



## BAIL SLIP

The Sole Accused S/o.Ramachandran, Aged about 33 years was released on Bail vide court dated 05.09.2017 in CrI.M.P(MD)No.5824 of 2017 in CrI.A(MD)No.162/2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|             |               |
|-------------|---------------|
| Reserved on | Pronounced on |
| 07.03.2019  | 15.03.2019    |

CORAM:

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

**CrI. A(MD)No.162 of 2017**

Karthikeyan : Appellant

Vs.

State represented by  
the Inspector of Police,  
Navalpattu Police Station  
in Crime No.101 of 2016  
Dindigul District.

: Respondent

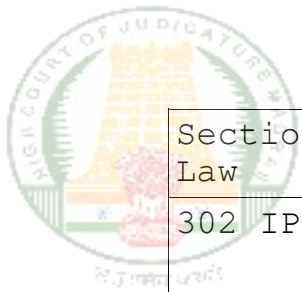
**PRAYER:** Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 19.05.2017 in S.C.No.1 of 2017 on the file of the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli.

For Appellant : Mr.G.Karuppasamy Pandian  
for M/s.K.Manavalan  
For Respondent : Mr.M.Chandrasekaran  
Additional Public Prosecutor

**JUDGMENT****B. PUGALENDHI, J.**

This criminal appeal is filed against the judgment dated 19.05.2017 in S.C.No.1/2017 on the file of the Sessions Court, Tiruchirappalli Division, Tiruchirappalli.

2. By Judgment dated 19.05.2017, the Trial Court convicted and sentenced the accused, as detailed below:-



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| Section of Law  | Sentence of imprisonment                        | Fine amount                                                                   |
|-----------------|-------------------------------------------------|-------------------------------------------------------------------------------|
| 302 IPC         | To undergo imprisonment for life.               | Rs.3,000/-, in default to undergo rigorous imprisonment for three years.      |
| 394 r/w 397 IPC | To undergo rigorous imprisonment for ten years. | Rs.2,000/- each, in default to undergo rigorous imprisonment for three months |

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant/accused is before this Court in this Appeal.

3. The Trial Court framed as many as two charges, as detailed below:

| Charge | Penal Provisions |
|--------|------------------|
| 1      | 302 IPC          |
| 2      | 394 r/w 397 IPC  |

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

It is the case of the prosecution that the appellant wanted to rob the gold chain (M.O.3) that was owned by his friend Manikumar (deceased) and so he invited him for a part taking liquor at 10.00 p.m. on 24.05.2016 to a desolate place, where the appellant is said to have murdered Manikumar by stabbing him on his vital organs with a broken brandy bottle and thereafter had taken away the gold chain (M.O.3). Manikumar did not return home on 24.05.2016 and so, his parents started looking out for him everywhere. On the next day, ie., on 25.05.2016, his mother (P.W.2) received information about the presence of the dead body near the Ironputhur bye-pass and when she went and saw, she found that it was that of her son Manikumar. She (P.W.2) informed this to her husband Ponnusamy (P.W.1). Pursuant to which, Ponnusamy (P.W.1) gave a written complaint (Ex.P1) to the police, based on which, Selvaraj, Sub Inspector of Police, (P.W.13) registered a case in Navalpattu Police Station Crime No.101 of 2016 under Section 302 IPC on 25.05.2016 at 16.30 hrs against unknown accused and prepared the printed FIR (Ex.P15).

4.1. Investigation of the case was taken over by Abdul Gafoor (P.W.17), who went to the place of occurrence and prepared the observation mahazar (Ex.P2) and the rough sketch (Ex.P18). From the place of occurrence, he seized soil with bloodstain (M.O.6) and soil without bloodstain (M.O.7), broken brandy bottle (M.O.8) under the cover of mahazar (Ex.P3). He conducted inquest over the body of the deceased and the inquest report was marked as Ex.P19. He despatched the body to the Government Hospital for postmortem, where, Dr.Saravanan (P.W.16) performed autopsy.

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

4.2. Dr.Saravanan (P.W.16) in his evidence as well in the postmortem report (Ex.P16) has noted six ante-mortem injuries on



the body of the deceased. It may be necessary to extract a few important postmortem findings:

"Stomach: contained 105 gm partly digested brick reddish cooked food particles with no definite smell; mucosa; decomposing;

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The deceased would appear to have died of shock and hemorrhage due to multiple injuries (Viscera and gauze piece handed over to HC 208 named Mr.K.Rajkumar)".

4.3. The next important finding is the viscera report (Ex.P17), which is as under:

"The following articles were received here on 26.05.2016 through HC 208 Tr.Rajkumar under unbroken seals which corresponded with the sample seal sent viz.,

- 1.Stomach
- 2.Liver & Kidney
- 3.Preservative

Report: The above three (03) items were examined but alcohol or other poison was not detected in any of them."

4.4. According to the police, the first breakthrough came with the arrest of the appellant on suspicion on 27.05.2016 at 8.00 a.m. It is alleged that the appellant gave a confession, pursuant to which, two mobile phones (M.O.1 and M.O.2) belonging to the deceased were recovered from the appellant. It is the further case of the prosecution that the gold chain (M.O.3) purportedly belong to the deceased was pledged by the appellant with Mookaiah (P.W.9), a local Pawn Broker from whom, the gold chain (M.O.3) was recovered by the police under the cover of mahazar (Ex.P5). The photo copy of the pawn receipt was marked as Ex.P12 subject to the objections raised by the defence at the time of marking. The serology report (Ex.P10) shows that the blood group found on the shirt of the deceased was 'Human O'. However, there is nothing to link the appellant with the crime in the serology report (Ex.P10). After examining the witnesses, the Investigating Officer filed final report in P.R.C.No.27/2016 before the Judicial Magistrate, No.III, Trichy for the offence under Sections 302 and 394 read with 397 IPC against the appellant.

5. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.1/2017. The Sessions Court framed the charges as narrated in Paragraph No.3 cited supra. When questioned the accused pleaded not guilty.

6. To prove the case, the prosecution examined 19 witnesses, marked 26 exhibits and 10 material objects. When the appellant was questioned under Section 313 Cr.P.C. about the incriminating materials appearing against him, he denied the same. However, he admitted that he went to the shop of Mookaiah (P.W.9) and pledged his chain on 25.05.2016 for Rs.11,300/-. No witness was examined



on his behalf nor any Exhibit was marked.

7. After considering the evidence on record and on hearing either side, the trial Court, by judgment dated 19.05.2017, has convicted the appellant as stated supra, against which, the appellant is before this Court.

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

9. This case is predicated on circumstantial evidence. The prosecution placed reliance on the evidence of Shanmugam (P.W.3) and Surya @ Suryakanth (P.W.4) - two close friends of the deceased, who have stated that on 24.05.2016, at around 9.00 p.m., they had dinner with the deceased in a Hotel and around 9.30 p.m., the deceased received a phone call from a person called Karthikeyan. After speaking to the person, he left their company. After that, they did not hear anything from him and on the next day, ie., on 25.05.2016, his body was found near Ironputhur Bye-pass. The prosecution examined one Karnan (P.W.15) to speak about the last seen theory, but, unfortunately, he turned hostile. The most powerful circumstance that has been relied upon by the prosecution is the pledging of gold chain by the appellant on 25.05.2016 with Mookaiah (P.W.9) and Karunakaran (P.W.10) for Rs.11,300/-, which is said to have belonged to the deceased.

10. Mr.G.Karuppasamy Pandian, counsel for the appellant, contended that the gold chain (M.O.3) was subsequently introduced by the police to fix the appellant. In support of this contention, he brought to the notice of this Court the following circumstances:

(a) There is no evidence to show that the appellant and the deceased were friends, for the appellant to know that the deceased has a gold chain;

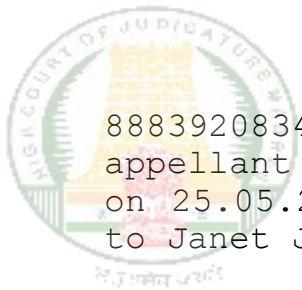
(b) the case of the prosecution is that the appellant invited the deceased for a drink stood belied by the viscera report (Ex.P.17), which shows that alcohol was not detected in the visceral organs;

(c) Even in the postmortem report, the Doctor (P.W.16) has not smelt alcohol;

(d) Ponnusamy (P.W.1), in his complaint (Ex.P1) to the police has not mentioned about the gold chain at all;

(e) Ponnusamy (P.W.1), Shanmugam (P.W.3) and Surya @ Suryakanth (P.W.4) have clearly stated that they saw the appellant in the police station on 25.05.2016 and 26.05.2016 and therefore, the version of the police that they arrested the appellant only on 25.05.2016 stood belied;

(f) Janet Jacintha (P.W.18), the Sub Inspector of Police attached to the Cyber Wing has stated in her evidence that on 25.05.2016, she received a requisition from the Investigating Officer (P.W.17) asking her to give the Call Detail Records relating to the mobile numbers 8682075953 (of the accused) and



8883920834 (of the deceased). When the police had arrested the appellant only on 27.05.2016, how they knew about his involvement on 25.05.2016 for them to give the mobile number of the appellant to Janet Jacintha (P.W.18) for getting the Call Detail Records.

11. There appears to be sufficient force in the aforesaid submissions of Mr.G.Karuppasamy Pandian, counsel for the appellant, for which, there is no satisfactory explanation from the prosecution.

12. That apart, as contended by the learned counsel for the appellant, in the complaint (Ex.P1), Ponnusamy (P.W.1) has not stated that his son's gold chain was missing. Under normal circumstances, the police would have asked all these details in order to come to a prima facie finding whether it is a case of murder for gain. Even if the benefit of this doubt is given to Ponnusamy (P.W.1), yet, the gold chain (M.O.3) has a dollar with the image of Lord Krishna, whereas, there is no description of the dollar in the Pawn Broker's receipt copy (Ex.P.12). Mookaiah (P.W.9) has stated that the appellant was his regular customer. But, Mookaiah (P.W.9) did not identify M.O.3 as the chain that was allegedly pledged by the appellant with him. Therefore, he (P.W.9) was declared hostile by the prosecution and cross-examined. Similarly, Karunakaran (P.W.10) the employee of Mookaiah (P.W.9) has stated that the appellant came and pledged a chain on 25.05.2016 for Rs.11,300/-, but when he was shown M.O.3, he was not able to identify it.

13. It must be remembered that even according to the prosecution, the chain was recovered from the shop of Mookaiah (P.W.9) and Karunakaran (P.W.10). May be they would have forgotten the description. However, in the Pawn Receipt (Ex.P.12), it is merely stated a design chain with dollar without anything more. In the evidence of Mookaiah (P.W.9), he has stated that the appellant pledged the chain on 25.05.2016 and on the next day, the police brought him to the shop and took away the chain, whereas, it is the case of the police that the appellant was arrested only on 27.05.2016. It is also not known as to how the police knew the mobile number of the appellant on 25.05.2016 for them to ask for the Call Detail Records from Janet Jacintha (P.W.18). Had the police called for the Call Detail Records of the mobile phone of the deceased, then, the issue would have been little different. In this case, they have specifically asked Janet Jacintha (P.W.18) to give a report about the exchange of calls between these two numbers alone and accordingly, the report (Ex.P25) has been given.

14. In the light of such overwhelming materials to show that the appellant was not arrested on 27.05.2016, but on 25.05.2016 itself, the recovery of the gold chain (M.O.3) becomes suspect. The appellant has taken a stand that he had gone to the shop of Mookaiah (P.W.9) on 25.05.2016 and had pledged his chain, whereas, the police has substituted a chain obtained from Ponnusamy (P.W.1)



to tighten the case.

15. In the result, the criminal appeal is allowed; the conviction and sentence imposed on the appellant, vide Judgment dated 19.05.2017 by the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli, in S.C.No.1/2017 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 (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To

- 1.The Sessions Judge,  
Tiruchirappalli Division,  
Tiruchirappalli.
- 2.The Judicial Magistrate No.III,  
Tiruchirappalli.
- 3.The Inspector of Police  
Navalpattu Police Station  
Dindigul District.
- 4.The Superintendent of Central Prison,  
Trichy.
- 5.The Additional Public Prosecutor  
Madurai Bench of Madras High Court,  
Madurai.

Judgment made in  
**Cr1.A. (MD) No.162 of 2017**  
**15.03.2019**

TR (06.04.2019) 6P 6C