



BAIL SLIP

Appellant/Single Accused namely Arumugam was released on Bail as per order of this Court dated 24.06.2019 made in CRL.MP(MD) No.5275 of 2019 in CRL.A(MD)No.262 of 2019.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.03.2022

DELIVERED ON : 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A. (MD)No.262 of 2019

Arumugam

... Appellant /Single Accused

Vs.

State rep. by
The Inspector of Police,
Samayanallur Police Station,
Madurai District,
(In Cr.No.138/2013.)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment passed in S.C.No.367/2017, dated 21.02.2019, on the file of the learned I Additional District and Sessions Judge, Madurai and set aside the same and acquit the appellant/accused from the charges leveled against him and allow the appeal.

For Appellant : Mr.K.Govindarajan

for Mr.R.Venkateswaran

For Respondent : Mr.A.Thiruvadikumar

Additional Public Prosecutor.

JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 21.02.2019, passed in S.C.No.367 of 2017, by the learned I Additional District and Sessions Judge, Madurai.



2. The appellant/sole accused stood convicted and sentenced to undergo imprisonment, as detailed hereunder:

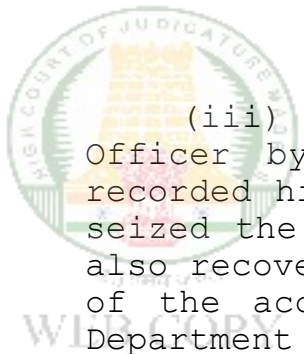
	Conviction U/s.	Sentence	Fine amount
Accused	302 IPC	To undergo Life Imprisonment	To pay a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment.
	201 IPC	To undergo 5 years Rigorous Imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo 6 months simple imprisonment.

(Both the sentences were directed to run concurrently.)

3. The brief facts of the prosecution is as follows:

(i) The deceased is the brother-in-law of the accused. The accused married the sister of the deceased. P.W.2 is the sister of the accused. There was a marital discard between the in-laws of the accused i.e., parents of the deceased. The accused was under the impression that the deceased was the root cause for such separation, he tried to reunite the family. However, the deceased threatened his brother-in-law, namely, the accused herein with dire consequences. Besides, he has also threatened his mother, namely, sister of the accused. In view of such happening in the family, there arose the enmity between the accused and the deceased. In order to eliminate the deceased, the accused under the pretext of calling him to his house took him to his old house situated in Middle Street in the guise of cleaning the motorcycle bearing Registration No.TN-59-K-8429. The accused has caused serious stab injuries on the back neck, shoulder, left hip, waist and stomach repeatedly and other parts of the body. As a result, the deceased succumbed to the injuries on the spot. Not stopping with that, in order to conceal the crime, the accused put the dead body in the Septic tank situated in front of his house. The law was set in motion on the basis of the complaint given by the father of the deceased.

(ii) When the investigation was commenced, the accused fearing arrest appeared before P.W.13-Village Administrative Officer and gave an Extra-Judicial Confession statement narrating the manner in which, he has eliminated the deceased and the dead body was concealed. P.W.13 recorded the confession statement of the accused viz., Ex.P4 and handed over the accused to the Police through Ex.P5 report.



(iii) After the accused was handed over to the Investigating Officer by P.W.13, he arrested the accused at 14.30 hours and recorded his voluntary confession Ex.P18. Pursuant to the same, he seized the Lungi and knife from the place shown by the accused and also recovered the dead body from the septic tank situated in front of the accused's house. The firemen working in the Fire Service Department also visited the scene of occurrence and removed the dead body from the septic tank and handed over it to the Investigating Officer.

(iv) P.W.20 Tahsildar, as per the request of the Investigating Officer, went to the place of occurrence. He ordered to exhume the dead body from the place where the accused has shown at 05.00 p.m., on 27.05.2013. The body was removed from the septic tank with the help of P.W.16 & P.W.17 Sanitary workers. They also reached the place of occurrence to remove the dead body from the septic tank at the instructions of the Village Administrative Officer and others and removed the dead body after the police came to the place of occurrence along with accused from the place pointed out by the accused.

(v) P.W.22 -Doctor conducted autopsy over the dead body of the deceased and found the antimortum injuries and opined that the deceased died 36-48 hours prior to the postmortem due to the injuries caused on the body.

(vi) P.W.28 working as Finger Print Expert. He deposed that on 27.05.2013 as per the request of the Investigating Officer, he has gone to the place of occurrence and he has lifted P1, P2 and P3 chance finger prints from three objects, namely, TVS XL Motorcycle, Plastic Tub and Metal Tub. Thereafter, on 03.06.2013 he received the specimen Finger Print of accused Arumugam from the learned Judicial Magistrate No.4, Madurai. On the same day, he compared P1,P2, P3 with the specimen Finger Prints of the accused and found that they tally with S1, the Specimen Finger Print of left thumb and S2, the specimen Finger Print of right thumb. He has issued Ex.P32 report to the Court to that effect. According to him, the chance prints lifted from the house of the accused tallied with the specimen finger print of the accused. After completing the investigation, the Investigating Officer has filed the final report against the accused.

4. In order to substantiate the charges against the accused, the prosecution has examined as many as 27 witnesses as P.W.1 to P.W.27, marked 33 documents as Exs.P1 to P33 and 19 Material Objects were marked.

5. After going through the evidence both oral and documentary, the learned trial Judge has found the accused guilty under Sections 302 and 201 IPC., and sentenced the accused as stated above.

<https://hccases.judis.gov.in/case.htm>, the present Criminal Appeal is filed.

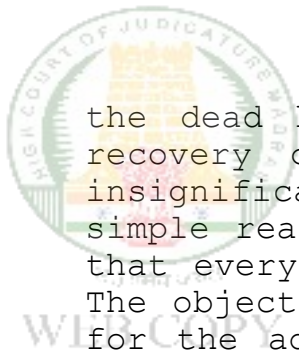


6. The law was set in motion on the basis of the complaint lodged by the father of the deceased. He has not been examined as he died. All other relatives P.Ws.4,5,6 & 7, who were examined on the side of the prosecution but they have not supported the case of the prosecution in any manner. The prosecution mainly relied on the circumstantial evidence. The prosecution theory is mainly based on the following circumstances, namely, extra judicial confession and recovery of the material objects, finger print experts evidence and recovery of the corpus delicti at the instance of the accused, for which, there is no explanation from the accused. Though the prosecution has projected the motive as one of the circumstances, the relatives of the deceased have not supported the motive part. Therefore, the prosecution has relied upon other materials. It was not disputed by the accused that the dead body was found in his house. Though the deceased was found missing from 26.05.2013, the dead body was recovered after the disclosure statement made by the accused. It is relevant to note that the accused is a Army Man. He has appeared before the Village Administrative Officer on 27.05.2013 fearing the arrest by the police and gave a extra judicial confession Ex.P.18, wherein, he has narrated the cause of death of the deceased/brother-in-law and concealed the dead body. P.W.13 immediately recorded the confession statement and handed over the accused to the Investigating Officer along with confession statement. The Investigating Officer has recorded the admissible portion of the confession statement and thereafter, he has also proceeded to the place of occurrence and prepared the Observation Mahazar and also availed the help of P.W.10, P.W.11 fire service people to recover the dead body from the septic tank.

7. P.W.10 and P.W.11 in unison voice have clearly spoken that as per the request of the Investigating Officer, they went to the house of the accused at 06.00 p.m. However, they waited till the arrival of the Tahsildar to remove the dead body.

8. P.W.16 & P.W.17 stated in their evidence that at the request of the Village Administrative Officer and Menial, they came to the place of occurrence and waited till the arrival of the Tahsildar. They were asked to lift the said dead body, for which, they refused. Thereafter, the fire service personnel came and lifted the body. They have also clearly spoken that the accused was brought by the police, he pointed out the septic tank, from which dead body was recovered.

9. Much has been emphasised by the learned counsel for the appellant that P.W.16 and P.W.17 were already in the place of occurrence and saw the dead body before the accused was taken to the place of occurrence. His further contention is that the Observation Mahazar Ex.P20 also shows that the Investigating Officer has prepared the Observation Mahazar at 13.30 hours even before the body was recovered from the septic tank. Hence, it is the contention that

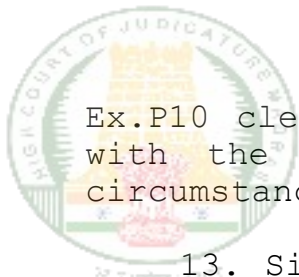


the dead body was already seen by many people. Therefore, the recovery of dead body at the instance of the accused becomes insignificant. We are not able to countenance the arguments for the simple reason that Section 27 of the Evidence Act does not require that every recovery should be made in the presence of the accused. The object of Section 27 of the Indian Evidence Act was to provide for the admission of evidence which but for the existence of the section could not be admitted in view of the preceding Sections. Section 27 of Indian Evidence Act does not mandate that only recovery at the instance of the accused alone is admissible. On the other hand, Section 27 deals with discovery of any fact, which is un-known to the police. Therefore, any such statement leading to discovery of any fact whether it amounts to confession or not is admissible.

10. Admittedly, in this case, accused has surrendered before the Village Administrative Officer-P.W.13 on 27.05.2013 at 01.00 p.m., thereafter he was handed over to the Investigating Officer along with confession statement. In the confession, he disclosed the fact that dead body was concealed in the septic tank in his house. Thereafter only, the Investigating Officer and the Village Administrative Officer availed the service of the Sanitary workers and proceeded to the spot, with the help of Tahsildar, dead body was recovered. Therefore, it cannot be said that recovery of the dead body is not admissible. It is not the case of the accused that the house, where, the dead body was found and recovered at his instance was not under his control at any point of time. Therefore, there is no reason to discard the evidence of P.W.13, Investigating Officer and P.Ws.10, 11, 16 & 17 with regard to the recovery of dead body at the instance of the accused at the place of occurrence.

11. Though the accused has given an extra judicial confession before the Village Administrative Officer, with whom he has no prior acquaintance. We are of the view that the accused is not the rustic villager. He is working in Army. He is aware of the consequence of the arrest by the police. Therefore, his surrender before the Village Administrative Officer is quite natural. Therefore, merely because there was no connection with the Village Administrative Officer and the accused, it cannot be said that in all eventuality such as extra judicial confession became inadmissible or cannot be reliable.

12. We do not find any infirmity in the evidence of P.W.13 to reject the extra judicial confession in toto, for the reason that the same is also substantiated by other materials. At the instance of the accused, in pursuant to the admissible portion of the confession, the vehicle used by the accused and the crime weapon and shirts were seized under Ex.P6 in the presence of P.W.13. Under Ex.P6, M.O.1 knife, M.O.2-blood stained vehicle bearing Registration No.TN-59-K-8429, M.O.3-blood stained shirt were also recovered from



Ex.P10 clearly shows that M.O.1 contains human blood which tallies with the deceased's blood group. This is also one of the circumstances relied on by the prosecution against the accused.

13. Similarly, Finger Print Expert visited the spot on the same day i.e., on 27.05.2013 and lifted the chance prints from M.O.2 and also plastic bucket and other objects. Thereafter, they compared the same with the admitted finger print sent by the learned Judicial Magistrate and issued a report under Ex.P32 holding that the finger print lifted from the place of occurrence tallied with the accused finger print. This evidence also clearly established the complicity of the accused with the crime. Finger print expert also spoken about the manner in which he arrived at conclusion, which has not been shaken in the cross-examination.

14. The evidence of finger print expert was based on the exact science unlike handwriting expert, which is not based on exact science. Therefore, the report of the finger print expert cannot be discarded as he has visited the place of occurrence and lifted the chance prints, which goes against the accused.

15. It is the other submission of the learned counsel for the appellant that the evidence of postmortem doctor shows that the dead body was decomposed at the time of examination, rigormortis was not found. Therefore, his contention is that death should have been happened much prior than the occurrence as alleged by the prosecution.

16. In support of his contention, learned counsel appearing for the appellant relied on the following judgments:-

(I) **Ravi @ Ravichandran & another v. State** reported in **2007(1) L.W. (Cr1.) 555;**

(ii) **Bala and others v. State** reported in **2014 (1) MLJ (Cr1) 385;**

(iii) **Thangavelu vs. State of Tamilnadu** reported in **2002 Supreme Court Cases (cri) 1382;**

17. The postmortem doctor P.W.22 opined that the deceased appears to have died on external injury No.1 and it is corresponding to internal injuries between No.36 to 40 hours prior to the autopsy. In her cross-examination, she has stated that the body was decomposed stage and there was no rigormortis found in the body.

18. Though several judgments have been relied upon by the learned counsel appearing for the appellant, considering the judgment based on the different sets of facts, they cannot be applied as a precedent mechanically. As far as the criminal trail is concerned, it has to be decided on the facts of the case. In this regard, it is useful to have reference to the judgment of the Constitution Bench of Hon'ble Apex Court in **Willie (William) Slaney**

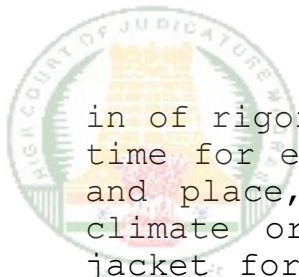


Vs. The State of Madhya Pradesh reported in **AIR 1956 SC 116**, wherein paragraph 44, the Constitution Bench of the Hon'ble Apex court has held as follows:

'44. In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage. If it was not, and particularly where the accused is defended by counsel (*Atta Mohammad v. King-Emperor*) it may in a given case be proper to conclude that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars, provided it is always borne in mind that "no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused" (*Abdul Rahman v. King-Emperor*). But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases "however" alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were."

19. Much emphasis has been made by the learned counsel for the appellant that as the rigormortis was not found in the body by the postmortem doctor and it has to be presumed that the death would have occurred prior to the date of occurrence and not as projected by the prosecution.

20. It is noted that the postmortem was conducted on 28.05.2013 and the occurrence took place as per the prosecution on 26.05.2013. The postmortem conducted after 2 days from the date of occurrence. The occurrence took place in the month of May. Normally, in the month of May, it is hot summer. Therefore, putrefaction sets in earlier and decomposition is also faster. Therefore, merely because the doctor has not found rigormortis at the time of postmortem, it cannot be said that the death should have occurred prior to the time as alleged by the prosecution. Setting



in of rigormortis and passing of the rigormortis, cannot be the same time for every human body. It depends upon the nature of the body and place, where, the dead body was found, it depends upon hot climate or the cool climate etc., there cannot be any straight jacket formula for fixing time for rigormortis herein. Normally, rigormortis starts 1 to 2 hours after the death and it spreads in the entire body between 12 hours, thereafter, it slowly passes. Therefore, merely because rigormortis was not found at the time of postmortem, which was conducted after two days after the death, we cannot conclude that the death should have been happened much prior to the time as alleged by the prosecution. Such submission is also without any evidenciary support. Such submission is made only based on the Modi's Textbook of Medical Jurisprudence and Toxicology. Any opinion found in such Textbook cannot be the evidence at all, at the most, it will have persuasive value only. Therefore, such submission, in our view is not sustainable. Considering the over all evidence and the fact that the accused has not explained as to recovery of dead body from his house, such non-explanation also gives an additional link to the chain of circumstances relied upon by the prosecution, we concur with the findings of guilt as recorded by the trial Court.

21. Accordingly, we do not see any reason to interfere with the well reasoned judgment of the trial Court and hence, the appeal stands dismissed. The period of imprisonment already undergone by the appellant shall be set off under Section 428 of Cr.P.C. The trial Court is directed to take steps to secure the custody of the appellant/accused and make him to undergo the remaning period of the sentence.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

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 I Additional District and Sessions Judge,
Madurai.



2.Do Through The Principal District Judge,
Madurai.

3.The Judicial Magistrate No.IV,
Madurai.

4.Do Through The Chief Judicial Magistrate,
Madurai.

5.The District Collector,
Madurai.

6.The District General of Police,
Mylapore, Chennai.

7.The Superintendent,
Central Prison, Madurai.

8.The Inspector of Police,
Samayanallur Police Station,
Madurai District,

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.R.VENKATESWARAN, Advocate (SR-13810[F]
dated 23/03/2022)

Judgment in
Crl.A. (MD) No.262 of 2019
23.03.2022

SS (CO)
GC (31.03.2022) 9P 14C