



BAIL SLIP

The Petitioner/Accused viz., Saravanan, M/A 35 years was released on bail as per order of this court dated 17/12/2018 in CRL.MP.No.15727 of 2018 in CRL.A.No.744 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Crl.A. No.744 of 2018

Saravanan

.. Appellant

vs.

The State rep. by
The Inspector of Police,
Mel Chengam Police Station,
Thiruvannamalai District.

.. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment passed in S.C.No.34 of 2013 dated 31.10.2018 by the Principal District and Sessions Judge, Thiruvannamalai.

For Appellant .. Mr.N.R.Elango,
Sr. Counsel
for Mr.S.V.Karthikeyan

For Respondent .. Mr.M.Babu Muthumeeran,
Addl. Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by P.N.PRAKASH, J)

This criminal appeal is directed against the judgment and order dated 31.10.2018 passed in S.C. No.34 of 2013 on the file of the Principal District Judge, Thiruvannamalai, in and by which, the appellant herein, was convicted for the offence under Sections 364, 302 and 392 IPC and for the offence under Section 364 IPC, sentenced him to undergo life imprisonment and to pay a



fine of Rs.2,000/-, in default, to undergo two years rigorous imprisonment, for the offence under Section 302 IPC, sentenced him to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo two years rigorous imprisonment and for the offence under Section 392 IPC, sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo two years rigorous imprisonment. The sentences were ordered to run concurrently.

2. The prosecution story runs thus:

2.1 The deceased Ravi and the appellant were friends. The deceased Ravi hailed from Muthampatti Village in Vazhapadi Taluk in Salem District and was living with his wife/Deivanai (P.W.4) and son/ Gautham (P.W.11). The deceased had purchased a Mahindra Tractor for his personal use as well for letting it out on hire. The appellant hailed from Arasanganni Village, Chengam Taluk in Thiruvannamalai District. On 04.02.2022, Kannan (P.W.1)/Forest Officer of Melchengam Range found a mutilated dead body in Melchengam Eucalyptus forest. Therefore, he gave a written complaint (Ex.P1) to the Sub Inspector of Police, Melchengam Police Station, based on which, Latha (P.W.9), Sub Inspector of Police registered a case in Melchengam Police Station Crime No.27 of 2011 on 04.02.2011 at 20.00 hours under Section 174 Cr.P.C. (suspicious death) and prepared the printed F.I.R. (Ex.P9).

2.2 Initially, investigation of the case was taken over by Venkatachalam (P.W.12), who went to the place where the dead body was found and prepared the Observation Mahazar (Ex.P11). The body was sent to the Government Hospital, Chengam where Latha (P.W.9) conducted inquest over the body of the deceased and prepared the inquest report (Ex.P10). Even during inquest, identity of the dead body was not known. However, the body was sent for postmortem and Dr.Kumar (P.W.7) performed autopsy on the dead body and issued the post mortem certificate (Ex.P7) and after receiving the viscera report, he gave his final opinion as to the cause of death as under:

The deceased appear to have died more than 72 hours prior to post-mortem exam and as to the cause of death the deceased appear to have died due to asphyxia - due to neck passage block evidenced by neck pathology leading to neuro/cardio/respiratory arrest ending in death. (superimposition and identification confirmation awaited)



2.3 While the Chengam police were groping in the dark as to the identity of the deceased, Deivanai (P.W.4) went to Vazhapadi police station on 09.02.2011 and gave a complaint to Udhayakumar (P.W.10)/Sub Inspector of Police stating that her husband Ravi left home on 02.02.2011 saying that a friend in Hosur has called him to come with the tractor on an assignment and therefore he is going there. She has further stated that she received a phone call around 8 p.m. on the same day from her husband who told her that he has almost reached Hosur and would call her thereafter. Since she did not get any call from her husband, she started searching for her husband at various places, ultimately, she gave the complaint as aforesaid.

2.4 Based on the complaint, Venkatachalam (P.W.12)/Inspector of Police registered a case in Vazhapadi Police Station Crime No.201 of 2011 on 09.02.2011 for man missing. Thus, the Chengam police were investigating about the identity of the dead body that was found within their jurisdiction and the Vazhapadi police was investigating about the whereabouts of Ravi.

2.5. While so, according to the prosecution, the appellant appeared before Rajasekar (P.W.6)/ Village Administrative Officer, Melchengam and confessed that he had committed the murder of one Ravi. Rajasekar (P.W.6) took the appellant to Melchengam police station and handed him over there. Pursuant to that, Venkatachalam (P.W.12) placed the appellant under arrest and recorded his police confession.

2.6. Based on the alleged disclosure made by the appellant, the police took him to the eucalyptus forest in Chengam and recovered the following items under the cover of a mahazar (Ex.P15) in the presence of Rajasekar (P.W.6) and Lakshmanan (D.W.1):

1. one slipper
2. one black coloured pant
3. one blue checked lungi

2.7 Immediately thereafter, the appellant was taken to Thorapadi village and from near the house of one Amudha, the police recovered one Mahindra tractor without registration number (M.O.4) and Nokia cell phone (M.O.5) under the cover of a mahazar (Ex.P12) in the presence of the same witnesses viz., Rajasekar (P.W.6) and Lakshmanan (D.W.1). The police collected the photograph of the deceased from his wife Deivanai (P.W.4) and sent the same to the Tamil Nadu Forensic Sciences Department for superimposition test with the skull obtained after the



postmortem. Bhavani (P.W.8)/Scientific Assistant, Tamil Nadu Forensic Sciences Department conducted the superimposition test and issued the certificate (Ex.P8) opining that the skull, item 2 could very well have belonged to the male individual seen in the photograph, item 1.

2.8. After examining various witnesses and collecting the various reports, the police filed a final report in PRC No.11 of 2012 before the Judicial Magistrate, Chengam for the offence under Sections 364, 302 and 392 IPC.

2.9. On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied and the accused was committed to the Court of Sessions, Thiruvannamalai in S.C.No.34 of 2013 for trial. The Trial Court framed three charges viz.,

1. Under Section 364 IPC, alleging that on 02.02.2011, the appellant and the deceased travelled together in the tractor; at that time, the deceased was drunk; that the appellant drove the tractor, abducted the deceased Ravi to the forest;

2. Under Section 302 IPC for murdering Ravi by strangulating him with a lungi; and

3. Under Section 392 IPC, for committing the robbery of the tractor and the mobile phone of Ravi.

When questioned, the appellant pleaded not guilty to the charges.

2.10 To prove the case, prosecution examined 13 witnesses, marked 19 exhibits and 5 material objects and when the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. From the side of the appellant, Lakshmanan who was one of the mahazar witnesses along with P.W.6 was examined as a defence witness (D.W.1) and two documents Exs.D1 and D2 viz., Station House General Diary for the periods 01.01.2011 to 04.02.2011 and 05.02.2011 to 26.03.2011 were marked.

2.11 After considering the evidence on record and on hearing either side, the Trial Court by judgment and order dated 31.10.2018 in S.C. No.34 of 2013 has convicted and sentenced the appellant, as stated in the opening paragraph of this judgment. Aggrieved by the same, the appellant has filed the present appeal.

3. Heard Mr.N.R.Elango, learned senior counsel for the counsel on record for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor for the respondent.



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

(i) An unidentified dead body was found in the eucalyptus forest in Chengam on 04.02.2011;

(ii) Deivanani (P.W.4), wife of Ravi gave a police complaint on 09.02.2011 to Vazhapadi police station that her husband went missing from 02.02.2011 and that his whereabouts are not known;

(iii) The identity of the dead body that was found on 02.02.2011 in Chengam forest has been satisfactorily proved as that of Ravi.

5. The short point is, whether the appellant was the perpetrator of the offence. There is no satisfactory medical evidence to show that the deceased had died of strangulation. The opinion of the post mortem doctor shows that the deceased would appear to have died due to asphyxia due to neck passage block evidenced by neck pathology leading to neuro/cardio/respiratory arrest ending in death. The hyoid bone is found to be in tact.

6. There is no evidence to show that the accused and the appellant were seen together in and around the alleged time of occurrence. We have only the evidence of Rajasekar (P.W.6), who had stated that the appellant appeared before him and confessed to the commission of the offence. Admittedly, P.W.6 did not record the confession statement of the appellant. Instead, he took the appellant straight to Chengam Police Station and produced him before the Inspector of Police, who placed the appellant under arrest and thereafter recorded the police confession and effected the alleged recoveries.

7. Coming to the recovery of the tractor, according to the police, it was effected on 16.02.2011. Whereas Gautham (P.W.11), son of the deceased Ravi has in his evidence stated that the tractor was recovered by the police on 14.02.2011 itself and he saw it in the police station.

8. According to Deivanani (P.W.4) and Gautham (P.W.11), the wife and son of the deceased Ravi, the appellant was the friend of the deceased and that the deceased had gone with him. However, in the 'man missing' complaint that was given by Deivani (P.W.4), she had not stated that her husband had gone with the appellant on 02.02.2011. On the contrary, for the first time, she has stated in the evidence that the appellant took her husband with him on 02.02.2011.



9.We are unable to place much reliance on this part of the testimony of P.W.4 because, had the deceased gone with the appellant, his family members would have approached the appellant to know about the whereabouts of the deceased. It is not the case of the prosecution that the appellant was a stranger to the deceased. Therefore, we are unable to confirm the conviction and sentence of the appellant based merely on the alleged recovery of the tractor on 16.02.2011. The tractor was recovered two days earlier itself i.e., on 14.02.2011.

10.In the result, the appeal deserves to be allowed and is accordingly allowed by setting aside the judgment and order dated 23.07.2018 passed in S.C.No.34 of 2013 dated 31.10.2018 by the Principal District and Sessions Judge, Thiruvannamalai and the appellant stands acquitted. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any executed, shall stand discharged. The appellant shall be released, if not required in any other case.

11.We find from the records that the Trial Court has summoned the General Diary from the Melchengam Police Station and has marked it as Exs.D1 and D2. The General Diary is an important document which should remain in the police station. Therefore, the Trial Court is directed to retain the photocopy of Exs.D1 and D2 and send back the originals immediately to the Melchengam Police Station.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District and Sessions Judge, Thiruvannamalai.
- 2.The Judicial Magistrate, Sengam.
- 3.The Chief Judicial Magistrate, (For information) Tiruvannamalai District.
- 4.The District Collector, Tiruvannamalai District.



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

6.The Superintendent,
Central Prison, Vellore.

7.The Inspector of Police,
Mel Chengam Police Station,
Thiruvannamalai District.

8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.V.Karthikeyan, Advocate SR.No.13730

Crl.A. No.744 of 2018

SPD(CO)
GN(18/03/2022)