

Bail Slip

The Appellant/Accused namely Mr. Moorthy, S/o. Gurusamy was directed to be released on bail as per the order of this Court dated 21.01.2019 in CrI.M.P. 17698/2018 in CrI.A. 160/2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH

AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.160 of 2018

Moorthy

... Appellant/accused

-vs-

The State by Inspector of Police,
Thiruchengode Rural Police Station,
Namakkal District.

... Respondent/complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to call for the records and to set aside the judgment conviction imposed in dated 27.02.2018 of the learned Additional District and Sessions Judge (Full Additional Charge), Namakkal, passed in S.C.No.23 of 2016.

For Appellant : Mr.N.Manokaran

For Respondent : Mrs.M.Prabhavathi,

Additional Public Prosecutor.

J U D G M E N T

[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

The appellant herein is the sole accused in S.C.No.23 of 2016 ,on the file of the learned Additional District and Sessions Judge, Namakkal. He stood charged for the offence under Sections 449 and 302 of IPC. By a judgment dated 27.02.2018, the trial Court convicted the appellant and sentenced as follows:

Sections of Law	Sentence
449 IPC	Seven years R.I. and fine of Rs.2,000/- i/d to undergo six months R.I.
302 IPC	Life imprisonment with fine of Rs.2,000/- i/d to undergo six months R.I.

However, the sentences were ordered to run concurrently.

2. Challenging the conviction and sentence, the appellant/accused is before this Court with the present Criminal Appeal.

3. The case of the prosecution in brief is as follows:

(i) PW1, Ganesan is the son of deceased Muthusamy. The said Ganesan was working at Ran India Steels and besides he was running a weigh bridge at Thiruchengode to Sankari main road. The weigh bridge was looked after, by the deceased Muthusamy, by staying in the weigh bridge itself during night hours. PW5, Anandan was also working in the same weigh bridge during day time. On 05.02.2013, at about 6.00am, PW2, Periyasamy informed PW1, Ganesan, that his father is lying in a pool of blood. After hearing the same, PW1 rushed to the weigh bridge at about 8.30am and saw his father, lying dead with cut injury on his neck. On verification of computer used for weighing the vehicle, PW1 noticed that at about 5.40am, the vehicle bearing Regn.No.KA 01 AD 3223, came to the weigh bridge. Coming to the conclusion that only after 5.40am, his father was murdered, PW1 Ganesan, lodged a complaint before PW25, Eswaramoorthy, under Ex.P1.

(ii) Mr.Eswaramoorthy-PW25, who was working as a Sub Inspector of Police in Thiruchengode Rural Police Station on 05.02.2013, at about 9.30am, received the complaint from PW1, and registered the case in Cr.No.57 of 2013 under Sections 449 and 302 IPC. Ex.P14, is the First Information Report [FIR]. After registration of the case, he sent a copy of the FIR to the Judicial Magistrate No.1, Thiruchengode through PW24, Mr.Chelladurai and at about 10.10am, he reached the scene of occurrence, where in the presence of Mr.Shajakhan and one Mr.Senthil Kumar [PWs.17 & 16], he prepared a rough sketch and observation Mahazar under Exs.P16 and 15, respectively. Between 11.30am and 2.00pm, in the scene of occurrence, in the presence of Panchayathar and witnesses, he conducted the inquest and prepared the inquest report. After the preparation of the inquest report, in the presence of same witnesses, he collected the blood samples under Ex.P4 Recovery Mahazar. He examined the witnesses and recorded their statement under section 161 Cr.P.C.

(iii) Thereafter, as per the direction of Inspector of Police, PW22 Amulraj, Head Constable, handed over the dead body of the deceased Muthusamy, for postmortem.

(iv) PW23 Dr.Mohan Babu, was working as an Assistant Surgeon in Government Hospital, Thiruchengode, received the requisition letter from PW25 and conducted the post mortem over the dead body of Muthusamy. On examination he found a cut injury over his neck about 13x5x4cm. He collected viscera for chemical

examination. The post mortem report is Ex.P12. After collecting the viscera report, he gave the final opinion under Ex.P13. As per the final opinion of PW23, the deceased would appear to have died of shock and haemorrhage due to the cut injury to the vital organs & blood vessels, trachea, jugular & carotid artery. The viscera report was marked as Ex.P10.

(v) After four months, on 05.06.2013, when PW18, Manivannan, who is the Village Administrative Officer and his Assistant Ravi, were in his office, the appellant/accused allegedly surrendered and given a confession statement, in respect to the death of the deceased Muthusamy. Thereafter, PW18, Manivannan recorded the statement given by the appellant/accused and obtained his signature in the said statement. After recording the said statement, PW18 Manivannan and his Assistant Ravi produced the appellant/accused before PW25 Investigation Officer, along with special report. The confession statement by the appellant/accused given before PW18, and the Special report given by the PW18, was marked as Exs.B5 & B6 respectively.

(vi) On receipt of the report given by PW18, PW25 recorded the confession statement of the appellant/accused. In the confession statement the appellant/accused made a statement that he is willing to produce the weapon, which was used during the time of occurrence. Accordingly, he accompanied the investigation officer and VAO to one thatched shed, situated at Vannamparai and identified the plastic bag containing blood stained knife and green colour blood stained lungi. PW25 recovered the same under Ex.P18, seizure mahazar. The recovered articles are marked as M.O.5 to M.O.7. Admissible portion of confession statement is Ex.P19. He sent the blood stained articles for chemical examination through the Judicial Magistrate.

(vii) In continuation of the investigation, the Inspector of Police collected the call details of cell phone, which was used by the deceased under Ex.P20. After chemical examination done by PW21, Geetha, Assistant Director, he received the Biological and Serology reports, under Exs.P21 & 22. PW25 also recorded the statements from witnesses, who conducted the post mortem and chemical examination and he filed the final report.

(viii) The learned trial Judge with reference to the incriminating evidences made by the prosecution witnesses, questioned the accused under Section 313 (1)(b) Cr.P.C. for which the accused denied the same as false.

(ix) On the side of the accused, one Manjula, was examined as DW1. She exhibited two documents, as Ex.D1 and D2. Before the trial Court, she has stated that the accused Moorthy was

her husband. After the occurrence the police brought her husband to the police station and confined in the police station for a period of 20 days. Due to that she sent a complaint to the various authorities under Ex.D1. The acknowledgment in respect to the complaint sent to the Chief Minister was marked as Ex.D2. After sending the complaints, the police officers released the accused from his unlawful confinement and thereafter, after three months from the date of occurrence, her husband was again arrested and remanded to judicial custody.

Points for consideration:

4. Admittedly, there are no eye witness to the case and this is a case based on circumstantial evidence. Hence, before deciding the issue involved in this appeal, it is necessary to see the judgment in Chandru @ Chandrasekaran Vs. State Rep. By Deputy Superintendent of Police CB CID and Another, reported in (2019) 1 MLJ (Crl.) 714 (SC), wherein our Hon'ble Apex Court has held as follows:

9....The law with regard to appreciation of circumstantial evidence has been clearly enunciated in the case of Hanumant V. State of Madhya Pradesh, [AIR 1952 SC 343] wherein this Court held as follows:

"10.....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 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."

10. This law has been consistently followed and has been repeated in catena of authorities. It is not necessary to refer to all the authorities. However, we may refer to Sir Alfred Wills book Wills on Circumstantial Evidence (Chapter VI)2, in which he has laid down the following Rules specially to be observed in the case of circumstantial evidence:

"RULE 1. - The facts alleged as the basis of any legal inference must be clearly proved, and beyond reasonable doubt connected with the factum probandum.....

RULE 2. - The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability.....

RULE 3. - In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.....

RULE 4. - In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.....

RULE 5. - If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

11. The law can be summarised in the following terms:

1. The circumstances relied upon by the prosecution which lead to an inference to the guilt of the accused must be proved beyond doubt;

2. The circumstances should unerringly point towards the guilt of the accused;

3. The circumstances should be linked together in such a manner that the cumulative effect of the chain formed by joining the links is so complete that it leads to only one conclusion i.e. the guilt of the accused;

4. That there should be no probability of the crime having been committed by a person other than the accused."

5. Summarising the principles set out by our Hon'ble Apex Court for proving this type of cases based on circumstantial evidence, it is necessary for the prosecution to prove the motive of the accused for committing the offence, last seen theory and medical evidence.

6. In respect to the motive, the learned Additional Public Prosecutor made a submission that since the deceased Muthusamy was interfering with the personal affairs of the accused and the witness Kokila, the accused got wild and committed the offence, but, it has not been proved by way of letting in relevant evidence in this regard.

7. Considering the submission made by the learned counsel appearing for the appellant/accused, it is true, that as per the case of prosecution, the appellant/accused Moorthy and one Kokila, was having illegal affairs, for which, the deceased Muthusamy advised the Kokila, not to speak freely with the people, who come to the Tea Shop. In this regard, for proving the said allegation, the above said Kokila was examined as PW6. But during the time of giving evidence, she has not supported the case of prosecution and thereby, the learned Public Prosecutor, treated the said witness as a hostile witness. Even during the time of cross examination by the learned Public Prosecutor, the said kokila has not supported the case of prosecution and therefore, the evidence given by Kokila-PW6, was no way helpful to establish the motive of the appellant/accused. The trial Court has also come to the conclusion that the motive has not been proved by the prosecution.

8. Secondly, for proving the last seen theory, nobody was examined on the side of the prosecution. The witnesses examined on the side of the prosecution viz., PWs.1 to 3, 5, 7 to 12 and 14, are all the relatives and neighbours of the deceased Muthusamy, who have visited the scene of occurrence, only after the death of Muthusamy. Nobody has stated that prior to the occurrence, the appellant/accused and the deceased were seen together. Therefore, the last seen theory, has also not been proved in this case.

9. The other stand taken by the learned Additional Public Prosecutor is that the case of prosecution was proved by way of recovery of the material objects and also by way of proving the extra judicial confession statement, which are all the relevant factors, that would connect the accused to the crime.

10. In this regard, the learned counsel appearing for the appellant/accused, would contend that as per the case of prosecution on 05.06.2013, when PW18-Manivannan, was in his office along with his menials, the appellant/accused surrendered

before him and made a statement in which he admitted the alleged occurrence. The said statement was recorded by PW18 and thereafter, he produced the accused before the investigation officer. After receiving the accused from the custody of PW18, the investigation officer, PW25 has also recorded the confession statement and based on the confession given by accused, he recovered MO6 Knife, in the presence of PW18.

11. In this regard, the learned counsel appearing for the appellant/accused would further contend that as per the evidence given by PW18, before recording the extra judicial confession statement on 05.06.2013, the appellant/accused was seen together with PW25 for the purpose of Enquiry, hence the statement recorded by PW18-Manivannan, VAO, is not at all having any evidentiary value for proving the allegation levelled against the appellant/accused.

12. Now on considering the submission made by the learned counsel appearing for the appellant/accused, it is an admitted fact that the alleged offence has happened on 05.02.2013. Subsequently after four months only, on 05.06.2018, PW18-Manivannan, VAO, recorded the extra-judicial confession statement of the appellant/accused. In this regard, PW18 has stated that before recording the statement from the appellant/accused, at the relevant time of occurrence, PW25 escorted the appellant/accused. Therefore, it cannot be said that after the occurrence, the appellant/accused voluntarily surrendered before PW18 for the first time and given the statement.

13. Further, on going through the extra judicial confession statement -Ex.P5, recorded by PW18, which runs to six pages, it would reveal the relationship of appellant/accused with one Kokila and also about the places in which the deceased was running the weigh bridge.

14. In this connection, it is relevant and useful to see the judgment in Thangavelu Vs. State of T.N., reported in 2002 SCC (Cri.)1382, wherein at paragraph No.7, our Hon'ble Apex Court, has held as follows:

"Ex. P-14 is recorded in nearly 4 full pages, it not only speaks of his motive to kill D-1 and D-2 but also gives graphic details of the nature of the attack on the deceased and also mentions in detail the persons whom he saw during and after the incident. In a manner of speaking, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression, therefore, he was seeking to corroborate their future evidence. In our opinion, this would hardly be the

natural conduct of an accused if he was voluntarily making a confession."

15. Further, in Madammal Vs. State, Represented by Inspector of Police, Karimangalam Police Station, Dharmapuri District, reported in 2005 MLJ (Cr1.) 1046, this Court has held that the extra-judicial confession, which was recorded by a person who is competent to record it, is admissible, provided it must have been done prior to commencement of the investigation.

16. So, for the reason that the extra-judicial confession statement is recorded after four months from the date of starting the investigation and also it runs to six pages, by following the above principles set out by our Hon'ble Apex Court and this Court, we are of the opinion that the extra-judicial confession statement recorded by PW18, cannot be considered as a piece of evidence, for deciding the case of the prosecution.

17. Yet another aspect to be considered is that PW18 while at the time of giving evidence, has stated that earlier the accused surrendered before him, however, the appellant/accused was not known to him. Therefore, in the said circumstances, it is relevant and useful to see the judgment in Anumuthu Vs. Inspector of Police, reported in 2003 (1) MNW (Cr.) (DB) 259, wherein this Court has held as follows:

"17... It is noticed that P.W.4 would admit in cross-examination that he is utter stranger to the accused. Under those circumstances, we are unable to believe the version of P.W.4 that the accused had gone to P.W.4's place and given extra-judicial confession."

18. So, according to the settled principles of law, it is not possible for the appellant/accused to surrender before the PW18, who is an utter stranger, believing that he has to save his life. Hence, in this aspect also, the case of prosecution fails.

19. In respect to the aspect of medical evidence, PW23-Dr.Mohan Babu, who conducted the post mortem in his final opinion has clearly stated that only because of the injury sustained by deceased in the neck, the death could have occurred to the deceased. Though, the said evidence was not disputed on the side of the accused, considering the fact that the other evidence let in by the prosecution for connecting the accused with the crime, is not sufficient, we are of the considered opinion that the prosecution has not proved its case.

20. The Court below, only believing the evidence given by the Doctor and also after believing the evidence given by PW21-

Geetha, Assistant Director and a forensic expert, came to the conclusion that the appellant/accused alone has committed the offence and convicted him. In this regard, since PW21, Geetha, is a Scientific Assistant, who examined the materials collected in this case, the evidence given by the said witness is not related to the occurrence or in any way connecting the accused with the alleged crime.

21. As rightly pointed out by the learned counsel for the appellant/accused, before the trial Court, the crucial document, which was the inquest report prepared by the officer has also been not marked and the trial was proceeded lethargically, without care and caution.

22. Therefore, the circumstances stated above, do not form a chain so complete as not to leave any reasonable doubt or exclude every possible hypothesis except the one to be proved, nor the circumstances sufficient and adequate to hold that the prosecution had established its case beyond any reasonable doubt.

23. Considering the totality of the circumstances, in our view, the prosecution has failed to establish the case against the appellant/accused. Therefore, we allow this Criminal Appeal. The conviction and sentence imposed on the appellant/accused, by the learned Additional District and Sessions Judge, Namakkal, passed in S.C.No.23 of 2016 on 27.02.2018, are set aside and the appellant/accused is acquitted of all charges. The fine amount, if paid, shall be refunded to the accused. The bail bond if any, executed by him shall stand cancelled.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Additional District and Sessions Judge, Namakkal.

2. The Judicial Magistrate
Tiruchengode

3. The Chief Judicial Magistrate
Namakkal

4. The Superintendent
Central Prison, Coimbatore

5. The Inspector of Police
Tiruchengode Rural Police Station
Namakkal District

6. The Public Prosecutor
High Court, Madras 104.

7. The Section Officer
Criminal Section
High Court, Madras 104.

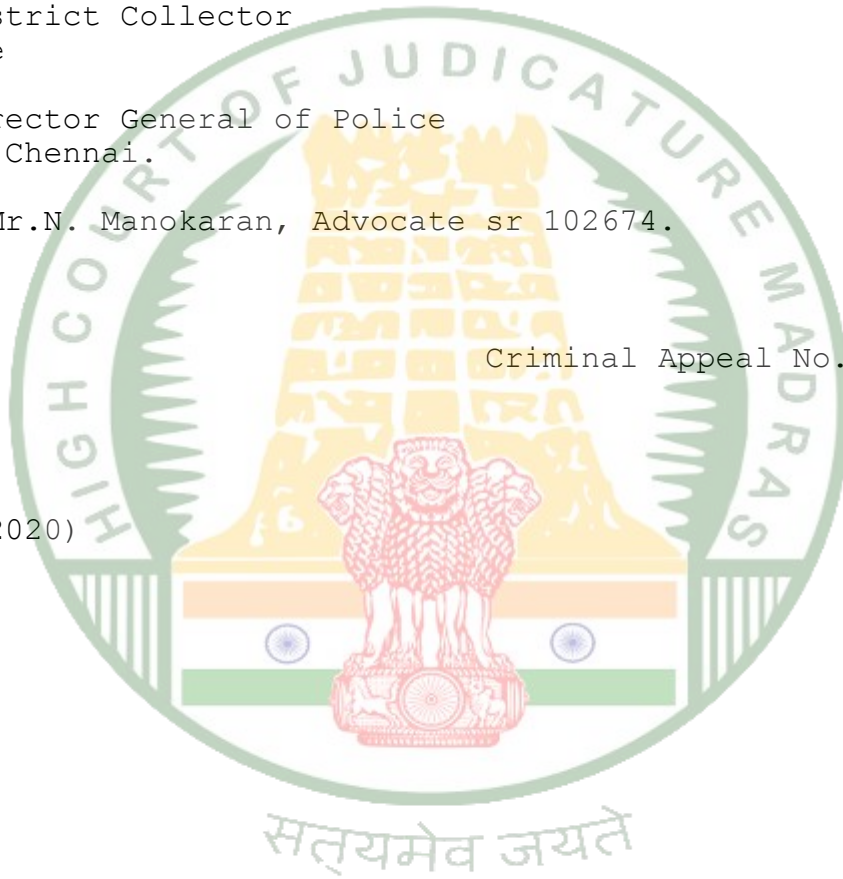
8. The District Collector
Coimbatore

9. The Director General of Police
Mylapore, Chennai.

+1 CC to Mr.N. Manokaran, Advocate sr 102674.

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BR(CO)
SP(20/02/2020)



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