



BAIL SLIP

The Appellant/Accused namely Sasi, S/o. Vallayutham, male aged 43 years was directed to released on bail by this Hon'ble Court made in CRL.MP(MD).No. 8458 of 2018 in CRL.A(MD).No. 475 of 2018 dated 01.11.2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.A.(MD).No.475 of 2018

Sasi ... Appellant /sole accused
-vs-

State through
the Inspector of Police,
Eraniyal Police Station,
Kanyakumari District
(in Crime No.450 of 2013) ... Respondent

PRAYER : Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records in S.C.No.128 of 2014, on the file of the Fast Track Mahila Court, Nagercoil, dated 12.05.2015 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.128 of 2014, on the file of the Fast Track Mahila Court, Nagercoil and he stood charged and tried for the offence under Section 302 I.P.C.

2. The trial Court, vide impugned judgment dated 12.05.2015, has convicted the appellant herein for the above said offence and imposed the sentence, thus:

Accused	Conviction	Sentence
Sole Accused	U/s. 302 of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.25,000/-, in default to undergo two years rigorous imprisonment.



Now, challenging the above said conviction and sentence, the appellant is before this Court.

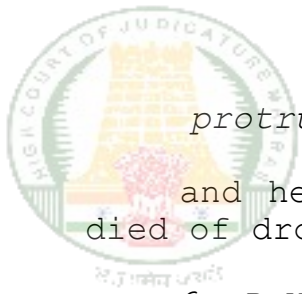
3. The case of the prosecution is that the deceased in this case one Jothi is the wife of the appellant/accused, their marriage took place 14 years prior to the occurrence and out of wedlock, three children were born to them. Thereafter, there was a dispute between the husband and wife and the deceased was staying at her mother's house in Sungankadai along with the children and all the three children were admitted in a hostel run by P.W.15. On 13.07.2013, both the deceased and P.W.2, the mother of the deceased, met the children in the hostel and returned to Sungankadai. Thereafter, P.W.2 went to see her granddaughter at Kalungadi and asked the deceased to go home. After returning home, P.W.2 found the deceased missing. On the next day, both the accused and his parent came to the house of P.W.2, demanding for a divorce from the deceased. After knowing that the deceased was found missing, they went in search of the deceased and after three days i.e., on 16.07.2013, they got an information that a body was found floating in a tank near Nedungulam and identified the body as that of the deceased. Immediately, P.W.1, the brother of the deceased filed a complaint before P.W.20, Marimuthu, Sub Inspector of Police in the respondent police station. Based on the complaint, the F.I.R. has been registered in Crime No.450 of 2013, under Section 174(3) of Cr.P.C., and send the F.I.R. to the concerned Judicial Magistrate Court and copies of the same to the higher officials.

4. P.W.21, Inspector of Police, in the respondent police station after receipt of the F.I.R., has commenced the investigation, visited the scene of occurrence at about 9.00 a.m., and prepared the Observation Mahazar and Rough Sketch, Ex.P11 and recorded the statement of the witnesses and sent the body for postmortem to the Government Medical College Hospital, Asaripallam. Then, he conducted inquest in the hospital from 11.15 a.m., to 13.15 a.m., and prepared the Inquest Report, Ex.P12. The investigation revealed that the accused only attacked the deceased and caused her death. Therefore, the investigating officer filed an alteration report, Ex.P13, on 19.07.2013. On the very same day, he arrested the accused. On such arrest, the appellant/accused voluntarily given a confession, based on the admissible portion of the confession, P.W.21 recovered the blade, M.O.1. Thereafter, he forwarded the accused to the jurisdictional Magistrate Court for judicial remand.

5. In the mean time, P.W.16, a Doctor working in the Government Hospital, Asaripallam conducted postmortem autopsy on the dead body of the deceased and given a Postmortem Report, Ex.P7 and he found the following injuries:

"Median gaping out injury seen over the perineum extending from the vagina, anus up to the gluteal region

11 x 4 x 5 cm loops of intestine found



protruding through this gap."

and he was also opined that the deceased would appear to have died of drowning.

6. P.W.21, Inspector of Police, continued the investigation and recorded the statement of the other witnesses and after completion of investigation, filed a final report.

7. Based on the above materials, the trial Court framed the charges against the accused as mentioned above. However, the appellant/accused has denied the same. The prosecution in order to sustain their case, examined 21 witnesses, marked 14 documents and also produced 2 material objects.

8. Out of the witnesses examined, P.W.1 is the brother of the deceased. He spoke about the dispute between the husband and wife. According to him, prior to the occurrence, the deceased left the matrimonial home and staying with his mother, P.W.2. She was found missing from 13.07.2013 and after identifying the body, on 16.07.2013, he has given a complaint before the respondent police.

9. P.W.2 is the mother of the deceased and according to her, on 13.07.2013, both the deceased and P.W.2 visited the children of the deceased in the hostel and at about 7.00 p.m. P.W.2 gone to see her granddaughter at Kalungadi and returned back to Sungankadai but, the deceased did not return home. On the next day, both the accused and his parents came to P.W.2's house and stayed for 2 - 3 days, searched for deceased and found the dead body on 16.07.2013.

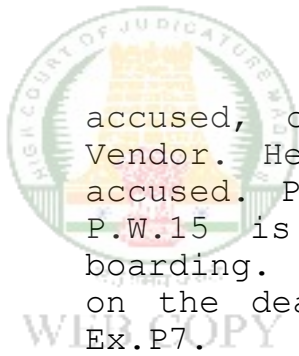
10. P.W.3 is the brother- in-law of the deceased and his evidence has_no substance.

11. P.W.4 is the niece of the deceased. He spoke about the dispute between the deceased and the accused and according to him, on 13.07.2013, at about 8.30 p.m., both the deceased and P.W.2 returned back to Sungankadai and the deceased left the place after having told her mother/P.W.2 that she would meet her employer to get her salary and return. Thereafter, she was found missing.

12. P.W.5 is the employer of the deceased. According to him, the deceased was working under him. P.W.6, who is running a Tea Shop near the house of accused, turned hostile. P.Ws.7, 8 and 9 also turned hostile.

13. P.W.10 is the neighbour of the accused. According to him, on 13.07.2013, at about 11.30 p.m., there was a quarrel between the deceased and the accused in the accused house and after three days, the deceased died and the body was found in the lake.

<https://hcservices.courts.go.in/PwServices/> and 12 are the witnesses to the arrest of the



accused, confession and recovery of M.O.1. P.W.13 is the Milk Vendor. He spoke about the quarrel between the deceased and the accused. P.W.14 is the witness to the Observation Mahazar, Ex.P6. P.W.15 is running a hostel, where the deceased children were boarding. P.W.16, the Doctor, who conducted the postmortem autopsy on the dead body of the deceased and given a Postmortem Report, Ex.P7.

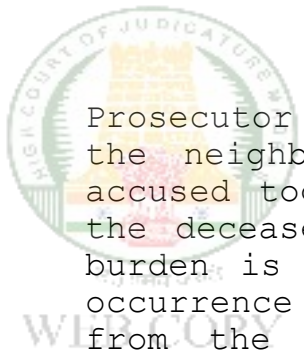
15. P.W.17 is the Scientific Officer, working in Forensic Lab, Tirunelveli, he examined the material objects and given a report, Ex.P9. P.W.18 is the Sub Inspector of Police, who identified the body for postmortem. P.W.19 is a photographer, who took photographs at the scene of occurrence.

16. P.W.20 is the Sub Inspector of Police and he registered the F.I.R. and sent the same to the concerned Judicial Magistrate Court. P.W.21 is the Inspector of Police, who continued the investigation and filed the final report after the investigation was over.

17. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false and he has not examined any witnesses and not marked any documents.

18. Considering the above materials, the trial Court convicted the accused and sentenced him as stated above. Challenging the same, the present appeal has been filed.

19. Mr.R.Alagumani, learned counsel appearing for the appellant would contend that this is a case of circumstantial evidence and absolutely there is no circumstances available to point out the guilt of the accused. Admittedly, both the deceased and the accused were separated for more than two years prior to the occurrence and the deceased was residing along with her mother, P.W.2. The occurrence has taken place near the place of the deceased and it is far away from the accused's residence. There is no evidence available on record to show that the accused was seen with the deceased before the occurrence. P.W.10 is the only witness said to have seen the deceased and the accused together and P.W.10 is the neighbour of the deceased. According to him, on 13.07.2013, both the deceased and the accused available in the house of the accused and there was a quarrel between them at about 11.30 p.m., but it is contrary to the evidence of P.Ws.1 and 2, brother and mother of the deceased. They said all along the deceased was residing in P.W.2's house and there is no occasion for her to go to the matrimonial house. Hence, the evidence of P.W.10 is not believable. That apart, absolutely there is no other circumstances available in this case. But the trial Court, without considering the same, convicted the appellant/accused.

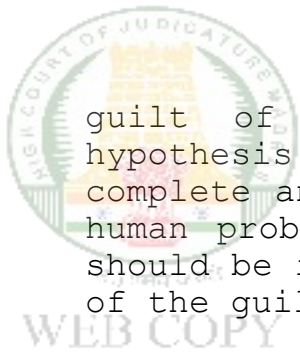


Prosecutor appearing for the State would contend that P.W.10, who is the neighbour of the deceased, seen both the deceased and the accused together prior to the occurrence and being the husband of the deceased, under Section 106 of the Indian Evidence Act, 1872, burden is on him to prove the said circumstances as to how this occurrence has taken place and absolutely, there is no explanation from the accused. That apart, so far as the motive for the occurrence, P.W.1 clearly stated that the accused harassing the deceased to give divorce to him. After the arrest of the accused, based on his confession, a blade used by the accused for the commission of offence was recovered. Considering those circumstances, the trial Court has rightly convicted the appellant/accused and the accused has committed the murder and there is no reason to interfere with the judgement of the trial Court.

21. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record carefully.

22. It is the case of circumstantial evidence. Prosecution mainly rely upon the evidence of P.W.10, who is the neighbour of the deceased, and said to have seen the deceased and accused together in the accused house prior to the occurrence. The accused was residing at Palavilai Village. Admittedly, both the accused and the deceased separated two years prior to the occurrence and the deceased was residing along with her mother, P.W.2 at Sungankadai Village. It is far away from the accused house. The testimonies of P.Ws.1, 2 and 4, who are the brother, mother and niece of the deceased, would clearly show that, for two years, prior to the occurrence, the deceased was residing in Sungankadai Village along with P.W.2. On the date of occurrence, both the deceased and P.W.2 visited her children in the hostel and came back to Sungankadai Village at about 7.00 p.m. Thereafter, she was found missing. It is contrary to the evidence of P.W.10. That apart, there is no evidence available on record to show that the deceased gone to the accused house prior to the occurrence. In those circumstances, the evidence of P.W.10 cannot be believed. As per the evidence of P.W.2, both the accused and his parents came to the house of P.W.2, on the next day ie., on 14.07.2013 and stayed with her for three days and they also went in search of the deceased, finally, the body was found on 16.07.2013 floating in a tank. As per the postmortem report, the deceased appears to have died of drowning. Even though some injuries found on the private part of the deceased, there is no material available on record to show that those injuries were inflicted by the accused. Apart from that, there is no strong circumstances available against the accused to connect with the murder.

23. It is settled position of law that in a case based on the circumstantial evidence, the circumstances from which the conclusive guilt is to be drawn should be fully established and the facts so



guilt of the accused, and it should exclude every possible hypothesis except one to be proved. The chain of evidence must be so complete and there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

24. In **Hanumant v. State of M.P. [A.I.R. 1952 SC 343]**, the Hon'ble Supreme Court held as follows:

"10. ... It is well to remember that in cases, where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. ..."

25. The Hon'ble Supreme Court 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."

26. In **Trimukh Maroti Kirkan vs. State of Maharashtra, [(2006) 10 SCC 681]**, the Hon'ble Supreme Court held as under:

"12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the



circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence."

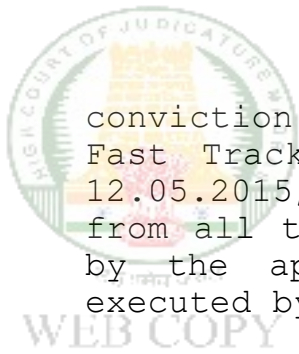
27. In a case of circumstantial evidence, the Court may infer from available evidence, which may lead to prove the guilt of the accused and the Courts have to identify the facts in the first place so as to fit the case within the parameters of a "Chain of Circumstances" and then find out the fact of the case and to see that there is a chain of events, which unerringly proving the guilty of the accused beyond reasonable doubt.

28. The Hon'ble Supreme Court in ***Suresh v. State of Haryana [(2018) 18 SCC 654]***, held as follows:

"42.Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the Courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of 'chain link theory' and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the 'chain link theory' since ***Hanumant v. State of M.P. [AIR 1952 SC 343]***, which of course needs to be followed herein also."

29. Following those principles, we are of the considered view that, the circumstances relied upon by the prosecution do not have definite tendency unerringly point out the guilt of the accused and the appellant/Accused cannot be convicted based on the solitary circumstance, a doubtful evidence of P.W.10 and the prosecution has failed to establish the guilt of the accused. In these circumstances, the accused is only entitled for acquittal.

<https://hcservices.courts.gov.in/hcservices/> result, the Criminal Appeal is allowed and the



conviction and sentence imposed on the appellant/Accused, by the Fast Track Mahila Court, Nagercoil in S.C.No.128 of 2014, dated 12.05.2015, is hereby set aside. The appellant/Accused is acquitted from all the charges levelled against him. Fine amount if any paid by the appellant/Accused shall be refunded to him. Bail bond executed by him also shall stand cancelled.

Sd/-

Assistant Registrar (CS-I)

// 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 Fast Track Mahila Court,
Nagercoil.
- 2.The Inspector of Police,
Eraniyal Police Station,
Kanyakumari District.
3. The Superintenant. Central Prison,
Palaamkottai.
- 4.The District Collector,Kanyakumari.
- 5.The Director General Of Police,
Mylapore, Chennai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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



+1 CC to M/s.R.ALAGUMANI, Advocate (SR-32391[F] dated 25/10/2021)

CrI.A. (MD) .No.475 of 2018
21.10.2021

SJ(CO)

KB(25.11.2021) 9P 10C

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