



Bail Slip

The Petitioner/ Accused viz., Mahesh @ Maheshwaran S/O.Rasu was released on bail as per order of this Court dated 10.09.2018 in Crl.M.P.No.10094 of 2018 in Crl.A.445 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice A.A.NAKKIRAN

Crl.A.No.445 of 2018

Mahesh @ Maheshwaran

.. Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Vennandur Police Station,
Namakkal District.
(Crime No.165/2015)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment and order dated 27.12.2017 passed in S.C.No.111 of 2015 on the file of the Sessions Court, (Fast Track Mahila Court), Namakkal and to set aside the same.

For Appellant : Mr.R.Ezhilarasan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public
Prosecutor

JUDGMENT

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

This criminal appeal has been filed against the judgment and order dated 27.12.2017 passed in S.C.No.111 of 2015 on the file of the Sessions Court, (Fast Track Mahila Court), Namakkal and to set aside the same.

2. The prosecution story runs as under:



2.1 The deceased Ramya, who was aged about twenty years at the time of occurrence viz., on 16.09.2015, was the daughter of Kandasamy (PW1) and Lakshmi (PW2) and wife of Sureshkumar (PW3). They all hail from Vennandur, Nachipatti Village and lived in the Dalit Colony. The appellant, who lived in the same colony, was a good friend of Sureshkumar (PW3).

2.2 It is alleged that the appellant developed intimacy with Ramya and when it became public, there was a panchayat, in which, the appellant was advised to keep away from Ramya, as she was a married woman.

2.3 Sureshkumar (PW3), husband of Ramya, was a Drummer by avocation and he used to go for various functions in that connection. Though Sureshkumar (PW3), Ramya, Kandasamy (PW1) and Lakshmi (PW2) were residing in the same colony, Sureshkumar (PW3) and Ramya were residing away from the house of Kandasamy (PW1) and Lakshmi (PW2).

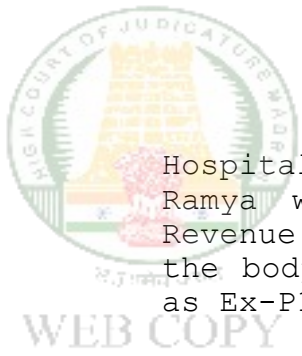
2.4 Ramya was temporarily employed in a women's self-help group, which had its office in the same village and along with her Gowthami (PW13) and Durgadevi (PW14) were also employed.

2.5 On 16.09.2015, Ramya went for work in the morning. In the afternoon, around 3.00 p.m., when Sureshkumar (PW3), along with his friends Arumugam (PW7) and Vijayakumar (PW9), was going for some agricultural work via the office of Ramya, they found the chappals (M.O.2) of Ramya outside the office, but, the office door was closed. This aroused a suspicion in their mind and so, when they opened the door of the office, they found Ramya on the ground unconscious. They attempted to revive her, but, in vain. This was informed to Kandasamy (PW1), father of Ramya, who was working elsewhere.

2.6 Kandasamy (PW1) gave a written complaint (Ex-P1), narrating the circumstances, under which, the information about his daughter's death was passed on to him by his son-in-law Sureshkumar (PW3) and his friends Arumugam (PW7) and Vijayakumar (PW9), based on which, Sasikumar (PW21), Inspector of Police, Vennandur Police Station, registered a case in Crime No.165 of 2015 on 16.09.2015 at 5.30 p.m. under Section 174(3) Cr.P.C. for suspicious death and prepared the printed FIR (Ex-P18), which reached the jurisdictional Magistrate on 17.09.2015 at 8.00 a.m., as could be seen from the endorsement thereon.

2.7 Since Ramya was a Dalit, the investigation was taken over by Raju (PW22), Deputy Superintendent of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P3) and rough sketches (Exs-P19 and P20).

2.8 The body of Ramya was despatched to the Government



Hospital, Salem and was kept in the mortuary. Since the death of Ramya was within seven years of marriage, Vijaybabu (PW18), Revenue Divisional Officer, Salem, conducted first inquest over the body of Ramya at the mortuary and marked the inquest report as Ex-P14.

2.9 Not satisfied with the same and in order to find out if the death of Ramya could be on account of cruelty or for any other reasons, second inquest was conducted by Kannan (PW16), Revenue Divisional Officer, Namakkal and the inquest report was marked as Ex-P10.

2.10 Dr.Gokularamanan (PW19), who performed autopsy on the body of Ramya, in his evidence as well in the postmortem certificate (Ex-P15), has noted six external injuries around the neck indicating application of pressure.

2.11 After the receipt of the viscera report, Dr.Gokularamanan (PW19) gave his final opinion (Ex-P16) as to the cause of death of Ramya, which reads as follows:

"FINAL OPINION: The deceased would appear to have died of ASPHYXIA due to compression of neck."

2.12 While the police were clueless as to who the perpetrator of the crime was, the appellant is said to have voluntarily surrendered before Kathirvelu (PW10), Village Administrative Officer, on 18.09.2015 around 8.00 a.m. and had given an extrajudicial confession (Ex-P5) stating that he was having an extramarital affair with Ramya and he was so possessive of her; when he saw her talking to one Chinnaraj (PW6), he went and questioned her; on questioning, Ramya is said to have told him that she would talk to everyone and he cannot question her; infuriated at that, he throttled her and also strangled her with the pallu of her nylon saree.

2.13 Thereafter, Kathirvelu (PW10) produced the appellant before the Investigating Officer, who placed him under arrest at 10.00 a.m. on 18.09.2015.

2.14 Based on the police confession, a T-shirt (M.O.3) that was allegedly worn by the appellant at the time of occurrence was recovered.

2.15 After completing the investigation, the Investigating Officer filed a final report in P.R.C.No.25 of 2015 in the Court of the Judicial Magistrate, Rasipuram, for the offences under Sections 449 and 302 IPC against the appellant.

2.16 On the 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 in S.C.No.111 of 2015 and was made over to the Sessions Court, (Fast Track Mahila Court), Namakkal, for trial.

2.17 The trial Court framed charges under Sections 449 and 302 IPC against the appellant and when questioned, the appellant pleaded "not guilty".

2.18 To prove the case, the prosecution examined twenty two witnesses and marked twenty one exhibits and three material objects.

2.19 When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on behalf of the appellant.

2.20 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 27.12.2017, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
Section 449 IPC	Seven years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment.
Section 302 IPC	Life imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.21 Challenging the above conviction and sentences, the appellant has preferred the present appeal.

3. Heard Mr.R.Ezhilarasan, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State.

4. The prosecution has proved beyond a peradventure the following facts:

(a) Ramya was the daughter of Kandasamy (PW1) and Lakshmi (PW2) and wife of Sureshkumar (PW3);

(b) Ramya was living in Nachipatti village and employed in the women's self-help group;

(c) the body of Ramya was found at 3.00 p.m. in the office of the women's self-help group; and



(d) the death of Ramya was a homicide.

5. The short question that falls for consideration in this appeal is whether the evidence on record justifies the conviction and sentences of the appellant.

6. At the outset, we have the evidence of Gowthami (PW13) and Durgadevi (PW14), who have stated in their evidence that, Ramya was working along with them in the women's self-help group and on the fateful day viz., 16.09.2015, both of them were on leave; when they heard about the death of Ramya, they went to the office and saw her body.

7. Sureshkumar (PW3), Arumugam (PW7) and Vijayakumar (PW9), in their evidence, have stated that in the afternoon on 16.09.2015, while they were proceeding from their house for cutting plantain trees, they saw the office of the women's self-help group closed, but, found the chappals (M.O.2) of Ramya outside; therefore, when they opened the door, they found the body of Ramya inside the office and so, they alerted everyone including the parents of Ramya.

8. Up to these evidences, the prosecution story is worthy of acceptance. To connect the appellant with the crime, the only piece of evidence is the extrajudicial confession (Ex-P5), which the appellant is said to have given to Kathirvelu (PW10) at 8.00 a.m. on 18.09.2015.

9. Admittedly, Kathirvelu (PW10) was assisting the police from 16.09.2015 onwards for the preparation of the observation mahazar (Ex-P3), spot recovery mahazar, inquest, etc.

10. Kathirvelu (PW10), in his evidence, has stated that the appellant appeared before him on 18.09.2015 and stated that he (appellant) had smothered and murdered Ramya.

11. Of course, the extrajudicial confession (Ex-P5) of this nature, if it inspires the confidence of the Court, conviction can be confirmed. However, in this case, as pointed out by the learned counsel for the appellant, Kandasamy (PW1) and Sureshkumar (PW3), have stated in their cross-examination that, after the police came to the place of occurrence, they rounded up all the suspects including the appellant and took them to the police station for enquiry.

12. Kandasamy (PW1), in his evidence, has stated that the police came to the office of the women's self-help group, where, the body of Ramya was lying and at that time itself, they got the appellant and his mother for investigation. He has also



stated that the police also took with them Chinnaraj (PW6) and Vijayakumar (PW9).

13. On similar lines is the evidence of Sureshkumar (PW3), but, in the cross-examination, he has stated that the police had taken him along with Arumugam (PW7), Vijayakumar (PW9) and the appellant and was interrogated for three days in the police station.

14. Thus, when the evidence on record shows that the appellant had already gone into the custody of the police even before 18.09.2015, the prosecution's theory that he suddenly appeared before Kathirvelu (PW10) on 18.09.2015 and gave the extra judicial confession (Ex-P5), defies credibility.

15. Therefore, the extra judicial confession (Ex-P5) lacks plausibility to sustain the conviction and sentences of the appellant. In the absence of any other evidence to link the appellant with the crime, this criminal appeal deserves to be allowed.

16. In view of the foregoing:

- i. The judgment and order dated 27.12.2017 passed in S.C.No.111 of 2015 on the file of the Sessions Court, (Fast Track Mahila Court), Namakkal, is set aside;
 - ii. The appellant is acquitted of the charges under Sections 449 and 302 IPC framed against him;
 - iii. Fine amount, if any, paid by the appellant, shall be refunded to him; and
 - iv. Bail bond, if any, executed by the appellant shall stand discharged.
- In the result, this criminal appeal stands allowed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Sessions Judge,
(Fast Track Mahila Court),
Namakkal.



2.The Inspector of Police,
Vennandur Police Station,
Namakkal District.

3.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

4.The Judicial Magistrate,
Rasipuram.

5.The Chief Judicial Magistrate.
Namakkal.

6.The Superintendent,
Central Prison,
Coimbatore.

7.The Director General of Police,
Mylapore, Chennai.

8.The Commissioner of Police,
Vepery, Egmore, Chennai.

9.The Collector,
Chennai District.

Cr1.A.No.445 of 2018

NRL (CO)
SB(04/04/2022)