

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.740 of 2016
and
Crl.M.P.No.11315 of 2016

V.Manikandan @ Kutti @ Mani (A2) .. Appellant

- Vs -

State rep by Inspector of Police,
T.4, Maduravoyal Police Station,
Chennai.
(Cr.No.621 of 2010) .. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned II Additional District and Sessions Judge, Thiruvallur at Poonamallee in S.C.No.261 of 2012 dated 15.09.2015.

For Appellant : Mr.A.E.Kalaiselvan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the second accused in S.C.No.261 of 2012 on the file of the learned II Additional District and Sessions Judge, Thiruvallur at Poonamallee. There were two other accused by name Prakash and Selvam, who were arrayed as accused 1 and 3 respectively. According to the final report filed by the police, there were totally five persons involved in the crime. Two others by name Manoj @ Manoj Kumar and Venkatesh @ Venkatesan were found to be juveniles in conflict with law and therefore the case against them was split up and dealt with separately before the Juvenile Justice Board. Thus, the appellant (2nd accused) and the accused 1 and 3 faced the trial

before the lower Court. The trial Court framed charges under Sections 364, 302 and 201 r/w 149 I.P.C. The trial Court found that the first accused Prakash was also a juvenile in conflict with law and therefore referred his case to the Juvenile Justice Board. By judgment dated 15.09.2015, the trial Court convicted the accused 2 and 3 alone under Section 302 I.P.C. and sentenced them to undergo imprisonment for life and pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year. Challenging the said conviction and sentence imposed on him, the appellant / second accused alone has come up with this appeal.

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

2.1. The juveniles in conflict with law Manoj @ Manoj Kumar and Venkatesh @ Venkatesan have got a sister by name Durga. The deceased in this case was one Mr.Ramesh. The deceased had a one side love for Ms.Durga. On few occasions, the deceased, met Ms.Durga and harassed her to respond to his love. Durga informed the same to Manoj @ Manoj Kumar and Venkatesh @ Venkatesan. They got wild. The first accused herein Mr.Prakash and the second accused Mr.Manikandan @ Mani @ Kutty had enmity already with the deceased. Manoj @ Manoj Kumar and Venkatesh @ Venkatesan joined hands with the accused 1 and 2 and they decided to do away with the deceased. The 3rd accused was known to the accused 1 and 2. They took the help of the third accused also to execute their intention.

2.2. It is further alleged that on 17.09.2010 around 06.00 p.m. the deceased was talking to one Mr.Dinesh near Kanniamman temple at Kanniamman Nagar. One Madhavi (P.W.4) is a friend of Ms.Durga. As requested by these accused, by playing deception on the deceased, Madhavi took the deceased to the ration shop at Odama Nagar. All these accused including the juveniles from Odama Nagar, by force, took the deceased to Vanagaram and near the bypass bridge they attacked him. The accused 1 and 2 attacked him with wooden logs and the third accused attacked him with stones. The deceased fell down. They dropped huge stones on the deceased and the deceased died on the spot. They pushed the body into a nearby drainage and they put few stones on the body of the deceased and immersed the body into the water. Then, they ran away from the scene of occurrence. The occurrence was not witnessed by anybody.

2.3. P.W.1, is the mother of the deceased. She has stated that the deceased was working as a carpenter. On 17.09.2010, he went for work and in the evening he did not return. Then, she enquired Mr.Dinesh (P.W.3) a friend of the deceased. P.W.3 told her that the deceased had fallen in love with Durga and he went to the house of Durga and found that the deceased was not available anywhere. After sometime, P.W.3 told her that the deceased was taken by the brothers of Durga. Even thereafter, the deceased was not seen anywhere. Therefore, on 20.09.2010 at 08.30 a.m. she made a complaint to the Sub Inspector of Police,

Maduravoyal Police Station.

2.4. On the said complaint, the Sub Inspector of Police registered a case in Crime No.621 of 2010 for boy missing. Ex.P12 is the F.I.R. and Ex.P.1 is the complaint. He forwarded both the documents to Court which was received by the learned Magistrate at 09.30 p.m. on 20.09.2010.

2.5. The investigation was taken up by P.W.18 the then Sub Inspector of Police. He examined P.Ws.1 to 4 and few more witnesses. But no breakthrough could be made out of the same. On 20.09.2010, in the afternoon, P.Ws.8 and 9 found the dead body of the deceased in the drainage. They informed P.W.18 about the same. P.W.18 went to the place of occurrence and found the dead body and confirmed that it was the body of the deceased. Then he prepared an observation mahazar and a rough sketch in the presence of P.W.10 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.6. One Dr.Anbuselvam conducted autopsy on the body of the deceased at the Kilpauk Medical College Hospital on 21.09.2010. Dr.Anbuselvam could not be examined and therefore P.W.17, the Head of Department had deposed about the postmortem conducted by Dr.Anbuselvam. According to P.W.17 Dr.Anbuselvam had found the following injuries:

"Injuries: Abrasions: (1) 10 cm x 4 cm on left cheek. (2) 8 cm x 2 cm on left arm. There was no other external or internal injuries anywhere on the body. Heart: Normal in size; c/s all the chambers were empty; coronaries: patent. Lungs: Normal in size; c/s fine gritty mud particles adherent loosely onto the mucosal surface of the larynx, trachea, primary and secondary bronchioles; Hyoid bone: intact. Stomach: 80 ml of bile stained fluid and sand particles with no specific smell, mucosa: congested. Intestines: brown chyme present. Liver, Spleen and Kidneys: Normal in size, decomposing; c/s congested. Pelvis & Spinal column: Intact, Bladder : empty. Skull: Intact, Brain:liquefied."

Ex.P7 is the postmortem certificate. Dr.Anbuselvam opined that the death of the deceased was due to asphyxia due to drowning.

2.7. P.W.18 altered the case into one under Sections 302 and 201 I.P.C. On 21.09.2010, he arrested Manoj @ Manoj Kumar and Venkatesh @ Venkatesan (juveniles in conflict with law). On 23.09.2010, he arrested these three accused. On their confession (joint confession) M.Os.1 and 2 wooden logs, M.O.3 - a stone, M.O.4 - a shirt, M.O.5 a shirt and M.O.6 another shirt were all recovered. He forwarded the same for chemical examination. On completing the investigation, he laid chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution as many as 18 witnesses, 15 documents and 9 material objects were marked.

2.9. Out of the said witnesses, P.W.1 is the mother of the deceased. She has stated only about the missing of the deceased from 17.09.2010 and the complaint made by her on 20.09.2010. P.W.2 is the father of the deceased. He has spoken about the same facts as spoken by P.W.1. P.W.3 is a neighbour. He has stated that on 17.09.2010, around 06.30 p.m. near Kanniamman Kovil, Ms.Durga was standing. Ms.Madhavi was also there at that time and she told that Durga wanted to speak to the deceased. The deceased followed Madhavi. Then the juvenile accused Manoj @ Manoj Kumar and Venkatesh @ Venkatesan took the deceased to Mettukuppam. He also followed these accused. P.W.4 is Ms.Madhavi. She has stated that the deceased was the lover of Durga. On 17.09.2010 the deceased came to the workplace where Ms.Durga was working and told that if she did not accept his love, he would slit himself with a blade. Then, on the same day evening at 05.00 p.m. she was near Kanniamman temple. There the deceased came. The brothers of Durga took the deceased.

2.10. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has stated that on 17.09.2010 at 06.00 p.m. he found five people attacking a boy. He has stated that he could not identify those five persons. P.W.7 has also stated that he found four or five persons attacking another person at Vanagaram. He has further stated that he could not identify those persons. P.Ws.8 and 9 have stated that they found the dead body at 01.00 p.m. on 20.09.2010 and they informed the same to the Inspector of Police. P.W.10 has spoken about the preparation of the observation mahazar and a rough sketch at the place of occurrence. P.W.11 has spoken about the complaint made to the police. P.W.12 has not stated anything incriminating as he has spoken on hearsay information.

2.11. P.W.13 has stated that on 17.09.2010 at 06.00 p.m. the deceased was taken by the juveniles in conflict with law and the third accused accompanied them. P.W.14 has spoken about the arrest of the accused and the recoveries of the material objects on their confession. P.W.15 has spoken about the photographs taken at the place of occurrence as directed by the investigating officer. P.W.16 the Constable has stated that he handed over the dead body of the deceased to the doctor for postmortem. P.W.17 has spoken about the postmortem conducted by Dr.Anbuselvam and the final opinion regarding the cause of death of the deceased. P.W.18 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, one Devagi was examined as D.W.1. She

has spoken about the date of birth of the first accused Prakash. Ex.D1 is the school certificate pertaining to the first accused. Having considered all the above, the trial Court convicted the accused 2 and 3 as detailed in the first paragraph of this judgment and that is how, the appellant / the second accused alone is before this Court with this appeal. The third accused filed a separate appeal in CrI.A.No.211 of 2016 and by judgment dated 02.08.2016, this Court allowed the said appeal and acquitted him.

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

5. This is a case based on circumstantial evidence. So far as the appellant is concerned, no motive whatsoever has been attributed to him. The deceased was lastly seen alive on 17.09.2010 in the morning when he went for work. P.W.1, the mother of the deceased has stated so. In the evening he did not return. The dead body was found on 20.09.2010 at 01.00 p.m. The death was due to drowning as spoken by the Doctor. The dead body was found immersed in water. There is no evidence that the deceased was manually pushed into the water and killed. The learned counsel for the appellant would submit that the death due to accidental fall into the drainage cannot be ruled out. We find force in the said argument. Thus, we hold that the cause of death that it was a homicide has not been proved by the prosecution.

6. Absolutely there is no other evidence against this appellant. There is some evidence against the third accused, which has also been disbelieved by this Court while considering the appeal filed by him. But the trial Court has convicted this accused based on mere surmise. We are surprised to note that the trial Court even in the absence of any evidence against this accused has held him guilty. The judgment of the trial Court is not based on any reasoning and on appreciation of the evidence let in. We cannot afford to convict this accused on mere surmises. Thus, we hold that the judgment of the trial Court is not sustainable as the prosecution has not proved the case against the appellant / second accused beyond all reasonable doubts.

7. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant / second accused by the learned II Additional District and Sessions Judge, Thiruvallur at Poonamallee in S.C.No.261 of 2012 dated 15.09.2015 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) Since the appellants / second accused is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case. Consequently the

connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The II Additional District and Sessions Judge,
Poonamallee.
2. The Judicial Magistrate,
No.II,
Poonamalle.
3. The Chief Judicial Magistrate,
Thiruvallur.
- 4.The Superintendent, Central Prison,
Puzhal, Chennai.
5. The Inspector of Police,
T.4, Maduravoyal Police Station,
Chennai.
- 6.The Public Prosecutor,
Madras High Court.
- 7.The District Collector,
Thiruvallur.
- 8.The Director General of Police,
Mylapore, Chennai-4

+1cc to Mr.A.E.Kalaiselvan, Advocate, SR.No.72348.

MP (CO)
GN(02/02/2017) -

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