

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2017

PRONOUNCED ON : 10.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.111 of 2017

Durkeshkumar

... Appellant

-Vs-

State by
Inspector of Police
B-9, Saravanampatti Police Station,
Coimbatore District,
(Crime No.20/2015).

... Respondent

This Criminal Appeal has been filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed against the appellant on 15.04.2016 in SC.No.262/2015 (on the file of the Special Court for exclusive trial of Bomb Blast Cases, Coimbatore).

For Appellant : Mr.P.Pugalenth

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

सत्यमेव जयते

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

The appellant/sole accused in S.C.No.262 of 2015 on the file of the Sessions Court for Bomb Blast Cases at Coimbatore, has come up with this Criminal Appeal, challenging the conviction and sentence imposed on him for offences u/s.302 and 201 I.P.C. The Trial Court, by the Judgment dated 15.04.2016, convicted and sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months for the offence under Section 302 I.P.C., and to undergo rigorous imprisonment for seven years and

to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months, for the offence under Section 201 I.P.C.

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

The accused hails from Bihar State. He was working in a Flour Mill at Ganapathi Sivasakthi Colony, Coimbatore, as an Office Boy. One Mrs.Jothi @ Julie was also working in the same Mill. The accused was staying at the house of Mrs.Jothi @ Julie at Balakrishnabavan II Street, Ganapathi Nagar, Coimbatore, from the year 2006 onwards. The accused gave his entire salary to Mrs.Jothi @ Julie for safety purpose. It is alleged that, the deceased in this case was one Mr.Krishnamoorthy who is the husband of Mrs.Jothi @ Julie. They have a son by name, Mr.Prabu, who was studying in a local college. During the month of January 2015, the deceased was in need of Rs.10,000/- to pay the college fees for Mr.Prabu. Therefore, he wanted the accused to pay him Rs.10,000/-. But, the accused did not pay so.

3. On 06.01.2015, the deceased again demanded Rs.10,000/- from the accused. When the accused refused to pay any amount to the deceased, the deceased warned him that he should not come to his house, if he was not prepared to pay a sum of Rs.10,000/-. This statement of the deceased infuriated the accused. This is stated to be the motive for the occurrence.

4. On 06.01.2015, around 10.30 am, it is alleged that the accused cut the deceased on his neck with a knife and killed him. The accused severed the head from the trunk and packed the head in a gunny bag and the trunk in another gunny bag. He threw the gunny bag containing the head in a watter in the channel near the municipal play ground at VNS Nagar, Ganapathi, Coimbatore. Similarly, he threw the gunny bag containing the trunk in a water in the channel at Sangnur, Aavarampalayam Road. Then he fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

5. P.W.1 - Mr.Prabu is the son of the deceased. According to him, on 06.01.2015 at 08.45 am, Mrs.Jothi @ Julie, the wife of the deceased had left for Flour Mill. P.W.1 also left for the College. The accused and the deceased alone were there in the house. On the same day, around 5.00 pm, P.W.1 returned home.

At that time, the accused was found painting the hall of the house. The deceased was not found in the house. P.W.1 enquired the accused about the whereabouts of the deceased. But, he did not reply properly. Then, P.W.1 tried to contact the deceased over cellphone. But, the cellphone of the deceased was in a switch off mode. On the same day, around 7.00 pm, the wife of the deceased returned home. She also tried to speak to the deceased through cellphone. But, the cellphone of the deceased was continuously in a switch off mode. When P.W.1 and Mrs.Jothi @ Julie enquired the accused about the whereabouts of the deceased, he said that he was not aware of. Thereafter, the accused left the house informing P.W.1 and Mrs.Jothi @ Julie, the wife of the deceased that he was going in search of the deceased.

6. P.W.1 and the other family members also went in search of the deceased. Since, the deceased was not seen anywhere, on 09.01.2015, Mrs.Jothi @ Julie, the wife of the deceased, made a complaint at 5.00 pm at Saravanampatti Police Station. Ex.P.1 is the complaint. On the said complaint, the then Head Constable (P.W.19) registered a case in Crime No.20/2015 for "man missing". Ex.P.22 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate on 10.01.2015 at 6.15 am.

7. The case was taken up for investigation by P.W.21, the then Inspector of Police. He visited the house of the deceased at 7.00 pm on 09.01.2015; prepared an observation Mahazar and a rough sketch in the presence of witnesses. Though, he tried to find out the deceased, he did not get any breakthrough. When that be so, the accused, on his own, met P.W.2 around 2.00 am on 10.01.2015. P.W.2 was a resident of Vaiyampalayam Village. The deceased and his family members were closely known to him. He was also the organiser of a political party for Coimbatore Corporation limits. The accused also used to visit his house as a friend of the deceased and his wife. In such a way, the accused was closely known to him.

8. On 10.01.2015, P.W.2 was doing his night shift work in a grinder company at Pappanayakkanpalayam. The accused met him in his company and at that time, he was seen perplexed. P.W.2 enquired him. Immediately, the accused confessed to him that he had killed the deceased; severed the head; put the head in a gunny bag and threw the same in the channel near the Municipal play ground at VNS Nagar, Ganapathi, Coimbatore, and put the

trunk in another gunny bag and threw the same in a channel at Sangapur Village. As it was said orally by the accused, P.W.2 reduced the same into writing. The said extra judicial confession is Ex.P.4. Then he took the accused along with Ex.P.4 and produced him before P.W.21 around 4.30 am on 10.01.2015 at the Police Station. P.W.21 arrested the accused. On such arrest, the accused again confessed to his guilt. In pursuance of the confession made, he took the Police and the witnesses to the place where he had thrown the gunny bag containing the head of the deceased. Accordingly, the gunny bag containing the head was recovered. The accused also disclosed the place where he had hidden an Aruval. In pursuance of the said disclosure statement, he produced the Aruval (M.O.2) and the same was also recovered. In his confession, the accused had also disclosed the place where he had hidden a TVS Pep bearing Registration No.TN 37 AW 4929. That was also recovered. Then, in pursuance of the disclosure statement, the trunk of the deceased was also recovered. The paint box (M.O.14) containing the remaining paint was also recovered. P.W.21 conducted inquest on the head as well as the trunk of the dead body. He also sent the head and the trunk to the Doctor for post mortem through P.W.17, the then Head Constable.

9. P.W.12 - Dr.Jeyasingh, conducted autopsy on the head and found the following injuries:-

The following ante mortem injuries noted over the head:

Cut injury 9 X 5 cm depth noted over front and left side of neck at the level of lower part of thyroid cartilage. The wound cutting the underlying muscle, vessels, nerves, and completely cutting the larynx and partially cutting the anterior part of C-5 vertebra. The cut surface found reddish in colour and adherent with the blood clots with evidence of anti mortem reactions.

The following post mortem injuries noted over the head:

The post mortem cut injury noted over the remaining portion of the neck and separated from the body at the level of C-5 vertebra. The margins and edges of the wound found pale in colour. There is no evidence of any anti mortem reactions. The hyoid bone found intact.

On dissection of Scalp, Skull and Dura found intact. Brain-cut section pasty.

C-5 vertebra is preserved for comparison with the body.

Mandible preserved for D.N.A. Profiling.

10. P.W.12 - Dr.Jeyasingh, conducted autopsy on the trunk and found the following injuries:-

The following ante mortem injuries noted over the trunk:

Cut injury 9X5 cm depth noted over front and left side of neck at the level of lower part of thyroid cartilage. The wound cutting the underlying muscle, vessels, nerves, and completely cutting the larynx at the level above the C-6 vertebra. The cut surface found reddish in colour and adherent with the blood clots with evidence of anti mortem reactions.

The following post mortem injuries noted over the trunk:

- 1) The post mortem cut injury noted over the remaining portion of the neck and separated from the head at the level of above to C-6 vertebra. The margins and edges of the wound found pale in colour. There is no evidence of any anti mortem reactions.
- 2) Post mortem cut injury 11X2 cm X bone deep noted over top of right shoulder.
- 3) Pressure ligature marks 0.5 to 1 cm breadth noted over both elbow, wrist and hand, entire anterior lower chest, both side lower abdomen, anterior aspect of both upper thigh, both mid thigh and both knee joint. "

P.W.12 gave opinion that the deceased would appear to have died of cut injury on the neck. He further opined that the cut injury would have been caused by a weapon like Aruval (M.O.2)

11. On returning to the Police Station, P.W.21 forwarded the accused to Court for judicial remand. The material objects were sent to Court and in turn to forensic laboratory for chemical examination and the report was received. On completing the investigation, he laid charge sheet against the accused.

12. Based on the above materials, the trial Court framed

the charges under Sections 302 and 201 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined and 40 documents were exhibited besides 26 Material Objects were marked.

13. Out of the said witnesses, P.W.1 is the son of the deceased. He has stated about the fact that the deceased was at his house. He has also stated about the demand made by the deceased for a sum Rs.10,000/- from the accused and the quarrel between the accused and the deceased on account of the same, on 06.01.2015. He has further stated that on the occurrence day, at 8.45 am, his mother left for her Flour Mill and he also went to the College. At that time, according to him, the deceased and the accused alone were there in the house. He has further stated that at 5.00 pm, when he returned, he found the accused alone in the house and he was painting the hall of the house. He has further stated that the accused said that he was not aware of the whereabouts of the deceased. He has also spoken about the complaint made to the Police. He has further stated that after the head and trunk of the deceased were retrieved, the same were identified by him and by his mother.

14. P.W.2 - Mr.Selvam, has spoken about the extra judicial confession made by the accused to him. P.W.3 is the neighbour of the deceased. He has stated about the preparation of observation mahazar at the house of the deceased. P.W.4 has spoken about the arrest of the accused and the confession made by him to P.W.2 and the subsequent recoveries made out of the said confession. P.W.5 has spoken about the preparation of observation mahazar and rough sketch prepared at the house of the deceased. P.W.6 yet another neighbour of the deceased has also spoken about the preparation of observation mahazar and rough sketch.

15. P.W.7 has stated that on 06.01.2015 between 12.00 noon and 1.00 pm, the accused came in a TVS Pep motorcycle (M.O.1) with a gunny bag and threw the same into the channel. At that time, he was not aware that the gunny bag contained a trunk. Later, when it was recovered, he came to know that the gunny bag contains the trunk of a man. He identified the same. P.W.8 has spoken about the recovery of TVS Pep motorcycle (M.O.1) and paint box (M.O.14). P.W.9 has stated about the recovery of the head, in the place on being identified by the accused. P.W.10 has also spoken about the same facts. P.W.11 has stated that he went in search of the deceased along with P.W.1 and other family members. He has further stated about the confession made by the accused, subsequent recovery of Aruval (M.O.2), in pursuance of the same. P.W.12, has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.13 has not

stated anything incriminating about the accused. P.W.14 has stated that on 06.01.2015 around 12.00 noon, he found the accused moving in his motorcycle with a gunny bag. P.W.15 has stated that he found the accused throwing a gunny bag in the channel near the Municipal play ground, Ganapathi, Coimbatore. P.W.16 has spoken about the photographs taken by him after the trunk and the head were recovered. P.W.17, a Head Constable has stated that he handed over the head and trunk to the Doctor for post mortem. P.W.18 has also spoken about the same facts. P.W.19 has spoken about the registration of the case, on the complaint of the wife of the deceased. P.W.20 an Expert from the Regional Forensic Laboratory, Coimbatore has spoken about the chemical examination conducted on the material objects. According to him, he found blood stains on all the material objects. P.W.21 has spoken about the investigation done and the final report filed by him.

16. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

17. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant is before this Court with this Criminal Appeal.

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

19. This is a case based on circumstantial evidence. The foremost circumstance is that the deceased was last seen alive around 8.45 am on 06.01.2015 at his house and thereafter, he was not seen. The dead body of the deceased was found on 10.01.2015, into two pieces. The head and the trunk were recovered from two different places from two channels. The Doctor who conducted autopsy has stated that the death of the deceased was due to violence. Thus, the prosecution has succeeded in establishing that the death of the deceased was a homicide and it had taken place some time between 8.45 am on 06.01.2015 and 3.45 pm on 10.01.2015.

20. The next circumstance relied on by the prosecution is

the motive. P.W.1, the son of the deceased has stated that the accused was staying in their house from the year 2006 onwards. He has further stated that the deceased requested him to pay a sum of Rs.10,000/- to pay college fees for P.W.1. Since, the accused refused to give, the deceased asked him to vacate the house and not to stay there. This is stated to be the motive. This has been clearly spoken by P.W.1. We find no reason to reject this part of the evidence of P.W.1.

21. The next circumstance is that lastly, the accused was found in the company of the deceased. On 06.01.2015 at 8.45 am, according to P.W.1, when he left for his college, his mother had already left for Flour Mill. The accused and the deceased alone were there in the house. At 5.00 pm, when he returned from the college, the deceased was not seen in the house. The accused did not give any satisfactory reply to P.W.1 about the whereabouts of the deceased. When the wife of the deceased returned around 7.00 pm on the same day, she also enquired the accused about the deceased. The accused said that he was not aware of the whereabouts of the deceased. Then, the accused left the house and informed P.W.1 and his mother that he was proceeding to search for the deceased.

22. P.W.1 has further stated that the accused was painting the hall of the house of the deceased. There was no need to paint the hall of the house. It was something unusual on the part of the accused to paint the hall of the house. According to the prosecution, because, there were blood stains, in order to erase the same, he had painted the hall of the house. P.W.1 has categorically stated about the painting of the hall by the accused. There is no reason to reject this part of the evidence of P.W.1. This conduct of the accused in not saying anything about the whereabouts of the deceased and in painting the hall of the house is yet another incriminating circumstance against the accused.

23. After the complaint was made, the accused had gone to P.W.2 on 10.01.2015 around 2.00 am and made a voluntary confession. P.W.2 reduced the same into writing. Ex.P.4 is the said extra judicial confession. In that confession, he disclosed that he killed the deceased; severed the head; put it in a gunny bag and threw the same in a channel near the municipal play ground at VNS Nagar, Ganapathi, Coimbatore and similarly, he threw the gunny bag containing the trunk in a water in the channel at Sangapur, Aavarampalayam Road.

24. The learned counsel for the appellant would submit that this extra judicial confession cannot be believed. According to him, the accused would not have made such voluntary confession at all. But, we find no force at all in the said argument of the learned counsel. It is not as though, P.W.2 was a stranger to the accused. The family members of the deceased were very close to P.W.2. On account of the same, the accused also used to visit the house of P.W.2. In such a way, P.W.2 and the accused were also close to each other. Therefore, there was every reason for the accused to go to P.W.2 to make a voluntary confession. Therefore, we hold that Ex.P.4 is a voluntary confession and there is no reason to doubt the same.

25. It is too well settled that if an extra judicial confession inspires the fullest confidence of the Court that by itself can be the foundation to convict the accused, even in the absence of any corroboration from any other source. It is only in a case where, the extra judicial confession is shrouded with any doubt, the same needs corroboration from independent sources. But in this case, in our considered view, the extra judicial confession (Ex.P.4) inspires the fullest confidence of the Court and it is corroborated on all material particulars by other independent sources, about which we will discuss now.

26. After the accused completed his confession, P.W.2 took him to P.W.21, the then Inspector of Police and produced the accused before him. The accused reiterated the same confession to P.W.21. Out of the said disclosure statement made, he took the Police and witnesses to the place where he had hidden the Aruval (M.O.2) and the TVS Pep motorcycle (M.O.1) and also identified the place where he had thrown the head in the channel near the municipal play ground at VNS Nagar, Ganapathi, Coimbatore and similarly, the place where he had thrown the gunny bag containing the trunk in the channel at Sanganur, Aavarampalayam Road. P.W.21 recovered the same in the presence of witnesses. These recoveries were made out of the disclosure statement made by the accused. The recoveries of head and the trunk of the deceased, on the disclosure statement made by the accused, is a very strong circumstance against the accused. The accused has got no explanation to offer in respect of the same. Thus, the recovery of the TVS Pep motorcycle (M.O.1) in which, according to the confession made by the accused, he carried the gunny bags containing the trunk and the head, the recovery of Aruval (M.O.2) which, according to the confession, was used to cut the deceased and the recoveries of head and the trunk from two different channels would all go to corroborate the extra judicial confession made by the accused to P.W.2 on material

particulars.

27. Above all, there is also evidence to show that the accused was seen carrying the gunny bags in his motorcycle (M.O.1) and also throwing the same into the channels. At that time, the prosecution witnesses were not aware of the fact that the gunny bags contained either the head or the trunk of the deceased. It was only after the accused was arrested and only after he identified the places where he had thrown the head and the trunk in two different gunny bags in two different places, the recoveries of head and the trunk of the deceased were made and then only, the prosecution witnesses also came to know that the gunny bags thrown by the accused contained the head and the trunk of the deceased. The head and the trunk were found in the gunny bags tied so tightly with ropes. The accused has got no explanation regarding the same. Thus, the extra judicial confession made by the accused is corroborated on all material particulars by these evidences.

28. From this, in our considered view, the prosecution has clinchingly proved that it was this accused who killed the deceased; severed the head; put the head in one gunny bag and the trunk in the other gunny bag and threw the same in two different channels, with a view to erase the evidence. The trial Court was thus, right in convicting the accused for offence under Sections 302 & 201 I.P.C.

29. Now turning to the quantum of punishment, the trial Court has imposed only minimum punishment on the appellant. It does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this Criminal Appeal.

30. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The conviction and sentence imposed by the trial Court on the appellant is hereby confirmed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Sessions Judge,
Special Court for exclusive trial of Bomb Blast Cases,
Coimbatore.
2. The Judicial Magistrate II,
Coimbatore.
3. Thro' Chief Judicial Magistrate,
Coimbatore.
4. The Superintendent,
Central Prison, Coimbatore.
5. The District Collector,
Coimbatore.
6. The Director General of Police,
Mylapore, Chennai-600 004
7. The Inspector of Police
B-9, Saravanampatti Police Station,
Coimbatore District.
8. The Public Prosecutor
High Court, Chennai.
9. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Pugalenth, Advocate SR.No.21770

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