

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.No.808 of 2016
and
Crl.M.P.No.13187 of 2016

1.Duraisamy
2.Dhanavel
3.Sri Ranganathan ..Appellants/Accused 1to3

vs.

State, through
The Inspector of Police,
Katpadi Police Station,
Vellore District.
Crime No.1021 of 2012 ..Respondent/Complainant

Criminal appeal preferred under Section 374 Cr.P.C.,
against the judgement dated 15.09.2016, passed by the I
Additional District and Sessions Judge, Vellore, Vellore
District, in S.C.No.326 of 2013.

For Appellants : Mr.B.Balamurugan for
Mr.A.Muruganathan

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

JUDGMENT

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

The appellants are the sole accused in S.C.No.326 of 2013, on the file of the learned I Additional District and Sessions Judge, Vellore, Vellore District. They stood charged for offence under Section 302 read with Section 120-B and Section 201 IPC. By judgement, dated 15.09.2016, the trial Court convicted all the three accused under Sections 120-B, 302 and 201 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.500/-, each, in default, to undergo rigorous imprisonment for one month for offence under Section 120-B IPC; to undergo imprisonment for life and to pay a fine of Rs.500/-, each, in default, to undergo rigorous imprisonment for one month for offence under section 302 IPC and to undergo rigorous imprisonment for three years for

offence under Section 201 IPC and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month. Challenging the said conviction and sentences, the appellants are before this Court with this appeal.

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

(a) The deceased in this was one Mr.Vinayagam. He was a resident of Sanjeeviroyapuram in Vellore District. P.W.3 is his wife and P.W.2 is the father of the deceased. All these three accused were the friends of the deceased. It is stated that on 14.5.2012, at around 8.00 a.m., these three accused came to the house of the deceased and took him in a friendly manner to go to a different place to play cards. Accordingly, the deceased followed them. It is alleged that at around 2.00 p.m., on the same day, while playing cards, these three accused made the deceased to take liquor and while he was in drunken stage, the second accused pushed him down and held his legs. The third accused held the hands of the deceased and the first accused strangled the deceased by his hands and caused his death. It is alleged that thereafter they took the dead body and threw it by the side of the Railway track at Ramapuram. The occurrence was not witnessed by anybody.

(b) One Mr.Kannan (not examined as a prosecution witness) found the dead body of the deceased by the railway track, on 15.5.2012 and informed P.W.1, who was the then Sub-Inspector of Police, Railway Police Station at Ramapuram. P.W.1 immediately went to the place of occurrence. Thereafter, he prepared a report and submitted the same to the Sub-Inspector of Police, Railway Police Station at Katpadi, since the place where the dead body was lying, fell within the jurisdiction of the said Police Station. One Selvakumar, the then Grade-I Police Constable, Katpadi Railway Police station, registered a case in Crime No.538 of 2012, under Section 174 Cr.P.C., on 15.5.2012 at 12.45 a.m. The case was taken up for investigation by P.W.5, the then Sub-Inspector of Police. He went to the place of occurrence, prepared an observation mahazar and a rough sketch. He conducted inquest on the body of the deceased. During such investigation, he suspected that the deceased had met with a train accident and died. Then, he forwarded the body for post-mortem. P.W.11, Dr.Selvaraj conducted autopsy on the body of the deceased on 15.5.2012 at 2.40 p.m. He found the following injuries:

"1. Multiple abrasions of varying sizes seen on the shoulders, chest, abdomen, right side of hip, thigh and both feet.

2. Grazed abrasions on the back of chest.

3. Gaping open lacerated wounds in the following areas: Center of scalp, right side of forehead, left temple, front of neck, both arms, both wrists, right thigh.

4. Bruising of muscles and soft tissues seen in the neck on the front and sides, as well as front of chest on both sides.

5. The laryngeal horns and cartilages show bruising with severe extravasation of blood. Hyoid bone shows fracture of greater horn on the right side.

6. Both legs traumatic amputation at the level of lower third and the amputated feet brought separately.

7. Fractures of both arm bones and right thigh bone.

On dissection of chest and abdomen: Abdominal cavity contains one litre of blood with rupture of spleen and liver, right collar bone fractured.

Fracture of collar bone and ribs 2 to 4 on the right side in their front with puncture wounds of right lung.

On dissection of scalp, skull and dura: Diffuse sub-scalpal contusion over the entire scalp.

Pleural cavities: Empty. Heart: Normal.

Coronaries: Patent. Lungs: C/s: Pale.

Stomach: Empty. Nil specific smell. Mucosa:

Normal Small intestine: Nil specific. Liver,

spleen and kidneys: pale. Bladder: Empty.

Brain: Pale."

He gave opinion that the death of the deceased was due to manual strangulation, coupled with the other injuries found on the body.

(c) Based on the above report, the case was altered into one under Section 302 IPC. P.W.13, the Inspector of Police, took up the case for investigation. When the investigation was in progress, it is alleged that the accused appeared before P.W.6, the then Village Administrative Officer of Tarapadavelu Village, at around 4.00 p.m. On such appearance, all the three accused together jointly made a voluntary confession. P.W.6 prepared an extract of the said confession under Ex.P7. Then, he prepared a report under Ex.P8. Along with the same, he produced the accused to the police. P.W.13 arrested them. On completing the investigation, P.W.13 laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge as detailed in the first paragraph of the judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 14 documents were marked, however no material objects were marked. Out of the said witnesses, P.W.1, the then Sub-Inspector of Police at Ramapuram Railway Police Station, has stated that one Kannan informed him that a

dead body of a male aged about 45 years was lying by the side of the railway track at Katpadi. Immediately he went there, found the dead body and submitted a report to Katpadi Railway Police. P.W.2, the father of the deceased has stated that on 14.5.2012, at around 8.00 a.m. all these three accused came to the house and took the deceased with them for playing cards. Thereafter, the deceased did not return. Subsequently, the dead body was found near the railway track. P.W.3, the wife of the deceased, has also spoken to the same facts. P.W.4, the Head Constable, attached to Railway Police Station, Katpadi, has stated about the registration of the case under Section 538 of 2012. P.W.5, the then Sub-Inspector of Police, has spoken about the investigation done by him initially. He has stated that he concluded that the deceased has died due to train accident; however, to find out the correct cause of death, he forwarded the body for post-mortem. P.W.6, the Village Administrative Officer, has spoken about the confession made by these three accused. P.W.7 has stated that at around 5.30 p.m., on 14.5.2012, he found the three accused and the deceased and few other persons playing cards near Sakrakuttai Banial tree, he joined them for sometime. P.W.8 has also stated so. P.W.9 has turned hostile. P.Ws.7 and 8 have also been treated as hostile, because they did not support the case of the prosecution any further. P.W.10, a resident of Sakrakuttai village, has spoken about the preparation of observation mahazar and a rough sketch. P.W.11 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.12 has stated that he altered the case into one under Section 302 IPC, based on the opinion of the Doctor. P.W.13 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 on their side nor mark any document. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused. That is how they are before this Court.

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

6. This is a case based on circumstantial evidence. The foremost circumstance is that according to P.Ws.2 and 3, the deceased accompanied these accused at 8.00 a.m., on 14.5.2012 for the purpose of playing cards. Thereafter, the dead body of the deceased was found on 15.5.2012 at 12.45 p.m. According to the medical evidence, the death of the deceased had occurred due to the combined effect of manual strangulation as well as the injuries. The prosecution has thus proved that the death of the deceased was not natural. But at the same time, the death due to train accident cannot be ruled out. Assuming that the death is due the injuries

found on the neck of the deceased, it could be concluded that the death of the deceased was caused by manual strangulation. The prosecution is yet to prove as to who are the perpetrators of the crime.

7. In order to prove the same, the prosecution in this case relies only on the evidence of P.W.6, the Village Administrative officer. According to him, on 14.5.2012, at around 4.00 p.m., all these three accused came to him and jointly made a confession. But he did not reduce the same into writing. During cross-examination, he has stated that someone else recorded their statement. He has further admitted that he did not remember the person who wrote the confession. At any rate, Ex.P7, which is before the Court, is not the confession of these accused. It is only the statement of P.W.6. A perusal of Ex.P7 would go to show that it is not the verbatim re-production of what was stated by the accused. It is highly unbelievable that three persons would have made a joint confession. Except Ex.P7, which is nothing but the statement of P.W.6 and the oral evidence of P.W.6, wherein he has stated that all the three accused jointly made a confession, there is no other evidence.

8. It is a settled law that if such extra judicial confession inspires the confidence of the Court, then, that by itself can be the sole foundation for conviction. But in this case, the confession is shrouded with doubt. Unless it draws corroboration from any other independent sources, at least, in material particulars, the same cannot be the foundation for conviction. Here, in this case, we find it difficult to believe P.W.6 for more than one reason, as we already discussed. Assuming that these three accused made a confession, since there are lot of doubts, shrouding the same, it is not possible to sustain the conviction, in the absence of any corroboration from any other independent sources. Thus, in our considered view, the prosecution has miserably failed to prove the charges against the accused. We cannot afford to convict the accused based on mere surmises or suspicion. There is no evidence in respect of the distance between the place where these accused were playing cards with the deceased and the place where the dead body was lying. It is not as though these accused alone were playing cards with the deceased. There were others also. Thus, the possibility of somebody else strangulating the deceased to cause his death also cannot be ruled out. In a case based on circumstantial evidence, if there are alternative theory, which would be in consistence with the guilt of the accused, then the accused should be given the benefit of doubt and he should be acquitted. In this case, such an alternative theory that somebody else would have caused the death of the deceased also cannot be ruled out. At any rate, in our considered view, the prosecution has failed to prove the charge against the accused beyond reasonable doubts and therefore, they are entitled for acquittal.

9. In the result, this criminal appeal is allowed; the conviction and sentence imposed as against the appellants are set aside. The appellants/accused are acquitted. Fine amount, if any, paid by them shall be refunded to them forthwith. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Inspector of Police,
Katpadi Police Station,
Vellore District.
- 2.The I Additional District and Sessions Judge,
Vellore,
Vellore District
3. The Superintendent, Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.a. Muruganathan, Advocate Sr.6886

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GJ(CO)
EU 23.3.17

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