

**BAIL SLIP**

The Appellants/Accused No.1 and 2 namely Jamesraj, aged 27, S/o.Arthar and Ponnuthurai, aged 29, S/o.SamuthiraPandi are directed to be released on bail as per order of this Court dated 08.01.2016 in MP(MD)Nos.1 & 2 of 2015 in CRL A(MD)No.346 of 2015 on the file of this Court

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2017

CORAM

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

Crl.A.(MD)No.346 of 2015

1.Jamesraj
2.Ponnuthurai

.. Appellants/Accused Nos.1 & 2

Vs.

State rep.by
The Inspector of Police,
Manoor Police Station,
Crime No.205 of 2011,
Tirunelveli District.

.. Respondent/Complainant

Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 03.11.2015 passed in Sessions Case No.73 of 2014 by the Fourth Additional Sessions Court, Tirunelveli.

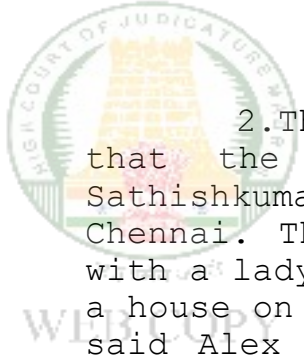
For Appellants : Mr.V.Kathirvelu
Senior Counsel
for M/s.B.Bhuvaneswari

For Respondent : Mr.A.Ramar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

The convictions and sentences passed in Sessions Case No.73 of 2014 by the Fourth Additional District and Sessions Court, Tirunelveli are being challenged in this Criminal Appeal.



2. The sum and substance of the case of the prosecution is that the deceased Mariganesh is the elder brother of one Sathishkumar. The said Sathishkumar has been running an auto in Chennai. The brother of the first accused by name Alex has eloped with a lady. The said Sathishkumar has made arrangements for getting a house on monthly rent in Chennai. After a lapse of six months, the said Alex has vacated the said house even without paying monthly rents. Under the said circumstances, the said Sathishkumar has paid rent and taken the household articles of Alex. The first accused has demanded the deceased to return the same. But the deceased has refused and due to that an animosity has been in existence between the first accused and deceased. The first accused with an intention to murder the deceased and also with the connivance of other accused, has directed the second accused to invite the deceased for consuming liquor and accordingly, on 08.06.2011 at about 05.00 pm, the second accused has invited the deceased and all of them have gone to the place of occurrence and as contrived earlier, the accused 1 and 2 have attacked the deceased by using deadly weapons and due to that he passed away. The remaining accused have lent their support for the crime committed by the accused 1 and 2. Further the accused 1 and 2 have stolen the valuables of the deceased. After occurrence, the father of the deceased viz., Sivalingam has given a complaint and the same has been registered in Crime No.205 of 2011. The complaint alleged to have been given by PW1 has been marked as Ex.P1.

3. On receipt of Ex.P1, PW13, the Inspector of Police has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Sudalaimuthu (PW12) has conducted autopsy and he found the following internal and external injuries:

"Ante Mortem Injuries:

1) Multiple gapping incised wounds overlapping with each other measuring 2 x 5 cm cervical bone deep seen on the front and sides of middle of neck. It is 8 cm below to chin. 3 cm above in (NC) sternal notch, 6 cm below right mastoid and 6 cm below left mastoid it extends from 5 cm below left angle of mandible to 11 cm behind and below the right angle of mandible. Margins are regular and edges are sharp Underlying both sternocleidomastoid muscles and other muscles of front and side of neck, major vessels, nerves, trachea, esophagus cervical vertebra No.3 found cut at the level of upper 1/3rd of thyroid lamina with surrounding bruise. 3 x 0.2 cm cut injury noted on the cervical vertebra No.5 along with the gaping incised wound there is stab injury noted in the front of right side of cervical vertebra No.3. The stab injury ends as a point in body of right side of cervical vertebra No.3.

2) 3x 0.5 cm x muscle deep incised wound seen on the right side of front of neck. Its is 0.5 cm above the injury No.1.



3) 5 x 1 cm x muscle deep incised wound seen on the front of middle of neck, it is 0.5 cm below the injury No.1.

4) 4 x 0.5 cm x skull bone deep vertical cut injury seen on the right forehead and right eyebrow area 1 cm right from the midline. Margins are regular lower edge blunt and upper edge is sharp. Underlying outer table of frontal bone and supra orbital ridge found cut.

5) 3 x 0.2 x 0.2 cm seen on the right side of nose.

6) 10cm x 0.5 cm long transverse ligature mark seen on the back of left side of neck. It lies 6 cm below and behind the left mastoid and 3 cm below the external occipital protuberance. There is extravasation of blood seen beneath the ligature mark.

Other Findings:

Pleural and Peritoneal cavities - empty Heart - normal coronaries patent. Hyoid bone - intact. Stomach contains 10 ml of light brown colour fluid with fruity odour. Mucosa - pale. Lungs, liver, Spleen and Kidneys - c/s pale. Small intestine contains 5 ml of light brown colour fluid with fruity odour. Mucosa - pale. Bladder - empty. Brain - c/s pale. Viscera preserved for chemical analysis.

4.The post-mortem report has been marked as Ex.P14. After transfer of PW13, his successor in office viz., PW14 has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court, No.V, Tirunelveli and the same has been taken on file in PRC No.12 of 2012.

5.The Judicial Magistrate Court, No.V, Tirunelveli after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, committed the case to the Court of Sessions, Tirunelveli Division and the same has been taken on file in Sessions Case No.73 of 2014.

6.The trial Court after hearing arguments of both sides and upon perusing relevant records has framed first charge against the first accused 1 and 2 under Section 302; second charge against the remaining accused under Section 302 r/w 34 of the Indian Penal Code and third charge against the accused 1 and 2 under Section 379 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7.On the side of the prosecution, PWs.1 to 14 have been examined and Exs.P1 to P29 and M.Os.1 to 17 have been marked.

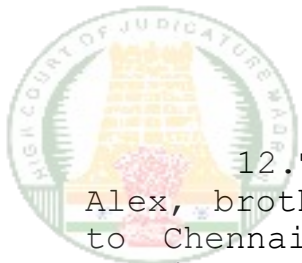
8.When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.



9. The trial Court after hearing arguments of both sides and upon perusing relevant evidence has found the accused 1 and 2 guilty under Section 302 of the Indian Penal Code and sentenced them to undergo imprisonment for life and also imposed a fine of Rs.1,000/- upon each of them with usual default clause. Further they have been found guilty under Section 379 of the Indian Penal Code and sentenced to undergo six months rigorous imprisonment. The trial Court has acquitted the remaining accused. Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused 1 and 2 as appellants.

10. The learned Senior Counsel appearing for the appellants/accused 1 and 2 has contended to the effect that the entire case of the prosecution is based upon circumstantial evidence and for the purpose of proving the alleged circumstance, the father of the deceased by name Sivalingam has been examined as PW1. Even in Ex.P1, it has been stated to the effect that on the date of occurrence, the accused 1 and 2 have taken the deceased at about 05.00 pm, and further it is stated in Ex.P1 that on the same day at about 09.00 pm, the defacto complainant contacted the deceased over phone and he replied that he is purchasing parota with his friends and therefore, absolutely there is no connecting link with accused 1 and 2 and in short, there is no circumstance in the present case so as to point out the guilt of the accused 1 and 2 and further for the purpose of proving the alleged motive, the brother of the deceased has not been examined. Further in Ex.P1, it has been mentioned to the effect that next day, the factum of death of the deceased has been informed by some villagers, whereas, PW1 has stated in his evidence that one Ponnaiah has informed the factum of death and he has not been examined. Since there is a missing link with regard to circumstantial evidence, the Court cannot come to a conclusion that the accused 1 and 2 have committed the offences punishable under Sections 302 and 379 of the Indian Penal Code and the trial Court has failed to look into the lapse of evidence on the side of the prosecution and therefore, the convictions and sentences passed by the trial Court are liable to be set aside.

11. Per contra, the learned Additional Public Prosecutor has contended to the effect that even though the entire case of the prosecution is based upon circumstantial evidence, the father of the deceased viz., PW1 has given clear evidence so as to connect the accused 1 and 2 with the crime and even the doctor who conducted post-mortem has opined that in the blood of the deceased, liquor is found and the trial Court after considering the circumstances available on record and that too towards the guilt of the accused 1 and 2 has rightly found them guilty under Sections 302 and 379 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court are not liable to be set aside.



12.The genesis of the case of the prosecution is that one Alex, brother of the first accused has eloped with a lady and gone to Chennai. He approached the brother of the deceased by name Sathishkumar for taking out a dwelling house on monthly rental basis and accordingly, the said Sathishkumar has found out a dwelling house to the said Alex and after a lapse of six months, he vacated the same even without paying monthly rents and subsequently the said Sathishkumar has paid the same and taken all household articles. The first accused has approached the deceased to return the same. But the deceased has refused to concede the demand made by the first accused and due to that an animosity has been in existence between the first accused and deceased.

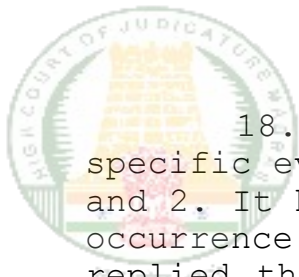
13.For the purpose of proving the said factual aspects put forth on the side of the prosecution, the said Sathishkumar, who is none other than the younger brother of the deceased has not been examined. Therefore, it is needless to say that on the side of the prosecution, motive for occurrence has not at all been established.

14.Even assuming without conceding that on the basis of evidence given by PW1, the motive put forth on the side of the prosecution has been established, the Court has to further analyse as to whether the available circumstances are sufficient to come to a conclusion that the accused 1 and 2 have committed the offence punishable under Sections 302 and 379 of the Indian Penal Code.

15.The specific case of the prosecution is that after occurrence, accused 1 and 2 have stealthily removed M.Os.1 to 5 and 15. For the purpose of proving the alleged recovery from the accused 1 and 2, PWs.5 and 6 have been examined. But for the reasons best known to them, both of them have become hostile witnesses. Therefore, the alleged recovery of M.Os.1 to 5 and 15 has not been established on the side of the prosecution.

16.In fact, this Court has perused the entire Judgment passed by the trial Court, wherein, the trial Court has invited convictions and sentences against the appellants/accused 1 and 2 mainly on the basis of the evidence given by PW1, father of the deceased.

17.It is an admitted fact that the entire case of the prosecution hinges upon Ex.P1, complaint. In Ex.P1 it has been clearly mentioned that on 08.06.2011 at about 05.00 pm, the defacto complainant and deceased have gone to Thalayoothu for purchasing cone ice and at that time, he has seen the accused 1 and 2 and they left the place by using a motorcycle. The accused have left the place by using a separate motorcycle. Further it is stated in Ex.P1 that on the same day at about 09.00 pm, the defacto complainant (PW1) has contacted the deceased and he replied to the effect that he is purchasing parota along with his friends.



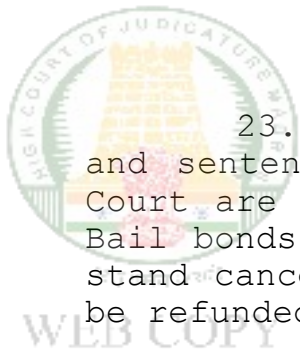
18. The defacto complainant has been examined as PW1 and his specific evidence is that the deceased has gone along with accused 1 and 2. It has already been pointed out that in Ex.P1, on the date of occurrence at about 09.00 pm, PW1 has contacted the deceased and he replied that he is purchasing parota along with his friends. Since the said aspect is available even in Ex.P1, the Court cannot come to a conclusion that on the date of occurrence, from 05.00 pm, the deceased has been under the custody/clutch of the accused 1 and 2.

19. In Ex.P1, it is mentioned to the effect that next day, while selling ice, some persons of neighbouring village have informed the factum of death of the deceased. But PW1 in his evidence has stated to the effect that one Ponnaiah has informed the factum of death. But the said Ponnaiah has not been examined.

20. As adverted to earlier, the entire case of the prosecution is purely based upon circumstantial evidence. The only circumstance available in the present case is nothing but the evidence of PW1 coupled with Ex.P1. Even in Ex.P1, it has been clearly mentioned to the effect that on the date of occurrence at about 09.00 pm, PW1 has contacted the deceased and he replied to the effect that he purchased parota along with his friends. Since the said aspect is available in Ex.P1 and since the very same evidence is available in the evidence of PW1, the Court cannot automatically come to a conclusion that the word 'friends' mentioned in Ex.P1 as well as found in the evidence of PW1 would indicate only the accused 1 and 2. Further absolutely there is no evidence on the side of the prosecution that prior to occurrence, at about 09.00 pm, the deceased has purchased parota along with accused 1 and 2. Under the said circumstances, there is no hesitation in coming to a conclusion that lot of missing links are available on the side of the prosecution.

21. Since the entire case of the prosecution is based upon circumstantial evidence, there should not be any missing link so as to point out the guilt of the accused 1 and 2. It has already been pointed out that the prosecution has not adduced trustworthy evidence for the purpose of coming to a conclusion that the accused 1 and 2 are real culprits.

22. As taunted earlier, in the instant case, motive for occurrence has not been established. Further, on the side of the prosecution, acceptable circumstances, pointing out towards guilt of the accused 1 and 2 are not at all available. Since on the side of the prosecution, the said aspects have not been established beyond reasonable doubt, this Court is of the view that the convictions and sentences passed by the trial Court are not factually and legally tenable and altogether, the present Criminal Appeal deserves to be allowed.



23. In fine, this Criminal Appeal is allowed. The convictions and sentences passed in Sessions Case No.73 of 2014 by the trial Court are set aside. The appellants/accused 1 and 2 are acquitted. Bail bonds if any executed by the appellants/accused 1 and 2 shall stand cancelled and fine amount if any paid by them are ordered to be refunded forthwith.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

1. THE IV ADDITIONAL SESSIONS JUDGE, TIRUNELVELI.
2. DO THRO THE PRINCIPAL DISTRICT AND SESSSIONS JUDGE, TIRUNELVELI.
3. THE JUDICIAL MAGISTRATE NO.V, TIRUNELVELI.
4. DO THRO THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI.
5. THE DISTRICT COLLECTOR, TIRUNELVELI.
6. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI.
7. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
8. THE INSPECTOR OF POLICE, MANOOR POLICE STATION, TIRUNELVELI DISTRICT.
9. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO M/S.B.BHUVANASHWARI, ADVOCATE, SR.NO. 8985

Cr1.A.(MD)No.346 of 2015
16.02.2017