



BAIL SLIP

The Appellant/2nd Accused namely Newton S/o.Jeya Chandran aged 38 years was directed to be released on bail and by order of this court dated 31.07.2019 made in Crl.MP.No.5519 of 2019 in Crl.A.485 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2022

PRONOUNCED ON : 15.03.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CRL.A.NOS.485 OF 2018

AND

CRL.A.NO.127 OF 2021

Newton .. Appellant/A-2
in Crl.A.No.485 of 2018

S.Karthikeyan .. Appellant/A-1
in Crl.A.No.127 of 2021

Vs.

State rep. by
The Inspector of Police,
Karuveppilankurichi Police Station,
Cuddalore District.
(Crime No.117 of 2010)

.. Respondent/Complainant
in both appeals

Criminal Appeals filed under Section 374(2) Cr.P.C. against the judgment and order dated 21.12.2013 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.227 of 2011.

For Appellant Mr.B.Krishnamani Appukutti
in both appeals : for Mr.A.Saravanan (Crl.A.485/18)
and Mr.K.Amirthalingam
(Crl.A.127/21)

For Respondent Mr.M.Babu Muthu Meeran
in both appeals : Additional Public Prosecutor



P.N.PRAKASH, J.

2. The prosecution story runs thus :

2.6. Dr.Kumaravel (P.W.18) noticed an abrasion 7 x 6 cms on the left leg of Rajasekar. However, Rajasekar complained of severe pain in the back. He was admitted as an in-patient in the



Government Hospital, Virudhachalam and around 11.45 p.m. on the same day, he passed away.

2.7. On a complaint (Ex.P1) lodged by Tamilarasi (PW1), Mani (P.W.19), Sub-Inspector of Police, registered a case in Karuveppilankurichi Police Station Crime No.117 of 2010 on 03.08.2010 for the offences under Sections 394 and 302 IPC against three unknown persons and prepared the printed FIR (Ex.P11), which reached the jurisdictional Magistrate on the same day at 09.35 a.m., as could be seen from the endorsement thereon.

2.8. Investigation of the case was taken over by Seeralan (P.W.21), Inspector of Police (for brevity "the I.O."), who went to the place of occurrence and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P12).

2.9. Thereafter, the I.O. went to the mortuary of the Government Hospital, Virudhachalam, where, he conducted inquest over the body of Rajasekar and the inquest report was marked as Ex.P13.

2.10. After the inquest, the body of Rajasekar was sent for post-mortem. Dr.Saminathan (P.W.16) performed autopsy on the body of Rajasekar and issued the post-mortem certificate (Ex.P8), wherein, 18 external injuries have been noted.

2.11. After receiving the viscera report (Ex.P9), Dr.Saminathan (P.W.16) gave his final opinion, wherein, he has opined as follows:

"Final Opinion: The deceased would appear to have died of shock and haemorrhage due to injuries sustained to vital organ namely, brain."

2.12. While the police were tracking the offenders, seemingly, the I.O. had availed medical leave. Hence, Sridharan (P.W.20), Inspector of Police (in charge), came into picture and on intelligence, arrested Karthikeyan (A1) and Newton (A2) on 10.09.2010 at 06.00 p.m., in the presence of witnesses viz., Radhakrishnan (P.W.14), Village Administrative Officer (V.A.O.) and Paramasivam (not examined). Confession statements were recorded and the admissible portion of the confession statements of Karthikeyan (A1) and Newton (A2) were marked as Exs.P3 and P4, respectively.

2.13. Pursuant to the disclosure statement of Karthikeyan (A1) and Newton (A2), they were taken from Virudhachalam to their respective residences in Kanniyakumari District on



11.09.2010, for effecting recoveries.

2.14. From near the house of Newton (A2), Sridharan (P.W.20), Inspector of Police recovered the following material objects :

- i. Lorry bearing registration No.TN 31 L 7272 (M.O.6),
- ii. Stepney tyre (M.O.7) and
- iii. Tyre (M.O.8)

in the presence of Radhakrishnan (P.W.14-V.A.O.) and Paramasivam (not examined), under the cover of a mahazar (Ex.P5).

2.15. From the house of Newton (A2), Sridharan (P.W.20), Inspector of Police, seized the following items:

- i. R.C. book of the lorry (M.O.1)
- ii. Driving license of Rajasekar (M.O.2)
- iii. Lorry permit (M.O.3)
- iv. PAN card of Rajasekar (M.O.4)
- v. Puducherry permit (M.O.5)
- vi. Key of the lorry with key chain (M.O.9)

in the presence of Radhakrishnan (P.W.14-V.A.O.) and Paramasivam (not examined), under the cover of a mahazar (Ex.P6).

2.16. Then, based on the disclosure of Karthikeyan (A1), Sridharan (P.W.20), Sub-Inspector of Police, seized the following items:

- i. Iron rod ankle (M.O.10)
- ii. R.C. Grill (M.O.11) and
- iii. Iron carrier (M.O.12)

from the land of one George, kept hidden beneath a tree, in the presence of Radhakrishnan (P.W.14-V.A.O.) and Paramasivam (not examined), under the cover of a mahazar (Ex.P7).

2.17. On the I.O. joining duty after availing his medical leave, investigation was continued and completed by him, by filing a final report in P.R.C.No.9 of 2011 in the Court of the Judicial Magistrate No.II, Vridhachalam, for the offences under Sections 397 and 302 r/w 34 IPC against three accused viz., Karthikeyan (A1), Newton (A2) and Ashok @ Gilbert (A3).

2.18. Though the involvement of Ashok @ Gilbert (A3), being the 3rd person who was involved in the offence, came to light during the course of investigation, the police were not able to arrest him, and so, he was shown as an absconding accused in the charge sheet. The case against Ashok @ Gilbert (A3) was split up



in P.R.C.No.11 of 2011 and the parent case viz., P.R.C.No.9 of 2011 was committed to the Court of Session in S.C.No.227 of 2011 and was made over to the III Additional District and Sessions Judge, Cuddalore, for trial.

WEB COPY

2.19. The trial Court framed charges under Sections 417, 394 r/w 397 and 302 r/w 34 IPC against Karthikeyan (A1) and Newton (A2) and when they were questioned, they pleaded "not guilty".

2.20. To prove the case, the prosecution examined 21 witnesses and marked 14 exhibits and 12 material objects.

2.21. 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 nor any document marked on behalf of the accused.

2.22. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.12.2013 in S.C.No.227 of 2011, convicted and sentenced the accused, as follows:

Name of the accused	Provision under which convicted	Sentence
Karthikeyan (A1) and Newton (A2)	Section 417 IPC	Six months rigorous imprisonment
	Section 394 r/w 397 IPC	Ten years rigorous imprisonment and fine of Rs.200/-, in default to undergo two years rigorous imprisonment
	Section 302 r/w 34 IPC	Life imprisonment and fine of Rs.200/-, in default to undergo two years rigorous imprisonment

The aforesaid sentences were ordered to run concurrently.

2.23. Challenging the above conviction and sentences, Karthikeyan (A1) has filed Crl.A.No.127 of 2021 and Newton (A2) has filed Crl.A.No.485 of 2018 before this Court.

3. Heard Mr.B.Krishnamani Appukutti, learned counsel representing Mr.A.Saravanan and Mr.K.Amirthalingam, learned counsel on record for the appellant in Crl.A.485 of 2018 and Crl.A.127 of 2021, respectively and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State.



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

- (a) Rajasekar was living with his wife Tamilarasi (P.W.1) and son Rajkumar (P.W.7) at Virudhambigai Nagar in Virudhachalam;
- (b) Rajasekar was the owner-cum-driver of the lorry bearing registration No.TN 32 L 7272;
- (c) Rajasekar left his house after dinner on 02.08.2010 to attend to a call for transporting centering planks from Srimushnam to Pennadam Sugar Mills Limited;
- (d) On 02.08.2010, around 10.45 p.m., Rajasekar was found on the road near Chinnathukurichi bus stop by Jeyachitra (P.W.5) and her husband Ramamoorthy (P.W.6) with injuries and he was conscious;
- (e) Rajasekar was carried to the Government Hospital, Virudhachalam, where, he was examined by Dr.Kumaravel (P.W.18);
- (f) Rajasekar told everyone that three unknown persons asked for a lift, got into the lorry, threw chilli powder on his eyes, assaulted him, pushed him out of the lorry and fled with the lorry; and
- (g) Rajasekar died in the hospital on the same day at 11.45 p.m.

Thus, the prosecution has satisfactorily proved that the death of Rajasekar was a homicide.

5. The short question that falls for consideration is, whether the appellants were the perpetrators of the crime.

6. The statement of Rajasekar to his wife Tamilarasi (P.W.1) and son Rajkumar (P.W.7) that, he received a call to transport centering planks from Srimushnam to Pennadam Sugar Mills Limited; while he was proceeding near Chinnathukurichi bus stop, three persons stopped his vehicle asking for a lift; he permitted them to get into the cabin, they sprayed chilli powder on his eyes, grievously attacked him, pushed him out of the lorry and fled with the lorry, is a dying declaration, within the meaning of Section 32(1) of the Evidence Act, 1872.

7. The prosecution mainly relies on the evidence of Jegadeeshwaran (P.W.12) and Sivalingam (P.W.13), who have stated in their evidence that, they know Rajasekar well; on 01.08.2010,



while they were in the lorry stand, three persons came there and enquired about the driver of TN 31 L 7272 and collected his mobile number from them; on 02.08.2010, they came to know that Rajasekar had died; thereafter, on 12.09.2010, they saw the photographs of two persons in the newspapers alleging that they were involved in the murder of Rajasekar and they immediately, recollected that it was those persons, who had came on 01.08.2010 and enquired about Rajasekar in the lorry stand and so, they went and gave their statements to the police.

8. We are unable to place much reliance on these two witnesses viz., Jegadeeshwaran (P.W.12) and Sivalingam (P.W.13), because, even according to Rajasekar, he received a phone call asking him to come to Srimushnam and on the way, three persons got into his vehicle and assaulted him. Had Jegadeeshwaran (P.W.12) and Sivalingam (P.W.13) shared the mobile number of Rajasekar to the appellants on 01.08.2010, they would have narrated these facts to the police immediately, instead, only after the appellants were arrested and their photographs were published in the newspapers, these witnesses (P.W.12 & P.W.13) report to the police that it was those persons, who collected Rajasekar's mobile number in the lorry stand.

9. That apart, no Test Identification Parade was conducted for Jegadeeshwaran (P.W.12) and Sivalingam (P.W.13) to identify the appellants. Therefore, much credence cannot be placed on the evidence of Jegadeeshwaran (P.W.12) and Sivalingam (P.W.13).

10. However, the police had recovered the lorry and the documents, pursuant to the disclosure of Newton (A2), from his residence in Kanniyakumari District.

11. The learned counsel for the appellants attacked the seizure, by taking us through the evidence of Radhakrishnan (P.W.14-V.A.O.) and submitted that the said witness was not even able to say the name of the appellant viz., Newton (A2), properly. He further submitted that Radhakrishnan (PW14-V.A.O.) had not taken proper permission from the superior officer to accompany the police from Virudhachalam to Kanniyakumari District and therefore, his evidence becomes suspect.

12. The learned counsel for the appellants pointed out to us that Radhakrishnan (PW14-V.A.O.) has stated that, he went in person and got permission from the Tahsildar, to go with the police to Kanniyakumari, whereas, the I.O. has stated that he has obtained permission over phone.

13. The fact remains that the police had taken the services of an officer of the Revenue Department viz., Radhakrishnan (P.W.14-V.A.O.) to accompany them, for conducting the search and



seizure in this case. Just because, the I.O. has stated that Radhakrishnan (P.W.14-V.A.O.) had obtained permission of the Tahsildar over phone, which runs contrary to the assertion of Radhakrishnan (P.W.14-V.A.O.) that he went in person and got the permission from his superior, could not in any way vitiate the evidence of Radhakrishnan (P.W.14-V.A.O.), as he has no personal axe to grind in the matter.

14. The fact remains that the appellants were arrested in Virudhachalam and in their confession, they have stated that the lorry has been parked near Newton's (A2's) house in Kanniyakumari District. Therefore, the police had to rush to Kanniyakumari District along with the accused to recover the lorry, for which, they had taken with them Radhakrishnan (P.W.14-V.A.O.) and Paramasivam (not examined). Much attack was mounted on this by the learned counsel for the appellants, who contended that the police should have asked a local person to be a witness for the seizure. This criticism has been answered by the Supreme Court in Ronny @ Ronald James Alwaris and Others Vs. State of Maharashtra [(1998)3 SCC 625] as under :

"We are not persuaded to accept the contention that the evidence of Nandu Ambadas Jadhav (PW 6) cannot be accepted for the reasons that he was not a witness of the locality and that he was brought from Pune by the Investigating Officer to witness the search. He was one of the drivers of the cars in which the investigating team came to Bombay from Pune. For the sake of convenience, he was taken as a witness for search. We do not find any material in the cross-examination to discredit his testimony. The only ground of attack on the evidence of PW 6 that he was not from the locality as contemplated under sub-section (4) of Section 100 CrPC fails because in our view a witness of search other than the one from the locality even if he has been brought by the investigating agencies along with them cannot be disbelieved only on that ground and we do not find anything in his evidence to discredit his testimony."

15. Just because, the police had taken with them Radhakrishnan (P.W.14-V.A.O.) and Paramasivam, Village Assistant (not examined), along with them to Kanniyakumari, for effecting the search, the seizure will not get vitiated. The evidence of Radhakrishnan (P.W.14-V.A.O.) does inspire our confidence and amply corroborates the evidence of the I.O. qua the seizure.

16. As alluded to in paragraph 10 above, the police have recovered the lorry bearing registration No.TN 31 L 7272 (M.O.6) and its documents along with a stepney tyre (M.O.7) and a tyre



(M.O.8), under the cover of mahazar (Ex.P5).

17. From the residence of Newton (A2), the police seized the documents like the R.C. book, driving license of Rajasekar, permit, PAN card of Rajasekar, authority receipt issued by the R.T.O., Puducherry, including the key of the lorry, which have been identified by Tamilarasi (P.W.1) and have been marked as M.O.s 1 to 5 and 9, respectively, under the cover of mahazar (Ex.P6). Similarly, on the disclosure statement of Karthikeyan (A1), an iron rod ankle (M.O.10), R.C. grill (M.O.11) and an iron carrier (M.O.12), were recovered under the cover of mahazar (Ex.P7). We have no reasons to disbelieve these recoveries.

18. Learned counsel for the appellants contended that there is no evidence to link M.O.s.10, 11 and 12, as parts belonging to the lorry (M.O.6) and in the absence of this link evidence, Karthikeyan (A1) cannot be convicted for murder, solely on the recovery of these items. There appears to be sufficient force in the above submission of the learned counsel for the appellants, with regard to Karthikeyan (A1). As regards Newton (A2), as stated above in paragraph 2.14 and 2.15, the lorry has been recovered from a place near his house and the documents have been recovered from inside his house and he has offered no explanation whatsoever as to how, he came into possession of the lorry of Rajasekar along with the documents like license, permit, etc. Even when, Newton (A2) was examined under Section 313 Cr.P.C., he had not given any explanation at all in this regard. As held by the Supreme Court in Gulab Chand Vs. State of Madhya Pradesh [(1995)3 SCC 574] and Mukund @ Kundu Mishra and Another Vs. State of Madhya Pradesh [(1997)10 SCC 130], in a given case, the Court can draw an inference that the offences of robbery and murder have been committed in the course of the same transaction. In this context, it may be profitable to advert to the following paragraph from Mukund (supra) :

"... . If in a given case - as the present one - the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder. In drawing the above conclusion we have drawn sustenance from the judgment of this Court in Gulab Chand Vs. State of M.P."

(emphasis supplied)



19. In this case, Rajasekar has given a dying declaration to the effect that while he was proceeding towards Srimushnam, three persons stopped his lorry asking him for a lift, he let them into the cabin, thereafter, they sprayed chilli powder on his eyes, grievously attacked him, pushed him out of the lorry and fled away with the lorry. Thereafter, the lorry has been recovered intact from the possession of Newton (A2), from near his residence in Kanniyakumari District. Therefore, on the facts of this case, this Court can safely draw an inference that Newton (A2) was one of the persons, who was involved in the robbery and murder of Rajasekar.

20. As regards, Karthikeyan (A1), merely based on the recovery of M.O.s 10 to 12, without anything more, we are unable to sustain the conviction and sentence imposed on him.

In the result :

- i. Crl.A.No.485 of 2018 filed by Newton (A2) stands dismissed. The trial Court is directed to secure him and commit him to prison for undergoing the remaining period of sentence.
- ii. Crl.A.No.127 of 2021 filed by Karthikeyan (A1) is allowed and he is acquitted of all the charges. He shall be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nsd/gya

To

1. The III Additional District and Sessions Judge
Cuddalore, Virudhachalam
2. The Inspector of Police
Karuveppilankurichi Police Station
Cuddalore District
3. The Superintendent of Prison
Central Prison
Cuddalore



4. The Public Prosecutor
High Court
Madras.

WEB COPY
Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

Crl.A.Nos.485 of 2018 & 127 of 2021

GPL (CO)
PM/28/03/2022