

Bail Slip

The Appellant/Accused namely Srinivasan S/O Munusamy was directed to be released on bail by the order of this Hon'ble Court dated 01/07/2014 made in CRL.A.No.906/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.906 of 2012

Srinivasan (Age 32/2012)

S/o Munusamy

Appellant / Single Accused

Vs

State by the Inspector of Police

B-7, Vellavelu Police Station

Thiruvallur District

(Crime No. 344/2007)

Respondent / Complainant

Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 06.12.2012 by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamalee in SC No.82 of 2010 and acquit the appellant.

For Appellant : Mr.E. Kannadasan and
Mr. M. Machavatharan

For Respondent : Mr. G. Ramar
Government Advocate

The appellant is the sole accused in SC No. 82 of 2010 on the file of the learned III Additional District and Sessions Judge, Thiruvallur at Poonamalee. He stood charged for the offence under Section 302 IPC. By a Judgment dated 06.12.2012, the trial Court convicted him under Section 304 Part I IPC and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.500/- in default to undergo 3 months rigorous imprisonment. Challenging the said conviction and sentence, the appellant is before this Court with this Appeal.

2) The Case of the prosecution in brief is as follows:-

The accused Srinivasan is the son-in-law of the

deceased Babu. PW 1 is his brother-in-law. PW2 Rajeshwari is the wife of the accused. PW 3 Samundeeswari is his mother-in-law. On 30.05.2004, the marriage of the accused is happened with PW 2. Subsequently after giving birth one female child, PW 2 came to her father's house and staying along with her parents. So, the accused came to the house of the deceased and requested him to send back his wife alongwith the child. But the deceased refused to send PW 2 by saying, the customs of the community is not permitted in sending PW 2 along with the newborn baby immediately within two months from the date of delivery. Infuriated by the denial of the deceased in sending PW 2, he developed enmity with his father in law and used to quarrel with him. Meanwhile, on 23.09.2007, evening hours, the accused had come to the house of the deceased and insisting him to send back his wife. But as usual, the deceased refused to send back her daughter. Finally, they made a quarrel with each other.

3) The said occurrence was witnessed by PW 1 to PW 3. During the time of quarrel, the elders of their family intervened and pacified them, but the quarrel between the accused and the deceased prolonged till late night and finally the accused left his father in law's house, since PW 1 was residing two streets away from his father's house, he went over to his house. On the next day morning, when PW 4 going to tea shop, the accused came from the opposite direction in a different manner. After seeing the accused, PW 4 questioned about the same, for that the accused replied as he finished Babu.

4) On the same day, PW 5 also met the deceased on 24.09.2007 at about 02.00 hours, in a street near to the deceased house and questioned the presence of the accused. For that he replied that he has proceeding to his native village. Subsequently, in the early morning at about 5 O'clock, PW 3 along with her daughter went to her husband's house and saw the deceased Babu is lying down on the floor with injuries on head, face and chest. Further, she saw a blood stained granite stone near Babu's dead body. Immediately the same was informed to Vellavedu Police Station. After knowing the said incident, PW 1 came to his father's house and after seeing his father, he went to Vellavedu Police Station and preferred a Complaint under Ex.P.1. Based on the complaint given by PW 1, PW 14 Tmt. Nagarathinam, the then Sub Inspector of Police, Vellavedu Police station registered a case in Cr.No.344/2007 under section 302 IPC. The complaint given by PW 1 is Ex. P.1. Ex.P.9 is the First Information Report. After the registration of the case, for investigation, she handed over the case records to PW 15. On receipt of the First Information Report, PW 15 the then Inspector of Police came to the scene of occurrence at about 8.45 hours and in the presence of PW 6 Balu and one Kandavel, he prepared Observation Mahazar under Ex.P.2. Further he draw a

Rough Sketch under Ex.P.10. Further, in the presence of the same witnesses, he had seized M.O.1 a rectangular Granite Stone, M.O.2 Cement Plaster piece, M.O.3 another Cement Plaster piece under the cover of Seizer Mahazar.

5) In continuance of investigation, PW15 examined the witnesses and prepared the Inquest Report under Ex.P.11. He entrusted the body with PW 12 Head Constable Raghupathy to produce the same before the Doctor for conducting Autopsy. Further he gave requisition Letter to the Doctor through him for conducting Autopsy.

6) PW 13 Dr. Kuppusamy, after receiving the requisition Letter given by PW 15, conducted Postmortem over the body of the deceased Babu and the extract of the Post Mortem Certificate is as follows.

- Brown colour abrasions with irregular margins seen on the following areas. Right side cheek and neck measuring 11 cm in length and 14 cm in breadth.
- On right temporal region measuring 10 cm in length and 9 cm in breadth
- On the right side chest wall anteriorly measuring 1cm in length and 1 cm in breadth
- On the left side Hip measuring 10 cm in length and 1 cm in breadth
- On the left loin measuring 6 cm in length and 1 cm in breadth
- Another abrasion seen on the outer aspect of the left forearm measuring 2cm in length and 1 cm in breadth
- There is fracture of nasal bone seen.
- There is fracture of mandible on the left side seen
- There is fracture of sternum at the level of 4th rib seen
- There is fracture of both clavicles seen
- There is contusion with blood clot seen on the soft tissue of right side neck and chest anteriorly
- There is fracture of all ribs on both sides on mid axillary line
- There is collection of blood in the thorax is about 700 ml
- There is blood clots seen in the mesentery and omentum of abdomen.
- Dissection of Thorax and Abdomen continued
- Larynx and Trachea normal and empty. Stomach 100 ml. Of brown colour fluid present
- Lungs: Contusion with blood clots and laceration seen on both lungs apex
- Heart, liver, kidneys and spleen normal. C/s congested. Intestine and bladder empty. Pelvis and spinal cord intact. Dissection of scalp skull and membrane intact.
- Brain normal c/s congested.

Finally, he gave opinion that the deceased would appear to have

died of shock and heamorrhage due to multiple injuries and issued Ex.P.13 Post Mortem Certificate to that effect. Thereafter, PW15 sent requisition to the Judicial Magistrate concerned for sending M.O.1 to M.O.4 for chemical examination.

7) On receipt of the Letter issued by the Magistrate, PW 11 Kamala Krishnamurthy, Assistant Director, Tamilnadu Forensic Department, examined M.O.1 to M.O.4 and found that the blood stains found on the above items are A Group and the Biological Report is marked as Ex.P.5. Serological Reports are marked as Ex.P.6 and Ex.P.7.

8) On 25.09.2007, at a tea shop near Manavala Nagar, in the presence of PW 9 and PW 10, PW 15 arrested the accused, and recorded the confession statement given by him. In the confession statement, he admitted the guilt and he identified the M.O.1 by saying that the said M.O.1 is used for committing the offence. By recording the above statement, PW 15 closed the investigation and filed the Final Report under section 302 IPC.

9) Based on the above materials, the Trial Court framed the charges against the accused and he denied the same. In order to prove the case on the side of the prosecution, as many as 15 witnesses were examined as PW 1 to PW 15 and 11 documents were marked as Ex.P1 to Ex.P.11. Besides that, 4 Material objects.

10) Out of the said witnesses, PW 1 to PW 3, who are the close relatives of the deceased had stated in their evidence about the marriage of PW 2 happened with the accused. They have further stated that after giving birth to one female child, PW 2 remains in her parents house, the accused repeatedly came requested the deceased for sending PW 2 to his house. All of the them stated in their evidence that on the fateful day, till 23.09.2007 mid night, the accused quarreled with the deceased demanding to send back the PW 2 to his house and thereafter the accused left the place and all of them were went for sleeping. PW 4 Ramu and PW 5 Selvam also corroborating the evidence of PW 1 to PW 3 and stated in their evidence about the quarrel happened yesterday night. Further PW 4 has stated in his chief examination that on the next day morning, the accused was came from the deceased house. PW 5 has also supported the evidence given by PW 4.

11) PW 6 is the resident of the same village has deposed that on 24.09.2007 in the night hours, Investigating Officer (PW 15) came to the house of the deceased and prepared an Observation Mahazar and Rough Sketch. Further he has stated that in his presence M.O.1 to M.O.4 were recovered by PW 15 under the cover of Mahazar. PW 7 is the neighbor stated in the trial Court that after knowing the occurrence, he went to the scene of occurrence. PW 8 also stated in the trial Court that as

he came to the scene of occurrence after hearing about the incident through some other persons. PW 9 and PW 10 are the independent witnesses stated in their evidence that as on 23.09.2007 at about 7.00 am, they identified the accused to the Investigating Officer. Further they stated about the recording of confession statement given by the accused.

12) PW 11 is the Chemical Examiner, Madras Forensic Science Laboratory has stated in his evidence about the examination of M.O.1 to M.O.4. According to him, the blood group found in the said objects are Group A. PW 12 is the head constable has stated about the handing over the dead body to the Doctor. PW 13 Dr. Kuppusamy, Doctor of Kilpauk Medical College Hospital has stated in his evidence about the process of postmortem conducted by him and he further stated about the injuries sustained by the deceased. Finally, he issued Post Mortem Certificate along with final opinion. PW 14 and PW 15 are the Police officials have stated in the Trial Court about the receiving of complaint, registration of the case, details of investigation conducted and filing of the Final Report in the Trial Court.

13) The learned trial Judge, with reference to the above incriminating evidence adduced by the prosecution, questioned the accused under section 313 Cr.P.C. and for which, he pleaded not guilty. However he did not chose to examine any witness, nor to mark any documents on his side.

14) The learned trial Judge on perusal of the materials placed and considering the arguments advanced on both sides, convicted and sentenced the appellant / accused as stated supra and challenging the same, the present appeal has been filed.

15) I have heard. Mr.E. Kannadasan and Mr. M. Machavatharan, learned Counsels for the appellant, Mr. G. Ramar, learned Government Advocate for the respondent and perused the records carefully.

16) The learned counsel for the appellant would contend that the evidence given by PW 1 to PW 15 are having lot of contradictions and not in far to connect the accused with the alleged crime. Further he submit that recovering the material objects alone not sufficient to prove the guilt of the accused beyond all reasonable doubts.

17) On the other hand, the learned counsel appearing for the Respondent making the submission that the Judgment rendered by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamalee is well considered one. Further, she submitted interference is not necessary in this

case.

18) I have considered the rival submissions made on either side.

19) Admittedly, the trial Court has attempted to prove their case through the circumstantial evidence. Even though, the alleged offence is happened inside the house of PW 1, no eye witness was cited and examined in the trial court to prove the guilt of the accused.

20) In the said circumstances, Reliance is placed in the Judgment reported in 2008(2) TLNJ Page 618, in which it was observed as follows.

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 of 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 the 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"

So considering the principle already laid down by this Court, there must be cogency, tangible evidence of prosecution is necessary for believing the case of the prosecution. In the said circumstances, according to the evidence given by PW 1 to PW 3, the accused left the place of occurrence between 11.00 to 12.00 hours on 23.09.2007. They are specifically stated only in the early morning, they found that the dead body of the deceased Babu is lying over in the room with multiple injuries. Thereafter PW 4 and PW 5 who are the neighbours to PW 1 supported the case of the prosecution.

21) According to PW 4, upto 12 O'clock mid night, the deceased and the accused had a quarrel with each other. But in his cross examination, he stated that he saw the accused in the early morning 4 O'clock in a way to Tea Shop. In the same way, PW 5 had also stated in his cross examination that on the next day early morning 2 O'clock, he saw the accused. Further more PW

5 has stated that on 23.07.2009, after 9.30 hours itself, he left the village and went to his regular work. Apart from the said evidence, nothing has not been stated by PW 4 and PW 5 about the presence of accused with the deceased. Mere seeing the accused in the road side is not a sufficient ground to presume that the accused had committed the murder. So the evidence of PW 4 and PW 5 is not sufficient and convincing evidence to connect the accused with the alleged crime. Accordingly, through the said evidences, the prosecution did not prove the connectivity of the accused with the alleged offence. Another independent witness examined in the trial Court on the side of the prosecution is PW 6, he merely has stated in his evidence about the recovery of material objects and in respect of the preparation of Observation Mahazar. Hence, his evidence is also not sufficient to connect the accused with crime. PW 7 and PW 8 are the neighbors, who went to the scene of occurrence only after hearing the news.

22) Finally, PW 9 Mohan has stated in his evidence about the arrest of the accused, his evidence was mainly with regard to the confession statement given by the accused. Admittedly, in the confession statement given by the accused before the Police Officer, nothing was disclosed by the accused. As all are aware that, confession before the Police officer without any recovery is not admissible in evidence. So the evidence given by PW 7 to PW 10 are also not relevant to connect the accused with the crime.

23) The remaining witnesses in this case are PW 11 to PW 15. According to the evidence given by Chemical Examiner, the blood stains found in M.O.1 to M.O.4 belongs to A Group. However, as per the evidence given by PW 4, the material Objects M.O.1 to M.O.4 are all recovered only in the scene of occurrence by the Investigating Officer. Apart from that, nothing was recovered from the accused and hence, in order to connect the accused with the alleged offence, the result of the chemical examination in respect to the blood stains found in the M.O.1 to M.O.4 are also not sufficient. Accordingly, the Investigating officer, without applying his mind and without knowing the Criminal Law, done the investigation in this case. Further it is to be noted that the manner of investigation conducted by PW 15 shows that he is not having a least knowledge with regard to the investigation and the said aspect shows that he is liable for disciplinary enquiry.

24) In respect to the remaining witnesses examined in this case are official witnesses. PW 12 has stated in his evidence about the arrangements made for postmortem. PW 13 Doctor says about the injury sustained by the deceased and PW 14 and PW 15 are the Investigating Officers. Thereby, absolutely no

evidence is available and none of the witness has stated about the role of the accused played by him in the crime, and in a way to connect the accused with the alleged offence. In the said circumstances, the trial Court without considering the said aspects, convicted the accused is nothing but erroneous. So findings arrived by the Trial Court needs interference. Therefore, in view of the above discussions, this Court comes to the conclusion that the prosecution is not proved the case beyond all reasonable doubt. Accordingly, the appeal is allowed and the conviction and sentence imposed upon the appellant by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamalee in SC No.82 of 2010 dated 06.12.2012 is hereby set aside and the appellant is acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
B-7 Vellavedu Police Station
Thiruvallur District

2.The III Additional District and Sessions Judge,
Poonamalee.

3.The Judicial Magistrate No,II
Poonamalee.

4.The Public Prosecutor,
High Court, Madras.

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+1cc to Mr.E.Kannadasan, Advocate, S.R.No.53292

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CrI.A.No.906 of 2012

SS(CO)
GSP(25/09/2018)