

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.184 of 2016

M.Ganesh

.. Appellant / Sole Accused

vs

The State, Rep. By,
The Inspector of Police,
Erode Town Police Station,
Erode District
(Cr. No.147/2013)

.. Respondent / Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, against the judgement of the learned I Additional District and Sessions Judge at Erode, in S.C.No.21 of 2015, dated 06.02.2016.

For Appellant : Mr. N.Manokaran
For Respondent : Mr. E.Raja, A.P.P.,

J U D G M E N T

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

The appellant is the sole accused in S.C.No.21 of 2015 on the file of the learned I Additional District Sessions Judge, Erode. He stood charge for the offence under Sections 302, 201 and 404 IPC. By judgment, dated 06.02.2016, the trial court convicted him under all the three charges and sentenced him to undergo Imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for two years, for the offence under Section 302 IPC, and to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for one year, for the offence under Section 201 IPC and to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for one year, for the offence under Section 404 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The appellant is a resident of Ellapalayam Village in Erode District. The deceased, in this case, was one Mr. Jayaraman, who also hailed from the said village. The accused had borrowed a sum of Rs.35,000/- from the deceased, but did not repay the same. The deceased was demanding repayment of the same. The accused was evasive. This resulted in frequent quarrels between the accused and the deceased. On 02.03.2013, around 10.30 am, the deceased had come to Record Room of Erode Municipality, where the accused was working. On seeing the accused, the deceased demanded repayment of the loan amount. Again, the accused was evasive. This resulted in a quarrel. At the end of the quarrel, it is alleged that the accused took out a wooden log and attacked the deceased indiscriminately, inside the Record Room itself. The deceased died instantaneously. It is further alleged that keeping the dead body of the deceased inside the Record Room, he closed the room around 12.30 pm, came to the shop, purchased two nylon gunny bags, returned to the Record Room, opened the record room and put the dead body in one of the gunny bags. He removed two gold rings worn by the deceased. Then he removed the shirt, lungi and a note-book kept by the deceased. Then, he carried the dead body in the gunny bag and threw it in the drainage situated behind the Municipality Office and then escaped from the scene of occurrence. The occurrence was not noticed by anyone. On 05.03.2013, one Mr. Madeswaran, a Sanitary Worker, while cleaning the drainage, found a gunny bag in the drainage. He informed the same to P.W.1, who was then working as a Sanitary Inspector. After informing the same to his higher-ups, P.W.1, immediately went to Erode Town Police Station and made a complaint at 12.00 noon on 05.03.2013. Ex.P-1 is the complaint and Ex.P-11 is the First Information Report.

3. P.W.12, the then Sub-Inspector of Police, registered a case and forwarded the complaint and the First Information Report to the Court, which were received by the learned Magistrate at 02.00 pm on 05.03.2013. P.W.16, the then Inspector of Police, took up the case for further investigation. He went to the place of occurrence at 12.45 pm, on the same day, and prepared an observation mahazar and a rough sketch in the presence of P.W.8 and another witness. He recovered 2 sachets (containing 12 tablets) and 12 beedies, near the place of occurrence. He recovered two gunny bags. At his request, Police sniffer dogs was brought to the place of occurrence. But, the same turned futile, as it could not get any clue for the investigation. At his request, the Police Photographer came to the place of occurrence and taken photographs. Between 02.45 pm and 04.45 pm, he conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.15, Dr.D.Jaisingh, conducted autopsy on the body of the deceased

around 03.20 pm on 06.03.2013. He found the following injuries:-

"On dissection of scalp, skull and Dura: Sub scalpel contusion reddish in colour 8x4 cm noted over right frontal region and 10x4 cm noted over left occipital region. Brain found liquefied with blood clots, blood tinches noted over surface of the meninges.

Other findings:

- Peritoneal & Pleural cavities - empty.
- Hyoid Bone: Intact.
- Larynx and Trachea: Cut section decomposed.
- Heart - flabby. Cut Section decomposed.
- Stomach contains about 50 grams of early digested rice particles with smell of decomposed, mucosa decomposed.
- Small intestine contains about 10 ml of decomposed fluid with smell of decomposed, mucosa decomposed.
- Spleen, kidneys, Lungs and Liver - cut section decomposed.
- Urinary Bladder - empty.
- Viscera preserved and sent for chemical analysis.
- Right femur preserved for D.N.A. Profile.
- Sternum preserved for diatom test."

4. There was neither poison nor alcohol found in the internal organs of the deceased. Ex.P-22 is the post-mortem certificate. The Doctor, P.W.15 gave opinion that the deceased had died due to head injury. P.W.16 during the course of investigation, went in search of the accused. But he could not be traced. Based on the opinion of the Doctor, who conducted the post-mortem, P.W.16, the Investigating Officer, altered the case into one under Sections 302, 380 and 201 IPC. On 09.03.2013, in the presence of P.W.10 and another witness, he arrested the accused. On such arrest, he gave a voluntary confession, in which he disclosed the place where he had hidden two gold rings, cycle, account book, cloths, wooden log, hook and rope. In pursuance of the same, he took the police and the witnesses to his house and produced the above material objects, from the backyard of the house. On returning to the Police Station, he forwarded the accused to the Judicial remand and also handed over the material objects to the Court. At his request, the material objects were sent for chemical examination. A Deoxyribonucleic Acid (DNA) Examination conducted to confirm the identity of the deceased. The investigation was thereafter continued by P.W.17. P.W.17 examined few more witnesses. Finally, the investigation was taken over by P.W.18. On completing the investigation, P.W.18 laid charge sheet against the accused.

5. Based on the above materials, the trial court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the

prosecution, as many as 18 witnesses were examined and 14 documents were exhibited, besides marking 22 Material Objects. On the side of the accused, two documents, namely, the arrest report, dated 02.03.2013, and arrest memo, dated 09.03.2013 were marked as Exs.D-1 and D-2.

6. Out of the said witnesses, P.W.1 has spoken about the fact that he found the dead body of the deceased in the drainage at 09.45 am. According to him, the dead body was in the gunny bag. He has further stated about the complaint made to the Police. P.W.2 is an auto driver. He has also stated that he found the dead body in the gunny bag lying in the draining on 05.03.2013, around 09.30 am. P.W.3 is the wife of the deceased. She has stated that on 02.03.2013, around 09.45 am to 10.00 am, the deceased left the house to go to Erode Municipality Office to meet the accused to demand the loan amount. In normal course, according to her, the deceased would have returned by 12.30 pm. But he did not return till 03.30 pm. Therefore, she, along with her relatives, went in search of the deceased. But she was not able to locate him anywhere. Therefore, according to her, on 05.03.2013, in Malai Malar News Paper, she found a news item, about lying of a dead body in the gunny bag, behind the Erode Municipality Office. From the photographer, who took the photograph of the dead body, she identified the same to be that of her husband. She has further identified M.Os.1 and 2, the rings, as that of the deceased. P.W.4 has stated that around 10.15 am, on 02.03.2013, he had gone to Municipality Office at Erode and at that time, he meet the deceased in the Municipality Office. At that time, the deceased told that he has come there to meet the accused. P.W.5 is the Watchman in the Municipal Office at Erode. He has stated that on 02.03.2013 around 09.00 am, the accused came to the Municipality Office and he stopped the motorcycle in the cycle-stand and thereafter, he did not see him at all. P.W.6 is the Sanitary Worker. He has also stated that at 06.00 am, when he was cleaning the drainage on 05.03.2013, he found the dead body of the deceased in the gunny bag. P.W.7 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.8 has stated that on 02.03.2013, the accused purchased two gunny-bags from his shop. P.W.9 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of the material objects from the place of occurrence.

7. P.W.10, the Village Administrative Officer, has stated that on 09.03.2013, when she was at his Office, the accused came to him around 10.45 am and made a voluntary confession. She has further stated that she reduced the same into writing and obtained the signature of the accused. Thereafter, according to her, with the said report, she produced him before the Investigating Officer. She has further stated about the arrest of the accused, the disclosure statement made by him and the

consequential recoveries of the material objects.

8. P.W.11 has spoken about the photographs taken at the place of occurrence, as requested by the Investigating Officer. P.W.12 has spoken about the registration of the case on the complaint made by P.W.1. P.W.13, the Head Constable, has stated that he handed over the body for post-mortem as directed by the Investigating Officer. P.W.14, the Head Clerk of the Magistrate's Court, has stated that he forwarded the material objects for chemical examination. According to him, the DNA examination revealed that the dead body found in the gunny bag was that of the deceased. P.W.15 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.Ws.16, 17 and 18 have 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.P.C., he denied the same as false. However, he did not choose to examine any witness and only two documents were marked as Exs.D-1 and D-2. His defence was total denial. Having considered all the above, the trial Court convicted him under all the three charges and that is how, he is before this Court with this Appeal.

10. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. This is a case based on circumstantial evidence. There is no denial of the fact that the deceased left his house to go over to Erode Municipality Office, on 02.03.2013, at about 09.45 am. This has been spoken to by P.W.3, the wife of the deceased. P.W.4 has stated that he saw the deceased in the Erode Municipality Office on 02.03.2013 at 10.15 am. P.W.5, the Watchman, of the Erode Municipality, has stated that he saw the deceased in the Municipality Office on 02.03.2013 at 09.00 am. From these evidences the prosecution has clearly established that, on 02.03.2013, between 09.00 am and 10.15 am, the deceased was lastly seen, alive, in the Office of the Erode Municipality. Thereafter, he was not seen by anyone alive.

12. The dead body of the deceased was found at 09.00 am on 05.03.2013. The identity of the dead body has been established by the DNA examination. The Doctor, who conducted autopsy on the body of the deceased, has stated that the deceased had died due to the head injury. Thus, the prosecution has succeeded in establishing that the deceased had died homicidally, sometime between 10.15 am on 02.03.2013 and 09.00 am on 05.03.2013.

13. Now the question is, "who is the perpetrator of the crime?". In order to prove the case, the prosecution relies on

the evidence of P.W.10, the Village Administrative Officer. P.W.10 has stated that on 09.03.2013, at 10.45 am, when she was at her office, the accused came to her voluntarily and made an oral confession. It is her positive evidence that she reduced the same into writing and then obtained the signature of the accused. It is her further evidence that, along with the covering letter, she produced the accused and the above stated Extra Judicial Confession of the accused to the Inspector of Police. It is stated by her that Ex.P-4 is the said Extra Judicial Confession. But a perusal of Ex.P-4 would go to show that it is not at all the confession of the accused and it is only the report of the Village Administrative Officer. Of course, it carries the signature of the accused. Ex.P-5 is another report. There is no indication in Ex.P-4 that it is in the words of the accused. It is not known as to why the original Extra Judicial Confession, as spoken to by the accused, allegedly, and reduced into writing by P.W.10, has not been produced in evidence. The suppression of the same creates an enormous doubt in the case of the prosecution. We cannot attach much importance to Ex.P-4 at all, as it is not the verbatim statement of the accused.

14. Above all, P.W.3, the wife of the deceased, has stated that on 07.03.2013 itself, the accused was taken into police custody. P.W.7 is the clerk in the Erode Municipality. He has also spoken about the dead body lying in the drainage channel on 05.03.2013. During cross-examination, he has stated that on 07.03.2013, he was asked to come to Police Station for the purpose of interrogation. Accordingly, he appeared. At that time, he found the accused in the custody of the Police. When a specific question was asked as to whether, the accused was in the handcuffs, he answered that the accused was investigated by the police and not with handcuffs. From these evidences, the learned counsel for the appellant would submit that the story of the prosecution that the accused had surrendered before P.W.10, on 09.03.2013, cannot be true. We find no force in the said argument. Since the accused was in the custody of the Police, as early as on 07.03.2013 itself, it is highly unbelievable that he would have gone to P.W.10 on 09.03.2013. Further, it is not as though the accused had any close relationship or acquaintance with P.W.10. It is also doubtful as to whether the accused would have chosen a total stranger to repose confidence in her and to confess.

15. For these reasons, we find it difficult to believe P.W.10. Once the story of the prosecution that the accused was arrested only on 09.03.2013 is disbelieved and on the basis of the evidences available that he was in the custody of the police on 07.03.2013 onwards, then the further case of the prosecution that M.Os.1 and 2 were recovered, from the side of the accused, cannot be believed. This part of the story of the prosecution

is disbelieved. We find no other evidence against the accused so as to sustain the conviction. In such view of the matter, we find that the prosecution has not proved the case against the accused beyond all reasonable doubts. For these reasons, we hold that the accused is entitled for acquittal.

16. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned I Additional District and Sessions Judge, Erode, in S.C.No.21 of 2015, by the judgment, dated 06.02.2016, are hereby set-aside. The appellant / accused is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bonds, if any, shall stand discharged.

-s/d-
Assistant Registrar

True copy

Sub-Assistant Registrar

srk

To

1. I Additional District and Sessions Judge, Erode,

2.The Public Prosecutor, Madras.

3.The Inspector of Police
Erode Town Police Station
Erode District

4.The Judicial Magistrate No.II
Erode

+1 cc to M/s.N.Manokaran Advocate sr 47308

CrI.A.No.184 of 2016

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