

**Bail Slip**

The Appellant/Accused Viz., K. Narayanasamy @ Narayanan in SC.No.25 of 2004 on the file of I Additional Sessions Judge, Coimbatore was directed to be released on bail by the order of this court dated 23.9.2004 and made in CrI.MP.9385/04 in CrI.A.No. 973/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 29.09.2006

Coram

The Honourable Mr. Justice K. RAVIRAJA PANDIAN

and

The Honourable Mr. Justice M. CHOCKALINGAM

CrI. A. No.973 of 2004

K. Narayanasamy @ Narayanan ... Appellant/Accused

..Vs..

The State

by the Inspector of Police,  
Pollachi Taluk Police Station,  
Vadakkipalayam Police Station,  
Coimbatore District.

(Crime No. 87/03)

... Respondent/Complainant

Appeal filed under section 374(2) Cr.P.C. against the Judgment of the first Additional Sessions Judge, Coimbatore dated 19.4.2004 in SC.No.25/04.

For Appellant : Mr. K. Kalyanasundaram

For Respondent : Mr. P. Kumaresan ,  
Addl. Public Prosecutor

## JUDGMENT

(Judgment was delivered by M. CHOCKALINGAM, J.)

Sole accused, in a case of murder, on being found guilty for the offences under Sections 302 and 404 of the Indian Penal Code, was awarded with the punishment of life imprisonment together with fine of Rs.10,000/- in default to undergo Rigorous Imprisonment for a period of one year for an offence under Section 302 of the Indian Penal Code and Rigorous Imprisonment for three years for an offence under Section 404 of the Indian Penal Code and the sentences should run concurrently, has challenged the judgment passed by the I Additional Sessions Court, Coimbatore in S.C. No.25 of 2004 dated 19.4.2004.

2. The short facts necessary for the disposal of the case can be stated thus:-

(i) The deceased Mayilathal was living at Mettukkadu Gardens, Vadakkipalayam village along with accused and P.W.1. P.W.1 is her nephew, while the accused is her cousin brother. She was having cattles and also having landed properties. Though the accused and the deceased were cousin, they were living as husband and wife, which was known to others also. P.W.1 was employed in the shop of P.W.11, where, he was having a shop, dealing with or selling cattle fodder. There were occasions, in which P.W.1 used to inform P.W.11 about the illicit intimacy between the deceased and the accused and the quarrel that arose between them in respect of the money transaction. P.W.1, who was in Kerala, came to the house of the deceased one and a half years before the occurrence and therefrom, they had a quarrel, since the deceased Mylathal had the idea of giving the entire property and also money to P.W.1 and she was also having a Bank account, where she had the amount of Rs.20,000/- in her account.

(ii) Just four days prior to the occurrence, the accused went to the shop of P.W.11 and informed him that P.W.1 did not bring the salary to home and pay to them and apart from that, the deceased has got soft corner for P.W.1 and hence they would face any consequence.

(iii) On the date of occurrence i.e. on 21.6.2003, P.Ws.5, 7 and 8 found the accused/appellant near the house of the deceased at about 11 O' Clock and on the same day, P.W.1 went to the shop of P.W.11 by 8.30 a.m. and came to the house at 10.30 a.m. and again went to the shop. When he returned home at 1.45 p.m., he found the deceased in a pool of blood.

(iv) Then, immediately P.W.1 proceeded to the police station and gave complaint Ex.P1 to P.W.19, the Sub Inspector of Police who was present at that time. On the strength of the same, a case was registered in Crime No.87 of 2003 for the offences under Sections 302 and 380 of the Indian Penal Code and Express First Information Report Ex.P17 was despatched to the concerned Court and the Inspector of Police P.W.18. P.W.18 took up investigation, proceeded to the spot, made an inspection in the presence of witnesses and prepared Ex.P2 Observation Mahazar and Sketch Ex.P18. Thereafter, the Inspector of Police conducted inquest on the body in the presence of witnesses and Panchayatars and the inquest report is marked as Ex.P19. The dead body was sent to the Government Hospital for the purpose of autopsy.

(v) P.W.11 Doctor Somasundaram conducted autopsy on the dead body and gave his opinion Ex.P16 that the deceased appears to have died due to shock and hemorrhage and due to the injuries to the organs prior to 24 hours of autopsy.

(vi) Pending investigation, on 29.6.2003, the accused appeared before the Panchayat Union President, who is P.W.12, a Ward Councilor and came forward to give confession statement voluntarily. The said statement was recorded by P.W.13, the Village Administrative Officer. The admissible portion of the same was marked as Ex.P4. The accused was taken and handed over to the police station. When the accused was in the custody of the police, he gave confession statement voluntarily in the presence of witnesses P.Ws.14 and 15. The admissible portion of the same was marked as Ex.P9.

(vii) Pursuant to the confession statement, the accused produced M.O.8 aruval, M.O.9 nose screw and M.O.10 series ear screws and the same were recovered in the presence of witnesses under Mahazar Ex.P11. The said material objects were sent to the Court. The accused was sent for judicial remand. All the Material Objects were subjected to chemical analysis. Ex.P28 Chemical analysis report and Ex.P27 Serological report were received. On completion of investigation, final, report was filed as per the charge and the case was committed to the Court of Sessions. Necessary charges were framed against the accused.

3. In order to substantiate its case, the prosecution examined P.Ws.1 to 19 and relied on Exs.P1 to 28 and also relied on M.Os.1 to 19. On completion of examination of witnesses on the side of the prosecution, when the accused was questioned under Section 313 of the Criminal Procedure Code, he denied them as false.

4. The Trial Court, after hearing the arguments advanced by either side and scrutinized the materials available on record, found the accused guilty and awarded the punishment referred above. Hence this appeal is filed at the instance of the appellant.

5. Advancing arguments on behalf of the appellant, learned counsel would submit that in the instant case, the prosecution had no direct evidence to offer. It relied on only circumstantial evidence namely P.Ws.5, 7 and 8, who saw the accused near the place of occurrence at about 11 a.m. P.Ws.5 and 7 did not speak about the case of the prosecution and they turned hostile. As regards P.W.8 Veerammal, wife of Subban, the Investigating Officer had categorically admitted that he examined one Veerammal, wife of Nagaraj and he had further admitted that at the time of investigation, the said Veerammal was aged only 20 years, which clearly reveals that P.W.8 was not the one examined by the Investigating Officer and it was the question of impersonation. Hence the same has got to be rejected.

6. Learned counsel further added that as regards motive, the case of the prosecution is that the deceased Mayilathal had lot of money and the same were put in the Bank, where P.W.1's name was nominated to receive the benefits. The Bank Manager P.W.16 has spoken to the fact that the deceased Mayilathal had an account in the Bank and the balance of Rs.20,000/- is available in that account, but there was no nomination. Thus, it would be clear that the motive, which was attributed to the accused for committing the crime, was not proved by the prosecution.

7. Learned counsel added further that in the instant case, in the absence of any direct witness, the case rests only on circumstantial evidence and hence duty is cast upon the prosecution to prove the motive part. If the same is not proved, the prosecution case cannot be believed.

8. Learned counsel added further that the prosecution relied on the alleged confession statement made by the accused through P.W.13 Village Administrative Officer, pursuant to which, M.Os.9 and 10 were recovered, which, according to the prosecution belonged to the deceased. From his evidence, it is quite clear that he was not acquainted with the accused earlier. If the occurrence took place on 21.6.2003, there was no need for the accused to approach the Village Administrative Officer on 29.6.2003 and gave such a statement, that too a person who was not acquainted with him.



9. Learned counsel added further that the accused was taken custody, pursuant to which, he gave confession statement in the presence of two witnesses P.Ws.14 and 15. Following the confession statement M.Os.8 to 10 were recovered from him. Insofar as recovery part was concerned, P.W.14 has not stated anything about M.Os.8 to 10. The other witness P.W.15 has categorically admitted that all the papers were signed in the police station. Hence, these two witnesses cannot be relied upon. Thus the alleged confession statement, recovery of material objects and motive part fail and in the absence of any other circumstances to find the accused guilty, the Trial Court was not correct in finding the accused guilty and hence, he is entitled for acquittal in the hands of this Court.

10. In support of his submissions, learned counsel for the appellant also relied on the decisions reported in the case of SAKHARAM v. STATE OF MADHYA PRADESH (1993 L.W. (Cr1.) 29) followed by this Court in MANIKKUNDU v. STATE (2004(1) C.T.C. 1970).

11. This Court heard the learned Additional Public Prosecutor on the above contentions. This Court paid its anxious considerations on the above contentions.

12. It is not a fact in controversy that one Mylathal was done to death in the incident that had taken place on 21.6.2003 between 10 and 11 a.m. and following the inquest made by the Inspector of Police, the body was sent to the Doctor for post-mortem and the Doctor, who has conducted autopsy, has categorically opined that the deceased died due to shock and hemorrhage. Hence, the fact that Mylathal died due to homicidal violence was not disputed and it has to be recorded so.

13. It is true that the prosecution had no direct evidence to offer, but the prosecution relied on three circumstances. Firstly, P.Ws.5, 7 and 8 found the accused near the place of occurrence at about 11 a.m. on 21.6.2003. Secondly, the accused appeared before P.W.13 Village Administrative Officer and gave extra judicial confession on 29.6.2003. Thirdly, pursuant to the confession statement made by the accused, M.Os.8 to 10 were recovered in the presence of P.Ws.14 and 15.

14. The first contention put forth by the learned counsel for the appellant that in the instant case, the motive has not been proved has got to be discountenanced. Admittedly, the accused is the cousin brother of the deceased Mylathal, but they were living as husband and wife. P.W.1 is the nephew of the deceased. During the relevant time, he was also living with them. Mylathal had sufficient fund in deposit in her Bank account, which was proved through P.W.16 Bank Manager. P.W.11 was the shop owner and P.W.1

was employed under him. From the evidence of P.W.11, it would be quite clear that there were occasions, in which, P.W.1 has brought to his notice about the illicit intimacy between the accused and the deceased and quarrel between them in respect of the money transaction.

15. P.W.11 has categorically deposed in his evidence that four days prior to the occurrence, the accused went to his shop and informed him that P.W.1 was not bringing his salary to the home and Maylathal had a soft corner with P.W.1 and they would face any consequence at any time. Insofar as the evidence of P.W.11 is concerned, the Court cannot entertain any doubt, since under any circumstances P.W.11 had any inimical terms against accused or interest in the prosecution witness. From the evidence of P.W.11, it could be seen that the deceased was living with the accused as paramour, though she happened to be the cousin sister and the accused has grievance over Mylathal that she has soft corner with P.W.1. Hence the motive part remains proved. In the circumstances, the contention of the learned counsel for the appellant that the prosecution rested its case on circumstantial evidence and motive part must be proved, the Court may not have any quarrel over the decision cited by the learned counsel for the appellant referred above. In the instant case, the prosecution proved the motive part.

16. According to the prosecution, the occurrence took place on 21.06.2003 between 10 and 11 a.m. and the complaint was given immediately at about 2.00 p.m. by P.W.1, after seeing the dead body and the case was registered on the same day. According to the prosecution, the accused appeared before P.W.13 Village Administrative Officer and gave confession statement voluntarily and the same was recorded on 29.6.2003, which is marked as Ex.P4.

17. Before accepting the extra judicial confession statement given by the accused, the Court applies a test viz. before whom extra judicial confession statement was made, which inspires the confidence of the Court. After applying this test, the Court is satisfied that P.W.13 is the Village Administrative Officer, through whom the extra judicial confession was given. Immediately after recording the statement, he took the accused to the police and handed over him. At this juncture, the evidence of P.W.13 is to be completely scrutinized. There is no reason as to why P.W.13 should come forward before the Court and give evidence to connect the accused in crime. Apart from that, all the material particulars, which were admitted by the accused and recorded by the Village Administrative Officer and stood corroborated by other circumstances, speak about the motive for committing the crime.

18. With regard to the overt act attributed against the accused, in the post-mortem Certificate, it is stated that number of stab injuries were found on the deceased, which caused her death. The material particulars, which are necessary for murder, have been found to be admitted by the accused and the Court is well relied on the extra judicial confession statement given by the accused before the Village Administrative Officer P.W.13 on 29.6.2003. In the instant case, insofar as the evidence of P.Ws.14 and 15 with regard to recoveries are concerned, M.O.8 aruval, M.O.9 nose screw and M.O.10 series ear screws were all recovered and identified by the accused and thus, the accused was unable to say how he happened to be in possession of the same in particular M.O.9 nose screw and M.O.10 ear screws, which were worn by the deceased at the time of occurrence. If to be so, when he was in possession of the same, he was responsible to explain about the possession of the same, but he has not given any such explanation.

19. In view of the above, the Court is of the considered opinion that the above said circumstances are sufficient to point out the guilt of accused with the crime. Though the witnesses, according to whom, they saw the accused near the place of occurrence at about 11 a.m. on 21.6.2003, since the prosecution could not bring forth any direct evidence, in the opinion of the Court, the other facts are sufficient enough to point out the guilt of the accused and hence, the Court has to necessarily accept the case of the prosecution. It is a case where the accused committed the murder of Mylathal and the Trial Court is perfectly correct in awarding life imprisonment together with other punishments mentioned above. Hence the appeal fails and the same is dismissed.

ssa.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate No.I,  
Pollachi.
2. Do- Thro' The Chief Judicial Magistrate,  
Coimbatore. (for information)

3. The Chief Judicial Magistrate,  
Trichy. (for information).
4. The I Additional Sessions Judge,  
Coimbatore.
5. Do Thro' The Principal Sessions Judge,  
Coimbatore. (for information).
6. The Superintendent,  
Central Prison,  
Coimbatore.
7. The District Collector,  
Coimbatore.
8. The Director General of Police,  
Madras - 4.
9. The Inspector of Police,  
Pollachi Taluk Police Station,  
Vadakkipalayam Police Station,  
Coimbatore District.
10. The Public Prosecutor,  
High Court, Madras.

NG(CO)  
SR/27.10.2006

Crl.A. No.973 of 2004

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