

Bilal vs State Represented By on 21 April, 2022

Author: P.N.Prakash

Bench: P.N.Prakash, A.A.Nakkiran

Judgment
Criminal Appeal

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM

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

Criminal Appeal No.404 of 2019

1.Bilal
S/o.Ahmad Ushan

2.Adhiru @ Kathiru @ Jayaraman @ Arthanari
S/o.Subramani

.. Ap

Vs.

State represented by
The Inspector of Police,
Karimangalam Police Station,
Dharmapuri.

.. Re

Criminal Appeal filed u/s.374(i) of the Code of Criminal Procedure
against the judgment and order dated 25.06.2019 passed in S.C.No.13
2017 on the file of learned Additional Sessions Judge, Dharmapuri.

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<https://www.mhc.tn.gov.in/judis>

Judgment
Criminal Appeal

For Appellants : Mr.M.R.Thangavel

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Pros

JUDGMENT

[Delivered by P.N.PRAKASH, J] This criminal appeal is directed against the judgment and order of conviction and sentence dated 25.06.2019 passed by the learned Additional Sessions Judge, Dharmapuri, in S.C.No.134 of 2017.

2. The prosecution story runs thus:

2.1. Poovarasan [deceased] is the son of Rangasamy [PW-1] and Maadhu [PW-10] and brother of Pachaiappan [PW-2]. The family of Poovarasan was from Karimangalam village. Maadhu [PW-10] developed intimacy with one Selvam and got separated from Rangasamy [PW-1] around 15 years prior to the incident. Selvam already had a son viz., Vigneshmurthy [PW-17] through his first wife. Though Maadhu [PW-

<https://www.mhc.tn.gov.in/judis> Judgment dated : 21.04.2022 Criminal Appeal No.404 of 2019 10] got separated, Poovarasan used to visit his mother frequently in Selvam's house. This was resented by Vigneshmurthy [PW-17]. During one such visit on 30.03.2017, Vigneshmurthy [PW-17] assaulted Poovarasan. On 01.04.2017, the body of Poovarasan was found lying in the Ponnigannur dry lake bed, which was noticed by the villagers and information was given to Rangasamy [PW-1].

2.2. On a written complaint [Ex.P14] given by Rangasamy [PW-1], Srinivasan [PW-31], Special Sub-Inspector of Police, registered a case in Karimangalam P.S.Crime No.165 of 2017 on 01.04.2017 at 8.30 a.m. u/s.174 Cr.P.C. and prepared the printed First Information Report [Ex.P15], which reached the jurisdictional Magistrate on 03.04.2017, as could be seen from the endorsement thereon.

2.3. In the complaint, Rangasamy [PW-1] had stated about the quarrel between Poovarasan and Vigneshmurthy [PW-17] that happened on 30.03.2017 and therefore, the involvement of Vigneshmurthy [PW-17] in <https://www.mhc.tn.gov.in/judis> Judgment dated : 21.04.2022 Criminal Appeal No.404 of 2019 the murder of Poovarasan was suspected.

2.4. Investigation of the case was taken over initially by Ravi Kumar [PW-33], Inspector of Police, who went to the place of occurrence and prepared an observation mahazar [Ex.P4]. Inquest was conducted over the body of Poovarasan and the inquest report was marked as Ex.P19. Thereafter, the body was sent to the Government Hospital, Dharmapuri, for postmortem where Dr.Sathish

Kumar [PW-23] performed autopsy on the body of Poovarasan and sent the samples of the visceral organs to the Tamil Nadu Forensic Sciences Department for analysis. The postmortem doctor [PW-23] found injuries around the neck of Poovarasan. The viscera report [Ex.P16] disclosed the presence of cyanide in the visceral organs. Based on the postmortem findings, Dr.Sathish Kumar [PW-23], gave his final opinion as to the cause of death, which reads as under:

"The deceased would appear to have died of asphyxia due to manual strangulation (Throttling)."

2.5. Since Sathish Kumar [PW-34], Inspector of Police, returned to duty, Ravi Kumar [PW-33], Inspector of Police, handed over the <https://www.mhc.tn.gov.in/judis> Judgment dated : 21.04.2022 Criminal Appeal No.404 of 2019 investigation to Sathish Kumar [PW-34], Inspector of Police [hereinafter would be referred to as 'the investigating officer'].

2.6. While the police were clueless as to who the perpetrator of the offence was, Bilal [A1] surrendered before the Judicial Magistrate, Namakkal, on 03.05.2017. On 10.05.2017, the police arrested Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2] on suspicion and interrogated him. Based on the disclosure statement of Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2], the investigating officer [PW-34] seized a motorbike [MO- 10] under the cover of a mahazar [Ex.P8]. Similarly, on the disclosure statement of Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2], the investigating officer [PW-34] seized a plastic cover [MO-4], a brown colour paper [MO-5] and a small quantity of cyanide [MO-6] under the cover of a mahazar [Ex.P9]. The seized cyanide [MO-6] was sent through the Court to the Tamil Nadu Forensic Sciences Department and the report [Ex.P17] showed that cyanide was detected in the sample. <https://www.mhc.tn.gov.in/judis> Judgment dated : 21.04.2022 Criminal Appeal No.404 of 2019 2.7. Bilal [A1], who had earlier surrendered before the Judicial Magistrate, Namakkal, was taken into police custody on 15.05.2017 and based on his confession, a motorbike [MO-11] was recovered under the cover of a mazhar [Ex.P11].

2.8. The investigating officer [PW-34] filed two alteration reports [Exs.P24 and P25] altering the case from one u/s.174 Cr.P.C. to Section 302 IPC and further altering the case by including Sections 109 and 34 IPC.

2.9. After examining the witnesses and collecting the various reports of the experts, the investigating officer [PW-33] filed a final report in P.R.C.No.22 of 2017 in the Court of the Judicial Magistrate, Palacode.

2.10. On appearance of the accused, 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.134 of 2017 and was made over to the Additional Sessions Court, Dharmapuri, for trial.

<https://www.mhc.tn.gov.in/judis> Judgment dated : 21.04.2022 Criminal Appeal No.404 of 2019 2.11. The trial Court framed charges u/s.302 IPC against Bilal [A1] and u/s.302 r/w 34 IPC against Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2]. When questioned, the accused pleaded 'not

guilty'.

2.12. It is the definite case of the prosecution that Poovarasan was having an affair with one Sharmila, sister of Bilal [A1] and therefore, Bilal [A1], who is a Muslim, was irked at it and hence, he wanted to get rid of Poovarasan, for which, he sought the help of Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2], who had a criminal track record. They both took Poovarasan in their bike to Ponnigannur dry lake bed, gave him Ragi gruel mixed with cyanide, Bilal [A1] strangled him with his hands and Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2] held his feet and murdered him. After the murder, they left the body in the dry lake bed and left.

2.13. To prove the case, the prosecution examined 34 witnesses and marked 25 exhibits and 11 material objects. When the accused were <https://www.mhc.tn.gov.in/judis> Judgment dated : 21.04.2022 Criminal Appeal No.404 of 2019 questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. None was examined from the side of the accused and no exhibit was marked.

2.14. After considering the evidence on record and hearing either side, the trial Court, by judgment and order 25.06.2019 in S.C.No.134 of 2017, convicted and sentenced the appellants as follows :

Provision under Sentence which convicted Section 302 IPC life imprisonment and fine of Rs.5,000/- each, in default, to undergo 3 months rigorous imprisonment.

2.15. Challenging the aforesaid conviction and sentence, the appellants/accused have filed the present appeal.

3. Heard Mr.M.R.Thangavel, learned counsel for the appellants and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

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4. In this case, the initial investigation proceeded on the footing that the offence could have been committed by Vigneshmurthy [PW-17] and only after the surrender of Bilal [A1] before the Judicial Magistrate, Namakkal, the course of investigation changed.

5. Rangasamy [PW-1], Pachaiappan [PW-2] and Parasuraman [PW-3] are close relatives of Poovarasan and they testified only with regard to quarrel between Poovarasan and Vigneshmurthy [PW-17] that occurred on 30.03.2017. They have not spoken a word about the alleged affair of Poovarasan with Sharmila, the sister of Bilal [A1].

6. Similarly, Prabhu [PW-4], Thirupathi [PW-5], Manikandan [PW-6], Bargunan [PW-7], Murugesan [PW-8], Aaris [PW-9] and Maadhu [PW-10], testified about the finding of the body of Poovarasan in the Ponnigannur lake, conducting inquest, etc. <https://www.mhc.tn.gov.in/judis> Judgment dated : 21.04.2022 Criminal Appeal No.404 of 2019

7. Madhappan [PW-11], Mouli [PW-12], Raghul [PW-13], Suresh [PW-14], Gokul [PW-15], Balaji [PW-16], Vigneshmurthy [PW-17], Vadivel [PW-18], Subramani [PW-19] and Pazhanivel [PW-20] turned completely hostile.

8. The fact that Poovarasan's death was a homicide has been clearly established by the prosecution via the evidence of those who had seen his body lying in the Ponnigannur lake as well through the evidence of the postmortem doctor [PW-23]. The recovery of the two motorbikes in this case appears to have no relevance at all to link the appellants with the offence. The only piece of evidence against the appellants is that of Dhanalakshmi [PW-21], who, in her testimony, has stated that on 31.03.2017 night, she saw Poovarasan going in a motorbike with Bilal [A1] on the pillion. She has stated that she is the aunt of Poovarasan, but, she did not disclose this important fact to anyone on the next day i.e. 01.04.2017 when the body of Poovarasan was found in the lake. The police appeared to have recorded her statement only on 11.04.2017 after the surrender of Bilal [A1] and arrest of Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2]. Based merely on the frail solitary testimony of Dhanalakshmi [PW-21] that she saw Poovarasan going with Bilal [A1] on the previous night [31.03.2017], coupled with the alleged seizure of cyanide on the disclosure of Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2], it cannot be inferred that Bilal [A1] and Adhiru @ Kathiru @ Jayaraman @ Arthanari [A2] were the perpetrators of the offence.

In view of the foregoing reasons, this Criminal Appeal is allowed and the appellants are acquitted of the charge u/s.302 IPC. The conviction and sentence passed in S.C.No.134 of 2017 on the file of the learned Additional Sessions Judge, Dharmapuri, vide judgment and order dated 25.06.2019, are set aside. Fine amount, if any, paid by the appellants shall be refunded. Bail bonds executed shall stand discharged.

[P.N.P., J]
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Index: Yes/No
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Judgment dat
Criminal Appeal

P.N.PRAKASH,
an
A.A.NAKKIRAN,

To

- 1.The Additional Sessions Judge,
Dharmapuri.
- 2.The Superintendent of Central Prison,
Vellore.
- 3.The Inspector of Police,
Karimangalam Police Station,
Dharmapuri.
- 4.The Public Prosecutor,
High Court, Madras.

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