

Bail Slip.

The Appellant herein/Accused viz Arul, Male aged 33 years, S/o. Gopal was directed to be released on bail by order dated 15.04.2015 in CrI.M.P. 1/2014 in CrI.A.No.624 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.624 of 2014

Arul .. Appellant/Accused

Vs

State rep. by
The Inspector of Police, Manimangalam,
In Somangalam Police Station,
Kancheepuram District.
(Crime No.22 of 2018)

.. Respondent

Criminal Appeal filed under Section 374 Cr.P.C. praying to set aside the conviction and sentence imposed on the appellant by judgment dated 21.03.2010 in S.C.No.08 of 2010 on the file of the District and Sessions Judge No.II, Kancheepuram and acquit the Appellant by allowing this appeal.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondent : Mr.G.Ramar, GA (CrI. Side)

O R D E R

This Criminal Appeal has been filed to set aside the conviction and sentence imposed on the appellant by judgment dated 21.03.2010 in S.C.No.08 of 2010 on the file of the District and Sessions Judge No.II, Kancheepuram.

2.It is the case of the prosecution that, the appellant suspected the fidelity of his wife Shakila and on 24.01.2008, he caused her death by attacking her with a stone in a cashew grove, behind Poonthandalam Bus Stand.

3.On the complaint dated 25.01.2018 (Ex.P1) lodged by Durai (PW1), the father of the deceased (Shakila), Natarajan (PW11),

Sub-Inspector of Police, registered a case in Crime No.22 of 2008 on 25.01.2008, under Section 302 IPC and prepared the printed FIR (Ex.P12), which was received by the jurisdictional Magistrate on the same day at 10.15 p.m., as could be seen from the endorsement thereon. Investigation of the case was taken over by Muthuramalingam (PW12), Inspector of Police, who went to the place of occurrence and in the presence of N.Sathyamoorthi (PW5) and B.Sathyamoorthi (not examined), prepared the Observation Mahazar (Ex.P12) and the Rough Sketch (Ex.P13) at around 4.00 p.m., on 25.01.2008. In the presence of the same witnesses, he seized soil with and without blood (MO-1 and MO-2) and a pair of black chappals (MO-3), under the cover of Mahazar (EX.P3). Thereafter, he conducted inquest over the body of the deceased (Shakila) and prepared the inquest report (Ex.P4). After completing inquest proceedings, he despatched the body through Gunasekaran, Head Constable, to the Government Hospital, Sriperumbudur, for post-mortem, where, Dr.Kamesh Balaji (PW6) conducted autopsy and issued post-mortem certificate (EX.P4), opining that Shakila would appear to have died of shock and haemorrhage, due to multiple injuries caused by lethal blow with a blunt weapon like a stone. The Investigating Officer (PW12), examined some witnesses and arrested the appellant on 15.04.2008, and recorded his statement in the presence of two witnesses, one of whom, is Thangaraj (PW7), Village Administrative Officer. The admissible portion of the confession statement was marked as Ex.P5. From the appellant, he seized two pawn receipts (Ex.P9), under Mahazar Ex.P6. Based on the disclosure of the accused, he seized gold ornaments (MO-5 series and MO-6 series) from the pawn shop of one Bundaram, under the cover of Mahazar (Ex.P8). He went to the place of occurrence, where he seized a blood stained stone (MO-4), under the cover of Mahazar (Ex.P7). After recording the statement of witnesses and collecting the post-mortem report, the Investigating Officer (PW12) laid final report in P.R.C.No.66 of 2008, before the Judicial Magistrate, Sriperumbudur, for the offence under Section 302 IPC against the appellant.

4.On the appearance of the appellant, he was served with the copies of the documents relied upon by the prosecution under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.8 of 2010 and was made over to the Sessions Court No.II, Kancheepuram for trial. The trial Court framed charge under Section 302 IPC and when questioned, the appellant pleaded 'not guilty'.

5.To prove the case, the prosecution examined 12 witnesses and marked 18 exhibits and 10 M.O.s. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on behalf of the appellant.

6. After considering the evidence on record and hearing either side, the trial Court acquitted the accused under Section 302 IPC, but convicted him under Section 304(I) IPC and sentenced him to undergo 10 years rigorous imprisonment and pay a fine of Rs.3,000/-, fine in default to undergo six months rigorous imprisonment, challenging which, this appeal has been filed.

7. Heard Mr.A.M.Rahamath Ali, learned counsel for the appellant and Mr.Ramar, learned Government Advocate (Crl. Side).

8. Before adverting to the rival submissions, it may be necessary to catalogue the admitted facts:

- a) the deceased (Shakila) is the daughter of Durai (PW1);
- b) she (Shakila) was married to the appellant and they had two children;
- c) her death occurred on 24.01.2008 and was homicidal;
- d) her body was found in the cashew grove behind Poonthandalam Bus Stand.

9. Mr.Rahamath Ali, learned counsel for the appellant submitted that the case of the prosecution principally hinges on the evidence of Durai (PW1) and Pandian (PW8) and contended that their evidence is unbelievable.

10. It is the case of the prosecution that, the appellant had criminal track record, on account of which, there used to be frequent quarrel between the spouses resulting in Shakila, even getting divorce from him. It is the further case of the prosecution that after divorce, on the intervention of well-wishers, they rejoined, but, the appellant suspected that she was having an affair with one Karuna, which has been projected as the motive for the murder.

11. Durai (PW1), the father of the deceased, has stated in his evidence that, his daughter-Shakila got married to the appellant and they have a daughter and son; they were residing in Mananchery for some time, but, started quarrelling, after the appellant got addicted to liquor; Shakila initiated divorce proceedings and obtained divorce and was living with him(PW1); after sometime, the appellant approached him and promised to keep Shakila happy, on which promise, Shakila rejoined him; one afternoon, around 01.00 p.m., while he was in his residence, he was informed that, he has received a phone call to attend, for which, he went to the telephone booth near his house; on answering the call, he learnt that it was the appellant; the appellant told him that he has killed his daughter-Shakila in the cashew grove in Poonthandalam Bus Stand and asked him to take her body; he came to his house and told his son Madhiazhagan (not examined) and together, they went to the said

cashew grove and found the body of Shakila; thereafter, he informed the Police and gave the complaint (Ex.P1).

12.In the cross-examination, Durai (PW1) admitted that, after getting divorce from the appellant, Shakila worked in an orphanage. He has further admitted that Shakila is facing a prosecution for having murdered the child of the warden of the orphanage, by pouring kerosene and setting fire to the child along with one Venkatesan.

13.The prosecution examined one Moorthy (PW9), who has stated that he is having a provision shop near the house of Durai (PW1); he knows Durai (PW1) and the appellant; the appellant called him in his landline and told him that he wanted to speak to his father-in-law Durai (PW1) and so, he sent word to Durai (PW1), who came and attended the call; after speaking, Durai (PW1) went home and thereafter returned crying that his daughter-Shakila has been murdered.

14.However, in the complaint (Ex.P1) given by Durai (PW1), he has stated that, the appellant told him that he, along with Karuna, had committed the murder of Shakila. In the FIR, Karuna was shown as A2, but, during the course of investigation, it came to light that Karuna was not involved in the offence and therefore, he was not included in the final report. There appears to be much force in the statement of Mr.Rahamath Ali that, the fulcrum of the prosecution case viz., the motive for the offence, stood destroyed by the evidence of Durai (PW1). Motive assumes significance in a case involving circumstantial evidence and when that fails, there is undoubtedly, a dent in the prosecution case. However, it is seen that, on the date of incident viz., 24.01.2008, the appellant, along with Shakila and their two year old infant, had gone in the auto rickshaw of Pandian (PW8) to Tiruvallur Court and on the way, they went to the pawn shop of Bundaram and thereafter, he dropped them at Poonthandalam Bus Stand.

15.Mr.Rahamath Ali, learned counsel for the appellant contended that, Pandian (PW8) has stated that he knew the appellant and Shakila even before the incident and that he was aware of the death of Shakila also. But, his statement has been recorded by the Investigating Officer only on 15.04.2008 and thereby, his testimony becomes suspect.

16.In the opinion of this Court, just because, the Investigating Officer had recorded the statement of a witness very late, that, by itself, cannot lead to the rejection of the testimony of the witnesses in toto. The evidence of Appu @ Venkatesan (PW4) and Jayashankar (PW3) assume great significance in this case.

17.Appu @ Venkatesan (PW4) was 18 years old, when he was examined in the trial. He has stated that, he is residing in Raja street; he knows Arul (appellant) and Shakila (deceased) and that, two years ago, Shakila died; at that time, he was studying ninth standard in the Government School; while returning from the school in the evening around 05.30 p.m., he saw the appellant with his girl child in Poonthandalam Bus Stand; the appellant gave the child to him and requested him to hand over the child in the house of Jayashankar uncle (PW3); the appellant told him that he and Shakila will come there with fish and will collect the child; so, he took the child from the appellant and left the child with the wife of Jayashankar (PW3). In the cross-examination Appu (PW4), he has stated that, his school timings are from 09.30 a.m. to 04.30 p.m.; on that day, since the bus did not come, he decided to walk home; Jayashankar's (PW3) house would be about 1 km from Poonthandalam Bus Stand; he took the child and reached Jayashankar's (PW3) house around 06.00 p.m; the next day, he came to know about the death of Shakila. Though the prosecution had failed to elicit, as to when, he came to know about the death of Shakila, the defence had successfully got the answer from this witness, in the cross-examination and filled up the gap.

18.Jayashankar (PW3), in his evidence, has stated that he knows Shakila (deceased) and Arul (appellant) very well and that, he had attended their marriage also; two days prior to the incident, Arul (appellant) and Shakila (deceased) came with their girl child to his house and requested him to give Rs.500/-, as they wanted to go to the Court, which he gave; the next day, he went out and on return, he found their daughter in his house and when he asked his wife, she told him that child was brought by Appu (PW4), their neighbour, on the request of Arul (Appellant); that on the next day, he learnt about the murder of Shakila (deceased). In the cross-examination, he admitted that his mother-in-law and the appellant's mother are sisters. The defence was not able to make any serious dent in his evidence. This Court has no reason to disbelieve the testimony of Appu (PW4) and Jayashankar (PW3).

19.To recapitulate, the body of Shakila was found in a cashew grove behind Poonthandalam Bus Stand. On the fateful day, Pandian (PW8) had taken the couple with their daughter in his auto to various places including the pawn shop of Bundaram, from where, the jewels of Shakila have been recovered. On the same day, around 5.00 p.m., Appu (PW4) has seen the appellant with the child in Poonthandalam Bus Stand, at which time Shakila was not there. The appellant handed over the child to Appu (PW4) asking him to drop the child in Jayashankar uncle's house by saying that he will come there with Shakila after buying fish and collect the child. The child was dropped in Jayashankar's (PW3) house. Neither the appellant nor Shakila came to collect

the child. On the next day, the news of Shakila's murder came to the knowledge of Jayashankar (PW3) and Appu (PW4).

20. When the appellant was questioned about these incriminating circumstances appearing against him under Section 313 Cr.P.C, he did not give any plausible explanation and merely denied the same. The false explanation given by the appellant that he will come with Shakila and collect the child is an additional link in the chain of circumstances. Therefore, this Court does not find any infirmity in the judgment of the trial Court.

21. Mr. Rahamath Ali, learned counsel for the appellant submitted that there is sufficient evidence to show that Shakila was not an ordinary lady, but, had criminal antecedents and therefore, she could have been liquidated by someone else. In support of this contention, he took this Court through the evidence of Durai (PW1) and the evidence of the Investigating Officer, who have stated that Shakila was facing trial along with her colleague Venkatesan for having murdered the child of the orphanage warden and even on the fateful day, she had attended the Court for that case. Of course, all was not well with Shakila. However, her bad antecedents cannot be a good reason to acquit the appellant.

22. Hence, for the reasons set out above, this Court is of the view that the conviction of the appellant does not warrant interference. However, the sentence stands reduced from 10 years rigorous imprisonment to 7 years rigorous imprisonment. The fine and default sentence remain the same.

With the above modification in sentence, this criminal appeal stands dismissed. The trial Court is directed to secure the presence of the appellant and commit him to prison to suffer the remaining period of sentence.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

dua
To

1. The District and Session Judge No.II
Kancheepuram.
2. The Principal District Judge
Kancheepuram

3. The District Munsif cum Judicial Magistrate
Sriperumbudur.
 4. The Chief Judicial Magistrate, Chengalput.
 5. The Superintendent, Central Prison, Puzhal, Chennai.
 6. The District Collector, Kancheepuram.
 7. The Director General of Police
Mylapore, Chennai 4.
 8. The Inspector of Police, Manimangalam,
In Somangalam Police Station,
kancheepuram District.
(Crime No. 22 of 2018)
 9. The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr.A.M.Rahamath Ali, Advocate sr 88324.

CRL.A.No.624 of 2014

CA(CO)
SP(16/05/2019)