

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU  
AND  
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.632 of 2014

Sampath Kumar

..Appellant/Sole Accused

-vs-

State rep.by  
Inspector of Police,  
Kavundapadi Police Station,  
Erode District.  
(Crime No.296 of 2011).

..Respondent/Complainant

Appeal under Section 374(2) of the Code of Criminal Procedure, against the judgment passed in S.C.No.147 of 2012 dated 20.02.2013, on the file of the learned I Additional Sessions Court, Erode.

For Appellant :: Mr.Philip Ravindran Jesudoss

For Respondent :: Mr.M.Maharaja,  
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by  
S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.147 of 2012 on the file of the I Additional Sessions Court, Erode. He stood charged for the offences under Sections 302 and 201 IPC. By judgment dated 20.02.2013, the Trial Court convicted the appellant on both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment, for the offence under Section 302 IPC and also to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month, for the offence under Section 201 IPC.

2.Challenging the conviction and sentence imposed, the appellant is before this Court with this appeal.

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

The deceased was one Mrs.Kogila. The accused is her husband. They were residing at Poomantakavundanur Village in their ancestral house. The deceased had developed illicit intimacy with one Ranjithkumar @ Ganesan. Enraged over the same, according to the case of the prosecution, the accused decided to do away with the deceased. Accordingly, on 26.08.2011, at about 03.30 p.m., when the deceased was alone in the house, the accused dropped a huge stone on her head. Then he took the body and threw it into a well. The occurrence was not witnessed by anyone. The dead body of the deceased was found floating in the well around 10.30 a.m.on 27.08.2011, by P.W.2. He informed the same to P.W.1. P.W.1 went to the place of occurrence, verified the said fact and then went to Kavundapadi Police Station, and made a complaint under Ex.P1. On receipt of the same, P.W.11, the then Sub-Inspector of Police, registered a case in Crime No.296 of 2011 under Section 174 Cr.PC (Suspicious death) under Ex.P18. He forwarded both Exs.P1 and P18 to the Court, which were received by the learned Magistrate at 02.35 p.m. on 27.08.2011.

4.P.W.12 took up the case for investigation. He proceeded to the place of occurrence and prepared a rough sketch and an observation mahazar in the presence of P.W.4 and another witness. Then, he lifted the body from the well with the help of others. The identity of the body was not known. He arranged for a photographer to photograph the dead body and the well from various angles. Then he conducted inquest over the body of the deceased and forwarded the same for conducting post mortem. P.W.8-Dr.Krishnamurthy, conducted autopsy on the body of the deceased on 28.08.2011 at the Erode Government Hospital at 9.30 a.m. He found the following injuries:

“External examination:

(i)Laceration right eye brow 2 x 1 x .5 cm (ii) Laceration 3 x 2 x 1 cm at right ..... region (iii)Contusion below right eye 4 x 4 cm. Whole body is swollen and oedematous. Skin of almost all areas are peeled off from the underlying tissue. Mouth, eyes, eyelids swollen. Tongue swollen and outside the mouth. Abdomen distended. Ribs intact. Heart 320 gm. Congested, Right Lung 530 gms and left lung 500 gms both congested. Both enlarged in size and voluminous. Hyoid bone broken and pressed. Stomach contains partly digested rice particles. Liver 1600 gms congested. Spleen 190 gms congested. Kidney right 130 gms left 140 gms

congested. Bladder empty. Uterus normal in size & C.S.empty.

Skull (1)Bone upto 4 cm in right ..... part extended upto right frontal bone and superior wall of right orbit. (2)Nasal bone depressed (3)Right eye ball protrudes out of the socket. Both liquefied ..... Putrifying smell. Viscera, blood and hyoid have ....."

5.Ex.P11 is the Post Mortem Certificate. Ex.P12 is the Final Opinion regarding the cause of death. According to the Doctor, the above injuries on the body of the deceased could have been caused by drop of a stone on the head of the deceased. He further opined that the death of the deceased was due to shock and haemorrhage due to head injury.

6.During the course of investigation on 28.08.2011, at about 01.00 a.m., the father and sister of the deceased came to the hospital and identified the dead body. P.W.12 altered the case into one under Section 302 IPC. On 28.08.2011 at 5.00 p.m., he arrested the accused. After the arrest, the accused gave voluntary confession in the presence of P.W.1 and another witness. In the said confession, he disclosed the place where he had hidden the stone. In pursuance of the same, he took the police and other witnesses to Poomantakavundanur Village and produced the stone (M.O.1) and the mat (M.O.8) and the same were recovered under a mahazar. Thereafter, P.W.12 handed over the material objects to the Court. Then he made a request to the Court to forward the material objects for chemical examination. He forwarded a report that there were blood stains on the lungi and nighty alone and blood stains were not noticed in any other material objects including the stone and mat. On completing the investigation, he laid the charge sheet.

7.Based on the above materials, the Trial Court framed charges under Sections 302 and 201 IPC against the accused. He denied the same as false. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 22 documents and 22 material objects were marked.

8.Out of the said witnesses, P.W.1- Village Administrative Officer has spoken about the fact that the dead body of the deceased had been found in the well at 10.30 a.m.on 27.08.2011. He has further spoken about the arrest of the accused and the recovery of stone on the disclosure statement made by the accused. P.W.2 had stated that he only noticed the body in the well and informed the same to P.W.1. P.W.3 has also stated that he found the dead body of the deceased at 10.00 a.m.on 27.08.2011 in the well. P.W.4 has spoken about the preparation of observation mahazar and rough sketch. P.W.5 has also spoken about the said fact. P.W.6 is the sister of the deceased. She

stated that she identified the body as that of the deceased. P.W.7 is the neighbour of the deceased. According to him, 1 ¼ years before the occurrence, on one night, when he was sleeping in his house, he heard the accused and the deceased quarrelling in their house and after 15 minutes he heard a bang and then he came to know that the deceased was found dead in the well. P.W.8 has spoken about the post mortem conducted on the body of the deceased. P.W.9-the Scientific Assistant has stated about the chemical examination conducted on the material objects. P.W.10 has stated that he took the dead body and handed over the same to the doctor for post mortem. P.W.11 has spoken about the registration of the case. P.W.12 has spoken about the investigation done and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.PC, he denied the same as false. However, no witnesses were examined and no documents were marked on the side of the defence. His defence was total denial.

10. Having considered the materials available on record, the Trial Court convicted the appellant on both the charges, and that is how, he is before this Court.

11. We have heard the learned counsel for the appellant, learned Additional Public Prosecutor for the respondent and also perused the records carefully.

12. This is a case based on circumstantial evidence. It is needless to over-emphasise that in a case of this nature, it is the duty of the prosecution to prove the circumstances projected by it beyond reasonable doubts forming a complete chain pointing to the guilt of the accused. In this case, the prosecution relies only on the evidence of P.W.7. He has stated that about 1 ¼ years before, on one night, he heard the accused and the deceased quarrelling in their house and after 15 minutes he heard a bang and then he came to know that the deceased was found dead in the well. He has not seen the occurrence. There is no other evidence clinchingly pointing to the guilt of the accused.

13. The learned counsel for the appellant/accused would submit that the Trial Court has convicted the accused merely on surmises. We find force in the said argument. Under Article 21 of the Constitution of India, the accused should be given a fair trial and such fair trial includes proof of guilt beyond reasonable doubts. The law does not permit the accused being convicted on mere surmises. Here, in this case, as rightly pointed out by the learned counsel for the appellant, though there is no evidence pointing to the guilt of the accused, the Trial Court has convicted the accused only on surmises, which cannot be allowed to sustain. Thus, we do not find any evidence

at all against the accused proving his guilt beyond reasonable doubt. Therefore, the appellant is entitled for acquittal.

14.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.147 of 2012 dated 20.02.2013, on the file of the learned I Additional Sessions Court, Erode, are set aside and the appellant is acquitted from all the charges levelled against him. The fine amount, if any paid by the appellant, shall be refunded back to him.

-s/d-

Assistant Registrar (CSIV)

True Copy

Sub-Assistant Registrar

KM

To

- 1.The Inspector of Police,  
Kavundapadi Police Station,  
Erode District.
- 2.The I Additional Sessions Judge, Erode
- 3.-do- Thro The Principal Sessions Judge  
Erode
- 4.The Judicial Magistrate No.2  
Gobichettipalayam
- 5.-do- Thro The Chief Judicial Magistrate  
Erode
- 6.The Superintendent Central Prison Coimbatore
- 7.The District Collector Erode
- 8.The Director General of Police,  
Mylapore Chennai-4
- 9.The Public Prosecutor High Court Madras

+1 cc to Mr.Philip Ravindran Jesudoss Advocate sr 30631

CrI.A.No.632 of 2014

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