

**Bail Slip**

The appellant/accused namely P.Ramesh, S/o. M.Periyasamy was directed to be released on bail as per order this Court dated 17.10.2016 in CrI MP(MD)No.9266/16 in CrI A(MD)No.351/16 by SNJ & MGJ

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	14.02.2018
Orders Pronounced on	27.03.2018

CORAM:**THE HONOURABLE DR.JUSTICE S.VIMALA**

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**CrI.A. (MD) No.351 of 2016**

P.Ramesh

... Appellant/Sole Accused

-vs-

State rep. by
The Inspector of Police,
Rural Police Station,
Virudhunagar District.
(in Crime No.21 of 2014)

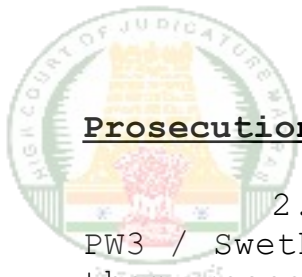
... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure praying to admit the appeal and call for the records from the Trial Court and hear the counsel for the appellant / accused and set aside the conviction and sentence passed by the District Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur in S.C.No.73 of 2015 dated 24.06.2016.

For Appellant : Mr.P.Daneswaran
For Respondent : Mr.C.Ramesh
Addl. Public Prosecutor

J U D G M E N T**S.VIMALA, J.**

The accused / appellant has been convicted under Section 498(A) and 302 IPC by the Fast Track, Mahila Court, Virudhunagar District at Srivilliputhur by judgment dated 24.06.2016. The punishment of life imprisonment has been imposed in respect of offence under Section 302 IPC and imprisonment of three years for offence under Section 498-A IPC. Challenging the same, this appeal has been filed.



Prosecution case in brief:

2. The accused is the husband of the deceased Katchammal. PW3 / Swetha and PW4 / Harishkumar are the daughter and the son of them respectively. The accused is a Mason by profession. He is stated to be a drunkard, maintaining illicit relationship with PW28 / Neelavathi and did not provide support and maintenance to his own family.

3. It is alleged that the accused, after picking up a quarrel with the deceased in the house on 18.01.2014, caused her death by beating her with wooden log and hand. The occurrence was intimated to the sister of the deceased (PW1) by Pws.3 & 4 and when the deceased was taken to hospital, she was declared dead.

3.1. Alleging that it is a case of murder by the accused, the prosecution has filed the final report against the accused person. In order to substantiate the offence against the accused, the prosecution has examined 33 witnesses and marked 19 exhibits and produced six Material Objects. The defence has not examined any witness.

4. The Trial Court has found the accused guilty and this finding is under challenge in this appeal on the following grounds:

4.1. The learned counsel for the accused would point out that there are sufficient grounds to come to a conclusion that the accused is innocent and that the Trial Court did not appreciate the evidence of witnesses in proper perspective. It is the main grievance of the appellant that there is no direct evidence to fix the appellant under Sections 498-A and 302 IPC.

4.2. There is an inordinate delay in the registration of the First Information Report; that the Trial Court ought not to have relied upon inadmissible portion of the confession by the accused; the Trial Court should have relied upon the evidence of PW28 / Neelavathi and should have come to a conclusion that there is no motive for the accused to commit murder; the recovery on the basis of the confession are fake documents and the Trial Court should not have relied upon.

4.3. The learned counsel for the appellant, in support of those grounds, has relied upon the following decisions:

i) **State by Prosecutor vs. Varchese @ Varghese Anthony** reported in **[2006 (1) T.N.L.R.143 (Mad)]**;

<https://hcservices.ecourts.gov.in/hcservices/>
"11....So far as the FIR is concerned, the lower Court has clearly pointed out that **the motive so alleged is flimsy**. Apart from that, the **FIR could not have come**



into existence as put forth by the prosecution. It is not the case where the prosecution rests its case on the circumstantial evidence but on the direct evidence through the eye-witnesses. There are ample materials to indicate that the eye-witnesses who were examined by the prosecution, could not have seen the occurrence at all. The lower Court was perfectly correct in rejecting the case of the prosecution in its entirety."

ii) **Durga Burman (Roy) vs. State of Sikkim**, reported in **AIR 2014 SC 2993**;

"20. Thus, there should be independent evidence. **The conviction of the appellant is by placing reliance solely on the recovery of the wrist watch. We have already held above that, it is faulty in procedure and, apart from that, the same does not infuse any confidence in the mind of the Court** in the given circumstances, when pitted against the rest of the evidence, that the appellant committed the murder with the motive of theft. It is not enough that the circumstances lead to possibility or probability of the involvement of the accused; the circumstances should point all the fingers to the accused and the accused only."

iii) **Paresh Chandra Mondal and another vs. State of West Bengal**, reported in **2016 Cr1.L.J.3850**;

"34. With regard to the contention of absconding of the appellants from the place of recovery of the dead body of the victim on the date of occurrence of the incident of his death, it was decided by the Hon'ble Supreme Court in the matter of Sk. Yusuf vs. State of West Bengal, reported in (2011) 11 SCC 754, that in a case a person is absconding after commission of offence of which he may not even be the author, such a circumstance alone may not be enough to draw an adverse inference against him as it would go against the doctrine of innocence. According to the above decision, **it is quite possible that he may be running away merely on being suspected out of fear of police arrest and harassment.**"

iv) **Patiram vs. The State of Maharashtra**, reported in **2003 Cr1.L.J.4718**;

"21. The totality of the evidence of Shankar (PW-2), in our considered view, cannot be said to be free from tutoring and it is **unsafe to rely on the testimony of such child witness in the facts and circumstances of the present case.** Since we are not inclined to rely on the testimony of Shankar (PW-2), the First Information



Report lodged by Istari (PW-1) on the basis of the information received from Shankar (PW-2) loses its authenticity. Similar is the case in respect of evidence of Lalitabai (PW-3).

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22. As far as the evidence of Gopikabai (PW-4) is concerned, she has stated in her chief that at the relevant time deceased Someshwar was sitting on the swing of the house of the accused. Accused Patiram picked up an axe and then dealt a blow of the axe on the head of deceased Someshwar. However, we cannot turn the Nelson's eye to the fact that her statement under **Section 164 of the Code was recorded by the Magistrate only after fifteen days of the incident.** This witness is also a resident of the same village and the wife of the complainant PW-1. The Investigating Agency was well aware of these facts and ought to have taken immediate steps to record the statement of this witness under Section 161 of the Code, since this witness Gopikabai was the eyewitness to the incident. However, there is no explanation forthcoming from the Investigating Officer in this regard. Since the statement of this witness was recorded after a considerable delay, which has not been explained by the prosecution at all, it will be highly unsafe to rely on the evidence of such witness, who admittedly was not on visiting terms with the accused. In the facts and circumstances of the case, there is a serious doubt about the authenticity in respect of the material particulars of the prosecution case disclosed by this witness in her evidence and, therefore, in our view, the testimony of Gopikabai (PW-4) is not truthful and difficult to rely."

v) **Balaprasanna vs. Inspector of Police, Madurai District**, reported in **2006 (1) CTC 599**;

"23. In the present case, some of the links are either non-existent or very weak or even consistent with the innocence of the accused. The fact that a heinous and a high profile offence has been committed does not mean that an order of conviction has to be passed irrespective of the innate strength in the prosecution case. **On the other hand, the fact that such a sensational murder has been committed would require the court to be more careful** to weigh the various circumstances and obviously the benefit of any reasonable doubt would go to the accused rather than the benefit of every suspicion going in the prosecution way.

24. In course of hearing, the learned Addl. Public Prosecutor has submitted that several witnesses like P.Ws.15, 16, 17, etc. had no axe to grind against the



accused and therefore their statement was entitled to great weight. In this context, we are only reminded by the observation made by the Supreme Court in 1981 SCC (Cr1) 315 (SHANKARLAL GYARASILAL DIXIT v. STATE OF MAHARASHTRA) as to why so many would conspire to involve him falsely. In the words of the Supreme Court:

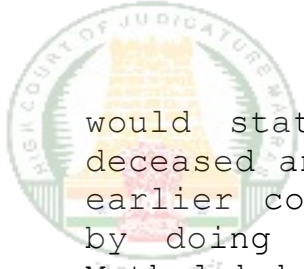
"The answer to such question is not always easy to give in criminal cases. Different motives operate in the minds of different persons in the making of unfounded accusation. Besides, human nature is too willing when faced with brutal crimes to spin stories out of strong suspicions."

vi) **J.Peter Raj vs. The State, represented by the Inspector of Police, reported in 2015 (0) Supreme (Mad) 2778;**

"2.1....At that time, the deceased was conscious and fit to make dying declaration. **PW-16, Dr.N.Deivanathan, who was attending on her, gave certificate that she was conscious and fit to make dying declaration. Having been satisfied about the mental fitness of the deceased,** PW-8 recorded the dying declaration. In the said dying declaration, the deceased told that there was quarrel between her and the accused in the house and in the said quarrel, the deceased told that she was going to die. On hearing the same, according to the dying declaration, the accused poured kerosene on her and set fire. She has further stated that the occurrence was not witnessed by anybody. On hearing the alarm raised, one Muthumari rushed to the house. Then, the accused tried to extinguish the fire. Thereafter, the accused and his sisters took the deceased to the hospital. According to PW-8, since there were burn injuries on both her hands, he obtained impression of the left toe in the dying declaration.

5. The prosecution alleges that the father of PW3/Swetha and PW4 / Harishkumar committed murder of the deceased Katchammal. Dual motive has been alleged for this murder, 1) the accused had been maintaining illicit relationship with one Neelavathi (PW28) and wanted to marry her and in order to facilitate that marriage, the accused thought of finishing the life of the deceased wife, 2) yet another motive alleged is that the accused was a drunkard and did not spend any amount towards the expenses of the family and frequently, picked up quarrel with the deceased and aggrieved over the demand for money made by the wife, he committed murder of the wife.

6. The prosecution relies upon the evidence of the sister of the deceased, who set the criminal law in motion by preferring a written complaint to Virudhunagar Rural Police Station. PW1



would state that there had been frequent quarrel between the deceased and the accused in respect of which, there had been three earlier complaints; that the deceased was maintaining the family by doing tailoring work; that on the day of occurrence, one Muthulakshmi, who is nearby resident of the deceased was informed by the daughter of the deceased that the deceased was beaten to death; PW1 took her to the hospital and the Doctor declared her dead.

7. The learned counsel for the accused would point out that the motive part of the accused is proved to be false as PW1 would admit that originally the accused and the deceased were residing in the rented house; the accused bought a plot in the name of his wife / deceased; from the earnings of the accused, a house was constructed at the cost of about Rs.5,00,000/- and therefore, the contention that the accused did not provide any amount for maintenance cannot be true. As contended by the learned counsel for the accused, the motive for the occurrence as spoken to by the prosecution is falsified by the evidence of PW1 in the cross examination.

8. The next motive alleged is that he was maintaining relationship with PW28, the prosecution relied upon the evidence of Neelavathi to substantiate the motive. She would state that the accused is a friend of her brother and he came to her house for the purpose of patching the tiles and apart from that there is no link between herself and the deceased, thus the prosecution has belied its own version through the examination of PW28. Therefore, the prosecution has shown that veracity in the prosecution case is a causality.

9. The prosecution relies upon the evidence of child witnesses PWs.3 & 4, whose 164 statements (as recorded by the learned Judicial Magistrate) have been marked as Ex.P11 and Ex.P12. The learned counsel for the accused would point out that those witnesses were rejected by the learned Sessions Judge, doubting the capacity of the witnesses to depose and this rejection has been made on 19.05.2015; therefore, the evidence of PWs.3 & 4 cannot be relied upon. It is settled that just because the evidence was given by the children, for that reason *per se*, evidence cannot be rejected, but duty is enjoined upon this Court to scrutinize the evidence deeply and carefully.

10. So far as this case is concerned, the Sessions Court did not permit the evidence of PW3 and PW4. The court, after putting certain initial questions, has come to the conclusion that they are incompetent, as they are not able to tell the technical name of the person sitting in front of them, namely, the Judge and the lawyers. The evidence of the child witness and the capacity of children to depose must be judged not in the standard applicable to the adult witness, but to the standard applicable to a child witness. <https://www.e-services.gov.in> has not been done by the Trial Court. May be on account of lack of familiarity, the child would not have been to say, who a Judge is?



11. But, strangely, the Trial Court has marked the 164 statement of the children given before the Judicial Magistrate. When they are found capable of making statements before the Judicial Magistrate, how they became incompetent to depose before the Sessions Judge, is the main issue.

12. It is within the personal knowledge of the accused to explain the circumstances under which the life of the deceased was taken away. When the prosecution has discharged the initial burden, then it is for the accused to offer rebuttable evidence, especially having regard to the nature of the relationship between the accused and the deceased.

13. When the Trial Court had taken into account the statement of children before the Magistrate without examining them, then the reliance upon those documents is not acceptable. Therefore, the conviction and sentence is illegal.

14. Under such circumstances, the conviction and sentence imposed upon the accused is set aside and the matter is remanded back to the Trial Court with direction to the Trial Court to examine PW3 and PW4 after ascertaining the capacity to depose in an objective way and thereafter, giving opportunity of offering rebuttal evidence to the accused, the Trial Court shall decide the issue on merits.

15. With the above direction, the accused is ordered to be discharged from the prison. The learned Trial Judge is directed to dispose of the Trial within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

1. The District Judge,
Fast Track Mahila Court,
Virudhunagar District at Srivilliputhur.
2. The Judicial Magistrate No.II, Virudhunagar.
3. The Chief Judicial Magistrate,
Virudhunagar at Srivilliputhur.
4. The Inspector of Police,
Police Station,
Virudhunagar District.



5. The Superintendent, Central Prison, Madurai.

6. The Superintendent of Police, Virudhunagar.

7. The District Collector, Virudhunagar.

8. The Director Genral of Police, Mylapore, Chennai-4.

9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Vijaya Kumar, Advocate Sr.No.58178

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VB/SV/MMS/SAR1/05/04/2018/8P/13C

Crl.A. (MD) No.351 of 2016
27.03.2018