

Bail Slip

The Appellant/accused,namely Kumar S/o, Gopal was released on bail vide order dated 13/12/2012 in MP.2/2012 in CRL A no.527/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.527 of 2012

Kumar .. Appellant/Accused
S/o, Gopal

Vs

The State Rep. by
The Inspector of Police,
Siva Kanchi Police Station,
Kancheepuram. ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Sections 374(2) of the Code of Criminal Procedure, to set aside the judgment of conviction dated 31.07.2012 passed in S.C.No.71 of 2010 by the learned Sessions Judge, District Sessions Court No.II, Kancheepuram.

For Appellant : Mr.K.M.Balaji
Mr.E.R.K.Murthy

For Respondent : Mr.G.Ramar
Govt. Advocate (Crl.side)

J U D G M E N T

The present appeal has been filed to set aside the judgment of conviction dated 31.07.2012 passed in S.C.No.71 of 2010 by the learned Sessions Judge, District Sessions Court No.II, Kancheepuram.

2. The appellant is the sole accused in S.C.No.71 of 2010 on the file of the Sessions Judge, District and Sessions Court No.II, Kancheepuram.

The accused stood charged for the offences under Section 302 IPC. By the judgment dated 31.07.2012, the trial Court convicted the appellant under Section 304(i) IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.2,000/- in default to undergo Rigorous

imprisonment for six months. Challenging the said conviction and sentence, the accused is before this Court.

3. The case of the prosecution in brief is as follows:

(i) The deceased Pandian is the son of P.W.1, they are residing at Thirumettu Street, Kancheepuram. P.W.1 is having 3 sons and 2 daughters, in which, the deceased is her elder son. Prior to the occurrence, the deceased married one Kamala. Subsequent to the marriage, after 7 years, the wife of the deceased left the matrimonial home. Thereafter, the deceased was doing the painting work and in the night hours, he stayed in the medical store situated in the street, in which, P.W.1 was residing. On the day of occurrence, after finishing the painting work, the deceased did not return to his home. P.W.1, heard the news from one Anjalammal that his son is lying down near to Amirdham Shop at Nalvar thope, she immediately rushed to the scene of occurrence and found that the deceased was lying down near to the shop of Amirdham with multiple injuries in his head. Immediately, she went to Kancheepuram Police Station and lodged a complaint under Ex.P.1.

4.P.W.13, Sivaveliappan, the then Inspector of Police, Sivakanchi Police Station, on 10.5.2010 at about 7.00 hours, on receipt of complaint from P.W.1, registered a case in Cr.No.308 of 2010 under Section 302 IPC. Ex.P.13 is the printed copy of the First Information Report. After registration of the case, immediately, he visited the scene of occurrence and in the presence of one Pandian and P.W.8 Bala Murugan, he prepared an observation mahazar under Ex.P.14, further, he drew a rough sketch under Ex.P.15. In the presence of the same witnesses, at about 8.30 hours, from the scene of occurrence, he recovered the blood stained stone, mixed with brick, blood stained soil, soil without blood, one pair of black rubber chappal with paint and blood stained cotton under the cover of recovery mahazar Ex.P.16. The recovered material objects are marked as M.O.3 to M.O.7. Further, he conducted an enquiry over the dead body of the deceased Pandian and prepared an inquest report under Ex.P.17. He sent a requisition letter to the Kancheepuram Government Hospital through the Head Constable Murugan for conducting autopsy over the dead body of the deceased Pandian.

5.P.W.9 Dr.Srikanth, attached with Government Hospital Kancheepuram on 10.05.2010 received a requisition letter given by P.W.13 and conducted autopsy over the dead body of the deceased Pandian. He found the following injuries over the dead body of the deceased:

"1.Entire left side of face
extending from the forehead upto Left
side. A Mandible including the Maxilla,

orbit and root of nose crumpled into multiple pieces with underlying bone and muscles exposed with Left eye ball depressed and pushed inside the Left # orbit. Dry blood Clots & Sand particles present over the Face. Blood stained discharge from Right ear.

2.Dry abrasion Dark brownish 2 x 2 cm in front of the ribble 1/3 of Right leg.

3.Abraded contusion of size 4 x 4 cm inner aspect of Left Fore arm Dark brown coloured surrounding Left elbow.

4.Deep Abrasion opp. 3 x 3 cm of irregular shaped in medial aspect of Right arm.

5.Teeth 8/8 8/7 into one Left upper 2nd Fuissar mission & Lower.

6.8 Teeth dislocated with fractured mandible.

7.3 x 3 x 2 cm deep laceration present in the lateral aspect of Lower lip with black brown blood clots present.

Nazal bone back and the tongue within the mouth. On opening the neck, hyoid bone intact. Neck Structures intact. Thorax # Right 1 and 2 ribs. Heart 350 gram c/s empty. Pale Lungs Right 450 gms Left 400 gms. Both c/s. Stomach 10 ml of coffee coloured fluid thick fluid. Liver 1600 gm. Left Kidney 100 gm c/s pale. Scalp - recently tonsured scalp with 0.5 cm of hand grown entire scalp. On opening the scull, entire frontal bone (Forehead bone) crushed into pieces. Subdural hematoma entire brain surface present. Underneath the brain. There was a linear Fracture of left temporal bone and it attends back upto left occipital bone of size 7 cms. Cerebrum penetra present.

6.After completing the post-mortem, he preserved samples of

limbs of intestine for viscera examination. Subsequently, he sent the same for chemical examination and obtained the examination report, in which, it was mentioned that no poisonous substances and alcohol found in the dead body of the deceased and thereafter, he issued a final opinion stating that the deceased have died of shock and hemorrhage due to multiple facial bone fractures and brain injury. The post-mortem and the viscera reports are exhibited as P.17 and P.18 respectively.

7. In continuation of the investigation, P.W.13 received the blood stained shirt and dhoti, which were all removed from the dead body. Further, the same have been marked before the trial Court as M.O.8 and M.O.9. Thereafter, he examined the witnesses and recorded their statements. On 15.05.2010, at about 8.30 a.m, in the presence of P.W.10 Pandurangan and P.W.11 Sivaprakasam, he arrested the accused and recorded the confession statement given by the accused.

8. In the confession statement, the accused admitted the guilt as alleged by the prosecution. Pursuant to the confession, P.W.13, witnesses and the accused went to the house of the accused and on identification by the accused, P.W.13, in the presence of same witnesses recovered the blood stained red colour T-shirt and the blood stained blue colour shorts under the cover of recovery mahazar. Ex.P.11 is the recovery mahazar. Thereafter, P.W.13 made arrangements for sending the accused to the judicial custody. Further, he sent the material objects to the Court and submit a requisition before the learned Magistrate for sending the material objects for chemical examination. Finally, after receiving the final opinion from the Doctor, he completed investigation and filed a final report against the appellant under Section 302 IPC.

9. Based on the materials available, the trial Court framed charges under Section 302(i) IPC and the accused denied the same. In order to prove the case, on the side of prosecution, as many as 13 witnesses were examined as P.W.1 to P.W.13 and 21 documents were marked as Exs.P.1 to P.21, besides 9 Material Objects.

10. Out of the said witnesses, P.W.1, who is the mother of the deceased has stated in her evidence as on the day of occurrence, after seeing the dead body of the deceased, she lodged a complaint before the Kancheepuram police station. P.W.2 Duraisamy has not supported the prosecution case in any manner. P.W.3 Anjalammal has not stated about the information given to the P.W.1. P.W.4, who is the brother of the deceased, deposed that the deceased was residing independently. P.W.5 Selvam, the another witness deposed that usually, the deceased and the appellant were going to attend the work jointly.

11.P.W.6 is the eye witness to the alleged occurrence. He did not gave evidence in support of prosecution. P.W.7 and P.W.8 are the witnesses attested in the observation mahazar prepared by P.W.13 and in the recovery mahazar prepared for the recovery of material objects from the scene of occurrence. P.W.9, is the medical officer, who conducted autopsy on the dead body of the deceased and gave his final opinion stating that the deceased would appear to have died of shock and hemorrhage due to multiple facial bone fractures and brain injury.

12.P.W.10 and P.W.11 are the witnesses for arresting the appellant has stated in their evidence about the confession statement given by the accused and about the recovery of blood stained dresses from the hut belonging to the appellant. P.W.12, who is working as Deputy Director in Forensic Science Department, has stated in his evidence with regard to receiving of material objects and with regard to chemical examination. P.W.13 investigating officer has stated about the registration of the case, details of investigation and with regard to filing of final report before the Magistrate Court.

13.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or mark any document on his side.

14.The learned Sessions Judge, after perusing all the above materials and on considering the arguments advanced by the learned counsel on either side, convicted and sentenced the appellant as stated supra. Aggrieved by the above conviction and sentence, the appellant is before this Court with this appeal.

15. I have heard Mr.E.R.K.Murthy, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Criminal side). I have also perused the records carefully.

16.The learned counsel for the appellant submitted that there are lot of contradictions in the evidence adduced by the prosecution witnesses. The evidence given on the side of the prosecution did not connect the accused with the alleged crime. Without any evidence for connecting the accused with the crime and without any sufficient reason, the learned Sessions Judge convicted the accused, thereby, the conviction is liable to be set aside.

17.On other hand, the learned Government Advocate (Criminal side) submitted that the minor contradiction arises in the evidence adduced by the prosecution witness is not sufficient to disbelieve the case of prosecution.

18.I have considered the rival submissions made on either side and perused the records carefully.

19.According to the evidence given by P.W.1 to P.W.4, they have not stated anything about the motive between the accused and the deceased and also with regard to the occurrence. According to them, after hearing the news, they went to the scene of occurrence. So, they are unaware that the accused only committed the offence. However, P.W.5, the elder brother of the deceased has stated in his chief examination that a day before the date of occurrence, the deceased and the appellant jointly went to the work place, subsequently, in his cross examination he had stated that at the time of seeing the deceased, the appellant is not with the deceased. So, his evidence did not connect the accused with the crime. P.W.7 and P.W.8 are the witnesses attested in the observation and recovery mahazars prepared at the scene of occurrence. So their evidence is also not sufficient to hold that the accused committed the offence as alleged.

20.Even though P.W.11, who is the witness to the confession statement given by the accused supported the case of prosecution, his evidence alone is not sufficient to connect the accused with crime. P.W.13 has stated in his evidence that he arrested the accused and recorded the confession in the presence of P.W.10 and P.W.11, Further, he stated that only in their presence, he recovered the blood stained dresses through recovery mahazar.

21.In this connection, the learned counsel for the appellant submitted that the evidence given by P.W.11 is having lot of contradiction. So, the said evidence is not having any trust worthy.

22.On considering the submission of the learned counsel with the evidence recorded in the trial Court, P.W.11 has stated that the blood stained clothes were recovered from the appellant's hut.

23.On the other hand, P.W.13, investigation officer has stated in his evidence that the appellant is not having any hut. Further, he deposed that the property, which was identified by the appellant is not recovered from his house. So, automatically, the evidence given by P.W.11 loses credibility. Accordingly, the recovery of material objects through the appellant is also not proved beyond the reasonable doubt.

24.Even assuming the recovery is proved, that alone has not been taken into account to accept the guilt of the appellant. In this regard, reliance is placed on the decision in Mustkeem

alias Sirajudeen v. State of Rajasthan (AIR 2011 SCC 2769), in which, paragraph No.27 reads as follows:

"With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution."

25.It is also useful to extract the relevant portion in the decision in N.Baskar vs. State, rep. by the Inspector of Police Kurumbur Police Station, Tuticorin (2008 [2] TLNJ 618 [criminal]):

"In a case of this nature, where there is no eye witness and the matter rests on the circumstantial evidence, such evidence must satisfy the following tests:

(i)the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii)those circumstances should be a definite tendency unerringly pointing towards guilt of the accused;

(iii)the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv)the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

26. Accordingly, the discovery of the material object at the instance of disclosure statement made by the accused alone would not automatically lead to the conclusion that the appellant has committed the offence. Therefore, the evidence given by P.W.11 is not sufficient to hold that the case of the prosecution is true one.

27. In the said circumstances, with the available materials on the side of the prosecution particularly based on the evidence given by P.W.9, who is the Doctor, conducted post-mortem and upon the evidence given by the investigating officer convicting the accused is not justifiable one. In this case, absolutely there is no evidence from the prosecution to connect the accused with the alleged crime. Apart from that, all the witnesses examined on the side of the prosecution, did not say anything about the involvement of the appellant in the alleged crime.

28. In the above circumstances, the learned Sessions Judge without considering the entire evidence, put forth by the prosecution came to the conclusion and convicted the appellant without any platform. So, the finding arrived at by the trial Court is liable to be set aside.

29. In the result, the appeal is allowed. The conviction and sentence imposed upon the appellant under the judgment dated 31.07.2012 in S.C.No.71 of 2010 on the file of the learned Sessions Judge, District Sessions Court No.II, Kancheepuram is set aside. The accused is acquitted of the charge under Section 304(i) IPC. The bail bond, if any, executed by him shall stand cancelled.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Sessions Judge,
District Sessions Court No.II,
Kancheepuram.

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2. The Judicial Magistrate No.I,
Kancheepuram.
3. The Cheif Judicial Magistrate,
Chengalpattu.
4. The Superintendent,
Central Prison, Vellore.
5. The Inspector of Police,
Siva Kanchi Police Station,
Kancheepuram.
- 6.The Public Prosecutor,
High Court, Madras.

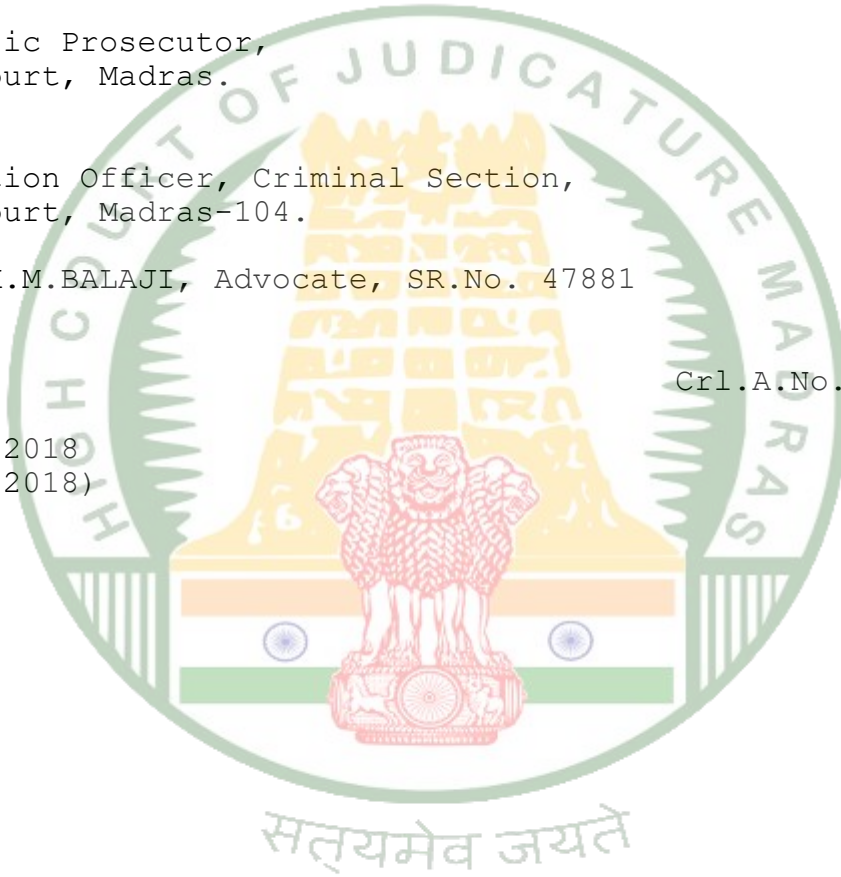
Copy To:

The Section Officer, Criminal Section,
High Court, Madras-104.

+1 cc Mr.K.M.BALAJI, Advocate, SR.No. 47881

Crl.A.No.527 of 2012

PVS (CO)
CSL/22.10.2018
ASK(30/10/2018)



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