

BAIL SLIP

The appellants herein viz., 1. Thangadurai 2. Kasthuri & 3. Sivaraj/ Accused in SC No.61/2010 on the file of the I Additional District and Sessions Judge, Salem, were directed to be released on bail, as per order of the court dated 02.11.2012 made in MP.1/12 in CRL A.776/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.776 of 2012

1.Thangadurai

2.Kasthuri

3.Sivaraj

... Appellants

Vs

State rep. by
Inspector of Police,
Edapadi Police Station,
Salem District.

... Respondent

Criminal Appeal filed against the judgment dated 09.10.2012 passed in S.C.No.61 of 2010 by the learned I Additional District and Sessions Judge, Salem.

For Appellants : Mr.K.V.Sridharan

For Respondent : Mr.M.Prabhavathi Ganeshram,
Addl. Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment, dated 09.10.2012, made in S.C.No.61 of 2010 on the file of the I Additional District and Sessions Judge, Salem, convicting A1 and A3 for the offence under Section 325 of IPC and sentenced to undergo RI for 3 years and to pay a fine of Rs.5,000/- with default clause and convicting A2 for the offences under Sections 325 r/w 34 of IPC and sentenced to undergo 3 years RI and to pay a fine of Rs.5,000/- with default clause and convicting A1 to A3 for the offence under Section 201 of IPC and sentenced to undergo RI for 2 years and to pay a fine of

Rs.5,000/- with default clause.

2.The Inspector of Police, Edappadi Police Station laid charge sheet against A1 to A3 alleging that A1, who married the deceased Jayadevi @ Mangayarkarasi, due to enmity with the deceased for non co-operation of marital life, on 02.10.2009 at 11.45 a.m., in the house of A1 along with A2 and A3 with a common intention to murder her, A1 slapped her indiscriminately on both sides of her head and she died on the spot. After the death, all the three accused with an intention to screen themselves from legal punishment, by pouring kerosene over the body of the deceased set fire to it so as to appear as it is a case of suicide and there by A1 committed offences under Sections 302 and 201 of IPC and A2 and A3 under Sections 302 r/w 34 and 201 of IPC.

3.The learned Judicial Magistrate-II, Sankari, after furnishing copies to the accused, committed the case to the Court of Sessions and the Principal Sessions Judge, Salem, made over the case to the I Additional District Court for trial. The I Additional District Court framed charges against the accused and questioned them. Since the accused pleaded not guilty, they were put on trial.

4.On the side of the prosecution, 17 witnesses were examined and 17 Material Objects marked.

5.The incriminating evidence were put to the accused under Section 313[1][b] of Cr.P.C. and they denied the same.

6.On the side of the accused, 1 witness was examined and 6 exhibits were marked. A true copy of the telegram dated 05.10.2009 was also marked as Ex.C1.

7.The deceased Jayadevi @ Mangayarkarasi was married to A1 on 23.08.2009. She was not consenting for marital life, after marriage. A1 and his relatives informed the same to the parents of the deceased and the parents took the deceased Jayadevi @ Mangayarkarasi to the Psychiatrist and also gave counselling to her. After that, she was again taken to the matrimonial home. On 02.10.2009, on hearing the alarm made by A2, P.W.4 came out from her sister's house, which is adjacent to the scene of crime and went inside the house of A1. He saw the deceased lying with burn injuries and flame was on her body. He along with others doused the fire. On getting information about the death, P.W.s 1 to 3 came to the scene of crime and after seeing the dead body, P.W.1 got suspicion over the death. He went to the Police Station and lodged a complaint at 8.00 p.m. On the basis of the complaint, a case was registered in Crime No.792 of 2009 under Section 174 of Cr.P.C.

8.P.W.11-Revenue Divisional Officer, Sankari went to the spot and conducted inquest in the presence of the panchayatars and prepared inquest report. Then, he sent the body to the Government Mohan Kumaramangalam Medical College Hospital, Salem for postmortem. P.W.s 14 and 16-the Doctors conducted autopsy and found the following injuries:

"FOLLOWING ANTEMORTEM INJURIES ARE SEEN :

A] Contusion over left side cheek M-3.5 x 3 x 0.25 Cms and it is pale red in colour.

B] Dermo epidermal burns with underlying dermis shows yellowish area with blisters seen over scalp, whole face including ears, upper limb including hand and lower limb including foot.

3rd degree burns over front of right side upper part of chest and right arm. Lateral wall of right side of chest, lateral wall of right side abdomen and back of lateral wall of right side thorax, abdomen, right side gluteal region no inflammatory changes and it is light yellowish in colour burns are postmortem.

External genitalia and perineum intact axillary hair since pubic hair since [postmortem] no other external injuries seen on the body.

OTHER FINDINGS :

O/D HEAD : Scalp contusion over left side fronto temporo region M-8 x 4 x 0.25 Cms dural membranes and cranial vault intact, brain CS congested, base of skull - intact.

O/D NECK : Spine : Sub luxation with contusion over C1 and C2 cervical vertebrae with pre and para vertebral muscle contused O/D contusion over the underlying spinal cord hyoid bone - intact.

O/D THORAX : No rib fracture lungs C/S congested Heart Normal in size chambers contained minimal fluid blood. Myocardium normal coronaries patent.

O/D ABDOMEN : Stomach contains 120 ml of brown coloured fluid with no specific small mucosa C/s. congested liver, spleen and kidney C/s congested bladder - empty genitalia - No injuries made out pelvis and spinal column intact."

9.P.W.15-Deputy Superintendent of Police, Sankari went to the scene of crime at 9.00 a.m. on 03.10.2009 and prepared Observation Mahazar-Ex.P2, Rough Sketch-Ex.P21 and also seized Material Objects viz. burnt matchstick etc. P.W.17-

Inspector of Police continued the investigation and recorded the statements of witnesses. On 08.10.2009, A1 and A2 surrendered before the Tahsildar and gave Extra judicial Confession before him. On receipt of intimation about the surrender, the Investigating Officer went to the office of the Tahsildar-P.W.9

and arrested A1 and A2. He also got the Extra judicial Confession statement recorded by the Tahsildar. Then, he altered the Sections and sent the alteration report. A1 and A2 gave confession statement before the Investigating Officer and pursuant to the confession, he recovered plastic can with kerosene, gunny bag, etc. and he sent the properties to the Court. On 25.10.2009, A3 surrendered and gave Extra judicial Confession before the Village Administrative Officer. A3 was arrested by the Investigating Officer and he also recorded the confession statement voluntarily given by A3. Pursuant to the confession, A3 handed over the gold chains-M.O.s 14 and 15 from the back side of his house and the same has been recovered. After that, Investigating Officer sent the accused to the Court for remand. After examination of witnesses, charge sheet was laid.

10.The trial Court, after analysing the evidence, convicted the three accused as aforesaid.

11.The learned counsel for the appellants argued that the trial Court is not correct in convicting the accused, when there is absolutely no evidence to connect the accused with the crime. The trial Court, has gravely omitted to note Ex.C1, which is the copy of telegram marked through the Head Clerk of the Judicial Magistrate Court, bearing information about taking them into police custody. It is further argued that in the light of the telegram, the alleged Extra judicial Confession has to be construed as concocted for the purpose of the case. It is further argued that there is no evidence, even to show that A1 to A3 were with the deceased at the time of occurrence and therefore, the accused are entitled to be acquitted by giving the benefit of doubt.

12.The learned Additional Public Prosecutor appearing for the State has astonishingly argued that the Extra judicial Confession given by A1 and A2 before the Tahsildar and A3 before the Village Administrative Officer, though given after some days, they cannot be brushed aside considering the entire circumstances along with the medical evidence. It is further argued that the trial Court, after analysing the evidence of both sides, has rightly found the appellants guilty and convicted them and the same does not require any interference.

13.There is no dispute about the marriage between the deceased A2 and the misunderstanding between the spouses, due to non co-operation of the deceased for marital life. Even A1 admits the same, when he was questioned under Section 313[1][b] of Cr.P.C. P.W.s 1 to 3, kith and kin of the deceased are not eye-witnesses. They speak about the marriage and subsequent event as to the non co-operation of the deceased

for cohabitation and suspicion over the death.

14.P.W.4, who came out of the adjacent house, on hearing the alarm of A2 has deposed that A2 standing outside the house of A1, shouted that the deceased set fire on her inside the house. He further says, when he went inside along with others, saw the deceased with burns and there was flame on her body and he doused the same. Therefore, his evidence is also not helpful to establish the charges levelled against the accused. His evidence is very clear that A2 shouted standing outside the house. There is no evidence to show that anyone saw the deceased lastly in the house either with A2 or with other accused.

15.The Doctors, who conducted autopsy have been examined as P.W.s 14 and 16. According to their evidence, burn injuries have been caused subsequent to the death and the deceased died, due to injuries over C1 and C2 cervical vertebrae. Therefore, it is very clear that death has been caused due to the above injuries. It is for the prosecution to establish that those injuries have been caused by the accused either by direct evidence or through circumstantial evidence. As already pointed out, there is no direct evidence. There is also no evidence barring Extra judicial Confession, even to show that A1 to A3 were along with the deceased in the occurrence house at the time of occurrence.

16.Extra judicial Confession stated to have been made by A1 and A2 before the Tahsildar and A3 before the Village Administrative Officer do not inspire confidence to rely upon the same for the following reasons:

- 1.The occurrence took place on 02.10.2009. Extra judicial Confession of A1 and A2 were stated to be given to Tahsildar on 08.10.2009. A telegram was sent to the Judicial Magistrate, informing that A1 and A2 were taken by the police on 02.10.2009 as could be seen from Ex.D1. Considering the delay and above said telegram, the genuineness of the Extra judicial Confession is highly doubtful.
- 2.It is also to be noted that the reason, which prompted the accused to give Extra judicial Confession by A1 and A2 before the Tahsildar is not given.
- 3.The Extra judicial Confession said to have been given by A3 is also after about 23 days.
- 4.The above Extra judicial Confession statements of A1 to A3 are not supported by cogent circumstances.

Therefore, the above confession statements alleged to have been given by the accused 1 to 3 cannot be relied upon and the conviction cannot be based on these Extra judicial Confession statements alone.

17.For the aforesaid reasons, the appellants/accused are entitled to the benefit of doubt and the accused are not found guilty for the offence charged against them and they are acquitted.

18.In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused by the learned I Additional District and Sessions Judge, Salem in S.C.No.61 of 2010, dated 09.10.2012, is set aside and the appellants/accused are acquitted from the charges. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/accused, shall stand cancelled.

Sd/-

Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

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TO

1. I ADDITIONAL DISTRICT AND SESSIONS COURT,
SALEM.

2. THE INSPECTOR OF POLICE,
EDAPADI POLICE STATION, SALEM DISTRICT.

3. THE PUBLIC PROSECUTOR HIGH COURT, MADRAS.

4. THE SECTION OFFICER, CRIMINAL SECTION, HIGH COURT, MADRAS.

5. THE JUDICIAL MAGISTRATE - II, SALEM.

6. THE SUPERINTENDENT OF CENTRAL PRISON, SALEM.

+1cc to Mr.K.V.SRIDHARAN, Advocate, S.R.No. 24701

Crl. Appeal No.776 of 2012

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TR(18/04/2018)

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