

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 11..08..2016

Judgement Pronounced on : 31..08..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.280 of 2016

Perumal Raja @ Perumal [A1]

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
Odiansalai Police Station,
Puducherry.
[Crime No.80 of 2008]

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Puducherry, in S.C.No.22 of 2014 dated 07.04.2016.

For Appellant : Mr.Ananthanarayanan, Senior
Counsel for Mr.K.Balu

For Respondent : Mr.V.Balamurugane, APP
(Puducherry)

JUDGEMENT

S.NAGAMUTHU, J.

The appellant is Accused No.1 in S.C.No.22 of 2014 on the file of the learned Principal Sessions Judge, Puducherry. Totally, there were five accused in the above said case including the appellant herein. A2 absconded during the pendency of the committal proceedings and, therefore, case against him was split up and numbered as P.R.C.No.11 of 2013. The rank of the accused was, however, not altered. Thus, A1 and A3 to A5 faced the trial. The trial court framed as many as three charges against A1 and A3 to A5. The first charge was under Section 302 r/w 34 of IPC; the second charge was under Section 201 r/w 302 of IPC; and the third charge was under Section 380 r/w 34 of IPC as against A1 and A3 to A5. The trial

court, by judgement dated 07.04.2016, acquitted A3 to A5, however, convicted A1, the appellant alone for the offences under Sections 302 and 201 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- [no default sentence was imposed] and to pay a fine of Rs.3,000/- [no default sentence was imposed] for the offence under Section 302 of IPC; and to undergo rigorous imprisonment for three years for offence under Section 201 of IPC. Challenging the above said conviction and sentences, A1 has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Rajini @ Rajinikanth. His father was one Mr.Rajaram. Mr.Rajini @ Rajinikanth was residing at Chinna Vaikkal Street, Puducherry. His father-Mr.Rajaram, had gone abroad and settled there for many years. The house in which the deceased was residing was in the name of Mr.Rajaram. Mr.Rajaram was closely related to A1-Mr.Perumal Raja @ Perumal. The accused wanted to grab the house property owned by Mr.Rajaram and Rajini @ Rajinikanth. It is alleged that these accused had planned to do away with Rajini @ Rajinikanth as he was the hindrance for A1 to grab the said property. It is further alleged that on 23.11.2007 around 10.00 p.m. all these five accused along with one juvenile by name - Narayanan joined together, went to the house of the deceased killed him by attacking him with knife and also by strangulating him to neck and then dumped the dead body into the drinking water sump and closed it. The occurrence was not witnessed by anyone. It is further alleged that, thereafter, all the five accused and the juvenile had stolen away the movable properties, including the motor cycle of the deceased. That was also not witnessed by anyone.

3. It is the further case of the prosecution that Mr.Rajaram returned to Puducherry on 20.04.2008 from France. This was already known to A1. Therefore, before the arrival of Mr.Rajaram, he wanted to remove the dead body from the water sump and to dispose of the same. Therefore, with the help of the other accused, he removed the dead body of the deceased - Rajini @ Rajinikanth from the water sump and cut into two pieces, put them in two nylon bags, carried the same and threw them in the river near Uppanar River Bridge at Vanarapet. This was also not witnessed by anyone.

4. Mr.Rajaram, on returning to Puducherry on 20.04.2008, found the deceased absent in his house. While he opened the house, he found that the motor cycle of the deceased was also not seen. He went in search of the deceased to various places, but, he could not find him anywhere. Therefore, he went to Muthialpet Police Station on 20.04.2008 and made a complaint at 09.05 a.m. P.W.12, the then Sub Inspector of Police, on receipt

of the said complaint, commenced inquiry into the said allegations. He sent the police personnel in search of the deceased. But, the deceased could not be traced out anywhere.

5. While so, on 21.04.2008, Mr.Rajaram was murdered by a gang of six people and in connection with the same, a case was registered in Crime No.204 of 2008 under Sections 147, 148, 341, 302 r/w 149 of IPC on the file of Grand Bazaar Police Station. The said case was under investigation. While so, one Mr.Arumugham, the father of Mr.Rajaram made yet another complaint at Odiansalai Police Station on 24.04.2008 at 09.00 a.m. in respect of the missing of his son Mr.Rajini @ Rajinikanth. P.W.27, the then Sub Inspector of Police, Odiansalai Police Station, on receipt of the said complaint registered a case in Crime No.80 of 2008 for "Man Missing". Ex.P.20 is the complaint and Ex.P.21 is the FIR. Then, he forwarded both the complaint and the FIR to the jurisdictional court and commenced the investigation.

6. The investigation in Crime No.204 of 2008 relating to the murder of Mr.Rajaram was taken up by P.W.30, the then Inspector of Police, Grand Bazaar Police Station. In connection with the said case, on 25.04.2008 at 06.45 p.m., P.W.30 arrested A1, the appellant herein, in the presence of witnesses. On such arrest, A1 made a voluntary confession and from out of the voluntary confession of A1, it came to light that Mr.Rajini @ Rajinikanth had also been done to death already. In the said confession, A1 disclosed that the dead body of the deceased - Rajini @ Rajinikanth was concealed in the water sump at the house of the deceased for some time and, thereafter, it was removed, cut into two pieces, put into two nylon bags and then they were thrown into the river near Uppanar River Bridge at Vanarapet. He also disclosed the place where he had hidden the other properties stolen from the house of the deceased Rajini @ Rajinikanth. In pursuance of the same, he took the police and the witnesses to the place and identified the place where he had thrown the nylon bags. Accordingly, the police went to the said place and took out the nylon bags. On request made by the investigating officer, the postmortem was conducted on the spot itself. The dead body was beyond recognition. Thereafter, he forwarded A1 to the court for judicial remand. In connection with the case in Crime No.204 of 2008. In that case, he arrested the other accused also, produced them for judicial remand. Thereafter, the relevant papers relating to Crime No.204 of 2008 were transferred to the file of Odiansalai Police Station and based on the same, P.W.27 altered the case in Crime No.80 of 2008 on the file of Odiansalai Police Station into one under Sections 302, 201 and 380 r/w 34 of IPC.

7. The investigation of the said case was, thereafter, taken over by P.W.32. He was present at the time when the dead body of Rajini @ Rajinikanth was recovered from the river channel and when the postmortem conducted. He made a formal arrest of all these accused who were already arrested in connection with the case in Crime No.204 of 2008. Then, on the confession of A4, the other properties stolen from the house of the deceased-Rajini @ Rajinikanth were recovered. In order to ascertain the identity of the dead body, superimposition test was conducted using the photograph of the deceased-Rajini @Rajinikanth which proved that the dead body was that of the deceased. On completing the investigation, P.W.33 laid charge sheet against the accused. The case as against the juvenile accused has been dealt with by the Juvenile Justice Board separately.

8. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 33 witnesses were examined, 73 documents and 20 material objects were marked.

9. Out of the said witnesses, P.Ws.1 to 9, 11, 13 to 20, 22 and 23 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.10 has spoken about the fact that one Mrs.Punitha, a relative of the deceased had tried to sell out the property. Her evidence is not incriminating to the accused in any manner. P.W.12 has spoken about the complaint made by Mr.Rajaram on 20.04.2008 about the missing of the deceased-Rajini @ Rajinikanth.

10. P.W.21 has spoken about the arrest of A4, confession made by him and the consequential recovery made out of the same. He has also spoken about the arrest of A1, his confession and the consequential recovery and the recovery of the dead body of the deceased from the Uppanar River channel. P.W.24 has spoken about the postmortem and his final opinion regarding the cause of death. P.W.25, the photographer has spoken about the photographs taken at the house of the deceased including the water sump. P.W.26 has spoken about the photographs taken at the channel where from the dead body of the deceased-Rajini @ Rajinikanth was recovered.

11. P.W.27 has spoken about the registration of the case in Crime No.80 of 2008 on the file of the Odiansalai Police Station for "Man Missing" on the complaint of one Mr.Arumugham. He has further stated that on 27.04.2008, he altered the case into one under Section 302, 201 and 380 r/w 34 of IPC on coming to know from out of investigation in Crime No.204 of 2008 on the file of Grand Bazaar Police Station that Mr.Rajini @ Rajinikanth had been killed. Ex.P.22 is the alteration report. P.W.28 has spoken about the formal arrest of these accused made on

02.05.2008 in the prison as directed by the investigating officer.

12. P.W.29 has spoken about the superimposition test conducted for the skull with the photograph of the deceased. The superimposition test proved that the dead body was that of the deceased.

13. P.W.30 said that when he was the Inspector of Police of Grand Bazaar Police Station, he took up the case in Crime No.204 of 2008 on 21.04.2008 registered under Sections 147, 148, 341 and 302 r/w 149 of IPC for investigation. He has further stated that in connection with the said case, he arrested A1, the appellant herein on 25.04.2008 at 6.45 p.m. in the presence of P.W.21 and another witness. While in custody, it is alleged that A1 made a voluntary confession in which he disclosed that the dead body of the deceased-Rajini @ Rajinikanth was initially concealed by him along with other accused in the water sump and thereafter, it was removed, cut into two pieces, put in nylon bags and was thrown into the channel near the bridge on the Uppanar River. He has further stated that in pursuance of the said disclosure statement, the dead body was recovered. He has further stated that on the confession of A4, the properties stolen from the house of the deceased-Rajini @ Rajinikanth were recovered. He has further stated about the investigation done in the other case. P.W.31 has spoken about the statement made by the juvenile accused under Section 164 of Cr.P.C. P.Ws.32 and 33 have spoken about the further investigation done by them and P.W.33 has further spoken about the filing of charge sheet against the accused.

14. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

15. Having considered all the above, the trial court convicted the appellant/A1 alone as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 is now before this Court with the present criminal appeal.

16. We have heard the learned counsel appearing for the appellant/A1 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

17. This is a case based on circumstantial evidence. As we have already pointed out, most of the witnesses, who were examined to speak about the vital circumstances, have turned

hostile. The only circumstance clinchingly available against the appellant/A1 upon which much reliance was made by the trial court is the disclosure statement made by the appellant/A1 to P.W.30 on 25.04.2008. Pursuant to the said disclosure statement some bone pieces were recovered from the sump of the house of the deceased. The dead body of the deceased was recovered from the river channel on being identified by A1. The dead body has been proved to be that of the deceased-Rajini @ Rajinikanth. The death was, according to the medical evidence, a homicide.

18. Now the only question is that from out of the only circumstance that the dead body of the deceased - Rajini @ Rajinikanth was recovered on the disclosure statement of the appellant/A1, whether he could be convicted. The learned senior counsel for the appellant would submit that the disclosure statement would not have been made by the accused on 25.04.2008 as it is alleged. He would submit that P.W.12 has stated that on 22.04.2008 itself, he came to know that the culprits who murdered Mr.Rajaram had murdered the deceased - Rajini @ Rajinikanth also. The learned senior counsel has further pointed out that he has further stated that on 24.04.2008 itself when the Inspector of Police examined him he told the same. Referring to the same, the learned senior counsel would submit that the dead body of the deceased would not have been recovered on the confession allegedly made by A1 on 25.04.2008. This argument does not at all persuade us. A careful reading of the evidence of P.W.12 would go to show that he did not even bother to register a case on the complaint of Mr.Rajaram on 21.04.2008. The present case was registered only on 24.04.2008. When that be so, it is not possible that the death of the deceased Rajini @ Rajinikanth came to the knowledge of P.W.12 on 21.04.2008 itself. From the evidences available it is clear that Mr.Rajaram was killed on 21.04.2008 and A1 was arrested only on 25.04.2008. When that be so, the evidence of P.W.12 wherein he has given a contrary statement cannot carry any weightage of. From the evidence of the Village Administrative Officer and from the evidence of P.W.30 were are fully convinced that the appellant was arrested only on 25.04.2008 and on his disclosure statement only the dead body of the deceased - Rajini @ Rajinikanth was recovered from the river channel.

19. The appellant/A1 has got no explanation to offer in respect of his exclusive knowledge that the dead body was lying in the channel. Going by the natural human conduct as provided in Section 114 of the Evidence Act and from out of the fact that the dead body was concealed by A1, we have to raise presumption that it was this accused who committed the murder of the deceased and concealed the dead body. Of course the said presumption is rebuttable. But, the appellant has not rebutted the said presumption by means of either direct or circumstantial evidence by bringing the same on record. Thus,

from out of the above unrebuttable presumption, in our considered view, the prosecution has conclusively proved that it was A1 who committed the murder of the deceased-Rajini @ Rajinikanth and concealed the dead body in the channel after having cut the dead body into pieces and put it in nylon bags with a view to erase the evidence.

20. In this case, of course, the judicial confession given by the juvenile accused has been proved in evidence. In our considered view, the same cannot be used in evidence as against the appellant/A1 because as per Section 30 of the Evidence Act, confession of the co-accused cannot be relied on unless there is a joint trial. Here, the juvenile accused, who is the maker of the confession, has not been tried along with the appellant and therefore, the said confession is inadmissible. We thus reject the confession of the juvenile accused and eschew the same from consideration.

21. So far as the recovery of stolen properties belonging to the deceased, including the motor cycle is concerned, they were recovered on the disclosure statement made by A4. A4 has been acquitted by the trial court disbelieving this part of the case of the prosecution. Therefore, those recoveries also cannot be used against A1, the appellant herein.

22. The learned senior counsel would submit that the motive for the occurrence has not been proved by the prosecution. It is true that the witnesses who have been examined to speak about the motive, turned hostile and Mr. Rajaram, the only person who could have spoken about the motive had been killed. But, in a case of this nature even in the absence of proof of motive, there can be no difficulty in sustaining the conviction inasmuch as the circumstance that the dead body was cut into two pieces, kept in two nylon bags and concealed by the appellant/A1 by itself would be sufficient to sustain the conviction.

23. The learned senior counsel would point out that while recording the evidence the trial court has admitted the confession, in full, made by the accused to the police who investigated the case though it was objected to by the accused. The learned senior counsel would submit that the said inadmissible confession has influenced the mind of the trial court.

24. We find force in the said argument. It is too elementary that as per Section 25 of the Evidence Act, a confession made to the police is irrelevant and the same cannot be admitted in evidence. Section 27 of the Evidence Act which is in the nature of a proviso to Section 25 of the Evidence Act makes that part of the statement, which distinctly leads to the discovery of a fact as admissible. In the instant case, therefore, that part of

the statement by which A1 disclosed that the dead body was earlier concealed in the water sump and the dead body was later on removed and cut into two pieces , put into two separate nylon bags and concealed in the river channel alone is admissible in evidence. The discovery of the dead body from the river channel and the recovery of few bones from the water sump are vital circumstances against the accused. In our considered view, the confession of the appellant/A1 in full is liable to be eschewed except that part by which the discovery of the above vital circumstances was made.

25. In view of the foregoing discussion, we hold that the prosecution has proved the guilt of the appellant/A1 beyond any reasonable doubt. The trial court was therefore right in convicting him under Sections 302 and 201 of IPC and so the judgement of conviction recorded by the trial court does not require any interference at the hands of this court at all.

26. Now coming to the quantum of sentences, we do not find any infirmity in the same also as the trial court itself has imposed only reasonable punishments. Thus, the appeal fails and the same deserves to be dismissed.

27. In the result, the criminal appeal is dismissed. The conviction and sentences imposed on the appellant/A1- Perumal Raja @ Perumal by the trial court are hereby confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Judicial Magistrate-I, Puducherry.
- 2.-do- Thro' The Chief Judicial Magistrate, Pudhcuerry.
- 3.The Principal Sessions Judge, Puducherry.
- 4.The Inspector of Police, Odiansalai Police Station, Puducherry.
5. The Superintendent, Central Prison, Puducherry.

+ 1 cc to Mr.K. Balu, Advocate Sr.49509
+ 1 cc to Government Pleader Sr.49771

Cr1.A.No.280 of 2016

KJI(CO)
EU 28/09/16