



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2016

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM**

CRIMINAL APPEAL(MD)No.199 of 2014
and M.P(MD)No.1 of 2015

T.Gnanasekaran @ Sekar

... Appellant/Accused No.1

vs.

The State rep. By the Inspector of Police,
Karur Town Police Station,
Karur, Karur District.
(Crime No.3217 of 2008)

... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment dated 16.03.2012 passed in Sessions Case No.54 of 2011 by the Sessions Court, Karur and set aside the same.

For Appellant : Mr.K.Samidurai

For Respondent : Mr.A.Ramar, Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J)

The convictions and sentences dated 16.03.2012 passed in Sessions Case No.54 of 2011 by the District and Sessions Court, Karur are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the first accused Gnanasekaran @ Sekar has had illicit intimacy with one Yasodha and since she accentuated him to marry her, with intention to murder her the first accused has abducted her to an isolated place. The accused Nos.2 and 3 have lend their support to first accused. The first accused has murdered the deceased by using a nylon rope and subsequently removed gold jewels from the body of the deceased. After occurrence, the husband of the deceased by name Chandran as defacto complainant has given a complaint and the same has been registered in Crime No.3217 of 2008.

3. On receipt of the complaint, Investigating Officer viz., P.W.19 has taken up investigation, examined connected witnesses. The body of the deceased has been found subsequently within the jurisdiction of Paramathi Police Station and a separate complaint has been registered in Crime No.409 of 2008 and accordingly, the Inspector of Police viz., P.W.21 has continued investigation and made arrangements for conducting autopsy on the body of the deceased. The Doctor by name Sujatha (P.W.13) has conducted post-mortem and she found the following external and internal injuries:-

"External appearance:- All over highly decomposed



female body with lies of muscle tissues over the body. O/D. Skull bone broken into pieces. Temporal and half of parietal bone right side separated. Thoracic cavity bone ribs, sternum, maxilla, mandible and vertebra both humerus both side tibia, fibula, ulna, radius (both sides). Both hand wrist bones, both foot (NC) bones seen. Dislocation and fracture in hip bones present. Both foot with muscles present. All visera are missing. Part of liver and part of intestine preserved and sent for chemical analysis."

The Post-Mortem Certificate has been marked as Ex.P.15. After completing investigation, P.W.21 has laid a final report on the file of the Judicial Magistrate's Court No.I, Karur and the same has been taken on file in P.R.C.No.22 of 2009.

4. The Judicial Magistrate No.I, Karur, after considering the facts that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Karur Division and the same has been taken on file in Sessions Case No.54 of 2011.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed a first charge against the first accused under Section 364 of the Indian Penal Code; second charge against all the accused under Sections 302 read with 34 of the Indian Penal Code and third charge against them under Sections 404 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 21 have been examined and Exs.P.1 to P.34 and M.Os.1 to 15 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. However no oral and documentary evidence have been adduced on the side of the accused.

8. The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused Nos.1 and 2 guilty under Sections 302 read with 34 of the Indian Penal Code and also under Section 404 of the Indian Penal Code and sentenced to undergo imprisonment for life and also imposed a fine of Rs.500/- upon each of them under Sections 302 read with 34 of the Indian Penal Code. Further, they have been sentenced to undergo one month rigorous imprisonment under Section 404 of the Indian Penal Code with usual default clause. Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been filed at the instance of the first accused as appellant.

9. The consistent case of the prosecution is that the first accused has had illicit intimacy with the wife of the defacto complainant and in pursuance of their relationship, the wife of the defacto complainant has compelled the first accused to marry her and in order to murder her, on 02.10.2008, the first accused has abducted



and taken her to an isolated place and with the assistance of the remaining accused murdered her and subsequently, stealthily removed her jewels.

10. It is an admitted fact that Ex.P.1, complaint has been given by the defacto complainant and the same has been registered under Section 363 of the Indian Penal Code and after some time, the body of the deceased has been recovered within the jurisdiction of Paramathi Police Station and a separate crime number has been given.

11. The learned counsel appearing for the appellant/first accused has contended that the specific evidence given by P.W.5, Village Administrative Officer is that all the accused have been arrested on 28.10.2008 whereas, the daughter of the deceased has been examined as P.W.2 and her specific evidence is that even on 27.10.2008, she has seen all the accused in Police Station and therefore the arrest of the accused has not been clearly established on the side of the prosecution. Further, the argument advanced on the side of the appellant/first accused is that in the instant case, no evidence is available with regard to recovery of jewels. On that score also, the convictions and sentences passed by the trial Court are liable to be set aside.

12. Per contra, the learned Additional Public Prosecutor has contended that in the instant case with regard to confession, recovery of some material objects P.W.5, Village Administrative officer has given clear evidence and further the concerned Investigating Officer has been examined as P.W.21 and he speaks about the confession alleged to have been given by the first accused and also material objects produced by him. The trial Court, after considering the evidence adduced on the side of the prosecution, has rightly found the accused guilty under Sections 302 read with 34 of the Indian Penal Code and also under Section 404 of the Indian Penal Code and therefore the convictions and sentences passed by the trial Court do not warrant interference.

13. It is an admitted fact that in the instant case, there is no eye witness for the purpose of proving the charges framed against the accused. The prosecution has utilized service of P.W.5, Village Administrative Officer. The specific evidence given by P.W.5 is that on 28.10.2008, the police have arrested all the accused. The first accused has voluntarily given a confession statement and he produced a receipt and also a nylon rope.

14. At this juncture it would be more useful to look into the evidence given by P.W.2, who is none other than the daughter of the deceased and defacto complainant. The specific evidence given by P.W.2 is that on 27.10.2008 itself, she has found all the accused in Police Station. Since P.W.2 has found all the accused in Police Station on 27.10.2008, it is very clear that the evidence given by P.W.5 is absolutely false.

<https://hcservices.ecourts.gov.in/hcservices/>

15. The further case of the prosecution is that in pursuance of confession alleged to have been given by the first accused, he produced a receipt (Ex.P.3). In fact, this Court has perused Ex.P.3 and the same stands in the name of the second accused.



16. Considering the fact that on 27.10.2008 itself P.W.2 have seen all the accused in Police Station, the alleged arrest, confession and recovery of material objects have not at all been established nor proved on the side of the prosecution. Under the said circumstances, on the basis of Ex.P.3, the Court cannot come to a conclusion that the first accused has had connection with the crime. Except the said portion of evidence, no other incriminating materials are available so as to come to a conclusion that the appellant/first accused has had connection with the crime.

17. The trial Court, without considering the evidence given by P.W.2 and also without considering the fact that P.W.5 does not specify the place from which the police have arrested the accused, has erroneously found the appellant/first accused guilty under Sections 302 read with 34 of the Indian Penal Code and also under Section 404 of the Indian Penal Code. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/first accused and altogether the present Criminal Appeal deserves to be allowed.

18. In fine, this Criminal Appeal is allowed and the convictions and sentences passed in Sessions Case No.54 of 2011 by the District and Sessions Court, Karur are set aside. The appellant/first accused is acquitted. Bail bond if any executed by him, shall stand cancelled and fine amount if any paid by him is ordered to be refunded forthwith. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The District and Sessions Judge, Karur.
- 2.The Sessions Judge, Karur.
3. The Judicial Magistrate No.II, Karur.
4. -Do-Thro' The Chief Judicial Magistrate, Karur District.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The District Collector, Karur District.
7. The Director General of Police, Vepary, Chennai -4.
- 8.The Inspector of Police,Karur Town Police Station,Karur,Karur Dist.
- 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Samidurai, Advocate SR.No.12756