



BAIL SLIP

The Petitioner/Accused Viz C.Jayavel, S/o.Chandrappan was released on bail as per the Order of this Court Dated 18.12.2020 in CrI.M.P.No.4508 of 2020 in CrI.A.No.284 of 2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.284 of 2020

C.Jayavel
S/o.Chandrappan

.. Appellant

Vs.

State represented by
The Inspector of Police,
Magudanchavady Police Station,
Salem District.
Crime No.109 of 2018

.. Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 23.01.2020 passed in S.C.No.39 of 2019 on the file of I Additional District and Sessions Court, Salem.

For Appellant : Mr.V.Paarthiban

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]

This criminal appeal is directed against the judgment and order of conviction and sentence dated 23.01.2020 passed by the I Additional District and Sessions Court, Salem, in S.C.No.39 of 2019.



2. The prosecution story runs thus:

2.1. The deceased Raju hailed from Illampillai village and was leading a wayward life, in that, he never used to live with his family, but used to sleep in a temple in the outskirts of the village in the nights. In the day time, he used to spend time in the local TASMACH shop serving the customers, getting tips from them, consuming whatever left by them, etc.

2.2. While that being so, on 21.03.2018, the appellant, who had gone to the TASMACH shop for taking liquor, is said to have picked up a quarrel with Raju, in which, Raju is said to have virulently abused the appellant. Keeping this vengeance in mind, while Raju was sleeping in the village temple precincts, the appellant is said to have belaboured him and caused his death. The body of Raju with injuries was noticed on the next day i.e., 22.03.2018 by the villagers and was informed to Manickam [PW-1], Raju's brother.

2.3. On the written complaint [Ex.P1] given by Manickam [PW-1], Boopathy [PW-6], Sub-Inspector of Police, registered a case in Crime No.109 of 2018 for the offence u/s.302 IPC on 22.03.2018 at 09.00 hours against the appellant and prepared the printed First Information Report [Ex.P9].

2.4. Investigation of the case was taken over by Rajaranaveeran [PW-11], Inspector of Police, who went to the place of occurrence along with Selvam [PW-5], V.A.O and R.Sekar, Village Assistant and prepared the observation mahazar [Ex.P2] and rough sketch [Ex.P14]. From the place of occurrence, the Investigation Officer [PW-11] seized soil with bloodstains and without bloodstains and pieces of 'parotta'. The Investigation Officer [PW-11] conducted inquest over the body of Raju and the inquest report was marked as Ex.P15. The body was sent to GMK Medical College Hospital, Salem, for postmortem where Dr.R.Sangeetha [PW-10] conducted autopsy and issued the postmortem certificate [Ex.P11]. After getting the viscera report, Dr.R.Sangeetha [PW-10] gave her final opinion under Ex.P13, wherein, she observed as follows:

'FINAL OPINION:

The Deceased would appear to have Died of Shock and Haemorrhage due to Multiple Stab and cut injuries with evidence of consumption of Ethyl Alcohol.'

2.5. While that being so, the appellant is said to have voluntarily appeared before Selvam [PW-5], V.A.O. on 23.03.2018 around 09.00 a.m. and given an extra-judicial confession [Ex.P4] confessing that on account of the quarrel he had with Raju, he had committed the murder. Thereafter, the appellant was produced before the police and was placed under arrest.



2.6. Based on the disclosure made by the appellant, the Investigation Officer [PW-11] recovered a knife [MO-4] and a bloodstained banian [MO-5] near the place of occurrence. Thereafter, from the house of the appellant, further recoveries were made, viz., a pant [MO-6] and a full-sleeve shirt [MO-7]. All these recoveries were made in the presence of Selvam [PW-5], V.A.O. and Sekar (not examined).

2.7. After examining various witnesses and collecting the reports of the experts, the Investigation Officer [PW-11] completed the investigation and filed a final report in P.R.C.No.9 of 2019 in the Court of the Judicial Magistrate II, Sangagiri, for the offence u/s.302 IPC against the appellant.

3. On 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.39 of 2019 and was made over to the I Additional District and Sessions Court, Salem, for trial. The trial Court framed a charge u/s.302 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

4. To prove the case, the prosecution examined 11 witnesses and marked 19 exhibits and 10 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked.

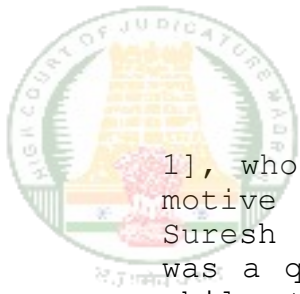
5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 23.01.2020 in S.C.No.39 of 2019, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.

Challenging the conviction and sentence, the accused is before this Court in this appeal.

6. Heard Mr.V.Paarthiban, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

7. This case is based on circumstantial evidence as well the extra-judicial confession [Ex.P4]. Admittedly, Manickam [PW-



1], who lodged the complaint [Ex.P1], was not an eyewitness. The motive for the murder has been spoken to by Thangaraj [PW-3] and Suresh [PW-4], who, in their evidences, have stated that there was a quarrel between Raju and the appellant in the TASMAL shop while they were consuming liquor. Beyond that, they have not stated anything. Thereafter, we have the evidence of Manikandan [PW-2], who is supposed to have seen the appellant following Raju to the village temple where Raju normally sleeps. Apart from this, there is no other evidence to connect the appellant with the crime, except the extra-judicial confession [Ex.P4] that is allegedly given by the appellant to Selvam [PW-5], V.A.O on 23.03.2018.

7.2. In this case, Selvam [PW-5], V.A.O., actively assisted the Investigation Officer [PW-11] from the time the dead body was recovered, in that, Selvam [PW-5], V.A.O., was a witness to the observation mahazar [Ex.P2], rough sketch [Ex.P14] and recoveries were made in the place of occurrence vide Ex.P3. All these exercise were done on 22.03.2018 by the Investigation Officer [PW-11].

7.3. While that being so, it is the case of the prosecution that the appellant suddenly surfaced before Selvam [PW-5], V.A.O., on 23.03.2018 and gave the extra-judicial confession [Ex.P4] stating that he had committed the murder of Raju. However, Manickam [PW-1], in his evidence, has stated that after he gave complaint to the police on 22.03.2018, he saw the appellant in the police station at 01.00 p.m. on the very same day.

7.4. Thus, when the appellant had come into the custody of the police on 22.03.2018, the case of the prosecution that he gave an extra-judicial confession [Ex.P4] to Selvam [PW-5] on 23.03.2018, cannot be countenanced. We find that the prosecution has failed to prove the case against the appellant.

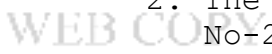
In the result, this Criminal Appeal is allowed and the appellant is acquitted of the charge u/s.302 IPC. The conviction and sentence passed in S.C.No.39 of 2019 on the file of the I Additional District and Sessions Court, Salem, vide judgment and order dated 23.01.2020, are set aside. Fine amount, if any, paid by the appellant shall be refunded. Bail bond executed shall stand discharged.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

gm
To



- Criminal Appeal No.284 of 2020

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