



BAIL SLIP

The Petitioner / accused viz., Mani, aged 26 years, S/o.Kannan was directed to be released on bail vide order in Crl.M.P.No.14731 of 2018 in Crl.A.No.691 of 2018, dated 26.11.2018.

BAIL SLIP

The Petitioner / accused viz., Arul, aged 25 years, S/o.Natesan was directed to be released on bail vide order in Crl.M.P.No.10381 of 2019 in Crl.A.No.471 of 2019, dated 16.08.2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

CRL.A.Nos.691 of 2018 and 471 of 2019

Mani .. Appellant/A-2
in Crl.A.691 of 2018

Arul .. Appellant/A-1
in Crl.A.471 of 2019

Vs.

State by Inspector of Police
Puduchatram Police Station
Namakkal District

.. Respondent/Complainant
in both appeals

Criminal Appeals filed under Section 374(2) Cr.P.C. to set aside the judgment passed in S.C.No.26 of 2012 dated 10.10.2018 by the Principal Sessions Judge, Namakkal.



WEB COPY

For Appellant
in both appeals

: Ms.R.Shase

For Respondent
in both appeals

: Mr.M.Babu Muthu Meeran
Additional Public
Prosecutor

C O M M O N J U D G M E N T

P.N.PRAKASH, J.

Challenging the conviction and sentence dated 10.10.2018 passed in S.C.No.26 of 2012 by the Principal Sessions Judge, Namakkal, the accused No.2 (Mani) preferred Crl.A.No.691 of 2018 and the accused No.1 (Arul) preferred Crl.A.No.471 of 2019.

2. The prosecution story runs thus :

2.1. Since the name of the deceased and the name of the P.W.11 is Karthik, for the sake of clarity, the deceased Karthik is referred to as the deceased and P.W.11 is referred to by his name.

2.2. The deceased Karthik, who was aged about 23 years at the time of his death, was a resident of Sevagoundampalayam village, Namakkal District. He was a bachelor. Bharathi (P.W.1) is his mother and Arun (P.W.3) is his younger brother. Ramesh (P.W.2) is the brother-in-law of Bharathi (P.W.1) and junior paternal uncle of the deceased and they all hail from the same village. The deceased was working in a saloon in Namakkal and was a close friend of Arun (A1), Mani (A2), Vignesh (P.W.12) and Karthik (P.W.11) and they used to consume liquor together.

2.3. On 23.08.2011, the deceased left his house by his motorcycle bearing registration No.TN 47 Z 3602 (M.O.1) around 03.30 p.m. and thereafter, did not return. On the next day i.e., on 24.08.2011, Ramesh (P.W.2) informed Bharathi (P.W.1) that Karthik's body has been found in the Agaram pond, which is about 2 kms. away from their village. On hearing this news, Bharathi (P.W.1) and her relatives went to the said pond and found the body of the deceased settled in the bank of the pond.

2.4. On a written complaint (Ex.P1) that was given by Bharathi (P.W.1), Kasirajan (P.W.14), Spl. Sub-Inspector of Police, registered a case in Puduchathram P.S. Crime No.468 of



2011 under Section 174 Cr.P.C. on 24.08.2011 at 10.00 hrs. and prepared the printed FIR (Ex.P18).

2.5. In the complaint (Ex.P1), Bharathi (P.W.1) has stated that her son (deceased) left the house at 03.30 p.m. on 23.08.2011 and when she contacted him at 07.30 p.m., he told her that he is in Agaram area and that he will come home; again, when she contacted him around 11.00 p.m., she was not able to reach him; she suspects the involvement of Arul (A1), Mani (A2), Vignesh (P.W.12) and Karthik (P.W.11).

2.6. Investigation of the case was taken over by Subash (P.W.19), Inspector of Police, (hereinafter referred to as "the I.O.") who went to the place of occurrence, prepared an observation mahazar (Ex.P5) and a rough sketch (Ex.P24). The breadth and depth of the pond were around 30 feet and 3 feet, respectively.

2.7. From the place of occurrence, the I.O. seized a black colour T-shirt (M.O.2) under a seizure mahazar (Ex.P7), in the presence of witnesses viz., Palanisamy (not examined) and Rajendran (P.W.6). In the presence of panchayatdars, the I.O. conducted inquest over the body of the deceased and the inquest report was marked as Ex.P25. In column No.4 of the inquest report, it is stated that the deceased was last seen alive by his mother Bharathi (P.W.1) on 23.08.2011 at 03.30 p.m. In column No.3 of the inquest report, it is stated that the body was first seen by Ramesh (P.W.2) on 24.08.2011 early morning.

2.8. The I.O. collected water from the pond for diatom test and sent the body of the deceased to the Government Hospital, Salem, for postmortem, where Dr.Gokularamanan (P.W.18) performed autopsy on the body of the deceased and issued the postmortem certificate (Ex.P20). The viscera report (Ex.P21) shows that ethyl alcohol was detected in the visceral organs and no other poison was detected. The postmortem doctor has noticed abrasions on the left elbow and right knee of the body of the deceased and has also found fish bite marks on the back of the right earlobe. Based on the viscera report, the postmortem doctor has given his final opinion (Ex.P23), which is as follows :

"The deceased would appear to have died of asphyxia due to drowning with evidence of consumption of ethyl alcohol."

2.9. While that being so, Arul (A1) and Mani (A2) appeared before Sridhar (P.W.9), Village Administrative Officer on 25.08.2011, around 02.00 p.m. and Arul (A1) gave an extra-judicial confession (Ex.P8), wherein, he has stated that one



month prior to the incident, he had a quarrel with the deceased, in which the deceased is said to have slapped him, on account of which, he wanted to wreak vengeance on him and when he discussed this matter with Mani (A2), the latter advised him (Arul) that they should get rid of him (deceased), after entertaining him (deceased) with liquor; accordingly, on 23.08.2011, all the three consumed liquor in the bank of the Agaram pond and when they found that the deceased was high, they immersed him in the pond and murdered him; thereafter, they took away his bike and parked it near a poultry farm; since they feel remorseful, they are confessing.

2.10. After recording the extra-judicial confession (Ex.P8), Sridhar (P.W.9) took both of them along with his report (Ex.P9) and produced them before the I.O. on the same day at 04.30 p.m. The I.O. placed Arul (A1) and Mani (A2) under arrest and recorded their police confession. Based on the confession of Arul (A1), the I.O. seized a motorcycle bearing registration No.TN 47 Z 3602 (M.O.1), near the poultry farm under a seizure mahazar (Ex.P14) and a mobile phone (M.O.3) from one Subramani (P.W.4), who is said to have bought the mobile phone for Rs.800/- from Arul (A1), in the presence of witnesses viz., Sridhar (P.W.9) and Ramakrishnan (not examined) under a seizure mahazar (Ex.P15).

2.11. After examining witnesses and collecting the various reports, the I.O. completed the investigation and filed a final report in P.R.C.No.1 of 2012 in the Court of the Judicial Magistrate No.II, Namakkal, under Sections 302 and 201 IPC against Arul (A1) and Mani (A2).

2.12. On appearance of the accused, 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.26 of 2012 and was tried by the Principal Sessions Judge, Namakkal. The trial Court framed charges under Sections 302, 201 and 404 IPC against Arul (A1) and under Sections 302 and 201 IPC against Mani (A2).

2.13. When questioned, the accused pleaded "not guilty".

2.14. To prove the case, the prosecution examined 19 witnesses and marked 27 exhibits and 3 material objects.

2.15. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined from the side of the accused nor any document marked.

2.16. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.10.2018, in S.C.No.26 of 2012, convicted and sentenced the



accused as under :

Name of the accused	Provision under which convicted	Sentence
Arul (A1)	Section 302 IPC	Life imprisonment with fine of Rs.5,000/-, in default to undergo one month simple imprisonment
	Section 201 IPC	7 years rigorous imprisonment with fine of Rs.1,000/-, in default to undergo one month simple imprisonment
	Section 404 IPC	1 year rigorous imprisonment with fine of Rs.1,000/-, in default to undergo one month simple imprisonment
Mani (A2)	Section 302 IPC	Life imprisonment with fine of Rs.5,000/-, in default to undergo one month simple imprisonment
	Section 201 IPC	7 years rigorous imprisonment with fine of Rs.1,000/-, in default to undergo one month simple imprisonment

The aforesaid sentences were ordered to run concurrently. Challenging the said conviction and sentences, Arul (A1) has preferred CrI.A.No.471 of 2019 and Mani (A2) has preferred CrI.A.No.691 of 2018.

3. Heard Ms.R.Shase, learned counsel for the accused and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

4. The entire case of the prosecution rests on the extra-judicial confession of Arul (A1) viz., Ex.P8, which was given to Sridhar (P.W.9) and the last seen together theory of the testimonies of Venkateswaran (P.W.5), Saravanan (P.W.7) and Sukumar (P.W.10). As regards Bharathi (P.W.1), Ramesh (P.W.2) and Arun (P.W.3), they had gone to the place of occurrence, only after the incident and they merely suspected the involvement of four friends of the deceased. At this juncture, it may be relevant to state certain events that took place during trial that would have a strong bearing in this case.

5. Bharathi (P.W.1), in her evidence, had stated that she suspects the involvement of four friends of her deceased son viz., Arul (A1), Mani (A2), Karthik (P.W.11) and Vignesh (P.W.12). However, the I.O. had recorded the statements of Karthik (P.W.11) and Vignesh (P.W.12) and had cited their names



in the memo of evidence.

6. Since Bharathi (P.W.1) disclosed the names of Karthik and Vignesh in her testimony, the trial Court exercised its power under Section 319 Cr.P.C. and included them as co-accused along with Arul (A1) and Mani (A2).

7. Challenging their inclusion, Vignesh and Karthik filed Crl.R.C.No.1331 of 2012 in this Court, which was heard by a learned Single Judge, who, by order dated 23.06.2017, discharged them from the prosecution, by holding that, apart from the ipse dixit of Bharathi (P.W.1), there was no material to show the involvement of Karthik and Vignesh in the offence. However, Karthik and Vignesh were examined as P.W.11 and P.W.12, respectively, during trial as per the original memo of evidence, but they turned hostile.

8. Coming to the extra-judicial confession (Ex.P8) of Arul (A1), Ms.Shase, learned counsel for the appellants took us through the evidence of Bharathi (P.W.1), who, in the cross-examination, has clearly stated that on 24.08.2011, when she went to the police station, she found that the police had detained Arul (A1), Mani (A2), Karthik (P.W.11) and Vignesh (P.W.12). Thus, from her testimony, it is clear that Arul (A1) and Mani (A2) were taken into custody, even on 24.08.2011 itself and therefore, the extra-judicial confession (Ex.P8) dated 25.08.2011, that was allegedly given by Arul (A1) to Sridhar (P.W.9), stood vitiated. Hence, this Court cannot place any reliance on the said extra-judicial confession (Ex.P8) of Arul (A1), for mulcting criminal liability on the accused.

9. As regards the last seen together theory, we have the evidence of Venkateswaran (P.W.5), Saravanan (P.W.7) and Sukumar (P.W.10). Venkateswaran (P.W.5) and Sukumar (P.W.10) have stated that they were working in a petrol bunk, which is around 100 feet away from the pond; a few years ago, the deceased came with two of his friends and filled petrol for Rs.50/- in a red colour TVS flame motorcycle; again, they saw the trio around 06.00 to 06.15 p.m. in the evening going in the eastern direction in their motorcycle; thereafter, again at 08.30 p.m., they heard a noise near the pond and when they went there, they found a TVS flame motorcycle parked there and the deceased was consuming liquor along with Arul (A1) and another person; once again, around 10.00 to 10.30 p.m., they heard a noise and when they went to the pond, they saw Arul (A1) and another person leaving the pond in a motorcycle; on the next day, they heard



the news about the death of Karthik.

10. If these two witnesses viz., P.W.5 and P.W.10 had really seen the deceased on the previous day and also on the day, when the body was fished out of the pond, they would have been part of the inquest proceedings and their names would have appeared in column No.4 of the inquest report. The prosecution has not placed any material to show that these two witnesses viz., P.W.5 and P.W.10 were working in the petrol bunk. No receipt was marked to show that the deceased and the accused had filled petrol on 23.08.2011. Of course, that by itself, cannot be fatal. However, Venkateswaran (P.W.5), in his cross-examination, has stated that when he was examined by the police, he stated the name of one person as Arul (A1) and did not give the name of the other person, but had merely stated that he can identify that person. He also admitted that when he was examined by the police, he saw three or four persons consuming liquor near the pond where the motorcycle was parked. Similarly, Sukumar (P.W.10) has stated that he had not gone voluntarily to the police and given any statement and that he does not know Mani (A2) previously and was seeing him after the incident for the first time in the Court. The records show that the police statement of these two witnesses viz., P.W.5 and P.W.10 have been recorded by the I.O. on 25.08.2011, but, it is not known, as to how the I.O. knew that these two persons had earlier seen the accused with the deceased, when they have stated that they did not go and voluntarily give any statement to the police.

11. Now, coming to the evidence of Saravanan (P.W.7), he has stated that he is into chicken business; 6 to 7 years ago, one day, around 08.30 p.m., when he was on the way from the Wednesday shandy to Elur, he found four persons consuming liquor near the Agaram pond, where a red colour motorcycle was found parked; again at 09.00 p.m., while he was returning to his house, he saw Karthik (deceased) riding the said motorcycle with the two accused viz., Arul (A1) and Mani (A2) seated on the pillion, leaving the place; on the next day, he heard the news about Karthik's (deceased) death and he went to the pond, where he found Karthik's body floating. From this evidence, it appears that Karthik (deceased) and the two accused had left the pond in the motorcycle in the night.

12. In the cross-examination, it is admitted by Saravanan (P.W.7), that he did not specifically state the names of the accused. Had this witness really seen the incident, he being a relative of the deceased, would have disclosed all these facts



to the police immediately.

13. In such view of the matter, we are unable to place much credence on the testimonies of Venkateswaran (P.W.5), Saravanan (P.W.7) and Sukumar (P.W.10), for sustaining the last seen together theory.

14. Next, let us examine the scientific evidence in this case, in order to see whether the deceased was first murdered and thrown into the pond or the death was owing to asphyxia due to drowning as stated in the final opinion (Ex.P23). The viscera report (Ex.P21) states that ethyl alcohol was detected in the contents of stomach, intestine, liver, kidney, brain and blood. In fact, 483 milligrams of ethyl alcohol was detected in the stomach contents, which is very huge. The diatom report (Ex.P22) shows that diatom was detected in the water sample that was lifted from the pond as well in the sternum and lungs of the deceased. Thus, the scientific evidence manifestly shows that the deceased was not murdered and subsequently, thrown into the pond. Therefore, we can reasonably draw an inference from the scientific evidence that the deceased was so heavily drunk that he could have slipped into the pond and could have died of asphyxia due to drowning, albeit the fact that the depth of the pond was only 3 feet. However, as discussed above, since there is no material, much less any credible material, to convict Arul (A1) and Mani (A2), by granting the benefit of doubt in their favour, they deserve to be acquitted.

In the result, these criminal appeals are allowed and the judgment and order of conviction and sentences dated 10.10.2018 passed by the Principal Sessions Judge, Namakkal, in S.C.No.26 of 2012, are set aside. Bail bond executed by the accused viz., Arul (A1) and Mani (A2) shall stand discharged. Fine amount if any paid by them, shall be refunded.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge
Namakkal
2. The Chief Judicial Magistrate,
Namakkal. (For Information)
3. The Inspector of Police
Puduchatram Police Station
Namakkal District
4. The Judicial Magistrate,
No.II, Namakkal.
5. The Public Prosecutor
High Court, Madras
6. The Superintendent,
Central Jail,
Coimbatore.

+2ccs to Mr.M.Guru Prasad, Advocate, S.R.No.61634, 61633

CRL.A.Nos.691 of 2018 & 471 of 2019

AD(CO)
SU(14/12/2021)