

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Criminal Appeal No.61 of 2018

State represented by
The Inspector of Police,
Odiyansalai Police Station,
Puducherry.
Crime No.80 of 2008

... Appellant

Vs

1.Saravanan @ Krishnan
S/o.Subramani

2.Mohan @ Mohankumar
S/o.Muthaiyan

3.Ravi @ Ravichandran
S/o.Ramachandran

... Respondents

Criminal Appeal filed u/s.378 of the Code of Criminal Procedure against the judgment of learned Principal District and Sessions Judge, Puducherry, passed in S.C.No.22 of 2014 on 07.04.2016.

For State/Appellant	:	Mr.D.Bharathachakravarthy, Public Prosecutor
For Respondents	:	Mr.R.Thamarai Selvan [R1 & R2]

JUDGMENT

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

State has preferred this appeal against judgment of learned Principal Sessions Judge, Puducherry, passed in S.C.No.22 of 2014 on 07.04.2016 acquitting respondents/A3 to A5.

2. There were six accused in the case. A1, A3 to A5 were tried in S.C.No.22 of 2014 on the file of learned Principal Sessions Judge, Puducherry. Since A2 was absconding and A6 is a juvenile, cases against them were split up. This is a case of 'murder for gain'. Case of the prosecution is that A1 along with other accused caused injury to the head of the deceased, strangled him using a telephone wire resulting in his death and stole a motor cycle bearing Registration No.PY-01-X-9857, some electronic items and certain documents from the house of deceased. It is the further case of prosecution that accused concealed the body of deceased and later, took the same from a sump, cut it into pieces, packed it in two gunny bags and threw the same into a Canal towards screening the offence. On the complaint of the grandfather of deceased, a case was registered in Crime No.80 of 2008 on the file of respondent for 'Man Missing' @ offences u/s.302, 201, 380 r/w 34 IPC. On completion of investigation, a charge sheet was filed informing commission of offences u/s.302, 380, 201 r/w 34 IPC.

3. Before trial Court, prosecution examined 33 witnesses and marked 73

exhibits and 20 material objects. None were examined on behalf of defence nor were any exhibits marked.

3.1. PW-1, grandmother of deceased, spoke to her being second wife of *de facto* complainant/grandfather of deceased, of her husband having a son and two daughters, of identifying the signature of her husband in Exs.P1 and P2, complaint and First Information Report, of learning of the death of deceased's father through police, of seeing the deceased's father at hospital and that deceased died prior thereto. PW-1 has been treated hostile.

3.2. PW-2, cousin of PW-1, spoke to having no knowledge of the occurrence. PWs.3 and 4/daughters of *de facto* complainant, PWs.5, 6, 7, 8, 9, 14, 15, 16, 17 and 20 have also denied knowledge. PWs.2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17 and 20 have been treated hostile.

3.3. PW-10 spoke to doing real estate business, of having paid a sum of Rs.1,00,000/- towards advance for purchase of PW-3's property, of initially stating the name of PW-3's husband as Ravichandran and later, as Vasu, of being questioned by Ravichandran as to why he has purchased the above said property, agreeing to repay the amount upon conduct of a panchayat and seeking 3 days time to repay the amount and of having paid the same.

3.4. PWs.11, 13 spoke to not having been enquired by police. PWs.11 and 13 have been treated hostile.

3.5. PW-12, Head Constable, spoke to father of deceased (Rajaram) having preferred an oral complaint on 20.04.2008 stating that he handed over his house to his son (deceased) and gone to France and on his return on 20.04.2008, he found some articles in the house were scattered and assuming that his son would have taken the two wheeler. Upon PW-12 requiring the father of deceased to reduce the complaint in writing, he requested time and went away. PW-12 sent another Constable to PW-4's house to bring the deceased wherein he was informed that the deceased was not at home and thereafter, none had visited the police station. PW-12 spoke to attending duty on 22.04.2008 and learning that the father of deceased had been done to death as also learning that the deceased had been done to death 4 months prior thereto.

3.6. PW-18, painter, spoke to not knowing accused and of attesting Ex.P32, Inquest Report. He has been treated hostile.

3.7. PW-19 spoke to not having been enquired by police and of attesting Ex.P32, Inquest Report. He has been treated hostile.

3.8. PW-21, Village Administrative Officer, spoke to visiting the police station along with one Padmanabhan, Village Administrative Officer, at about 12.00 p.m. on 29.04.2008 on the instructions of the Tahsildar, of A4 tendering a

confession stating that he along with other accused caused the death of deceased, concealed the body in a sump, taking away the articles of deceased and the next morning, A1 cut the body of deceased into pieces, packed and threw the same into a canal with the assistance of A2 and A3 and of attesting confession of A4 and seizure mahazars.

3.9. PW-22 spoke to attesting seizure mahazar and confessions of A2 and A3. PW-22 has been treated hostile.

3.10. PW-23 spoke to attesting confession of A5. PW-23 has been treated hostile.

3.11. PW-24, Doctor, spoke to conducting postmortem on the body of deceased. Ex.P16, Postmortem Report informs:

'(1) No definite opinion as to the cause of death could be given, due to advance decomposition of the body. However, autopsy findings are consists with death due to criminal violence;

(2) it is probable death could have occurred about 6 months prior to autopsy;

(3) the deceased could be about 25-30 years;

(4) the required body parts are preserved for photo superimposition test and DNA test.'

3.12. PW-25, photographer, spoke to taking photographs of bones in the sump and handing over the same to Investigation Officer. Ex.P18 is the series of

photos.

3.13. PW-26, photographer, spoke to taking photographs of gunny bag in a canal identified by A1, of taking photographs of pieces of the body of deceased and handing over the same to Investigation Officer. Ex.P19 is the series of photos.

3.14. PW-27, Inspector of Police (CBCID), spoke to registering a case in Crime No.80 of 2008 for 'Man Missing'. Exs.P20 and P21 are complaint and First Information Report. PW-27 spoke to examining witnesses, of issuing circular to all police stations towards tracing the missing person, of receiving First Information Report in Crime No.204 of 2008 on the file of Periyakadai Police Station and on finding that the missing person was done to death, altering the First Information Report to reflect offences u/s.302, 201, 380 r/w 34 IPC and of handing over investigation to another Inspector. Ex.P22 is the Alteration Report.

3.15. PW-28, Sub-Inspector of Police (CBCID), spoke to causing formal arrest of A1 to A3 at Cental Prison, Puducherry and A6 (juvenile) at a Home at Ariyankuppam.

3.16. PW-29, Scientist, spoke to examining 'a skull with mandible' and opined that 'the skull, item 1 could possibly have belonged to the male individual seen in the photograph item 4.'

3.17. PW-30, Inspector of Police, spoke to conducting investigation in Crime

No.204 of 2008 on the file of Periyakadai Police Station for offences u/s.147, 148, 341, 302 r/w 149 IPC, of arrest of Perumal Raja (A1 in Crime No.80 of 2008), recording the confession in the presence of Village Administrative Officers, of he admitting that he caused the death one Rajaram (his uncle and father of deceased in Crime No.80 of 2008) along with others (A2, A3 and A6 in Crime No.80 of 2008 and two others), of he confessing to causing death of the deceased in the present case, concealing the body in a sump and on coming to know of deceased's father returning to India, removing the body from the sump, cutting the same and throwing it into a canal. PW-30 spoke to requiring the Inspector of Police, Odiyansalai Police Station (appellant in the present case) to accompany him to the canal, taking photographs of the body of deceased, conducting inquest in the presence of panchayatdars, preparation of mahazars, of forwarding the body of deceased for postmortem, of forwarding the case papers in Crime No.204 of 2008 to be investigated along with Crime No.80 of 2008, arresting A2, A3, A5 and A6 and recording their confessions, arranging for DNA test and of Magistrate recording the 164 Cr.P.C. statement of A6 (juvenile).

3.18. PW-31, Principal Sub-Judge, Thanjavur, spoke to recording the 164 Cr.P.C. Statement of A6(juvenile) after duly following the procedure prescribed therefor under Ex.P35 and of forwarding the same of learned Judicial Magistrate II, Puducherry.

3.19. PW-32, Circle Inspector, spoke to conducting investigation in Crime

No.80 of 2008, examining witnesses, recording their statements, arresting A4 and recording his confession, preparation of mahazars, seizure of material objects, forwarding viscera of deceased for examination, of receiving the chemical analysis report of deceased's father, forwarding the seized articles to Court under Form-95 and handing over the case papers to one Baskaran, Inspector of Police, for further investigation.

3.20. PW-33, Circle Inspector, spoke to conducting further investigation in the case, examining witnesses and recording their statements, receiving report from the Forensic Sciences Laboratories, making arrangements to club case papers in Crime Nos.204 of 2008 and 80 of 2008 and on completion of investigation, filing of charge sheet informing commission of offences u/s.302, 380, 201 r/w 34 IPC. PW-33 also spoke to filing a petition towards marking additional documents.

4. On questioning u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 07.04.2016, while acquitting accused 3, 4 and 5 of all charges and A1 of offence u/s.380 IPC, convicted A1 for offences u/s.302 and 201 IPC and sentenced him to life imprisonment and fine of Rs.5,000/- for offence u/s.302 IPC and 3 years R.I. and fine of Rs.3,000/- for offence u/s.201 IPC. State has preferred the present appeal challenging the finding of acquittal of respondents.

counsel for respondents 1 and 2. Perused the materials on record.

6. Learned Public Prosecutor (Puducherry) would submit that the trial Court having convicted A1 ought to have convicted also A3 to A5 since on their confessions the body of deceased had been recovered. While A1 has confessed to the initial murder of deceased and keeping the body in a yellow colour bag, A2 having removed the body from the bag and had disposed of it in a Canal and A3 to A5 have also confessed to the occurrence and informed that they would point out the place i.e. the sump, in which the body of deceased was first thrown into. Such confession has been recorded in the presence of PW-21, Village Administrative Officer. Learned Public Prosecutor would further contend that the statement of juvenile delinquent involved in the case has been recorded by a Magistrate u/s.164 Cr.P.C. which is marked as Ex.P35. Therein, he had implicated A3 to A5. Though he would concede that such statement would not be reliable u/s.30 of the Indian Evidence Act, he would seek to bring the same into play relying on Section 32(3) of the Indian Evidence Act. As regards A4, the recovery of a Motorcycle, an Iron Box and a Home theater system which had been removed from the house of the deceased had been effected and the same has been spoken to by PW-21, Village Administrative Officer. Learned Public Prosecutor relied upon documents Ex.P40 - admissible portion of confession of A4 and Ex.P52 - admissible portion of confession of Juvenile delinquent.

7. The body of deceased has been identified through conduct of

superimposition test. The trial Court has convicted A1 of offence u/s.302 and 201 IPC and acquitted respondents/accused 3, 4 and 5 of charges u/s.302, 380 and 204 r/w 34 IPC. A2 has absconded. The case also involved a juvenile (A6). The prosecution case rests primarily on circumstantial evidence and then on the confessions of the accused. Quite rightly, the trial Court has refused to read the involvement of A3 to A5 through the confession of A1 or that of the juvenile delinquent. While the confession of the juvenile delinquent cannot be used to implicate the other accused since he has not faced trial along with the other accused and therefore, Section 30 of the Indian Evidence Act will not apply, that of A1, implicating A3 to A5 by itself in the absence of independent corroboration, cannot result in the conviction of such accused. Prosecution has sought to seek corroboration through the confession statements of A3 to A5. While the confession of other accused relating to seizure of motorcycles etc., really are not of much consequence, it is the confession of A4 which informs his pointing out the sump in which the body of deceased was first thrown, gloves and other artifacts seized from the same address and his thereafter, pointing out the place where the body parts were thrown in gunny bags, resulting in recovery thereof, that has to be considered. The confession of A4 would gain admissibility if it resulted in the discovery of a fact/s. Confession of A4 as also A1 are of 26.10.2015. To repeat, the involvement of other accused came to knowledge only upon confession of A1. The very confession of A1 reveals both the usage of a sump at the house of the deceased as also the disposal of the body into a canal. The confession of A4 not having led to discovery of any fact cannot be looked into and consequently, the

alleged recoveries effected pursuant thereto are to be ignored. In view of what is aforestated there is no occasion to interfere with the judgment of acquittal.

The Criminal Appeal shall stand dismissed.

[C.T.S., J] [B.P., J]

05.12.2018

Index:yes/no

Internet:yes

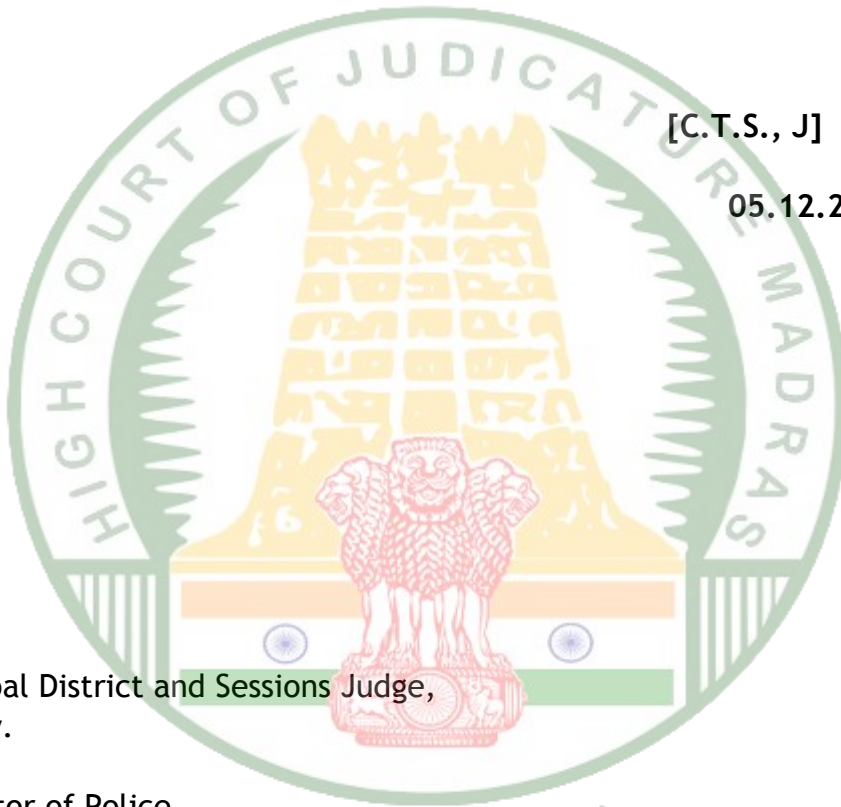
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To

1.The Principal District and Sessions Judge,
Puducherry.

2.The Inspector of Police,
Odiyansalai Police Station,
Puducherry.

3.The Public Prosecutor,
High Court, Madras.



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B.PUGALENDHI, J

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