



**BAIL SLIP**

The Appellant herein / Accused viz., namely Rajasekar, S/o.Karuppanan, was released on Bail as per order of this Court dated 11.2.2013 made in MP(MD)No.1/2012 in Crl.A(MD)No.243/2012.

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 30.07.2019**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**Crl.A.(MD)No.243 of 2012**

Rajasekar ... Appellant / Accused  
Vs.

The Inspector of Police,  
Thuraiyur Police Station,  
Tiruchirappalli District. ... Respondent / Complainant  
(Crime No.335 of 2011)

**Prayer:** Criminal Appeal filed under Section 374 of Cr.P.C, to set aside the conviction and sentence order passed in Sessions Case No.47 of 2012, on the file of the Sessions Judge, Tiruchirappalli, dated 12.10.2012 and to allow the above appeal.

For Appellant : Mr.Veera Kathiravan, Senior Counsel  
For Mr.C.Jegannathan  
For Respondent : Mr.A.Robinson  
Government Advocate (Crl. Side)

**J U D G M E N T**

The appellant was convicted for the offence under Section 304 (ii) of I.P.C. and sentenced to undergo 10 years rigorous imprisonment and also levied with fine of Rs.1,000/- vide judgment dated 12.10.2012 in S.C.No.47 of 2012, on the file of the learned Sessions Court, Tiruchirappalli Divison, Tiruchirappalli.

2.The prosecution case is that the appellant was sleeping outside Gayathiri Building, Welding Centre on 09.08.2011 at about 11.30 p.m., when the deceased/Sangeetha, who was intimate with him came to him and called him by name. The appellant woke up and questioned Sangeetha as to why she came after disowning him at Samayapuram in front of her relatives. Sangeetha stated that she is willing to marry him. At this stage, the appellant went into a rage and took M.O.5/iron angle and hit Sangeetha on her head and face. As a result, she died. Following the extra judicial confession made by the appellant, Crime No.375 of 2011 was registered on the file of Thuraiyur Police Station under Section 302 of I.P.C. Investigation was taken up and final report came to be filed against the appellant before the learned Judicial Magistrate, Thuraiyur. Cognizance of the offence under Section 302 of I.P.C. was taken and the case was committed to the Sessions Court in P.R.C.17 of 2011. The case was taken up for trial in S.C.No.47 of 2012. Charge was framed against



the appellant under Section 302 of I.P.C. The appellant pleaded not guilty and claimed to be tried.

3.The prosecution examined as many as 18 witnesses and marked Exs.P.1 to P.27. M.O.1 to M.O.12 were also marked. Incriminating circumstances were put to the accused under Section 313 of I.P.C. The accused not only denied the same as false but also filed a statement.

4.The learned Trial Judge while holding that the charge under Section 302 of I.P.C. was not made out convicted the appellant under Section 304(ii) of I.P.C. and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

5.The learned counsel appearing for the appellant submitted that the entire case of the prosecution rests on the so called extra judicial confession said to have been made by the accused/appellant vide Ex.P.1, before P.W.1/Manoharan, Village Administrative Officer. He would point that in Ex.P.1, the original signature of the appellant is not found. It is there only in the carbon copy. P.W.1 would claim that he was having his morning walk at about 04.00 a.m. and that by sheer chance, P.W.1 came across the appellant, who confessed to have murdered the deceased/Sangeetha. The counsel for the appellant wanted this Court to reject the testimony of P.W.1 as well as Ex.P.1 as artificial and false.

6.He would also submit that the prosecution has not at all established the motive for the crime. It is not in dispute that the appellant and Sangeetha were in love with each other. The appellant belongs to Scheduled Caste community. Sangeetha belongs to Muthuraja community, a non Scheduled Community. When they were in love, there was absolutely no reason for the appellant to have caused her murder. It is the not the case of the prosecution that Sangeetha was not loyal to the appellant. When Sangeetha had come all the way to meet the appellant at such an hour, the appellant could not have killed her at all as there was absolutely no reason for the appellant to have done so.

7.The prosecution relies on the last seen theory. P.W.12/Dr.Srinivasan was examined to establish that the appellant had brought Sangeetha to his nursing home. A careful reading of the testimony of Dr.Srinivasan would indicate that he was aware that Sangeetha was brought dead. If that be so, Dr.Srinivasan would have certainly alerted the police. He had not done so. The investigating officer/P.W.18 admits that he did not conduct any test identification parade. Kalyani, the nurse working in the nursing home of P.W.12 also was not examined. Dr.Srinivasan had not given physical description of the appellant. Only in the Court, P.W.12 had identified the appellant. The testimony of P.W.12 cannot inspire this Court's confidence.



8.The learned counsel for the appellant also submitted that the body of Sangeetha was found in a very busy locality. According to the prosecution, the appellant left the body of Sangeetha some time around 04.00 a.m. According to the police, the body was removed only at about 07.00 a.m. If so, It would have been noticed by members of general public and they would have intimated to the police about the same.

9.The prosecution had marked M.O.12 series, which are the photographs of the dead body. One can conclude by a mere look at the photographs that it was taken during night hours. But then, the investigating officer would claim that the photographs were taken only at 07.15 a.m. If that be so, the morning background would have been captured in the photographs. The photographer was not examined by the respondent.

10.The appellant's counsel would also submit that the recovery of M.O.1 to M.O.5, particularly M.O.1 and M.O.2 could not be believed. This is because in the confession said to have been given by the appellant (Ex.P.9), the place where the incriminating objects had been kept had not at all been mentioned. The appellant's counsel reiterated all the other contentions set out in the appeal memorandum. He wanted this Court to set aside the impugned judgment and allow this appeal and thereby acquit the appellant.

11.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference.

12.I carefully considered the rival contentions and perused the evidence on record.

13.It is not in dispute that Sangeetha and the appellant were in love with each other. It is also not in dispute that they belong to different communities. It is admitted that Sangeetha was done to death. Sangeetha did not die a natural death; she was killed. The appellant in his statement under Section 313 of Cr.P.C. would claim that it is a case of honour killing. According to the appellant, Sangeetha was killed by her own relatives and the blame conveniently put on him.

14.Now the only question that arises for my consideration is whether the killing of Sangeetha could be attributed to the appellant. The prosecution had examined as many 18 witnesses, in support of its charge against the appellant. P.W.1 is the Village Administrative Officer before whom, the appellant allegedly made the extra judicial confession. As rightly contented by the learned counsel appearing for the appellant, the original signature of the



appellant is not found in Ex.P.1/extra judicial confession. P.W.1 would claim that when he was having his morning walk at about 04.30 a.m. on 10.08.2011, the appellant met him and told him that he had killed his lover by name Sangeetha and that since he was apprehensive about going to police, he wanted to surrender before P.W.1/VAO. P.W.1 took the appellant to his office and after recording his extra judicial confession, took him to Thuriayur Police Station at around 06.30 a.m. and lodged Ex.P.2/complaint. Based on Ex.P.2/complaint, Crime No.335 of 2011 (Ex.P.18) was registered for the offence under Section 302 of I.P.C. The appellant was formally arrested at around 01.30 p.m. on 10.08.2011. The appellant made confession to P.W.18, the Inspector of Police, Thuraiyur Police Station, at around 01.30 p.m. on the same day. The admissible portion of his confession is marked as Ex.P.9. The accused was taken to the spot in question and from there M.O.5/iron angle was recovered under Ex.P.7. In Ex.P.7, it has been mentioned that M.O.5 was stained with blood. The same along with other seized items were sent for serological examination. The Serologist/P.W.13 gave her report/Ex.P.16. In Ex.P.16, it has been mentioned that on M.O.5/iron angle, there was human blood but the result of grouping test was in conclusive. Ex.P.16 was marked through P.W.13. It is interesting to note that even though P.W.13 had deposed before the Court that on three of the items including M.O.5, the presence of human blood was detected, there was no cross examination of P.W.12 on this score. The only question put in the cross examination was whether he was examined by the police.

15.P.W.3/owner of Gayathri Welding Centre as well as P.W.2, who is his brother turned hostile. P.W.4 is the father of the deceased/Sangeetha. P.W.5 is the mother of the deceased. Both of them have deposed about the love affair between the appellant and their daughter/Sangeetha. P.W.6 is the sister of P.W.5 and the aunt of Sangeetha. Her testimony is rather significant. She deposed that her sister namely., Rajeshwari/P.W.5 brought Sangeetha to her house and asked P.W.6 to take care of her. This was done in order to prevent Sangeetha from continuing her relationship with the appellant. Sangeetha was in the care and custody of P.W.6 for about 15 days. On 08.08.2011, she had seen that Sangeetha chatting with the appellant in Samayapuram Temple. Immediately, P.W.6 and her husband caught hold of the appellant and asked his family members to come. Some talks were held and signatures were obtained that henceforth Sangeetha and the appellant will not talk to each other. This was marked as Ex.P.3. In the said Ex.P.3, witnesses had affixed their signatures and thereafter, the appellant was sent away. Of course, Ex.P.3 was strongly contested by the accused. In fact, the contents of Ex.P.3 has been seriously challenged also. The fact remains that P.W.6, the aunt of Sangeetha had deposed that she saw the accused and her niece Sangeetha chatting with each other on 08.08.2011 and that she detained the appellant and got an assurance from both the parties that they would not talk to each



other and that she sent away Sangeetha to her house after informing her mother. Sangeetha had died on the next day night. This Court after reading the testimony of P.W.6, can come to the conclusion that after Sangeetha was left at Thuraiyur by P.W.6, She was not willing to stay at her mother's house at Thuraiyur and wanted to go to her grandmother's house, which was situated near her house. But instead of going to her grandmother's house, Sangeetha had chosen to go to the appellant's place.

16.Even though, the prosecution may appear to be a little shaky as far as the extra judicial confession and taking of photographs are concerned, what clinches the case of the prosecution against the appellant is the testimony of P.W.12/Dr.Srinivasan. P.W.12 is having his nursing home at Thuraiyur. In his testimony, he deposed that on 10.08.2011 at about 03.15 a.m., he was informed by his nurse that a person had been brought for emergency treatment. P.W.12 came out and saw that the patient was a woman and was totally unconscious. When he felt her pulse, he realized that the girl was dead.P.W.12 felt that if the person who brought the girl was informed as to what had happened, he may run away. He therefore advised him to take her to Government Hospital. Dr.Srinivasan/P.W.12 identified the appellant in the Court as the person, who brought the girl to his nursing home in the early hours on 10.08.2011. Of course, the appellant's counsel would seriously challenge the testimony of P.W.12/Dr.Srinivasan. He wanted this Court to disbelieve his evidence because P.W.12 did not inform the police thereafter. He also submitted that it was impossible that P.W.12 could have identified the appellant. The occurrence had taken place on 09.10.08.2011. P.W.12 was examined on 18.09.2011. It is also relevant to note that no test identification parade was conducted and P.W.12 was never called upon to identify the appellant. He also pointed out that the nurse, who had initially received the appellant in the nursing home was also not examined. The statement of P.W.12/Dr.Srinivasan under Section 161 of Cr.P.C., also reached the Court only on 26.08.2011.

17.Even though the submissions of the appellant's counsel appear to be attractive, I am still not persuaded by the same. Dr.Srinivasan/P.W.12 had no motive whatsoever against the appellant. He was having a private nursing home. Since the encounter between Dr.Srinivasan and the appellant was slightly out of the ordinary, it is quite possible that Dr.Srinivasan was able to remember the appellant and correctly identified him in the Court. The testimony of Dr.Srinivasan clearly links the appellant with the crime. The appellant was thus last seen with Sangeetha. Dr.Srinivasan had stated that Sangeetha was brought dead by the appellant to his nursing home. The prosecution case must be appreciated in the light of the background facts. The appellant was admittedly having an affair with the deceased/Sangeetha. On 08.08.2011, meeting of the appellant with Sangeetha came to the knowledge of P.W.6 and others,





who had detained him. The appellant obviously must have been subjected to a great deal of humiliation. The grouse of the appellant is that Sangeetha did not stand by him but had agreed to call off their relationship. Therefore, on the next day night when Sangeetha came to him, the appellant was quite furious with her and flew into a rage. He was working in a welding centre. M.O.5/iron angle, which was readily available was used as the weapon to ventilate his anger. But then, the appellant obviously did not have any deliberate intention to kill her. Otherwise he would not have taken her to the nursing home of P.W.12. That is why, the learned Trial Judge acquitted the appellant of the charge under Section 302 of I.P.C. but found him guilty only for the lesser offence under Section 304(ii) of I.P.C. The conviction of the appellant is hence upheld. But then, I am of the view that sentencing the appellant to undergo 10 rigorous imprisonment is rather severe. Obviously, the circumstances which found favour with the learned Trial Judge for reducing his culpability from the offence under Section 302 of I.P.C. to one under Section 304(ii) of I.P.C. are sufficient to further reduce the period of imprisonment from 10 years rigorous imprisonment to 5 years rigorous imprisonment. The appellant is said to have spent sometime in prison already. The same is set off in terms of Section 428 of Cr.P.C. The conviction of the appellant is confirmed and the sentence is reduced from 10 years rigorous imprisonment to 5 years rigorous imprisonment. With this modification, this criminal appeal is partly allowed. The Court below shall take steps to enforce this judgment to secure the appellant.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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TO

1. THE SESSIONS COURT, TIRUCHIRAPPALLI
2. THE JUDICIAL MAGISTRATE, TRICHY
3. THE CHIEF JUDICIAL MAGISTRATE, TRICHY
4. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY
5. THE INSPECTOR OF POLICE  
THURAIYUR POLICE STATION, TIRUCHIRAPPALLI
6. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.VEERA ASSOCIATES, Advocate ( SR-78958[F]

**Crl.A.(MD)No.243 of 2012**

**30.07.2019**