

Bail Slip

The Petitioner/Accused No.2, namely Kumar @ Jayakumar, S/o Rajagopal aged 39 years is directed to be released on bail as per order of this Honorable Court dated 09/01/2019 in CrI.M.P.No.17530 of 2018 in CrI.A.No.51 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.11.2019

Date of Verdict: 12.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

CrI.A.Nos. 51 and 136 of 2018

Kumar @ Jayakumar ...Appellant/Accused-2
in CrI.A.No.51/2018

Muthumari ...Appellant/Accused-1
in CrI.A.No.136/2018

-vs-

The State Rep by its
The Inspector of Police,
T.R.Pattinam Police Station,
T.R.Pattinam, Karaikal District,
Puducherry. ...Respondent/Complainant
in both the appeals

COMMON PRAYER: Appeals filed under Section 374(2) Cr.P.C. to set aside the conviction and sentence passed in S.C.No.4 of 2014 dated 12.10.2017 passed by the Court of Sessions Judge, Karaikal, Karaikal District, Puducherry.

For Appellant
in Crl.A.No.51/18 : Mr.T.Wilson Easter Raj

For Appellant
in
Crl.A.No.136/18 : Mr.R.Murugabharathi

For Respondent Mr.D.Bharatha Chakravarthy
(in both appeals) : Public Prosecutor
(Puducherry)

COMMON JUDGMENT

M.M.SUNDRESH, J

Crl.A.No.51 of 2018 has been filed by A2 and Crl.A.No.136 of 2018 has been filed by A1 respectively, challenging the conviction and sentence rendered in S.C.No.4 of 2014 on the file of Sessions Court, Karaikal for the offence punishable under Section 302 r/w 109 IPC and Section 302 IPC respectively.

2.PROSECUTION VERSION:

2.1. The deceased was none other than the husband of A1. A2 is stated to be her paramour. As the deceased objected to the relationship and thus stood as an obstruction, the accused conspired with each other and committed the offence. The deceased was quarreling with A1 on 04.11.2012. Thereafter, on 05.11.2012, A1 made the deceased to take liquor, asked their two sons to sleep in the room, went along with daughter to the upper portion and made the deceased to sleep in the main hall. Thereafter, A1 attacked the deceased at about 21.00 hours with a sickle and murdered him.

2.2. P.W.1 is the neighbour who gave the complaint under Ex.P1 on 06.11.2012 at about 5.30 a.m. In the complaint, P.W.1 has stated that A1 was found crying in the morning hours on 06.11.2012. Upon going to the place of occurrence, the deceased was found dead with cut injuries. On enquiry, he came to know that it was A1, who committed the offence.

2.3. P.W.2 is also a neighbour. He speaks about the panchayat held on the complaint made by the deceased against A1 with respect to the illicit relationship with A2. He is also a witness to Ex.P2 inquest report.

2.4. P.W.3 is another neighbour who also speaks about the panchayat held on the complaint of the deceased. P.W.4 who is another neighbour found the body of the deceased. He also spoke about the panchayat held. He is another witness to the inquest report.

2.5. P.W.5 is the Village Administrative Officer who is a party to Exs.P3 to P8. He further speaks about the recovery of material objects including M.Os.1 to 5.

2.6. P.W.6 is the son of the deceased and A1. It is his evidence that the first accused asked him to buy drink for the deceased. There was frequent quarrel between his parents over the relationship of A1 with A2. A1 asked him and his brother to sleep in the room anticipating that the deceased might vomit. Thereafter, A1 and the sister of P.W.6 went upstairs and slept in the open terrace. He heard the noise of A1 when he tried to come out of the room, he found it locked from outside. Thereafter, the latch was unbolted by A1. He further deposed that the deceased was drunk even in the afternoon.

2.7. P.W.7 is the doctor, who conducted the post mortem. Though post mortem was conducted on 06.11.2012, report was signed only on 22.05.2013. He has deposed that he has been shown as both sickle and a knife at the same time. He examined and thereafter returned them. It is his evidence that the death could have been caused by both sickle and knife. Ex.P10 is the report pertaining to the two weapons. The following is the extract of Ex.P10:

Received a requisition to examine two weapons pertaining to Crime No.158/12 of T.R.Pattinam Police Station on 07.11.2012 at 10.30 a.m.

Weapons are real size figures.

Injuries No.01 to 03 could have been caused by the moderately cutting heavy weapon examined (aruval)

Injury no.04 could have been caused by the knife examined or fall on a pointed object.

2.8. P.W.8 is the Sub Inspector of Police who registered the complaint under Ex.P11. Thereafter, P.W.9 took up the investigation and filed the final report.

2.9. P.W.9 is the investigating officer who conducted investigation and filed the final report. He conducted inquest and prepared Observation Mahazar followed by Seizure Mahazars. He recorded the confession statement of A1 under Ex.P7 and made

further recoveries. After completing the investigation, he filed final report for the offence punishable under Section 302 r/w 120B and 34 IPC. In his cross examination, P.W.9 has stated that what was shown to P.W.7 is the sickle. He however accepted the fact that the Seizure Mahazar is pertaining to M.O.5 sickle. It is his further evidence that though call details have been obtained under Ex.P13, no one from the call centre has been examined. No report has been filed with respect to the nature of discussion said to have happened between A1 and A2. There was no recovery of either the cell phones or sim cards. There is no evidence to show that the cell phones were owned by A1 and A2. Though the sim cards were owned by one Ganesan, he died thereafter. It was he who gave the sim cards few years ago in favour of A2.

2.10. Thus, the prosecution has examined 9 witnesses in total apart from marking Exs.P1 to P14. None has been examined on behalf of the appellants nor they marked any document. After the denial of the appellants on questioning under Section 313 Cr.P.C., the trial was proceeded with.

2.11. The Trial Court convicted the appellants for the offence under Section 302 IPC insofar as A1 is concerned and 302 r/w 109 IPC for the other. Accordingly, for the offence under Sections 120B and 34 IPC, they have been acquitted. Reliance has been made on the evidence of P.Ws.1 to 7.

3.SUBMISSIONS:

3.1. Learned counsel appearing for the appellants has submitted that P.W.1 has stated that he has given a telephonic intimation to P.W.8. However, P.W.8 has denied the same. The evidence of P.W.1 that the two children were made to sleep in the ground floor is also contradictory. There is a material discrepancy with respect to M.O.5. Two weapons have been shown whereas the recovery was a sickle. However, the witnesses have spoken that the recovery was a knife. Similarly, P.W.5 also has spoken that M.O.5 is only a knife.

3.2. It is further submitted that the evidence of P.W.6 cannot help the case of the prosecution. There is no evidence to show that it is A1 who locked the children. P.W.7 has clearly deposed that there were two weapons involved. His deposition is also in tune with the report given by him under Exs.P9 and P10. Therefore, the evidence of P.W.9 is contrary to the evidence of P.W.7.

3.3. Learned counsel made further submission that neither the phones nor the sim cards have been recovered. There is no

evidence of ownership of the cell phones and sim cards. The prosecution has not proved that those phones and sim cards have been used by the accused. Nobody from the call centre has been examined and Ex.P13 has been marked only through the police. Ex.P10 which is the examination of the weapon report has been sent long after the post mortem report. The date of post mortem report under Ex.P9 is 06.11.2012 and Ex.P10 is 24.09.2013. There is no proper explanation for the aforesaid delay though the weapons have been produced before P.W.7 at the earliest. Ex.P10 though dated 24.09.2013 was received by the Court only on 28.01.2014. Similarly Ex.P9 was also received on the same day - 28.01.2014.

3.4. The Trial Court committed an error in rendering conviction against A2. The ingredients of Section 109 IPC have not been satisfied. There is absolutely no acceptable evidence to implicate A2. There is no evidence for instigation or aid on the part of A2. Even the quarrel on the previous day - 04.11.2012 has not been proved. Thus, the Trial Court committed a grave error in placing reliance upon the evidence adduced by the prosecution without considering the abovesaid aspects. Therefore, the conviction rendered will have to be set aside.

3.5. Learned Public Prosecutor (Puducherry) appearing for the respondent has submitted that the motive has been proved from the evidence of P.Ws.1 to 4 and 6. P.W.5 speaks about the confession, arrest and recovery. Merely because there are certain defects in the prosecution, the conviction rendered cannot be set aside. Therefore, the decision of the Trial Court will have to be confirmed.

4. We have heard the learned counsel appearing for the appellants and the learned Public Prosecutor (Puducherry) appearing for the respondent.

5. DISCUSSION

5.1. Admittedly, in the case on hand, there is no eye witness. Therefore, we are dealing with a case of circumstantial evidence. Though the witnesses speak about the motive, a mere existence of past dispute by itself cannot be a ground to convict the accused persons. The deceased, A1 and three children were sleeping in the same house. It was A1 who saw the deceased in a pool of blood. Therefore, he was the first one who could have seen the deceased. There is no evidence to show that it was A1 who locked the room with P.W.6. We may note, other two children have not come forward to give any evidence. The evidence of P.W.1 is contrary to the evidence of P.W.8. P.W.8 would clearly depose that no such phone call has come. We also

find that the complaint given is somewhat unnatural as it implicated A1 and A2 without any concrete evidence.

5.2. P.W.7 has clearly deposed about the factum of two weapons shown to him. It is his evidence that the death would have occurred by the usage of two weapons. There is also discrepancy with respect to the nature of weapon mentioned as M.O.5. The prosecution has not proved that what was used was the sickle as the witnesses speak about the usage of knife. Even otherwise, there is no evidence with respect to the usage of other weapons. The evidence of P.W.7 is corroborated by Ex.P10.

5.3. The cell phones and sim cards have not been recovered. Though it can be stated that the accused could have hidden the sim cards or destroyed them, no investigation has been done to show that those cell phones were immediately used by the accused apart from owning them. The case of the prosecution that cell phones and sim cards were owned by one Ganesan, who gave them to A2 six years back has also not been proved since at the time of trial, he was no more. Though the call details have been marked, no one from the call centre has been examined. They have been marked only through the police officer. Nature of conversation between A1 and A2 was also not known.

5.4. We do not find absolutely any evidence to implicate A2. Even assuming that A2 is the paramour of A1, in the absence of any evidence to implicate him, he cannot be convicted by placing reliance upon Section 107 IPC. While the prosecution has not proved the immediate reason for abetment, the very parameter required has not been satisfied. There is absolutely no evidence to implicate A2 either for instigation or aid. We may note, the Trial Court itself has acquitted A2 insofar as the offence under Sections 120B and 34 IPC are concerned.

5.5. We are also not convinced with respect to the recoveries made especially M.O.5. We have also already discussed discrepancy involved in M.O.5. While the witnesses speak about the same being a knife, M.O.5 is only a sickle. Secondly, the mere production of two weapons as against the recovery of M.O.5 alone also creates serious doubt on the version of the prosecution. There is absolutely no need to suppress the usage of other weapon.

6.CONCLUSION

6.1. The Trial Court merely accepted the evidence placed before it by the prosecution. Mere production of the evidence would not lead to conviction. It is its quality that matters. Thus, we are of the considered view the Trial Court has not appreciated the evidence available on record properly. Existence

of strong suspicion can never lead to a conviction. As we find that there is no credible evidence to come to the conclusion that it is the appellants who committed the offence, we are inclined to set aside the conviction rendered by the Trial Court, especially when we are dealing with a case of circumstantial evidence.

6.2. Accordingly, the conviction and sentence passed in S.C.No.4 of 2014 dated 12.07.2017 by the Court of Sessions Judge, Karaikal, Karaikal District, Puducherry are set aside and the Criminal Appeals are allowed. The appellants are acquitted of the charges framed against them. The bail bonds, if any executed, shall stand cancelled and the fine amount, if any paid, shall be refunded to them.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
Court of Sessions Judge,
Karaikal, Karaikal District,
Puducherry.
2. The Inspector of Police,
T.R.Pattinam Police Station,
T.R.Pattinam, Karaikal District,
Puducherry.
3. The Superintendent,
Central Prison for Women,
Puducherry.
4. The Jailor,
Sub Jail, Karaikal,
Karaikal District, Puducherry.
5. The Public Prosecutor,
Puducherry.

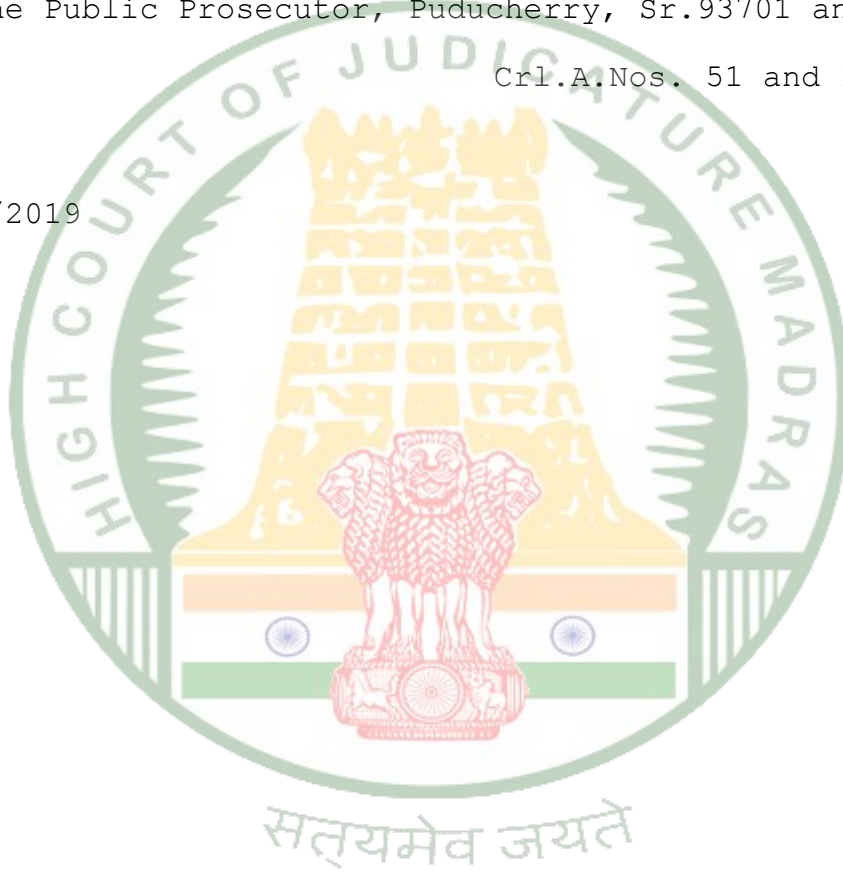
Copy to

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

+1cc to Mr.M.Nallathambi, Advocate Sr.93562
+1cc to M/s.T.Wilson Easter Raj, Advocate Sr.93624
+2cc to the Public Prosecutor, Puducherry, Sr.93701 and 93702

Crl.A.Nos. 51 and 136 of 2018

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srg 13/12/2019



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