

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.Nos.384 and 569 of 2016

and

Crl.M.P.Nos.5792 and 7888 of 2016

Thirumal ..Appellant in Crl.A.384 of 2016(A-2)

Mari ..Appellant in Crl.A.569 of 2016(A1)

Vs

State represented by
The Inspector of Police
Krishnapuram Police Station,
Mathikonepalayam circle,
Dharmapuri District.

... Respondent in both Appeals

Appeals filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional Sessions Judge, Dharmapuri, in S.C.No.263 of 2014 on 25.08.2015.

For Appellant in Crl.A.384 of 2016 : Mr.C.Munusamy

For Appellant in Crl.A.569 of 2016 : Mr.C.Prabakaran

For Respondent in both the appeals : Mr.V.M.R.Rajentren
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The first accused in S.C.No.263 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri, is the appellant in Crl.A.No.569 of 2016. The second accused in S.C.No.263 of 2014 is the appellant in Crl.A.No.384 of 2016. Both the accused stood charged for offences under Sections 120(b), 302, 201 r/w.302 IPC. The trial Court found them guilty of the above charges and sentenced them as detailed below:

Accused	Conviction	sentence
A1 & A2	under section 120 (b) IPC	Sentenced to undergo seven years rigorous imprisonment with a fine of Rs.500/- each, in default to undergo three months rigorous imprisonment.
	under section 302 IPC	Sentenced to undergo life imprisonment and also to pay a fine of Rs.2,000/- each, in default to undergo one year rigorous imprisonment.
	under section 201 r/w.302 IPC	Sentenced to undergo seven years rigorous imprisonment with a fine of Rs.1000/- each, in default to undergo three months rigorous imprisonment.

The trial Court directed all the sentences to run concurrently. Challenging the above said conviction and sentence, the appellants are before this Court with this appeal.

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

(a) The deceased in this case one Chinnamurugan was the husband of A1. The deceased and A1 were construction labours. A2 was also a construction labour working with the deceased and A1. Both the accused and the deceased were working in a construction site at Coimbatore, where A1 and A2 developed illicit intimacy. On coming to know about the same, the deceased warned A1 several times. Feeling the presence of deceased as a hindrance to their illicit intimacy, both the accused conspired together to finish the deceased. In furtherance of the above conspiracy, on 02.02.2014, at about 11 p.m., both the accused strangled the deceased with a shawl and caused his death. Then the accused took the body to the agricultural field owned by one Raman and throw the body there.

(b) On the next day morning, PW.5 - brother's son of the deceased, who saw the dead body, informed PW.1, his father as well as brother of the deceased.

(c) Immediately, PW.1 rushed to the place and found the blood oozing from the ears of the deceased and also the injuries on the chest. Hence, he immediately lodged a complaint (Ex.P1) before the respondent police.

(d) PW.23, Special Sub-Inspector of Police then working in Krishnapuram police station, on receipt of the above complaint, registered a case in Crime No.25 of 2014 for the offence under Section 302 IPC, against the accused and sent the express First Information Report (Ex.P11) to the Judicial Magistrate Court and copies of the same to the higher authorities.

(e) PW.25 - then Circle Inspector, Mathikonepalayam police station, on receipt of the above First Information Report, commenced investigation, proceeded to the scene of occurrence and prepared Observation Mahazar and also rough sketch (Ex.P13) and then conducted inquest on the dead body between 1.00 p.m and 3.00 p.m and prepared inquest report (Ex.P14) and sent the dead body for autopsy to the Government Medical College Hospital, Dharmapuri, through PW.20 - Special Sub-Inspector of Police.

(f) PW.22 - Assistant Professor working in Medico-Legal Department in Government Medical College Hospital, Dharmapuri conducted autopsy on the dead body and found the following injuries:-

"EXTERNAL INJURIES:

1. Four linear scratch reddish brown abrasions on outer aspect of right side of abdomen measuring 8 x 0.2 cm to 3 x 0.2 cm.
2. Irregular reddish brown abrasion of 7 x 4 cm on right side of neck, 1 cm from midline, 4.5 cm from lower jaw.
3. 1 x 1 cm reddish brown abrasion on right side of face.
4. 0.5 x 0.5 cm reddish brown abrasion on right side of nose.
5. 2 x 1 cm reddish brown abrasion on bridge of nose.
6. 6 x 1 cm, 1 x 1 cm reddish brown abrasion on right side of face below lower eyelid.
7. 1 x 0.2 cm reddish brown abrasion on right side of forehead.
8. 23 x 1.5 x 1 cm brown ligature mark was seen on left & back side of neck. The ligature mark was oriented horizontally. The upper margin of ligature abrasion was 5 cm from chin, 6 cm from left mastoid. Lower margin of the ligature abrasion was 5 cm above supra sternal notch.

DISSECTION OF THORAX AND ABDOMEN:

Sternum was fractured at its mid level with surrounding reddish contusion.

6 x 5 cm x muscle deep reddish contusion in front of mid chest.

2 to 5 right & left side ribs were fractured along mid clavicular line with surrounding reddish contusion.

Heart was normal in size, chamber contained fluid blood. Valves, great vessels and coronaries were normal.

Lungs were normal in size, cut section : right lung diffusely adherent onto the chest wall.

Multiple Petechial hemorrhage on inter lobar

fissure of both lungs. Cut section : congested.

Stomach contained 50 gms of partially digested food particles with no specific odour. Mucosa was congested.

Liver, Spleen and Kidneys were normal in size. Cut Section : congested.

Urinary bladder was empty. Pelvic bone was intact.

DISSECTION OF HEAD:

Scalp : 6 x 5 cm x scalp deep reddish contusion on left temporal region. Left temporalis muscle was contused.

Vault & Duramater were intact.

Brain was normal in size, superficial blood vessels were engorged. Cut Section : congested. Base was intact.

DISSECTION OF NECK:

4 x 2 x 1.5 cm reddish contusion in the left thyroid lobe & adjacent muscles.

2 x 1 x 0.5 cm reddish contusion in the right side of thyroid tissue.

Right & Left superior horn of thyroid cartilage fracture with surrounding reddish contusion.

Left greater horn of hyoid bone fractured with surrounding reddish contusion.

Spinal column was intact."

and issued postmortem certificate (Ex.P10) and he was of the opinion that the deceased appeared to have died of asphyxia due to ligature strangulation.

(g) PW.25 arrested the accused on 05.02.2014 near Thippampatti Junction Bus Stop and on such arrest, A1 and A2 voluntarily gave confessions and they disclosed the place where they committed murder. Based on the disclosure statement of A1, PW.25 recovered a 'Nokia' mobile phone and photographs (M.O.5 and M.O.6) and based on the disclosure statement of A2, PW.25 recovered 'LG' Mobile phone (M.O.1) and 'Onida' Mobile phone (M.O.2) and also TATA DOCOMO sim card (M.O.3) and AIRCEL sim card (M.O.4). PW.25 also collected mobile call details between A1 and A2. After recording the statements of postmortem Doctor and other witnesses, PW.25 completed investigation and filed charge sheet against the accused.

3. Considering the above materials, the trial Court has framed charges against the appellants/accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 25 witnesses and marked 14 documents and exhibited 13 material objects.

4. Out of the witnesses examined, PW.1 is the brother of deceased. He has spoken about the illicit intimacy between A1 and A2 and the quarrel between deceased and A1. According to him, on coming to know about the occurrence through his son (PW.5), he lodged a complaint (Ex.P1) before the respondent police. PW.2 is the uncle of deceased. He has seen the dead body on the next day. He has also spoken about the frequent quarrel between A1 and the deceased. PW.3 is also an uncle of the deceased. He also heard about the quarrel between A1 and the deceased. He has seen the dead body on the next day. PW.4 is the co-worker working along with the deceased and the accused. He has also spoken about the illicit intimacy between A1 and A2. According to him, sniffer dog was engaged and sniffer dog went near A1. PW.5 is P.W.1's son. He saw the dead body at 8.00 a.m and immediately informed the same to his father (PW.1). He has also spoken about the illicit intimacy between the accused and the deceased and the frequent quarrel between them. PW.6 is a person known to the accused and the deceased. According to him, he found blood in the ear and leg of the deceased. PW.7 is a villager. He has also seen the dead body. He found bloodstains near the scene of occurrence. He has also spoken about the sniffer dog engaged during the investigation. According to him, he saw A2 at about 12 p.m. near Krishnapuram Bus Stand. PW.8 is another villager. He has also spoken about the quarrel between the accused and A1. He along with other villagers advised him and brought them back to the village. PW.9 - Village Administrative Officer is a witness to the Observation Mahazar. PW.10, one of the panchayatdar in the village. He along with some other villagers held panchayat and advised the deceased and A1 to lead a peaceful life. PW.11, another panchayatdar, has turned hostile. PW.12 is also one of the panchayatdars, who advised the deceased and A1. PW.13 - a Supervisor in the construction site and nephew of the deceased has spoken about the illicit intimacy between A1 and A2 and the quarrel between the deceased and A1. PW.14 has also spoken about the illicit intimacy between A1 and A2 and the quarrel between the deceased and A1. PW.15 is the brother's son of the deceased. He is a witness to the arrest of A1 and A2 and recovery of material objects. PW.16 has turned hostile. PW.17 - Scientific Officer working in the Forensic Lab, has examined the visceral parts of the dead body and gave viscera report (Ex.P5). PW.18 is the photographer, who took photographs of the dead body. PW.19- Sniffer Dogs Trainer working in Sniffer Dogs Division of police. According to him, at the request of Investigating Officer, he brought the sniffer dogs and the sniffer dogs went near A1 and sat there. PW.20 is the Special Sub-Inspector of Police in the respondent police. He identified the body for postmortem and handed over the same to the relatives after autopsy. PW.21 is a witness to the arrest of the accused and also the confession given by the accused and

recovery of material objects based on the disclosure statements made by the accused. PW.22 - Assistant Professor working in Medico-Legal Department, at Government Medical College Hospital, Dharmapuri, conducted autopsy on the dead body and gave postmortem report (Ex.P10) and also gave opinion about the cause of death. PW.23, Special Sub-Inspector of Police, registered the complaint. PW.24, Sub-Inspector of Police, collected mobile phone call details of A1 and A2. PW.25 - Investigating Officer investigated the case, arrested the accused and recorded the statements of witnesses and filed charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused neither examined any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the appellants and sentenced them as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the appellants before this Court.

7. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. It is the case of circumstantial evidence. It is settled principle of law that in a case of circumstantial evidence, the prosecution should prove all the circumstances beyond any reasonable doubt and the proved circumstances should form a chain unerringly pointing the guilt of the accused.

9. Keeping the above principle in mind, let us consider the instant case. After considering the materials on record, we are of the considered view that it is a case of no evidence. All the witnesses examined by the prosecution have only spoken about the illicit intimacy between A1 and A2 and also the frequent quarrel between A1 and deceased. Except that, absolutely there is no evidence to connect the accused with murder. Even though the mobile phones of accused were seized based on the disclosure statements of the accused and the call details were also collected by the respondent police to establish that A1 and A2 had frequently talk to each other, the prosecution did not obtain any certificate as contemplated under Section 65 (d) of the Evidence Act. Hence, the above call details cannot be considered in evidence. Even assuming that both A1 and A2 frequently talk to each other, we cannot presume that they were conspired together to murder the deceased.

10. Yet another circumstance is that the sniffer dog engaged in the investigation ran near A1 and stopped near her.

From that, one cannot come to a conclusion that it is the A1 has committed the murder. In the above circumstances, we are of the considered view that the prosecution has failed to prove the circumstances unerringly pointing the guilt of the accused. In the above circumstances, the appellants are entitled for acquittal.

11. In the result, both the Criminal Appeals are allowed. The conviction and sentence imposed on the appellants on 25.08.2015 in S.C.No.263 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri, are set aside. Both the appellants are acquitted and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional Sessions Judge,
Dharmapuri.
- 2.-do-Thro The Principal Sessions Judge
Dharmapuri
3. The Judicial Magistrate II, Dharmapuri
4. The Chief Judicial Magistrate Dharmapuri
5. The District Collector, Dharmapuri
6. The Inspector of Police
Krishnapuram Police Station
Mathikonpalayam Circle
Dharmapuri District.
7. The Superintendent of Police
Dharmapuri
8. The Superintendent
Central Prison, Vellore

9. The Superintendent of Special Prison
for Women Vellore

10. The Director General of Police
Mylapore Chennai 4

11. The Public Prosecutor,
High Court, Chennai.

copy to

The Section Officer
Criminal Section
High Court Madras

+1 cc to Mr.C.Prabakaran Advocate sr 48805

+1 cc to Mr.C.Munusamy Advocate sr 48394

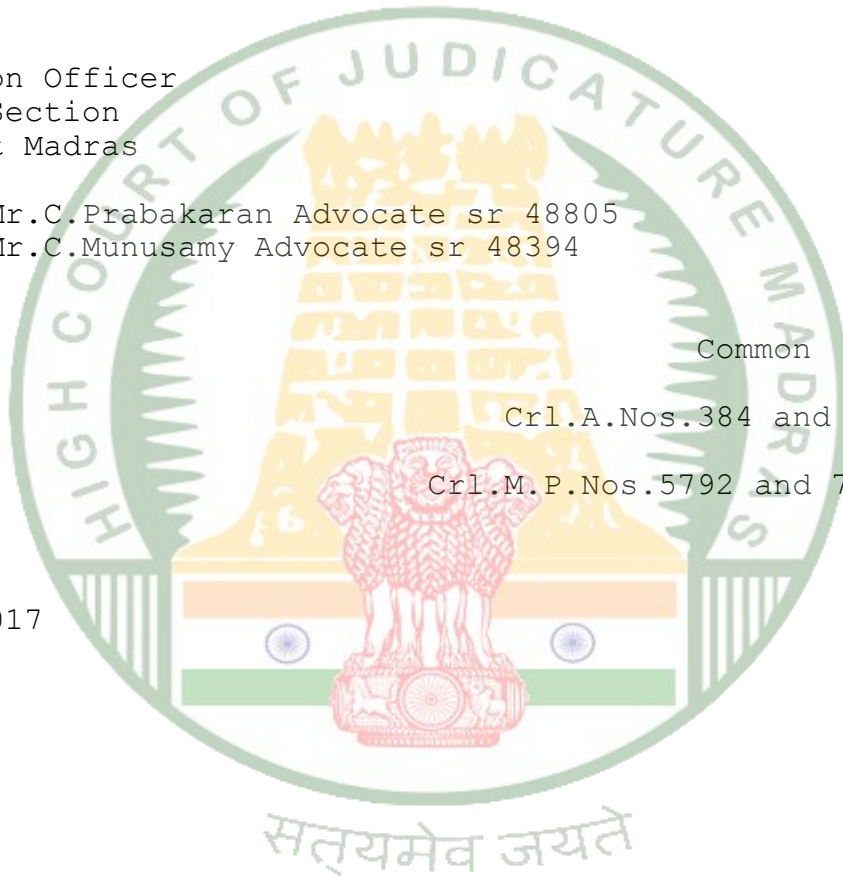
Common Judgment in

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