



BAIL SLIP

The Appellant/Accused, Nallaiah(A2), S/o.Andi@ Chinnandi was released on bail, granted as per order dated 16.07.2018 made in CrI.MP(MD)3374 of 2018 in CrI.A(MD)No.209 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI. A. (MD)No.209 of 2018

Nallaiah

... Appellant/Accused No.2

Vs.

State rep. by
The Inspector of Police,
Karaiyur Police Station,
Ponamaravathi Taluk,
Pudukkottai District
In Crime No.2 of 2016

... Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the Judgment and conviction in S.C.No.127 of 2016, dated 27.03.2018 on the file of the Mahila Court, Pudukkottai and acquit the appellant.

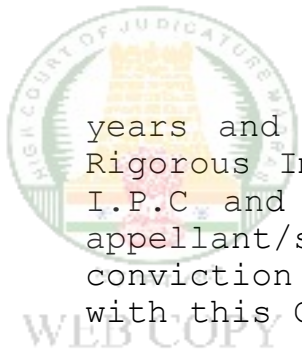
For appellant	: Mr.A.Arun Prasad
For Respondent	: Mr.K.K.Ramakrishnan
	Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **T.RAJA, J.**)

The appellant is the second accused in S.C.No.127 of 2016 on the file of the learned Sessions Judge, Mahila Court, Pudukkottai and he stood charged and tried for the commission of offences under Sections 120-B r/w 302, 302 and 201 I.P.C.

2.The trial Court vide judgment dated 27.03.2018, has found the appellant/ accused guilty along with the first accused for the commission of offences punishable under Sections 120-B r/w 302, 302 and 201 I.P.C and imposed Rigorous Imprisonment for life and a fine of Rs.1,000/- with default sentence of 1 year Rigorous Imprisonment for the commission of offence under Section 120-B r/w 302, I.P.C., and Rigorous Imprisonment for life and a fine of Rs.1,000/- with default sentence of 1 year Rigorous Imprisonment for the commission of offence under Section 302 I.P.C and Rigorous Imprisonment of 2



years and a fine of Rs.1,000/- with default sentence of 6 months Rigorous Imprisonment for commission of offence under Section 201 I.P.C and the sentences were ordered to run concurrently. The appellant/second accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, has come forward with this Criminal Appeal.

3. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

3.1. It is the case of the prosecution that the deceased Poochi @ Vellaiyan is the younger brother of P.W.1 and the husband of accused No.1 viz., Pappa @ Danalakshmi. The first accused and the second accused/present appellant said to have had illicit intimacy and due to which, the first accused asked the appellant herein through phone to make a plan to murder her husband. While so, 05.01.2016 at about 11.20 p.m, when the deceased was sleeping, by holding the legs of the deceased, the first accused throttled the neck of the deceased and thereafter, both of them jointly hit the deceased on the wall. In an effort to make the death as natural death, accused Nos.1 & 2 had brought the body of the deceased to the tiled house and set up a scene as if he was hanging himself and committed suicide. Immediately thereafter, the first accused also made a phone call to her neighbour Meena/P.W.2 informing her that her husband/deceased committed suicide by hanging. Thereafter, on 06.01.2016, on coming to know the information of death of his younger brother viz., deceased, P.W.1-brother of the deceased made a complaint/Ex.P.1, at 09.30 a.m, before the Sub Inspector of Police, Karaiyur/P.W.14 and the same has also been registered as F.I.R in Cr.No.2 of 2016 under Section 302 I.P.C. The printed copy of the F.I.R has been marked as Ex.P.13.

3.2. P.W.10 - Thiru.Rengaraj, was the Village Administrative Officer. He knew the accused. When the second accused/present appellant was arrested on 11.01.2016, he was present there. When the confession statement was recorded by the Police and material objects 7 and 8 were recovered, he was also present and in the observation mahazar/Ex.P.2, he has put his signature.

3.3. P.W.11 - Dr.Thiru.Arunagiri, conducted post mortem on the body of the deceased and he also issued post mortem certificate Ex.P.8. In his final opinion report, he opined that hyoid bone would have been broken, before the death and because of that, death would have occurred, due to asphyxia.

3.4. P.W.12 - Thiru.Annathurai was the Head Constable of Kottaipattinam Police Station. As per the orders of the Inspector of Police, he handed over the copies of F.I.R to the court of the Judicial Magistrate, Thirumayam, the Office of the District Superintendent of Police and also higher officials.



3.5. P.W.13- Thiru. Adaikkan, who is the elder brother of the deceased has spoken about the last seen theory of A-1 along with A-2/appellant herein.

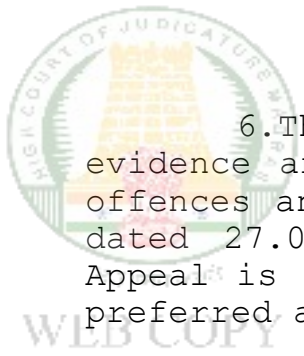
3.6. P.W.14-Thiru.Muthukannu was the Inspector of Police of Karaiyur Police Station. He registered the F.I.R in Cr.No.2/2016 under Section 302 I.P.C. Then, he sent the copies of F.I.R to the higher officials.

3.7. P.W.15-Thiru. Tharani was the Scientific Officer in Forensic Science Laboratory in Chennai. He analysed the material objects and issued a Blood Serology report-Ex.P.15.

3.8. P.W.16-Thiru.Karthigaisamy, who was the Inspector of Police attached to Ponnamaravathi Police Station took up the case for further investigation. He visited the place of occurrence on 06.01.2016 at 10.00 a.m and prepared an observation mahazar/Ex.P.2 and a rough sketch/Ex.P.16 and recovered material objects 1 to 5 (M.O.1-small amount of bloodstained tiles, M.O.2-small amount of tiles without bloodstains, M.O.3- a mat, M.O.4- a bed sheet and M.O.5- a T shirt) from the place of occurrence. Thereafter, at 11.00 a.m, he conducted inquest on the dead body of the deceased in the presence of panchayatars. Then, he arrested the first accused on 06.01.2016 at about 4.30 p.m and recorded her confession statement. Based on her confession, he recovered M.O.6- a Poonam saree. After medical check up, he sent the first accused to judicial custody. Then, he arrested the second accused on 11.01.2016 and recorded his confession statement. Thereafter, he enquired P.Ws.10, 11, 12 and 14 and recorded their statements. Then, he sent the material objects to the Forensic Science Laboratory. Based on the report of the Forensic Science Laboratory, he altered the sections of F.I.R into 120-B, 302 and 201 of I.P.C and then, he sent the alteration report/Ex.P.8 to the Court of Judicial Magistrate, Thirumayam. Thereafter, after completing the investigation, on 02.05.2016, he filed a charge-sheet against both the accused under Sections 120-B, 302 and 201 of I.P.C.

4.The trial court framed appropriate charges against the appellants/accused as stated in the second paragraph of the judgment. They denied the charges. Therefore, they were put on trial. In order to prove the case of the prosecution, on the side of prosecution as many as 16 witnesses were examined and 18 documents were exhibited, besides 8 material objects.

5.When the above incriminating circumstances were put to the accused under Section 313 Cr.P.C, they denied the same as false. However, they have not chosen to examine any witness or to mark any document on their side.



6.The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the accused guilty of the offences and sentenced them as stated above, vide impugned judgment dated 27.03.2018 and challenging the same, the present Criminal Appeal is filed by the second accused. The first accused has not preferred any appeal.

7.We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8.Mr.A.Arun Prasad, learned counsel appearing for the appellant/ accused would submit that the prosecution has not even examined any eye witness to show that A-2 was also an accomplice along with A-1. Further, there is no circumstantial evidence to implicate this appellant with the crime. Again, arguing further, he would submit that when there is no eye witness nor any circumstantial evidence implicating the appellant/A-2 with the crime, it is improper on the part of the prosecution to implicate falsely A-2 along with A-1.

9.Continuing further, learned counsel appearing for the appellant would submit that the prosecution has placed their case on two premises.

a)When P.W.13- elder brother of the deceased was returning from Neyveli, after completing his work, he said to have spotted both A-1 and A-2 standing under an electrical post. Knowing pretty well that they are usually meeting and discussing, he has not even made any attempt to complain the said meeting of A-1 with A-2 to the deceased or any one of his family members. Therefore, the last seen theory made by the prosecution on the basis of the deposition of P.W.13 is liable to be thrown out *in limini*.

b)The prosecution has implicated A-2 along with A-1 on the basis of arrest and recovery of bloodstained clothes of A-2 for the reasons best known to them. But, the prosecution has miserably failed to obtain any positive serology report in this regard. Therefore, both the 'last seen theory' and 'recovery made on the basis of the confession made by A-2' propounded before the trial court by the prosecution also have not clearly substantiated the involvement of A-2/appellant herein.

10.Learned counsel appearing for the appellant heavily pleaded before us that mere arrest and so-called recovery of bloodstained cloths of A-2 also has not proved the presence of A-2 or participation of A-2 along with A-1 in causing the death of the deceased. This aspect against A-2, who is an innocent person, has been unexplained or unjustified on the part of the trial court. When A-1 and A-2 were regularly meeting, without there being any evidence either any eye witness or indirect evidence, it is highly



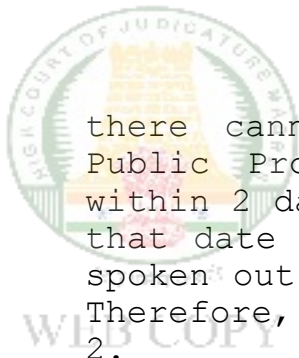
insufficient on the part of the trial court to convict the appellant/A-2 herein.

11. Again in an effort to substantiate that the prosecution has not proved the participation of A-2 joint hands with A-1 for causing the death of the deceased, the learned counsel appearing for the appellant also argued that P.W.1, who is said to have made a complaint alleging the involvement of A-2 along with A-1, even after a period of almost 4 months from the date of occurrence, namely 06.01.2016, has not come forward to examine himself as PW.1. When P.W.13 has spoken in his deposition that he has seen the meeting of A-1 and A-2 just before the taking place of occurrence, that false case projected by the prosecution has been accepted by the trial court as a 'last seen theory'. But, it is clearly disproved by the deposition of P.W.16, who clearly deposed before the trial court that P.W.13 has not seen the meeting of A-1 and A-2, just before the occurrence took place on the same day. Further, P.W.16 has also deposed that P.W.1 did not mention the alleged intimacy between A-1 and A-2 in his complaint as well as in the F.I.R. Therefore, he pleaded that merely on the allegation of illegal intimacy between A-1 and A-2, without any solid evidence, A-2 an innocent person cannot be implicated. This vital aspect has been completely overlooked by the trial court. Therefore, the conviction and sentence imposed by the trial court has to be set aside.

12. Mr. K.K. Ramakrishnan, learned Additional Public Prosecutor, opposing the above submissions, submitted that the prosecution has safely placed two circumstances namely the (i) 'last seen theory' of P.W.13- own brother of the deceased, after seeing both A-1 and A-2 under an electrical post just before the occurrence took place on 06.01.2016 at 05.00 a.m; (ii) When the Investigation Officer has made arrest of A-2 on the basis of the confession statement made by A-1, A-2 also has given a confession statement, admitting the fact that if he is taken to a place, he would be in a position to recover bloodstained lungi and shirt worn by him at the time of committing the offence.

13. Again, in an effort to disprove the arguments of the learned counsel for the appellant, the learned Additional Public Prosecutor, submitted that the arguments advanced by the learned counsel for the appellant that there is no need to arrest A-2 only on 11.01.2016, argued that on the very same date of occurrence, i.e 06.01.2016, both A-1 and A-2 were called for to the police Station and an enquiry was conducted with A-1 and A-2 on the very same day. Finally, after knowing the facts, A-2 was arrested only on 11.01.2016. Therefore, it is not open to the counsel for the appellant to say that no steps were taken to arrest the accused.

14. Again, meeting the arguments of the learned counsel for the appellant that P.W.13 was examined after 4 months and therefore,



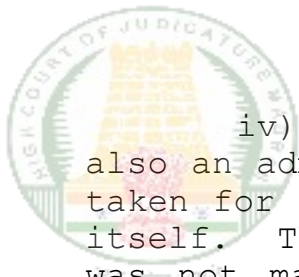
there cannot be any 'last seen theory', the learned Additional Public Prosecutor, has further argued that P.W.13 was examined within 2 days from the date of incident, namely on 08.01.2016 and on that date of examination of P.W.13 itself, 'last seen theory' was spoken out and based on which, arrest and recovery have been made. Therefore, the prosecution has brought forth the findings against A-2.

15. However, we are unable to agree with the arguments advanced by the learned Additional Public Prosecutor, the reason being that the trial court has proceeded against the appellant/A-2 herein on the basis of 'last seen theory', the arrest and recovery of bloodstained cloths of A-2/appellant/accused. Therefore, we are of the considered view that the trial court has not properly gone through the evidence and has committed an error in convicting the appellant/accused, for the following reasons:

i) Firstly when P.W.13 - elder brother of the deceased, while he was returning from Neyveli, after completing his work, has deposed that he has seen both A-1 and A-2 under an electrical post, with sufficient light, when they were interestingly speaking, it is not known why he has not mentioned the same 'last seen theory', when he was examined on 08.01.2016 by the Investigation Officer. When the 'last seen theory' was brought out, the trial court, accepting the same, without any sufficient safeguard, has projected the issue and believed the unsafe 'last seen theory' without any substantial evidence.

(ii) Secondly, when A-1 was arrested and a confession statement was obtained and on the basis of which, A-2 was also arrested, no doubt, in the confession statement, A-2 appears to have confessed that if he is taken to a place, he would be in a position to take out a lungi and a shirt, worn by him, at the time of occurrence and based on the said evidence, the Investigation Officer took A-2 to that place and recovered the said lungi and shirt worn by A-2 said to have been used at the time of committing the offence, it is now known why the prosecution has not obtained any positive serology report/Ex.P.15 to the effect that the bloodstained cloth was also carrying the same blood of the deceased. Therefore, when the last seen theory, arrest and recovery leading to the blood stained cloths of the accused also are not appeared to be satisfied, we have no other option to interfere with the judgment and conviction passed by the learned Sessions Judge.

(iii) The serology report/Ex.P.15 shows that there are no bloodstains as advocated by the prosecution. That further shows that the bloodstained lungi said to have been worn by A-2 has not been recovered. Since the only remote evidence namely circumstantial evidence also fails, it is highly unsafe to convict the appellant/A-2.



iv) Yet another fact also has to be mentioned herein. It is also an admitted case of the prosecution that both A-1 and A-2 were taken for investigation on 06.01.2016 i.e on the date of occurrence itself. Therefore, we find no justification as to why the recovery was not made on the same day, moreover, confession statement has also not been obtained so as to collect the bloodstained cloths of A-2. Therefore, the entire prosecution case insofar as A-2 is concerned, we are of the view that it is wholly un-sustainable. Therefore, it is highly unsafe to convict the appellant/A-2.

16. Accordingly, this criminal appeal is allowed. The judgment and conviction passed in S.C.No.127 of 2016, dated 27.03.2018 by the learned Sessions Judge/ Mahila Court, Pudukkottai is set aside insofar as the appellant/A-2 is concerned. The bail bonds, if any, executed by the accused, shall stand cancelled and the respondent/police is directed to release the appellant/A-2 forthwith, if his presence is not needed in any other criminal proceedings.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vs

To

1. The Sessions Judge/ Mahila Court, Pudukkottai
2. The District Munsif cum Judicial Magistrate,
Thirumayam, Pudukkottai District.
3. The Superintendent Central Prison, Trichy.
4. The Inspector of Police,
Karaiyur Police Station,
Ponamaravathi Taluk,
Pudukkottai District
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to

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

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+1 CC to Mr.A.ARUN PRASAD, Advocate (SR-5506[F] dated 10/02/2020)

JUDGMENT IN

Crl. A. (MD)No.209 of 2018

10.02.2020

VB (22.07.2020) 8P 9C