

BAIL SLIP

Muniappan@ Chinnakilladi Appellant/Accused

The Appellant/Accused was viz Muniappan @ Chinnakilladi was directed to be released as bail, as per order of this court dated 01.09.2016 made in CRL MP No 7889/16 in CRL A No 570 of 2016 as the file of this Court.

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.No.570 of 2016

Muniappan @ Chinnakilladi ... Appellant

-vs-

STATE : Represented by
Inspector of Police,
Mahendramangalam Police Station,
Dharmapuri District.
(Crima No.171 of 2013) ... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence imposed on the appellant by the judgment dated 05.01.2016 passed in S.C.No.233 of 2014, on the file of the learned Principal Sessions Judge, Dharmapuri.

For Appellant : Mr.R.John Sathyan
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

[Judgment of the Court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.233 of 2014 on the file of the learned Principal Sessions Judge,

Dharmapuri. He stood charged for an offence under Section 302 I.P.C. By judgment dated 05.01.2016, the trial Court convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for six months under Section 302 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

[a] The deceased in this case was one Mr.Marappan. The accused is his brother. For quite some time, there was a misunderstanding between the deceased and the accused. It is stated to be the motive for the occurrence. It is further alleged that on 13.08.2013, around 5.30 a.m., when the deceased was proceeding to a Tea Shop to have tea, the accused intercepted him and he wanted the deceased to give his share in the property. This resulted in a quarrel. In that quarrel, it is stated that the accused took out a knife [Malu] and stabbed the deceased repeatedly on his neck. The deceased succumbed to the injuries instantaneously.

[b] Thereafter, P.W.1, who was at her house, was informed by somebody that the deceased had been killed and the dead body was found lying on the road. P.W.1, the wife of the deceased, went to the place of occurrence and found the dead body and went to Mahendramangalam Police Station in Dharmapuri District and made a complaint at 9.30a.m. on 13.08.2013. P.W.11, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.171 of 2013 for the offences under Sections 147, 148 and 302 I.P.C., against Muniyappan @ Chinnakilladi, Lakshmi, Muniraj, Suresh, and Mallesan as accused. Ex.P.1 is the complaint and Ex.P.12 is the F.I.R. He forwarded both the documents to Court, which were received by the learned Judicial Magistrate on 13.08.2013 at 12 10.p.m.

[c] P.W.13 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.5 and another witness. He also recovered the blood stained earth and sample earth from the place of occurrence and forwarded the same to the Court. Then, he conducted inquest on the body of the deceased between 10.50 a.m. and 13.30 p.m. and prepared an inquest report (Ex.P.14). He forwarded the dead body for post mortem.

[d] P.W.9, Dr.A.Arun Prabhu, conducted autopsy on the body of the deceased at 2.30p.m. on 13.08.2013 and he found the following injuries:-

"1. 9 x 3 cm x muscle deep oblique cut wound on right side of neck. The wound lies 4 cm from the right mastoid. Margins were regular, ends acute. The wound exposes underlying muscles.

2. 5 x 2 cm x muscle deep oblique cut wound on right side of neck. The wound lies 7 cm from the right mastoid. Margins were regular, ends acute.

3. 12 x 3 cm x muscle deep oblique cut wound on the right side of neck. Margins were regular, ends acute. The wound exposes underlying muscles.

4. 7 x 1.5 cm x muscle deep oblique bevelled cut wound on the angle of left lower jaw. The wound lies 6 cm from the left mastoid. Margins were regular, ends acute. The wound exposes underlying muscles.

5. 32 x 7 cm x bone deep horizontal cut wound on the upper part of left, front and right side of neck. The wound lies 6 cm below left mastoid and 7 cm below right mastoid, lower margin is 8 cm above Suprasternal notch. The upper margin was clean cut in the middle part and irregular on the sides. The wound exposes cut surface of subcutaneous tissue, neck muscle, cut ends of jugular and carotid vessel on both right and left side, cut fracture of hyoid bone on left side, cut fracture of lower part of thyroid cartilage and cut fracture of vertebral disc between C4 and C5 vertebra.

6. 1.5 x 1 cm x skin deep horizontal cut wound on the right index and middle finger."

Ex.P.11 is the post mortem certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage due to the multiple cut injuries found on the dead body of the deceased.

[e] P.W.13, during the course of investigation, recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. He examined many more witnesses. When the investigation was in progress, on 14.08.2013, at 10.00 a.m., the appellant voluntarily appeared before P.W.6, the then Village Administrative Officer at his office and he wanted to confess. P.W.6 after having ascertained that the appellant was in a voluntary mood to make confession, allowed him to confess. P.W.6 reduced the same into writing. Ex.P.5 is the said confession. Then, he took the accused to the Police Station and handed over him to the Police. On 13.08.2013, at 11.30 pm, he arrested the accused. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden a knife. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the knife (M.O.5). P.W.13 recovered the same under a mahazar, in the presence of the same witnesses. He forwarded the material

objects through Court to the Forensic Lab, for chemical examination. Then, P.W.14 took up the case for further investigation and on completing the investigation, he laid charge sheet against the accused/appellant.

3. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C. The accused/appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 15 documents were exhibited, besides 9 Material Objects were marked.

4. Out of the said witnesses, P.W.1, the wife of the deceased, has spoken about the land dispute between the accused and the deceased. She has further stated that on 13.08.2013, at 5.00a.m., the accused left his house for a Tea Shop. Within half an hour, she found the accused coming to "Aattupatti" and washing his hands and knife (Malu). Thereafter, she was informed that the dead body was found lying with injuries at Jittanahalli near the field of Ganesan's Farm. She went to the place of occurrence, verified and also the made a complaint to Police. P.W.2, who is the brother of P.W.1, has also stated so. P.W.3 and P.W.4 are the son and brother of the deceased, who have also spoken only about the motive. P.W.5 has spoken about the preparation of the observation mahazar and rough sketch and also the recovery of material objects from the place of occurrence. P.W.6, the then Village Administrative Officer, has spoken about the extra judicial confession allegedly given by the accused on 14.08.2013 at 10.00 am. He has further stated that along with the confession, he produced the appellant to P.W.13-the Investigating Officer.

5. P.W.7, the Photographer, has spoken about the fact that on receiving intimation from P.W.13, he visited the place of occurrence and took photographs of the dead body of the deceased as well as the surrounding places. P.W.8, a Forensic Officer from the Forensic Lab has stated that she found blood stains on all the material objects recovered from the place of occurrence. P.W.9 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.10, a Head Constable has stated that he handed over the dead body to the Doctor for post mortem. P.W.11, the Sub Inspector of Police has spoken about the registration of the case on the complaint of P.W.1. P.W.12, the then Judicial Magistrate has stated that she recorded the statements from P.W.1 under Section 164 Cr.P.C. P.Ws.13 & 14 have spoken about the investigation done and the final report filed in this case.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, one Pandian was examined as D.W.1. He has

stated that on the date of occurrence, the police wanted him to inform the accused to come to the police station for enquiry. Therefore, he took him in his motorcycle around 6.30a.m. to the police station on 13.08.2013 and thereafter, he was kept in the police custody by P.W.13. Thus, the defence of the accused was a total denial.

7. Having considered all the above materials, the trial Court convicted the appellant for offence under Section 302 I.P.C. Challenging the same, the appellant is before this Court with this Criminal Appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. This is a case based on circumstantial evidence. It is needless to point out that, in a case of this nature, the prosecution has to prove the circumstances projected by it, beyond reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution in the present case.

10. The first and foremost circumstance is about the motive between the accused and the deceased. It is not seriously disputed that there was a land dispute between them. It has also been established through the evidences of P.Ws.1 to 4 that there was a land dispute between the accused and the deceased. P.W.1 has stated that on 13.08.2013, at 5.00 am, the deceased left his house to go to a nearby Tea Shop. According to P.W.2, around 6.30 a.m. the dead body of the deceased was lying near Jittanahalli Ganesan's farm. P.W.9, Dr.Arun Prabhu, who conducted autopsy on the body of the deceased has given opinion that the death of the deceased was due to multiple cut injuries. Thus, the prosecution has clearly established that the deceased had died some time between 5.00 a.m. and 6.00 a.m. on 13.08.2013 and the death was a homicidal one.

11. The next question is as to who is the perpetrator of the crime. Admittedly, there has been no eye witness account. The prosecution mainly relies on the evidence of P.W.6, the then Village Administrative Officer, who has stated that on 14.08.2013 at 10.00 am, the appellant appeared before him and made a voluntary confession and the same was reduced into writing. Ex.P.5 is the said confession.

12. The learned counsel for the petitioner would submit that P.W.1 has admitted that on 13.08.2013, even before the complaint was registered, the police came to the place of occurrence and the accused was taken into the police custody. She has further stated that when she was proceeding to the place of occurrence after receiving information from P.W.2 that the dead body was lying, she found the accused being taken by D.W.1 in his motorcycle. D.W.1, Pandian has admitted that P.W.13 wanted the accused to come to the police station for enquiry and he took him in his motorcycle and went to the police station on 13.08.2013 itself. According to his further evidence, the accused was thus in the police custody on 13.08.2013. From these two evidences, the defence has probalised that the accused was very much in the police custody from 13.08.2013 itself and therefore, the evidence of P.W.6 that the accused appeared before him only on 14.08.2013 at 10.00a.m. and made confession cannot be believed. Apart from that, P.W.1 has admitted that even before going to the police station, the Investigation Officer was present at the place of occurrence and the distance between the place of occurrence and the police station is hardly 4 kms as indicated in the First Information Report. P.W.1 has further stated that she made a complaint at 9.30a.m. in the police station which remains unexplained by the prosecution. There is no explanation as to why the information which brought the police to the place of occurrence at 6 to 6.30a.m. itself has been suppressed. As already discussed, the extra judicial confession in this case is a very weak piece of evidence and in our considered view, solely based on the same, it is not safe to sustain the conviction imposed on the appellant.

13. The next circumstance relied on by the prosecution is that after the deceased died at 5.30a.m. P.W.1 found the accused washing knife (Malu) and his hands. But this fact has not been spoken by her during the course of investigation. She has been contradicted by her earlier statements. But she has no explanation. Therefore, this part of the evidence of P.W.1 is also rejected.

14. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In this case, the prosecution has not even been able to succeed in creating a very strong suspicion against these accused. For these reasons, we hold that the conviction and sentence imposed on the appellant is not sustainable and hence, the same is liable to be set aside.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Dharmapuri in S.C.No.233 of 2014, dated 05.01.2016, is set aside and the appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant, shall stand discharged.

s/d-
Assistant Registrar(CS VI)

//True Copy//

Sub-Assistant Registrar

To

1. The Principal District and Sessions Judge, Dharmapuri.
 2. The Judicial Magistrate, Palakadu
 3. Thru The Chief Judicial Magistrate, Dharmapuri District
 4. The Superintendent, Central prison, Vellore
 5. The Inspector of Police, Government of Tamilnadu, Mahendramangalam Police Station, Dharmapuri District.
 6. The Public Prosecutor, High Court, Madras.
- +1 CC to Mr. R. Johnsathyam, Advocate sr 1080

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