

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Criminal Appeal No.840 of 2016

1.Padma
2.Yuvaraj

..

Appellants

Vs

State, represented by
The Inspector of Police,
D. Triplicane Police Station,
DI.Chennai – 600 005
DII.(Crime No.548 of 2013)



..

Respondent

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., by the appellants/accused against the judgment dated 15.11.2016 made in S.C.No.365 of 2014 on the file of the learned XV Additional Sessions Judge, Chennai.

For Appellant : Mr.P.Anbazhagan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellants are accused 1 and 2 in S.C.No.365 of 2016 on the file of the learned XV Additional Sessions Judge, Chennai. A.1 stood charged for offence under Section 302 I.P.C. A.2 stood charged for offence under Section 302 r/w 201 I.P.C. By judgment dated 15.11.2016, the trial Court convicted A.1 for offence under Section 302 I.P.C., and sentenced to undergo imprisonment for life and to pay a fine of Rs.15,000/- in default to undergo simple imprisonment for six months and convicted A.2 for offence under Section 302 r/w 201 I.P.C., and sentenced to undergo imprisonment for life and to pay a fine of Rs.15,000/- in default to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the appellants/A.1 & A.2 are before this Court with this appeal.

2.Before going into the facts of this case, we have to record our displeasure that the trial Court has sentenced the second accused to undergo imprisonment for life with fine for the offence under Section 201 r/w 302 I.P.C., though, the maximum imprisonment permitted for the said offence is only seven years.

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

The deceased in this case was one Mr.Mani. A.1 & A.2 are wife and son respectively of the deceased. They were residing at Pachayappan Street, Triplicane. It is alleged that the deceased had illicit intimacy with many women in that locality which resulted in frequent quarrels in the family. The deceased also used to sexually exploit the young female children in that locality. A.1 was enraged over the same. This is stated to be the motive for the occurrence.

4.It is alleged that on 14.12.2012, early in the morning, the deceased made sexual advances towards a female child by name Ms.Ishwarya. The child raised alarm. On seeing this, A.1 got wild. It is alleged that around 8.00 am, A.1 stabbed the deceased with a knife and killed him inside the house. Thereafter, she informed the same to A.2. A.2 with a view to save A.1, cut the dead body into pieces, put it in a gunny bag, carried it in a motorcycle and burnt it in a near by bush. A.1 was also present at the time when the body was disposed of by A.2.

5.P.W.1 and few others who incidentally came to the place of occurrence noticed smoke emanating from the said place. On noticing the same, they rushed to the place of occurrence and found

a dead body in flames. They took both the accused 1 & 2 in their custody and informed the same to the Police. The Police rushed to the place of occurrence and extinguished the fire and took both the accused into custody. On the complaint made by P.W.1, the present case in Crime No.548/2013 for offences under Sections 302 & 201 I.P.C., was registered against both the accused. Ex.P.1 is the complaint and Ex.P.25 is the F.I.R. The Investigating Officer/P.W.17 forwarded both the documents to Court which were received by the learned Judicial Magistrate at 10.30 am on 15.12.2012.

6.The case was taken up for further investigation by P.W.17, the then Inspector of Police. While in custody, the accused 1 and 2 made voluntary confessions one after the other. In pursuance of the said disclosure statement made, A.1 took the Police and witnesses to the place of hide out and produced a motorcycle bearing registration No.TN01 9841 (M.O.1) and knives (M.Os.2 to 5). The same were recovered by P.W.17 under a mahazar. The accused were thereafter sent to Court for judicial remand. P.W.17 conducted inquest on the dead body of the deceased and sent the same for post mortem.

7.P.W.16 – Dr.Sathyamoorthy, conducted autopsy on the body of the deceased and found the following injuries-

"All the body parts can be easily aligned

All the transceted margins were regular without extravasation of blood

All the soft tissues, muscles, vessels, nerves and bones of transacted parts were clean cut without any extravasation of blood and soft tissue contusions – post mortem in nature.

Post mortem burns seen over face, transacted parts of both upper and lower limbs. There is no hyperaemia over the burnt areas. No blisters were seen over those burnt areas. The underlying skin over those burnt areas were pale.

On dissection of head:

1.Scalp Laceration of size 6x5xcavity deep over postero medial aspect of right parietal region.

2.Scalp laceration of size 5x1.5xbrain deep over mid parietal region

3.Scalp laceration of size 10x3xbone deep over postero medial aspect of right side heard

4.Scalp laceration of size 8x2xbone deep over left fronto temporal region

5.Scalp laceration of size 2x1xbone deep over left tempero parietal region.

1)Dark red scalp contusion seen over right parietal region of size 13x8 cms

2)Dark red scalp contusion seen over left

fronto temporo parietal region of size
14x10cm"

Ex.P.14 is the post mortem certificate. P.W.16 has opined that the death was due to multiple injuries.

8.Initially, the identity of the half burnt body could not be established. The skull was preserved and later on it was used for super imposition examination. The report revealed the identity of the deceased. The investigation was thereafter, continued by P.Ws.18 & 19. The material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects. On completing investigation, P.W.19 laid charge sheet against both the accused.

9.Based on the above materials, the trial Court framed charges as against the appellants as stated in the first paragraph of this judgment. The appellants/accused 1 & 2 denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 26 documents were exhibited, besides 8 Material Objects.

10. Out of the said witnesses, P.W.1 has stated that he was a resident of Chinnachekadu, Manali, Chennai. He has further stated that around 2.30 pm, on the day of occurrence, when he was passing through a compound wall, near Chennai Petroleum Corporation Limited Company, he found a male carrying a gunny bag and going near the bush by the side of the compound wall and a woman was standing on the road. A motorcycle was also found there. After some time, he found smoke emanating from the said place from the bush. When he rushed there, he found a dead body in flames. Thereafter, he informed about the occurrence to the Police. The Police came and took into the custody of accused 1 and 2. He has further stated about the complaint made by him to Police. P.W.2 has also spoken to the same facts as spoken by P.W.1. He was the one who accompanied P.W.1.

11. P.W.3 has spoken about the frequent quarrels between A.1 and the deceased. He has further stated that around 11.00 am on 14.12.2012, he found A.1 was driving a motorcycle and A.2 was sitting in the motorcycle as a pillion rider. A.1 was holding a gunny bag. P.Ws.4 to 6 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.7 has stated that he found A.1 carrying a gunny bag around 11.00 am on 14.12.2012. P.Ws.8 to 10 have turned hostile and they have not supported the

case of the prosecution in any manner. P.Ws.11 to 13 have spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.14 has spoken about the photographs taken in the place of occurrence as requested by the Investigating Officer. P.W.15, a Forensic Expert has stated that he conducted superimposition test on the skull of the dead body which revealed that the dead body was that of the deceased. P.W.16 has spoken about the post mortem conducted and the final opinion regarding the cause of death. P.Ws.17 to 19 have spoken about the investigation done and the final report filed in this case.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness nor did they mark any documents on their side.

13. Having considered all the above materials, the trial Court convicted the appellants/accused 1 & 2 as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 & 2 are before this Court with this Criminal Appeal.

14. We have heard the learned counsel appearing for the appellants/accused 1 & 2 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. This is a case based on circumstantial evidence. It is needless to point out that, in a case of this nature, the prosecution has to prove the circumstances projected by it, beyond reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution in the present case.

16. The dead body of the deceased was found on 14.12.2012 around 2.30 pm near the bush at Manali, in a half burnt condition. The identity of the dead body could not be traced. Therefore, super imposition examination was conducted. The cause of death has also been spoken by the Doctor who conducted autopsy. From these evidences, the prosecution has clearly established that the death of the deceased was homicide and the deceased would have been done to death some time before 2.30 pm on 14.12.2012.

17. Now the question is "Who are the perpetrators of the crime ?"
In order to prove that these two accused are the perpetrators of the crime, the prosecution mainly relies on the evidences of P.Ws.1 & 2. They have stated that when they were passing through Tiruvotriyur bridge, they found a male and a female standing there and the male member carried a gunny bag to a near by bush. Within a short while, smoke was emanating from the bush. When they rushed there, they found the dead body in flames.

18. P.Ws.1 & 2 have not identified A.2 at all. They have identified A.1 alone. But, there is a major contradiction on a vital aspect between the evidences of P.Ws.1 & 2 and that of the evidence of P.W.17. P.Ws.1 & 2 have stated that from the place of occurrence, they gave a phone call to the Police and in response to the same, the Inspector of Police came to the place of occurrence and extinguished the fire on the dead body and then arrested the male and female persons who were in the custody of P.Ws.1 & 2. However, P.W.17 has stated that P.W.1 and others came to the Police Station and lodged a complaint and based on the same, he proceeded to the place of occurrence. There is no explanation for this contradiction. This creates doubt in the case of the prosecution as to whether these accused were really found near the place of occurrence and whether they were taken into custody by P.W.1.

19. Apart from that, the only other circumstance relied on by the prosecution is that, these two accused were going in a motorcycle with gunny bag. In our considered view, there is nothing incriminating in the mother and son travelling in a motorcycle. Apart from this circumstance, there is no other evidence at all against the accused. It also needs to be mentioned that P.W.2 had only seen two people coming from the bush and he has not stated anything incriminating against the accused. Thus, the circumstances projected by the prosecution, assuming that they stand proved, would only create a very strong suspicion against the accused.

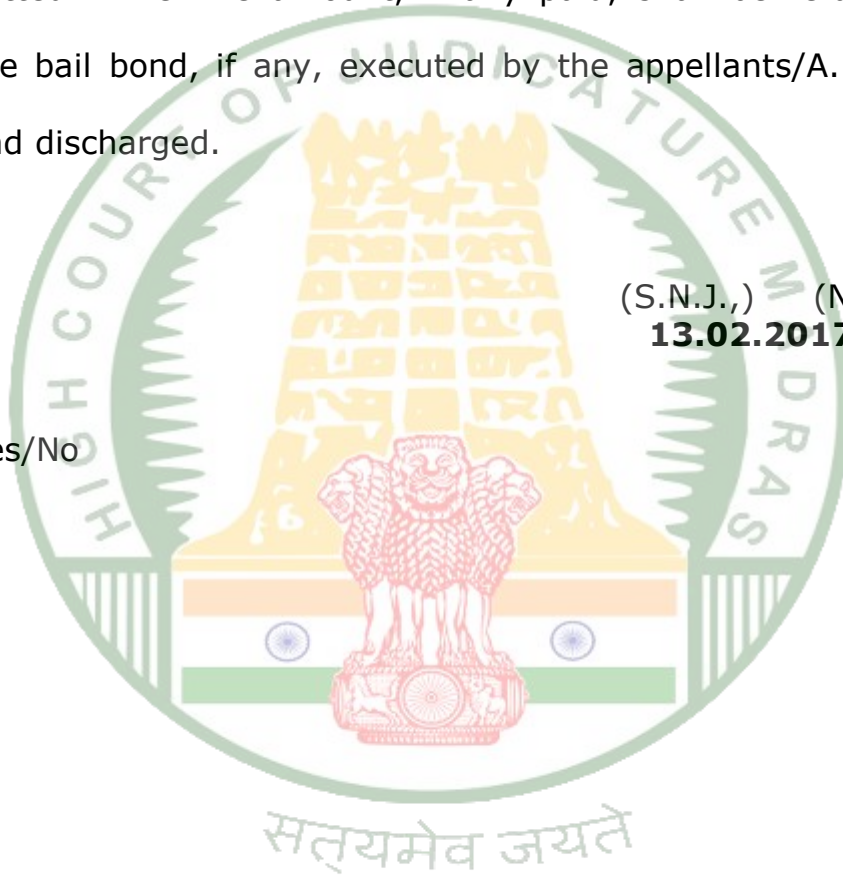
20. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. For these reasons, we hold that the conviction and sentence imposed on the appellants/A.1 & A.2 are not sustainable and hence, the same are liable to be set aside.

21.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A.1 & A.2 by the learned XV Additional Sessions Judge, Chennai in S.C.No.365 of 2014, dated 15.11.2016, are set aside and the appellants/A.1 & A.2 are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 & A.2, shall stand discharged.

(S.N.J.,) (N.S.S.J.,)
13.02.2017

jbm

Index: Yes/No

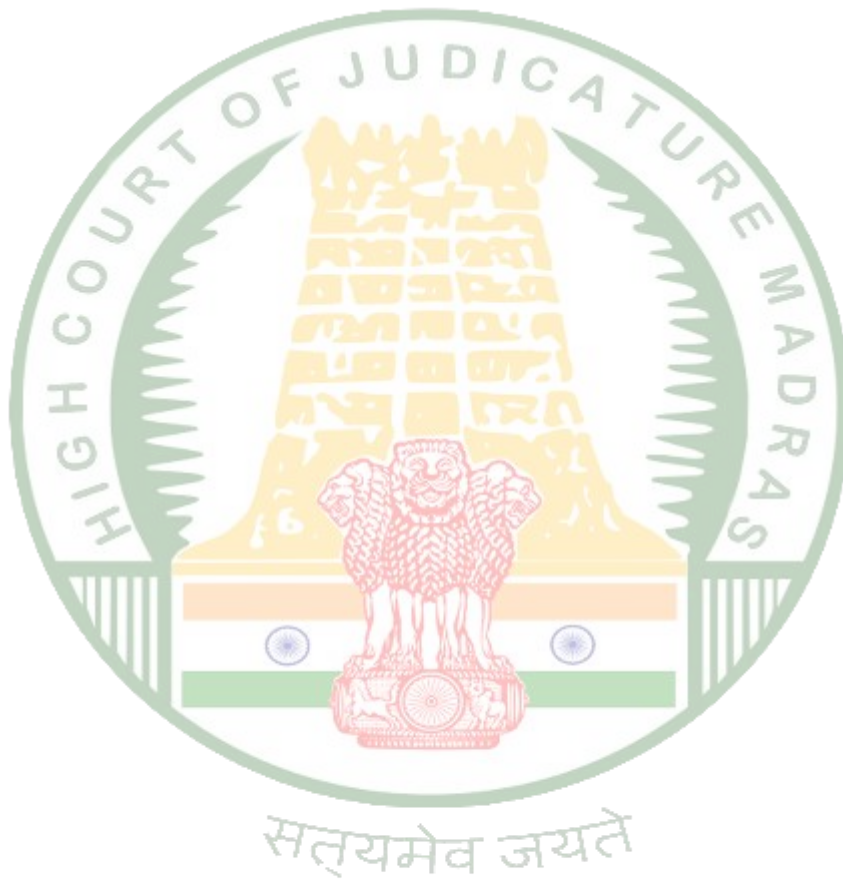


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To

1.The XV Additional Sessions Judge,
Chennai.

2.The Public Prosecutor,
High Court, Madras.



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S.NAGAMUTHU.J.,
AND
N.SESHASAYEE.J.,

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