

Bail Slip.

The Appellant herein/Accused No.2 namely Parameswari W/o Ganesan(in S.C.No.242 of 2009) on the file of Additional District and Sessions Judge(FTCI) Salem was directed to be released on bail by order of this court dated 13.11.2017 and made in Crl.M.P. 11039/2017 in Crl.A.No.553/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.553 of 2017

Parameswari
W/o.Ganeshan

... Appellant/A2

Vs

State through
The Inspector of Police,
Theevettipatti Police Station,
Salem District.
Crime No.322 of 2008

... Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned Additional District and Sessions Judge, Fast Track Court I, Salem, passed in S.C.No.242 of 2009 on 30.11.2009.

For Appellant : Mr.P.Palanikumar

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned Additional District and Sessions Judge, Fast Track Court I, Salem, passed in S.C.No.242 of 2009 on 30.11.2009.

2. Case of prosecution is that PW-3 and A2 are husband and wife and deceased boy was their son. A1 and A2 developed illegal intimacy. On 08.07.2008 at about 18.00 hours both accused

indulged in sexual intercourse at 'Perumal Kuchikadu'. On seeing the same, deceased boy shouted and A2 closed his mouth asking him not to shout. A1 slapped the deceased boy on his cheek and he fell down. Thereafter, A1, with an intention to commit murder, assaulted the deceased boy on his head using a stone, owing to which the deceased died. A case was registered in Crime No.322 of 2008 on the file of respondent u/s.174 Cr.P.C. @ offence u/s.302 IPC. Upon completion of investigation and filing of charge sheet informing commission of offence u/s.302 IPC against A1 and 302 r/w 109 IPC against A2.

3. Before trial Court, prosecution examined 16 witnesses and marked 16 exhibits and 11 material objects. 1 witness was examined on the side of defence and no exhibits were marked.

3.1. PW-1, father-in-law of A2, spoke to knowing A1, of A2 informing him about the deceased boy having gone missing, searching for the boy and finding him lying with head injuries at 'Perumal Kuchikadu', seeing a stone near him, carrying the deceased boy and returning home. PW-1 also spoke to preference of Ex.P1, complaint.

3.2. PW-2 spoke to working as a Watchman at Primary Health Center, Sarakkupillaiyur, of hearing some noise near the house of PW-1 and going there, seeing deceased boy with head injuries and bleeding and having been informed by PW-1 of finding the deceased boy at 'Perumal Kuchikadu'. PW-2 also spoke to knowing the accused.

3.3. PW-3, husband of A2, spoke to having gone to work at 'Kaligoundanur' on 08.07.2008, of having been informed at about 06.00 p.m. that his son was done to death, reaching the home at 11.00 p.m., enquiring PW-1 as to what happened, PW-1 informing him the incident and preference of complaint and of having heard that accused beat the deceased.

3.4. PW-4, Village Administrative Officer, spoke to having been informed by his Assistant, on 09.07.2008 at about 08.30 p.m., over phone that a child was done to death at 'Kilangukadu', of visiting the scene of crime at about 09.15 p.m., enquiring villagers, not finding the deceased there, seeing the deceased boy with head injuries at the house of PW-1, attesting Ex.P2, observation mahazar, Ex.P3, seizure mahazar for MOs.1 to 5 - stone, ladies slipper, blood stained earth, sample earth and sticks and leaves, A2 tendering a voluntary confession and recording the same under Ex.P4, handing her over to police, attesting the confession of A2 given to police and Ex.P6, seizure mahazar for MO-6, saree, arrest of A1 on 25.07.2008 and recording his confession by police and attesting Ex.P7, seizure mahazar for MOs.7 and 8 - blood stained T-shirts.

3.5. PW-5, resident of Sarakkupillaiyur, spoke to knowing accused, of seeing A2 near 'Perumal Kuchikadu' and seeing PW-1 screaming and carrying the deceased on his shoulder.

3.6. PW-6, resident of Sarakkupillaiyur, spoke to working as a Watchman at Sarakkupillaiyur Co-operative Bank, of seeing PW-1 on 08.07.2008 at about 05.30 p.m. near 'Perumal Kuchikadu' on his way home, resuming work at about 05.45 p.m. and hearing of PW-1 taking the deceased boy. PW-6 has been treated hostile.

3.7. PW-7 spoke to working as a salesman at 'Murugalaya Silks', of knowing the accused, of A2 informing him and his friend that one Military Kandasamy was forcing her to have illegal relationship by offering a sum of Rs.100/-, both accused quarreling with the said person, pacifying the parties, preference of complaint by the said Kandasamy, dispute having been settled on the intervention of elders, his being out of town 4 days prior to the occurrence and hearing of the death of deceased through his brother over phone. PW-7 has been treated hostile.

3.8. PW-8, resident of Sarakkupillaiyur, spoke to knowing the accused and of not having knowledge about the occurrence. PW-9 has also spoken on similar lines. PWs.8, 9 have been treated hostile.

3.9. PW-10, Doctor, spoke to conducting postmortem and of stating that the deceased appeared to have died of shock and hemorrhage due to head injuries. PW-10 also spoke to issuing Ex.P9, Postmortem Certificate.

3.10. PW-11, photographer, spoke to taking photographs of the body of deceased in MO-9 - series.

3.11. PW-12, Head Constable, spoke to submitting the First Information Report to Court and higher officials.

3.12. PW-13, Head Constable, spoke to handing over the body of deceased to Doctor towards conduct of postmortem and on completion thereof, handing over the same to his relatives. PW-12 also spoke to handing over MO-10, trousers of deceased, to Inspector of Police.

3.13. PW-14, Sub-Inspector of Police, spoke to registering a case, on the complaint of PW-1, in Crime No.322 of 2008 u/s.174 Cr.P.C., forwarding Ex.P10, First Information Report to Court and higher officials, arresting A1 on 25.07.2008 at about 06.00 a.m. near 'Gaancheri' and recording his confession and seizure of articles.

3.14. PW-15, Judicial Magistrate II, Mettur, spoke to recording Ex.P12, Section 164 Cr.P.C. statement of A2 after duly following prescribed procedure.

3.15. PW-16, Investigation Officer, spoke to visiting the scene of crime, preparation of mahazars, conducting inquest on the body of deceased in the presence of witnesses, examining witnesses and recording their statements, forwarding the body of deceased for postmortem, seizure of material objects, altering the First Information Report to reflect offence u/s.302 IPC upon receipt of Ex.P9, Postmortem Certificate, arrest of accused and recording their confessions, obtaining various reports, forwarding articles to Court under Form-95 and on completion of investigation, filing of charge sheet informing commission of offences u/s.302 IPC against A1 and 302 r/w 109 IPC against A2.

3.16. DW-1, mother-in-law of A2, spoke to A2 giving birth to her child 2 to 3 months prior to the occurrence, of she enquiring of A2 whether the deceased boy ate well and A2 replying 'no', A2 searching for the deceased boy alone for some time and thereafter, both of them searching for him, enquiring PW-1 about the whereabouts of deceased, PW-1 searching for deceased boy, finding him lying with head injuries at 'Perumal Kuchikadu' and taking him to the house. DW-1 spoke to police taking A2 to police station, of police asking her for A2's saree and a shirt and of giving the same. DW-1 also spoke to attending Court on receipt of summons. MO-6 is the saree.

4. On questioning u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, convicted appellant/A2 for offence u/s.302 r/w 109 IPC and sentenced him to life imprisonment and fine of Rs.20,000/- i/d 1 year R.I., under judgment dated 31.03.2016. Hence, this appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for State. Perused the materials on record.

6. This Court has dealt with the appeal of the first accused in Crl.A.No.4 of 2010 and passed a judgment of acquittal on 10.03.2010. The material put against the present appellant/A2 is that she tendered an extra judicial confession in Ex.P4 to PW-4, Village Administrative Officer and upon PW-4, Village Administrative Officer, forwarding her to Police, she made a confession in Ex.P5 again attested by him(PW-4 -VAO), pursuant to which a saree of A2 was recovered. This Court, time and time again, has found unacceptable the admission in evidence of an extra judicial confession tendered after commencement of investigation. A laudable purpose of lending assurance against false implication of one already in the Police dragnet or

trajectory is served by the consistent view adopted by this Court and we follow the same. The prosecution and defence (DW-1) have differing versions on how the saree was recovered. The recovery of saree, even if true does not carry the forward the prosecution case in as much as the same has not been subjected to forensic examination towards establishing that the blood stains found there on matched the blood group of the deceased. There is no material to link the appellant with the offence.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by Additional District and Sessions Judge, Fast Track Court I, Salem, passed in S.C.No.242 of 2009 on 30.11.2009, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to her. Bail bond(s), if any, executed by her shall stand cancelled. Appellant is directed to be released forthwith, if her detention is not required in any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gm
To

1.The Additional District and Sessions Judge,
Fast Track Court I, Salem.

2. The Judicial Magistrate, Omalur,

3.The Inspector of Police,
Theevettipatti Police Station,
Salem District.

4.The Public Prosecutor,
High Court,
Madras.

5. The Superintendent
Women Special Prison
Vellore.

6. The District Collector
Salem.

7. The Director General of Police
Mylapore, Chennai 4.

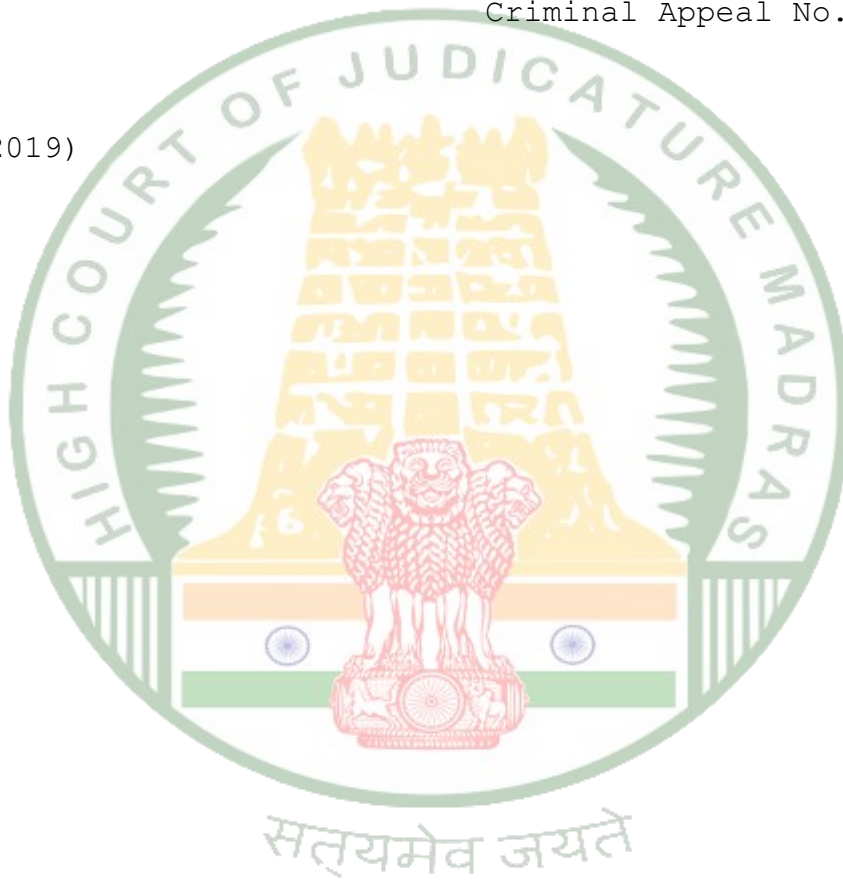
8. The Superintendent of Police
Salem.

Copy to
The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.P.Palanikumar, Advocate sr 64654.

Criminal Appeal No.553 of 2017

SV(CO)
SP(06/03/2019)



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