

BAIL SLIP

The Appellant/Accused namely was Alangaraj S/o.Mookan, aged 61 years was directed to be released on bail as per order of this Court dated 01.09.2017 made in CRL.MP(MD)No.8352/2017 CRL.A(MD)No.459/2016 on the file of the Madurai Bench Of Madras High Court, Madurai.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2018

CORAM:

THE HONOURABLE Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE**AND****THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

CRL.A.[MD].No.459 of 2016

Alangaraj

.. Appellant/Accused

Vs.

State rep. by its
The Inspector of Police
Jeeyapuram Police Station,
Trichy.
(Crime No.133/2015)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 11.11.2016 in S.C.No.68/2016 on the file of the Principal Sessions Judge, Tiruchirapalli.

For Appellant
For Respondent

: Mr.N.Anandkumar
: Mr.S.Chandrasekar
Additional Public Prosecutor

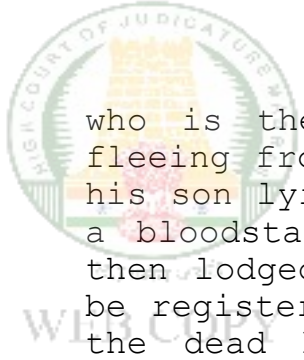
JUDGMENT

**[Judgment of the Court was delivered by
The Hon'ble Chief Justice]**

The appellant/original accused has preferred this appeal against the judgment and order dated 11.11.2016 passed by the learned Principal Sessions Judge, Tiruchirappalli in Sessions Case No.68 of 2016. By the said judgment and order, the learned Principal Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment and to pay fine of Rs.2,000/-, i/d to undergo rigorous imprisonment for a further period of three years.

2. The prosecution case briefly stated is as under:

The appellant was running a Mess by the name of Madurai Pandian Mess. The appellant, his wife and the deceased Sivakumar were working in the said Mess. It is the prosecution case that the deceased Sivakumar was having illicit affair with the wife of the appellant. Hence, on the night between 27 and 28 March 2015, between 12.00 a.m. and 1.30 a.m., the appellant assaulted Sivakumar with crowbar on the head and caused his death. P.W.1 R.Rengasamy,



who is the father of the deceased Sivakumar, saw the appellant fleeing from the back gate of the Mess and on going inside, he saw his son lying there with bleeding injuries on his head. He also saw a bloodstained crowbar lying at that place. P.W.1 - R.Rengasamy, then lodged a complaint, Ex.P.1. Thereafter, FIR, Ex.P.14 came to be registered. After registration of FIR, investigation commenced, the dead body was sent for postmortem. P.W.15 - Dr.Saravanan conducted postmortem on the body of Sivakumar. The postmortem notes are marked as Ex.P.15. The postmortem notes show four injuries on the body of Sivakumar, which are, on the neck, chin and occipital region. According to P.W.15-Dr.Saravanan, the cause of death was shock and hemorrhage due to multiple injuries. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

2.1. Charge came to be framed against the appellant under Section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is of total denial and false implication. In order to support its case, the prosecution examined 16 witnesses and marked documents as Exs.P1 to P20 and M.Os.1 to 12, during the time of trial. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in Paragraph No.1 above, hence, this appeal.

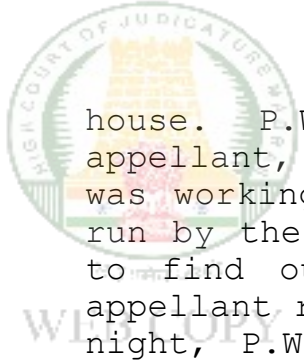
3. We heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

4. After giving anxious consideration to the facts and circumstances of the case, the arguments advanced by the learned counsel for the appellant, the learned Additional Public Prosecutor, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated herein below, we are of the opinion that the prosecution has not proved its case against the appellant beyond reasonable doubt.

5. There is no eye witness in the present case and the prosecution is relying on circumstantial evidence to support the conviction. In order to support the conviction, the prosecution has relied on three circumstances. They are as under:

- (i) Last seen;
- (ii) Recovery of bloodstained crowbar and lungi; and
- (iii) Motive.

6. As far as the first circumstance is concerned, ie., "last seen", the prosecution is relying on the evidence of P.W.1 - R.Rengasamy and P.W.2 - Maruthamuthu. P.W.1 is the father of the deceased. He has stated that Sivakumar is his son. Sivakumar was married to one Renuka. However, due to difference of opinion between his son Sivakumar and Renuka, Renuka was residing at her mother's

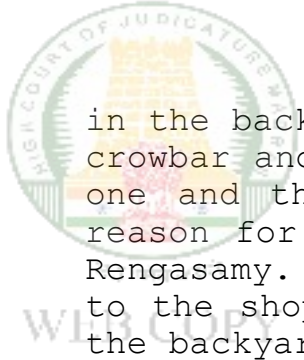


house. P.W.1-Rengasamy has further stated that he knew the appellant, as he was running a Mess at Kuzhumani. His son Sivakumar was working in the Mess run by the appellant. He went to the Mess run by the appellant at Kuzhumani on 27.03.2015 at about 8.00 p.m. to find out whether his son has come for work, thereupon, the appellant replied that his son left by taking leave. At about 12 mid night, P.W.1-Rengasamy found that his son had not returned home. Since his son told him that there was a dispute between him and the appellant, he went to the house of his neighbour P.W.2-Maruthamuthu and took him to the Mess, where his son Sivakumar used to work. At that time, it was 1.30 a.m. He called out his son by name, but there was no response. When he opened the front gate of the shop, he saw the appellant fleeing from the gate in the backyard. P.W.1-Rengasamy, then, went inside the shop and saw his son lying there with heavy bleeding injuries on the head. There was a bloodstained crowbar lying at the spot. Rengasamy then went to the police station and lodged his complaint.

7. The evidence of P.W.2-Maruthamuthu is on the same lines as that of P.W.1 Rengasamy. According to the prosecution, P.W.2 - Maruthamuthu had accompanied P.W.1 Rengasamy to the Mess of the appellant. They saw the appellant fleeing through the back door and at that time, Sivakumar was found lying in the shop with bleeding injuries on his person.

8. The learned counsel for the appellant submitted that the evidence of P.W.1-Rengasamy and P.W.2-Maruthamuthu cannot be relied upon in the light of the cross examination of P.W.1. He has drawn our attention to the cross examination of P.W.1, where he has stated that the police informed him that his son died around 12.30 mid night. Subsequent to that, only he brought his neighbour and went to the shop and saw his son lying there with injuries on his person. This clearly shows that there was no occasion for P.Ws.1 and 2 to go to the shop of the appellant, prior to the police informing them that Sivakumar had expired. It is only after police informed P.W.1 about death of Sivakumar that P.Ws.1 and 2 went to the shop and saw the dead body of Sivakumar. In such circumstance, the story put forward by P.Ws.1 and 2 that when they went to the shop to look for Sivakumar, they saw the appellant running away from the gate in the backyard, cannot be believed. In such case, the circumstance of "last seen" cannot be said to be proved by the prosecution.

9. The second circumstance, on which, the prosecution is relying is recovery of crowbar (M.O.5) and lungi (M.O.6) at the instance of the appellant. In this connection, the prosecution is placing reliance on P.W.10 - P.Chandrasekaran, who has stated that on 28.03.2015, the appellant volunteered to give confessional statement. Based on the confessional statement given by the appellant/accused, he along with the police went to Madurai Pandian Mess, which was run by the accused, from where, the accused produced the crowbar and lungi, which were hidden inside the wooden logs kept



in the backyard of the shop. Thus, according to the prosecution, the crowbar and lungi was recovered at the instance of the appellant at one and the same time. We find this recovery to be suspect, the reason for which, we would like to advert to the evidence of P.W.1 Rengasamy. The evidence of P.W.1-Rengasamy shows that when he went to the shop of the appellant, he saw the appellant fleeing through the backyard and when Rengasamy went inside the shop, he saw his son lying in an injured condition and there was a bloodstained crowbar lying at the spot. But the evidence of P.W.10-Chandrasekaran shows that the crowbar came to be recovered at the instance of the appellant from the place where it was hidden under the wooden logs kept in the backyard of the shop. This clearly shows that the recovery of crowbar and lungi purportedly at the instance of the appellant had been falsely foisted on him, and hence, this circumstance cannot be relied upon.

10. The last circumstance, on which, the prosecution case is relying is "motive". The motive is that the deceased was having illicit affair with the wife of the appellant. P.W.1-Rengasamy, who is the father of the deceased, has deposed about the motive. He has stated that on 27.03.2015, after about 8.00 p.m., he met his son and enquired with him, why he did not go for work on that date. At that time, his son (deceased) replied that he did not go to work as his owner ie., the appellant told that he (Sivakumar) is having illicit intimacy with his wife ie., the wife of the appellant. Thus, P.W.1 is the only witness, who had deposed about the aspect of motive.

11. The learned Additional Public Prosecutor placed reliance upon the evidence of P.W.4-Murali to show that a quarrel had taken place between the appellant and the deceased around 5.00 to 6.00 p.m., on the date of incident, however, as it was a routine quarrel, he did not bother about it. The learned Additional Public Prosecutor pointed out that the shop of P.W.4-Murali is adjacent to the shop of the appellant. The reason for the quarrel is not stated by P.W.4-Murali. However, we find the evidence of P.W.4-Murali to be suspect, because P.W.1-Rengasamy speaks of his son not going to the shop of the appellant on that day. In addition, the evidence of P.W.1-Rengasamy also shows that his son at 8.00 p.m., was not in the shop, but was standing near M.G.R. statue. At that time P.W.1-Rengasamy had enquired with his son why he did not go for work that day and then his son gave him a reply, which we have referred to above. In such case, the possibility of there being an argument between the appellant and the deceased around 5.00 to 6.00 p.m., as stated by P.W.4 - Murali, does not seem believable.

12. As stated earlier, the prosecution is relying on three circumstances to sustain the conviction. We have already observed in the earlier paragraphs that we cannot rely on the circumstance of last seen or recovery of crowbar and lungi. Thus, the only circumstance, which remains, is motive. As far as motive is concerned, though the prosecution has relied on the evidence of P.W.1-Rengasamy, who deposed that his son told him that the



appellant told him that he (Sivakumar) is having illicit intimacy with the wife of the appellant, however, P.W.1-Rengasamy further says that he did not give much importance to what his son Sivakumar said, since Sivakumar was a drunkard and he used to blabber something. In fact, the evidence of P.W.1-Rengasamy shows that the relationship between his son and the appellant were cordial. Thus, we do not find it safe to rely on the circumstance that there was illicit intimacy between the deceased and the wife of the appellant.

13. P.W.3-Renuka, who is the wife of the deceased, has also stated that due to intoxication, the deceased used to have petty quarrels with her and his neighbors in the village. P.W.4-Murali has also stated that the deceased used to be in intoxicated condition and without knowing as to whom he is speaking to, he used to speak and pick up quarrel. On account of this, none had good opinion about deceased Sivakumar. He has further stated that in the afternoon, generally, Sivakumar used to be in intoxicated condition. Thus, it appears that the appellant usually used to be in an intoxicated state, hence, much importance cannot be given to the utterances by the appellant.

It is also seen from the evidence on record that there were many persons, who were on inimical terms with the deceased in the village. This can also be seen from the evidence of P.W.1-Rengasamy, who has stated that there was enmity between his son and the parents of his daughter-in-law, from the day his daughter-in-law left the matrimonial house and went to stay with her mother. The evidence of P.W.3-Renuka also shows that due to intoxication, her husband used to have petty quarrels with her and the persons in the village. Thus, it appears that there were many persons in the village as well as the in-laws of the deceased Sivakumar, who had enmity with deceased Sivakumar and could have had reason to do away with him.

14. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on the mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. The Supreme Court in para 28 of the decision in the case of Sheila Sebastian v. R.Jawaharaj and another, reported in (2018) 7 SCC 581, has observed as under:

"Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof."

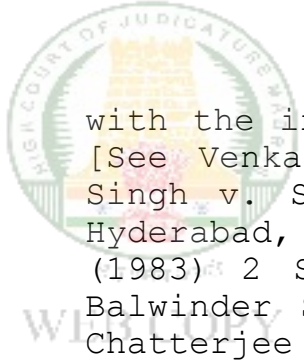


15. The Supreme Court in *Jaharlal Das v. State of Orissa*, reported in (1991) 3 SCC 27, has observed in para 9 that caution must be borne in mind that in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however strong cannot be allowed to take the place of proof.

16. In cases, where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

17. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case where the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 IPC. Effect of absence of motive would depend on the facts of each case.

18. However, as stated earlier, in the present case, there are only three circumstances relied upon by the prosecution. None of them, in our opinion, have been proved by the prosecution beyond reasonable doubt. It has been consistently laid down by the Supreme Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible



with the innocence of the accused or the guilt of any other person [See Venkatesan v. State of Tamil Nadu, (2008) 8 SCC 456, Hukam Singh v. State of Rajasthan, (1977) 2 SCC 99, Eradu v. State of Hyderabad, AIR 1956 SC 316, Earabhadrapa v. State of Karnataka, (1983) 2 SCC 330, State of U.P. v. Sukhbasi, 1985 Supp SCC 79, Balwinder Singh v. State of Punjab, (1987) 1 SCC 1, Ashok Kumar Chatterjee v. State of M.P., 1989 Supp (1) SCC 560 and Hanumant, son of Govind Nargundkar v. State of Madhya Pradesh, AIR 1952 SC 343.] The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab, AIR 1954 SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

19. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all 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. The present case being a case of circumstantial evidence, the prosecution has not proved the chain of circumstances to show the involvement of the appellant in the crime. There are missing links at every stage and hence, it cannot be stated that the case is proved against the appellant beyond reasonable doubt.

20. In this view of the matter, the judgment and order passed by the learned Principal Sessions Judge, Tiruchirapalli in S.C.No.68 of 2016 cannot be upheld. This Criminal Appeal is allowed and the conviction and sentence imposed against the appellant/accused under section 302 IPC is set aside. The appellant is acquitted of the offence under Section 302 IPC. Bail bonds, if any, executed by him shall stand cancelled and fine amount, if any, paid by him, is ordered to be refunded forthwith.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

1.The Principal Sessions Judge, Tiruchirapalli

2.The Judicial Magistrate No.III, Trichy.

3.-Do-through the Chief Judicial Magistrate,
Trichy.

4.The District Collector,Trichy.

5.The Director General Of Police, Mylapore, Chennai.

6.The Superintendent of Prison,Central Prison, Trichy.

7.The Inspector of Police
Jeeyapuram Police Station,
Trichy.

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

Copy To:

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

+ 1 CC TO Mr.N.ANANDA KUMAR , ADVOCATE IN SR No.91568.

MJ/RR

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JUDGMENT MADE IN
CRL.A.[MD].No.459 of 2016
22.10.2018