
- 2) Stomach empty, kidney, liver normal.
- 3) Bladder empty, skull bone fractured.
- 4) Temporal bone fracture.
- 5) Brain Haumotanic and the fractured site.
- 6) Base of skull intact.

11. P.W.8/Doctor opined that the death was caused due to shock and hemorrhage as well as bleeding caused due to injuries in the head of the deceased and the post-mortem report given by her is marked as Ex.P8. Thus, it is clear from the medical evidence that the death was caused due to head injury suffered by the victim. The prosecution case is that the injured was assaulted by the 1st accused with Iron Pipe-M.O.1 causing the above said injuries. The prosecution marked Ex.P15 & Ex.P16, Serological Reports received from the Forensic Science Department regarding the material objects involved in the alleged offence. As per Ex.P15, the blood sample in the Iron Pipe-M.O.1 has disintegrated. Likewise, in Ex.P16 Serological Report, the result of grouping test is stated to be inconclusive. Thus, as per the Chemical Analysis/Serological Reports, nothing is established about the blood sample or blood group found in the Iron Pipe-M.O.1.

12. In the absence of any eye witness to the occurrence, it is to be seen whether there is any sufficient circumstantial evidence to corroborate the alleged confession statement marked as Ex.P1 given by the 1st accused. As stated above, the prosecution contention is that on the occurrence day, the 1st accused left the matrimonial home early morning, went to her parents home and thereafter at about 10.00 a.m. on the same day, the occurrence took place there. As per Ex.P1-Statement and as well as Ex.P9-FIR the 1st accused was abused by the victim at 10.00 a.m. on the occurrence day in her parents home and then only the victim was assaulted with the Iron pipe-M.O.1 by the 1st accused resulting in his death. The son of the deceased and the 1st accused who deposed as PW2 turned hostile and failed to support the prosecution. Likewise, PW3 also has not supported the prosecution. The other witness who deposed as PW4 stated that he is the relative to the deceased Muniappan and the accused and according to him, one year before at about 8.00 p.m. when he was at his home, the deceased Muniappan rushed to his house with blood strains on his head as well as on his dress. Thereafter all the four accused came to his house with iron rod and asked him to send away the deceased Muniappan. He asked them to come in the morning to discuss about the issue. Accordingly all the four accused went away and next day morning he left for his work at 4.00 a.m. and subsequently he came to know at about 9.00 a.m that Muniappan has died. Thus, PW4 claims that the victim came to his house with bleeding injuries on the previous day night itself and on the occurrence day

morning at 9.00 a.m. he got information that Muniappan was assaulted by all the four accused resulting in his death. It is apparent that the same is contrary to what is stated in Ex.P1-Statement allegedly given by the 1st accused and as such creates doubt about the alleged occurrence.

13. The prosecution claims that the victim came to the parents house of the 1st accused on 27.12.2010 at 10.00 a.m., quarreled with the 1st accused and subsequently he was assaulted by the 1st accused with iron pipe resulting in his death, but P.W.4 has stated that at 9.00 a.m. on the occurrence day, he got information about the death of Muniappan. There is no explanation on the side of prosecution about the victim being found with bleeding injuries on the previous day itself by P.W.4. While P.W.4 has stated so, the evidence of P.W.5, Sister of the deceased Muniappan contradicts the same. According to P.W.5-Veerammal, at about 8.00 p.m. her brother deceased Muniappan came to the house of PW4-Periya Kannaiyan with blood strains all over the body and on next day morning, the deceased Muniappan went away to Chinnakadamadai village. While the deceased was in Chinnakadamadai village bus stop, all the four accused came there and asked the deceased Muniappan to come with them, but he refused to go with them. Then the 2nd accused and the 4th accused tied the hands of the deceased and took him away in motorbike. When she questioned them, she was informed, that they are taking the victim Muniappan to the hospital for treatment. P.W.5 further stated that she followed them and on enquiry came to know that the deceased was taken in Auto Rickshaw, but she was not able to find Muniappan either in the hospital or nearby places. Thereafter, around 11.00 a.m. she was informed that the victim was beaten to death and his body is lying at Mudhukampatti, Kalimankadu Village. Thus, P.W.5 stated that on the occurrence day morning the victim was taken away by all the four accused in motor bike and thereafter around 11.00 a.m the victim was found deceased, which is contrary to what is stated by P.W.4. Similarly, P.W.6-Sivan also stated that about a year back around 6.00 a.m. while he was in tea shop at Chinnakadamadai village, the accused 2 to 4 came there and asked about the deceased Muniappan. At that time, deceased Muniappan came to tea shop with bleeding all over the body and on enquiry he told him that the accused has assaulted him. P.W.6 also stated that the accused 2 to 4 came there, tied the hands of the deceased Muniappan and took them away stating that they are going to hospital for treatment. Nothing is stated by P.W.10-Investigating Officer about any such occurrence on the occurrence day. The trial Court has concluded the charge of 364 IPC against the accused is not proved. What is stated by P.W.5 about the accused taking away the deceased Muniappan on the occurrence day is not corroborated by any other witnesses. The statement of P.W.4 and P.W.5 about the victim being found with blood strains all over the body on the previous night itself is

not investigated and explained by P.W.10-Investigating Officer. Thus as to how and when the victim got injury is doubtful. In view of the above said deposition of P.W.4, the case of the prosecution that the victim was assaulted by the 1st accused with iron pipe-M.O.1 is not established by any independent witness or by any other materials.

14. Thus, as stated above, the evidence of P.W.4, P.W.5 and P.W.6 is not categorical about the victim being assaulted by the 1st accused with Iron Pipe. While the victim is said to have been seen with bleeding injury on the previous day itself and on the next day he was taken away by the accused from the tea shop in a two wheeler, the averments in Ex.P1 Statement is contradictory to the same. While it is the claim of the prosecution, that the victim was taken away in Auto Rickshaw owned by P.W.7-Nagaraj, but he has not supported the prosecution and stated that he has no knowledge about the occurrence and the accused. Thus, the claim of the prosecution about the accused taking away the deceased Muniappan in Auto Rickshaw false flat to the ground. P.W.10 has admitted that neither the said Auto nor the two wheeler alleged to have been used for taking away the victim was seized by him. Further P.W.1 also admitted that no complaint was received from P.W.4 to P.W.6 about the alleged occurrence of the victim being taken away by the accused forcibly on the occurrence day.

15. Under such circumstances, doubt arises as to when and where the victim was assaulted and by whom. As per the prosecution, the occurrence took place at 10.00 a.m. near the parents house of the 1st accused and thereafter she went on her own to P.W.1/VAO office at 12.30 p.m. and voluntarily gave Ex.P1 Statement to P.W.1. Considering the above stated facts, it is unbelievable that the 1st accused would have assaulted the victim and immediately gone to the office of P.W.1 to make such statement. It is admitted by P.W.1 that himself and his Assistant were present throughout the day with the police and signed in all the documents prepared by the police. The said claim of P.W.1 that he was present with the police throughout the day raised suspicion as to whether really he was speaking the truth. It is admitted by P.W.4, that the victim was an alcoholic and used to quarrel with everyone and damage the things under the influence of alcohol. Considering the above said facts, it is clear that the prosecution has not let in sufficient and suitable independent witness to corroborate the alleged confession statement. Ex.P1 stated to have been given by the 1st accused and to prove the guilt of the 1st accused beyond reasonable doubt. Further there is no enough material before the Court to prove that Ex.P1 Statement was given by the 1st accused on her own as claimed by the prosecution. It is therefore clear that prosecution has failed to prove the guilt of the 1st accused beyond reasonable doubt as the case has to

fail.

16. In the light of the above said discrepancies, the conclusion of the trial Court, that the guilt of the accused is proved beyond reasonable doubt is unsustainable and the reasons stated for arriving at such conclusion is not correct and proper. In view of the above said discussion, the plea of the appellant/1st accused is to be entertained and the findings of the trial Court holding the 1st accused guilty of the offence under Section 304(i) IPC is unsustainable and the same is liable to be set aside.

17. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.65 of 2011 passed by the learned Principal District Judge, Dharmapuri is set aside. The appellant/1st accused is acquitted. Bail bond, if any executed by her shall stand cancelled. Fine amount, if any paid by her is ordered to be refunded forthwith.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Principal District and Sessions Judge,
Dharmapuri.
- 2.The Chief Judicial Magistrate,
Dharmapuri.
- 3.The District Munsif Cum Judicial Magistrate,
Pennagaram.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Inspector of Police
Penagaram Police Station
Dharmapuri District.
- 6.The District Collector,
Dharmapuri.
- 7.The Director General of Police,
Mylapore, Chennai.

8.The superintendent of Police,
Dharmapuri.

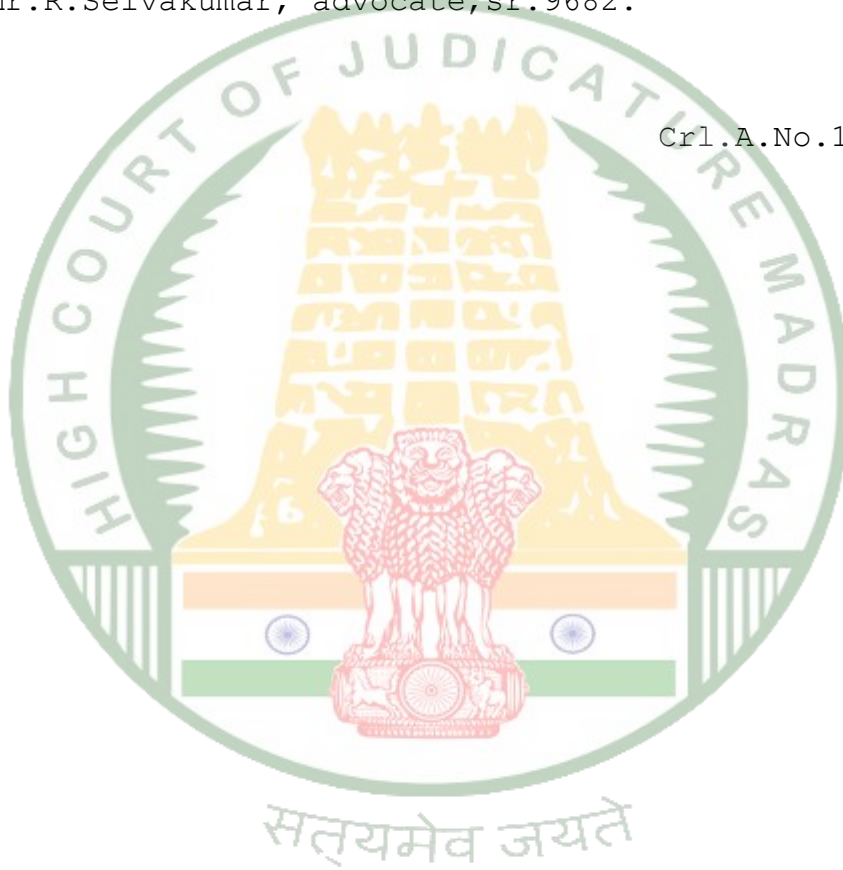
9.The Public Prosecutor Office,
High Court, Madras.

10. The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.R.Selvakumar, advocate,sr.9682.

pvs (co)
krd 2/3

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