

Crl.A.No.159 of 2016

That the Appellant herein/Accused namely Selvam (A3) s/o Arumugam in S.C.No.2 of 2015 on the file of the Session Court (Mahalir Fast Track Court) Erode was released on bail as per order of this Court dated 22/03/2016 in Crl.M.P.No.2152/16 in Crl.A.No.159 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19-09-2016

PRONOUNCED ON : 29-09-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM
AND

THE HONOURABLE MR. JUSTICE P. KALAIYARASAN

Criminal Appeal Nos.159, 215 and 224 of 2016
and Crl.M.P.Nos.3244 and 3457 of 2016

In Criminal Appeal No.159 of 2016:

Selvam ... Appellant/Accused No.3

Vs.

The State rep. by
The Inspector of Police
Kavundapadi Police Station
Crime No.129 of 2014
Erode District

... Respondent/Complainant

In Criminal Appeal No.215 of 2016

1. Manju @ Panchavarnam
2. Mathi @ Mathivanan
3. Sankar

... Appellants/Accused Nos.2,4 & 5

Vs.

The State rep. by
The Inspector of Police
Kavundapadi Police Station
Crime No.129 of 2014
Erode District

... Respondent/Complainant

In CrI.A.No.224 of 2016:

Balusamy

... Appellant/Accused-A6
Vs.

The State by
Inspector of Police
Kavindapadi Police Station
Erode District
Crime No.129 of 2014

... Respondent

Prayer in Criminal Appeal No.159 of 2016:

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 to call for the records on the file of the Sessions Court (Mahalir Fast Track Court), Erode dated 27/1/16 made in S.C.No.2 of 2015 and set aside the same.

Prayer in Criminal Appeal No.215 of 2016:

Criminal Appeal under Section 374 (2) of Cr.P.C., to call for the records relating to the judgment dated 27-01-2006 made in S.C.No.2 of 2015 on the file of the Sessions Court (Mahalir Fast Track Court), Erode and set aside the same.

Prayer in Criminal Appeal No.224 of 2016:

Criminal Appeal under Section 374 (2) of Cr.P.C., to call for the records relating to the judgment dated 27-01-2006 made in S.C.No.2 of 2015 on the file of the Sessions Court (Mahalir Fast Track Court), Erode and set aside the same.

For appellants :: Mr. N. Manoharan
in CrI.A.Nos.159 and 215 of 2016
Mr. V. Gopinath, Senior Counsel
for Mr.I.C. Vasudevan in
CrI.A.No.224 of 2016

For respondent :: Mr. E. Raja, Addl. PP.

COMMON JUDGMENT

These criminal appeals are directed against the convictions and sentences, dated 27-01-2016 passed in Sessions Case No.2 of 2015 by the Additional District/ Mahalir Neethi Manram, Erode.

2. The case of the prosecution is that the first accused by name Dhanaselvi is a sister of deceased Ranganayaki. The defacto complainant, by name Sukumar, is the son of the deceased

and one Panchalingam is her husband. A dispute has arisen in between deceased and first accused in respect of partition of a house. The first accused has had illicit intimacy with the husband of the deceased and due to that, an animosity has been in existence between the families of first accused and deceased. The second accused by name Manchu @ Panchavarnam has used to come to the house of the first accused for having sexual pleasure. Under the said circumstances, on 02-06-2014, all the accused have contrived themselves to murder the said Ranganayaki and in pursuance of their conspiracy, on the same day, at about 3:15 p.m., in Periyar Nagar, Kavundampalayam, the first accused has watched the house of the deceased and ultimately found the loneliness of the deceased. The fourth accused has attacked the deceased and due to his overtacts, she has passed away. The accused 1,2,3,5 and 6 have lent their support to the fourth accused. The accused 4 and 5 have removed the jewels worn by the deceased and also looted her house and subsequently, all the accused have shared the jewels and cash. After occurrence, the son of the deceased by name Sukumar, has given a complaint and the same has been registered by the Special Sub-Inspector of Police in Crime No.129 of 2014. The complaint given by Sukumar has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer (P.W.21) has taken up the investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr. Senthil Kumar (P.W.16) has conducted post-mortem and he found the following external and internal injuries on the person of the deceased:

"External Injuries :

1. 1 x 0.5 cm nail mark line abrasion on left cheek (n.c) are oriented.
2. Multiple small abrasion 5 cm nailmark (n.c) 0.5 x 1 & 0.5 X 0.5 cm right side neck.
3. Two abrasion left side neck 1 x 0.5 cm & 0.5 x 0.5 cm
4. Contusion lower (n.c) neck 3 X 2 c.m
5. Abrasion left (n.c) 0.5 x 1 cm
6. Marks bleed.

A moderately nourished symmetrical (n.c) body Rigor Mortis present and 4 limbs, (n.c) Thorax No fracture ribs, (n.c) intact, heard byoid intact (n.c) Abdomen: Stomach contains 150 gms of partly digested food, Liver congested with Spleen laped (?) intact both Kidney Cor(?), (n.c) loopy partly digested gms, Uterus intact, (n.c) empty on (n.c) skull. No fracture skull bones, Parietal (n.c) to parital region 6 x 10cm (n.c), Brain (n.c) membrane congested intact, (n.c) intact, Hyoid bone preserved for analysis.

The following Viscera sent for Analysis

1. Stomach contents
2. Intestine with contents

3. Sample of liver 4. (n.c) 5. Preservative 6. Hyoid bone 7. Blood sample.

Post mortem concluded at 11.20 a.m. On 3.6.14.

- The deceased should died 15-17 hrs from autopsy
- The deceased would appeared died due to (n.c) pending chemical analysis report."

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The postmortem Certificate has been marked as Ex-P15. During the course of investigation, in the presence of the Village Administrative Officers viz., Govindaraj and Minisamy (P.Ws.12 and 13), the accused have given confession statements and as per their confessional statements, material objects have been recovered. After completing the investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate No.II, Gopichettipalayam and the same has been taken on file in P.R.C.No.16 of 2014.

4. The Judicial Magistrate No.II, Gopichettipalayam after considering the fact that the offences alleged to have been committed by all the accused are triable by Sessions Court committed the case to the Court of Sessions, Erode Division and taken on file in Sessions Case No.2 of 2015 and subsequently, made over to Trial Court.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed the first charge against all the accused under Section 120(b), second charge against the fourth accused under Section 302, third charge against the accused 1, 2, 3, 5 and 6 under Sections 302 read with 34, fourth charge against all the accused under Section 396 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 21 have been examined and Exs-P1 to P31 and M.Os.1 to 21 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The Trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record has invited convictions and sentences against all the accused as set out in the following table:

Accused No.	Convicted under Sections	Sentence Imposed	Fine Amount (in Rs.)
A1	120 B (1) IPC, 302 r/w 34 IPC, 396 IPC	Life Sentence Life Sentence Life Sentence Life Sentence	10,000 10,000 10,000
A2	120 B (1) IPC, 302 r/w 34 IPC, 396 IPC	Life Sentence Life Sentence Life Sentence Life Sentence	10,000 10,000 10,000
A3	120 B (1) IPC, 302 r/w 34 IPC, 396 IPC	Life Sentence Life Sentence Life Sentence Life Sentence	10,000 10,000 10,000
A4	120 B (1) IPC, 302 IPC, 396 IPC	Life Sentence Life Sentence Life Sentence Life Sentence	10,000 10,000 10,000
A5	120 B (1) IPC, 302 r/w 34 IPC, 396 IPC	Life Sentence Life Sentence Life Sentence Life Sentence	10,000 10,000 10,000
A6	120 B (1) IPC, 302 r/w 34 IPC, 396 IPC	Life Sentence Life Sentence Life Sentence Life Sentence	10,000 10,000 10,000

9. The convictions and sentences passed by the Trial Court are being challenged by the accused 2 to 6 by way filing these appeals.

10. The sum and substance of the case of the prosecution is that the first accused by name Dhanaselvi is a sister of deceased Ranganayaki. Prior to occurrence, both of them are having despair in respect of division of a house. The first accused has kept the husband of the deceased as her paramour and due to animosity that existed between the two families, all the accused have contrived themselves to murder the said Ranganayaki and in pursuance of their conspiracy made on 02-06-2014, on the same day at about 3:15 p.m., the fourth accused has entered into the house of the deceased and attacked her and due to his overtacts, she passed away. The remaining accused have lent their support to the fourth accused and further, the fourth and fifth accused have removed all gold jewels worn by the deceased and also looted her house and subsequently, all the accused have shared the jewels and cash taken from the deceased as well as from her house.

11. For the purpose of proving the charges framed on all the accused on the side of the prosecution, P.Ws.1 to 21 have been examined.

12. Even though on the side of the prosecution P.Ws.1 to 21 have been examined, no ocular witness is available in the present case. The entire case of the prosecution is based upon the alleged motive and other available circumstances.

13. The learned counsel appearing for the appellants in Criminal Appeal Nos.159 and 215 of 2016 has raised the following points so as to supplant the convictions and sentences passed by the Trial Court:

(1) The specific case of the prosecution is that with regard to division of house, a despair has been in existence between the first accused and deceased and further, the first accused, prior to occurrence has kept the husband of the deceased as her paramour and even though, such motive has been put forth on the side of the prosecution, the same has not been proved.

(2) On the side of the prosecution, P.Ws.5,7 and 9 have been examined as last seen witnesses and their evidence is not at all sufficient for coming to a conclusion that the accused have committed the offences mentioned in the charges.

(3) The son of the deceased has been examined as P.W.1 and her husband has been examined as P.W.2. None of them has identified the vital material objects alleged to have been recovered from the accused.

(4) All material objects have been belatedly sent to the Court.

14. The learned Senior Counsel appearing for the appellant in Criminal Appeal No.224 of 2016 has sparingly contended that in the instant case except P.W.5, no body has spoken about the overtacts alleged to have been done by the sixth accused and therefore, the convictions and sentences passed against the sixth accused are liable to be set aside.

15. To resile the contentions put forth on the side of the appellants/accused, the learned Additional Public Prosecutor has argued that in the instant case, properties have been sent to Court on 04-06-2014 and the Trial Court after considering the available evidence on record has rightly invited convictions and sentences against all the accused and therefore, the convictions and sentences passed by the Trial Court against the present appellants are not liable to be set aside.

16. As pointed out earlier, the entire case of the prosecution is based upon the circumstantial evidence.

17. In the first charge, it has been specifically mentioned to the effect that with regard to division of a house, dispute has been in existence between the first accused and deceased and further, the first accused prior to occurrence, has kept the husband of the deceased as her paramour. Under the said circumstances, on 02-06-2014, with a view to murder the deceased, all the accused have contrived themselves and in pursuance of their conspiracy, the subsequent crime has been done by all the accused.

18. The first and foremost attack made on the side of the appellants in Criminal Appeal Nos.159 and 215 of 2016 is that in the instant case, the motive alleged on the side of the prosecution has not at all been established. In fact, this Court has perused the evidence of P.Ws.1 and 2, who are none other than the son and husband of the deceased. It is not an exaggeration to say that both of them have not stated even a single word about the alleged motive that existed prior to occurrence between the families of the first accused and deceased. Since the entire case of the prosecution is based upon circumstantial evidence, the motive put forth on the side of the prosecution played a pivotal role, but, unfortunately, the same has not been established. To put it in short, virtually no evidence is available for the purpose of believing the alleged motive put forth on the side of the prosecution. Therefore, the first and foremost contention put forth on the side of the appellant in Criminal Appeal Nos.159 and 215 of 2016 is really having subsisting force.

19. The prosecution has set the law in motion against all the accused only after recording statements under Section 161(3) of the Code of Criminal Procedure, 1973 from P.Ws.5, 7 and 9 and they have been examined for the purpose of proving the alleged last seen theory. It has already been pointed out that in the present case, motive has not at all been established. Under the said circumstances, this Court has to meticulously analyse the last seen theory put forth on the side of the prosecution. The specific evidence given by P.W.5 is that on the date of occurrence, the sixth accused has come to the house of the first accused and both the accused have gone to the house of the first accused. Further, he would say that two or three persons are inside in the house of the first accused. Except the said portion of evidence, P.W.5 has not given any specific evidence so as to connect the accused 1 to 6 with the crime.

20. The evidence given by P.W.7 is that on 02-06-2014 at about 3:00 to 3:45 p.m., he and his son have seen the first accused in front of the house of the deceased. The accused 4 and 5 have also come to the house of the first accused. Except the said portion of evidence, P.W.7 has not given any specific evidence to the effect that he and his son have seen accused 1,4 and 5 with the deceased.

21. The son of P.W.7 viz., Kumar has been examined as P.W.9. He would say in his evidence that he has seen the first accused and two persons. Therefore, it is quite clear that P.W.9 has also not given sufficient evidence so as to accept the last seen theory.

22. The specific contention of the appellants in Criminal Appeal Nos.159 and 215 of 2016 is that P.Ws.5, 7 and 9 have not given any evidence to the effect that they have seen some of the accused with the deceased. In fact, this Court has meticulously analysed the evidence given by P.Ws.5, 7 and 9 and ultimately, found that their evidence is not at all sufficient for coming to a conclusion that the accused mentioned by them have had some connections with the deceased. Therefore, the second contention put forth on the side of the appellants in Criminal Nos. 159 and 215 of 2016 can easily be accepted.

23. The specific case of the prosecution is that in the presence of P.Ws.12 and 13, Village Administrative Officers, most of the material objects (jewels and cash) have been recovered. In fact, some of the material objects have been marked only through P.Ws.12 and 13 and not through P.Ws.1 and 2 and further, P.Ws.1 and 2 have not at all identified the vital

material objects in the Court. Therefore, the third contention put forth on the side of the appellants in Criminal Appeal Nos.159 and 215 of 2016 is also having merit.

24. The fourth contention put forth on the side of the appellants in Criminal Appeal Nos.159 and 215 of 2016 is that all material objects are belatedly sent to the Court.

25. It is seen from the records that some of the material objects have been sent to Court on 04-06-2014, but returned. However, statements of most of the vital witnesses have been belatedly sent to the Court.

26. It is settled principle of law that mere delay in sending material objects to Court itself would not militate the case of the prosecution provided on the side of the prosecution replete and acceptable evidence is available.

27. In the instant case, as objurgated earlier, motive for occurrence has not been established. Further, P.Ws.1 and 2 have not identified the vital material objects. Further, last seen theory by way of examining P.Ws.5, 7 and 9 is not at all sufficient so as to point out the guilt of all the accused. Therefore, virtually on the side of the prosecution, no material evidence is available so as to connect the accused with the crime.

28. Now, the Court has to analyse the arguments advanced on the side of the appellant in Criminal Appeal No.224 of 2016.

29. The learned Senior Counsel appearing for the appellant sparingly contended that except P.W.5, no body has stated anything about the sixth accused.

30. It is an admitted fact that P.W.5 has stated in his evidence that on the date of occurrence he has seen the first and sixth accused in front of the house of the first accused and that itself would not be sufficient for coming to a conclusion that the sixth accused has had connection with the crime. Therefore, the argument advanced by the learned Senior Counsel appearing for the appellant in Criminal Appeal No.224 of 2016 is really having merit.

31. It has already been asserted that motive has not been established; P.Ws.1 and 2 have not identified vital material objects; and most of the material objects have been belatedly sent to the Concerned Court.

32. Now, it would be apropos to look into the role alleged to have been played by P.Ws.12 and 13, Village Administrative Officers. The prosecution has projected its case mainly on the basis of confessions, alleged to have been given by all the accused, coupled with recovery of some material objects. The specific evidence given by P.W.12 is that from some of the accused, the Investigating Officer has recorded confession statements on 04-06-2014 and in pursuance of their confessions recovered some material objects. Likewise, P.W.13 has stated about the confessional statement given by the fifth accused, coupled with recovery of some material objects. As pointed out earlier all the material objects have been marked only through P.Ws.12 and 13 and P.Ws.1 and 2 have not identified the same.

33. At this juncture, the Court has to look into as to whether a mere recovery of material objects would be sufficient to invite convictions and sentences against the appellants/accused.

34. In 2011 (3) SCC 306 (Wakkar Vs. State of Uttar Pradesh), the Honourable Supreme Court has held as follows:

"Recovery itself cannot form basis of conviction. Recovery of incriminating articles has to be considered in light of other relevant circumstances as well as chain of events suggesting involvement of the accused."

35. In the instant case, as marshalled earlier, on the side of the prosecution the following infirmities are found place:

- (i) the motive has not been established;
- (ii) no evidence is available with regard to identification of material objects;
- (iii) no acceptable/trustworthy evidence is available with regard to last seen theory;
- (iv) most of the statements recorded under Section 161(3) of the Code of Criminal Procedure, 1973 have been sent belatedly to the Court.

36. Since the aforesaid infirmities are in existence in the case of the prosecution, as per the dictum given by the Honourable Supreme Court, mere recovery of material objects would not be sufficient for coming to a conclusion that the accused/appellants have committed the offences mentioned in the charges framed against them. Therefore, viewing from any angle, the convictions and sentences passed against the

appellants/accused are not factually and legally sustainable and altogether, the arguments advanced on the side of the appellants /accused are really having acceptable force whereas the arguments advanced by the learned Additional Public Prosecutor is sans merit.

37. The Trial Court without considering the vital infirmities as set out earlier has erroneously invited convictions and sentences against the appellants/accused on the basis of mere recovery of some material objects and the approach made by the Trial Court is totally erroneous and therefore, the convictions and sentences passed by the Trial Court against these appellants/ accused 2 to 6 are liable to be set aside.

38. In fine, these criminal appeals are allowed. The convictions and sentences passed in Sessions Case No.2 of 2015 by the Trial Court against the appellants / accused 2 to 6 are set aside. The appellants/accused 2 to 6 are acquitted. The fine amounts paid by them are ordered to be refunded. The appellants/ accused 2 to 6 are entitled to receive material objects (out of M.Os.3 to 7) recovered from them, by way of filing separate petitions.

39. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

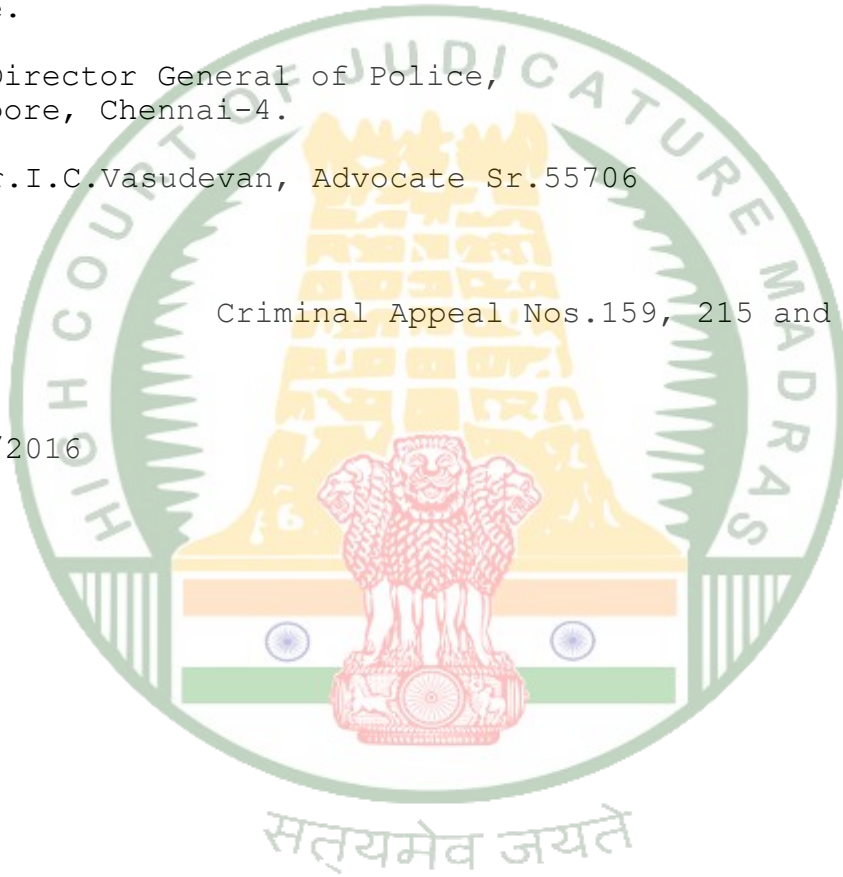
1. The Sessions Judge, (Mahalir Fast Track Court)
Erode.
2. The Judicial Magistrate No.II,
Gobichettipalayam.
3. The Chief Judicial Magistrate,
Erode.
4. The Inspector of Police
Kavundapadi Police Station
Erode.

5. The Superintendent,
Central Prison,
Coimbatore.
6. The Additional Public Prosecutor
High Court, Madras.
7. The Principal District Sessions Judge,
Erode.
8. The District Collector,
Erode.
9. The Director General of Police,
Mylapore, Chennai-4.

+1cc to Mr.I.C.Vasudevan, Advocate Sr.55706

Criminal Appeal Nos.159, 215 and 224 of 2016

nm[co]
srg 07/10/2016



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