

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-08-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.154 of 2016

Subash Gandhi @ Subash ... Appellant/Accused

-vs-

The State of Tamil Nadu,
rep.by the Inspector of Police,
B-2, Vishnu Kanchi Police Station,
Kancheepuram District.
Crime No.504 of 2011.

Respondent/Complainant

Appeal filed under Section 374(2) CRPC against the judgment, dated 05.02.2016, made in S.C.No.2 of 2012 on the file of Sessions Judge-II, Kancheepuram.

For appellant : Mr.K.M.Suberamaniam

For respondent : Mr.E.Raja,
Additional Public Prosecutor.

JUDGMENT

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

The appellant is the sole accused in S.C.No.2 of 2012 on the file of Sessions Court-II, Kancheepuram. He stood charged for the offences under Sections 302 and 380 IPC. By judgment, dated 05.02.2016, the trial Court convicted him for both the charges and sentenced him to undergo imprisonment for life and pay fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 302 IPC; and to undergo rigorous imprisonment for five years and pay fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for three months for the offence under Section 380 IPC. Challenging the said conviction and sentence, he is before this Court with this appeal.

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

2.1. P.W.1, Jayasree is a resident of Chinna Kancheepuram village. She married one Mr. Ananthapadmanabhan in the year 1998. The deceased Aravind Harshith was born out of the said wedlock. In the year 2007, she divorced Mr. Ananthapadmanabhan and, thereafter, she married one Krishnaraj. Thus, P.W.1 was residing with Krishnaraj at Chinna Kancheepuram village with the deceased Aravind Harshith. She was working as a teacher in a computer institute. The accused herein was a student of the said institute for sometime. The deceased was studying in a local school. Everyday, at 08.45 a.m., the deceased used to go to the school and return in the evening. On 18.08.2011, as usual, at 08.45 a.m., she sent the deceased to the school and then she went to her workplace. It was her practice to lock the house and hand over the key to her neighbour (P.W.3). On that day also, she gave the key to P.W.3. During lunch time, around 01.30 p.m., she came to the house, got the key from P.W.3, opened the house, had her lunch and again locked the house, handed over the key to P.W.3 and went to school. Her husband Krishnaraj was not at home at that time. She returned to her house only at 08.45 p.m. To her shock, she found the main door of the house kept open. When she entered into the house, she found the deceased lying in the kitchen. His head was fully covered with a polythene bag and tied around the neck. She immediately removed the bag (M.O.1), by untying the wire (M.O.2). She sprinkled water on the face of the deceased, but, there was no response. She found the bureau in the house broke open and the things in the bureau were lying in disarray. She raised an alarm. The neighbours and her husband rushed and they took the deceased in 108 Ambulance to the hospital. But, the doctor declared him already dead.

2.2. Immediately, P.W.1 went to Vishnukanchi Police Station and made a complaint at 10.00 p.m. on 18.08.2011. P.W.16, the then S.I. of Police, on receipt of the said complaint, registered a case in Crime No. 504 of 2011, for the offences under Sections 302 and 380 IPC. Ex.P-12 is the F.I.R. He forwarded both the documents, namely, the F.I.R. and the complaint to the Court and handed over the Case Diary to P.W.21 for investigation. P.W.21 took up the case for investigation. At 10.45 p.m., on 18.08.2011, he went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.2 and another witness. He arranged for photographer to take photographs at the place of occurrence. He recovered the polythene bag and the wire, which was used to tie the bag around the neck of the deceased under a mahazar (vide M.Os.1 and 2). Then, he conducted inquest on the body of the deceased and forwarded the same to the doctor, for post-mortem. P.W.17, Dr. Tamilvanan, conducted autopsy on the body of the

deceased on 19.08.2011 at 12.00 Noon. He found the following injuries.

"1. A transverse reddish brown ligature abrasion seen over middle of neck, all around it, measuring 26 x 0.5 cm x 1 cm 4 cm above suprastructural notch, 5 cm below occipital protuberance. 2. Oblique ligature abrasion seen front of right side of nose 3 x 3 cm. 3. Diffusive reddish brown contusion over upper part of neck 4 x 3 x 1 cm. 4. Reddish brown abrasion over front of upper part of chest right 6 cm x 4 cm. 5. On dissection of injury no.1 - found contusion. Hyoid bone intact, front of thyroid cartilage found contused. 6. Curved abrasion over anterior neck, lower part. 7. Multiple abrasions and parietal hemorrhages over both shoulders right to left and anterior neck and back of neck."

Ex.P-13 is the post-mortem certificate. He gave opinion that the death of the deceased was due to suffocation. He further opined that by covering the head of the deceased with M.O.1 plastic bag and by tying the neck by using the wire M.O.2, due to non-supply of oxygen, the deceased would have died.

2.3. P.W.21 examined many more witnesses. On 24.08.2011 at 06.30 a.m., he arrested the accused in the presence of P.W.8 and another witness. On such arrest, the accused gave a voluntary confession, in which he disclosed the place where he had hidden the covering bangle, green and white stoned covering necklace and red and white stoned covering necklace and cash of Rs.400/-. In pursuance of the said disclosure statement, he took the police and the witnesses to his house and produced M.Os.3 to 8. He recovered the same. On returning to the police station, he forwarded the accused and the material objects to the Court. The material objects were sent for chemical examination. The report revealed that there were bloodstains on the body of the deceased. On completing the investigation, he laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment and the accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined and 25 documents and 11 material objects were marked. Out of the said witnesses, P.W.1 is the mother of the deceased, who has stated that the deceased was lying dead in the house at 08.45 p.m. on 18.08.2011. She has further stated about the missing of M.Os.3 to 8 in the house. She further stated that the bureau in the house was broken and kept wide open. She has further stated that the head of the deceased was covered by M.O.1 plastic bag and the same was tied around the neck, by using M.O.2 wire. P.W.2 is a neighbour. He has stated that on hearing the alarm

raised by P.W.1, he went to the house of the deceased and found the deceased lying dead. He has also stated that the head was covered by M.O.1 polythene bag and the same was tied around the neck by M.O.2 wire. He has further stated that he helped P.W.1 to take the deceased to the hospital. P.W.3 is also a neighbour. She has stated that P.W.1 used to give the key of her house to P.W.3 everyday, before going to school. She has also stated that on 18.08.2011, P.W.1 came to her house, obtained the key, opened her house and after having food, she returned the key. She also stated that at 04.00 p.m., the deceased came, obtained the key of the house, opened the house and went inside. Thereafter, she heard the alarm raised by P.W.1 and then she rushed to the house of the deceased, where she found the deceased lying dead. P.W.4 is a resident of Chinna Kancheepuram village. He has stated that on 18.08.2011, around 05.30 p.m., when he was going to a shop along with one Vasudevan, he found the accused near the said shop and when he enquired, the accused told that he had come to the village to meet a college friend. Then, at 06.00 p.m., he came to know about the death of the deceased. P.W.5 is a neighbour, who has stated that on hearing the alarm raised by P.W.1, he rushed to the place and then he took the deceased to hospital. P.W.6 is the biological father of the deceased. He has stated that the deceased was residing with P.W.1 at Chinna Kancheepuram. He has further stated that he came to know about the occurrence later. P.W.7 was the Managing Director of CSC Computer Software Institute, where P.W.1 was working as a teacher. He has stated that the accused, who joined the said institute in the year 2011, did not pay fees for two months. He has further stated that from the month of August, 2011, the accused did not turn up for the institute. P.W.8 has spoken about the arrest of the accused and the consequential recovery of the material objects M.Os.3 to 8, on the confession of the accused. P.W.9 has stated that the accused was residing in his house as a tenant from 15.07.2011 onwards at Kancheepuram Sathankuttai Street. He has further stated that from 18.08.2011 onwards, the accused did not return to the said house. P.W.10 is the Manager of the college where P.W.1 was working and the accused was studying. He has stated that the accused did not pay fees for two months and, therefore, he did not attend the institute after August, 2011. P.W.11 is the Headmaster of the said institute, where the accused was studying. He has also stated the same facts, as spoken by P.W.10. P.W.12 has spoken about the photographs taken at the place of occurrence. P.W.13 has stated that he examined the internal organs of the deceased and found that there was no poison or alcohol in the internal organs. P.W.14 is the forensic expert, who has stated that he examined the material objects, sent to him for chemical examination. He found that there were bloodstains on the bag. P.W.15 is the Sub Inspector of Police. He has stated that handed over the dead body to the doctor for post-mortem, as directed by the investigating officer, after the

inquest was over. P.W.16 spoke on the registration of the complaint of P.W.1. P.W.17 has spoken about the post-mortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.18 has stated that when he was working as a doctor at Chengalpattu Medical College Hospital, he examined the cut muscles on the neck of the deceased. According to his examination, he found that there were contusions in the circutaneous tissues. P.W.19, Dr.Aravindan, has examined the hyoid bone and found that there was no breakage of the same. P.W.20 has stated that he stayed with the accused in a rented house together. He has further stated that from 18.08.2011 onwards, the accused did not return to the house. P.W.21 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness or to mark any document on his side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. That is how, he is before this Court with this appeal.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

6. This is the case based on circumstantial evidence. The first and foremost circumstance is that on 18.08.2011, around 08.45 a.m., the deceased had gone to his school. P.W.1 returned from her institute, opened the house, had her lunch, locked the house and then handed over the key to P.W.3, the neighbour, as per the usual practice. P.W.3 has stated that around 04.00 p.m., the deceased returned from the school. He obtained the key from her, opened the door and went inside the house. Thus, from the evidence of P.W.3, the prosecution has established that the deceased was lastly seen alive at 04.00 p.m. on 18.08.2011 in his house and there was nobody else. From the evidence of P.W.1, it is crystal clear that when she returned from the school, she found the deceased lying in the kitchen. The head was covered by M.O.1 plastic bag and the same was tied around his neck, by using M.O.2 wire. According to the medical evidence, the death was due to asphyxia. The doctor opined that the death was due to non-supply of oxygen due to the covering of the head of the deceased with M.O.1 plastic bag and by tying the neck by using wire M.O.2. Thus, the prosecution has clearly established that the death of the deceased was sometime between 04.00 p.m. and 08.45 p.m. on 18.08.2011.

7. From the evidence of P.W.1, it has been established that the bureau in the house was broken open and the things therein were found lying in disarray. M.Os.3 to 8, which were kept in the bureau were found missing. Probably, the culprit

has mistaken the same as valuable jewels. P.W.1 has mentioned so in the complaint itself. Thus, it has been clearly established by the prosecution that M.Os.3 to 8, which were kept in the bureau in the house of P.W.1 were stolen in the same occurrence. Thus, the person, who caused the death of the deceased, had committed the theft of these jewels also.

8. Now, the question is, who is the perpetrator of the crime ? The movement of the accused in the village was seen by P.W.4. He has stated that around 05.30 p.m., he found the accused in the village. The accused was residing at Kancheepuram Sathankuttai Street. The accused had no business to come to Kancheepuram i.e., the place of occurrence. Thus, the movement of the accused on 18.08.2011 around 05.30 p.m. somewhere near the place of occurrence is the incriminating evidence against him.

9. The accused was arrested by P.W.21 on 24.08.2011 at 06.30 a.m., in the presence of the Village Administrative Officer (P.W.8). On the disclosure statement made by the accused, M.Os.3 to 8, the stolen properties, were recovered from his possession from his house. The properties have been identified by P.W.1 as the stolen properties. P.W.8 has not been cross-examined at all by the accused. Thus, the arrest of the accused, the disclosure statement made by him and the consequential recovery of M.Os.3 to 8 from his possession, as spoken to by P.W.8, have not been disputed at all by the accused.

10. But, the learned counsel for the appellant would submit that during cross-examination, P.W.20 has stated that on 19.08.2011, around 06.30 a.m. itself, the accused was arrested at Chinna Kancheepuram Police Station. Thus, according to the learned counsel, the arrest of the accused on 24.08.2011 and the consequential recovery of the material objects (M.Os.3 to 8), as projected by the prosecution, cannot be true.

11. We are unable to accept the said argument for more than one reason. First of all, P.W.20 was examined in chief on 23.02.2015. On that day, he has stated that the accused was staying with him in a rented house at Kancheepuram Sathankuttai. He has further stated that on 18.08.2011, the accused told him that he was unable to pay the fees to the computer institute and, thus, he was in need of money. He has further stated that after 18.08.2011, the accused never returned to the house. Then, P.W.20 vacated the house on 20.08.2011 itself. According to his chief-examination, he was not aware of the movement of the accused. Curiously, this witness was not cross-examined on the same day by defence. He was cross-examined at the instance of the accused only on 27.10.2015 i.e., after eight months. When he was cross-examined on 27.10.2015, he has stated that on

19.08.2011, the accused was arrested by the police from the same house. He has simply nodded to all the suggestions. He has further stated that his evidence in chief examination that after 18.08.2011, the accused did not return to the house at all is false, because he was tutored by the police to say so. There is no reason stated as to why the accused did not choose to crossexamine P.W.20 on 23.02.2015 itself. The very fact that the accused, without assigning any reason, did not crossexamine P.W.20 on the same day and, instead, recalled him after eight months would go to show that the accused had taken time to win over P.W.20. Further, the fact that P.W.20 had disowned his evidence spoken in chief-examination and that he stated many facts in favour of the accused would go to show that he has turned hostile. But, unfortunately, the learned Additional Public Prosecutor did not choose to seek permission of the court to crossexamine him and to elicit the truth from him. But, the failure of the learned Additional Public Prosecutor to discharge his function would not, in any manner, deter this court from making proper appreciation of the evidence of P.W.20. Since we are fully convinced that this witness has been won over by the accused by taking a long time of eight months, we are unable to attach any importance to what has been elicited during the crossexamination in favour of the accused. Thus, we hold that the accused was arrested only on 24.08.2011 and, on the disclosure statement made by him, from his possession, the stolen properties, namely, M.Os.3 to 8 were recovered. The accused has got no explanation for the same. Therefore, we have to invoke the presumption under Section 114 of the Indian Evidence Act. Thus, it was this accused who committed the murder of the deceased and also the theft of the properties from the bureau in the house of P.W.1. In our considered view, the trial Court was right in convicting the accused for both the offences under Sections 302 and 380 IPC. In respect of the quantum of punishment also, the trial Court has imposed only minimum punishment, which does not require any interference by this Court. Thus, we do not find any merit at all in this appeal.

12. In the result, this appeal fails and it is, accordingly, dismissed. The conviction and sentence imposed on the accused/appellant are hereby confirmed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sessions Judge-II,
Kancheepuram.

2.-do-Thro The Chief Judicial Magistrate
Chengalpattu

3.The Inspector of Police,
B-2, Vishnu Kanchi Police Station,
Kancheepuram District.

4 The Superintendent
Central Prison,Vellore

5.The District collector
Kancheepuram

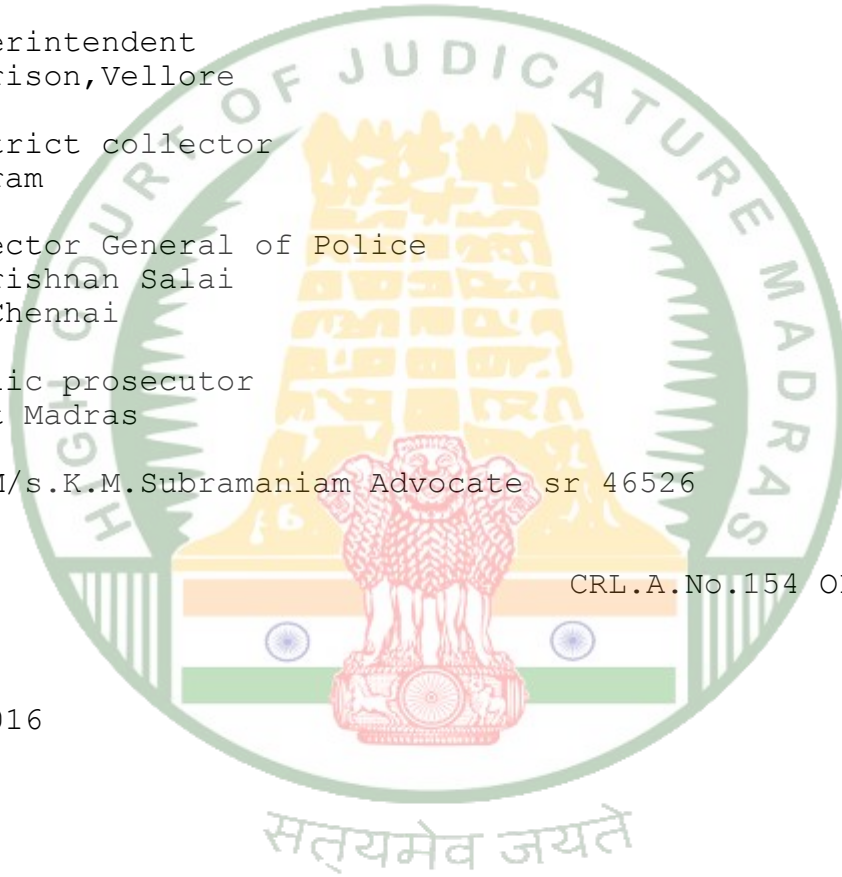
6.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore Chennai

7.The Public prosecutor
High Court Madras

+1 cc to M/s.K.M.Subramaniam Advocate sr 46526

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