

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and
THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.27 of 2014

R.Subramaniam ... Appellant/P.W.8

vs.

1.The Inspector of Police,
Uthukkuli Police Station,
Perundurai Taluk,
Erode District.
(Crime No.37 of 2008). 1st Respondent/complainant

2.Kutti @ Apsal Babu(A-1)
3.Haja Hussain(A-2)
4.Anish(A-3)
5.Rukkumani(A-5) ... Respondents/Accused 1,2,3 & 5

Criminal appeal preferred under Section 372 Cr.P.C.,
against the judgement dated 05.07.2012 passed by the learned IInd
Additional Sessions Judge, Erode, in S.C.No.42 of 2009.

For Appellant : No appearance

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by **V.Bharathidasan, J.**)

The appellant herein has filed this appeal against the order of acquittal passed by the learned II-Additional Sessions Judge, Erode, in S.C.No.42 of 2009 dated 05.07.2012. The appellant is the prosecution witness No.8 in the above sessions case. The respondents 2 to 5 are the accused 1 to 3 and 5 in the above said sessions case. Totally, there were five accused in this case. Pending trial, 4th accused died. Hence, remaining accused, namely, respondents 2 to 5, faced the trial. Earlier, A1 to A5 stood charged for offences as detailed below:-

<i>Sl.No.</i>	<i>Charges framed against</i>	<i>Charged framed</i>
1.	A-1 to A-4	U/s.364 r/w 34, 302 r/w 34, 201 IPC
2.	A-5	U/s.364 r/w 109, 302 r/w 109, 176, 177 and 182 IPC.

The trial Court, after trial, by Judgment dated 05.07.2012, acquitted all the accused. Aggrieved over the same, the appellant/8th prosecution witness is before this Court with this appeal. The parties in this appeal will be referred to as arrayed before the trial Court.

2. The case of the prosecution, in brief, is as follows:

(i) The deceased, in this case, one Panneer Selvam, is the husband of the 5th respondent/5th accused. The first accused in this case was a tenant under the deceased and he was engaged in fishing. The first accused developed illicit intimacy with the 5th accused/wife of the deceased. Apart from that, there was a dispute

between the first accused and the deceased in respect of leasing out the building to A1. In the above circumstances, on 20.01.2008 at about 9.45 p.m, A1 to A5, with a common intention to murder the deceased, took him to a nearby lake where A2 to A4 cut the deceased on his neck and caused his death. Then, they tied the dead body with a stone and threw it in the middle of the lake. Subsequently, on 27.01.2008, at about 4.00 p.m., P.W.1, Village Administrative Officer, Punjai Village, received an information that a dead body was floating in the lake. Immediately, he rushed to the lake and found the dead body in a decomposed stage. Then, he lodged a complaint[Ex.P1] before the respondent police.

(ii) P.W.21, incharge Sub Inspector of Police, attached to the respondent police, on receipt of the complaint from the Village Administrative Officer, registered a case in Crime No.37 of 2008 under Section 302 IPC and prepared First Information Report [Ex.P27], sent the same to the jurisdictional Judicial Magistrate Court and copies of the same were forwarded to higher police officials.

(iii) P.W.23, Inspector of Police attached to the respondent police, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, made an observation, prepared an Observation Mahazar [Ex.P2], drew rough sketch [Ex.P28] and fished the dead body from the lake with the

help of a boat. He examined some witnesses and recorded their statements. On 28.01.2008 at about 6.45 a.m., he conducted inquest over the dead body in the presence of panchayatdars and prepared an inquest report [Ex.P29]. Since the dead body was in a highly decomposed condition, he sent a requisition to the Government Hospital, Tiruppur for conducting postmortem in the place where it was kept.

(iv) P.W.15, Doctor, working in the Government Hospital, Tiruppur, conducted postmortem on the dead body and found the following injuries:-

“External Injuries:

Both hands found tied together with cotton cloth(white colour at wrist)and both the arms found tied together with chest by separate white cotton cloth. Both ankles found tied together with red colour cloth. Both knee found flexed and thigh and leg on the either side found tied together separately with rope, on removal of all ropes 4 cloths. Postmortem impressive abrasion of the tied earlier in the respective areas noted.

Antemortem injuries:

A Horizontal cut injury of about 15 cm x 5 cm x bone depth in the middle of neck in front and sides. Anatomical wound male 10 cm from right nastier, 9 cm from chin and tarn from left nastier. Hearing regular on dissection

of wound it was extending up to depth of cuticle in deeper planes, cutting the great vessels, nerves, wind pipe and food pipe at the level of C5-C6 clobber. Blush continuous noted in the surrounding tissue. Blush continuous noted on the mines aspect of the both upper and lower lip with teeth impression in lower lip. Antemortem avulsion of the teeth seen, pulp cavity is reddish colour and not easily crushable with water. Hyoid bone fractured and sent for expert opinion. Skin around the neck wound sent for analysis. Vertical cut injury of about 8cm x 4cm x 2cm in front of upper 1/3rd of right leg 4 cm below right knee margin. Vertical cut injury of about 10cm x 4cm x 3cm in front of left leg 5cm below left knee margin regular. Horizontal cut wound of about 15cm x 8 cm x extending intra axillary noted on the centre of the abdomen and profusion of the internal wounds. Skull bone intact, dissection of scalp sub scalp contusion of the size about 6cm x 4 cm noted on the left occipital region.

(v) Since the identity of the dead body was not known, P.W.23 took steps to bury the dead body. P.W.23 examined some witnesses and recorded their statements. Since P.W.23 met with an accident, he could not proceed with the investigation further.

(vi) P.W.25, Inspector of Police, attached to the respondent police, continued the investigation and recorded

statements of witnesses. During the investigation, on 01.02.2008, he arrested the first accused. On such arrest, the first accused voluntarily gave a confession and based on the disclosure statement, P.W.25 recovered the material objects. Then, on 02.02.2008, the second accused, who was taking treatment in Government Hospital, Coimbatore, was arrested by P.W.25. Subsequently, on 15.02.2008, he arrested A-5 and sent her to judicial custody. Then, he altered the FIR into one under Sections 302 r/w 120-B, 364, 302, 201 IPC and prepared alteration report[Ex.P32] and sent the same to the Jurisdictional Judicial Magistrate. Subsequently, P.W.25 sent the skull of the deceased for superimposition test. Then, he handed over the investigation to P.W.26, his successor. P.W.26, incharge Inspector of Police, attached to Perundurai Police Station, continued the investigation, examined some more witnesses and recorded their statements. After completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 28 witnesses were examined, 35 documents were marked and 13 material objects were marked and Court documents 9 were exhibited.

4. Out of the above said witnesses examined, P.W.1 is the Village Administrative Officer. According to him, on information he went to the lake and found a dead body floating and immediately he gave a complaint before the respondent police. P.Ws.2 and 3 turned hostile. P.W.4 is the president of the Village. He has spoken about the building plan approval given in favour of the deceased. P.W.5 is another Villager. He found the dead body floating in the lake. P.W.6 turned hostile. P.W.7 is the mother of the deceased. She has spoken about the illicit intimacy between A1 and A5. P.W.8 is the uncle of the deceased. He has spoken about the dispute between the deceased and A1 and also illicit intimacy between the first accused and the 5th accused. According to him, he could not identify the dead body as that of the deceased. P.W.9 is the learned Judicial Magistrate, Bhavani, who recorded the statement of P.W.2 under Section 164 Cr.P.C. P.W.10 is the sister of the deceased. According to her, on 20.01.2008 at about 9.30. p.m., A-1 took the deceased from his house under the guise of catching crane in the lake. P.W.11 is the Sub Registrar. He has spoken about the copies of the documents having been handed over by the investigating officer. P.W.12 is a person, who brought back the dead body from the middle of the lake. P.W.13 is the photographer. According to him, he took photograph of the dead body. P.W.14 is the Village Administrative Officer. According to him, he witnessed the arrest of

A1 and recovery of material objects. P.W.15 is the Doctor working in the Government Hospital, Tiruppur. According to him, he conducted postmortem on the dead body of the deceased and issued postmortem certificate. P.W.16 turned hostile. P.W.17 is a close relative of the deceased. He has spoken about the missing of the deceased. P.W.18 is the head constable working in the respondent police, who submitted the first information report to the Judicial Magistrate Court. P.W.19 is the Head Constable working in the respondent police station, who identified the dead body for postmortem. P.W.20 is the Head Clerk working in the Judicial Magistrate Court, Perunthurai. According to him, he sent the material objects for chemical examination. P.W.21 is the Sub Inspector of Police working in the respondent police station. In his evidence he has stated that on receipt of the complaint from the Village Administrative Officer, he registered a case and sent the first information report to the Judicial Magistrate Court and copies of the same were forwarded to the higher police officials. P.W.22 is the Scientific Officer working in the Forensic Department, Chennai. According to him, he conducted super imposition test of the dead body and gave a report. P.W.23 is the Inspector of Police attached to the respondent police. He has stated that he conducted investigation, examined the witnesses and recorded their statements. P.W.24 is the Inspector of Police working in the

respondent police station. According to him, on receipt of the case records, he continued the investigation, conducted inquest over the dead body and prepared inquest report, examined some witnesses and recorded their statements. Then, he handed over the investigation to P.W.25 his successor. P.W.25 has stated that he continued the investigation, arrested the accused and recovered the material objects, altered the Section and sent the alteration report to the Judicial Magistrate Court, sent the material objects for chemical examination and then handed over the investigation to P.W.26 the Inspector of Police. P.W.26 continued the investigation, examined the witnesses and recorded their statements. After completion of investigation, he laid charge sheet against the accused. P.W.27 is the Revenue Divisional Officer. He has spoken about the transfer of patta in favour of the deceased. P.W.28 is the hand writing expert, who compared the hand writing of the witness to the document.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not examine any witness but marked one document on their side.

6. Having considered all the above materials, the Trial Court acquitted accused 1,2,3 and 5 from the charges levelled against them. Challenging the above order of acquittal, P.W.8 has filed this appeal before this Court.

7. We have heard Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State/1st respondent but there is no representation for the appellant as well as respondents 2 to 5. We have also perused the records, carefully.

8. It is a case based on circumstantial evidence. P.W.2 is said to be the sole eye witness to the occurrence, but he turned hostile. In respect of other circumstance relied upon by the prosecution, P.Ws.3, 6 and 8, who are said to have seen the accused and the deceased together at the time of occurrence, have turned hostile. Likewise P.W.16, who is said to be the person who took fishing rights on lease and sublet the same to A-1 also turned hostile. Hence, the last seen together theory is not proved by the prosecution.

9. Now, the evidence of P.W.7/the mother, P.W.8 and P.W.10 the sister of the deceased have to be considered. They have only spoken about the illicit intimacy between A1 and A5,

quarrel between A1 and the deceased. Based on the above evidence, this Court cannot come to a conclusion that it is only these accused who could have murdered the deceased. Having considered all the above evidence elaborately, the trial Court has come to the conclusion that the prosecution has failed to prove the case beyond any reasonable doubt, and acquitted the accused.

10. It is a case of appeal against acquittal. It is settled law that in a case of acquittal, there is double presumption in favour of the accused. Firstly, every accused person should be presumed to be innocent, unless he or she is found to be guilty by a competent court of law. Secondly, the accused having secured an order of acquittal, the presumption of innocence is in their favour, as reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court and the benefit of doubt has to be extended in favour of the accused. But, in the instant case, absolutely, there is no evidence to point the guilt of the accused and the trial Court, after considering the entire evidence, has acquitted the accused. Hence, we find no perversity in the judgment of the trial Court. In the above said circumstances, we find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

11. In fine, this appeal is dismissed. The order of acquittal passed in S.C.No.42 of 2009 by the learned II Additional Sessions Judge, Erode, stands confirmed.

(S.N.J.,) (V.B.D.J.,)

28.07.2016

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To

- 1.The II Additional Sessions Judge,
Erode.
- 2.The Inspector of Police,
Uthukkuli Police Station,
Erode District.
- 3.The Public Prosecutor,
High Court, Madras.

S.NAGAMUTHU.J.,

and

V.BHARATHIDASAN.J.,

rrg

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