



BAIL SLIP

K.Hairiya Begum, W/o.seth Rawther(A2) was released on bail vide the order of this Court dated 18.08.2016 madurai MP(MD) 5512/2016 in Crl.A. (MD) .No.248/16

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2017

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM
and

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.A. (MD) Nos.248 & 367 of 2016

K.Hairiya Begum .. Appellant/A2 in Crl.A(MD)No.248/16

Sheit Rawther .. Appellant/A1 in Crl.A(MD)No.367/16

Vs.

State rep.by
The Inspector of Police,
R.S.Mangalam Police Station,
Crime No.9 of 2011.

.. Respondent/Complainant in both Appeals.

Criminal appeals filed under Section 374 Cr.P.C. against the convictions and sentences dated 11.12.2015 passed in Sessions Case No.97 of 2011 by the Fast Track Mahila Court, Ramanathapuram.

For Appellants : Mr.A.Ravi
(both appeals)

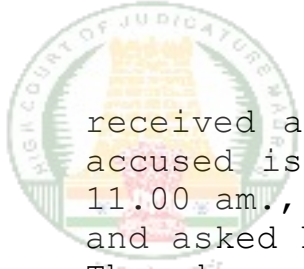
For Respondent : Mr.A.Ramar
Additional Public Prosecutor
(both appeals)

COMMON JUDGMENT

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

Challenge in these Criminal Appeals is to the convictions and sentences dated 11.12.2015 passed in Sessions Case No.97 of 2011 by the Fast Track Mahila Court, Ramanathapuram.

2.The nubble of the case of the prosecution is that the <https://hservices.ecourts.gov.in/hservices/> dated 09.09.2016 complainant by name Haji Ismath Inoon is the husband of the deceased by name Ummu Sabia Beevi. The first accused has



received a hand loan of Rs.2,000/- from the deceased. The second accused is the wife of the first accused. On 21.11.2010 at about 11.00 am., the deceased has gone to the house of the first accused and asked him to repay the debt. Due to that, a miff has occurred. The deceased has hurled invectives against the first accused. Having enraged at the conduct of the deceased, the first accused has slapped her. Due to his overtacts, the head of the deceased has touched on the door and subsequently fallen down. The deceased has become unconscious and subsequently, the first accused has jugulated her and due to his overtacts, she passed away. The accused 1 and 2 have robbed the gold jewels worn by the deceased and thereafter, both of them have placed the body of the deceased into a gunny bag and next day, put the gunny bag in washerman tank. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.169 of 2010. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the Investigating Officer (PW15) has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr. Diwaker (PW13) has conducted necropsy and he found the following internal and external injuries:

"Appearances found at the postmortem:

A well nourished female body lies on its back with rigor mortis wound from upper limb present. Tongue protruded out eyelids swollen all over the body sign of decomposition present. (greening blue) discolouration. Hyoid bone - fracture present.

Internal examination:

skull no bony injury present. Brain matter - liquoties. Thorax - no rib injury. Heart - lungs normal c/s congested. Abdomen - no peritoneum (NC) Stomach - empty.

Liver, Spleen, Kidney - normal c/s congested. Maggots present all over the body.

4. The post-mortem report has been marked as Ex.P16. The Investigating Officer has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate, Thiruvadanai and taken on file in PRC No.9 of 2011.

<https://hcservices.ecourts.gov.in/hcservices/> 5. The Judicial Magistrate, Thiruvadanai after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to



the Court of Sessions, Ramanathapuram Division and taken on file in Sessions Case No.97 of 2011 and subsequently made over to the trial Court.

6.The trial Court after hearing arguments of both sides and upon perusing relevant records has framed first charge against the first accused under Section 302; second charge against both the accused under Section 379 r/w 34 and third charge against them under Section 201 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 15 have been examined and Exs.P1 to P23 and M.Os.1 to 9 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. However, no oral and documentary evidence have been let in on the side of the accused.

9.The trial Court after hearing arguments of both sides and upon perusing relevant evidence available on record, has found the first 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. The trial Court has also found both the accused guilty under Section 379 r/w 34 of the Indian Penal Code and sentenced them to undergo three years rigorous imprisonment. The trial Court has also found both the accused guilty under Section 201 of the Indian Penal Code and sentenced them to undergo seven years rigorous imprisonment and also imposed a fine of Rs.10,000/- upon each of them with usual default clause . Against the convictions and sentences passed by the trial Court, the first accused has preferred CrI.A(MD)No.367 of 2016 and the second accused has preferred CrI.A(MD)No.248 of 2016.

10.The consistent case of the prosecution is that the defacto complainant is the husband of the deceased. The first accused has received a sum of Rs.2,000/- as debt from the deceased and for the purpose getting the same, on 21.11.2010 at about 11.00 am., the deceased has gone to the house of the first accused and demanded money. The deceased has also hurled invectives against him and having enraged at her conduct, he slapped the deceased and due to his overtact, her head has touched door and subsequently fallen down. Since the deceased has become unconscious, the first accused has jugulated her and due to his overtacts, she passed away. After knowing the demise of the deceased, both the accused removed the gold jewels worn by her and thereafter put the dead body into a gunny bag and next day, placed the same in washerman water tank.



11. The entire case of the prosecution is based upon circumstantial evidence. Since the entire case of the prosecution is based upon circumstantial evidence, the Court has to meticulously analyse the evidence adduced on the side of the prosecution.

12. The trial Court after analysing the evidence available on record has found the first accused guilty under Section 302 and also found both the accused guilty under Section 379 r/w 34 and 201 of the Indian Penal Code and imposed sentences as noted down earlier.

13. The learned counsel appearing for the appellants/accused has raised the following points so as to set aside the convictions and sentences passed by the trial Court against both the accused.

(i) Since the entire case of the prosecution is based upon circumstantial evidence, motive plays a pivotal role, but the same has not been proved on the side of the prosecution.

(ii) The trial Court has relied upon the evidence given by PWs. 7 and 8. But they are not real eye witnesses and only for the purpose of roping the accused, their role has been utilised.

(iii) Inconsistent evidence is available with regard to recovery of material objects.

(iv) There is an inordinate delay in sending Ex.P1 to Court.

14. The learned Additional Public Prosecutor has contended to the effect that in the instant case, motive has been clearly established and further both PWs. 7 and 8 have given clear evidence to the effect that next day, from the date of occurrence, early morning, both the accused have thrown a gunny bag into the water of washerman tank and apart from their evidence, proper recovery has been made and also proved on the side of the prosecution. The trial Court after considering the replete evidence available on record, has rightly invited convictions and sentences against both the accused and the same are not liable to be interfered with.

15. As rightly pointed out on the side of the appellants/accused, if a case purely rests upon circumstantial evidence, a primordial duty is cast upon the prosecution to prove the alleged motive for occurrence.

16. In the instant case, the specific contention put forth on the side of the prosecution is that prior to occurrence, the first accused has received a sum of Rs.2,000/- from the deceased by way of debt and for the purpose of receiving the same, on 21.11.2010, at about 11.00 am., the deceased has gone to his house and subsequently she fallen down. Thereafter, the first accused has jugulated her.



17.It is true that in Ex.P1, no allegations have been made against the accused and also motive for occurrence.

18.The specific evidence given by the defacto complainant is that after having consultation with Jamadars, he and others have gone to police station and after knowing the fact that a dead body is floating on the water of washerman tank, he has given a complaint viz., Ex.P1. Since Ex.P1 has been given in the circumstances mentioned by PW1, motive has not been mentioned in Ex.P1 and the same would not militate nor affect the case of the prosecution.

19.On the side of the prosecution, the daughter in law of the deceased as well as defacto complainant viz., Deenul Birousya has been examined as PW5. In fact, this Court has meticulously analysed her evidence. Both in chief as well as in cross examination, she categorically stated to the effect that her mother in law viz., the deceased has had money transaction with the first accused.

20.The main attack made on the side of the appellants/accused is that PWs.7 and 8 are not the residents of R.S.Mangalam and PW7 is living 3 kilometers away from R.S.Mangalam. Likewise, PW8 is living 8 kilometers away from R.S.Mangalam. Therefore, they are not at all eye witnesses for the purpose of proving the alleged fact that next day from the date of occurrence, both the accused have placed a gunny bag into the water of washerman tank.

21.On the basis of the contention put forth on the side of the appellants/accused, this Court has analysed the evidence given by PWs.7 and 8. The specific evidence given by PW7 is that on the way to R.S.Mangalam, he attended call of nature and at that time both the accused have placed a gunny bag into water of washerman tank. The evidence given by PW7 has also been corroborated by PW8. Further from the evidence given by them, the Court can easily discern that there is no motive between them and accused. Since no motive has been existence betwixt the accused and PWs.7 and 8, this Court is of the view that the evidence given by them can be relied upon.

22.Apart from the motive established on the side of the prosecution and also apart from the evidence given by PWs.7 and 8, on the side of the prosecution, recoveries of MOs.2 to 6 have been clearly established by way of examining PWs.3 and 4.

23.The concerned Village Administrative Officer has been examined as PW3 and his specific evidence is that on 02.12.2010 at about 10.00 am., he and PW4 while inspecting R.S.Mangalam tank, the Inspector of Police has arrested the first accused. The first accused has given voluntary confession and the same has been recorded and on that basis, he brought the Inspector of Police and others to his house and produced M.Os.1 to 6 and the same have

been recovered under cover of mahazers (Exs.P3 & P5). The evidence given by PW3 has also been corroborated by PW4.

24.At this juncture, the learned counsel appearing for the appellants/accused has contended to the effect that in between two recovery mahazers, a vital contradiction is in existence. It is true that M.Os.1 to 6 have been recovered from the house of the first accused and other material objects have been recovered from some other place. Since all the material objects have not been recovered in the same place, the details given in recovery mahazers are different and that itself cannot be a basis for rejecting the alleged recoveries.

25.It is an archaic principle of law that mere recovery of material object is not at all sufficient for inviting conviction and sentence and apart from recovery, some more material evidence is required.

26.In the instant case, as mentioned supra, motive for occurrence has been clearly established and apart from motive, the evidence given by PWs.7 and 8 has given clear support to the case of the prosecution. Since apart from recovery, two aspects mentioned supra are present in this case, the Court can easily come to a conclusion that the accused are the real culprits.

27.It is seen from the records that in sending First Information Report to Court, there is a delay of six hours.

28.It is a well known principle of law that mere delay in sending First Information Report to Court would not be sufficient for coming to a conclusion that the case of the prosecution is false, since other material evidence is available.

29.The learned counsel appearing for the appellants/accused has also relied upon the evidence given by PW13, Dr.Divakar, who conducted autopsy. In fact, most of the material witnesses in the instant case have been recalled after a lapse of two years and cross examined. Likewise, PW13 has also been recalled after a lapse of two years. Further PW13 has expressed his opinion. Since PW13 has expressed his opinion, the same cannot be treated as conclusive evidence. Likewise, PWs.7 and 8 have also been recalled after a lapse of two years and cross examined so as to suit the defence put forth on the side of the accused.

30.It is a settled principle of law that cross examination done after a lapse of time cannot be treated as evidence.

31.In fact, all the vital witnesses have been cross examined instantaneously and after a lapse of two years, they have been recalled and cross examined. Therefore, the residual defence put forth on the side of the appellants/accused cannot be accepted.

32.Before parting with this case, this Court would like to



sum up the following established aspects in the present case.

- (i) Motive for occurrence has been clearly established.
- (ii) Apart from motive, proper recovery of Material Objects has also been established.
- (iii) The evidence given by PWs.7 and 8 remains unshattered.

33. Since all these aspects have been clearly established on the side of the prosecution, this Court is of the view that the first charge framed against the first accused; second and third charges framed against both of them have been clearly established on the side of the prosecution. Further, M.Os.2 to 6 have been clearly identified by PWs.3 and 4.

34. The trial Court after considering the available evidence on record has found the first accused guilty under Section 302 of the Indian Penal Code and both the accused under Sections 379 r/w 34 and 201 of the Indian Penal Code.

35. Considering the role alleged to have been played by the second accused in the alleged crime, this Court is inclined to give lesser punishment for the offences under Sections 379 r/w 34 and 201 of the Indian Penal Code.

36. In fine, ***Crl.A(MD)367 of 2016 is dismissed.*** The convictions and sentences passed by the trial Court against the appellant/first accused in S.C.No.97 of 2011 are confirmed. Consequently, CMP(MD)No.1499 of 2016 is closed.

37. In fine, ***Crl.A(MD)No.248 of 2016 is allowed in part.*** The convictions passed by the trial Court against the appellant/second accused under Sections 379 r/w 34 and 201 of the Indian Penal Code are confirmed. However, quantum of sentence is modified as follows:

"The appellant/second accused is sentenced to undergo two years rigorous imprisonment under Sections 379 r/w 34 and 201 of the Indian Penal Code respectively. No modification in the quantum of fine imposed by the trial Court under Section 201 of the Indian Penal Code."

38. The trial court is directed to take appropriate steps so as to immure the appellant/second accused in prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar

/True copy/



To

1.The Principal and District and Sessions Judge,
Ramanathapuram

2.The Fast Track Mahila Court,
Ramanathapuram

3.Thro The Chief Judicial Magistrate,
Ramanathapuram

4.The Judicial Magistrate,
Thiruvadanai

5.The Director General of Police,
Mylapore, Chennai-4

6.The District Collectorate,
Ramanathapuram

7.The Superintendent of prison,
Central Prison,
Madurai.

8.The Inspector of Police,
R.S.Mangalam Police Station.

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.

Crl.A. (MD) Nos.248 & 367 of 2016
21.04.2017

MJ
KK-JC-SAR4-04.05.2017-8P-11C