

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.531 of 2016

Guru @ Gurunathan @ Sivagurunathan @ Magesh

.. Appellant/A-2

Vs

State by the Inspector of Police,
Chidambaram Town Police Station,
Cuddalore District.

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the Conviction and sentence passed by the learned II
Additional District and Sessions Judge, Chidambaram, Cuddalore
District in S.C.No.237/2008 dated 29.04.2016.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.P.Govindarajan,

Additional Public Prosecutor

JUDGEMENT

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

The appellant is the second accused in S.C.No.237 2008 on the file of the learned II Additional District & Sessions Judge. The first accused was one Mr.Veeramani @ Veera. The case against A.1 was split up and the same has been tried separately in S.C.No.137/2009. Including the appellant/A.2, there were a total number of 8 persons arrayed as accused, in this case, as per the Police Report. It has been brought to the notice that the case against the other accused were tried separately. So far as the

appellant/A.2 is concerned, the trial Court framed charges under Sections 148, 302, 201 & 202 I.P.C. By judgment dated 29.04.2016, the trial Court convicted him under all the charges and sentenced him as detailed below:-

Sl.No	Section of law	Sentence
1	148 I.P.C.,	Rigorous imprisonment for three years
2	302 I.P.C.,	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months
3	201 I.P.C.,	Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month
4	202 I.P.C.,	Rigorous imprisonment for six months.

Challenging the same, the appellant/A.2 is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Paramanandam. He was working as a Police Constable at Chidambaram Police Station, Cuddalore District. It is alleged that he was very sincere in duties and he was also allotted the work to arrest the prohibition offenders. Accordingly, on 02.06.1999, he found the appellant/A.2 who is a prohibition offender. The deceased took him into the custody and brought him in his Scooter bearing registration No.TNF5785 towards the Chidambaram Police Station. When he was on his way to the Police Station, the other accused were lying in wait for them. They intercepted the Scooter. It is further alleged that all of them joined together, killed the deceased and thereafter, put the dead body in a gunny bag and buried the same. The occurrence was not witnessed by anyone.

2.P.W.1 is the wife of the deceased. According to her, on the day of occurrence, the deceased went to the Chidambaram Police Station and informed P.W.1 that he would return home in the night. But, he did not return. She went in search of the deceased at various places. But, the deceased was not seen anywhere. Therefore, P.W.1 went to Chidambaram Police Station, made a complaint at 6.00 pm on 03.06.1999. On the said complaint, a case was registered in Crime No.262/1999 for "man missing". Ex.P.1 is the complaint and Ex.P.24 is the F.I.R.

3.P.W.28, took up the case was investigation. He examined P.W.1 and few others and recorded their statements. P.W.26 - Mr.Surendirakumar was the then Sub Inspector of Police, Chidambaram Police Station, Cuddalore. It was he who allotted work to the deceased on the occurrence day. P.W.28, examined P.W.26- Mr.Surendirakumar and recorded his statement. Though, all efforts have been taken by him to trace out the deceased, he could not succeed. But, from the materials collected during enquiry, he altered the case into one under Sections 147, 148, 342, 325 & 364 I.P.C., and submitted Ex.P.29 - Alteration Report to the Court.

4.During the course of investigation, it came to light that the Scooter belonging to the deceased bearing Registration No.TNF 5785 was found behind the Kariyaperumal Kovil. A Car bearing registration No.MDR 4971 was also found parked there. In that Car, there were huge blood stains. P.W.28 prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of witnesses at 11.30 am on 05.06.1999. Then, he recovered the Car (M.O.5) and the Scooter (M.O.1) under a mahazar.

5.During the course of investigation, on 08.06.1999, at 6.15 am, P.W.28 arrested the appellant/A.2 herein near the Chidambaram Railway station in the presence of witnesses. On such arrest, he made a voluntary confession in which, he disclosed the place where he had buried the dead body of the deceased in a gunny bag. P.W.28, reduced the said confession into writing. Ex.P.2 is the said disclosure statement. In pursuance of the same, he took the Police and witnesses to the place of occurrence and identified the same. P.W.28 made a request to the Executive Magistrate/Tahsildar (P.W.23) in this regard. P.W.23 came to the place of occurrence on 08.06.1999 at 10.00 am. In his presence, onceagain, the accused/A.2 identified the place where he had buried the dead body of the deceased. With the help of P.Ws.12 to 14, in the presence of P.W.23, the dead body of the deceased was exhumed. P.W.28, conducted inquest on the body of the deceased and then forwarded the same for post mortem.

6.P.Ws.16 & 17 conducted autopsy on the body of the deceased. They found the following injuries:-

"External Injuries:-

1.A lacerated wound on the middle of the occipital region 12x1x1 cm pale in colour oblique in nature

2.A lacerated wound on the left parietal region 5x1x1cm pale.

3.Haematomo on the left side of the occipital region 2x1x1cm"

P.Ws.16 & 17 gave opinion that the death of the deceased was due to the antimortem injuries found on the body. But, according to them, the injuries would have been caused by a weapon like M.O.6.

7.P.W.28 continued the investigation during which, he recovered the blood stained clothes from the body of the deceased. He recovered the same under a mahazar. Thereafter, he altered the case into under Sections 147, 148, 341, 302, 201, 212, 120(B) r/w 149 I.P.C. On the same day, at 6.40 pm, he arrested one accused by name Vijayan @ Jauapandian. On the basis of the disclosure statement made by him, an Auto bearing Registration No.TMM 1522 was recovered in the presence of witnesses. Though, he arrested the other accused and from whose disclosure statement, all the material objects were recovered, since, the appellant/A.2 was in a mood to make a voluntary confession, he made a request to the learned Judicial Magistrate on 09.06.1999 to record the judicial confession of the appellant/A.2.

8.On 10.06.2009, the appellant/A.2 was produced before the learned Judicial Magistrate No.1, Chidambaram. After statutory warning, the learned Judicial Magistrate directed him to be produced on 11.06.1999. On that day, the learned Judicial Magistrate again made a statutory warning and since, the appellant/A.2 was in a mood to give voluntary confession, the learned Judicial Magistrate recorded the same under Ex.P.25. On completing investigation, P.W.28 laid charge sheet against the appellant/A.2.

9.Based on the above materials, the trial Court framed charges as against the appellant/A.2 as stated in the first paragraph of this judgment. The appellant/A.2 denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 28 witnesses were examined and 40 documents were exhibited, besides 16 Material Objects.

10.Out of the said witnesses, P.Ws.3 to 11, 15, 19, 24 & 25 have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.1 & 2, the wife and son of the deceased respectively have stated that the deceased was gone to the Police Station lastly on 02.06.1999 and he did not return thereafter. P.W.1 has further stated about the complaint made by her to the Police. She has further stated that on 08.06.1999, at the place identified by the appellant/A.2, the dead body of the deceased was exhumed in the presence of P.W.23. P.Ws.1 & 2 have identified the dead body as that of the deceased. P.Ws.12

to 14 have stated that at the place identified by the appellant/A.2, they exhumed the dead body of the deceased in the presence of P.W.23. P.W.15 has spoken about the arrest of the appellant/A.2 and the disclosure statement made by him about the place where the dead body was buried. Though, he was stated as hostile, he has supported the case of the prosecution in respect of the above facts.

11.P.Ws.16 & 17 have stated about the post mortem conducted on the dead body of the deceased and their final opinion regarding the cause of death. P.W.18-the Finger Print Expert has stated that the admitted finger prints which were compared with the admitted finger prints of the deceased were tallied with each other. Thus, from out of the evidence of P.W.18, the identity of the dead body has been ensured.

12.P.W.19 who was examined to speak about the confession made by the appellant/A.2, has also turned hostile. P.Ws.20 & 21 have spoken about the preparation of observation mahazar; the rough sketch and the recovery of material objects. P.W.22, a Constable has stated that he handed over the dead body of the deceased to the Doctor for post mortem. P.W.23, the Tahsildar has stated about the exhumation of the dead body of the deceased at the place identified by the appellant/A.2. P.W.26, the then Inspector of Police at Chidambaram Police Station has stated that on the day of occurrence, he only allotted work to the deceased directing him to go for prohibition raid. P.W.27, the then Judicial Magistrate No.1, Chidambaram has spoken about the voluntary confession made by the appellant/A.2. P.W.28 has spoken about the registration of the case; the investigation done and the final report filed in this case.

13.When the above incriminating materials were put to the appellant/A.2 under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor did he mark any documents on his side.

14.Having considered all the above, the trial Court found the appellant/A.2 guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. That is how the appellant/A.2 is before this Court with this Criminal Appeal.

15.We have heard the learned counsel appearing for the appellant/A.2 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16.This is a case based on circumstantial evidence. There is no controversy over the fact that from out of the evidences of P.Ws.1,2 & 26, it has been clearly established by the prosecution that on 02.06.1999 evening, the deceased was lastly seen alive. From the evidence of these witnesses, it has also been further established that the deceased was in possession of his motorcycle bearing registration No.TNF5785 at the time when he was lastly seen alive. Thereafter, the deceased was not seen anywhere and which prompted P.W.1, the wife of the deceased to make a complaint.

17.From the evidence of P.W.28, it is crystal clear that the motorcycle (M.O.1) belonging to the deceased and the Car (M.O.5) with blood stains were also found at the place of occurrence. This had given some clue to P.W.28 about the involvement of the appellant/A.2 in this crime. This circumstance by itself would not go to prove the guilt of the appellant/A.2.

18.Yet another circumstance projected by the prosecution is that P.Ws.15 & 28 have stated that the appellant/A.2 was arrested on 08.06.1999 at 6.15 and on such arrest, he made a voluntary confession, in which, he disclosed the place where he had buried the dead body of the deceased, by keeping the same in a gunny bag. We do not find any reason to reject the evidence of this witness.

19.Apart from that, P.W.23, the Tahsildar has also stated that the place where exhumation was done was identified only by the appellant/A.2. It was only on being identified by the appellant/A.2, with the help of P.Ws.12 to 15, the Tahsildar exhumed the dead body from the place where the dead body had been buried. The accused has got no explanation to offer. This is in our considered view, is a very strong piece of evidence against the accused. The appellant/A.2 has got no explanation for the same. We do not find any reason to reject this part of the case of the prosecution. From this evidence, in our considered view, the prosecution has clearly established that it was this accused/A.2 along with the other accused killed the deceased; put the dead body in a gunny bag; carried the same in his Scooter (M.O.1) and buried the dead body. The Scooter (M.O.1) which was used to carry the dead body of the deceased was recovered by P.W.28-the Investigating Officer, behind the house of the appellant/A.2. The learned counsel for the appellant would submit that this circumstances itself would not be sufficient to prove the guilt of the appellant/A.2.

20.In this regard, the learned Additional Public Prosecutor appearing for the State would submit that the Court may make reliance on Ex.P.25, the judicial confession made by the appellant/A.2. In the said confession, which in our considered view was made voluntarily, the appellant/A.2 has admitted that

he was taken to custody by the deceased at 2.00 pm on the day of occurrence and he was brought him in his scooter towards Police Station. When they were on their way to the Police Station, near the house of one Mr.Veera, Mr.Selvam along with Mr.Veera, who are the associates of the appellant/A.2, came there and intercepted and attacked the deceased. The appellant has stated that he jumped out of the motorcycle (M.O.1) and out of fear, he ran away from the scene of occurrence. This judicial confession though some extent is exculpatory would atleast have a corroborative value to corroborate the other circumstances namely, the place where the dead body was exhumed was identified only by the appellant/A.2. From this evidence, in our considered view, the prosecution has clinchingly proved the offence under Sections 302, 201 & 202 I.P.C., but not the offence under Section 148 I.P.C., because, there was no clear evidence that there was unlawful assembly. Therefore, we are inclined to discharge the appellant/A.2 from the charge under Section 148 I.P.C., however, we hold him guilty under the charges for the offences under Sections 302, 201 & 202 I.P.C.

21.Now, turning to the quantum of punishment, the trial Court has imposed only minimum punishment for the charges under Sections 302, 201 & 202 I.P.C., which also does not require any interference at the hands of this Court.

22.In the result, the Criminal Appeal is allowed in part and the conviction and sentence imposed on the appellant/A.2 for offence under Section 148 I.P.C., is set aside and the appellant/A.2 is acquitted from the said charge. However, the conviction and sentence imposed on the appellant/A.2 for offences under Sections 302, 201 & 202 I.P.C., by the trial Court are hereby confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The II Additional District
and Sessions Judge, Chidambaram,
Cuddalore District.
- 2.The Principal Sessions Judge,
Cuddalore, Cuddalore District.

3.The Judicial Magistrate No.II,
Chidambaram, Cuddalore District.

4.The Chief Judicial Magistrate,
Cuddalore District.

5.The District Collector,
Cuddalore.

6.The Director Genreal of Police,
Mylapore, Chennai.

7.The Superintendant Central Prison,
Cuddalore.
(With a Copy for Communicated to the accused)

8.The Inspector of Police,
Chidambaram Town Poloce Station,
Cuddalore District.

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate SR.No.13429

CrI.A.No.531 of 2016

SSI (CO)
GN(20/04/2017)



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