

Bail Slip

Premkumar. S/O.Kathiraman aged about 24 years, Sole Accused was released on Bail (Accused not in Jail) Vide order of this Court dated 18/08/2017 in CrI MP(MD) No.3976/2017 in CrI A(MD) No.143/2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
28.02.2019	22.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CrI. A(MD)No.143 of 2017

Premkumar : Appellant/Sole Accused

Vs.

State represented by
the Inspector of Police,
Theppakulam Police Station
in Crime No.887 of 2015
Madurai District.

: Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 27.04.2017 in S.C.No.46 of 2016 on the file of the I Additional Sessions and District Judge, Madurai.

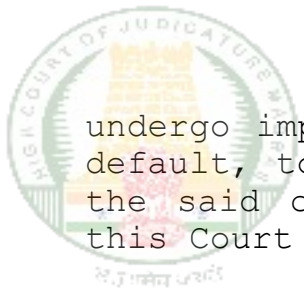
For Appellant : Mr.V.Kathirvelu
Senior Counsel for
Mr.K.Samidurai
For Respondent : Mr.R.Anandaraj
Additional Public Prosecutor

JUDGMENT**P.N.PRAKASH, J.**

This criminal appeal is filed against the judgment dated 27.04.2017 in S.C.No.46/2016 on the file of the I Additional Sessions and District Court, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The trial Court, by the said judgment, convicted the appellant for the offence under Section 302 IPC and sentenced him to



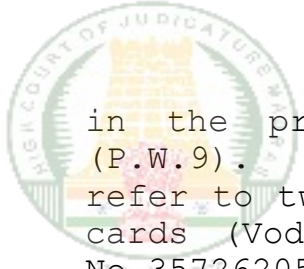
undergo imprisonment for life and to pay a fine of Rs.15,000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant/accused is before this Court in this appeal.

3. The facts in brief leading to the filing of this criminal appeal are as under:

It is the case of the prosecution that the deceased Alphonse Mary was married to one Justin, son of Arulraj (P.W.4) and Therasamary (P.W.5). Justin was employed abroad. Alphonse Mary has a four year old son Nelson through Justin. It is alleged that Alphonse Mary developed illicit intimacy with the appellant. When the appellant wanted to get married to another girl, Alphonse Mary protested. That apart, the appellant suspected that Alphonse Mary was having affair with other men. Therefore, on 01.08.2015, the appellant came to the first floor portion of the house in D.No.4/579 Adaikkalampillai Colony, where Alphonse Mary was residing and had a quarrel with her, after which, he strangulated her by using her Thali chain and caused her death. Admittedly, Alphonse Mary's parents-in-law, viz., Arulraj (P.W.4) and Therasamary (P.W.5) were living in the same house, but, separately in the ground floor portion.

3.1. On the same day, around 5.15 p.m., Vasanthi (P.W.3) a neighbour, who had given her blouse to Alphonse Mary for stitching, went to the house of Alphonse Mary to collect it. At that time, she found the body of Alphonse Mary on the cot. She raised a hue and cry and with the help of neighbours, she took Alphonse Mary to G.S.Hospital, where Dr.Anandhi Babu examined her and declared as "brought dead". Thereafter, Vasanthi (P.W.3) and the neighbours brought the body of Alphonse Mary and kept it in the ground floor portion of her parents-in-law (P.W.4 and P.W.5). Information was sent to Savariammal (P.W.1), mother of Alphonse Mary to her village. Savariammal (P.W.1) came to the house of Alphonse Mary and gave a statement (Ex.P.1) to the police, based on which, Rajendran (P.W.24), the Sub Inspector of Police, registered a case in Crime No.887/2015 on 01.08.2015 at 21 hrs. under Section 174 Cr.P.C. and prepared the printed FIR (Ex.P23). Since the death of Alphonse Mary was within seven years of marriage, Senthil Kumar (P.W.23), the Revenue Divisional Officer, conducted inquest and gave Preliminary report (Ex.P21) and final report (Ex.P22), wherein, it is stated that the death was not due to dowry demand.

3.2. Investigation of the case was taken over by Jose Thangaiah, (P.W.26) the Assistant Commissioner of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P24). The Investigating Officer (P.W.26) requested the services of Kumar (P.W.2) Scientific Expert attached to the Mobile Unit of the Regional Forensic Science Laboratory to collect clue materials, from the place of occurrence. He recovered the material objects under the cover of mahazar (Ex.P3)



in the presence of witnesses Narayanan (P.W.6) and Manikandan (P.W.9). He recovered 9 items, of which, it may be relevant to refer to two items, namely, a Nokia model mobile phone with two SIM cards (Vodafone and Idea) having IMEI No.35726205336658 and IMEI No.35726205336659 (M.O.3) and a pair of chappals (M.O.9).

3.3. The body was despatched to the Government Rajaji Hospital for postmortem, where Dr.Rajavelu (P.W.21) performed autopsy and issued the Postmortem Certificate (Ex.P5), where, six ante-mortem injuries, including ligature mark around the neck were noted. After obtaining the Viscera report, Dr.Rajavelu (P.W.21) gave the final opinion vide Ex.P6, wherein, it is stated as follows:

"The deceased would appear to have died of Asphyxia due to compression of the neck by ligatures, 16-20 hours prior to autopsy."

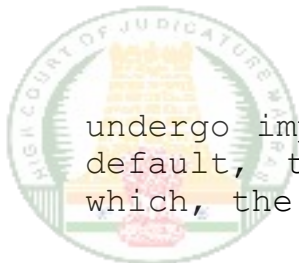
Vaginal Swab was taken and was sent to the Tamil Nadu Forensic Science Laboratory and the report (Ex.P8) states that 'no spermatozoa' was detected.

3.4. After the transfer of Jose Thangaiah (P.W.26), the investigation was continued by K.Muthukumar (P.W.28). He analysed the Call Detail Records of the Mobile phone of Alphonse Mary and suspected the involvement of the appellant and arrested him on 20.08.2015 and recorded his confession statement. The appellant/accused was in possession of a Samsung mobile phone (M.O.10), which was seized under the cover of mahazar (Ex.P4). Thereafter, the Investigating Officer (P.W.28) examined witnesses and ultimately, filed final report in PRC No.49/2015 before the Judicial Magistrate, No.I, Madurai, under Section 302 IPC against the appellant.

3.5. On the appearance of the appellant, the provision of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session and was made over to the I Additional District and Sessions Judge, Madurai, for trial. The trial Court framed a lone charge under Section 302 IPC and when questioned, the appellant pleaded not guilty.

4. To prove the case, the prosecution examined 28 witnesses, marked 28 exhibits and 10 material objects. When the appellant was questioned under Section 313 Cr.P.C., he denied the same, however, explained that Samsung mobile phone (M.O.10) does not belong to him. He has further stated that he was taken into illegal custody by the police along with Arulraj (P.W.4) the father-in-law of Alphonse Mary and was kept in the station lock up and thereafter, the case has been foisted on him.

5. After considering the evidence on record and on hearing either side, the trial Court, by judgment dated 27.04.2017, has convicted the appellant under Section 302 IPC and sentenced him to



undergo imprisonment for life and to pay a fine of Rs.15,000/-, in default, to undergo rigorous imprisonment for one year, against which, the appellant is before this Court.

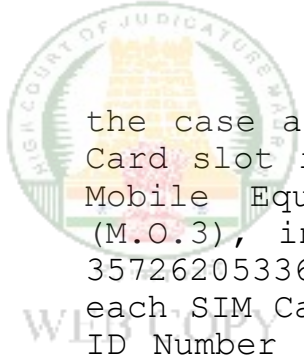
6. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

7. This case rests on circumstantial evidence. The prosecution have proved beyond doubt that Alphonse Mary was murdered on 01.08.2015 in the First Floor of her residence. The question is whether the appellant was the murderer. The prosecution examined Paulraj, (P.W.12), brother of the deceased, to establish that his sister was having illicit intimacy with the appellant. Unfortunately, this witness turned hostile and did not support the case of the prosecution. We are not able to use any part of his evidence even under Section 154(2) of the Evidence Act to infer about the alleged motive. No other witness has stated that the appellant was having illicit intimacy with the deceased and that when the appellant wanted to marry some other woman, the deceased was objecting and creating problems.

8. The prosecution examined Vasanthi (P.W.19) the maternal aunt of the appellant to prove that she had purchased and given the slippers (M.O.9) to the appellant. Unfortunately, she also turned hostile and stated that the slippers (M.O.9) was not purchased by her, and given to the appellant.

9. The learned Additional Public Prosecutor submitted that the prosecution have proved that the appellant had purchased two IDEA SIM Cards in the name of his friend Senthil Murugan (P.W.11), namely, 9087844309 (for brevity, it will be referred to as '309') and 9087844376 (for brevity, it will be referred to as '376'). The appellant retained 376 and gave 309 to the deceased. The Nokia Mobile Phone relating to 309 was recovered very near the body of the deceased under the cover of mahazar (Ex.P3) and the same has been marked as M.O.3. After the arrest of the accused, the Samsung Mobile Phone (M.O.10) relating to 376 was recovered from the custody of the accused at the time of his arrest under mahazar Ex.P4. The Call Detail Records of 309 (Ex.P14) and 376 (Ex.P.15) were obtained from Palani (P.W.22) the Nodal Officer of IDEA. A perusal of the Call Detail Record shows the tower location and also the fact that at and around the time of the occurrence, the appellant and the deceased were constantly in touch. Therefore, the learned Additional Public Prosecutor submitted that this is indeed a very powerful circumstance incriminating the appellant.

12. Before discussing the aforesaid submission of the learned Additional Public Prosecutor, we are constrained to record certain disquieting features that we have been coming across in connection with collecting materials from a Mobile Phone. In this case, the Investigating Officer and Kumar (P.W.2) Scientific Assistant found a Nokia Mobile Phone near the body of the deceased. They have opened



the case and found that it is a dual SIM Mobile Phone. Every SIM Card slot in a Mobile Phone will have a number called International Mobile Equipment Identity (IMEI). In the Nokia Mobile Phone (M.O.3), in this case, the IMEI numbers namely, 35726205336658 and 35726205336659 have been recorded in the Mahazar (Ex.P3). Behind each SIM Card, there will be a SIM number or Integrated Circuit Card ID Number (ICCD), which will indicate the mobile service provider. The most important piece of evidence is the actual mobile number. Only that will help the police to proceed further with the investigation of a case. At present, the police are sending the IMEI number to the Cyber Cell in the Police Department. The Cyber Cell in the Police Department, in turn, send a communication to all the service providers requesting them to see whether this IMEI number is available in their record. By the time, the service provider responds, several weeks pass and the investigation does not proceed further. What is the solution for this? The solution is simple and straight forward. The Investigating Officer can remove the SIM and find out the ICC ID number and record it in the Mahazar. However, if he can operate the Mobile Phone without a password, he needs to type a code number assigned to the service provider and immediately, the Mobile number will stand displayed on the screen. For example, *888# is the code number for BSNL. Similarly, for Airtel, IDEA, Vodafone, etc., such code numbers are available in public domain. If the Code number is typed, the mobile number will stand displayed on the screen. Even if that is not possible, the Investigating Officer can give a missed call from the seized mobile to his own mobile number and find out the mobile number of the seized mobile. After doing this, he should record it in the Mahazar truthfully.

13. These days, we are aware that modern Mobile phones have in-built battery and memory and therefore, the mobile case cannot be easily opened to find out the IMEI Number. That apart, the Mobile Phone can be opened only if the Password is known. There is a solution to this problem also. The Investigating Officer can remove the SIM Card and note down the SIM Number and put the SIM card in another mobile and give a missed call and thus find out the mobile number. After doing this, he should narrate this in the Mahazar itself.

14. Unfortunately, our policemen suffer a very low self-esteem and therefore, they are not prepared to adopt such an easy procedure and only take the circuitous route to find out the Mobile number. We are forced to remind the police of the words of wisdom of the Supreme Court in **AIR 1956 SC 217 (Aher Raja Khima v. State of Saurashtra)**, wherein, it has been held as under:

"The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistrate nor good to the public. It can only



run down the prestige of the police administration." This passage has been referred to and the legal principle enunciated above has been reiterated by the Supreme Court in **Jameel Ahamed and another v. State of Rajasthan [(2003) 9 SCC 673]**.

15. The problem for the Investigating Officer does not end in finding out the mobile number. He should have to find out the name and address of the Subscriber. Therefore, he has to address the service provider and obtain the details as well the call detail records.

16. We are informed that the newly formed Telangana State has created an "APP" titled "TS COP", which has the details of all the subscribers in Telangana State, with which, the Telangana Police are able to immediately find out the name and address of the subscriber. It is high time the Tamil Nadu Police also adopts this procedure by creating a special App.

17. The learned counsel for the appellant submitted that the last digit of the IMEI number stated in the mahazar does not tally with the last digit that is shown in the call detail records (Ex.P14 and Ex.P15). This has been clearly answered by the trial Court in Paragraph Nos.62 and 63 of the judgment, which is as under:

"62.At this juncture, this Court takes note of the IMEI Allocation and Approval Guidelines Version 6.0 published on 27.02.2011 as published by GSMA (<http://www.gsma.com/newsroom/wpcontent/uploads/2012/06/ts0660tacallocationprocessapproved.pdf>); wherein the principle behind providing an IMEI number to the mobile phone has been laid down. IMEI means International Mobile Equipment Identity. The following are the excerpts from the guidelines extracted for the purpose of this case (the relevant portion alone is extracted hereunder).

"The International Mobile Equipment Identity number (IMEI) uniquely identifies an individual mobile station. The IMEI is unique to every ME and thereby provides a means for controlling access to GSM networks based on ME Types or individual units. The 'IMEI' consists of a number of fields totalling 15 digits. All digits have the range of 0 to 9 coded as binary coded decimal. Values outside this range are not permitted. Some of the fields in the IMEI are under the control of the "Reporting Body". The remainder is under the control of the Type Allocation Holder.

4.PRESENTATION OF IMEI

The following procedure shall instruct the ME to display its IMEI (See GSM 02.30)

*#06#

The procedure shall be accepted and performed with and without an inserted SIM. The ME shall then display the 14 digits of the IMEI (not including



the spare digit), the Check Digit and optionally the Software Version Number as defined in GSM 02.16 (as a single string, in that order) It is recommended that the same procedure or a similar procedure be used to display the software version. This will greatly assist in the identification and resolution of interworking issues."

63. The format of the IMEI number is NN-XXXXYY-ZZZZZZ-A (NN-denotes the reporting body identifier; XXXXYY-denotes ME Type Identifier defined by the Reporting Body; ZZZZZZ-denotes Allocated by the Reporting Body but assigned per ME by the manufacturer and A-denotes Check digit, defined as a function of all other IMEI digits). As per the guidelines provided, the check digit number can be used only to safeguard the possibility of incorrect entries in CEIR (Central Equipment Identity Register) and EIR (Equipment Identity Register) equipment. Therefore, as already set out, even on the mobile number, if the IMEI number is checked only 14 digits will appear in most cases. At this point, it is relevant to take into account the explanation given by PW27. She has stated that since the IMEI number consists of 15 digits, by default the last digit is reckoned as '0' in order to validate the number. The said explanation when looked into along with the guidelines shows that the explanation given by P.W.27 is valid. Therefore, since the expert PW22 was not confronted with the variation in the digits, and since in the cross examination, the learned counsel for the accused has put the specific question to PW27, this court is of the view that the said explanation can be considered."

18. We have no hesitation in approving the above reasoning given by the trial Court, because we are aware that IMEI number has 15 digits and the Software that regulates the call detail records will show the 15th digit as "0". It would suffice if 14 digits tally. Having upheld the findings of the trial Court on the aspect of call detail records this far, can we draw the inference that it was the appellant, who had committed the offence?. Apart from the fact that the call detail records (Ex.P14 and Ex.P.15) prove that the appellant and the deceased were frequently in contact with each other at and around the time of occurrence, there is no other material to incriminate the appellant in the crime. As stated above, the brother of the deceased, Paulraj (P.W.12), who was supposed to speak about the illicit intimacy between the appellant and the deceased, turned hostile. There is no evidence to connect the pair of chappals (M.O.9) that was seized at the place of occurrence with the appellant. No witness has spoken to about the "Last Seen Theory". Hence, merely with call detail records, we cannot come to the inference that the appellant was having illicit intimacy with the deceased; that the appellant wanted to marry someone and the deceased was opposing it; therefore, the appellant



strangled her and murdered her.

19. In the result, the criminal appeal is allowed; the conviction and sentence imposed on the appellant, vide Judgment dated 27.04.2017 by the I Additional District and Sessions Judge, Madurai, in S.C.No.46/2016 are set aside and the appellant is acquitted of all charges. Fine amount, if any, paid by him shall be refunded. Bail bond executed shall stand terminated.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The I Additional District and Sessions Judge,
Madurai

2.The Director General of Police,
Chennai.

3.The Inspector of Police
Theppakulam Police Station,
Madurai District.

4.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Samidurai, Advocate, SR.No.55893

Judgment made in
Crl.A.(MD)No.143 of 2017
22.03.2019

SP/27.04.2019 /8P/6C