

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and
THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.59 of 2016

M.Velu @ Velusamy @ Saravanan ... Appellant

vs.

State,by
The Inspector of Police,
Deevatipatti Police Station,
Salem District.
(Crime No.502 of 2009)
Respondent

...

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 28.01.2014 passed by the learned III
Additional District and Sessions Judge, Salem, in S.C.No.299 of
2012.

For Appellant : Mr.R.John Sathiyar for
Mr.V.Kamal

For Respondent : Mr.E.Raja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by **V.Bharathidasan, J.**)

The appellant, in this appeal, is the first accused in
Sessions Case No.299 of 2012, on the file of the learned III

Additional District and Sessions Judge, Salem. In this case, totally there are three accused. They stood charged as detailed below:-

<i>Serial number of charges</i>	<i>Rank of the accused</i>	<i>Charges</i>
1.	A1	U/s. 364,302,201 r/w 302 & 404 IPC.
2.	A2 and A3	U/s. 364,302 r/w 34, 201 r/w 302 & 404 IPC

2. The trial Court, by Judgment, dated 28.01.2014, convicted the first accused and sentenced him as detailed below:-

<i>Rank of the accused</i>	<i>Penal provision(s) under which convicted</i>	<i>Sentence</i>
A-1	U/s. 302 IPC	Imprisonment for life and to pay a fine of Rs.1,500/-, in default to undergo rigorous imprisonment for six months.
	U/s. 364 IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,500/-, in default to under go rigorous imprisonment for six months.
	U/s.202 r/w 302 IPC	Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months.
	U/s. 404 IPC	Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months.

The sentences were ordered to run concurrently. The trial Court acquitted the accused 2 and 3. Challenging the above said conviction and sentence, the appellant/first accused is before this

Court with this Criminal Appeal.

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

(i) The deceased, in this case, one Prema @ Subbulakshmi was the daughter of P.W.5. The deceased was working as Staff Nurse in a Private Hospital at Dindugul. A-1 and the deceased loved each other and three months prior to the occurrence, she was missing whereabouts of the deceased was not known. Then, P.Ws.5 and 6, the father and mother of the deceased went to the hospital and made an enquiry, at that time one of the co-employee of the deceased informed them that the deceased went along with appellant/first accused, and, they were under impression that the deceased was with A1. Then they are searched them but unable to find them. Since they were under impression the deceased was living with the appellant, they did not give any complaint.

(ii) On 12.12.2009, P.W.1, Forester working in the Forest Department found a skeleton covered with stones in Goondugul Forest, Kappukadu. He informed the same to the Forest Ranger and on his instruction, P.W.1 gave a complaint before the respondent police.

(iii) P.W.12, Sub Inspector of Police attached to the

respondent police station, on receipt of the complaint registered a case in Crime No.502 of 2009, under Section 302 and 201 of IPC, and prepared first information report [Ex.P7], sent the same to the learned Judicial Magistrate, Omalur, and copies of the same were forwarded to the higher officials.

(iv) P.W.13, Inspector of Police, working in the respondent police, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence and prepared an observation mahazar[Ex.P6], drew rough sketch [Ex.P9] in the presence of P.W.1 and other foresters. He conducted inquest over the skeleton in the scene of occurrence between 11.30 a.m. and 2.30 p.m., and prepared inquest report[Ex.P8] and after completion of inquest, he sent the requisition letter [Ex.P10] to the Government Mohan Kumaramangalam Medical College and Hospital, Salem for conducting postmortem.

(v) P.W.14, Doctor, working in the Government Mohan Kumaramangalam Medical College & Hospital, Salem, on 13.12.2009 at about 5.00 p.m., conducted postmortem on the skeleton in the scene of occurrence and found the following injuries;-

Body was found in right lateral prone position with flexion at the elbow joint with hip and knee semiflexed. Head facing east foot facing towards west. All the soft tissues and skin over the body found missing due to skeletonisation. The scalp hair about 50 cms in length, black in colour found sticking on the occipital area. All the above and joints show postmortem diarticulation. No evidence of antemortem injuries in the available bones. Few dry, head tissue masses present in the thorax cavity. The organs could not be identified due to skeletonisation. The teeth in maxilla and mandible 8 in each quadrant, 2, 1, 2, 3 and the surface of the teeth are equal.

She has given postmortem certificate [Ex.P16]. She collected skull bones and sent the same for superimposition test and for DNA test. She has given opinion that she is unable to give any definite conclusion as to cause of death.

(vi) P.W.13, continued the investigation and during the course of investigation, he came to know that all the three accused committed murder and he further came to know that they were under judicial custody and confined in the Central Prison, Salem. Therefore, he took them into police custody on 29.12.2009. During enquiry, the first accused has voluntarily given confession and P.W.13 recorded the confession in the presence of P.W.8 and some

other witnesses and based on the disclosure statement of A1[Ex.P2], P.W.13 seized a knife [M.O.4], Gold chain [M.O.1]. Based on the disclosure statement of A-2[Ex.P3], P.W.13 seized ear stead [M.O.2], Silver anklets [M.O.3] and after recording the confession statement of the accused, he sent them back to judicial custody. Further, P.W.13 sent the skull bone for superimposition and thigh bone for DNA test to the Forensic Laboratory, Chennai. P.W.13, after identifying the deceased, and informed the same to P.Ws.5 and 6, father and mother of the deceased. P.Ws.5 and 6 came to the police station and identified the jewels recovered from the accused as that of the deceased. Then, P.W.13 handed over the investigation to P.W15, his successor.

(vii) P.W.15, Inspector of Police, attached to the respondent police, continued the investigation, altered the case into one under Sections 302, 302 r/w 34 IPC, and prepared alteration report [Ex.P24], and sent the same to the learned Judicial Magistrate, Omalur and after completion of investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 15

witnesses were examined and 24 documents and 4 material objects were marked.

5. Out of the above said witnesses examined, P.W.1 is the Forester, working in the Forest Department, Deniespet Forest Range, Thoppur. According to him, on 12.12.2009, when he along with P.W.2, were on patrol in the Gundakul Kappukadu forest, they found a skeleton covered with stones, immediately he informed the same to his higher officials and on instruction of his higher officials, he lodged a complaint before the respondent police. P.W.2 is the Forest Ranger, according to him, while he along with P.W.1 were on patrol in the forest, they found the skeleton covered with stone and P.W.1 gave a complaint before the respondent police. P.W.3 is a resident of Thoppur. According to him, he saw the skeleton and he was present at the time of taking skeleton from the forest area by the police. P.W.4 is a resident of Thoppur and he saw the skeleton. P.W.5 is the father of the deceased. According to him, one day his daughter was found missing and he was under impression that the deceased went along with A1. Subsequently, after three months, at the request of the respondent police, he went to the respondent police station and identified the jewels worn by the deceased and received the said jewels from the Judicial Magistrate Court. In his cross examination, P.W.5 stated

that the respondent police informed him that M.Os.1 to 3 were recovered from the dead body. P.W.6 is the mother of the deceased. She has spoken about the love affair between the first accused and the deceased. According to her, when the deceased was found missing, and she made an enquiry from her co-employees, they told her that the deceased went along with A-1, hence she did not give any complaint, subsequently after three months she went to the respondent police and identified the jewels as that of the deceased. P.W.7 is known to the accused and he saw him in the police station after his arrest and identified the jewels. P.W.8 is the Village Administrative Officer, Deevettipatti Village. According to him, he witnessed the confession given by the first accused before the respondent police and recovery of M.Os.1 and 4. P.W.9 is another Village Administrative Officer, Vellaru. According to him, on 15.12.2009, all the accused appeared before him and voluntarily given extra judicial confession and he recorded their statements and based on the confession, he produced the accused before the respondent police at about 3.00 p.m., and the respondent police arrested the accused and on such arrest all the accused voluntarily given confession before the Inspector of Police and he recorded the confession statement of the accused. P.W.9 along with his Village Assistant attested the confession statement of the accused. Based on the disclosure

statement, the Inspector of Police recovered M.Os.1 to 3 jewels and also a cell phone. P.W.10 is a Forest Guard. He is witness to the observation mahazar. P.W.11 is the Head Constable. According to him, he submitted the express first information report to the Judicial Magistrate Court. P.W.12 -Sub Inspector of Police, working in the respondent police station. He has stated that on receipt of the complaint, registered a case and sent the first information report to the Judicial Magistrate Court and copies of the same forwarded to the higher officials. P.W.13, Inspector of Police, working in the respondent police station, on receipt of the first information report, he conducted the investigation. According to him, during the investigation, he came to know the accused have committed murder and since they are confined in Central Prison, Salem in connection with some other case, on 29.12.2009, he took them into police custody. During such custody, the accused voluntarily gave confession and recorded the same in the presence of P.W.8 Village Administrative Officer and based on the disclosure statement of A1, P.W.13 recovered knife[M.O.4] and Gold chain[M.O.1]. Similarly, on the basis of the disclosure statement of A-2, he recovered ear stud [M.O.2], silver anklet [M.O.3] worn by the deceased. P.W.14, Doctor, working in the Government Mohan Kumaramangalam Medical College & Hospital, Salem, conducted postmortem autopsy on the skeleton and issued

Postmortem Certificate. P.W.15, Inspector of Police, attached to the respondent police has stated that he continued the investigation, prepared an observation mahazar and recovered material objects and after completion of investigation, he filed the charge sheet against the accused.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. He did not examine any witnesses nor marked any documents.

7. Having considered all the above materials, the Trial Court convicted the appellant/first accused for the offences as stated in first paragraph of this judgement and acquitted the accused 2 and 3. Challenging the above conviction and sentence, the appellant/first accused is before this Court.

8. We have heard Mr.R.Jhon Sathiyar, learned counsel appearing for the appellant and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. It is a case of circumstantial evidence. We are

conscious of the legal position that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principles in mind, we analyse the facts of the present case.

10. In the instant case, the prosecution relied upon the following circumstances to prove the guilt of the appellant/first accused. The first and foremost circumstance is that the appellant/first accused and the deceased loved each other before the occurrence. Both the first accused and the deceased went together from Dindugal. To establish the same, the prosecution has examined P.W.5, the father of the deceased. According to him, A1 used to come to his house frequently and one day the deceased was found missing and he was under impression that the deceased would have went only along with the appellant/first accused. P.W.6 is the mother of the deceased. According to her, both the accused and the deceased were moving closely and one day the deceased was found missing and she enquired her co-employees, who told her that the deceased went along with the appellant/first accused

and when she called the deceased over cell phone, the deceased told her that she is with the appellant, thereafter, the cell phone was switched off. Since she was under the impression that the deceased is with the accused, she did not give any complaint. From the evidence of P.Ws.5 and 6, it cannot be concluded that both the accused and the deceased were seen together prior to the occurrence, the co-employee was not examined to prove the deceased went along with the appellant/first accused. Except the same, no other evidence was available to prove that both the accused and the deceased were together prior to the occurrence. Hence, the last seen together theory was not proved by the prosecution.

11. The next circumstance is recovery of the jewels worn by the deceased, which were recovered from the accused. There are lot of contradiction in the prosecution case. According to P.W.9, the Village Administrative Officer of Vellaru, on 15.12.2009, all the accused appeared before him and voluntarily given an extra judicial confession and he recorded their confession and thereafter, he produced the accused before P.W.13, the Inspector of Police and the Inspector of Police arrested the accused and on such arrest, they voluntarily given confession and based on the disclosure statement of A-1, the Inspector of Police recovered

M.Os.1 to 3 jewels worn by the deceased. But P.W.13, deposed that only during the investigation, he came to know that the accused have committed murder and all the accused confined in Central Prison, Salem and he filed the custody application before the Judicial Magistrate Court, Salem and he took the accused in police custody on 29.12.2009 and in the police custody, the accused voluntarily given confession and recorded the same in the presence of P.W.8, Village Administrative Officer of Deevatipatti and based on the disclosure statement of A-1, P.W.13 recovered Chain (M.O.1) and knife [M.O.4] and based on the disclosure statement of A-2, he recovered Ear stud [M.O.2] and silver anklet [M.O.3] worn by the deceased. P.W.8 also confirmed the same. Hence, there are two set of evidence given by the prosecution regarding recovery of material objects. As per the evidence of P.W.9, on 15.12.2009, all the accused appeared before him and given extra judicial confession and he produced them before the respondent police and the Inspector of Police arrested them and the accused voluntarily given confession and based on the disclosure statement, P.W.13 recovered the material objects. According to P.W.13, he came to know that the accused have committed murder and all the accused confined in Central Prison, Salem, and he filed an application before the Judicial Magistrate Court, Salem and he took the accused in the police custody on

29.12.2009, and in the police custody, the accused voluntarily given confession and based on the disclosure statement of the accused, P.W.13 recovered the materials objects. Hence, the above said contradiction create doubts about the recovery of jewels worn by the deceased. It is also the evidence of P.W.5, in his cross examination, that the police has informed him that the jewels were recovered from the dead body.

12. Considering all the above evidence, we are of the considered view that the prosecution failed to prove the arrest and also consequential recovery of jewels of the deceased. Further, the trial Court, considered all the evidence, acquitted the accused 2 and 3. In the above circumstances, in absence of any other circumstance available to prove the guilt of the accused, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the appellant/first accused is entitled for acquittal.

13. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned III Additional District and Sessions Judge, Salem, in Sessions Case No.299 of 2012 dated 28.01.2014 is set aside and the appellant/first accused is acquitted and bail bond, if any executed by him shall stand

cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

(S.N.J.,) (V.B.D.J.,)

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10.08.2016

To

- 1.The III Additional District and Sessions Judge,
Salem.
- 2.The Inspector of Police,
Deevatipatti Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.

S.NAGAMUTHU.J.,

and

V.BHARATHIDASAN.J.,

rrg

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