



BAIL SLIP

The Appellants/Accused 1 to 3 namely 1)Murugan, Male, Aged 56 years, S/o.Subramani, 2).Ramaraj, Male, Aged 30 years, S/o.Murugan, 3).Shanthi, Female Aged 55 years W/o.Murugan, was directed to be released on bail as per the order of this Court dated 02/07/2019 in Crl.MP(MD)No.5792/2019 in Crl.A(MD)No.500/2018 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.09.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD)No.500 of 2018

1.Murugan

2.Ramaraj

3.Sanathi

... Appellants/Accused Nos.1 to 3

-vs-

State Rep. by,

The Inspector of Police,

South Police Station,

Rajapalayam,

Virudhunagar District.

(Crime No.649 of 2016)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur in S.C.No.2 of 2017, dated 25.09.2018.

For Appellants :Mr.K.S.Duraipandian

For Respondent :Mr.A.Thiruvadikumar,

Additional Public Prosecutor

JUDGMENT

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

Totally there are three accused in S.C.No.2 of 2017 on the file of the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur. They stood charged as follows:

Charge No.	Rank of the Accused	Charge
1.	A1 to A3	120 (B) I.P.C
2.	A1 to A3	302 I.P.C
3.	A-1 & A-2	201 I.P.C
4.	A-3	201 r/w 34 I.P.C



2. By judgment dated 25.09.2018, the trial Court convicted and sentenced the appellants/accused as follows:

Rank of the accused	Convicted under Section	Sentence Imposed	Fine	Default Sentence
A1 to A3	120(B) I.P.C	Life Imprisonment	Rs.10,000/- (each)	3 Years R.I.
A1 to A3	302 I.P.C	Life Imprisonment	Rs.10,000/- (each)	3 Years R.I.
A-1 & A-2	201 I.P.C	7 Years R.I.	Rs.10,000/- (each)	2 Years R.I.
A-3	201 r/w 34 I.P.C	7 Years R.I.	Rs.10,000/-	2 Years R.I.

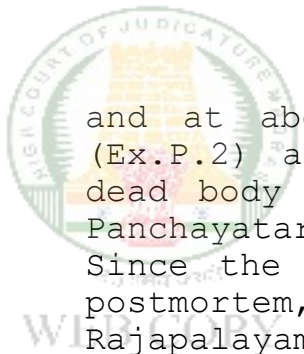
The sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentence, the appellants are before this Court with this Criminal Appeal.

2.The case of the prosecution in brief is as follows:

The deceased Silamparasan, is the son of A-1 and A-3. A-2 is the friend of the deceased. The deceased is an auto driver, and he is a drunkard used to quarrel with his parents demanding money. Hence, all the three accused hatched a conspiracy and in furtherance of the same, on 05.10.2016, both A-2, and the deceased consumed liquor in a bar and A-2 took him to the house of A-1 and A-3, when the deceased in an inebriated mood, A-3 caught hold of the legs of the deceased and both A-1 and A-2 strangulated him with nylon rope. Then, A-2 purchased petrol, and A-1 and A-2, took the body to a remote place where they poured petrol and set fire to the body. On 06.10.2016 at about 10.00 a.m., P.W.1 -Village Administrative Officer of Puthupalayam Village, got an information that a half-burnt body was found near a water channel. After seeing the body, he filed a complaint before the respondent police at about 11.15 a.m.

3.Based on that complaint, P.W.21, Sub-Inspector of Police working in the respondent police station has registered the F.I.R (Ex.P.15) in Crime No.649 of 2016 for the offence under Section 302 I.P.C and sent the F.I.R to the Judicial Magistrate Court, Rajapalayam and also sent the copy of the F.I.R to the Investigating Officer and other higher officials for investigation.

4. P.W.25, the Inspector of Police working in the respondent police station, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence



and at about 12.30 p.m., where he prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.24) and conducted inquest on the dead body between 2.30 p.m., and 3.30 p.m., in the presence of Panchayatars and witnesses and prepared Inquest Report (Ex.P.25). Since the body was mostly burnt, he could not sent the body for postmortem, hence, he made a request to the Government Hospital, Rajapalayam, to conduct postmortem autopsy in the scene of occurrence itself.

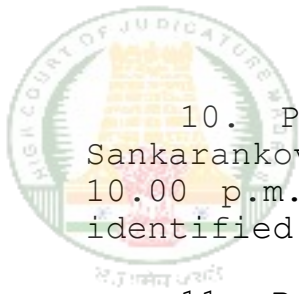
5. P.W.13, a Doctor, working at Government Hospital at Rajapalayam, has conducted postmortem autopsy and given a postmortem report (Ex.P8), he found that the body was almost burnt, and he found no injuries on the body, hyoid bone and ribs are intact and no fracture in the skull. He was of the opinion that the deceased appeared to have died of asphyxia due to burn injuries.

6. P.W.25, continued the investigation and on suspicion, he enquired A-1 and A-3 and they voluntarily came forward to give confession admitting their guilt. He recorded their confession and based on the admissible portion of the confession, he recovered Plastic Kerosene Cane (M.O.2) and Match Box (M.O.3). Thereafter, based on the confession of A-1, P.W.25, arrested A-2 and on such arrest, he voluntarily came forward to give a confession and based on the admissible portion of the confession, he recovered one Nylon Rope (M.O.4) and one Auto (M.O.5), which was used to take the body and sent him for remand to judicial custody. Then, he sent the skull of the dead body for superimposition test to the Forensic Laboratory at Chennai, and received the report. Thereafter, he examined the other witnesses and on completion of investigation, he filed the final report on 30.11.2016.

7. Considering the above materials, the trial Court framed charges as mentioned above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 25 witnesses, marked 28 documents and also produced 5 material objects.

8. Out of the witnesses examined, P.W.1 is the Village Administrative Officer, who has filed the complaint on seeing the dead body. P.W.2 is the witness to the Observation Mahazar and recovery of material objects. P.W.3 is a neighbour of the deceased and A-1 & A-3. He turned hostile. P.W.4 is another neighbour of the deceased and he also turned hostile. P.W.5 is a neighbour and he spoke about the earlier quarrel between the deceased and A-1 and A-3. He was also treated as hostile.

9. P.W.6 is a person working in the local bar. According to him, on 05.10.2016, at about 8.00 p.m., both A-2 and the deceased consumed liquor and thereafter, both of them left in an auto. P.W.7 is the Revenue Inspector working at Rajapalayam. He spoke about the arrest of A-1 and A-3 and the confession given by them and also the



10. P.W.8 is working in the petrol pump at Rajapalayam - Sankarankovil main road. According to him, on 05.10.2016, at about 10.00 p.m., A-2 purchased petrol in a plastic cane and he also identified the cane(M.O.2).

11. P.W.9 is the CCTV operator, who recorded the CCTV camera footage in a C.D., and handed over the same to the Investigating Officer. P.W.10, is the neighbour of A-1 and A-3 and he spoke about the earlier quarrel between the deceased and A-1 & A-3 and saw that on 05.10.2016 at about 11.00 p.m., both A-1 and A-2 took the deceased in an auto and on the next day morning he came to know that the deceased was found dead. P.W.11 is a marriage broker and according to him, A-3 approached him to seek for a suitable bride for the deceased. P.W.12 is a person running a Matrimony Centre. According to him, A-3/mother of the deceased, approached him to seek for a bride for the deceased.

12. P.W.13 a Doctor working at Rajapalayam Government Hospital, conducted postmortem autopsy and issued postmortem certificate (Ex.P.8). P.W.14 is a Photographer, who took the photographs of the deceased in the scene of occurrence. P.W.16 is the Block Development Officer working at Rajapalayam. According to him, on 06.10.2016, A-3, who was working in his office and she was absent from 07.10.2016.

13. P.W.17 an Assistant Physician working in the Government Hospital at Rajapalayam, took the blood samples of A-1 and A-3 for D.N.A test. P.W.18 is the Clerk working in the Judicial Magistrate Court, Rajapalayam and he received the materials objects. P.W.19 is the Grade I Constable, who handed over the request of the learned Judicial Magistrate to the Government Hospital, Rajapalayam, for sending the blood samples to conduct D.N.A test.

14. P.W.20 is the Assistant Director working in the Forensic Laboratory, Chennai and he conducted the superimposition test and issued the report Ex.P.14. P.W.21 is the Sub-Inspector of Police working the respondent police station, who registered the F.I.R. P.W.22 is the Officer working in the Forensic Laboratory, Chennai, who conducted the D.N.A test and confirmed that the deceased is the son of A-1 and A-3 and given reports Exs.P21 and P22. P.W.23 is the neighbour of the deceased, who has taken passport size photograph of the deceased. His evidence has no substance. P.W.24 is the Assistant Director working in the Forensic Laboratory, Virudhunagar. He collected the material objects from the scene of occurrence. P.W.25 is the Inspector of Police working in the respondent police station, who conducted the investigation and filed the final report.

15. The above incriminating materials were put to the accused under Section 313 Cr.P.C. The accused denied the same as false. On their side, they have not examined any witnesses and marked any



16. Having considered the above materials, the trial Court convicted the appellants/accused and sentenced them as stated above. Challenging the aforesaid conviction and sentence, the appellants are before this Court with this Criminal Appeal.

17. Mr.K.S.Duraipandian, learned counsel appearing for the appellants submitted that, it is a case of circumstantial evidence and the prosecution has miserably failed to establish the circumstances, which would conclusively prove the guilt of the accused. Without considering those aspect, the trial Court erroneously convicted the appellants.

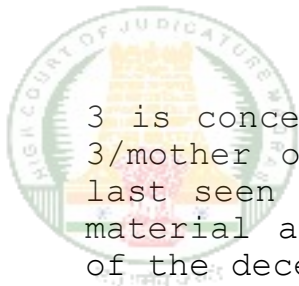
18. Opposing the same, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor would submit that all the circumstances, unerringly pointed out the guilt on the accused and the trial Court has rightly convicted the accused and there is no reason to interfere with the well considered judgment of the trial Court.

19. We have considered the rival submissions and also perused the records carefully.

20. It is a case of circumstantial evidence. The deceased is the son of A-1 and A-3. A-2 is an auto driver and friend of the deceased. The prosecution has strongly relied upon two circumstances to prove the guilt of the accused. The first circumstance relied upon by the prosecution is the last seen theory and the second circumstance is motive.

21. So far as the motive is concerned, it is the evidence of P.W.5 a neighbour that there was frequent quarrel between the deceased and A-1 & A-3 his parents. The deceased is a drunkard and used to quarrel with A-1 and A-3 frequently. P.W.10, is another neighbour, who spoke about the quarrel between A-1 & A-3 and the deceased. According to him, the deceased used to consume liquor regularly, and asked A-1 & A-3 to arrange for a re-marriage to him and quarrelled with A-1 and A-3 and he along with another person, used to mediate them. From his evidence, the prosecution tried to establish the motive that, since the deceased used to quarrel with A-1 and A-3, they wanted to finish him off and with the help of A-2, committed the murder, and thereafter, A-1 and A-2 burnt the body. The motive attributed against A-1 and A-2 is very trivial. A-1 and A-3 are the parents the deceased. Looking at from the natural conduct, no parent will come forward to murder their son for a petty quarrel happening in the family. It is true that in case of circumstantial evidence, the motive plays a vital role. But in the instant case, it is very hard to believe that for the petty quarrels between the parents and son, will lead to murder their own son brutally.

22. That apart, the motive has been attributed only against A-1
<https://hcservices7ee0b3ts.gov.in/hcservices/> motive has been attributed against A-2. So far as A-



3 is concerned, absolutely, there is no evidence to show that A-3/mother of the deceased also participated in the occurrence, the last seen theory also only related to A-1 and A-3, and there is no material available on record to show the involvement of A-3/mother of the deceased in the occurrence.

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23. The next circumstance relied upon by the prosecution is the last seen theory. To prove the same, the prosecution examined P.Ws.5 and 10. P.W.5 is a person working in the local bar. According to him, on 05.10.2016, both A-2 and the deceased consumed liquor in their bar at about 8.00 p.m., and thereafter, they left in an auto. P.W.10, who is a neighbour of the deceased said to have seen both A-1 and A-2 took the deceased in an auto at about 11.00 p.m., on 05.10.2016. According to the prosecution, these two witnesses seen the deceased along with A-1 and A-2 immediately before the occurrence and there is no plausible explanation came from the accused explaining how does the accused found murdered.

24. It is true that, under Section 106 of Evidence Act, the burden lies on the accused and it is for them to give proper explanation for the cause of death, who was found in the company of the deceased immediately before the occurrence. However, it is settled that, Section 106 Evidence Act, cannot be applied directly, and non providing explanation cannot be taken as a circumstance to find them guilty.

25. The Honourable Supreme Court in **Smt. Gargi vs. State of Haryana** reported in **(2019) 9 SCC 738**, has held as follows:

"33.1. Insofar as the "last seen theory" is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial Court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in Sawal Das in the following: (SCC p. para 10).

"10. Neither an application of Section 103 and 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable



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doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused."

26. It is the primary duty of the prosecution first to establish the guilt of the accused. Once it has been established, then only the burden shifts on the accused and the accused have to explain the cause of murder.

27. The Honourable Supreme Court in **Satpal vs. State of Haryana** reported in **(2018) 6 SCC page 610**, has held as follows:

"6.... If the accused offers no explanation, and there is no corroborative evidence available inter alia in the form of recovery of otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

28. Recently, the Honourable Supreme Court following the above said judgments in **Shivaji Chintoppa Patil v. State of Maharashtra** reported in **(2021) 2 SCC (Cri) 679**, has held as follows:

"23.It could thus be seen that it is well-settled that Section 106 of the Evidence Act does not directly operate against either a husband or wife staying under the same roof and being the last person seen with the deceased. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused."

29. Another circumstance relied upon by the prosecution is the evidence of P.W.8, the salesman in the petrol pump where A-2, said to have purchased petrol at about 10.00 p.m. It is an admitted fact that A-2, is an auto driver and hence, there is every possibility of purchasing petrol for his auto. Merely because A-2 purchased petrol



before the occurrence, it cannot be presumed that the petrol has been purchased only to use the same for the crime.

30. It is settled law that in a case based on the circumstantial evidence, the prosecution has to prove that the circumstances relied upon by them, it should be fully established, the facts established should be consistent only with the hypothesis of the guilt of the accused, and it should exclude every possible hypothesis except one to be proved. The circumstances should be conclusive in nature and the chain of circumstances must be complete so as to not leave any reasonable ground for the conclusion consistent with the innocence of the accused.

31. The Hon'ble Supreme Court in a leading case of circumstantial evidence, in **Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116]** held as follows:

"153.(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(2) The facts so established should be consistent with the hypothesis of guilt and 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."

32. Considering all those circumstances, we are of the considered view that the prosecution has miserably failed to prove the case beyond reasonable doubt. The Court below without considering the same, erroneously come to the conclusion that the accused has committed murder and convicted the accused. Hence, the conviction and sentence imposed by the trial Court is liable to be set aside and the appellants are entitled for acquittal.

33. In the result, Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused, by the learned Principal District and Sessions Judge, Virudhunagar at



Srivilliputhur, in S.C.No.2 of 2017, by the judgment dated 25.09.2018, are hereby set aside. The appellants/accused are acquitted of the charge levelled against them. Fine amount, if any, paid by the appellants/accused shall be refunded to them. Bail bonds executed by them also shall stand cancelled.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PM-PN

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 and Sessions Judge,
Virudhunagar at Srivilliputhur.
- 2.The Judicial Magistrate,
Rajapalayam.
- 3.The Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur.
- 4.The Inspector of Police,
South Police Station,
Rajapalayam,
Virudhunagar District
- 5.The Superintendent
Central Prison, Madurai.
- 6.The Officer Incharge,
Special Prison for Women,
Madurai.
- 7.The District Collector,
Madurai.
- 8.The District Collector,
Virudhunagar District.



9.The Director General of Police,
Mylapore, Chennai-4

10.The Superintendent of Police,
Virudhunagar District.

11.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)

Judgment in
Criminal Appeal No.(MD) No.500 of 2018

22.09.2021

GC(12.10.2021) 10P 14C