

**BAIL SLIP**

The Accused namely, Dass @ Ganesan, S/o.Kannimuthu (A2), Arumugam, S/o.Ramupillai, (A1) are released on bail vide the Order of this Court dated 18.09.2017 made in CrI.MP(MD)Nos.7394, 7395/2017 in CrI.A(MD)No.306/2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2017

Pronounced on: 18.01.2018

CORAM:

THE HONOURABLE MR .JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.[MD].No.306 of 2016

1.Arumugam

2.Dass @ Ganesan

.. Appellants/
Accused Nos.1 & 2

Vs.

State rep. by the
Inspector of Police,
Silaiman Police Station,
Madurai District.
(Crime No.338 of 2010)

.. Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 12.08.2016, made in S.C.No.88 of 2013, by the learned IV-Additional District and Sessions Judge, Madurai.

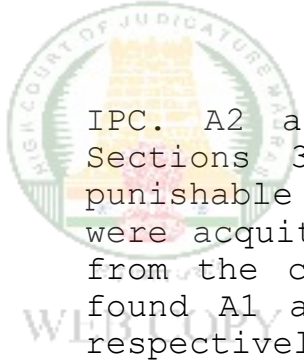
For appellants : Mr.N.Anantha Padmanaban

For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellants / A1 & A2 against the conviction and sentence, dated 12.08.2016, made in S.C.No.88 of 2013 by the learned IV-Additional District and Sessions Judge, Madurai. There are totally four accused in this case and A1 was charged for the offences punishable under Sections 364, 302 and 201



IPC. A2 and A3 were charged for the offences punishable under Sections 302 r/w 34 IPC and A4 was charged for the offences punishable under Section 302 r/w 109 IPC. After trial, A3 and A4 were acquitted from their respective charges. A1 was also acquitted from the charge under Section 364 IPC. But, the trial Court has found A1 and A2 guilty under Section 302 IPC and 302 r/w 34 IPC respectively and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for three months. The trial Court has further found A1 guilty under Section 201 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for three months.

2.The case of the prosecution is consciously narrated below:

(a) PW1 is the then Village Administrative Officer of Sakkimangalam IInd Bit Village, Madurai. PW2 is a retired Village Assistant. On 20.10.2010 at 5.00 p.m. PW2 informed to PW1 over phone that a male dead body, aged about 35 years, was found floating in Municipal drainage water channel near Alameen Timber Coconut Grove at Sakkimangalam Village. On receiving the said information, PW1 rushed to the spot and saw the dead body of a male with dark grey colour trouser, lungi and shirt and there was multiple stab injuries on the body of the deceased. PW1 and PW2 enquired the people in the nearby area, however, the identity of the dead body could not be found. Hence, PW1, immediately, rushed to the Silaiman Police Station and lodged a complaint.

(b) PW14 - the then Sub Inspector of Police, on receipt of Ex.P1 - complaint from PW1, registered a case in Crime No.338 of 2010 under Section 302 IPC and forwarded both the complaint (Ex.P1) and FIR (Ex.P13) to the learned Judicial Magistrate Court No.II, Madurai and copy of the same to the higher officials.

(c) On receipt of copy of the Ex.P1 and Ex.P13, PW20 - the then Inspector of Police took up the investigation, proceeded to the place of occurrence and prepared an observation mahazar (Ex.P11) and rough sketch (Ex.P18) in the presence of PW10 and one Raman. Thereafter, he recovered bloodstained sand and sample sand under a mahazar. PW20, thereafter, forwarded the dead body to the Government Rajaji Hospital with the request to keep the body in the mortuary and then, recorded the statements of PW1, PW2, PW10, PW11, PW14 and others.

(d) On seeing the photographs of the dead body published in the newspaper, PW3, who is the brother of the deceased, came to the Government Rajaji Hospital on 22.10.2010 and identified the dead body of the deceased as Sekar. Thereafter, at 10.00 a.m. PW20 conducted inquest on the body of the deceased in the presence of Panchayatars. Ex.P19 is the inquest report.

(e) On 22.10.2010 at 9.00 a.m. PW3 also lodged a complaint - <https://hcservices.ecourts.gov.in/hcservices/> Ex.P2. In the said complaint, PW3 had stated that the deceased's wife - A4 had illegal intimacy with A1, who is the son of junior



paternal uncle of the deceased and PW3. It was warned by the relatives of the deceased and by the deceased that A1 should abstain from coming to the house of A1 for some time. But, later, A1 developed a friendship with deceased and started to come to the house of the deceased again. On 19.10.2010 the deceased went to Madurai Town for supplying the finished goods at Jeya Metal Stores. Thereafter, the son of the deceased by name Chellapandi came to Jeya Metal Store, where the deceased gave the coolie amount to his son Chellapandi, after taking Rs.100/- from the same. At that time, A1 came there and took the deceased along with him. Thereafter, the deceased did not return. When PW1 enquired about A1, A1 had informed that he was not aware of the whereabouts of the deceased. Thereafter, on seeing the newspaper publication, PW3 came and approached the Police and thus, he gave the complaint.

(f) After conducting inquest, PW20 forwarded the dead body to the hospital for postmortem. PW17 - Dr.Natarajan conducted postmortem on the dead body of the deceased on 22.10.2010 at 01.00 p.m. He found the following injuries on the dead body of the deceased:

"1.A transversely oblique cut injury 18 cms x 2 cms x bone deep noted on the front of middle of neck. On dissection, the wound found cutting underlying muscles, vessels (carotid vessels), nerves, wind pipe and food pipe through & through.

2.An oblique stab injury 3.5 cms x 1 cm x 3 cms along the muscle plane noted on the right side of upper part of abdomen, 6 cms below the costal margin.

3.An oblique stab injury 4 cms x 1 cm x 3.5 cm along the muscle plane noted on the back of upper part of right forearm.

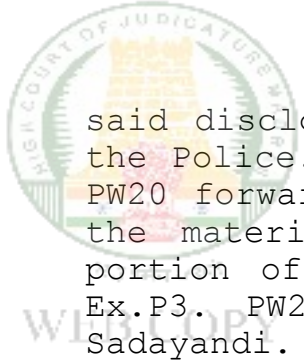
4.3 stab injuries each measuring 2.5 cms x 1 cm x muscle deep, one below another each separated by 2 cms noted on the back of middle of neck.

5.An oblique stab injury 3 cms x 1 cm x 2 cms along the muscle plane noted over back of right shoulder.

6.Laceration 4 cms x 1 cm x muscle deep noted over front of right side chest."

PW17 opined that the deceased would appear to have died of shock and hemorrhage due to external injury No.1 and its corresponding internal injuries, 2-3 days prior to autopsy.

(g) On the same day, ie., on 22.10.2010 PW20 recovered the bloodstained dresses from the dead body of the deceased ie., orange colour bloodstained shirt (MO.8), blue colour bloodstained lungi (MO.9), grey colour bloodstained trouser (MO.10). Thereafter, he recorded the statements of PW3, PW15, PW4, PW5 and others. On the same day, at 6.00 p.m., PW20 arrested A4 - wife of the deceased in the presence of PW6 and PW7. On such arrest, she gave a voluntary confession statement, in which she had stated that she would produce the cell phone which was used for conspiracy. In pursuance of the



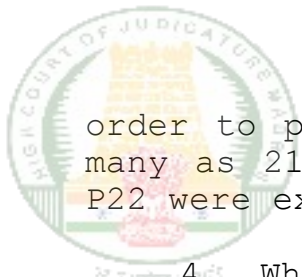
said disclosure statement, A4 produced a cell phone (MO.11) before the Police. PW20 recovered the same under a mahazar and thereafter, PW20 forwarded A4 to the Court for judicial remand and handed over the material object under Form 95 to the Court. The admissible portion of the voluntary confession statement of A4 is marked as Ex.P3. PW20, thereafter, recorded the statement of PW8 and one Sadayandi.

(h) On 25.10.2010 at 10.00 a.m. PW20 arrested A2 and A3 at Kalmedu Bus-stop in the presence of PW8 and one Sadayandi. On such arrest, A2 and A3 gave separate voluntary confession statements in the presence of PW8 and the said Sadayandi, in which A3 disclosed the place of occurrence and A2 disclosed the place where he had concealed the weapon. In pursuance of the said disclosure statements, A2 and A3 took the Police and witnesses to the place of hide out and A2 produced a bloodstained knife (MO.1). PW20 recovered the same under a mahazar. On returning to the Police Station, PW20 forwarded A2 and A3 to the Court for judicial remand and handed over the material objects under Form 95 to the Court. The admissible portion of the voluntary confession statement of A2 is marked as Ex.P21.

(i) A1 surrendered before the Court. On 08.11.2010, PW20 took A1 under custody for investigation by filing a petition. On enquiry, A1 gave a voluntary confession statement in the presence of PW9 and one Subramani, in which he disclosed the place where he had hidden his bloodstained shirt and Lungi. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced a bloodstained shirt (MO.2) and bloodstained lungi (MO.3). PW20 recovered the same under a mahazar. On the basis of confession of A1, the two wheeler bearing registration No.TN-59-AT-3021 (MO.4), which was used for taking the deceased to the place of occurrence, was recovered under a mahazar. On returning to the Police Station, PW20 forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court. The admissible portion of the voluntary confession statement of A1 is marked as Ex.P8.

(j) Due to transfer, PW20 handed over the investigation to his successor PW21 - the Inspector of Police. At the instance of PW21, the material objects were sent for chemical examination. The Chemical examination report (Ex.P16) and serological report (Ex.P17) revealed that there was human bloodstain of "B" group on all the material objects, including knife recovered from the A2. During the course of investigation, PW21 collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. PW21, after completion of investigation, laid charge sheet against all the accused.

3. Based on the above materials, the trial Court had framed as many as four charges against the accused. When the accused were questioned in respect of the charges, they pleaded innocence. In



order to prove the charges, on the side of the the prosecution as many as 21 witnesses were examined as PWs.1 to PW21 and Exs.P1 to P22 were exhibited, besides eleven Material Objects (MOs.1 to 11).

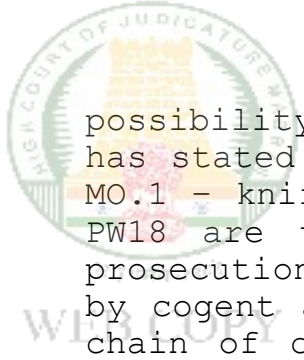
4. When the accused were questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied their complicity in the crime and pleaded innocence. On the side of the accused, no one was examined and no document was marked.

5. The trial Court, after considering the oral and documentary evidence, has acquitted A3 and A4 from their respective charges and A1 from the charge under Section 364 IPC. But, the trial Court found A1 guilty of the charges under Sections 302 and 201 IPC and A2 guilty of the charge under Section 302 r/w 34 IPC and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellants / A1 and A2 have come up with this appeal.

6. The learned counsel for the appellants / A1 and A2 would submit that it is a case of circumstantial evidence. The prosecution has miserably failed to establish the circumstances leading to the guilt of the accused and there are missing links in the chain of circumstances. In this regard, the learned counsel for the appellants submitted that the motive alleged by the prosecution is that A1 and A4, who is the wife of the deceased, had illegal intimacy and the same was warned by the elders, especially PW15 and the sister of the deceased - Saroja, and that in order to continue their illegal relationship, at the instigation of A4, A1 with the aid of A2 and A3 murdered the deceased. But, the trial Court itself disbelieved the motive theory projected by the prosecution and acquitted A3 and A4. When that be so, the motive theory shall not stand against A1 and A2 also. Thus, the entire case of the prosecution must be thrown away and the conviction and sentence against A1 and A2 are liable to be set aside.

7. The learned counsel for the appellants would further submit that in order to prove the last seen theory the prosecution has examined PW19, who is the employee of Jeya Metal shop. PW19 has stated that he saw the deceased on 19.10.2010 along with A1-Arumugam at Jeya Metals shop. But, the trial Court disbelieved the evidence of PW19 with regard to last seen theory. PW19 was initially shown as the 4th signatory in the list of Panchayatars mentioned in the inquest report and nowhere it is stated in the inquest report that the deceased was last seen by PW19 in Jeya Metal shop on 19.10.2010. Thus, last seen theory projected by the prosecution appears to be artificial and an after-thought, and the same cannot be believed.

8. The learned counsel for the appellant would further submit that PW8 has categorically stated in his evidence that the knife was taken out of knee deep water in the canal and hence, there is no



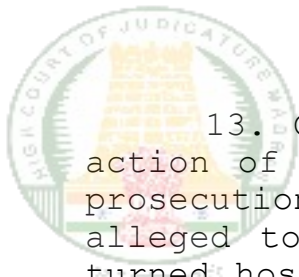
possibility for the knife to contain human blood at all. But, PW18 has stated in his report that there was bloodstain of "B" group on MO.1 - knife and therefore, the evidence of PW8 and the evidence of PW18 are totally contradictory to each other and thus, the the prosecution has miserably failed to prove the guilt of the accused by cogent and convincing reasons and there is also no links in the chain of circumstances and therefore, the conviction and sentence passed by the trial Court against the appellants / A1 and A2 are also liable to be set aside.

9. The learned Additional Public Prosecutor would submit that the prosecution has clearly proved the motive for the occurrence by examining PW3 to PW5 and the last seen theory through the evidences of PW19. PW8 and PW9 have clearly stated about the confession and recovery of material objects from A1 and A2. Thus, the prosecution has categorically proved the guilt of the appellants / A1 and A2 beyond reasonable doubts. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

10. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

11. This is a case based on circumstantial evidence. In a case of this nature, it is absolutely necessary for the prosecution to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain so as to unerringly point out the guilt of the accused and there shall not be any alternative hypothesis which would be inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now analyse the circumstances projected by the prosecution.

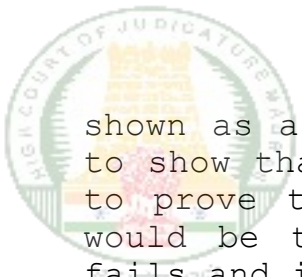
12. The first and foremost circumstance relied on by the prosecution is the motive for the occurrence. In order to prove the motive, the prosecution has examined PW3 to PW5 and PW15. PW3 and PW4 are brothers of the deceased. PW5 and PW15 are close relatives of the deceased. A1 is none other than the paternal uncle's son of the deceased, PW3 and PW4. According to PW3, PW4 and PW5, there was illegal relationship between the wife of the deceased - A4 and A1 and it was warned by the sister of the deceased - Saroja and PW15 and due to which, A1 stopped visiting the house of A1 for some time, but, later, A1 developed a friendship with the deceased and they used to take liquor and on the date of occurrence, A1 took the deceased for taking liquor and thereafter, the deceased did not return. According to the prosecution, in order to continue the illegal relationship, at the instigation of A4, A1 with the aid of A2 and A3 conspired and A1 took the deceased for taking liquor and after having liquor, they murdered the deceased in the place of occurrence.



13. One of the persons, who is alleged to have condemned the action of A1 and A4 ie., the said Saroja was not examined by the prosecution for the reasons best known to them. PW15, who is also alleged to have condemned the illegal intimacy of A1 and A4, has turned hostile and he did not support the case of the prosecution. The motive theory projected by the prosecution is unbelievable in view of the fact that no person would accept the friendship of a person, who is alleged to have illegal relationship with his wife. Even assuming that it is for consuming alcohol, the postmortem report says that the intestine of the deceased did not contain alcohol. More over, the trial Court has disbelieved the motive theory projected by the prosecution and acquitted A3 and A4. Thus, the motive theory projected by the prosecution did not stand in the way of convicting the A1 and A2 also. Merely because the motive has not been proved by the prosecution, we cannot throw away the entire case of the prosecution. Therefore, let us now look into the other circumstances projected by the prosecution.

14. The other circumstance projected by the prosecution is the last seen theory. According to PW3 and PW4, on 19.10.2010, the deceased went to Jeya Metal Shop for supplying the goods along with his son Chellapandi and after taking Rs.100/- from the coolie amount, the deceased handed over the balance amount to his son Chellapandi, who subsequently returned home. Further, according to PW3 and PW4, when they went in search the deceased along with A1, it was informed by PW19 that lastly the deceased along with A1 went to take liquor. More over, PW3, PW4 and PW5 have deposed that when they asked about missing of the deceased, A1 informed that he went to take liquor at Obulapadidurai and A1 also came along with them for searching the deceased.

15. The son of the deceased Chellapandi has not been examined by the prosecution for the reasons best known to them and hence, the prosecution solely relied on the evidence of PW19 for the last seen theory. But, PW19 has stated in his evidence that on 19.10.2010, the deceased, A1 and one Murugan came to the shop and the deceased handed over the finished goods and at that time, the son of the deceased Chellapandi came there and received the coolie amount from the deceased except Rs.100/- which was withheld by the deceased and thereafter, the deceased went to take liquor. PW19 did not say that the deceased went along with A1. The presence of A1 in the said shop cannot be doubted, because even according to PW19, A1 also used to supply materials to the shop. Further, PW19 has also admitted in the cross examination that A1 and the deceased came to the shop separately. Hence, in the absence of any statement in the evidence of PW19 to the effect that the deceased went along with A1 from his shop, it is difficult to hold that the deceased was seen in the company of A1 lastly. Therefore, the evidence of PW19 is not sufficient enough to hold that the deceased lastly went along with the deceased. More over, even according to the prosecution, PW19 stood as one of the panchayatars while conducting inquest on the dead body of the deceased on 22.10.2010. But, his name has not been



shown as a last seen witness in the inquest report, which would go to show that the evidence of PW19 was pressed into service in order to prove the last seen theory. Thus, the last seen theory, which would be the main chain to link the deceased and A1, outrightly fails and it is a major missing link in the chain of circumstances.

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16. The next theory relied on by the prosecution is that the recovery of material objects from the possession of A2 and A1. PW8, who is the witness for the confession of A2 and A3 and recovery of MO-1 knife, has categorically admitted in the cross examination that the knife was recovered from a knee deep drainage water canal. Admittedly, the said recovery was made five days after the occurrence. When that be so, as rightly contended by the learned counsel for the appellants, there is no possibility for the knife to contain human bloodstain. But, in the serological report, it is stated that the knife - MO.1 contain human bloodstain of "B" group. As rightly contended by the learned counsel for the appellants, it is very hard to believe. More over, as rightly contended by the learned counsel for the appellant, the colour of dress materials stated to be recovered and sent for forensic examination differs, which creates doubt about the recovery of material objects. Further, PW9 has admitted in the cross examination that he has put three signatures in the Police Station, which would further strengthen the doubt that the recovery was created only in the Police Station. Thus, it is not safe to hold that the confession and recovery of material objects are proved. Even assuming that the recovery of material objects are proved, the same are not sufficient to bring home the guilt on the accused, in view of the fact that the prosecution abruptly failed to prove the other circumstances.

17. Admittedly, A2 has not been linked by the prosecution in the motive and last seen theory. A2 has been linked by the prosecution only through recovery of MO.1. A1 has been brought under custody long after the arrest of A2 and A3. Absolutely, there is no material on the side of the prosecution as to under what circumstances they had suspicion over A2 and A3 and arrested them. The instigation and common intention has also not been proved by the prosecution. The chain of circumstances I.e., motive, last seen theory, recovery of material objects, etc. have not been proved by the prosecution beyond reasonable doubts and such proved circumstances do not form a complete chain so as to unerringly point out the guilt of the accused. Hence, the entire case of the prosecution is liable to be thrown out and the appellants are entitle for acquittal.

18. In the result, this criminal appeal is allowed; the conviction and sentence passed by the trial Court against the appellants / A1 and A2 in S.C.No.88 of 2013 are set aside and the appellants are acquitted from the charges framed against them. The



bail bond, if any, executed by the appellants shall stand cancelled. The fine amount, if any, paid by the appellants are directed to be refunded forthwith.

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/True Copy/

Sd/-

Assistant Registrar (AS)

Sub-Assistant Registrar

To

- 1.The IV-Additional District and Sessions Judge,
Madurai.
- 2.The Judicial Magistrate No.II, Madurai
- 3.The Chief Judicial Magistrate, Madurai
- 4.The Superintendent, Central Prison, Madurai
- 5.The District Collector, Madurai
- 6.The Superintendent of Police, Madurai
- 7.The Inspector of Police,
Silaiman Police Station,
Madurai.
- 8.The Director General of Police, Mylapore, Chennai-4
- 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:-

The Record Keeper, Criminal Records, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.N.Anantha Padmanabhan, Advocate, SR.No.42860

gcg

RL/13C/9P/KK/SAR1/26/2/2018

Judgment made in
Crl.A.[MD].No.306 of 2016