

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal Nos.316 and 339 of 2018

Suresh Kumar
S/o.Selvam ... Appellant in Crl.A.No.316/2018/Accused
No.2

Suresh
S/o.Thirumurthy ... Appellant in Crl.A.No.339/2018/1st
Accused

Vs

State by
Inspector of Police,
Namagiripettai Police Station,
Namakkal District.
Crime No.471 of 2013

... Respondent in both
appeals/Complainant

Criminal Appeals filed u/s.374(2) Cr.P.C. against the
judgment of learned Additional District and Sessions Judge (Full
Additional Charge), Namakkal, passed in S.C.No.25 of 2016 on
19.04.2018.

For Appellants:Mr.N.Manokaran [Crl.A.No.316/2018]
[Crl.A.No.339/2018] Mr.A.Padmanaban

For Respondent: Mr.R.Pratap Kumar,
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

These appeals arise against the judgment of learned
Additional District and Sessions Judge (Full Additional Charge),
Namakkal, passed in S.C.No.25 of 2016 on 19.04.2018.

2. Case of prosecution is that on 17.10.2013 at about 05.00 p.m., accused, with an intention to murder the deceased and steal his lorry, kidnapped him and on 18.10.2013 at about 12.00 a.m., while they were proceeding from Singalanthapuram to Kullappa Naickenpatti, accused instructed deceased to get down from the lorry and first accused drove the lorry over the deceased and caused his death. Accused, in order to screen the offence, threw the body of the deceased in a Well at Pallankadu and took away the lorry. A case was registered in Crime No.471 of 2013 on the file of Namagiripettai Police Station as 'Man Missing' @ 364, 302, 404, 201 and 302 IPC. On completion of investigation and filing of charge sheet before learned Judicial Magistrate, Rasipuram, the case, on committal, was tried in S.C.No.25 of 2016 on the file of learned Additional District and Sessions Judge, Namakkal.

3. Before trial Court, prosecution examined 26 witnesses and marked 23 exhibits and 4 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, brother-in-law of deceased, deposed that deceased has spoken to him on 17.10.2013 and informed that he would see him on 18.10.2013. As there was no contact, PW-1 called the deceased over phone but the phone was switched off and upon obtaining information from police station that the lorry of the deceased was there, he, PW-2 and the financier of vehicle went to police station on 19.10.2013. A1 had informed that the deceased handed over the lorry to him and left. The financier took the vehicle. PW-1 also spoke to preferring Ex.P1, complaint, since the deceased has not come home for 4 to 5 days and that upon information received from police, they identified the body of deceased lying on the road between Singalanthapuram and Kullanaickenpatti. PW-2, wife of deceased and PW-8, brother-in-law of deceased, have spoken on the same lines.

3.2. PW-3, who was an employee under the deceased, spoke to proceeding in the lorry with deceased on 16.10.2013. On 17.10.2013, they stopped the vehicle at Namagiripettai and sought the price of a ladder. PW-3 also spoke to deceased querying him on where he was and that he replied that he was having lunch in a hotel near the bus stand, that deceased, along with accused, came there and slapped him accusing him of running away with his money. Thereafter, accused took him to a Mill, gave him Rs.200/- and asked him to go.

3.3. PW-4 spoke to informing deceased over phone of his having given a sum of Rs.4,000/- to PW-3 towards payment due to

deceased and upon deceased informing him that he had not received the money, he immediately contacted PW-3 and then informed deceased that PW-3 was having lunch at a hotel.

3.4. PW-5, a lorry driver, spoke to deceased contacting him over phone, informing that there was some misunderstanding between him and his driver and asking him to drive the lorry but when PW-5 went, neither the deceased nor the lorry was found and hence, he left the place.

3.5. PW-6 is an attesting witness. PW-7, Inspector of Police, spoke to seizure of the lorry in the course of vehicle checking and of handing over the same and A1 to police personnel at Namagiripettai Police Station.

3.6. PW-9, a retired Government servant, spoke to receiving information from police that the body of the deceased was found in his Well and of accompanying police who recovered the body from the Well.

3.7. PW-10, Customer Manager at HDFC, was a hearsay witness. PW-11, Officer at Vedachanthur Fire Station, spoke to lifting the body of deceased from the Well upon request of police personnel.

3.8. PW-12, Village Administrative Officer, spoke to issuing Ex.P4 - Certificate and of attesting Ex.P3, observation mahazar.

3.9. PW-13, a retired Village Administrative Officer, spoke to A1 being at his office on 31.10.2013 at about 08.00 a.m. and giving a confession statement. PW-13 spoke to recording confession statement of A1 under Ex.P6 and of issuing Ex.P7, Special Report and of attesting the confession statement of A2.

3.10. PW-14, financier, spoke to handing over the lorry to police and of attesting the seizure mahazar.

3.11. PW-15 spoke to identifying A2. PW-16 spoke to affording his tractor towards extricating the lorry which had got stuck in mud upon request of accused. PW-17 spoke to identifying the accused. PW-18 was an attesting witness. PW-19 is a hostile witness.

3.12. PW-20, Doctor, who conducted postmortem on the body of deceased, opined that that the deceased would appear to have died owing to head injury sustained.

3.13. PW-21, Assistant Director, Forensic Laboratory, spoke to conduct of chemical analysis and of issuing Ex.P15, Chemical Analysis Report.

3.14. PW-22, Head Constable, spoke to handing over the material objects to Court. PW-23, Head Constable, spoke to handing over the body of deceased to Government Hospital, Salem, towards conduct of postmortem and on completion thereof handing over the same to deceased's relatives. PW-24, Constable - Grade I, spoke to handing over the viscera to Forensic Department.

3.15. PW-25, Inspector of Police, who conducted initial investigation in the case, spoke to registration of First Information Report, visiting the scene of occurrence, preparation of mahazars, examining witnesses, recording confession of appellant/accused, arrest of accused, obtaining various reports and on his transfer handing over investigation to PW-26 Inspector of Police, who on completion of investigation, filed a charge sheet informing commission of offences u/s.364, 302, 201 and 404 IPC before learned Judicial Magistrate, Rasipuram.

4. On questioning u/s.313 Cr.P.C., appellants/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 19.04.2018, convicted appellants/accused and sentenced them as follows:

Accused	Offences u/s.	Sentence
A1 & A2	364 IPC	Life imprisonment and fine of Rs.1,000/- i/d 1 month R.I. each
	201 r/w 302 IPC	5 years R.I. and fine of Rs.1,000/- i/d 1 month R.I.
	404 r/w 302 IPC	2 years R.I. and fine of Rs.1,000/- i/d 1 month R.I.
A1	302 IPC	Life imprisonment and fine of Rs.1,000/- i/d 1 month R.I.
A2	302 r/w 34 IPC	Life imprisonment and fine of Rs.1,000/- i/d 1 month R.I.

Trial Court directed that sentences run concurrently. Against such finding, the present appeals have been filed.

5. Heard learned senior counsel for appellants and learned Additional Public Prosecutor for respondent. Perused the materials on record.

6. PW-20, Doctor, who conducted postmortem on the body recovered, has deposed that it was in most decomposed state, the postmortem was conducted at the site itself and the identity of deceased could not be established. PW-25, Investigation Officer, has admitted that the DNA report proved negative. No superimposition test was conducted and PW-25, Investigation Officer, has deposed that was so because the head of deceased had been smashed. The body recovered has been identified as that of the deceased informed in the case through identification of the clothes worn by deceased, PW-1/de facto complainant and brother of the wife of alleged deceased identifying the shirt and underwear found on the body while PW-2, wife of deceased, has identified the lungi and underwear found thereon. PW-26, Investigation Officer, has admitted that neither in the complaint nor in Section 161 Cr.P.C. statement of witnesses is any mention found of the clothes worn by alleged deceased. The Supreme Court in Ravinder Parkash and another v. State of Haryana [2003 SCC (Cri) 74] has had occasion to deal with similar circumstances and observed as follows:

12. If we see the evidence of PW 3, he merely says that he identified the dead body without giving any specific reason for the same. From the medical evidence, it is clear that the dead body was in a highly decomposed state, therefore, it was incumbent on the part of this witness to state how he recognised the body, he has failed to give any cogent reason in this regard, hence, his evidence does not help the prosecution.

13. However PW 4 Jai Bhagwan, another relative of Chander Has has gone further and states that he identified the dead body from the artificial jaw (dentures) which Chander Has had got fitted and from his ears and nose. Regarding dentures, he says that he saw them near the dead body. But PW 9, who conducted the inquest, has not supported this version of PW 4. PW 9 has specifically stated that he did not find any such dentures at the place where the dead body was found. So far as the identification of the dead body by this witness from the ears and nose is concerned, we see from the evidence of PW 7, the doctor who conducted the post-mortem that the dead body had deteriorated so much that the ears, eyeballs, nose and lips had disfigured. Thus from a total reading of the evidence of the doctor, it is clear that it was not possible for anybody to have identified the dead body from the ears and nose of the deceased because of the

condition of decomposition. Therefore, what remains is only the clothes that were found on the dead body of the deceased. It is to be noted that neither PW 2 nor PW 5 in their evidence has stated what clothes Chander Has was wearing when he went with the appellants. PW 4 has not given any reason for identifying the clothes of the deceased. PW 3 who is also a relative of Chander Has has not identified the clothes of Chander Has. Therefore, identification of the dead body by PW 4 by the clothes cannot be accepted. Here, we also notice even according to PW 9, the wife of Chander Has viz. PW 2 had not identified the dead body. Therefore, we find it not safe to rely upon the evidence of PW 4 in regard to identification of the body. That apart, it has come in evidence that in the complaint filed on 17-4-1993 before the police station, it is mentioned that the height of the missing Chander Has was 5' 7" while PW 7, the doctor who specifically measured the dead body has in unequivocal terms stated that the height or the length of the dead body was 5' 10". This is also a material discrepancy that could be noticed in the identification of the dead body. From the discussion made hereinabove, we are of the opinion that the prosecution has failed to establish that the dead body found by the police on 18-4-1993 was that of the missing Chander Has.'

7. The present being a case of circumstantial evidence save for the alleged confession of the accused which we shall deal with herein below, a finding of conviction cannot be arrived at unless all circumstances informed by the prosecution unerringly point to the guilt of the accused. In the present case, it cannot be said with any definiteness that the body recovered was that of the alleged deceased in the case. In any event, where none of the witnesses have made any mention of the clothes worn by the deceased to the investigation officer, it would be highly hazardous to place any reliance on the evidence of PWs.1 and 2 to the effect that clothes found on the body was, to their knowledge, that worn by deceased.

8. PW-13, Village Administrative Officer, has deposed to A1 having appeared before him on 31.10.2013 and admitting to A2 and himself having murdered the deceased. It is his evidence that Inspector of Police called him over cell phone and that A1 was produced before him by a police man whom he asked to wait outside and that he recorded the confession of A1. While these are reasons enough to doubt the veracity of the confession, what makes matters worse for the prosecution is that the confession statement does not bear the signature of A1, who admittedly was a person with whom PW-13 had no acquaintance. It is in such circumstance that PW-13 has accepted the defence suggestion of

the preparation of the alleged confession statement at the police station. As against the alleged confession of A1 to PW-13 on 31.10.2013, PW-14, the lorry financier, has spoken to the lorry having been returned to him on 17.10.2013 but that the same was again taken away by police on 19.10.2013 on their assertion that the lorry was involved in the occurrence resulting in death. Absolutely no credence can be attached to Ex.P6, alleged confession of A1. Given the reasons stated above, the finding of conviction arrived at by Court below is to be interfered with.

The Criminal Appeals shall stand allowed. The conviction and sentence passed by learned Additional District and Sessions Judge (Full Additional Charge), Namakkal, in S.C.No.25 of 2016 on 19.04.2018, shall stand set aside. Appellants are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Inspector of Police,
Namagiripettai Police Station,
Namakkal District.
2. The Judicial Magistrate, Rasipuram.
- 3 The Chief Judicial Magistrate, Namakkal.
4. The Additional District and Sessions Judge, Namakkal.
(full Additional Charge)
5. The Principal Sessions Judge, Namakkal.
6. The Superintendent, Central Prison, Coimbatore.
7. The District Collector, Namakkal.
8. The Director General of Police
Mylapore.

9.The Public Prosecutor,
High Court, Madras.

10. The Section officer
Criminal section
High Court, Madras 104.

+1 CC to Mr.N.Manokaran, Advocate sr 70854.

+1 CC to Mr.A.Padmanaban,Advocate sr 70976.

Criminal Appeal Nos.316 and 339 of 2018

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