



Bail Slip

The Appellant herein/Sole Accused Viz. Santhosam S/o.Sudalaikani Nadar aged about 39/2018 was directed to release on bail vide Orders of this Court dated 02.07.2019 made in CrI.MP(MD) No.9536/2018 in CrI.A(MD)No.472/2018.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Criminal Appeal(MD)No.472 of 2018

Santhosam

... Appellant/Sole Accused

vs.

State rep by Inspector of Police,
Kulathur Police Station,
Thoothukudi District
In Crime No.96 of 2016

... Respondent/Complainant

PRAYER:Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, to set aside the conviction and sentence imposed by the IInd Additional District and Sessions Court, Thoothukudi, in S.C.No.217 of 2017 on 16.08.2018.

For Appellant : Mr.M.Jothi Basu

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by V. BHARATHIDASAN, J.)

The appellant is the sole accused. He stood charged for the offences under Sections 302 and 201 IPC. The trial Court, convicted the appellant, under Section 302 IPC, and sentenced him to undergo life imprisonment, and also to pay fine of Rs.1,000/-, in default, to undergo one year simple imprisonment, and convicted the appellant under Section 201 IPC and sentenced him to undergo 3 years simple imprisonment, and also to pay fine of Rs.500/-, in default, to undergo three months simple imprisonment. Challenging the abovesaid conviction and sentence, the appellant is before this Court with this appeal.

2.The case of the prosecution is that, both the appellant and the deceased were indulged in theft on 04.07.2016, there was a quarrel between them in sharing the stolen property, due to which, the appellant/accused took the deceased to a remote place and



caused his death, by putting stone on his head, thereafter burnt the body. On the next day, 05.07.2016, PW1, Village Administrative Officer, who saw the half burnt body, immediately gave a complaint (Ex.P1), before the respondent/police. Based on the said complaint, PW11, Inspector of Police, registered an FIR(Ex.P6) in Crime No.96/2016, for the offences under Sections 302 and 201 IPC, sent the same to the concerned Judicial Magistrate Court, and sent copies of the same, to the higher officials. Thereafter, he proceeded to the scene of occurrence, and prepared the observation mahazar(Ex.P4), rough sketch(Ex.P7), in the presence of witnesses, then, he conducted inquest on the dead body, in the presence of witnesses and panchayatars, and prepared the inquest report(Ex.P8). PW11 collected blood stained stone weighing about 15kg(MO1), blood stained soil(MO2), sample soil(MO3), and also collected ashes(MO5) available in the scene of occurrence, then, sent the body for post-mortem autopsy along with a requisition to the Government Medical College Hospital, Thoothukudi. A Doctor, Government Thoothukudi Medical College Hospital, Thoothukudi, conducted postmortem autopsy of the deceased, and given post-mortem report(Ex.P14), which reads as follows:-

'The following ante mortem injuries were noted in the body:-

1.An abrasive contusion of size 9cms x 2cms x soft tissue deep seen over the left cheek.

2.A laceration of size 7cms x 2cms x cranial cavity deep seen over the right eyebrow.

3.A laceration of size 2cms x 1cm x cranial cavity deep seen over the forehead.

Right and left maxilla found fractured. Nasal bone found fractured. Both sides of anterior and middle cranial fossa found fractured.

On dissection of Scalp, Skull and Dura:-

Parietal, frontal, temporal and occipital bones on both sides showed comminuted fractured.

Other findings:- Peritoneal cavity-normal. Pleural cavity-normal. Pericardium-contained about 10ml of straw colored fluid. Heart-flappy, Coronaries-patent. Larynx and Trachea-no soot particles found. Hyoid bone-intact. Lungs, Liver, Spleen and Kidneys-normal and cut section pale. Stomach-contained about 200gm of partially digested food particles, nil specific smell, mucosa-pale. Small intestine -filled with foul smelling gas, mucosa-brownish. Bladder-empty. Brain-normal and cut section normal. External genitals-normal.

Note:- Viscera sent for chemical analysis.'

The Doctor was of the opinion that the deceased appears to have died of head injury.

3.PW11, continued the investigation, recorded the statement of other witnesses, sent the material objects for chemical examination to the Forensic Science Laboratory, Tirunelveli, and received the report, then, he



arrested the accused on 25.11.2016, on such arrest, the accused voluntarily given confession, based on the admissible portion of the evidence, PW11 recovered one set of ear stud, 4½ sovereigns of gold chain and also golden framed wrist watch. He recorded the statement of the post-mortem doctor and after completion of investigation, filed final report.

4.Considering the above materials, the trial Court framed the charges as mentioned above and the accused denied the same as false. In order to prove its case, the prosecution has examined as many as 11 witnesses and marked 29 documents, apart from 11 material objects.

5.Out of the witnesses examined, PW1, is the Village Administrative Officer, who saw the dead body, partly burnt and given complaint(Ex.P1). PW2, is the Village Assistant accompanied PW1, he is the witness to the arrest and confession of the accused and also witness to the recovery of material objects, however, he was treated as hostile witness. PW3, is the wife of the deceased, she has given a complaint that her husband is found missing from 04.07.2016, after long time, the police informed her this accused murdered her husband and she does not know anything else. PW4, is the mother of the deceased, she also spoke about the missing of the deceased. PW5, is the wife of the accused and she turned hostile. PW6, is also turned hostile. PW7, is running two wheeler mechanic workshop, and he also turned hostile. PW8, a Mason, turned hostile. PW9, a Village Assistant, is a witness to the observation mahazar and rough sketch and also recovery of MO1. PW10, another Village Administrative Officer, is a witness to the observation mahazar, and he also turned hostile. PW11, is the investigating officer, who arrested the accused, recovered the material objects, recorded the statement of the witnesses, and after completing the investigation, filed the final report.

6.The above incriminating materials were put to the accused, under Section 313 Cr.P.C., the accused denied the same as false. The accused did not examine any witness, nor marked documents, to prove his case. Considering those materials, the trial Court convicted and sentenced the accused, as stated above.

7.Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent and perused the records carefully.

8.It is a case of circumstantial evidence. According to prosecution, both the accused and deceased were indulged in theft and there was a quarrel, between them, in sharing the stolen property, which resulted in the occurrence. A Village Administrative Officer, PW1, found the dead body of the deceased, on 05.07.2016, in a remote place, near Subramaniapuram Vaippar River, where the body was found half burnt, immediately he gave a

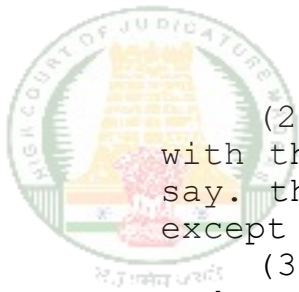


complaint and based on that, a crime was registered. Thereafter, on 25.11.2016, nearly after 4 months, the accused was arrested on suspicion and based on his confession, the investigating officer said to have recovered gold jewels and chain, however, those materials were not marked before the court. To prove the motive, no witness was examined and absolutely, there is no material available on record, to show that both the accused and the deceased were involved in theft cases. The witnesses said to have seen both the accused and deceased together, namely, PW6, PW7, and PW8, turned hostile. From the record, it could be seen that the body was half burnt, and nobody identified the body, neither the wife, PW3, nor PW4, the mother of the deceased. The prosecution has only relied upon the report of the finger prints expert, who compared the finger prints of the deceased with that of the alleged available finger prints of the deceased(Ex.P27), in Tirunelveli District Police Unit, but it is not known when that finger print of the deceased was taken, no evidence was let in to show that it was the finger print of the deceased and finger print expert was also not examined. That apart, after the arrest, the accused said to have given a confession statement, based on that, some jewels said to have recovered, but the same were not marked before the court, hence, recovery was also not proved by the prosecution. The Doctor, who conducted post-mortem autopsy, was also not examined by the prosecution.

9.It is the settled law that, in case of circumstantial evidence, the prosecution should prove the guilt of the accused, beyond any reasonable doubt and the evidence available should conclusively prove the guilt of the accused. The Hon'ble Supreme Court in **Sharad Birdhi Chand Sarda vs State Of Maharashtra** reported in **1984 AIR 1622 = 1985 SCR (1) 88**, has given five golden principles which are to be established by the prosecution in cases of circumstantial evidence, which reads as follows:-

'A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1)the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra(') where the following observations were made: "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."



(2)The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty;

(3)the circumstances should be of a conclusive nature and tendency;

(4)they should exclude every possible hypothesis except the one to be proved, and

(5)there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.''

10.Applying the above principles to the case on hand, we find no materials available on record to connect the accused with the offence. The prosecution has miserably failed to prove any one of circumstances relied upon by them. Hence, the appellant is entitled for acquittal.

11.Accordingly, this Criminal Appeal is allowed and the conviction and sentence passed by the trial Court in the judgment, dated 16.08.2018 made in S.C.No.217 of 2017 on the file of the IInd Additional District and Sessions Court, Thoothukudi, is set aside and the appellant is acquitted of all the charges. Fine amount, if any, shall be refunded to the appellant. Bail bond executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

- 1.The Principal District Judge,
Thoothukudi.
- 2.The II Additional District and Sessions Judge,
Thoothukudi.
- 3.The Chief Judicial Magistrate,
Thoothukudi.
- 4.The Judicial Magistrate,
Vilathikulam.
- 5.The Inspector of Police,
Kulathur Police Station,
Thoothukudi.
- 6.The Superintendent,
Central Prison,
Palayamkottai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-29829[F] dated
22/09/2021)

JUDGMENT MADE IN
CRL.A(MD)No.472 of 2018
DATED : 21.09.2021

TP(CO)
RS/JGB (18.11.2021) 6P 11C