

BAIL SLIP

The Appellant / Accused namely Govindaraj, S/o.Palanisamy, aged 38 years was directed to be released on bail as per order of this Honourable Court date 21.03.2014 in Crl.M.P.No.1 of 2014 in Crl.A.157 of 2014 on the file of this Honourable High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH
Crl.A.No.157 of 2014

Govindaraj

Appellant / Accused

Vs.

State represented by
The Inspector of Police
Dharmapuri Town Police Station

Respondent / Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment of conviction passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Dharmapuri, dated 13.02.2014.

For Appellant : Mr.C.R.Malarvannan

For Respondent : Mrs.Kritika Kamal, P.
Govt. Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been preferred against the judgment of conviction dated 13.02.2014 passed in S.C.No.116 of 2012 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Dharmapuri.

2. On Sunday, 11.07.2010, around 9.00 p.m., Vijayalakshmi was found dead in her house and on the written complaint [Ex.P.1] lodged by her brother Ganesan [P.W.1], Jaganathan [P.W.11], Special Sub-Inspector of Police, registered a case in Cr.No.1095 of 2010 on 11.07.2010 at 23.00 hrs under Section 302 IPC against the appellant and prepared the printed FIR [Ex.P.7]. The complaint [Ex.P.1] and the printed FIR [Ex.P.7] reached the jurisdictional Magistrate at 12.30 midnight on the same day, as could be seen from the endorsement thereon. Investigation of the case was taken over by Jaganathan [P.W.12] (incidentally P.W.11 and P.W.12 bear the same name) and went to the place of occurrence at 1.30 a.m. on 12.07.2010 and prepared the Observation Mahazar [Ex.P.2] in the presence of two witnesses, viz., S.Perumal [P.W.4] and one Manickam [Not Examined]. He

also prepared a Rough Sketch [Ex.P.8]. In the presence of panchayatdars, he conducted inquest over the body of the deceased and prepared the Inquest Report [Ex.P.9]. Thereafter, he despatched the body through Gokulan [P.W.9] Head Constable, to the Government Hospital, Dharmapuri for post-mortem. There, Dr.Siva [P.W.6] conducted autopsy and sent the viscera and hyoid bone to the Tamil Nadu Forensic Science Laboratory for report. After receiving the reports, viz. Exs.P.5 and P.6, he issued the Post-mortem Certificate [Ex.P.4], wherein, he has noted the following:

"Appearances found at the post-mortem: A body of female lying on its back. Arms by the side. Eyes and mouth closed. RM present in all four limbs. Teeth

8	8
8	8

External injuries:

(1) A black colored rope mark around the neck about 34 cm x 0.5 cm size left lateral and posterior aspect of neck

(2) 10 x 10 cm contusion over right parietal frontal region

(3) 4 x 1 cm abrasion over left lower jaw

(4) 5 x 2 cm contusion over right wrist region

(5) 5 x 2 cm contusion over suprasternal region

Internal Examination:

Hyoid Bone: Left side arm fractured. Trachea - Haematoma present 2nd, 3rd, 4th tracheal rings fractured. Both ribs-normal. Heart-chambers empty, congested. Both lungs congested. Stomach contains 100 gm of partially digested rice particles. Liver, Spleen, kidneys normal in size, congested. Uterus - empty normal size. Urinary bladder empty. Skull- Haematoma present over right temporal parietal, occipital region (subgaleal). Vaults normal. Meninges in tact. Brain diffuse. Blood clot present in temporo parietal region.

The following viscera are preserved for chemical analysis. (1) Liver (2) Kidney (3) Stomach intestine with contusion (4) Hyoid bone with rope mark skin. ..

Opinion : The deceased would appear to have been died at about 12-16 hours prior to autopsy. Cause of death reserved pending for chemical analysis report."

In his evidence as well in the Post-mortem Certificate, he has

given the following final opinion:

"Final opinion: The deceased would appear to have died at about 12 to 16 hours prior to autopsy. Cause of death due to asphyxia due to strangulation."

3. After autopsy, the body was handed over to the relatives of Gokulan [P.W.9] Head Constable, for disposal, in accordance with their custom. Investigation was continued by Jaganathan [P.W.12] who arrested the appellant on 12.07.2010 in the presence of Chinnaamy [P.W.5] and Muthu [Not Examined] and recorded his confession statement. There was no recovery pursuant to the confession. The appellant was produced before the jurisdictional Magistrate for judicial custody. After examining various witnesses, including the Post-mortem Doctor and others, Jaganathan [P.W.12] laid the final report on 03.02.2011 before the Judicial Magistrate-I, Dharmapuri, which was taken on file as P.R.C. No.17 of 2011. On the appearance of the appellant, he was furnished with the relied upon documents under Section 207 Cr.P.C. and the same was committed to the Court of Session, wherein, it was taken on file as S.C.No.116 of 2012.

4. It is the case of the prosecution that the appellant was having an affair with the deceased and that on account of quarrel, he is said to have strangled her on 11.07.2010 around 9.00 p.m., resulting in her death. When questioned, the appellant denied the charge. To prove the case, the prosecution examined 12 witnesses and marked 11 exhibits. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the appellant, no witness was examined nor any document marked.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 13.02.2014, has convicted the accused for the offence under Section 304(i) IPC and has sentenced him to undergo 7 years Rigorous Imprisonment and pay a fine of Rs.5,000/- in default to undergo 1 year Rigorous Imprisonment, challenging which, this appeal has been preferred.

6. Heard Mr.C.R.Malarvannan, learned counsel appearing for the appellant and Mrs.Kritika Kamal, P., learned Government Advocate (Crl.Side) appearing for the respondent-State.

7. Mr.Malarvannan formulated the following points:

[a] There is no eyewitness to this case and the entire case

is based on circumstantial evidence and therefore, the circumstances proved should unmistakably point to the guilt of the accused.

[b] Ganesan [P.W.1], the brother of the deceased, Madhaiyan [P.W.2], the father of the deceased, Radha [P.W.3], the sister of the deceased and Dhesingu [P.W.8], the minor son of the deceased, were nowhere near the house when the incident is said to have taken place and the entire prosecution rests on the evidence of Sekar [P.W.7] and Ponmani [P.W.10].

[c] These witnesses do not support the prosecution case in their examination-in-cross and therefore, the trial Court ought not to have convicted the accused on such a frail evidence.

[d] There are no materials to show that the accused was in a live-in relationship with the deceased for the Court to draw the inference under Section 106 of the Evidence Act.

8. Per contra, the learned Government Advocate [Crl.Side] refuted the contentions and drew the attention of this Court to the incriminating aspects in the evidence of the prosecution witnesses.

9. This Court gave its anxious consideration to the rival submissions.

10. It is true that this case hinges on circumstantial evidence. A Five Judge Bench of the Supreme Court, in Govinda Reddy and another v. State of Mysore [AIR 1960 SC 29], has held as follows:

"In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn would in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. Before advertng to the disputed facts in this case, it would be appropriate to enumerate admitted facts over which there is no dispute."

11. It is the specific case of the prosecution that the deceased Vijayalakshmi was married to Sathiamoorthy about 10 years prior to her death and to them was born Dhesingu [P.W.8]. This aspect has been spoken to by all the prosecution witnesses, save the official witnesses. It is the further case of the prosecution that Vijayalakshmi got estranged from Sathiamoorthy and was living with her son Dhesingu [P.W.8] in Konammal Street near Collectorate in a rented accommodation. This aspect has also been deposed by P.Ws.1, 2, 3 and 8.

12. The next most crucial question is, what is the relationship between the deceased and the appellant?

13. On this aspect, this Court has the evidence of Ganesan [P.W.1], who has stated that, after Vijayalakshmi got separated from her husband, she developed intimacy with the appellant and together, they have taken the house in Konammal Street and were living together. The evidence of Dhesingu [P.W.8], son of the deceased Vijayalakshmi and Sathiamoorthy assumes significance. He was 13 years old when he was examined before the trial Court on 13.06.2013. The trial Court has made a thorough preliminary enquiry by posing various fundamental queries to him in order to ascertain his capability to give evidence, as could be seen from the preamble portion of his deposition. After being so satisfied about his capability to give evidence, the trial Court has recorded his examination-in-chief. Dhesingu [P.W.8] has stated that the deceased was his mother and he knew the accused; when he was very young, his mother got separated from his father and that his mother started a waste paper shop in Dharmapuri; she contracted friendship with the appellant; they all lived together in a house in Konammal Street near Collectorate; on 10.07.2010, when he went to his maternal grandparents' house, his uncle Ganesan [P.W.1] received information about his mother's death and they all came down to her house and found her dead with injuries; the appellant would pick up quarrel frequently with his mother and in that quarrel, he would also beat him. The accused did not choose to cross-examine Dhesingu [P.W.8] on 13.06.2013. Therefore, the trial Court has recorded "no cross". In this case, none of the witnesses was cross-examined by the accused on the day they were examined-in-chief. Thereafter, the accused has recalled all the witnesses and has cross-examined them and in the cross-examination, the witnesses have not supported the prosecution case, but, strangely, the trial Court Special Public Prosecutor had miserably failed to even declare the witnesses hostile for reasons best known to him and cross-examined them. This Court places on record its anguish and further deprecates the cavalier manner in which a Sessions trial has been conducted.

14. In the cross-examination of Dhesingu [P.W.8], he has stated that at the instance of his grandparents and uncle, he has given false evidence and that his mother had died on account of her separation from his father. Even the close relatives of the deceased, viz., her brother Ganesan [P.W.1], Madhaiyan - father [P.W.2] and Radha - sister [P.W.3] have deposed in their cross-examination that Vijayalakshmi died on account of her estrangement from her husband Sathiamoorthy.

15. Be that as it may, there are overwhelming materials on record via the evidence of P.Ws.1, 2, 3, 7 and 8 that Sathiamoorthy and Vijayalakshmi got estranged and Vijayalakshmi, Dhesingu [P.W.8] and the appellant were living together in Konammal Street near the Collectorate. The aforesaid witnesses were only trying to shield the accused by giving an opinion that Vijayalakshmi would have died on account of her estrangement from her husband Sathiamoorthy. It may be necessary to state here that the accused was not charged for an offence under Section 306 IPC for abetment of suicide, because it has been established beyond cavil that the death of Vijayalakshmi was on account of homicide as could be seen from the injuries on her body. Had the case of the prosecution been that the accused had abetted the suicide of Vijayalakshmi, then, the opinion of these witnesses that she had committed suicide not on account of the abetment by the appellant, but on account of the sufferings at the hands of her husband Sathiamoorthy may be significant. That apart, a criminal case cannot be predicated on the opinion of witnesses, save experts. Therefore, the opinion of these witnesses for the cause of death of Vijayalakshmi has no relevance.

16. This is a case in which the law laid down by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Crl.) 288] has to be applied in all its fours, because, the Supreme Court has noted the practice of witnesses not being cross-examined immediately after their examination-in-chief and are recalled and cross-examined after they are either intimidated or purchased. This pernicious practice had forced the Parliament to amend Section 154 of the Evidence Act. Therefore, this Court has no hesitation in rejecting their evidence-in-cross and electing to rely upon their evidence-in-chief and come to the conclusion that the deceased, the appellant and Dhesingu [P.W.8] were living together in Konammal Street near the Collectorate.

17. Now, coming to the evidence of Sekar [P.W.7], Mr.Malarvannan, contended that in the examination-in-chief of Sekar [P.W.7], he had stated that he had seen the couple quarrelling around 7.00 a.m., whereas, even according to the prosecution, the incident had taken place only around 9.00 p.m. in the night and therefore, this solitary evidence of Sekar [P.W.7] cannot be the basis for holding that the prosecution

have proved the last seen theory satisfactorily. The evidence of Sekar [P.W.7] should be read in conjunction with the evidence of Ponmani [P.W.10], a neighbour of the deceased.

18. Ponmani [P.W.10], in his evidence, has stated that he was residing in Konammal Street near the Collectorate; the accused and the deceased were residing near his house. He has further stated that three years ago, around 9.00 p.m., the accused came and told him that his wife is dead.

19. Mr.Malarvannan contended that in the chief-examination Ponmani [P.W.10] has not clearly stated that it was the accused who had informed him about the death of his wife and therefore, nothing would turn out from his evidence. It is true that in the examination-in-chief, he has not specifically stated that it was the appellant who had come to his house and informed him about his wife's death, but, however, on a general reading of the examination-in-chief, one can infer that he was referring only to the appellant and not to anyone else. Even if the benefit of this doubt is given to the appellant, yet, in the cross-examination of Ponmani [P.W.10], he has denied the specific suggestion of the defence that it was not the accused (appellant) who informed him about the death of Vijayalakshmi. This clear denial of the said suggestion by Ponmani [P.W.10] reinforces his earlier statement in-chief that the death of Vijayalakshmi was informed to him by the appellant around 9.00 p.m. If this evidence is read with the evidence of the other witnesses, viz., P.Ws.1, 2, 3, 8 and 10 that after getting separated from her husband Sathiamoorthy, the deceased was living with the appellant in the house where the death occurred and there was no one else in the house, the appellant cannot escape from the inference of guilt. The appellant had failed to discharge the burden under Section 106 of the Evidence Act by not giving any plausible explanation as to how the death of Vijayalakshmi occurred in the house in which he was living.

20. Coming to the question of sentence, Mr.Malarvannan submitted that the appellant has three children to take care of and prayed for leniency in sentence. Accepting his submission, this Court is of the view that interests of justice will be served if the sentence of 7 years Rigorous Imprisonment is reduced to 5 years Rigorous Imprisonment.

In the result, the appeal is partly allowed. The conviction imposed on 13.02.2014 by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Dharmapuri, in S.C.No.116 of 2012 is confirmed. However, the sentence is reduced from 7 years Rigorous Imprisonment to 5 years Rigorous Imprisonment. The trial Court is directed to secure the presence of the accused to undergo the remaining period of

sentence, if any.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Inspector of Police
Dharmapuri Town Police Station.
- 2.The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court) Dharmapuri
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Judicial Magistrate No.I,
Dharmapuri.
- 5.The Chief Judicial Magistrate,
Dharmapuri (for information)
- 6.The Superintendent,
Central Prison, Vellore.
- 7.The Section Officer,
Criminal Section,
High Court, Chennai.

+1 cc to Mr.N.Mohideen Basha, Advocate, S.R.No.78064

Crl.A.No.157 of 2014

NMI (CO)
SSM(07/12/2018)