

Bail Slip

The Accused namely Stellamary, D/o. Subanbabu, was released on bail as per the order of this court made in M.P.1/2012 in Crl.A.857/2012, dated 6.2.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.857 of 2012

Stellamary

... Appellant/Accused

Vs

The State Rep. by its
The Inspector of Police,
Velankanni Police Station,
Nagapattinam District.
Crime No.332 of 2008

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed upon the appellant by the learned Sessions Judge, Nagappattinam, dated 24.07.2012 in S.C.No.12 of 2010.

For Appellant : Ms.Greetha Senthilkumar

For Respondent : Ms.T.P.Savitha

Government Advocate (Crl.side)

J U D G M E N T

The appellant herein is the sole accused in S.C.No.12 of 2010 on the file of the learned Sessions Judge, Nagappattinam. She preferred this appeal against the conviction and sentence awarded to her.

2. In the trial Court, the learned trial Judge came to the conclusion that the appellant is guilty of the offence under Section 304(Part I) IPC and awarded sentence to undergo seven years Rigorous imprisonment with fine of Rs.500/- i/d to undergo two years Rigorous imprisonment. Further, he awarded two years

Rigorous imprisonment with fine of Rs.200/- i/d to undergo further period of six months for the offence under Section 404 IPC

3. The case of the prosecution is that prior to the occurrence, the deceased Selva @ Selvaraj, who served as a Priest of Roman Catholic Church at Muthupet, had intimacy with the accused who was the resident of Trichy. The deceased had continued his intimacy in calling the accused through her cell phone No.94486646490. Due to such intimacy with the accused, on 05.10.2018, the deceased brought her to Velankanni and made arrangement for staying her in Room No.53 in the Little Flower Pilgrims Quarters. During the said period, the deceased stayed in Room No.36 of Priest Quarters, Velankanni. But on 05.10.2008, when the deceased stayed in room No.53, the deceased made promise to marry the appellant and had sexual intercourse with her. But on the next day, the deceased refused to marry her. Thereby, the appellant got angry and had intention to murder the deceased for which she suddenly attacked on the Chest of the deceased. Due to the push made by the appellant, the deceased fell down and died with head injury. The appellant/accused immediately took two cell phones and cash of Rs.350/- from the dead body of the said Priest Selva @ Selvaraj and fled away by locking the Room No.53 of Little Flower Pilgrims Quarters, Velankanni.

3.1. On 08.10.2008, from the locked room a bad smell was emanated. The authorities concerned in the Little Flower Pilgrims Quarters opened Room No.53 and found the dead body of the deceased inside the bathroom without any dress. Thereafter, a complaint had been lodged by the one staff of the above said Pilgrims Quarters namely Sthanislas (died) under Ex.P.14. After receiving the complaint, a case has been registered under Section 174 Cr.P.C.

3.2. P.W.23 the Inspector of Police took investigation and visited the scene of occurrence. He prepared Observation Mahazar and Rough Sketch in the presence of witnesses Michael and Anthony Arockiyadoss. He also conducted inquest on the dead body of the deceased Priest Selva @ Selvaraj and prepared inquest report under Ex.P.16. Further P.W.21 Head Constable of Velankanni Police Station was directed by P.W.23 to hand over the dead body to the Government Hospital, Nagapattinam. After getting requisition from P.W.23, P.W.7, who is the Doctor attached with the Government Hospital, Nagapattinam conducted Post mortem over the dead body of the deceased Priest Selva @ Selvaraj and found the following injuries, further he gave opinion as follows :-

"A male body lies on its back.
Rigor Motris absent. Offensive Odour present.

Peeling of cuticle present softening of eye balls. Eyelids open-bulged. Hands are empty. Internal Examination:-

Thorax - No fracture ribs. Heart 200 grams c/s congested no clots. Lungs right 450 grams left 400 grams c/s congested.

Abdomen - Distended stomach empty. Liver 1500 grams c/s congested. Spleen 200 grams c/s - congested. Kidney each 150 grams c/s congested. Intestine filled with gas. Bladder empty. Head - Haematoma beneath the scalp in left temporal region 8X6 cm. No fracture skull. Membranes intact. Brain 1300 grams c/s liquefactive necrosis. Spinal Column - No fracture. Specimen sent for chemical analysis. The deceased would appear to have pending chemical analysis report. The death would have occurred prior to 48 hours. Opinion to cause of death :-

In view of highly decomposed state of body, no definite cause of death could be given. Negative chemical analysis rules out poison. In view of the statement of investigating Officer that the door was locked outside and the presence of sub scalp haematoma it is not possible to exclude the homicidal element for the cause of death."

3.3. Thereafter, P.W.23 seized M.O.4 to 31 from Room No.53 under Ex.P.21 and M.O.32 to 33 under Ex.P.22 mahazar. After recovery, the material objects were sent to the Court for the purpose of chemical examination. Thereafter, P.W.23 handed over the case records to P.W.24, the Inspector of Police, Velankanni for further investigation. In continuation of investigation, on 09.10.2008, P.W.24 examined the witnesses and gave requisition to the Court for sending case material objects for chemical analysis. Further he also sent a letter to B.S.N.L Officer concerned and sought for the telephonic calls made in the cell phone No.9443502888 of the deceased. He also enquired the whereabouts of the accused and the last call received from the cell phone No.9486646490 of the appellant/accused. On 18.10.2008, he seized the ledger and receipts from the Little Flower Pilgrim Quarters, Vellankanni under Ex.P.9, in the presence of witnesses Stanislas and P.W.18 Ganeshkumar.

3.4. After receiving the call details from the B.S.N.L. office, on 21.10.2008 at about 9.15 a.m., P.W.24, the Inspector of Police arrested the appellant near Velankanni bus stand in the presence of P.W.17 Gopalakrishnan, VAO and Rethinasamy. After arresting the appellant, he recorded the confession

statement from the accused. In continuation of investigation, he recovered M.O.1 to 3 from the accused ie., Cell phones - 2 Nos., room key and cash of Rs.350/-. Further he recovered the accused hair with comb M.O.17 under Ex.P.10 mahazar. Thereafter, P.W.24 prepared Ex.P.24 alteration report for the for the offence 302 and 404 IPC. Finally, P.W.24 recorded the statement of the Doctor, who conducted the autopsy and after completion of investigation, he laid charge sheet against the appellant for the offence punishable under Sections 302 and 404 IPC.

4. In the trial Court, 24 witnesses were examined on the side of the prosecution, besides 24 exhibits were marked as P.1 to P.24 and 33 material objects were marked as M.O.1 to M.O.33.

5. After concluding the trial, the learned District and Sessions Judge, Nagappatinam came to the conclusion that the appellant is guilty of the offence under Sections 302(1) and 404 IPC and awarded punishment as stated above. Against which, the appellant approached this Court by way of this appeal and prayed to set aside the conviction and sentence awarded on her.

6. Heard Ms.Greetha Senthilkumar, learned counsel appearing for the appellant and Ms.T.P.Savitha, learned Government Advocate (Crl.side) appearing for the State and perused the available records.

7. The first and foremost contention raised by the appellant is that during the time of investigation none of the witnesses have identified the accused, which is necessary to prove the case of the prosecution. Further he submits that the said lacuna creating reasonable suspicion over the case of the prosecution and accordingly, the order passed by the trial Court is liable to be set aside. Thus he prayed to allow this appeal.

8. On the other hand, the learned Government Advocate (Crl.Side) would submit that the evidence put forth by the prosecution before the trial Court had clearly proved the case beyond doubts and hence this appeal deserves to be dismissed.

9. Considering the submission made on either side, it appears that the trial Court had tackled the case with the circumstances materials. Before going into the merits and demerits of the case, it is necessary to see the judgment of this Court reported in "2008(2) TLNJ 618 Criminal Madras - N.Baskar Vs. The State rep. by The Inspector of Police, Kurumboor Police Station" in which this Court has held that for proving the case of prosecution by way of circumstantial evidence, cogency of the prosecution case is necessary.

10. According to the evidence of P.W.1, the dead body was found in room No.53. The other witnesses P.W.2 and P.W.3 deposed in the chief examination corroborating the evidence of P.W.1, but not stated anything about the identification of the dead body and they simply told that they did not know anything about in this case. P.W.4 and P.W.5, who are the witnesses to the recovery mahazar, also not supported to the case of the prosecution. According to the prosecution, they are present at the time when the properties were recovered from the scene of occurrence. P.W.6, the care taker/Priest for the room, in which the deceased and the accused have stayed, stated in his evidence that the deceased was not stayed in the room which actually allotted to him. Further he specifically told that in the register maintained for the Pilgrims, and in the bill, it was stated that in room No.53 on 05.10.2008, a sum of Rs.450/- was received as rent. Except the said evidence, he does not say anything about the joining of the deceased with the appellant. Only because of the reason that the appellant stayed in room No.53, we cannot come to the conclusion that the accused had committed the crime.

11. The other witness P.W.7 - Doctor, who conducted the autopsy on the deceased, stated in his cross examination that due to the blood pressure and also due to the diabetes, a person can fall down. Further he admitted that the injury, found on the forehead of the deceased, might have caused when he fell down on the floor. Apart from that, P.Ws.8 to 11 and 13, who were all treated as hostile witnesses, have not supported the case of the prosecution. The other witness examined as P.W.14 Saravana Sabarinathan, deposed that he alone handed over the hair of the appellant along with the requisition letter to the Forensic laboratory, for which, the P.W.15 the Deputy Director of Forensic Lab, at the time of chief examination, deposed that one Anbalagan had handed over the specimen hair of the appellant for the chemical examination. Further, as per the evidence of Investigating Officer, the said hair was recovered only in the Police Station and not from the scene of occurrence. Hence, the examination of hair is no way connected to the alleged occurrence.

12. The examination of P.W.16 and P.W.18 who are the witnesses to the recovery mahazar has also not supported the case of the prosecution. Only the witness P.W.17 gave evidence in support of the prosecution. According to him he was present at the time of recovering two cell phones, key and Rs.350/- from the appellant. Even though, he supported the case of the prosecution in chief examination, he stated in the cross examination that he signed the mahazar in the Police Station. Hence his evidence has also not supported the case of the prosecution.

13. Apart from the above witnesses, the remaining witnesses examined on the side of the prosecution are Police Officers, who deposed in a trial Court about the manner of registration of case and investigation conducted in this case. That evidences are not supported by the independent evidence. Thereby we cannot come to the conclusion that the appellant stayed with the deceased, before the occurrence.

14. More over, the opinion given by the Doctor is also confirmed that the death has not occurred due to the assault made by the human being. So it is true that the prosecution has not proved their case through the cogent evidence. No prosecution witness deposed that the appellant and the deceased were present in the same room. The trial Court without considering these aspects, convicted the accused is nothing but erroneous.

15. In the light of the above discussion, this Court is of the view that the finding arrived by the trial Court needs interference and the prosecution has not proved the case beyond the reasonable doubts. Hence the order passed by the trial Court is liable to be set aside and the criminal appeal deserves to be allowed.

16. In the result, the Criminal Appeal shall stand allowed. The conviction and sentence imposed by the learned Sessions Judge, Nagappattinam, dated 24.07.2012 in S.C.No.12 of 2010, are hereby set aside. The appellant/accused is acquitted of all charges. Fine amount if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any, executed shall stand cancelled.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

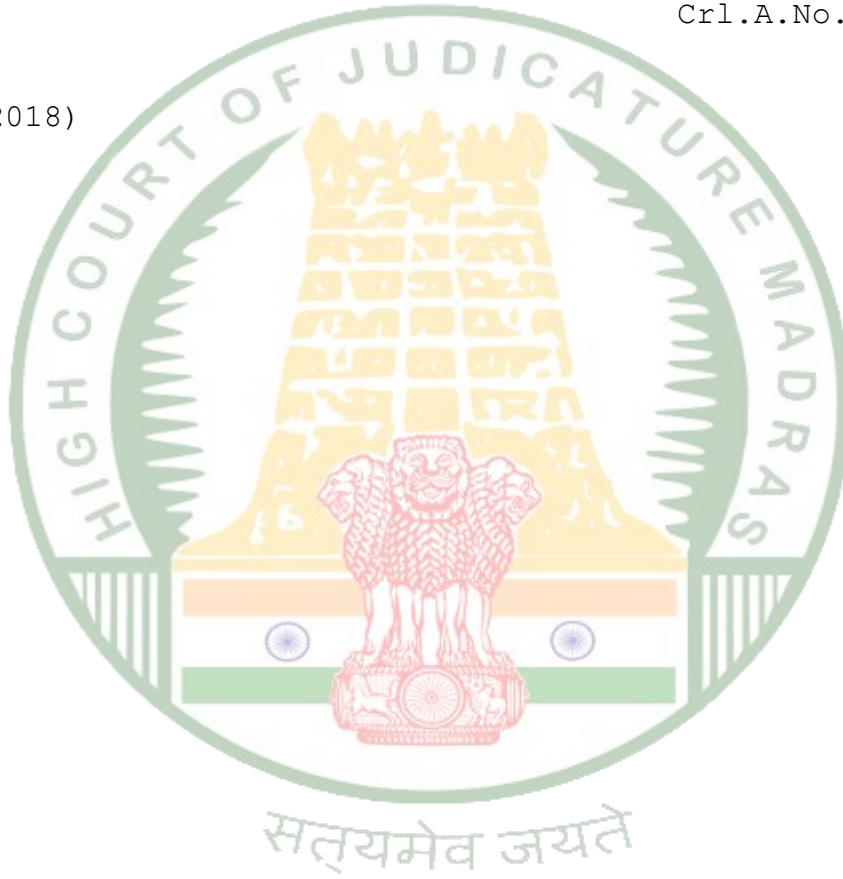
1. The Princia; District Judge,
Nagappatinam.
2. The Judicial Magistrate No.I, Nagapattinam.
3. The Chief Judicial Magistrate, Nagapattinam.
4. The Sessions Judge, Nagapattinam.

5. The Inspector of Police,
Velankannai Police Station,
Nagapattinam District.
6. The Superintendent, Central Prison, Trichy.
7. The Director of General Police, Mylapour.
8. The District Collector, Nagapattinam District.
9. The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s. T.P. Senthilkumar, Advocate Sr.38961

Crl.A.No.857 of 2012

NRI (CO)
EU(10/08/2018)



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