

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.06.2016

CORAM:

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

Criminal Appeal No.840 of 2013

Mari @ Saravan Raj

..

Appellant

Vs

State by  
Inspector of Police,  
Mettupalayam Police Station,  
Coimbatore.  
Crime No.973 of 2007

..

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore in S.C.No.298 of 2008 dated 11.06.2010.

For Appellant : Mr.K.J.Saravanan  
For Respondent : Mr.M.Maharaja,  
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The first accused in S.C.No.298 of 2008 on the file of the learned Additional District Sessions Judge, Fast Track Court No.I, Coimbatore is the appellant in the present appeal. Totally there are 5 accused. Appellant/A1 stood charged for the offences under section 120(B), 302 r/w.149 and 34 IPC and 201 r/w.109 IPC. During the trial, the second accused died and the trial Court acquitted A4 and A5 and this appellant was convicted under section 120(B), 302 r/w.34 and 201 IPC and sentenced him to undergo 5 years Rigorous imprisonment and to pay a fine of Rs.2000/- in default to undergo one year rigorous imprisonment for the offence under section 120(B), sentenced him to undergo life imprisonment and pay a fine of Rs.5000/- in default to undergo two years rigorous imprisonment under section 302 r/w.34 of IPC, and sentenced him to undergo five years Rigorous

imprisonment and to pay a fine of Rs.2000/- in default to undergo one year Rigorous imprisonment under section 201 IPC. Challenging the said conviction and sentence, the first accused/appellant is before this Court.

2. The prosecution in brief is as follows :

One Murali is the deceased in this case. He is the husband of P.W.7 and brother-in-law of P.W.6. The deceased is a gold smith and A1 is doing gold jewel polishing business. On 21.7.2007, at about 7.30 a.m., the deceased handed over 91 pieces of ear drops to A1 for polishing them and the deceased promised to return the same in the evening, till evening, the deceased did not return home. Therefore, P.W.7 informed her brother, P.W.6 about the same and P.W.6 went to the appellant's shop and found it closed. At that time P.W.9 and P.W.10, who were neighbouring shop owners informed him that on 21.07.2007 at 8 a.m., A1 and the deceased came in the motor bike belongs to the deceased, and A4 and A5 also came along with them in another motor bike and after some time they left. P.W.6 and P.W.7, further searched for the deceased. But they could not find the deceased and the appellant was also found missing. On the same day at about 8 p.m., P.W.2, a Village Assistant of Bellari village found a half burnt dead body near an Old Age Home and he informed the same to P.W.1, the Village Administrative Officer. P.W.1 after seeing the dead body, gave a complaint to the respondent police at about 9.30 a.m. P.W.16, Head Constable of the Sirumugai Police Station registered a case based on the complaint (Ex.P.1) in Crime No.164 of 2007 under Section 174 Cr.P.C. and handed over the same to P.W.29 the Inspector of Police.

3. On receipt of the F.I.R., P.W.29, Inspector of Police commenced the investigation and proceeded to the place of occurrence, prepared Observation Mahazar and Rough Sketch and recovered the pant, shirt, black colour waist thread from the body of the deceased in the presence of witnesses. He also recovered an empty whisky bottle under a mahazar. He has also taken photographs of the place of occurrence. Since the identity of the body was not known, he made publication through newspaper and sent the body to the Government Medical College Hospital, Coimbatore. On seeing the same in 'Dhinkaran' newspaper, P.W.6 and 7 went to the police station. Based on the material objects recovered from the body of the deceased, they identified the deceased. Thereafter, along with P.W.9 they went to the hospital and identified the dead body. On 24.7.2007, at about 12.30 p.m., P.W.2, who is the doctor working in the Coimbatore Medical College Hospital, conducted autopsy on the body of the deceased and found the following injuries :

Extensive superficial burns noted on the front of chest, upper 1/3<sup>rd</sup> abdomen, left upper limb, lower 1/3<sup>rd</sup> abdomen, front of right upper thigh, front of right leg,

inner aspect of left thigh and leg. The base of the burnt area is yellowish white in colour. Blackening of the skin and singeing of hairs noted on the burnt areas and top of the scalp.

The following antemortem injuries noted on the body.

1. Scratch abrasions noted on the following region  
a) 1 x 0.5 cm on left cheek 2 cm above to left angle of mouth. b) 1.5 x 0.75 cm on left upper cheek 2 cm below to left eye. c) 2 x 1 cm on right upper cheek 1 cm below to right eye. d) 2 x 0.5 cm on right lateral cheek 4 cm away from right eye. e) 1 x 0.25 cm on right temple f) 0.75 x 0.25 cm on right cheek 3 cm away from right angle of nose. g) 2 x 1 cm on outer left lower arm i) 4 x 3 cm on back of left wrist j) 24 x 2 cm on out hip and thigh k) 3 x 2 cm on outer right lower leg l) 4 x 2 cm on back of right thigh.

2) Contusion noted on the following region :

a) 5 x 2 cm on inner aspect of left lower lip. b) 3 x 1.5 cm on inner aspect of left upper lip. c) 2 x 1 cm on top of right shoulder.

On dissection of scalp skull dura - Sub scalp contusion 4 x 2 cm noted on right frontal and 6 x 4 cm on right occipital region. Diffuse sub-arachnoid haemorrhage noted on both cerebral hemispheres. Brain tissue softened and cut section congested.

Ex.P.7 is the Postmortem Certificate. He sent viscera for chemical examination and the viscera report reveals that the deceased died of cyanide poison and he also gave a final opinion that the deceased died due to consumption of cyanide poison. P.W.2 doctor also found some contusion on the body of the deceased and he has opined that it might have caused by wooden log.

4. On 30.07.2007, the first accused gave a extra judicial confession before P.W.21, who is also running a jewellery shop in Coimbatore, that he has committed murder of the deceased and also taken away the jewels. The above confession was reduced into writing and P.W.21, and he produced the accused before P.W.29 Inspector of Police along with the statement Ex.P.5. P.W.29 arrested the accused and on such arrest he has voluntarily given a confession in the presence of witnesses and based on the disclosure statement, he identified the other accused. A1 took P.W.29 and identified the second accused. P.W.29 arrested the second accused and on such arrest, A2 had given a voluntary confession and based on his disclosure statement, P.W.29 recovered a motor cycle and a cash of

Rs.9000/- from the second accused in the presence of witnesses. And based on their confession, they also identified the third accused. P.W.29 arrested the third accused and on such arrest he also voluntarily gave a confession and based on the disclosure statement, a cell phone and a cash of Rs.3,900/- was seized. Thereafter, all the three accused identified A4 and A5 and P.W.29 arrested them at about 3.30 p.m.

5. In pursuance of the confession given by the first accused, P.W.29 went to the shop of Dhadasa at Kumaran Street, where the first accused had sold a gold biscuit weighing 98 gms. P.W.29 recovered the same in the presence of the witnesses at 11.45 a.m. under the Mahazar. Then, the first accused took the police to the same Kumaran Street and identified one Suresh Kumar, from whom a sum of Rs.15,000/- was recovered at 2.30 p.m. Then, the first accused took the police to Sundaram Street and identified one Chandra Sekar, from whom a sum of Rs.5000/- was recovered. Then, the first accused took the police to Raja Street and identified one Prabhu near a car stand, from whom, a sum of Rs.20,000/- was recovered. Then, he took the police to Robertson Road and identified one Pratab near a milk company, from whom a sum of Rs.12,000/- was recovered under the Mahazar. Then, he took police to Subam Theatre, where the accused gave cyanide mixed in a beer to the accused. There, P.W.29 prepared an Observation Mahazar and a Rough Sketch. On returning to the police station, he forwarded the documents to the Court and handed over the material objects with a request to forward the Material Objects for chemical analysis. On completing the investigation, he laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed the above charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove its case, prosecution has examined as many as 31 witnesses and 27 documents were exhibited and 21 material objects were marked.

7. Out of the said witnesses, P.W.2 has stated that he found the dead body at Mettupalayam Road near Old Age Home and informed P.W.1. P.W.1 has spoken about the complaint lodged by him. P.Ws.3 and 4 have stated that they saw the dead body at the place of occurrence. P.W.5, the taxi driver is the Mahazar witness for the Observation Mahazar and Rough Sketch prepared by P.W.29 at the place of occurrence and he has also spoken about the recovery of Material Objects from the place of occurrence. P.W.6, the brother-in-law of the deceased has spoken that he and P.W.7 were searching for the accused from the day when he left the house. He has further stated that, on 23.07.2007 he saw the photograph of the dead body of the deceased published in Dinakaran newspaper and thereafter, he identified the deceased

at the police station. P.W.7- wife of the deceased has also stated so.

8. P.W.8 has stated that on 21.07.2007 at about 8.00 a.m., at Kovai Kumaran Street, he saw the accused and the deceased coming in a motor cycle followed by the accused 4 and 5 in another motor cycle. P.W.9 has stated that on 21.07.2007 at 7.30 a.m., he found the first accused and the deceased going in a motor cycle and he has also stated that the accused 4 and 5 followed them in another motor cycle. P.Ws.8 and 9 have stated that they identified the ingots recovered from the accused. P.W.12 has stated that the first accused gave him a gold ingot weighing 98 gms, for which he paid Rs.82,000/- on 21.07.2007. P.W.13 has stated that on 22.07.2007, at 12 noon, the first accused gave him 18 gms of gold ingot for Rs.15,000/- and the same was purchased by him. He further stated that he handed over the same to the police. P.W.14 has stated that on 30.07.2007 at 6.45 p.m., the first accused gave him Rs.20,000/- to discharge the loan due to him. P.W.15 has stated that on 21.07.2007, the first accused discharged the loan which he had raised earlier. P.W.16 has stated that on 21.07.2007 at 5.30 p.m., the accused gave him Rs.12,000/- for discharging his dues. P.W.17 has stated that on 20.07.2007, at about 10.00 p.m., the shop of the first accused was kept opened, where he found the accused 1, 4 and 5 inside the shop. P.W.18 claims to be the eye witness for the occurrence and he has seen the deceased and A1 to 3, according to him, on 21.07.2007, at 7.00 p.m., he was standing in front of a TASMAC wine shop in Co-operative Colony, at that time, one person roughly aged about 30 years fell down due to fits. Three people who were standing there, took him in a motor cycle. According to him, the persons who took the deceased from the spot are the accused 1 to 3. P.W.19 has also stated the same as though he was standing along with P.W.18. P.W.20 has turned hostile and he did not support the prosecution case. P.W.21 has spoken about the confession given by the first accused. P.W.22 has spoken about the post-mortem conducted by him and his final opinion regarding the cause of death. P.W.24 is the mahazar witness spoke about the arrest of all the accused and consequent recovery of the Material Objects. P.W.25, a finger print expert stated that he visited the place of occurrence, but he was not able to lift any useful material from the place of occurrence. P.W.26 has spoken about the registration of the case. P.Ws.29 and 31 have spoken about the investigation. The others are official witnesses.

9. When the above incriminating materials were put to the accused under section 313 Cr.P.C., he denied the same as false. Their defence was a total denial. On his side, one Selvaraj was examined as D.W.1. According to D.W.1 Selvaraj, on 24.07.2007, at about 10.30 a.m., two policemen came to his workshop and wanted him to identify the house of the fourth accused. Accordingly, he identified, the fourth accused and he was taken to custody. Later, he was remanded to judicial custody.

10. Having considered all the above, the trial Court convicted the first accused as stated in the first paragraph of this judgment. Aggrieved over the same, the appellant/ accused-1 is before this Court with this appeal. We have heard Mr.K.J.Saravanan, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. The learned counsel for the appellant would submit that it is a case based on the circumstantial evidence. A3, who is a similarly placed accused filed a separate appeal in C.A.No.480 of 2015 and a Division Bench of this Court in which one of us [S.Nagamuthu.J] is a party, by a judgment dated 04.02.2016 acquitted A3, and A1 is also a similarly placed accused and he is also entitled for acquittal based on the above judgment.

12. We have carefully considered the above judgment, the Division Bench acquitted A3 for the following reasons :

"17. Thereafter, the dead body was found by P.Ws.1 and 2. On the complaint made by P.W.1, P.W.29 started the investigation. During the course of investigation, it is stated that the first accused was arrested. On his confession, the rest of the accused were arrested. Some Material Objects have been recovered on the disclosure statement made by the first accused. But, so far as the present appellant is concerned, nothing was recovered from him and there is no other evidence against him. Further, this accused was not even found in the company of the deceased. Thus, though there appears to be some evidence against the first accused and the rest of the accused, as against this appellant, absolutely there is no evidence. Therefore, the appellant is entitled for acquittal as the prosecution has failed to prove the charges against him."

13. Now, we have to consider the case of A1 and with reference to the evidence available against him. According to P.W.7, wife of the deceased, the deceased is said to have given 91 pair of ear studs to A1 for polishing and A1 promised to return the same in the evening. The deceased went to the shop of A1 to get back the jewels given for polishing. Thereafter, the deceased did not return home. P.W.8 saw the deceased and the A1 together in the motor cycle followed by A4 and A5 in another motor cycle. According to him, at 8.00 a.m. the deceased was found along with A1, A4 and A5. This is the first circumstance. Another circumstance is the evidence of P.W.17. According to P.W.17, on 20.07.2007 at about 10.a.m., he saw A1, A4 and A5 inside the shop, hatched a conspiracy to murder the deceased by giving him poison. But he had not disclosed the same to anybody, the Division Bench also disbelieved the evidence of P.W.17. Another circumstance is the evidence of P.W.18. The evidence of P.W.18 that he had seen A1 to A3 carrying the deceased in a motor cycle, is also disbelieved by the Division Bench. The other witness, P.W.19, is said to have seen A1 along with the deceased. His evidence was also rejected by the Division Bench.

14. Now, the only circumstance against A1 is recovery. So far as the recovery is concerned, based on the disclosure statement, P.W.19 recovered 98 grams of gold biscuit from the shop of P.W.12 and there is no evidence to connect that jewels said to have been given by the deceased to A1. The other recovery, regarding cash from other witnesses also, there is no evidence to connect the amount to that of the deceased and that the amount was given by the deceased. 91 pairs of ear stud was said to have been given to A1 for polishing purpose, but nothing was recovered. Hence, there is no evidence available to prove that A1 had taken away the gold jewels and thereafter, he murdered the deceased by giving him cyanide. Hence, by the recovery of gold biscuit and cash, it cannot be presumed that they belong to the deceased and that the same has been taken away by the appellant/accused. In the said circumstances, we are of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and hence, the appellant is entitled for acquittal.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore on 11.06.2010 in S.C.No.298 of 2008 are hereby set aside. The appellant/accused is acquitted of all the charges levelled against him 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 bond, if any, shall stand discharged.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,  
Fast Track Court No.I,  
Coimbatore.
- 2 -do- Thro The Principal Sessions Judge, Coimbatore
- 3 The Judl. Magistrate, Mettupalayam
- 4 -do- Thro The Chief Judl. Magistrate
- 5 The Superintendent, Central Prison, Coimbatore
- 6 The District Collector, Coimbatore
- 7 The Director General of Police  
Mylapore, Chennai 4
- 8 The Inspector of Police,  
Mettupalayam Police Station,  
Coimbatore
- 9.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.K.J. Saravanan, Advocate, S.R.No.33894

vd(CO)  
md(29/12/2016)

Cr1.A.No.840 of 2013