

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM

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

CrI.A.No.842 of 2016

1.Muruganandam (A1)
2.Prabhu (A2)
3.Vanchinathan (A3)
4.Anand (A4) ... Appellants

Vs

The State, represented by
Inspector of Police,
Rasipuram Police Station,
Rasipuram. ... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C., against
the judgment of conviction and sentence passed by the learned
Principal District Judge, Namakkal made in S.C.No.68 of 2009
dated 25.10.2016.

For Appellant: Mr.K. Shanmugaraja
Assisted by Mr.Swamisubramniam,
Legal Aid counsel

For Respondents: Mr.P.Govindarajan,
Addl. Public Prosecutor

JUDGMENT

(DELIVERED BY DR.ANITA SUMANTH, J.)

This Appeal is filed challenging the judgment of
Principal District Judge, Namakkal dated 25.10.2016 in
S.C.No.68 of 2009. The charges laid against the four
appellants in terms of section 120 (b) r/w.sec.302 of the IPC
and section 404 of the IPC. The Trial Judge, finding the
appellants guilty of all charges convicted them in terms of
section 302 IPC with a sentence of rigorous imprisonment for
life and fine of Rs.5000/- each in default of which, simple
imprisonment was to be undergone for one year. The appellants
were also found guilty of criminal conspiracy and convicted
under section 120 (b) r/w.sec.302 IPC and sentenced to
rigorous imprisonment for life and fine of Rs.5000/- each, in
default of which, simple imprisonment for one year was to be
undergone. Further, the appellants were found guilty and
convicted u/s.404 IPC and sentenced to undergo rigorous

imprisonment for 3 years each and a fine of Rs.3000/- each in default of which, simple imprisonment for 6 months would have to be undergone.

2. The case of the prosecution, in brief, is that A1 and the deceased one Ganapathy, were employed in an entity by the name of Synar Gunny Bags near Andagalore Gate near Rasipuram. They fell in love with Lakshmi and Sathya who were working in PSK Spinning Mills situated near the Company they were employed in. The affairs ran into rough weather and the 1st and 2nd appellants (A1 and A2) had arguments with Ganapathy and developed enmity with him. A3 and A4 are the associates of the A1 and A2. The four of them thereafter proceeded to accost Ganapathy at about 9.30 p.m. on 16.7.2008 on a field belonging to Muthuswamy Gounder near Periyandichyamman Temple in Sakthi Nagar. While A3 and A4 caught hold of Ganapathy, A1 sat on and fisted him and A2 strangulated him causing death. Charges were accordingly laid against the four accused for murder of Ganapathy as well as misappropriation of gold chain, a cell phone and gold ring. The trial court after examination of witnesses and appreciation of evidence found the appellant along with 3 other accused guilty as against which, the appellant, 1st accused alone is in appeal before us.

3. The Prosecution would state that on 17.7.2008, PW2, Ramesh who was an assistant in the office of the VAO informed PW1 Janakiraman, the VAO, of having found one male corpse in Muthusamy Gounder's field at Sakthi Nagar. The VAO, Janakiraman went to the scene of crime and upon enquiry with persons there, identified the deceased as Ganapthy son of Shanmugam residing at Periyakulam Village, Tirunelveli District. He was also informed that the deceased was employed at Synar Gunny Bags at Rasipuram. He noticed a cycle at a distance of about 50 feet from the scene of occurrence. A complaint was filed, Ex.P.1 on 17.7.2008 and an FIR lodged in Crime No.808 of 2008 on 19.7.2008 (Ex.P.14). Enquiry was commenced by the Inspector of Police and in the meantime, the body of the deceased was forwarded with a requisition for conduct of post mortem. Ex.P.8 is the requisition and Ex.P.9 is the post mortem certificate issued by Dr.Kesavalingaman, Department of Forensic Medicine, Govt. College, Salem who opined that the cause of death was due to asphyxia due to strangulation. Inquest was conducted by Special Sub Inspector Periasamy and several witnesses examined.

4. In the course of the investigation, the accused confessed to having committed the murder. Charges were framed and the accused produced before the Principal District Judge, Namakkal. The On the side of the prosecution, 26 witnesses were examined, 23 exhibits were filed, and 12 material objects produced. When the charges were laid before the appellants, they denied the same. However, they did not choose to examine any witnesses or to produce any evidence in support of their plea. The trial court proceeded to hear the matter concluding

that the appellants were guilty of the charges framed as extracted in the earlier part of the judgment, against which, the present appeal has been filed.

5. We have heard the submissions of Mr.K.Shamugharaja and Mr.Swamisubramaniam for the appellant and Mr.Govindarajan, learned Addl. Public Prosecutor appearing for the State and applied our minds carefully to the records of the case.

6. The facts, as they present to us through the testimony of the witnesses are as follows: PW1, the VAO, Karukkupuram Village would state that on 17.7.2008 he was informed by his Assistant Ramesh that a dead male was found at Sakthi Nagar in Muthusamy Gounder's field. On going there he had found the deceased with blood stains on the nose and mouth and one rose colour towel on his neck. He was identified by the crowd as the deceased Ganapathy. He also found a cycle in the vicinity.

He immediately filed a complaint before the Rasipuram police station. PW2 Ramesh, the Village Assistant Karukkapuram Village, spoke about having heard of the news of one male corpse lying in a pit and reporting the same to the VAO and accompanying him to the Police Station to file the complaint.

7. PW3, Karuthapandi, the younger brother of the deceased spoke about being informed about his brother's demise and going along with his younger brother Murugan to the place of occurrence. He corroborated the statement of PW1 relating to the state of the deceased. He also spoke about the fact that the cell phone, chain and ring of his brother were missing. He would state that he was thereafter asked to identify the ring, the cell phone and the chain on the 20th of July 2008 at about 2 p.m. He would state that the ring and chain shown to him did not, however, belong to his brother, the deceased. PW4 Murugan, the younger brother of the deceased corroborated the statement of PW3 substantially, however differing with him on the identification of the cell phone, chain and ring as belonging to the deceased. PW5 Muthusamy stated that he was a Junior Assistant in the Rasipuram Municipality and had noticed the deceased lying in the field. He was however, unaware of his identity. PW6 Athiappan stated that he had a Tea Stall that was visited by the 2nd accused often. He would state that he was not running the tea stall anymore.

8. PW7 Dr.K.Kesavalingam had received the dead body of the deceased and conducted post mortem, finding the following injuries:

` The body was first seen by the undersigned at 5.20 PM on 17.7.2008. It's condition then was Rigor Mortis present. Lower limbs only the body. Postmortem commenced at 5.20 PM on 17.7.2008. It was a moderately nourished body of a male person. Injuries. 1. Dark reddish brown abrasions seen over (a) curved linear nail mark abrasion right side neck IX 0.25 c.m. (b) Left side neck 3 in Nos each 1 x 0.25 c.m. (c) Left Knee 5 x 3 cms. 2) Dark reddish brown contusion seen over. (a) Chin 8 x 5 cms (b) Front of chest 10 x 6 cms (c) right side

heel 3 x 3 cms: and (b) left side heel 4 x 3 cms. 3) A complete transverse dark reddish brown colour ligature mark seen encircling the entire neck below the level of thyroid Cartilage measuring 30 cms long, 5 cms width and it is situated 5 cms above supra sterna notch, 5.5 cms below mid chin, 6 cms below right mastoid process, 6 cms below left mastoid process. The underlying skin is haemorrhagic and contused. Fracture of thyroid cartilage with surrounding contusion made out with both sternomastoid muscle contused.

Contusion right side of the neck 8 x 7 x 0.5 cms and left side of neck 7 x 6 x 0.5 cms - dark red in colour. Face looks oedematous and congested, both limbs swollen. Both eyes - conjunctival haemorrhage present. All the above injuries are Antemortem in nature. Other Findings: Finger nails cyanosed OD Head: Cranial vault: Intact dura membranes intact brain C/S congested Multiple petechial haemorrhages seen over the surface of brain. Base of skull intact O/D neck: vide injury column. Hyoid bone intact with surrounding contusion. O/D thorax: Contusion over upper part of right side chest wall 15 x 8 x 0.5 cms; dark red in colour. No rib fracture. Heart: Normal in size chambers contained fluid blood myocardium normal coronaries patient; Lungs C/S congested and edematous.

Multiple petechial haemorrhages seen over the visceral surface of pleura and pericardium. O/D abdomen: stomach - empty No specific smell. Mucosa congested. Liver spleen and kidneys C/S congested. Bladder empty. Genitalia - no fresh injuries made out. Pelvis and spinal column intact. Viscer sent for chemical analysis. Postmortem concluded at 6.20 PM.'

9. He opined that the deceased had died on account of asphyxia due to strangulation. The PM certificate was marked as Ex.P.9. PW8 Sasikumar was a resident of Musiri and stated that he was also working in Synar Gunny Bags Company and knew A1. He stated that on 16.7.2008, he did not find his cycle upon completion of his shift and was informed by the Watchman Ramaswamy that the deceased had taken his cycle. He waited for a long time and since the cycle was not returned he went to have a cup of Tea when he was informed that there was a dead body that he identified as the deceased Ganapathy. He also found the cycle lying nearby. PW9 Ramaswamy the Watchman at Synar Gunny Bags Co stated that A1 and the deceased knew each other and that at around 9.30 p.m. on 16.7.2008 they were seen talking to each other. He turned hostile thereafter.

10. PW10 Vairamani, the Manager, in Synar Gunny Bags Company spoke about being informed on 17.7.2008 at about 9.15 a.m., about the death of Ganapathy. He went to the scene of occurrence and saw the deceased and then informed the family of the deceased. PW11 Kasi @ Muthuswamy spoke about being a witness in the observation mahazar. PW12 Sathya spoke about herself and one Lakshmi working in PSK Co. at Thambampatti. She also spoke about the affair that the deceased had had with Lakshmi. Since she did not support the case of the prosecution, she was termed hostile.

11. PW13 Loganathan, the VAO of Southapuram Viullage would state that on 19.7.08 at about 10.a.m. Prabhu son of Palanisamy, A2, voluntarily gave a statement that was recorded by him and marked as Ex.P.11. He would state that the said Prabhu, A2 would confess to having murdered Ganapathy and pursuant thereto, PW13 brought A2 to Rasipuram PS at about 11 a.m. along with his Assistant when he, in the presence of the Inspector Rasi Puram Police Station recorded his confession. PW13 and his Assistant bore witness thereto. Recovery of the cell phone MO8 was effected pursuant thereto under seizure mahazar Ex.P.12.

12. PW14 was Lakshmi who stated that she was working in PSK Mill, where Vasuki, the sister of A1, was also working with her. She would depose that Vasuki had told her that A1 had committed murder of Ganapathy by throttling his neck. However, she was thereafter treated as hostile and did not support the case of the prosecution. PW15 Raman, a retired Supervisor of TASMAC at Namakkal had received requisition in Ex.P.13 from the Rasipuram Police regarding a Whisky Bottle. He would state that the bottle had been sent to the Karukapuram Wine Shop by him. PW16 Kannan, a salesman in TASMAC would state that A2 had purchased a whisky bottle from him. PW17 Periasamy, the SSI would state that on 17.7.08 he received a complaint from PW1, on the basis of which a case in Crime No.808/08 was registered. It was sent through Head Constable to Namakkal and placed before the Inspector of Police for investigation. The FIR is marked as Ex.P.14. PW18 Krishnan Head Constable and PW19 Perumal, Sub Inspector would depose about the procedures followed by them in relation to the case.

13. PW20 Eswara Moorthy, Inspector of Police, Nalliyapalayam would state that on 17.7.2008, he had taken the matter for investigation. He had gone to place of occurrence, prepared an observation mahazar and rough sketch in Ex.P.16 in the presence of witnesses. He had engaged a finger print expert and sniffer dog. Inquest was conducted in the presence of witnesses and the inquest report was marked as Ex.P.15. The body was sent for postmortem to the Government Hospital. Material objects Whisky bottles, MO9, samples of ordinary and blood stained earth, MO11 and MO10, and Hercules ladies cycle MO12 were seized under seizure mahazar Ex.P.17.

14. In the meantime, he received a special report from the VAO of O.Soudapuram Village regarding the confession of A2 implicating the other accused and the recovery of a cell phone. On 20.7.2008 at 7 a.m., he arrested A3 and A4 and recorded the confessions of A1. Recovery of Nokia Cellphone MO8 and gold chain MO1, was effected on the basis of the confession. The admissible parts of the confessions are marked as Ex.P.21 (A2) and Ex.P.24 (A1). At about 9.30 a.m., the confessional statements of A3 and A4 were recorded on the basis of which, recovery was effected of the gold ring and black colour sim card under mahazar Ex.P.26. All the accused

were remanded to custody. Further examination of witnesses was carried out by Inspector of Police, who continued the investigation. PW21 R.Muthukrishnan, Inspector of Police would speak about the examination of various witnesses. Upon completion of the examination, all the appellants were afforded an opportunity to respond to the incriminating material found against them in terms of section 313 Cr.P.C which they denied, pleading that they were not guilty. The appellants were all convicted and sentenced as set out in the earlier part of this order as against which they are in appeal before us.

15. There are no eye witnesses in the matter and the entire case of the prosecution is based on circumstantial evidence. It is relevant to note that the murder of Ganapathy was committed on 17.7.08 and it was for the first time on 19.7.2008 that the confession was made by A2 to the VAO of O. Soudhapuram Village. It is his confession that implicates not only himself, but also A3 and A4. While A2 was in custody, A1 and A3 also confess before the VAO, O.Soudhapuram Village, pursuant to which, recovery of material objects was made.

These confessions form the plank of the case of the prosecution. We cannot but help noticing that the confessions have been made to a stranger, the VAO of a different area. It is highly improbable and does not support natural human conduct that the accused would choose to confess to a person who was wholly unknown and a stranger to them. This gives rise to a doubt as to whether the confessions are, in fact, believable and do not inspire the confidence of the court.

Further, and as far as the confession of A2 is concerned, it seeks to implicate the other accused as well. It is settled law that the weight attributable to an extra judicial confession implicating others in a crime is extremely limited as laid down by the Supreme Court in the case of Kashmira Singh vs. State of Madhya Pradesh (1952 AIR 159)

'... the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused ? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. The King "It does not indeed come within the definition of" 'evidence' contained in section 3 of the Evidence Act., It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination." Their Lordships also point out that it is "obviously evidence of a very weak type..... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities."

.....

In our opinion, the matter was put succinctly by Sir 'Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused "or, to put it in another way, as Reilly J. did in In re Periyaswami

"the provision goes no further than this--where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in section 30 may be thrown into the scale as an additional reason for believing that evidence." \

For the above reasons, all the confessions relied on by the prosecution are discredited and rejected.

16. The only other aspect is the recovery of the material objects. There is no clarity in regard to this aspect that would serve to clinch the case of the prosecution. PW3, the elder brother of the deceased states that the gold chain and ring produced before him did not belong to the deceased Ganapathy. The younger brother of the deceased PW4, would however state that they belong to the deceased. This conflict in the evidence of the prosecution witnesses, both brothers of the deceased, creates a doubt as to whether the evidence is credible and believable. We do not believe therefore that the recovery effected and the evidence of PW3 and PW4 lend any credence to the case of the prosecution as it has not even been established that the material objects recovered from the appellants belong to the deceased.

17. In the above circumstances, the only event which stands proved is the homicide of the deceased Ganapathy on 17.7.2008. Nothing has been brought on record by the prosecution to establish beyond reasonable doubt that A1 to A4 were responsible for the crime. It is trite to state that in a case based entirely on circumstantial evidence as in the present matter, the circumstances projected should be proved beyond reasonable doubt. Moreover, each circumstance should form a complete chain without any missing link whatsoever, such that they unerringly point to the guilt of the accused.

Under these circumstances, we conclude that the prosecution has failed to establish its case against the appellants beyond doubt and the trial court erred in convicting them. The judgment and sentence imposed by the trial court are set aside and the appellants acquitted of all charges. The appeal is allowed.

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-s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

msr

To

1. The Inspector of Police
Rasipuram Police Station
Rasipuram.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Public Prosecutor, High Court
Madras
 3. The Principal District Judge
Namakkal.
 4. The Judicial Magistrate
Rasipuram.
 5. -do- Thro The Chief Judicial Magistrate
Namakkal District.
 6. The Superintendent, Central Prison
Coimbatore.
 7. The District Collector
Namakkal, Namakkal District
 8. The Director General of Police
Mylapore, Chennai 4
- +1 CC to M/s. C.D. Johnson, Advocate sr 11685

sp(19/07/2017)

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