

Bail Slip

The Petitioner /Accused viz., Senthil S/o.Viswanathan (Accused in S.C.NO.87/2008 Dated.07.12.2011 on the file of the District and Sessions Judge, Nagapattinam was released on bail as per order dated 01.02.2012 in CRL MP.NO.1/12 IN CRL A.NO.22/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2019

PRONOUNCED ON : 18.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.22 of 2012

Senthil

...

Appellant/ Petitioner

Vs

State rep. By its
Inspector of Police,
Perambur Police Station,
Nagapattinam,
Nagapattinam District.

..Respondent/ Respondent

Prayer:- This Criminal Appeal is filed under Section 374 Cr.P.C., against the judgment and sentence passed in S.C.No.87 of 2009 dated 07.12.2011 on the file of the learned District and Sessions Judge, Nagapattinam convicting the appellant under Section 304(ii) I.P.C., and sentence to undergo rigorous imprisonment for ten years with a fine of Rs.3,000/- in default to undergo simple imprisonment for two years.

For Appellant : Mr.R.Shivakumar for
M/s.K.M.Vijayan Associates

For Respondent : Ms.Kritika Kamal.P
Government Advocate (crl.side)

JUDGMENT

This Criminal Appeal is preferred by the sole accused. The accused was charged for offence under Section 302 I.P.C., but held guilty of offence under section 304(i) I.P.C., by the trial Court. The conviction and sentence of 10 years rigorous imprisonment and fine of Rs.3,000/- is under challenge in this appeal.

2.The case of the prosecution, in brief, is as follows:-

On 17.03.2009, at about 4.35 pm, Tmt.Vembu w/o Anbazhagan was brought to the Government Hospital, Myiladuthurai by her mother-in-law Smt.Jayam in an unconscious stage. The Doctor who examined Vembu found a lacerated wound 6 x 2 cm size over left side parietal lobe. The Attender Smt.Jayam reported to the Doctor N.Pazhanirajan (P.W.5) that the victim fell down from the bridge near the house on 17.03.2009 at 1.00 pm and sustained injury. This was recorded by the Doctor (P.W.5), in the accident register. He referred the patient to higher institution, for further treatment.

3.Vembu was therefore taken to Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram on 17.03.2009 at 6.20 pm. The Doctor at Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram has examined the victim and found 2 x 1cm lacerated wound over the parietal region and intimated the Police. Referred the victim for surgery and also advised to take CT scan of brain and X ray of skull.

4.From Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, the victim was shifted to JIPMER Hospital, Puducherry and admitted as inpatient on 17.03.2009 at about 11.30 pm. She died on 21.03.2009 at about 16.15 hours.

5.In the mean while, on 19.03.2009, at about 3.00 pm, Senthil the brother-in-law of Vembu went to the Village Administrative Office at Eravanchi, met the Village Administrative Officer - Mr.Balan and confessed to him about his guilt of causing injuries to Vembu, using bamboo stick. While Senthil confessed to Balan, the Village Menial was also present. Balan - Village Administrative Officer recorded the statement of Senthil got his signature in it. The Village Administrative Officer took Senthil to the Perambur Police station and handed him over to the Police along with the confession statement of Senthil and his special report.

6.Statement of Senthil was recorded by the Police. Based on his statement, the bamboo stick used by Senthil to assault Vembu was recovered near the house of Vembu. Senthil was arrested and remanded to custody. The F.I.R., was registered for offence under Section 307 I.P.C., and later, it was altered to Section 302 I.P.C., in view of the death of Vembu on 21.03.2009. On completion of investigation, charge under Section 302 I.P.C., was framed and the accused - Senthil was tried for the said offence by the learned District and sessions Judge, Nagapattinam.

7.Fifteen witnesses were examined on the side of the prosecution. 13 documents and one material object were marked to support their case. The accused has chosen not to examine any witness nor mark any document.

8.P.W.1 - Balan, the Village Administrative Officer has identified Ex.A.1 as report containing the confession statement of the accused - Senthil. The admissible portion of the confession statement given by the accused to the Police were marked as Ex.A.2. The Mahazar for seizure of M.O.1 is marked as E.X.A.3.

9.P.W.2 - Rajendran who took the injured - Vembu to Mayiladuthurai hospital has said nothing incriminating against the accused. P.W.3 - Anbazhagan is the husband of Vembu. Since, he has not supported the case of the prosecution, he was declared hostile by the prosecution. P.W.4 Shantha and P.W.15 Sundarambal were the residents of Marudur Village. They were examined by the prosecution to prove that the accused and the deceased visited Marudur Village 10 days prior to the occurrence and stayed at Marudur Village, on that night. But, both these witnesses do not support the prosecution and they were declared hostile.

10.P.W.5 - Dr.Palanirajan has identified the accident register - EX.P.4 maintained at Government Hospital, Mayiladuthurai, which reveals that on 17.03.2009, at about 4.35 pm, Vembu was brought to the hospital with head injury by her mother-in-law.

11.P.W.6 - Dr.Prabakaran, working in Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, has deposed about the fact that Vembu was brought by her mother-in-law on 17.03.2009 at about 6.20 pm and he examined her in causality and noted the cut injury on her head. He has advised for surgery and to take CT scan. The accident register maintained by him is marked as Ex.P.5. Dr.-Rupash Kumar, Assistant Surgeon at JIPMER Hospital, Puducherry has deposed

about the admission of Vembu for treatment on 17.03.2009 at 11.30 pm and about the fact that she died on 21.03.2009. Vembu was treated for the injury she sustained on her head. CT scan revealed blood clots near her brain and multiple fractures on her face.

12.P.W.8 - Dr.Anburose, has conducted post mortem on Vembu and issued the post mortem report - Ex.P.6. He has opined that Vembu died due to head injury. His final opinion is marked as Ex.P.7. The visra report, Ex.P.8 has been issued by Vasuki, the Assistant Director, Tamil Nadu Forensic Laboratory, Tiruvarur. The visra report does not indicate the presence of any poisonous substance. P.W.10 - Muthukumarasamy is one of the signatory of the observation mahazar - Ex.P.9. P.Ws.11 to 15 are the police officials who have participated in the investigation and they have spoken about their respective role in the investigation. The Investigating Officer Radhakrishnan - Inspector of Police was examined as P.W.14, who has spoken about the course of action, he undertook during the investigation.

13.Before the trial Court, there was no direct evidence. Except P.W.1 and Police witness most of the prosecution witnesses have turned hostile. However the trial Court accepted the theory of the prosecution that the accused gave a voluntary confession statement to P.W.1. Through the voluntary confession statement, the prosecution has proved the guilt of the accused, beyond reasonable doubt.

14.Aggrieved by the conviction and sentence and the reasoning of the trial Court, the present Criminal Appeal is preferred by the appellant/accused.

15.The learned counsel for the appellant would submit that the trial Court has miserably failed to note that the prosecution has not proved the case against the accused beyond any reasonable doubt. Solely based on the extra judicial confession alleged to have been given by the accused to the Village Administrative Officer (P.W.1), without any corroboration and without proof of the said extra judicial confession the trial Court had convicted the appellant.

16.In a case of circumstantial evidence, solely relying upon the extra judicial confession which itself a weak piece of evidence, is impermissible. The trial Court, failed to apply the above fundamental principle of criminal jurisprudence. Except P.W.1, no other witness on the side of the prosecution has implicated the accused. The alleged statement signed by the accused confessing his guilt has not seen the light of the day and was placed before the Court is the version of P.W.1 who alleged to have heard the confession of the accused.

17. In spite of fact that, Ex.P.1, is nothing but a report of P.W.1 about the extra judicial confession made by the accused, the trial Court has held that there is no motive whatsoever available for the Village Administrative Officer to implicate the accused in this crime unnecessarily and therefore, believed the evidence of P.W.1 without any corroboration. The trial Court has failed to note that the Doctor at Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, informed the Police about the admission of the injured victim Vembu on 17.03.2009 at 6.20 pm itself. While so, the prosecution has failed to explain why no F.I.R., was registered immediately after receipt of the information and waited for two days for the Village Administrative Officer to bring the accused along with his confession statement.

18. The reason for delay in registering the F.I.R., by two days is fatal to the case of the prosecution and has led to manipulation of documents. However, the trial Court has failed to appreciate this lapse but solely based on the information given by the Village Administrative Officer, alleging that the accused has confessed to him about the crime, has erroneously held the accused guilty. The prosecution has registered the case and proceeded against the accused without basic material, which is sufficient to prove his guilt.

19. The learned Government Advocate (crl.side) appearing for the State, would submit that the accused after brutally attacking the victim, out of remorse has gone to the Village Administrative Officer and confessed his guilt. The narration of facts found in his statement, which were exclusively within his knowledge, will endorse the genuineness of the statement. The prosecution in order to ascertain 'whether the victim and the accused went to Marudur Village 10 days prior to the occurrence' and 'whether the accused saw the victim in a compromising position with one Murugan', the prosecution has examined P.W.4 and P.W.15. Though, they both turned hostile to the prosecution, the fact that the victim and the accused visited Marudur Village is established with the evidence of P.W.15 - Sundarambal. She in her evidence, has deposed that a day prior to the occurrence, the victim and the accused came to her house and asked Rs.20,000/-. She gave them Rs.5,000/- and left to hospital to attend her daughter. Further, she has deposed that the victim and the accused stayed in her house on that night. This portion of the evidence of P.W.15 who though treated hostile is inculcrimative to the accused and it corroborates the confession statement of the accused regarding the motive to kill Vembu. Pointing out that the weapon used to assault Vembu was recovered based on the statement given by the accused. The admissible portion of the evidence marked in Ex.P.2, has led to the recovery of M.O.1 - Bambu log. P.W.1 - the Village

Administrative Officer witnessed to the seizure mahazar of bamboo log (M.O.1). Therefore, the learned Government Advocate (crl.side) would submit that the prosecution has proved the guilt of the accused and the judgment of the trial Court has to be confirmed.

20.Heard the learned counsel for the appellant and the learned Government Advocate (crl.side) appearing for the State. Perused the records.

21.The materials which are incriminating the accused is the evidence of P.W.1; the admissible portion of the confession found in Ex.P.2; the recovery of mahazar Ex. P.3; the medical evidence and the deposition of the Doctors who were examined as P.Ws.6 to 8. They speak about the injury found on the victim when she was brought for treatment and P.W.8 has deposed about the post mortem report and his opinion for the cause of death. The accident registers which are marked as Ex.P.4 and P.5 does not implicate the accused.

22.The evidence of Rajendran (P.W.2) who took Vembu to the hospital along with the mother-in-law of Vembu has deposed that when he was in his house on 17.03.2009, the mother-in-law of Vembu came at 3.00 pm and informed him that Vembu was found lying wounded near the bridge and requested him to assist to take her to the hospital. So, he has arranged for a Car and took Vembu to the hospital. He saw Vembu sustained head injury and unconscious. The mother-in-law of Vembu has accompanied P.W.2.

23.P.W.2 has deposed that first they took Vembu to Mayiladuthurai hospital; then to Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, and thereafter, to JIPMER hospital, Puducherry. His evidence is in consonance with the accident register issued by the Mayiladurai hospital marked as Ex.P.4, the accident register issued by Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, marked as Ex.P.5 and the postmortem certificate marked as - Ex. P.6. The prosecution has chosen not to examine Jayam, the mother-in-law of the victim who was the first person to see Vembu lying unconscious with head injury.

24.The report of Village Administrative Officer (P.W.1) was taken as the first information leading to registration of F.I.R., Ex.P.10. According to the complaint, the accused has developed motive to eliminate his brother's wife Vembu when he saw Vembu in the compromising position with one Murugan when they went to Marudur Village and stayed in the house of Sundarambal (P.W.15), who is none other than the sister of Vembu. This happened 10 days prior to the occurrence, according to F.I.R. Whereas, Sundarambal was examined as P.W.15 and she

has deposed that the accused and the victim stayed in her house on the previous day of the occurrence. The other witness Shantha (P.W.4) who is the mother of Murugan to whom the first information report indicates illicit intimacy of Vembu has denied the fact that the accused and victim came to Marudur Village and stayed in her house 10 days prior to the occurrence. Since, she has not supported the case of the prosecution in this aspect, she has been treated as hostile.

25.To rely upon the extra judicial confession and to convict the person solely based on the extra judicial confession, first of all, the said extra judicial confession must be proved to be true and voluntary. To test the truthfulness of the confession statement, each and every fact found in the statement which are exclusively within the knowledge of the accused should be proved through evidence, corroborating the same.

26.The truthfulness of the alleged confession statement regarding the motive of the accused to kill Vembu itself found to be doubtful. The prosecution has not able to establish that there was some incident happened at Marudur village 10 days prior to the occurrence which the accused witnessed and thought fit to eliminate Vembu. Regarding the voluntariness of the statement, P.W.1 claims that the accuse came to his office on 19.03.2009 at about 3.00 pm and voluntarily confessed about his guilt of assaulting Vembu two days prior to that. So, he reduced his statement into writing, he read over to the accused the content of the statement which he reduced into writing and obtained the signature of the accused. Thereafter, took the accused to the police station and handed over the confession statement recorded by him along with his own report to the Sub Inspector. P.W.1 has identified Ex.P1 as the confession statement given by the accused. What is marked as Ex.P1 is the report of the Village Administrative Officer - P.W.1 and not the confession statement of the accused, alleged to have been reduced into writing by P.W.1.

27.A perusal of Ex.P.1, we could find that P.W.1 has signed in it and affixed his seal as Village Administrative Officer Devendran and Rajendran both Village Assistants have signed as witnesses. No where, we could find the signature of the accused. So what the accused alleged to have said to the Village Administrative Officer (P.W.1) and what reduced into writing by Village Administrative Officer is not before the Court. What has been marked by the prosecution and relied by the prosecution is the report of Village Administrative Officer containing the statement alleged to have been made by the accused.

28.Ex-P1 document addressed to the inspector of Police Perambur written by Village Administrative Officer- P.W. 1 is the report of P.W. 1 about the confession given by the accused to him. 'Whether at all the accused confessed to Village Administrative Officer; whether the report Ex.P1 which contains the confession statement of the accused was true and verbatim repetition of his statement and whether the accused made such confession voluntarily are facts which prosecution ought to have proved.

29.Unfortunately, in this case, none of the above ingredients has been proved by the prosecution. The prosecution has failed to place before the Court the so called confession statement reduced into writing by P.W.1 and signed by the accused. The prosecution has failed to prove even other statement of facts found in Ex.P.1 leave alone the statement which are inculpatory in nature indicating the maker.

30.The prosecution has registered F.I.R., only on 19.03.2009 at about 5.00 pm based on the report given by the Village Administrative Officer. Whereas, Ex.P.5 the accident register of Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, disclosed that the Police was informed about the admission of Vembu with head injury. This accident register is dated 17.03.2009 at 6.20 pm.

31.When the Police was informed about the admission of Vembu at Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, on 17.03.2009 by 6.20 pm, the respondent Police has not registered the information and proceeded with the investigation. P.W.13, Sulochana, the Sub Inspector of Police attached to Perambur police station in the cross examination admits that Rajendran-P.W.2 came to the police on 18.03.2009 and gave a complaint but she did not register the F.I.R., based on that complaint.

32.P.W.14 - Radhakrishnan who registered the F.I.R., - Ex.P.10 on 19.03.2009 based on the report given by P.W.1, also admits in his cross examination that Rajendran - P.W.2 came to the police station on 18.03.2009 and gave a complaint, but he did not register it. F.I.R. The prosecution has failed to explain why the complaint given by Rajendran on 18.03.2009 was not registered and why they have not acted upon the intimation given by Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram as early as on 17.03.2009 at 6.20 pm.

33.In the accident register - Ex.P.4, which is the earliest document of recording the incident, the Doctor Palanirajan - P.W.5 has recorded that Jayam, mother-in-law of the victim

informed him that the injured Vembu sustained injury at about 1.00 pm on 17.03.2009 due to the accident fall from the bridge into the canal. In Ex.P.5 - accident register of Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, the Doctor Prabakaran - P.W. 6 has recorded that the attender - Jayam (mother-in-law of Vembu) noticed Vembu lying down below the bridge near her house today (on 17.03.2009) at 3.00 pm.

34.P.W.2, Rajendran has also deposed that the mother-in-law of the Vembu came to his house on 17.03.2009 at about 3.00 pm and informed him that her daughter-in-law was lying down under the bridge with injuries. When the time mentioned in the earliest document maintained in the normal course of hospital transaction indicates that the victim had sustained the injury under the bridge at about 1.00 pm on 17.03.2009 and the same was noticed by her mother in law at about 3.00 pm. In Ex. P2, the accused has alleged to have confessed that he assaulted Vembu at about 2.00 pm on 17.03.2009 while she was watching TV in her house.

35.The inconsistency of the prosecution about the place of occurrence and time of occurrence gains very much significance in this case since, the prosecution wants to prove a fact which is not supported by any of the witness who could naturally be a witness and also the prosecution wants to prove a fact which is contrary to the content of the document like accident register which were prepared contemporaneously in the regular course of hospital activity. When the prosecution witnesses P.Ws.13 and 14 have admitted the screening of the information received by them about the incident from P.W.2 and from Annamalai University Raja Muthaiah Medical College & Hospital, Chidambaram, on 17.03.2009 at 6.20 pm. The F.I.R., registered two days later based on so-called extra judicial confession to Village Administrative Officer appears grossly doubtful against all these lapses and lacuna in the prosecution case, solely relying upon the report given by the Village Administrative Officer, containing the alleged confession statement of the accused, the trial Court has convicted the accused.

36.Even assuming the accused has given some statement which contains incriminating evidence against him, the prosecution ought to have proved independently other the material facts found in the confession statement. So that, the inculpatory portion of the statement needs no further corroboration. In this case, the prosecution has miserably failed to satisfy these requirements. Unfortunately, the trial Court has not appreciated Ex.P1 and the deposition of P.W.1, in accordance with law. Hence, the conviction and sentence of the trial Court is liable to be set aside.

37.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed by the trial Court in S.C.No.87 of 2009 dated 07.12.2011 are set aside. The appellant/accused is acquitted of all charges framed against him. He is set at liberty unless, his presence is required in connection with any other case. The bail bond, if any, shall stand discharged and the fine amount, if any, paid shall be refunded to him.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm
To

- 1.THE JUDICIAL MAGISTRATE,NO.II, MAYILADAUTHURAI.
- 2.THE CHIEF JUDICIAL MAGISTRATE, NAGAPATTINAM
- 3.THE DISTRICT AND SESSIONS JUDGE,
NAGAPATTINAM.
- 4.DO - THE PRINCIPAL SESSIONS JUDGE NAGAPATTINAM.
- 5.THE SUPERINTENDENT ,CENTRAL PRISON,TIRUCHY
- 6.THE INSPECTOR OF POLICE,
PERAMBUR POLICE STATION,
NAGAPATTINAM,
NAGAPATTINAM DISTRICT.
- 7.THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

सत्यमेव जयते

Cr1.A.No.22 of 2012

A.SK(08/03/2019)

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