



Bail Slip

The Petitioner/Accused viz Gunasekaran was released on bail as per the order of this Court dated 27.06.2019 in CrI.MP.No.914/2018 in CrI.A.47/2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL.A.No.47 of 2018

Gunasekaran

.. Appellant/Accused

Vs.

State by Inspector of Police
Sankarapuram Police Station
Sankarapuram
Villupuram District
Crime No.6/2016

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the conviction and sentence imposed on the appellant by the judgment and order dated 18.01.2018 passed by the III Additional District and Sessions Judge, Kallakurichi in S.C.No.345 of 2016.

For Appellant : Mr.C.Munusamy
for Mr.R.Arun Dattan

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

J U D G M E N T

(Delivered by P.N.PRAKASH, J.)

This criminal appeal is directed against the judgment and order of conviction and sentence dated 18.01.2018 passed by the III Additional District and Sessions Judge, Kallakurichi in S.C.No.345 of 2016.



2. The prosecution case is as under :

2.1. The deceased Jayaraman was residing with his wife Jayakantham (P.W.6) in Perungalathur village, Tiruvannamalai District and the appellant is his distant relative.

2.2. The appellant is said to have borrowed Rs.1,05,000/- sometime in 2013-14 from Jayaraman and had not returned the same. Jayaraman was pestering the appellant for return of the amount, on account of which, the appellant developed animosity towards Jayaraman.

2.3 While that being so, on 11.01.2016, the appellant is said to have called from his mobile number 73588 46252 to Jayaraman's mobile number 80986 05526. During the telecon, the appellant is said to have told Jayaraman that if he (Jayaraman) comes and meets him (appellant), he (appellant) will return the amount. Accordingly, Jayaraman told his wife Jayakantham (P.W.6) that the appellant has called him and saying so, Jayaraman left his house in his bicycle (M.O.14) to meet the appellant.

2.4. En route, Jayaraman parked his bicycle (M.O.14) in the saloon of Senthilkumar (P.W.13). The appellant is said to have borrowed a two-wheeler (M.O.13) belonging to Manikandan (P.W.14) and picked up Jayaraman and took him to a desolate place, where, both of them consumed liquor. Thereafter, when Jayaraman was intoxicated, the appellant is said to have murdered him, by smashing his head with a stone (M.O.11), stabbing him with a stick and thereafter, setting fire to his body with petrol allegedly obtained from Yesuraja (P.W.12).

2.5. On 14.01.2016 around 07.00 a.m., Kuzhandaivel (P.W.1), Village Administrative Officer (VAO) and his assistant Periasamy (P.W.2) found a charred body in the barren land of one Antonysamy in Irudayampattu village. Kuzhandaivel (P.W.1) gave a written complaint (Ex.P1) to the police, based on which, R.Kannan (P.W.27), Sub-Inspector of Police, registered a case in Moongilthuraipattu P.S.Crime No.6/2016 on 14.01.2016 under Section 174 Cr.P.C. and prepared the printed FIR (Ex.P30), which reached the jurisdictional Magistrate on 04.02.2016 at 17.15 p.m., as could be seen from the endorsement thereon.

2.6. Investigation of the case was taken over by Senthil Kumar (P.W.13), Inspector of Police, who went to the place where the body was found and prepared the observation mahazar (Ex.P2) and the rough sketch (Ex.P6). From the place of occurrence, the



Investigating Officer recovered the following items under the cover of mahazars (Ex.P3, P4 and P5) for the purpose of investigation.

M.O.1	A small quantity of bloodstained earth (with plants)
M.O.2	Earth without bloodstain (with plants)
M.O.3	Red colour waist belt with an iron talisman and copper talisman
M.O.4	A portion of half burnt rose colour half-sleeve shirt with black stripes
M.O.5	A portion of blue colour vest with yellow border
M.O.6	Half burnt lungi cloth with white and blue checks
M.O.7	Half burnt and bloodstained lungi with blue, white and black checks
M.O.8	A burnt portion of half-sleeve rose colour shirt with black stripes and bloodstains
M.O.9	A portion of white and green colour polythene rice sack

2.7. Inquest was conducted over the body of Jayaraman and the inquest report was marked as Ex.P31. The body of Jayaraman was sent to the Government Hospital, Villupuram, where Dr.Gitanjali (P.W.25) performed autopsy and issued the post-mortem certificate (Ex.P27). Samples of the visceral organs were sent to the Tamil Nadu Forensic Science Laboratory, for chemical analysis and after obtaining viscera report (Ex.P23), biological report (Ex.P24) and serology report (Ex.P25), Dr.Gitanjali (P.W.25) gave her final opinion stating that Jayaraman would appear to have died due to head injury with evidence of stab injuries.

2.8. It may be pertinent to state here that neither alcohol nor poison was detected in the visceral organs as per the viscera report (Ex.P23). That apart, the articles seized from the place of occurrence were sent for chemical examination and the chemical examination report (Ex.P26) shows that petrol, diesel, kerosene or any other inflammatory substance was not detected in any of the articles.

2.9. On 02.02.2016, the police arranged to affix posters in the village bearing the photo of the charred body through Raja (P.W.19). On seeing one such poster, Natrajan (P.W.15), a resident of Perungalathur village, informed Jayakantham (P.W.6), the wife of the deceased that the photo in the poster resembles her husband. On coming to know of that, Jayakantham (P.W.6) went to the police station on 03.02.2016 and informed that her



husband Jayaraman told her that the appellant had called him for return of money and left the house and thereafter, did not return home.

2.10. Immediately thereafter, the police altered the case on 03.02.2016 from one under Section 174 Cr.P.C. to Sections 364, 328, 302 and 201 IPC and showed the appellant as the accused vide alteration report (Ex.P32).

2.11. While so, it is said that the appellant appeared before Sivaprakasam (P.W.21), VAO and his assistant Venkatesh (P.W.23) on 04.02.2016 and gave an extra-judicial confession (Ex.P9), wherein, he stated that, he took Jayaraman in a motorcycle to a desolate place, where they both consumed liquor and when Jayaraman was in a state of intoxication, he murdered him by throwing a stone on his head and stabbing him with sticks; thereafter, he went to Irudayampattu in his motorcycle and purchased petrol from a shop and brought it to the place of occurrence where the body was, poured the petrol over the body and set fire to it to efface its identity.

2.12. After recording the extra-judicial confession (Ex.P9), Kannan (P.W.27) and Sivaprakasam (P.W.21) produced the appellant before the Investigating Officer along with a special report (Ex.P8). The Investigating Officer placed the appellant under arrest and recorded the police confession (Ex.P11).

2.13. Based on the disclosure, the police seized a stone (M.O.11) weighing 23 kgs. under Ex.P10 in the presence of witnesses viz., Sivaprakasam (P.W.21) and Venkatesh (P.W.23).

2.14. The police arranged to draw blood samples of Jayakantham (P.W.6) and her son, for DNA profiling to identify the dead body. The DNA report (Ex.P22) fixed the identity of the dead person as Jayaraman. Similarly, the ossification test also confirmed the identity.

2.15. After examining witnesses and collecting the various reports, the police completed the investigation and filed a final report in PRC.No.24/2016 in the Court of the Judicial Magistrate, Sankarapuram against the appellant.

2.16. 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, Villupuram in S.C.No.345/2016 and was made over to the III Additional District and Sessions Court, Kallakurichi, for trial. The trial Court framed charges under Sections 364, 328, 302 and 201 IPC against the appellant. When questioned, the appellant pleaded "not guilty".

2.17. To prove the case, the prosecution examined 30 witnesses and marked 32 exhibits and 21 material objects. When



the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant.

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2.18. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 18.01.2018, in S.C.No.345 of 2016, convicted and sentenced the appellant as under :

Provision under which convicted	Sentence
Section 364 IPC	Imprisonment for life with fine of Rs.1,000/-, in default, to undergo 1 month simple imprisonment
Section 328 IPC	10 years rigorous imprisonment with fine of Rs.1,000/-, in default, for undergo 1 month simple imprisonment
Section 302 IPC	Imprisonment for life with fine of Rs.1,000/-, in default, to undergo 1 month simple imprisonment
Section 201 read with 302 IPC	7 years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo 1 month simple imprisonment

The aforesaid sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentences, the accused has preferred this appeal.

3. Heard Mr.C.Munusamy, learned counsel for the appellant and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

4. The entire case is based on circumstantial evidence coupled with the extra-judicial confession (Ex.P9) that is said to have been given by the appellant to Sivaprakasam (P.W.21) on 04.02.2016. In this case, the prosecution has proved beyond a peradventure via the evidences of experts viz., K.Thara (P.W.24), Scientific Officer, DNA Typing Unit and Pushparani, Scientific Officer, Superimposition Expert that the dead body was that of Jayaraman, H/o.Jayakantham (P.W.6). That apart, the prosecution has also satisfactorily established through the evidence of Dr.Gitanjali (P.W.25) that the death of Jayaraman was a homicide.



5. The prosecution seeks to link the appellant with the crime, via the evidences of Jayakantham (P.W.6), Yesuraja (P.W.12), Manikandan (P.W.14), Charles (P.W.16) and Sivaprakasam (P.W.21).

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6. Jayakantham (P.W.6), in her evidence, has stated that, her husband Jayaraman left the house on 11.01.2016 saying that he has been asked by the appellant to meet him. Strangely, when Jayakantham's (P.W.6) husband did not return home on that day or even a day or two later, she did not choose to go to the police and give a complaint. In the cross-examination, she admitted that at the time of incident, she was living separately, on account of some difference of opinion she had with her husband. In the light of this admission coupled with the fact that Jayakantham (P.W.6) did not take any steps to look for her husband from 11.01.2016 to 03.02.2016, her statement that on 11.01.2016 her husband told her that he is going to meet the appellant does not appear probable to us.

7. It is seen that Yesuraja (P.W.12) is said to have sold petrol to the appellant and the Investigating Officer has conducted Test Identification Parade through S.Tamizhselvi (P.W.26), Judicial Magistrate for this purpose. In the extra-judicial confession (Ex.P9), the appellant has stated that he had gone to a shop in Irudayampattu village and had purchased petrol, whereas, Yesuraja (P.W.12) has stated that he drew petrol from his motorcycle and gave it to the appellant. This defies logic because, the appellant himself had a motorcycle, from which he could have taken petrol to burn the body instead of taking from Yesuraja's (P.W.12) vehicle.

8. According to Yesuraja (P.W.12), he did not know the appellant earlier and that is why, a Test Identification Parade was conducted for him to identify the appellant. It is indeed strange, as to how Yesuraja (P.W.12) would have gone out of way to draw petrol from his motorcycle and given it to a stranger like the appellant for a measly sum of Rs.50/-. Superadded, the forensic report shows that no petrol or kerosene was detected in any of the articles seized from the place where the body was found.

9. As regards the evidence of Manikandan (P.W.14), who had lent his motorcycle to the appellant on 11.01.2016, it is seen that the appellant had collected the motorcycle for the purpose of taking his daughter for medical treatment and thereafter, the appellant had parked the motorcycle in the brother's house of



Manikandan (P.W.14) and had handed over the key to Manikandan (P.W.14). We do not find anything incriminating in this circumstance against the appellant.

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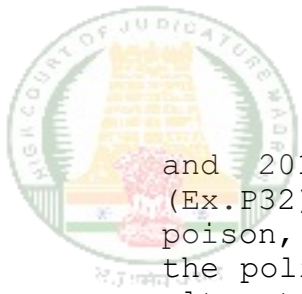
10. Senthilkumar (P.W.13), in his evidence, has stated that, Jayaraman came to his saloon on 11.01.2016, parked his bicycle there and went away; later, Jayaraman returned to the saloon and told him that he is going with the appellant. Senthilkumar (P.W.13) has not seen the appellant and Jayaraman together. His evidence is to the effect that Jayaraman told him that he is going with the appellant. This cannot be stretched to mean that Jayaraman and the appellant were seen together by this witness.

11. Then, we have the evidence of Charles (P.W.16), who in his evidence, has stated that, while he was operating his JCB vehicle nearby to the place from where the body was recovered, he saw Jayaraman and the appellant together; he does not know the appellant earlier and 25 days later, the police came to him and showed him a photograph, based on which, he identified the appellant as the person who was with Jayaraman at the relevant point of time.

12. It is not known as to how the police came to know that Charles (P.W.16) had seen the appellant and Jayaraman together on 11.01.2016. It is not the case of Charles (P.W.16) that on seeing the poster that was affixed by the police, he voluntarily went to the police station and gave information. No Test Identification Parade was conducted for Charles (P.W.16) to identify the appellant, though such a parade was conducted qua Yesuraja (P.W.12).

13. Finally, we have the evidence of Sivaprakasam (P.W.21), who has recorded the extra-judicial confession of the appellant (Ex.P9). We are unable to place any credence on the extra-judicial confession of the appellant (Ex.P9) that was supposed to have been given on 04.02.2016 to Sivaprakasam (P.W.21) because, Jayakantham (P.W.6) in her evidence, has stated that, when she went to the police station on 02.02.2016 and told the police that her husband Jayaraman had gone with the appellant, the police brought the appellant to the police station.

14. At this juncture, it may be necessary to state that on the mere statement of Jayakantham (P.W.6) on 03.02.2016, the police have altered the case by adding Sections 364, 328, 302



and 201 IPC on the very same day vide alteration report (Ex.P32). Section 328 IPC relates to causing hurt by means of poison, etc., with intent to commit an offence. Then, how did the police include Sections 328 and 201 IPC on 03.02.2016 in the alteration report, when according to them the appellant surrendered to the VAO only on the next day i.e., on 04.02.2016 and gave the extra-judicial confession. Thus, we are led to the irresistible inference that the appellant had come into custody of the police on 03.02.2016 itself and thereafter, he has been made to appear before the VAO on 04.02.2016 for recording the extra-judicial confession.

15. At the most, Jayakantham (P.W.6) would have told the police that her husband had gone with the appellant on 11.01.2016 and beyond that, there was no way, by which she would have told the police that the appellant had made her husband consume liquor, for the purpose of murdering him. The scientific evidence that neither liquor nor poison was detected in the visceral organs of Jayaraman, belies the extra-judicial confession (Ex.P9). Therefore, the extra-judicial confession (Ex.P9) that was allegedly given by the appellant on 04.02.2016 deserves to be rejected.

16. In fine, the prosecution has failed to prove the case beyond a peradventure for sustaining the conviction passed by the trial Court.

In the result, this Criminal Appeal is allowed and the judgment and order of conviction and sentence dated 18.01.2018 passed by the III Additional District and Sessions Judge, Kallakurichi in S.C.No.345 of 2016, are set aside. Bail bond executed by the appellant will stand discharged. Fine amount, if any, paid by him shall be refunded.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge
Kallakurichi

2. The Inspector of Police
Sankarapuram Police Station
Sankarapuram
Villupuram District

3. The Public Prosecutor
High Court, Madras

4. The Judicial Magistrate,
Sankarapuram, Villupuram District.

5. The Chief Judicial Magistrate,
Villupuram (for Information)

6. The Superintendent,
central Prison, Cuddalore.

7. The Director General of Police,
Mylapur, Chennai-4.

8. The District Collector,
Villupuram.

Copy To

The Section Officer,
VR Section, High Court, Madras.

CRL.A.No.47 of 2018

SVI (CO)
GMY (27/10/2021)