

**Bail Slip**

**Arockia Vanakkarasa, S/o.Soosaimanickam, Aged about 27/2012 years
(Sole Accused) is released on bail vide court order dated
13.06.2019 made in MP(MD)NO.1 of 2012 in Cr1.A. (MD)No.103 of 2012.**

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 16.08.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1 A(MD)No.103 of 2012**

Arockia Vanakkarasa

... Appellant / Sole Accused

Vs.

State, rep.by

The Inspector of Police,
Thiruverambur Police Station,
Thiruchirappalli District.

... Respondent / Complainant

(Crime No.605 of 2010)

Prayer : This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the judgment passed by the Principal Sessions Judge, Thiruchirappalli in S.C No.115 of 2011 dated 19.04.2012 and acquit the appellant herein.

For Appellant : Mr.T.Senthil Kumar

For Respondent : Mr.A.Robinson, Government Advocate
(crl.side)**JUDGMENT**

The appellant was convicted for the offences under Sections 304 (ii) and 201 IPC and sentenced to undergo rigorous imprisonment for ten years and three years respectively vide judgment dated 19.04.2012 in S.C No.115 of 2011 on the file of the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli.

2.The prosecution case is follows :

The appellant Arockia Vanakkarasa got married to one Priyanka Mary/P.W.2 in the year 2009. Priyanka Mary developed some illness. Therefore, the appellant and Priyanka Mary came to the

Thiraviya
Ananthi

4.I carefully considered the rival contentions and perused the evidence on record. It is not in dispute that the entire case of the prosecution rests only on circumstantial evidence. The prosecution would primarily harp on the extra judicial confession said to have been given by the accused/appellant to P.W.6 Sathiamoorthy. This Court carefully went through the evidence of P.W.6. The said Sathiamoorthy is a local dignitary. He deposed that on 15.12.2010 when he was chatting in his house, the accused came to him and confessed to the crime. P.W.6 would state that the accused told him that when he was having sexual intercourse with his wife, his brother in law Thiraviyanathan happened to witness the same and he not only teased the appellant but also



threatened that he will disclose the same to others. The appellant feeling overcome by a sense of shame decided to do away the deceased. He took his brother in law along with him for cutting grass on 10.12.2010 in the morning. The appellant pushed Thiraviyanathan to the ground and stuffed his mouth with grass and slit his throat with M.O.1 Bill Hook and thereafter threw the body into the nearby well. P.W.6 would further claim that he retained the appellant in his house till the morning of 16.12.2010 and thereafter took him to the house of P.W.1 and then took him to Thiruverambur Police Station and lodged Ex.P.4 which contains the extra judicial confession.

5.The testimony of P.W.6 does not inspire my confidence. The appellant/accused hails from Paramakudi Taluk in Ramanathapuram District. His wife hails from Nathambadipatti in Trichy District. The appellant had come with his wife to Nathambadipatti Village only in the month of October, 2010. He had no roots there. Even according to P.W.6, the appellant was not intimate with him. P.W.6 is not the local Village Administrative Officer or a Police Official. There is simply no reason for the accused to repose faith in P.W.6 to make the confession in question. What appears to be artificial is the claim of P.W.6 that he retained the appellant in his house from 10.00 P.M to 5.00 A.M. Nathambadipatti Village is after all a small place. If the appellant confessed to the crime to P.W.6, he would have definitely called P.W.1 and the wife of the appellant and informed them. He had not done so. The fact that PW.6 did not take the accused immediately to the house of P.W.1, arouses the suspicion of this Court. The testimony of P.W.6 is not at all credible.

6.The appellant denied the case projected by the prosecution in toto. He does not admit the prosecution case that on 10.12.2010, he taken his brother in law along with him. The deceased Thiraviyanathan was a nine year old boy and studying in school. P.W.1 would admit that she came to know that her son had not attended the school on the occurrence date. If that be so, P.W.1 would have lodged a complaint immediately. In this case, P.W.1 lodged Ex.P.1 complaint only on 12.12.2010 at about 06.00 P.M. The said complaint reached the court only on 15.12.2010 at about 04.00 P.M. It is relevant to note here that the FIR said to have been registered on 12.12.2010 at about 18.00 hrs also reached the court on 15.12.2010. Of course, as rightly pointed out by the learned Government Counsel at that point of time, there was no need to forward the complaint or even the FIR to the Magistrate immediately. The appellant was arrested on 16.12.2010 at about 06.30 A.M and he is said to have made confession about the crime. The admissible portion of the confession was marked as Ex.P17. That apart, though the blood ~~of the appellant~~ ^{of the appellant} was recovered pursuant to the said confession, interestingly, they were not sent for serological test. It is also interesting to note that M.O.2 and M.O.3 were



recovered from the house of P.W.1. P.W.1 in her examination has not said anything about the recovery of M.O.2 and 3 from her house. If as claimed by the prosecution on account of the crime, the clothes of the accused got blood stained, that would have been noticed by P.W.1 or the wife of the appellant P.W.2 when the appellant returned from his work in the field. Neither P.W.1 nor P.W.2 have claimed that the conduct of the appellant was suspicious when he returned home without his brother in law Thiraviyanathan.

7. There is much force in the contention of the learned counsel for the appellant that the theory of the appellant and Thiraviyanathan lastly going together has been brought out for the purpose of strengthening the prosecution case. According to P.W.6, only on the night of 15.12.2010 the involvement of the appellant came to light and that he reported to the mother of P.W.1 as well as the police on the next day morning ie., 16.12.2010. But then, P.W.4 who is a close relative of the deceased admitted that the police took the appellant to the police station on the date when the body of Thiraviyanathan was brought after the postmortem was conducted. It means the appellant was taken to the police station on 13.12.2010 itself.

8. The appellant's counsel states that the motive projected by the prosecution is too flimsy. In fact, this aspect of the matter has been noted by the trial court also. According to the prosecution, the brother in law of the accused/deceased witnessed the accused was having sexual relationship with his wife/the sister of the deceased. Thiraviyanathan is said to have threatened the appellant that he would spread the news to others. Even then there is no need to feel ashamed. The appellant after all was having sexual intercourse with his own wife. Therefore, the case projected by the prosecution appears to be too flimsy. As already pointed out, there is no ocular evidence to sustain the charge against the appellant. The entire case rests only on circumstantial evidence. In this case, the prosecution wants to rely on the last seen theory and the extra judicial confession. I have already held that the said extra judicial confession given by the appellant to P.W.6 did not inspire my confidence. Likewise, the last seen theory also cannot form the basis for convicting the appellant. The Hon'ble Supreme Court in more than one case held that on the strength of the "last seen together" evidence, a person cannot be convicted. It requires corroboration. In this case, the appellant had denied that the deceased had accompanied him. Since the entire case of the prosecution appears to have been built and developed after the postmortem report came, I am inclined to hold that the prosecution has not at all established its case against the appellant, let alone beyond reasonable doubt. Hence, the impugned judgment is set aside. The appellant is acquitted. The bail bond executed by the appellant shall stand cancelled. Fine



amount if any remitted by the appellant shall be refunded to him. Accordingly, this criminal appeal stands allowed.

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Sd/-

Assistant Registrar (P&A)

Sub Assistant Registrar (CS)

Skm

To

- 1.The Principal Sessions Judge, Thiruchirappalli.
- 2.The Superintendent of Police, Thiruchirappalli.
- 3.The Superintendent , Central Prison
Thiruchirappalli.
- 4.The Inspector of Police, Thiruverambur Police Station,
Thiruchirappalli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

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

+1 CC to M/s.T. SENTHIL KUMAR, Advocate (SR-82111[F] dated
19/08/2019)

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16.08.2019

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