

Crl.A.No.459 of 2015

That the Appellants herein/Accused 6 & 9 Viz., 1) Veerabhadran (A6) and 2) Murugan (A9) were directed to be released on bail as per the order of this Court dated 27.07.2015 and made in M.P.No.1 of 2015 in Crl.A.No.459 of 2015.

Crl.A.No.460 of 2015

That the Appellant herein/Accused 8 Viz., Thangaraj was directed to be released on bail as per the Order of this Court dated 27.07.2015 and made in M.P.No.1 of 2015 in Crl.A.No.460 of 2015.

Crl.A.No.462 of 2015

That the Appellant herein/Accused 7 Viz., Ramakrishnan aged about 59 years was directed to be released on bail as per the Order of this Court dated 27.07.2015 and made in M.P.No.1 of 2015 in Crl.A.No.462 of 2015 as stated within.

Crl.A.No.464 of 2015

That the Appellant herein/Accused 1 Viz., Seetu @ Elango aged 48 years was directed to be released on bail as per the Order of this Court dated 18.08.2015 and made in M.P.No.1 of 2015 in Crl.A.No.464 of 2015 as stated within.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.459, 460, 462 & 464 of 2015

1. Veerabhadran (A6) ... Appellants in Crl.A.459 of 2015
2. Murugan (A9) ... /Accused 6 & 9
Thangaraj (A8) ... Appellant in Crl.A.460 of 2015
... /Accused 8
Ramakrishnan (A7) ... Appellant in Crl.A.462 of 2015
... /Accused 7
Seetu @ Elango (A1) ... Appellant in Crl.A.464 of 2015
... /Accused 1

- Vs -

State rep by Inspector of Police,
Kallavi Police Station,
Krishnagiri District.
(Cr.No.174 of 2005)

... Respondent in all the Crl.Appeals
/Complainant

Prayer:- Appeals filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional Sessions Judge, Krishnagiri in S.C.No.127 of 2009 dated 09.07.2015.

For Appellants : Mr.L.Baskaran
in Crl.A.No.459/15

For Appellants : Mr.B.Manoharan
in Crl.A.No.460/15

For Appellants : Mr.L.Baskaran for Mr.J.Ramesh
in Crl.A.No.462/15

For Appellants : Mr.V.Paarthiban
in Crl.A.No.464/15

For Respondent : Mr.M.Maharaja
in all the appeals Additional Public Prosecutor

C O M M O N J U D G M E N T

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

The appellant in Crl.A.No.464 of 2015 is the first accused, the appellants in Crl.A.No.459 of 2015 are the accused 6 and 9, the appellant in Crl.A.No.462 of 2015 is the seventh accused and the appellant in Crl.A.No.460 of 2015 is the eight accused in S.C.No.127 of 2009 on the file of the learned Additional Sessions Judge, Krishnagiri. Including these appellants, there were a total number of ten accused in the case. The trial Court has framed as many as three charges as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1	302 of IPC
2	A2 to A10	176 of IPC
3	A2 to A10	302 r/w 201 of IPC

One accused by name Devaraj died during the trial and thus the charges framed against him stands abated and the array of the accused were re-arranged and thus these appellants are arrayed as accused 1 and 6 to 9. By judgment dated 09.07.2015, the trial Court convicted these appellants alone as detailed below:

Rank of the Accused	Penal provision (s) under which convicted	Sentence
A1	302 of IPC	Imprisonment for life and to pay a fine of Rs.10,000 in default to undergo rigorous imprisonment for one year.
A6 to A9	302 r/w 201 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.3,000 in default to undergo simple imprisonment for six months.
	176 of IPC	Simple Imprisonment for one month and to pay a fine of Rs.500 in default to undergo simple imprisonment for one week.

The trial Court acquitted the rest of the accused from all the charges. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

2.1. The first accused is a resident of Nagamarathupalayam village. The second accused is the wife of the third accused. The deceased in this case was one Elaiyarasan aged ten years. They were also residing in the same village. P.W.1 is the brother of the third accused. The wife of P.W.1 is one Mrs.Veeramani. It is alleged that the first accused had illicit intimacy with Mrs.Veeramani. This came to the knowledge of her husband viz., P.W.1. P.W.1 informed the same to the third accused. The accused 4 and 5 are the other brothers of the third accused. The accused 3 to 5 warned the first accused not to have any such illicit relationship with Mrs.Veeramani. The first accused was aggrieved over the same. It is alleged that on account of the grudge against the third accused, the first accused decided to kill Elaiyarasan, the ten years old son of the third accused.

2.2. It is the further case of the prosecution that on 13.05.2005 at 09.45 a.m., in the mango grove belonging to one Govindaraj, the first accused strangled the deceased by using a cloth as a ligature and killed him. Thus, according to the prosecution, the first accused committed murder of the deceased.

2.3. It is the further case of the prosecution that the accused 2 to 10 were aware of the fact that the deceased was murdered by the first accused. But willfully, they did not make any complaint to the police. Thus, according to the

prosecution, the accused 2 to 10 committed offence punishable under Section 176 I.P.C.

2.4. It is the further case of the prosecution that with a view to erase the evidence and to screen the first accused, the accused 2 to 10 took the dead body of the deceased to a cremation ground and cremated it as though it was a natural death. Thus, according to the case of the prosecution, the accused 2 to 10 have committed offence punishable under Section 302 r/w 201 I.P.C.

2.5. The occurrence was not witnessed by anyone. P.W.1 was informed by the owner of the mango grove Mr.Govindaraj that the deceased had committed suicide by hanging in his mango grove. According to the case of prosecution, P.W.1 went to the occurrence village at 04.00 p.m. The dead body has been brought to the house of the deceased. The Village Administrative Officer and other villagers were very much available. The villagers were of the impression that the deceased had died a natural death. But P.W.1 had a doubt about the cause of death. However, the villagers more particularly the accused 2 to 10 took the dead body and cremated the same. Thereafter, complaint was made by P.W.1 on 21.05.2005 at 03.00 p.m.

2.6. P.W.13 the then Sub Inspector of Police, Kallavi Police Station registered a case in Crime No.174 of 2005 under Section 174 Cr.P.C., 176 and 201 I.P.C. Ex.P14 is the F.I.R. He forwarded both the documents to Court. The investigation was taken up by P.W.15 and on completing the investigation, he laid chargesheet against all the ten accused.

2.7. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 21 documents were marked. No material objects were marked.

2.8. Out of the said witnesses, P.W.1 the uncle of the deceased has turned hostile and he has not supported the case of the prosecution in any manner. P.W.2 has also turned hostile and she has not supported the case of the prosecution in any manner. P.W.3 is the grandmother of the deceased. She has stated about the illicit relationship between Mrs.Veeramani and the first accused and the motive. She has stated that on the day of occurrence, she went to the house of the deceased and found the dead body of the deceased laid before his house. Then the body was cremated, she has stated. P.W.4 has stated that on one day, the first accused was talking to Mrs.Veeramani and told her that he had finished the life of the deceased as planned. According to P.W.4, he overheard the same.

2.9. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has also spoken about the illicit relationship between Mrs.Veeramani and the first accused. P.W.7 has stated that on the day of occurrence, when she went to the mango grove, she found the deceased sitting in the mango grove. At that time, she found a cloth around the neck of the deceased. She gave water but there was no response from him. P.W.8 the learned Magistrate has spoken about the statement recorded by him under Section 164 Cr.P.C. from Mrs.Veeramani. P.W.9 has turned hostile and he as not supported the case of the prosecution in any manner. P.W.10 has stated that on the request of the investigating officer, he visited the cremation ground and from where he collected only few bones and ash and sent the same for chemical analyses. The report revealed that the bone was that of a person aged 10 years.

2.10. P.W.11 has spoken about the statement recorded under Section 164 Cr.P.C. from few more witnesses. P.W.12 is the forensic expert who has stated that she examined the bones and gave opinion that the bone was that of a human being aged 10 years. P.W.13 had spoken about the registration of the case and the preliminary investigation done by him. P.Ws.14 and 15 have spoken about the further investigation done. P.W.16 has stated that on the day of occurrence, she found the deceased in the mango grove laying unconscious and within a short while he died.

3. The second accused examined herself as D.W.1. In her evidence, she has stated about the motive between the first accused and her husband viz., the third accused. She has further stated that on the day of occurrence, one Punitha informed her that the deceased was crying in the mango grove. According to her, immediately she went to the mango grove and found the first accused strangulating the deceased. On seeking D.W.1, the first accused fled away from the scene of occurrence. Since the deceased died instantaneously, she did not take him to the hospital. Then, she informed her husband about the occurrence.

4. D.W.2 is the third accused in the case. He has also spoken about the motive between him and the first accused on account of the illicit relationship the first accused had with Mrs.Veeramani. He has stated that on 13.05.2005 at 11.00 p.m. he returned to the house after work. His wife (D.W.1) was weeping, when he enquired, D.W.1 told him that the first accused had killed the deceased. She further told that the accused 6 to 9 had cremated the dead body. Then, he gave a complaint to the police. Thus, according to him, it was the first accused who killed the deceased.

5. Based on the above material, the trial Court convicted the appellants herein as detailed in the first paragraph of this judgment and that is how, they are before this Court with these appeals.

6. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

7. As we have elaborately discussed herein above, there is no evidence from the prosecution to prove that it was the first accused who caused the death of the deceased. Expect proving that there was motive between the first accused and the third accused, there is no other evidence let in by the prosecution. Even the cause of the death of the deceased also has not been proved by the prosecution. But curiously, the trial Court has convicted the accused on the basis of the evidence of D.Ws.1 and 2, who are accused 2 and 3 and they are the parents of the deceased.

8. The trial Court has committed a serious illegality in allowing D.W.1 and D.W.2 to depose against these appellants who are the co-accused. Section 315 of the Code of Criminal Procedure which declares a witness as a competent witness reads as follows:

"Section 315. Accused person to be competent witness. (1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that-

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence

shall not be made the subject or any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry."

9. A close reading of the sub-sections of Section 315 Cr.P.C. would make it undoubtedly clear that an accused shall be a competent witness for the defence and he may give evidence on oath either in disproof of the charges made against him or any person charged together with him at the time of trial. Except to the said limited extent, the accused is not competent to speak about any other fact in proof of the charges against the co-accused.

10. In the instant case, the charge against the accused 2 and 3 is that without informing the police that the first accused had murdered the deceased, they cremated the dead body. Thus, D.W.1 and D.W.2 along with other accused except A1, have committed offences punishable under Section 176 I.P.C and Section 201 r/w 302 I.P.C. But a reading of the evidence of D.Ws.1 and 2 would go to show that they have not stated anything to disprove these two charges. They have given evidence only in proof of the Charge No.1 for offence under Section 302 I.P.C. against the first accused.

11. Further, it is too fundamental that if any incriminating evidence brought on record during the course of trial is to be used against the accused, the same should be put to the accused under Section 313 Cr.P.C. This is in tune with the principles of Natural Justice and in tune with Article 21 of the Constitution of India, which guarantees a fair trial. An incriminating circumstance or evidence which has not been put to the accused under Section 313 Cr.P.C. calling upon him to offer his explanation, cannot be used against him at all. Here, in this case, obviously the evidences of D.Ws.1 and 2 were not put to the first accused. At any rate, the evidence of the co-accused spoken in proof of the charge against the first accused ought not to have been allowed to be spoken as it violates the mandate of Section 315 Cr.P.C. Thus, the conviction of the first accused based on the evidences of D.Ws.1 and 2 is illegal and therefore the same is liable to be set aside.

12. Similarly, the conviction of the other appellants is also liable to be set aside because there is no proof that the deceased was murdered.

13. In view of the above facts, the prosecution has failed to prove the charges against any of these appellants and therefore, they are entitled for acquittal.

14. In the result,

(i) The appeals are allowed, the conviction and sentence imposed on the appellants / accused 1 and 6 to 9 by the learned Additional Sessions Judge, Krishnagiri in S.C.No.127 of 2009 dated 09.07.2015 is set aside and they are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bond, if any executed, by the appellants / accused 1 and 6 to 9, shall stand discharged.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions Judge,
Krishnagiri.
2. Do Through The Principal Sessions Judge,
Krishnagiri.
3. The District Munsif Cum
Judicial Magistrate, Uthangarai.
4. Do Through The Chief Judicial Magistrate,
Krishnagiri.
5. The Inspector of Police,
Kallavi Police Station,
Krishnagiri District.
6. The Superintendent,
Central Prison, Vellore.
7. The District Collector,
Krishnagiri District.
8. The Director General of Police,
Mylapore, Chennai 04.

9. The Public Prosecutor,
Madras High Court.

+2cc's to M/s.L.Baskaran, Advocate, S.R.No.41013

+1cc to Mr.T.Venkatesan, Advocate, S.R.No.41015

+1cc to Mr.B.Manoharan, Advocate, S.R.No.41199

Cr1.A.Nos.459, 460, 462 & 464 of 2015

UG(CO)

CA(07/10/2016)