

BAIL SLIP

The Accused viz., Lokesh-A1, Sasi Kumar-A3, and Murali-A7 were released on bail vide CrI.M.P.No.1 of 2010 in CrI.A.No.687 of 2010, order dated 19.11.2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :21.08.2019

Pronounced on:30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal Nos.687 of 2010 and 431 of 2018

1.Lokesh
2.Sasi Kumar
3.Murali

...Appellant/Accused 1,3 and 7
in CrI.A.No.687/2010

Venkatalatchumamma

...Appellant/P.W.1 in
CrI.A.No.431/2018

Vs.

State by
The Inspector of Police
Dentkanikottai Station,
[Crime No.81/2007].

... Respondent/Complainant
in CrI.A.No.687/2010

1.Logesh

2.Ravi

3.Sasikumar

4.Babu

5.Chinna Reddy

6.Subbu Reddy

7.Murali

8.Kuppi @ Kubendran

9.State by Inspector of Police,
Denkanikottai Police Station,
Denkanikottai,
Krishnagiri District.

... Respondents
CrI.A.No.431/2018

Prayer in Crl.A.No.687/2010:

Appeal filed under section 374[2] of Code of Criminal Procedure, to set aside the conviction and sentence imposed on the appellants in S.C.No.29/2009 by the learned Principal Sessions Judge, Krishnagiri by judgment dated 02.11.2010.

Prayer in Crl.A.431/2018:

Appeal filed under section 397 & 401 of Code of Criminal Procedure aggrieved by the acquittal of the respondents 1 to 8 from the charges under Section 120-B, 364, 302, 302, R/w 109 and 201 in S.C.NO.29/2009 on the file of the Principal Sessions Judge, Krishnagiri in the judgment dated 02.11.2010, preferred this appeal.

Crl.A.687/2010

For Appellant : Mr.P.Kumaresan

For Respondent : Mr.V.Saradha Devi,
Government Advocate [Crl.Side]

Crl.A.431/2018:

For Appellant : Mr.K.Subburam

For Respondent : Mr.P.Kumaresan for R1, R3 & R7
Mr.V.Paarthiban for R2, R4, R5, R6 & R8
Mr.V.Saradha Devi,
Government Advocate [Crl.Side] for R-9

COMMON JUDGMENT

M.NIRMAL KUMAR, J.

Crl.A.No.687 of 2010 has been filed by Accused nos.1, 3 and 7. The appellants are the accused in S.C.NO.29/2009 on the file of the Principal Sessions Judge, Krishnagiri in the judgment dated 02.11.2010. There are totally 8 accused in this case. All accused in this case charged as follows;

S.I.No.	Rank of the Accused	Charged under Section
1.	A1 and A5 to A8	120(B) IPC
2.	A1 to A4	364 IPC
3.	A1	302 IPC
4.	A2 to A4	302 read with 109 IPC
5.	A1, A3 and A7	404 IPC
6.	A1 to A4 and A7	201 IPC

2. The accused are stood charged and tried for the commission of the offence under Section 120-B, 364, 302, 302, R/w 109, 404 and 201 IPC. The Trial Court, on conclusion of trial vide impugned Judgment dated 02.11.2010 had convicted the accused 1, 3 and 7 for the commission of the offence under Section 404 IPC and awarded them the sentence of rigorous imprisonment of three years and also imposed a fine of Rs.20,000/- and in default, to undergo 10 months Simple imprisonment. The accused/appellants, aggrieved by the conviction and sentence awarded by the Trial Court, vide impugned Judgment dated 02.11.2010, has preferred the Criminal Appeal No.687/2010.

3. The appellant in CrI.A.No.431/2018 is the defacto complainant, aggrieved by the acquittal of the respondents 1 to 8 from the charges under Section 120-B, 364, 302, 302, R/w 109 and 201 in S.C.No.29/2009 on the file of the Principal Sessions Judge, Krishnagiri in the judgment dated 02.11.2010, preferred this appeal.

4. Since both the appeals are arising out of common judgment in S.C.No.29/2009, it was taken up, heard out, and are being disposed of by this common judgment.

5. For the sake of convenience and clarity, the appellants and respondents are referred by their original ranking in the Lower Court.

6. The prosecution in this case during trial had examined P.W.1 to 18 and marked Ex.P1 to P33 and M.Os.1 to 14. On the side of the defence, no witnesses and documents have been examined. The Trial Court on conclusion of trial had convicted the accused/appellant as stated above.

7. The facts leading to the filing of these Criminal Appeals briefly narrated, are as follows:

7.1. The defacto complainant / P.W.1 Venkatalatchumamma is the mother of the deceased. The deceased is aged about 30 years and he was unmarried. On 10.03.2007, he went out in his two wheeler TVS suzuki and he did not return home. Thereafter, the defacto complainant along with her brothers / P.W.s 2 and 3 went to the police, complained about the same. The Police advised them to make search in the relatives house to find out her son's whereabouts. On 17.03.2007, they again went to the Police Station and lodged a complaint which was registered on 18.03.2007 in Crime No.81 of 2007 as 'Man missing'.

7.2. The defacto complainant/P.W.1 was married to A5 / Chinna Reddi, before 40 years. They lived together for 20 years.

Thereafter A5 had deserted her and got secondly married with another lady. The defacto complainant had two children, son namely Sathyanarayan reddy and daughter viz., Rathinammal. The defacto complainant and her two children were residing with the father-in-law and mother-in-law. The defacto complainant's father in law had settled 20 acres of property in favour of her son Sathyanaraya reddy, which was not liked by her estranged husband/ A5. A6 to A8 are in-laws of defacto complainant, who were also equally inimical due to the settlement. There was also a civil case between them in that regard, which was decreed in favour of the deceased.

7.3. A3 in this case had surrendered before the respondent Police on 13.06.2007. On his confession, the entire case unravel. A1 is the friend of A7 / Son of A5. A5 and A7 had approached A1 to do away with the deceased and they promised money. A1 to A4 are friends. A4 is also known to the deceased. On 10.03.2007, A4 took the deceased in his bike on the pretext of purchase of motor pump. On the way A1 to A3 had forcibly taken him in the Tata Sumo Vehicle to a remote forest area. On the way, the deceased was assaulted. Thereafter using the cyclechain, he was strangled to death and his head was cutoff and the body was tied with a big stone and dropped in the Dam. The head was taken and shown to A7 as proof of murder and thereafter taken it to the remote place in the forest and burnt. The other accused were also arrested in this case who had also confessed about the same. On completion of the investigation, charge sheet was filed.

8. P.W.1 is the mother of the deceased who had stated about her marriage with A5 and had two children out of the marriage and the deceased is one of her children. A5 had deserted her and was living with another lady. A7 is the son of A5, through second marriage. The father of A5 / grandfather of the deceased had settled 20 acres of land in favour of the deceased. There was civil suit against the settlement. A5 is her husband. A6 is the brother in law. A7 is the son of A5. A8 is the son of A6. Hence entire in-laws were inimical due to the above settlement. Recently, the Civil Court had also rendered a judgment in favour of the deceased. P.W.1 was supported by her brother's P.W.s 2 and 3. Due to this enmity, A6 to A8 / inlaws with the help of A1 to A4 planned to do away the life of the deceased and thereby deceased was done to death. P.W.1 had given a complaint to the respondent Police / Ex.P1 during March 2007. Thereafter after 3 ½ months, she was called by the Police and she identified her son's HMT Watch / M.O.1 and she was taken to the Panchappalli Dam, where she identified her son's Shirt / M.O.2 and Pant / M.O.3. She had also identified her son's Mobile phone / M.O.4. P.W.s 2 and 3 are the brothers of P.W.1 who had corroborated the version of P.W.1. Further stated that there was a constant

dispute between the deceased and A5 with regard to property. On 10.03.2007, she had informed her brothers / P.W.s 2 and 3 about her son not returning home. Thereafter on 18.03.2007, he accompanied P.W.1 and lodged the complaint and they were taken by the Police to Panchappalli Dam, where the articles of the deceased were identified namely M.O.5/Banian, M.O.6/underwear and M.O.7 / rope.

9. P.W.4 is the witness for the Observation Mahazar who had not supported the case and turned hostile. P.W.5 / Siddha Doctor who would state that the deceased used to come and take medicines from him and at times, his uncle used to accompany him. P.W.6 had seen A2 and A4 talking together and he overheard that they wanted to finish of the deceased. P.W.7 is the son of Venkatasamy Reddy / P.W.1's another brother. On 10.03.2007, he had seen the deceased speaking with his friends A1 to A4 and since they were discussing some real estate issues, P.W.7 had not interfered. P.W.8 is the postmortem Doctor who had issued Postmortem Certificate / Ex.P3. P.W.9 is the person before whom, A3 is said to have appeared and confessed about the murder. On 13.06.2007, P.W.9 is said to have taken A3 to the Police. This witness had not supported the case and turned hostile. P.W.10 is the witness before whom A4 had given a confession and he is the witness for observation Mahazar / Ex.P4 and Seizure Mahazar for M.Os 2 to 8 / Ex.P5, recovered near the Dam. P.W.11 is the witness for observation mahazar / Ex.P6 for recovery of the skull of deceased in the remote forest area and before whom, Ex.P7/observation mahazar for recovery of Sickle/M.O.9 was prepared. P.W.12 is the witness for seizure of the bike of deceased/ M.O.14. The brother of P.W.12 is known to A1 who had handed over the bike to him. P.W.13 is the witness for arrest of A2 and A7. Before whom Ex.s P8 and P9, seizure mahazar for M.O.10 / Cycle Chain and M.O 11/plastic can was seized. P.W.14 is the owner of mobile shop, who produced Ex.P10/ receipt for sale of M.O.4 / mobile phone to the deceased. P.W.15 is the Head clerk in Judicial Magistrate, Denkanikottai and he had sent seized articles for forensic examination and for DNA test and thereafter received the report, through him Ex.P11 to P15 have been marked. P.W.16 is the Head constable, who has produced the bones for inquest. P.W.17 is the Investigating Officer who had received complaint / Ex.P1 and lodged FIR / Ex.P16. Thereafter reached the scene of occurrence, prepared observation mahazar/ Ex.P17 and Rough Sketch / Ex.P18 and he examined witnesses and issued advertisement in television and newspaper about the missing of deceased. Thereafter he was transferred. P.W.18 / Investigating Officer had conducted major part of the investigation, arrested the accused, seized articles of the deceased near the Dam, prepared observation mahazar, rough sketch and made arrangements for postmortem and sent the seized articles for forensic examination. Thereafter after obtaining

the report filed the charge sheet in this case, through him, Exs.P19 to P31 had been marked.

10. The Trial Court on analysis of evidence and documents had acquitted the accused for offence under Section 120-B, 364, 302, 302, R/w 109 and 201 and convicted A1, A3 and A7 for offence under Section 404 IPC, A1 for recovery of M.O.14 / Bike, A3 for recovery of M.O.1/Watch and A7 for recovery of M.O.4 / mobile phone.

11. The contention of the defacto complainant is that the Trial Court who convicted A1, A3 and A7 based on the recovery, believing the evidence of witnesses, ought to have convicted all the accused for other offences under Section 120-B, 364, 302, 302, R/w 109 and 201. The motive for murder of deceased has been clearly spoken by P.Ws. 1, 2 and 3. As regards conspiracy, P.W.6 had stated about the planning of A2 and A4 to do away the life of deceased. Further P.W.7 is the last seen witness for the last seen who had seen the deceased along with A1 to A4 on 10.03.2007. The witnesses to the seizure are P.W.s 10, 11, 13 and 14. P.W.10 is the witness for seizure of articles from the Dam. P.W.11 is the witness for seizure of M.O.9 / Sickle and M.O.14 Bike. P.Ws.13 and 14 are the witnesses for mobile phone which was recovered from A7.

12. Since the occurrence had taken place on 10.03.2007, the remanance of the deceased could be recovered only on 15.06.2007 ie., after 3 ½ months. The bones were collected and the dresses were identified by the witnesses namely P.W.s 1 to 3. P.W.1 is the mother of the deceased who had identified the HMT Watch / M.O.1 and mobile phone / M.O.4 and bike of deceased / M.O.14 as that of the deceased. In view of the same, on the available evidence, motive, last seen theory and recovery had been proved. The accused have been identified. Thus, the Trial Court ought to have convicted the accused.

13. The learned counsel appearing for the respondents 2, 4, 5, 6 and 8 on the other hand submitted that the Lower Court had rightly acquitted the accused after proper analysis of evidence and materials. He would further state that the contention of the defacto complainant is hypothetical and without support of any evidence. The mystery of the entire case was unravel on the confession of A3 who had admitted before P.W.9 about the crime, A3 complicity and that of the other accused. P.W.9 does not speak anything with regard to these aspects. The only material is available Ex.P19/confession before the Police. Admissible portion of the confession is that he produced M.O.1 / Watch of the deceased. However this recovery is not proved through evidence. Ex.P19 / confession statement and Ex.P20 / mahazar for recovery of M.O.1/Watch have been marked through Investigating

Officer. P.W.9 does not speak anything as regards M.O.1 and Exs.P19 and P20. Thus, the entire case of the prosecution is demolished and falls as a pack of card. Thereafter other arrest and recovery is of inconsequence. P.W.8 Postmortem Doctor had categorically stated that he is not sure about whether the bones produced before him were that of human or animal? And whether male or female bones. Further the Forensic Report and DNA Report are marked through P.W.15 / the Court Staff and not through the Scientific Officer, which cannot be taken in evidence. These reports are not conclusive and no reliance can be placed on this. The Trial Court placed no reliance on the same.

14. Further, he would submit that Ex.P1 is a typed complaint in Tamil with over writing. P.W.1 categorically admits that she does not know to read or write Tamil and she is not aware of interpolation and in view of the same, the entire case falls. Further the witnesses to the seizure i.e, P.W.s10, 11, 13, 14 and 19 all have stated that they dont know to read and write Tamil but all the mahazars are in Tamil. Thus, the entire case is a got-up one and the Trial Court had rightly acquitted these accused.

15. The learned counsel for A1, A3 and A7 in addition to the submission of the learned counsel for other accused, stated that recoveries in this case are also unbelievable. The Lower Court while acquitting A1, A3 and A7 from offences under Section 120-B, 364, 302, 302, R/w 109 and 201 IPC ought to have acquitted these accused from offence under Section 404 also, since the evidences are unbelievable for one set of facts cannot be believable for other aspects. On the same set of evidence, convicting these accused for offence under Section 404 IPC is palpably incorrect. He further submitted that as regards A1, recovery of M.O.14 Bike is attributed. Likewise for A3, recovery of M.O.1 is attributed. As regards A7, M.O.4/Cell phone is attributed. M.O.s.1, 4 and 14 have been spoken to by P.W.18 Investigating Officer. No independent witnesses have spoken to and there is no admissible evidence. The confession witnesses P.W.s 9 and 13 have not supported the case of the prosecution. P.W.14 Mobile shop owner had produced the receipt / Ex.P10 in which there was no signature of P.W.14 and the receipt is bereft of necessary particulars. Likewise, M.O.1/HMT Watch is said to have been recovered on the confession of A3. P.W.9 does not mention about the same. Seizure mahazar of M.O.14 /Ex.P27 had been marked through Investigating Officer. In view of the same, the recovery of the articles are not proved and hence prays for acquittal.

16. The learned Additional Public Prosecutor submitted that the prosecution had not preferred any appeal against the

acquittal for offence under Section 120B, 364, 302, 302 read with 109 IPC. As regards the conviction of accused nos.1, 3 and 7 for offence under Section 404, the prosecution had proved the case by cogent evidence and recovered the articles based on the confession of the accused and M.Os 1, 4 and 14 are proved to be that of the deceased. P.W.1, mother of deceased had identified these material objects and the Lower Court had rightly convicted the accused and prays for dismissal of CrI.A.No.687/2010.

17. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

18. P.W.1 is the mother of the deceased who admits that on 10.03.2007, her son has not returned home. Thereafter she informed P.W.s 2 and 3, her brothers. One week thereafter only on 17.03.2007, the complaint was lodged which came to be registered only on 18.03.2007. After 3 ½ months, M.O.1/HMT Watch, M.O.2 / Pant and M.O.3 Shirt were shown to her by the Police for identification and the same has been identified as that of the deceased. P.W.1 admits that she does not know to read and write Tamil. Admittedly, Ex.P1 / complaint was typed in Tamil and interpolation about pant and shirt have been made in writing. P.W.1 admits that she is not the author of Ex.P1. Further it is found that there is no mention with regard to any of the accused in the complaint. In view of the same, the manner in which Ex.P1 came into existence creates suspicion and is highly doubtful. Further P.W.1 admits that there was property dispute with her husband / A5 and there was civil case pending between them. She admits that her brother P.W.s 2 and 3 were taking care of the property. Further she admits that the deceased was in the habit of going for treasure hunt for days together along with Priest in the forest. P.W.s 2 and 3 / the brothers of P.W.1, admitted that they don't know to read and write Tamil, further admits about dispute over the property settled by P.W.1's father-in-law in favour of deceased and hence there was animosity between them. It is an admitted fact that the property in dispute was in enjoyment and maintenance of P.W.s 2 and 3. The witness for conspiracy i.e., P.W.6 is highly doubtful, though he had seen A2 and A4 talking with each other on doing away the life of deceased and he had not informed to the Police till 3 ½ months. It is also seen that in his statement, he has mentioned about 4 persons and the Statement reached the Court with a delay of 3 months thereafter. Likewise for last seen theory, P.W.7 / brother-in-law of P.W.1's brother admits that on 10.03.2007, he had seen the accused and the deceased together, he did not inform anyone about the same, since they were friends and they were discussing about the real estate issues, he had not doubted the same. From 10.03.2007, the deceased was found missing and the entire family of the deceased were searching for him. These witnesses have not mentioned anything about seeing

the deceased in company of accused, till they were examined three months later. Hence no reliance could be placed on the evidence of these witnesses. It is seen that all the mahazars in this case have been prepared in Tamil, however witnesses to the mahazars categorically stated that they don't know to read and write Tamil. Hence the entire recovery and seizure of articles becomes unbelievable. P.W.8 Postmortem Doctor in the report Ex.P3 had categorically stated that he is not certain whether the bones sent for examination were that of the human or animal and whether it was male or female bones and he had not given any conclusive report. Likewise, the Forensic report and the DNA report are all inconclusive and nothing can be inferred from the report. Further, these reports have been marked through Head Clerk, and not through Scientific Officers. Taking the case on the whole, serious doubt is cast on the available evidence and materials. Therefore, the case of the prosecution as projected with respect to the arrest and recovery cannot be sustained. The Trial Court had rightly acquitted the accused for offence under Section 120B, 364, 302, 302 read with 109 and 201 IPC.

19. In view of the above, this Court feels that the prosecution had miserably failed to prove the links of evidence connecting the accused to this case and for recovery. Hence, the conviction and sentence imposed on the accused nos.1, 3 and 7/ appellants under Section 404 IPC in S.C.No.29 of 2009 on the file of the learned Principal Sessions Judge, Krishnagiri by judgment dated 02.11.2010 is set aside and the Criminal Appeal in CrI.A.No.687/2010 is allowed. Consequently Criminal Appeal in CrI.A.No.431/2018 is dismissed. The appellants in CrI.A.No.687/2010 are acquitted of the charges under Section 404 IPC and the fine amount, if any paid shall be refunded to him. The appellants / A1, A3, and A7 are directed to be released forthwith, unless their custody is required in connection with any other case.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sk

To

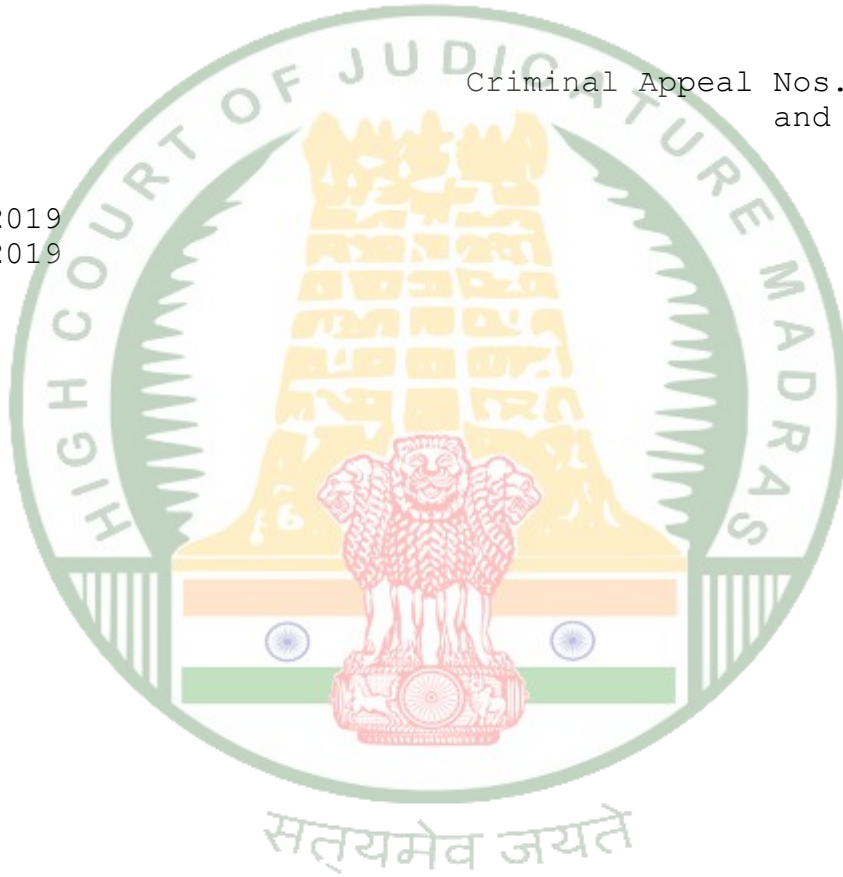
1. The Principal Sessions Judge,
Krishnagiri .
2. The Inspector of Police
Dentkanikottai Station,

3. The Public Prosecutor
High Court, Madras.
4. The District Munsif cum Judicial Magistrate,
Denkanikottai.
5. The Chief Judicial Magistrate, Dharmapuri @ Krishnagiri.
6. The Superintendent,
Central Prison, Vellore.

+1cc to Mr.P.Kumaresan, Advocate, S.R.No.75805

Criminal Appeal Nos.687 of 2010
and 431 of 2018

CP(CO)
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