

BAIL SLIP

The petitioner/Appellant/Accused namely A/Allah Bux male aged 37 years S/o.Rahman Kunthupabvoor was directed to be released on bail by the order of this Court dated 13.12.2017 and made in Crl.MP.15673/17 in Crl.A.No.779/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:09.03.2018
CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
Crl.A.Nos.770, 774 & 779/2017 & Crl.MP.No.2631/2017 in
Crl.A.No.770/2017

N.Mani .. Appellant / A5 in
Crl.A.No.770/2017

1.Selvam

2.Velu @ Velumani

3.Rajendran

4.Ramesh @ Bhoopathy Sundaram .. Appellants / A1 to
A4 in Crl.A.No.774/2017

Allah Bux .. Appellants / A6 in
Crl.A.No.779/2017

Vs.

State rep. by,
The Inspector of Police
Pallipalayam Police Station
Namakkal District.

..Respondent/Complainant
in all Crl.Appeal

Criminal Appeals filed under Section 374[2] of the Criminal Procedure Code to set aside the conviction imposed in judgment dated 30.11.2017 made in SC.No.24/2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal by allowing the criminal appeals.(in all Criminal Appeal).

For Appellants : Mr.N.Manoharan
For Respondent : Ms.M.Prabavathy, APP

COMMON JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant in Crl.A.No.770/2017 is arrayed as A5 ;
appellants in Crl.A.No.774/2017 are arrayed as A1 to A4 ; and
the appellant in Crl.a.No779/2017 is arrayed as A6 out of six

accused in the case in SC.No.24/2013 on the file of the Court of the learned Sessions Judge, Fast Track Mahila Court, Namakkal. The Trial Court, under impugned Judgment dated 30.11.2017, convicted and sentenced the appellants / accused as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A1 to A5	120-B IPC	Each of the accused were sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.1000/- each and in default, to undergo one month rigorous imprisonment.
A3 to A5	147 IPC	Each of the accused were sentenced to undergo 1 year rigorous imprisonment.
	302 r/w 149 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.10000/- each with a default sentence of 6 months rigorous imprisonment.
A1 & A2	302 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.10000/- each with a default sentence of 6 months rigorous imprisonment.
	148 IPC	Each of the accused were sentenced to undergo 2 years rigorous imprisonment.
A6	212 IPC	To undergo 3 years rigorous imprisonment and to pay a fine of Rs.2000/- with a default sentence of 2 months rigorous imprisonment.

The sentences were ordered to run concurrently. Aggrieved over the said conviction and sentence, the present appeals came to be filed by the appellants/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] The deceased Palaniammal is the wife of P.w.1- Palanisamy. They are the residents of Aayakkattupallam Naavinankaadu, Tiruchengode. They were residing in a farmhouse in the village along with their daughter-in-law Kokila-D.W.2 and granddaughter Manjula. The said Kokila is the daughter of A-5 - Mani was given in marriage to one Boopathy-son of P.W.1 and deceased. However, due to marital discard, P.W.1's son, viz., husband of Kokila [son-in-law of A-5] committed suicide. P.W.1 has 5 acres of farm land and the deceased was owning 1 acre and 20 cents inherited from her parents. Out of the said 1 acre and 20 cents, deceased sold

20 cents for a sum of Rs.40 lakhs and gave Rs.20 lakhs to her daughter - P.W3 and son-in-law [P.W.4] and out of the remaining amount, the deceased deposited Rs.15 lakhs in the name of their granddaughter Sowmiya. After the death of the son of P.W.1 and deceased, their daughter-in-law Kokila and her father, viz., A-5 demanded a share in the property from P.W.1. However, P.W.1 and his wife declined the demand in respect of which, there were a quarrel between A-5 and P.W.1 and deceased. Three months prior to the occurrence, A-5 had threatened P.W.1 and his wife that if they do not agree for partition, he will bite the trachea of the deceased.

[b] When the matter stood thus, on the date of occurrence, i.e., 20.09.2011, the deceased woke up in the morning at 4.00 a.m., and went to milch the cows. Thereafter, at 5.45 a.m. P.W.1 went in search of his wife as she did not return back home. He found the deceased lying in a pool of blood near the coconut groove. P.W.2-Jayanthi, daughter of P.W.1 and deceased, on hearing the death news of her mother, rushed to the spot. P.W.1 immediately went to Pallipalayam Police Station and lodged the complaint under Ex.P.1 to P.W.13-Varadharaj, Sub Inspector of Police.

[c] P.W.3-Boopathyraj is the husband of P.W.2 and son-in-law of P.W.1 and deceased. P.W.4-Raman, is the tenant in the house of the deceased. On 20.09.2011, after his night shift, he reached his house at 6.30 a.m. He saw the deceased dead with cut injuries. P.W.5-Shanmugasundram, a resident of the said village, rushed to the spot on hearing the death news of the deceased. P.W.9-Thangavel, a resident of the said village has stated that within 20 to 25 days after the death of the son of P.W.1, A-5 and his daughter Kokila, came to him and requested him to help them for getting partition of the property. Thereafter, P.W.1 and his wife - deceased came to P.W.9, three months prior to the occurrence and informed him that A-5 is threatening them with dire consequences unless partition is effected.

[d] P.W.13, Sub Inspector of Police, at the relevant time, after the receipt of the complaint from P.W.1 under Ex.P.1 on 20.09.2011 at about 10.00 a.m., registered the crime in Cr.No.969/2011 u/s.302 IPC. Ex.P.24 is the First Information Report. He despatched the originals of Ex.P.1 and Ex.P.24 to the jurisdictional Court and copies to the higher officials.

[e] P.W.15-Palanisamy, Inspector of Police attached to the respondent police station, at the relevant point of time, on receipt of FIR in Cr.No.969/2011 on 20.09.2011, went to the place of occurrence and prepared the Observation Mahazar [Ex.P.27] and Rough Sketch [Ex.P.28] in the presence of P.W.6 and P.W.7. On the same day, at about 11.45 a.m., he seized blood-stained earth [M.O.11] ; sample earth [M.O.12]

under Mahazar - Ex.P.29 in the presence of the same witnesses. He held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses on 20.09.2011 from 12.00 Noon to 2.00 p.m. and prepared Ex.P.30-Inquest Report. He enquired the witnesses and recorded their statements. He forwarded the dead body for autopsy through constable along with a requisition.

[f] P.W.8-Dr.Veeramani, Assistant Civil Surgeon in the Government Medical Hospital at Pallipalayam, at the relevant point of time, received the requisition and commenced the postmortem on 20.09.2011 at 2.45 p.m., and found the following injuries:-

"External Injuries:-

[1] An incised wound (cut injury with clean margin) seen which starts from the front of the neck mid line, goes backwards in the lateral aspect of the neck left side passes below the mastoid process left side 5 c.ms. Horizontally in the back of the neck below the occipital bone and ends below the mastoid process right side. Length of the injury 20 cmxwidth 10 cm in the mid line and at the end about 1 cm (due to gradual tapering of ends) and exposing underlying large muscles and large blood vessels of the neck laterally and posteriorly exposing spinal bone. On dissection the injury shows another injury on the large blood vessels and muscles of the neck. Blood seepage is seen in between the muscles. This injury carries into injury of trachea and oesophagus exposing inner walls of oesophagus and trachea.

[2] An incised wound on the front of the neck above the membranium 7 cmx0.5cmx0.5cm.

[3] Abrasion on the right shoulder 5 cmx0.5cm.

[4] An incised wound in front of the right femur below the orbital fossa 7.5 cmx0.5cmxbone depth. This injury carries cut injury of the large blood vessels and muscles of the forearm right side.

[5] Abrasion on the mandible margin 6 cmx1 cm left side. Firmly coagulated blood clots with infiltration into deep surrounding tissues is seen in all the above wounds and they are antemortem in nature".

Ex.P.7 is the Postmortem Certificate and Ex.P.8 is the Final Opinion issued by him, wherein he had stated that "the deceased would appear to have died of shock and hemorrhage due to multiple injuries."

[g] P.W.15-Investigating Officer, in continuation of his investigation, on 22.09.2011 at about 2.00 a.m., on the basis of the secret information, effected the arrest of A3 and A4 in the presence of P.W.10-Nallusamy, Village Administrative Officer and his Menial, during the routine vehicle check up. A-3 came forward to give a confession statement voluntarily, admissible portion of which is marked as Ex.P.9, in pursuant to the same, the Investigating Officer seized a two-wheeler bearing Registration No.TN-34-A-3379 and also, cash of Rs.5000/- under Mahazar-Ex.P.11. A-4 also came forward to give a voluntary confession statement, admissible portion of which is marked as Ex.P.10, in pursuant to the same, the Investigating Officer seized cash of Rs.2000/- under Mahazar [Ex.P.12]. On the same day at 6.00 a.m., he also arrested A-1 ; A-2 ; and A-6 ; recorded their confession statements [admissible portions of the confession statements of A-1 & A-2 are marked as Exs.P.13 & 15]; in pursuant to which, the Investigating Officer seized a two-wheeler and cash of Rs.5000/- under Mahazars [Ex.P.14 & Ex.P.15]. Similarly, the Investigating Officer seized a Billhooks [M.Os.7 & 9] ; half-sleeve shirt [M.O.8] ; full-hand shirt [M.O.10] in pursuant to the confession statement of A-6 under Mahazars [Exs.P.19 & 20] and cash Rs.500/- under Mahazar [Ex.P.18]. On the same day, at about 1.00 p.m., P.W.15 effected arrest of A-5-Mani near Aayakaatupallam Bus Stand and in pursuant to the voluntary confession statement of A-5, the Investigating Officer effected seizure of a two-wheeler bearing Registration No.TN-34-K-1105 under Mahazar [Ex.P.22]. He sent the accused for judicial remand and forwarded the material objects to Court along with a requisition to send the same for chemical analysis. The Investigating Officer enquired P.W.8, the doctor who conducted autopsy on the dead body of the deceased, ; received the medical reports and on completion of investigation, filed the Final Report on 21.01.2012 against A1 to A6 before the learned Judicial Magistrate, Tiruchengode, who took it on file in PRC.No.25/2012 and issued summons to the accused and on their appearance, furnished them copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Namakkal District, u/s.209 Cr.P.C., who in turn, had made over the case to the learned Sessions Judge, Fast Track Mahila Court, Namakkal District, who took it on file in SC.No.24/2013 and on appearance of the accused, had framed the charges u/s.120[b], 148, 302 IPC as against A-1, A-2 ; u/s.120[b], 147, 302 read with 149 IPC as against A-3 to A-5 and u/s.212 IPC as against A-6 and questioned them. The accused pleaded not guilty to the charge framed against them.

[h] The prosecution examined P.Ws.1 to 15 and marked Exs.P.1 to 30 besides marking M.O.1 to M.O.16.

[i] A1 to A6 were questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and they denied it as false. On the side of the defence, D.W.1-Dr.Ganapathy and D.W.2-Kokila were examined. D.W.2 was examined to show that her husband / son of P.W.1 and deceased was taking treatment under D.W.1 for some time before his death and also to show that after one month, she left her matrimonial home and was residing in her parental home. Exs.D.1 to 10 were marked on the side of the defence.

[j] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had convicted and sentenced the appellants/accused as above stated and hence, these appeals.

3 Mr.N.Manoharan, learned counsel for the appellants vehemently contended that there is no evidence whatsoever available on record to connect the accused with the grave crime. Except the evidence of P.Ws.1 and 2 to show some misunderstanding in the family with regard to the property, there are no other incriminating materials available on record to connect the accused with the crime. Further, the arrest and recovery projected by the prosecution is highly unreliable and cannot be believed at all. The evidence of the witnesses, clearly show that A5 was already taken into custody on the date of complaint itself and therefore, the arrest projected by the Investigating Officer at a later point of time, is highly unbelievable and create serious doubt about the entire prosecution version. The Investigating Officer has not conducted the investigation in a fair manner. The material objects allegedly seized from the accused were not sent to the Forensic Lab and did not contain any incriminating circumstances against the accused. Hence, learned counsel for the appellants submitted that absolutely there is no evidence to connect the accused in this case and prayed for acquittal of the appellants by setting aside the conviction and sentence and allowing of the criminal appeals.

4 Per contra, Ms.M.Prabavathy, learned Additional Public Prosecutor appearing for the State submitted that the motive aspect has been clearly spoken by P.Ws.1 to 3 and 9 and even the defence documents prove the said fact. Accused were arrested by the Investigating Officer and in pursuant to the same, the material objects were also seized. Hence, learned Additional Public Prosecutor submitted that the circumstances projected by the prosecution clearly point towards the guilt of the accused and submitted that the Trial Court, on considering these aspects had arrived at the correct finding and the same warrants no interference at the hands of

this Court and prayed for dismissal of the appeals.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, now it has to be analysed whether the prosecution has brought home, the guilt of the appellants / accused beyond all reasonable doubt?

7 The appellants / accused stood charged for offences u/s.120[b], 147, 148, 302 read with 149 IPC and 212 IPC. At the outset, it is to be stated that the entire prosecution case rests on the circumstantial evidence. The prosecution mainly relied upon two circumstances, viz.,

[a] Motive ; and

[b] Arrest of the accused and Recovery of Material Objects.

8 The fact remains that the prosecution has not put forward any specific, definite, clinching and incriminating circumstances except placing reliance on the above circumstances, viz., motive aspect said to have been spoken by P.Ws.1 to 3 and 9 and arrest of the accused in the presence of P.W.10-Nallusamy-VAO and his Menial and the subsequent recovery of the material objects.

9 Before proceeding to consider the above said circumstance, it is relevant to state that it is well settled that in a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should be fully proved and circumstances must be conclusive in nature to connect the accused with the crime. Keeping in mind, the above said settled principle of law, let us now consider the circumstances relied on by the prosecution.

10 No doubt, deceased Palaniammal-wife of P.W.1 was done to death. Evidence of P.W.8-Dr.Veeramani, when carefully scanned coupled with the Postmortem Certificate-Ex.P.7, it is seen that the deceased died out of multiple injuries, 6 to 12 hours prior to autopsy and we have no hesitation to hold that the death of the deceased is nothing but homicidal. In the above background, we proceed further to analyse the materials on record.

11 It is undisputed fact that the deceased was residing along with her husband-P.W.1 in the farmhouse in the village called Aayakkaattupallam. Evidence of P.W.1 shows that on the date of occurrence, i.e., on 20.09.2011, P.W.1 and the deceased were in the house and at 4.00 a.m., the deceased went out of the house to milch cows. Thereafter, she did not return. When P.W.1 made a search, he found his wife lying dead in the nearby coconut groove. Immediately, he lodged the complaint under Ex.P.1 with P.W.13-Sub Inspector of Police.

12 The motive projected by the prosecution is that A-5's daughter, viz., Kokila, examined as D.W.2 was given in marriage to one Boopathy, son of P.W.1 and deceased and after his death, D.W.2 was residing in her matrimonial home along with her child. During her stay in P.W.1's house, her father-A-5 also stayed with her. D.W.2 used to demand partition of properties as the deceased had already parted with her property in favour of her property. When the request of D.W.2 and A-5 [father of D.W.2] was not heeded by the deceased, A-5 threatened the deceased with dire consequences that he will do away her unless a share has been given to his daughter [D.W.2]. P.W.1 is husband of the deceased; P.W.2 is daughter of P.W.1 and deceased; and P.W.3 is the husband of P.W.2 / son-in-law of P.W.1 and deceased. When their evidence is carefully scrutinized it is seen that D.W.2 has married the son of P.W.1 and deceased Palaniammal and after his death, she was residing with P.W.1 and his wife along with her minor child. Further, their evidence shows that some properties stood in the name of the deceased and out of the sale consideration received, the deceased gave Rs.20 lakhs to her daughter /P.W.2 and out of remaining sum, she had deposited Rs.15 lakhs in the name of her granddaughter Sowmiya - daughter of P.W.2 and there were some demand by D.W.2 for a share. Though their evidence show that there were some dispute between D.W.2 and his father on one side and P.W.1 and deceased on the other side, their evidence when read along with the evidence of P.W.9, clearly reveals the fact that the said dispute, in fact, had happened three months prior to the death of the deceased. Be that as it may, D.W.2 was examined as defence witness

and she in her evidence has stated that she left her matrimonial home for some time and was residing in her parental home. This fact has not been disputed. Though the above evidence of P.Ws.1 to 3 and 9 shows that there were some dispute with regard to the property, whether such dispute was the motive for eliminating the deceased, has to be analysed. As per the evidence of P.W.9, he is said to be a respectable person in the village and D.W.2 and her father-A-5 came to him and requested him to get D.W.2's share. Three months prior to the death of the deceased, P.W.1 and the deceased informed P.W.9 about threatening of A-5. Even if the above evidence is taken into consideration, there is no evidence on record to show as to whether such threat was continuing till the death of the deceased. Be that as it may, even the evidence of the witnesses, viz., P.Ws.1 to 3 and 9 is taken into consideration, we are of the view that the prosecution was able to prove only the motive aspect alone.

13 Keeping the above aspect in mind, now it has to be seen whether the other circumstance projected by the prosecution, viz, arrest and recovery, has been clinchingly established, connecting the accused with the crime.

14 Though P.W.15-Investigating Officer claims to have arrested A3 and A4 on the basis of the receipt of secret information on 22.09.2011 at about 2.00 a.m. during routine vehicle check up, absolutely there is no material on record to show as to what was the secret information received by him as against A3 and A4 and the details of the informant who has furnished the said information and there is no iota of evidence available in that regard. It is the version of P.W.15-Investigating Officer that he has arrested A3 and A4 in the presence of P.W.10-VAO and his Menial. But, the very presence of P.W.10 and his Menial in the place and time of arrest itself is doubtful. It is his further evidence that pursuant to such arrest, he seized two-wheeler and cash under Mahazar-Ex.P.11 and pursuant to the confession statements of A3 and A4, the Investigating Officer effected the arrest of A1, A2 and A6 at 6.00 a.m. on the same day. Only thereafter, the Investigating Officer had effected the arrest of A-5 / father of D.W.2, at 1.00 p.m. on 22.09.2011, as seen from the evidence of P.W.15-Investigating Officer. It is the definite version of the Investigating Officer that A-5 was arrested only in pursuant to the confession recorded from the other accused on the early hours on 22.09.2011. In this regard, when the evidence of P.W.3 is carefully read it is seen that P.W.3-Boopathyraj has categorically stated that on the date of occurrence, i.e., 20.09.2011, itself, not only A-5 but also P.W.3 was taken to the police station and was examined by the police and he was detained in the police station from Noon to Evening on 20.09.2011 and A-5 was also detained in the Police Station. P.W.4-Raman, in his evidence has stated that on 20.09.2011, D.W.2 and her father [A-5] was enquired by the police. P.W.7-Manokaran, a relative of the deceased, in his chief examination has categorically admitted that on the date of occurrence itself, A-5 was taken to the police station. Therefore, the arrest projected by the prosecution is highly doubtful in this case. Further, the evidence of P.W.1 also clearly indicate that police also lifted chance print from the place of occurrence and services of Sniffer dog was also pressed and at that time, A-5 was very much present in the scene of crime. There was no reason as to why the Investigating Officer has not placed materials with regard collection of chance print and Sniffer Dog Report. Further, none of the materials allegedly seized from the accused did not contain any incriminating circumstances against the accused. The material objects allegedly seized from the accused also were not sent to the Forensic Lab. The reasons for non-sending those material objects were not explained by the Investigating Officer. The manner in which the case is solved by filing the Final Report by showing the arrest casually without any materials exhibit the clear intention of the prosecution agency to somehow or the other to solve the case without collecting material evidence.

15 Further, absolutely there is no evidence whatsoever available on record to prove the conspiracy aspect between the accused. Of course, the Courts cannot search

direct evidence for conspiracy. But, there must be some circumstantial evidence placed on record even to infer the conspiracy. Except the alleged confession recorded by the Investigating Officer, no other materials whatsoever is available as against the accused. Therefore, we are of the view that the circumstances relied upon by the prosecution has not been established clinchingly and the arrest of A-5 pursuant to the confession of other accused itself is doubtful in view of the categorical admission of the witnesses that A-5 was already in the custody of police on 20.09.2011 itself. In view of the same, it is very unsafe to record the conviction only on the basis of the evidence of the Investigating Officer, which also did not contain any incriminating materials as against the accused. In view of the same, we are of the view that the circumstances relied upon by the prosecution has not been proved clinchingly and merely because motive aspect has been spoken by the witnesses, that itself cannot be a ground to convict the accused in a grave crime. The Trial Court, without appreciating the entire evidence and materials collected by the Investigating Officer, merely on the basis of preponderance of probabilities and suggestion put to the witnesses by the defence counsel, has erroneously recorded the finding. In fact the Trial Court has not even adhered to the fundamental principles while appreciating the evidence on record, keeping in view the provisions of the Indian Evidence Act. Such approach by the Trial Courts in casually recording the conviction on mere surmise and conjecture, is highly deprecated since the life and liberty of the individual / person has been taken in such a lighter manner by the Trial Court. Hence, we have no other option to hold that the prosecution has miserably failed to prove any of the circumstances against the accused.

16 In the result, the criminal appeals are allowed. The conviction and sentences imposed on the appellants/accused for the offences u/s.147, 148 and 302 r/w 149 IPC and 212 IPC by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, in SC.No.24/2013 vide Judgment dated 30.11.2017, are hereby set aside. The appellants are acquitted of all charges levelled against them. Fine amounts if any paid, shall be refunded to them.

17 It is reported that the appellants / accused in CrI.A.Nos.770 and 774/2017 are in jail. They are directed to be released forthwith unless their presence/custody is required in connection with any other case / proceedings.

18 The appellant / A-6 in CrI.A.No.779/2017 is on bail. The bail bond executed by him shall stand cancelled.

Sd/-

Assistant Registrar(co)

//True Copy//

AP

To

1.The Principal District and Sessions Judge
Namakkal District.

2.The Sessions Judge
Fast Track Mahila Court,
Namakkal.

3.The Judicial Magistrate,
Tiruchengode.

4.The Chief Judicial Magistrate,
Namakkal District.

5.The Inspector of Police
Pallipalayam Police Station
Namakkal District.

6.The District Collector
Namakkal District.

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

8.The Superintendent of Prison
Central Prison, Coimbatore.

9. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Vinothkumar, Advocate Sr.No.18252

+2cc to Mr.N.Manokaran, Advocate Sr.No.18250, 18249

VGII(CO)

sm:3.4.2018

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