

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

CrI.A.No.140 of 2017

Kumar @ Anandakumar ... Appellant/Accused No.1
vs.

State, through
the Inspector of Police,
Erode North Police Station,
Erode District. ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 14.07.2009 passed by the
Additional District and Sessions Judge-cum-Fast Track Court
No.1, Erode, in S.C.No.222 of 2008.

For Appellant : Mr.S.Mohamed Ansar

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

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

The appellant, the first accused in S.C.No.222 of 2008,
on the file of the Additional District and Sessions Judge/Fast
Track Court No.I, Erode, stands convicted for offences under
Sections 364, 379, 302 read with Section 34 and Section 201
IPC. The trial Court has sentenced him to undergo rigorous
imprisonment for ten years for offence under Section 364 IPC;
to undergo rigorous imprisonment for three years for offence
under Section 379 IPC; to undergo imprisonment for life for
the offence under Section 302 read with Section 34 IPC and to
undergo rigorous imprisonment for three years for the offence
under Section 201 IPC. Challenging the said conviction and
sentences, the appellant is before this Court with this
appeal. The second accused was also convicted similarly, but
he has not filed any appeal.

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

(a) The deceased in this case was one Mr.Ayer @
Rajagopal. He was a resident of Mamarathupalayam Village in
Erode District. P.W.5 is his mother. Both the accused belong
to Perivasemur Village in Erode District. The accused and the

deceased were known to each other already. There were money transactions between the first accused and the deceased for quite some time. P.W.1 was plying an auto at Asokapuram in Erode. On 19.4.2008, around 10.45 p.m., when he was in the auto-stand, these two accused came there and engaged P.W.1's auto to go to Mamarathupalayam Village, Erode. P.W.1 fixed Rs.100/- for the same. The accused 1 and 2 got into the auto and it was proceeding towards Mamamuthurpalayam, Erode. At Erode, near 'Sakthi Wine Shop', the deceased was sitting in drunken state. These two accused put him in the auto. The second accused got down from the auto and he followed the auto in a motorcycle. Thus, the deceased and the first accused travelled in the auto, driven by P.W.1. When the auto was nearing Bharathi Nagar, en-route to Mamarathupalayam, there arose fight between the first accused and the deceased inside the auto. Therefore, P.W.1 stopped the auto and told the first accused that he would not proceed further. He wanted the first accused and the deceased to get down from the auto and to pay the fare. The first accused stated that he would pay only Rs.30/- and not Rs.100/-. P.W.1 agreed for the same. The first accused gave a 100/- rupee note to P.W.1 and wanted him the balance. P.W.1 went to a nearby shop to exchange the same. Even before he could return to the auto, the first accused took away the auto with the deceased, followed by the second accused, in the motorcycle. When P.W.1 returned to the place of occurrence, he did not find the auto and the above stated persons also. He went in search of the auto to various places. Since he could not locate, on 20.04.2008, at 9.00 p.m. he went to the Erode North Police Station and made a complaint under Ex.P1. On the said complaint, a case was registered in Crime No.286 of 2008, under Section 379 IPC against these two accused. Ex.P.23 is the FIR. P.W.1 and the Police went to the place of occurrence. At last, the dead body of the deceased was found in a pit, caused due to quarrying, near Aayarpali Government Quarry site. The auto belonging to P.W.1, bearing Registration No.TN-01B-6247, was parked near the said place. Based on the same, P.W.1 gave a statement to P.W.14, the Sub-Inspector of Police, who registered the case. He altered the case into one under Sections 379 , 364, 302 and 201 IPC and handed over the case diary to the Inspector of Police for investigation.

(b) P.W.15, the then Inspector of Police, went to the place of occurrence, prepared an observation mahazar and a rough sketch. He arranged for a photographer to take photographs at the place of occurrence. He recovered the auto belonging to P.W.1, under a mahazar. The Fire and Rescue Service men, who came to the place of occurrence, at the request of P.W.15, rescued the body from the pit, at 10.30 a.m. He conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.10-Dr.Jaganmohan conducted autopsy on the body of the deceased on 21.04.2008 at 5.00 p.m. He found the following injuries:

"Mouth opened. (R) eye ball protruding out. Skin all over body is peeled off. No External injuries could be made out. Injuries: All organs in Abdomen and thorax found in red colour. Weight within normal range. Brain: decomposed. could not be identified. Skull intact. Hyoid preserved."

Ex.P.13 is the postmortem certificate. Ex.P.14 is his final opinion regarding the cause of death. According to him, the death of the deceased was due to asphyxia due to manual strangulation.

(c) P.W.15, during the course of investigation, examined few more persons. On 23.04.2008, at 6.00 a.m., near Central Bus-Stand, at Erode, he arrested both the accused. On such arrest, the first accused gave a voluntary confession, followed by the second accused. In the confession made by the first accused, he disclosed that he had hidden a watch and cash of Rs.250/- at his house and also disclosed the place where he had thrown the towel. In pursuance of the same, he took the police and the witnesses to the said place and produced M.O.1, the towel, and from his house, he produced the watch-M.O.4 and cash of Rs.250/-. The second accused in his confession disclosed the place where he had hidden a TVS Victor Motorcycle and the Key. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced the said material objects. He produced Rs.150/- from his possession. P.W.15 recovered all these material objects. On returning to the police station, he forwarded the accused to the Court for judicial remand. At his request, the material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects. On completing the investigation he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. The trial Court proceeded with the trial. During the trial, in order to prove the charges, on the side of the prosecution, as many as 15 witnesses were examined, 28 documents and 17 material objects were marked. Out of the said witnesses, P.W.1 has stated that the accused 1 and 2 engaged his auto at around 10.45 p.m. on 19.4.2008 to go to Mamarathupalayam Village. He has further stated that they took the deceased in the auto from a wine shop. At that time, the deceased was fully drunk. The first accused and the deceased were travelling in the auto. The second accused followed them in a motorcycle. He has further stated that on the way to Mamarathupalayam, there arose a quarrel between the first accused and the deceased, which resulted in a fight. Therefore, he stopped the auto and demanded the deceased and the first accused to get down from his auto. The first

accused gave him a 100/- rupee note and asked him to take Rs.30/- only. He has further stated that when he went to the nearby shop for exchanging 100/- rupee note, the first accused took away the auto along with the deceased, followed by the second accused. He has further stated about the complaint made and the recovery of the auto by the police. P.W.3 has stated that P.W.1, after the above occurrence, came to him and informed him that his auto was stolen. P.W.2 has stated that on the day of occurrence, the deceased took him to the wine shop for taking liquor. After sometime, these two accused also came there. All of them drank liquor. The deceased was under the influence of alcohol. Thereafter, the accused 1 and 2 took the deceased in the auto, belonging to P.W.1, to go to Mamarathupalayam Village. The second accused followed the auto in his motorcycle. He has further stated that on the next day, he came to know that the auto was stolen by somebody. In fact, according to him, P.W.1 came to his house and informed him about the occurrence. P.W.4, is the mother of the deceased. She has stated that the dead body was found in a pit. P.W.5 has spoken about the preparation of observation mahazar and a rough sketch and the recovery of material objects at the place of occurrence. P.W.6 has turned hostile. P.W.7 has also spoken about the preparation of observation mahazar and a rough sketch. P.W.8 has spoken about the photographs taken at the place of occurrence. P.W.9 has spoken about the arrest of the accused, the confession made and the consequential recoveries of material objects. P.W.10 has spoken about the post-mortem conducted and the final opinion regarding the cause of death. P.W.11, the Head Clerk of the Judicial Magistrate Court, has stated that he forwarded the material objects for chemical examination, as directed by the Magistrate. P.W.12, a Constable, has stated that he handed over the FIR to the learned Magistrate at 10.30 a.m. on 21.04.2008. P.W.13, a constable, has stated that he handed over the dead body to the Doctor for postmortem, as directed by P.W.15. P.W.14 has spoken about the registration of the case, on the complaint of P.W.1, and the investigation done by him. P.W.15 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused as detailed in paragraph No.1 of this judgement and that is how the appellant/first accused has come up with this appeal.

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

7. This is a case based on circumstantial evidence. The first and foremost circumstance is the evidence of P.Ws.1 and 2. P.W.2 has stated that on the day of occurrence, the deceased took him to the liquor shop, where they had liquor. He has further stated that at that time, these two accused also came and they joined the deceased to have drink. The deceased was under the influence of alcohol. He has further stated that the accused 1 and 2 arranged for the auto of P.W.1. P.W.1 has also stated so. Thereafter, in the auto, the first accused and the deceased have travelled, which was driven by P.W.1 to go to Mamarathupalayam. The second accused followed the auto in his motorcycle. P.W.1 has further stated that when the auto was proceeding at Mamarathupalayam, there arose a quarrel between the first accused and the deceased, which resulted in a fight. Therefore, P.W.1 stopped the auto and wanted the first accused and the deceased to get down from the auto. He has further stated that the first accused gave him a 100/- rupee note and asked him to take only Rs.30/- towards fare. When he went to the nearby shop to exchange the 100/- rupee note, the auto was driven away by the first accused, followed by the second accused. The auto was thereafter not seen. Therefore, he made a complaint. On the next day, he informed P.W.2 about the same. From these evidences, the prosecution has clearly established that the deceased was taken only by these two accused in the auto. The second accused followed them in a motorcycle.

8. It is in evidence that thereafter the dead body of the deceased was found around 8.00 a.m. on 21.4.2008. The doctor, who conducted autopsy, has stated that the death of the deceased was due to manual strangulation. There is no reason to reject the said opinion of the Doctor. From this evidence, the prosecution has clearly established that the deceased was done to death sometime between 10.45 p.m. on 19.4.2008 and 8.00 a.m. on 21.04.2008. The prosecution has further established that it is a homicide.

9. The conduct of these two accused, after they were lastly seen, taking the deceased, also is an incriminating circumstance against them. There is no explanation from the accused as to why the first accused drove away the auto with the deceased, without the consent of P.W.1. There is also no explanation from the appellant as to why he abandoned the auto near the place of occurrence. He has also not explained as to what had happened to the deceased, who was lastly seen in his company. The silence on the part of the accused in respect of the above facts would only be consistent with his guilt.

10. After the arrest of the accused, the incriminating material objects were recovered from the first accused. A towel was recovered, which according to the prosecution case, was used to strangle the deceased. Though there is no evidence to prove that the said towel was used for the purpose of strangulation, there is evidence that the watch, recovered

from the first accused, belonged to the deceased. The first accused has no explanation to offer for his possession. This gives rise to presumption under Section 114 of the Indian Evidence Act that he was the one to remove the watch from the body of the deceased. Since the death of the deceased and the robbery had taken place in one and the same transaction, the natural presumption is that the person who committed robbery had committed the murder also. Since the presumption under Section 114 of the Act that the first accused was the one who had stolen away the watch from the deceased, as a corollary, we have to presume that he was responsible for the death of the deceased. From these circumstances, in our considered view, the prosecution has clinchingly proved the guilt of these accused.

11. So far as the quantum of punishment is concerned, the trial Court has imposed only the minimum punishment provided under Section 302 of the Indian Penal Code and therefore, the same also does not require any interference. In nutshell, we do not find any merit at all in this appeal. The appeal is, therefore, liable to be dismissed.

12. In the result, the appeal is dismissed. The conviction and sentence imposed on the appellant, by the trial Court, is hereby confirmed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal Sessions Judge, Erode.
- 2.The Additional District and Sessions Judge-cum-Fast Track Court No.1, Erode,
- 3.The Chief Judicial Magistrate, Erode.
- 4.The Judicial Magistrate No.1, Erode.
- 5.The Additional Superintendent, Central Prison, Coimbatore.
- 6.The Inspector of Police, Erode North Police Station, Erode District.
- 7.The District Collector, Erode.

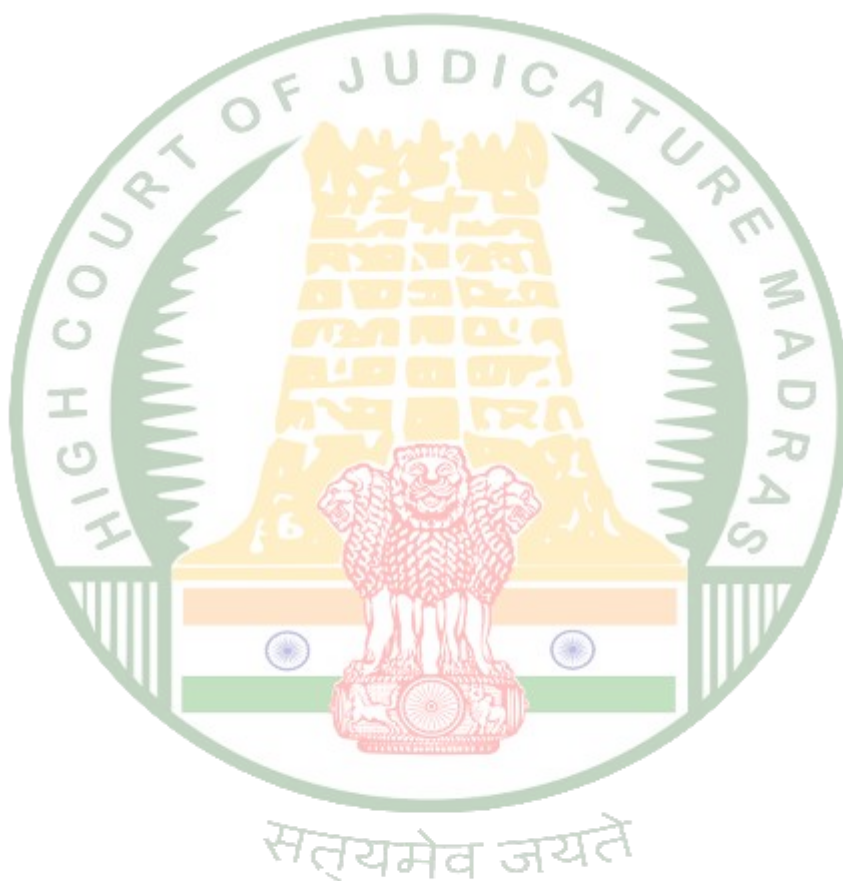
8.The Director General of Police,
Mylapore, Chennai.

9.The Public Prosecutor,
High Court, Madras

+1 cc to Mr.S.Mohamed Ansar,advocate,sr.18096.

kj(co)
krd 21/4

Cr1.A.No.140 of 2017



WEB COPY