

**Bail Slip**

The Appellant/sole Accused namely Shajahan S/o.Peer Mohammed was released on bail by this Hon'ble Court made in MP(MD)No.1 of 2010 in CrI. A(MD)No.441 of 2010 dated 06.12.2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 01.08.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI. A.(MD)No.441 of 2010**

Shajahan

.. Appellant/Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Thuckalay police station,
Kanyakumari District.
(Crime No.309 of 2005)

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the Judgment and conviction dated 20.10.2010 passed by the learned Principal District and Sessions Judge, Kanyakumari Division at Nagercoil, in S.C.No.130 of 2006 for the offence under Section 379 of I.P.C., and acquit the appellant.

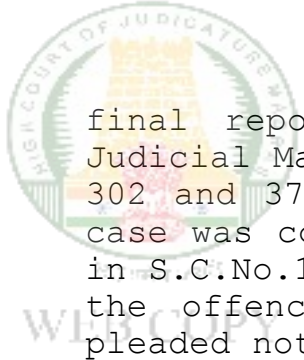
For Appellant : Mr.AR.Jayaruthiran,
for Mr.P.Prabhakaran.

For Respondent : Mr.A.Robinson,
Government Advocate(CrI. Side).

JUDGMENT

The appellant was convicted for the offence under Sections 379 of I.P.C., and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/- vide Judgment dated 20.10.2010 in S.C.No.130 of 2006 on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil.

2. The prosecution case is that the appellant had an inimical motive towards the deceased Thangam. Thangam was a street vegetable vendor. The appellant caused her death by strangulation on 30.03.2005 at about 01.45p.m., and also removed the gold jewels found on her person. After the death of the deceased Thangam came to the knowledge of her family members, her husband Dhasaiya lodged Ex.P.13 before Thukalay police station leading to registration of Ex.P.14 First Information Report in Crime No.309 of 2005 for the offence under Section 302 and 379 of I.P.C. The investigation was taken up and after the completion of all the usual formalities,



final report was laid against the appellant before the learned Judicial Magistrate, Padmanabhapuram, for the offence under Sections 302 and 379 of I.P.C. Cognizance of the offence was taken and the case was committed to the Sessions Court. It was taken up for trial in S.C.No.130 of 2006. Charges were framed against the appellant for the offence under Sections 302 and 379 of I.P.C. The appellant pleaded not guilty and claimed to be tried. The prosecution examined as many as 19 witnesses and marked Ex.P.1 to Ex.P.30. M.O.1 to M.O.18 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge after a detailed consideration of the evidence of record, acquitted the appellant for the offence under Section 302 of I.P.C. But then the appellant was found guilty of the offence under Section 379 of I.P.C. and sentenced him as mentioned above. Challenging the same, this Criminal Appeal has been filed.

3. Heard the learned counsel on either side.

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

5. The learned counsel appearing for the appellant raised a legal contention that in this case, the First Information Report was registered by P.W.19 and it was the very same official who conducted the investigation and filed the final report. The submission of the appellant's counsel is that the entire prosecution is therefore vitiated in view of the recent decision of the Hon'ble Supreme Court reported in 2018 2 L.W.(Crl.)596 (Mohan Lal Vs. The State of Punjab). The Hon'ble Supreme Court in the aforesaid decision held as follows:-

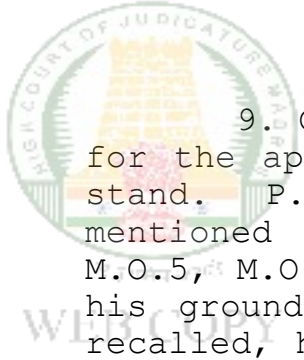
"25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the Courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof."



6. I am afraid that I cannot agree with the appellant's counsel's submission. What has been laid down by the Hon'ble Apex Court is that the informant and the investigator must not be the same person. In this case, admittedly informant is the husband of the deceased Thangam. P.W.19 registered the First Information Report and took up the investigation. He is not an informant in this case. Therefore, the proposition laid down by the Hon'ble Supreme Court has no application whatsoever to the facts of this case. The appellant's counsel also raised a further contention that the prosecution is not quite clear as to the exact time of death. Again there is no merit in this contention. The prosecution case does not rest on the evidence of the eyewitnesses. In any event, the appellant was found not guilty of the charge under Section 302 of I.P.C. The State has not chosen to file any appeal, challenging the same. Therefore, this contention the appellant need not be gone into.

7. The appellant's counsel submitted that in none of the mahazars, there is any mention about the injury on the face of the deceased Thangam. Hence, the prosecution claim that the earrings were forcibly removed from the body of the deceased stands belied. This contention is liable to be rejected because in the First Information Report, there is a clear reference to the injuries on the face of the deceased Thangam.

8. I am of the view that since the appellant had been convicted only for the offence under Section 379 of I.P.C., what has to be seen is whether the recovery has been established or not. Thangam admittedly died by homicidal death on 30.03.2005. On the same day, information was lodged before Thukalay police station and First Information Report was also registered. The First Information Report reached the Court on the same day at about 6.55 p.m. In the First Information Report, it has been clearly mentioned that gold jewellery worn by Thangam were found missing. The husband of the deceased in his complaint had stated that 3 ½ sovereigns worth gold chain, earrings and a Bracelet were missing. Thus the information regarding theft of gold jewels from the person/body of Thangam had been reported while reporting her murder also. The appellant was arrested on 11.04.2005. He gave a confession in the presence of P.W.10 and P.W.11. Both P.W.10 and P.W.11 have supported the case of the prosecution. The admissible portion of the confession was marked as Ex.P.17. The appellant had stated in his confession that if he is taken to Sivakumar, he would be able to cause production of the stolen jewellery. Pursuant to the said confession, the gold jewels were recovered from P.W.12 Sivakumar vide Ex.P.6. P.W.10 and P.W.11 were shown as attesting witnesses in Ex.P.16. Both the witnesses supported the prosecution case. Vide Ex.P.6, the jewellery stolen from the body of the deceased Thangam were recovered. The daughter of the deceased Sudha who was examined as P.W.2 identified those jewellery.



9. Of course, as pointed out by the learned counsel appearing for the appellant, P.W.12 had apparently resiled from his original stand. P.W.12 was originally examined on 14.09.2009. He clearly mentioned that on 02.04.2005, the appellant/accused handed over M.O.5, M.O.6 and M.O.7 to him. In the cross examination, he stood his ground. But when he was cross examined further after being recalled, he appeared to favour the appellant. But then, it must be noted that the further cross examination took place on 09.07.2010, that is, after a gap of almost 10 months.

10. This Court can safely assume during the intervening period, P.W.12 was won over. Therefore, I have no hesitation to reject the deposition of P.W.12 given on 09.07.2010. The Court below after a cumulative appreciation of the evidence of P.Ws.2, 10, 11 and 12, came to the conclusion that the prosecution proved the possession of the jewelry of the deceased with the accused beyond reasonable doubt. The accused has not come out with any explanation. M.Os.4 to 7 were recovered from P.W.12 pursuant to the confession given under Ex.P.17. From this, the Court below rightly held that the recovery of jewels was clearly established and the same establishes the charge under Section 379 of I.P.C.

11. I find no ground to interfere. The Criminal Appeal stands dismissed. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The bail bond if any executed by him shall stand cancelled. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal District and Sessions Judge,
Kanyakumari Division at Nagercoil.
2. The Inspector of Police,
Thuckalay police station,
Kanyakumari District.
3. The Judicial Magistrate,
Padmanabhapuram.
4. The Chief Judicial Magistrate,
Kanniyakumari District at Nagercoil.



5.The District and Sessions Judge,
Kanyakumari Division at Nagercoil.

6.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

7.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to Mr.P.PRABHAKARAN, Advocate SR-79316.

Cr1. A. (MD)No.441 of 2010
01.08.2019

CS(29.08.2019) 5P 10C