



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2016

PRONOUNCED ON : 23.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Criminal Appeal No. 59 of 2013

Lakshmanan

.. Appellant/Accused

Vs

State, rep. By Inspector of Police,
Mahendramangalam Police Station,
Dharmapuri District.
Crime No.111 of 2010.

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of CrI.P.C against the judgment of conviction by the learned Additional Sessions Judge, Dharmapuri in S.C.No.14 of 2012 dated 30.11.2012 and wherein sentenced the appellant as given under : (1) found guilty under section 304(i) of the Indian Penal Code and sentenced to undergo 7 years rigorous imprisonment and a fine of Rs.5,000/- with a default sentence of one year rigorous imprisonment; (2) found guilty under section 201 of the Indian Penal Code and 2 years rigorous imprisonment and fine of Rs.1,000/- with a default sentence of six months rigorous imprisonment.

For Appellant : Mr.R.John Sathyan.

For Respondent : Mr.R.Ravindran
Government Advocate.

J U D G M E N T

This appeal is filed against the conviction and sentence imposed by the trial Court in S.C.No.14 of 2012 vide its judgment dated 30.11.2012 against the appellant to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment for the offence under Section 304(1)IPC; and to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment for the offence under Section 201 IPC. The period of detention already undergone is ordered to be set off under Section 428 of Cr.P.C. The sentence



was ordered to run concurrently.

2. The case of the prosecution on the basis of the evidence let in by prosecution witnesses is as follows:

The accused/appellant and the deceased viz., Chinnathambi are relatives. After the death of the father of the accused, a partition was effected over 6 acres of Mango grove. One acre mango grove belongs to the deceased Chinnathambi, lies adjacent to the share of the accused. Prior to the occurrence, while the accused committing an offence of theft of Mango which belonged to the deceased, the deceased caught hold of him. As a result, a panchayat was held and imposed fine on the accused. Further, there was a wordy quarrel between the deceased and the accused with respect of grassing of cows of deceased Chinnathambi in the piece of land of the accused and the same was objected by the accused. At that time, the accused challenged to kill the deceased Chinnathambi. In furtherance of the challenge, on 06.05.2010 after 02.00 a.m., while the deceased was sleeping at Mango grove belonging to one Govindaraj situated at Bodarahalli, the accused assaulted the deceased with koduval on his head, neck, chest and the Juvenile accused, who is the brother of the appellant assaulted the deceased with wooden log. Due to that, the deceased sustained fractures of Hyoid bone and skull. As a result, the deceased died on the spot and after committing the murder of the deceased, with intention to cause the disappearance of the murder, he put the body of the deceased in a gunny bag and carried the body through TVS-XL bearing registration No.TN-29AC-9399 and threw away the body of the deceased near the KRP Dam at Krishnagiri, in order to escape from the legal punishment and thereby the accused has committed offences punishable under Section 302 and 201 r/w.302 IPC.

3. The Judicial Magistrate, Palacode has taken the case on file in PRC.No.28 of 2011. After considering the case materials, the Judicial Magistrate, Palacode, came to the conclusion that, this case is exclusively triable by the Court of Sessions and accordingly, committed the case to the Principal Sessions Judge, Dharmapuri, the Sessions Judge after completing the legal formalities framed the charges under Sections 302 and 201 r/w 302 of IPC.

4. In order to prove the case, on the side of prosecution as many as 14 witnesses were examined as PW.1 to P.W.14 and 15 documents were marked as Ex.P1 to Ex.P15 and also 7 material objects were marked as M.O.1 to M.O.7. After considering the oral and documentary evidences, the trial Court has found the accused guilty under Section 304(1) IPC and 201 r/w 304(1)IPC and sentenced him as stated above. Being aggrieved with the conviction and sentence passed by the trial Court, the accused/appellant has preferred the present appeal.

5. The learned counsel appearing for the appellant would



submit that there is no eye witness in this case and the prosecution has filed the case based on the circumstantial evidence. Further, the chain of events are not linked without any break from the prior to the offence till the completion of the offence. The trial Court has merely based on the summarise and conjunction has come to the conclusion that except the accused no one could have committed the offence and the conviction is on the basis of confession recorded by the co-accused. Therefore, the conviction and sentence are liable to be set aside.

6. The learned Government Advocate (Crl.side) would submit that the motive is proved through prosecution witnesses clearly and proved the case through circumstantial evidence beyond all reasonable doubt. The accused has given the extra judicial confession before P.W.1 and other villagers. TVS-50 and other weapons recovered from the accused. The body of the deceased was recovered at the instance of the Juvenile accused. Hence, no reason to interfere with the judgment of the trial Court and the appeal may be dismissed.

7. Heard, the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent.

8. It is the case of the prosecution that the accused and deceased viz., Chinnathambi are relatives and they have got previous enmity. After the death of the father of the accused, a partition was effected over 6 acres of Mango grove and one acre of land belonging to the deceased Chinnathambi was adjacent to the land of the accused. Prior to the occurrence, on 05.05.2010 the deceased caught hold of the accused, while he committing theft of mangoes from the land belonging to the deceased Chinnathambi. Therefore, Village Panchayat was held and imposed fine against the accused. Further, there was a wordy quarrel between the deceased and the accused with respect of grassing of cows of Chinnathambi in the piece of land of the accused and the same was objected by the accused. At that time, the accused challenged to kill the deceased. Subsequently, on 06.05.2010 after 02.00 a.m., while the deceased was sleeping at the Mango grove belonging to one Govindaraj, situated at Bodarahalli, the accused assaulted the deceased with koduval on his head, neck, chest and the Juvenile accused assaulted the deceased with wooden log. Due to that, the deceased sustained fractures of Hyoid bone and skull and as a result the deceased died. After committing murder, with an intention to hide the murder, the accused put the body of the deceased in a gunny bag and carried the body through TVS-XL bearing registration No.TN-29AC-9399 and had thrown the body of the deceased near a bush in the KRP Dam at Krishnagiri. The case was taken on file in



PRC.No.28 of 2011 by the Judicial Magistrate, Palacode.

9. PW.1 is the village head of Boodarahalli. In the above village, the accused and the deceased are residing. In his evidence he had stated that, he very well knew the deceased and the accused. Two years prior to the occurrence, there was a dispute with regard to land between the deceased and the accused. Three days before the occurrence, there was a dispute and wordy quarrel between the accused and deceased with respect of grassing of the cows in the lands. The deceased Chinnathambi made a complaint to P.W.1 with respect to the above incident. The P.W.1 pacified the deceased and told that he will settle the matter in Panchayath. After three days, the wife of the deceased informed that the deceased was missing. The deceased would always be sleeping near the mango grove. They searched him upto 11.00 O'clock and on suspicion, they called the accused and enquired about the deceased. For a long time the juvenile accused Arunagiri kept quite, then he stated that, he assaulted and caused death of deceased and put the body of the deceased in a gunny bag and had thrown the same in the bush near the Dam. Then, the juvenile accused Arunagiri was taken to the Police Station and handed over him. The complaint is marked as Ex.P1.

10. PW.2 is the daughter of the deceased and she stated that two years ago, there was a dispute in respect of grassing of the cows in the land of the deceased and made a complaint before the P.W.1, who pacified the deceased to settle the matter in the Panchayat. The accused challenged that, he will kill the deceased. Her father always sleeping at the mango grove. Hence, she got suspicion over the accused and informed the same to P.W.1. P.W.1 enquired the accused and Juvenile accused Arunagiri. At that time, the juvenile accused stated that, they assaulted the deceased, put him in the gunny bag and had thrown the same near the dam. Later, he absconded from there. Hence, they caught hold of the juvenile accused Arunagiri and sent him to the Police Station. The Police took the juvenile Arunagiri to the dam, where he identified the body of the deceased.

11. P.W.3 Krishnan is one of the villagers in the Bodarahalli, who stated that he knew the accused and the deceased and there was a dispute between the deceased and the accused with respect to lands. At the time, the accused stated that, he will kill the deceased within three days. After three days, the accused killed the deceased. They enquired the accused and the accused stated that he assaulted the deceased and thrown the body of the deceased near the dam.

12. P.W.5 is the brother of P.W.4 and he stated that he is owning a tempo van. Before two years, on 06.05.2010 at about



04.00 a.m., he went to the plantation to load the plantains. While he turned his tempo, a TVS XL came from opposite side without lighting head light. The TVS XL was ridden by the accused and the Juvenile Arunagiri was sitting at the back side. In front of the vehicle there was a gunny bag. When he stopped and enquired them, they replied that, they are going to Kaveripattinam. Then he went to the market. At that time, he did not know that the body of the deceased was in the gunny bag. While the villagers were searching the deceased, he informed them that the accused and his brother were taking a gunny bag and so requested them to enquire the accused and his brother. Initially the accused stated that they were taking the gunny bag to the rice mill and after examination, the accused admitted that they killed the deceased and put the body in the gunny bag and thrown the body of the deceased near the KRP dam.

13. P.Ws.6 and 7 are the attesting witnesses to the confession statement and recovery mahazar, they deposed that before two years, when the police examined the accused they have stated that, if they would be taken to Boodarahalli, they would take and hand over the TVS-50. Hence, the police had taken the accused to Boodarahalli, where the accused took TVS-50 from a shop and handed over the same to the Police. The Police recovered the same under the recovery mahazar Ex.P2 and the TVS-50 is M.O.1.

14. P.W.11 is the Head Constable stated that he received the body of the deceased and sent the same for post-mortem examination and after completing post-mortem, they handed over the body of the deceased to his wife.

15. P.W.12 the Investigation Officer stated that on 07.05.2010 while he was on duty at 06.00 a.m., he received a complaint from P.W.1 and registered the FIR in Crime No.111/2010 for the offence under Section 302 and 201 of IPC. Then on 08.05.2010 he examined the Doctor, who conducted the autopsy and recorded his statement and then handed over the case file to the P.W.13.

16. P.W.13 stated that on 08.05.2010 at 08.00 a.m., on the basis of identification given by the witness Kaliappan, he arrested the accused at Pickanahalli Bus Stop. On enquiry, the accused had voluntarily given a confession statement. On the basis of the confession statement of the accused, M.O.1- TVS-XL heavy duty two wheeler bearing Registration No.TN-29AC-9399 was recovered under the Recovery Mahazar in the presence of the witnesses. Then the Investigating Officer sent the M.Os material in Form-95 and also sent the accused and the M.Os to the Judicial Magistrate. Then he handed over the case file to P.W.14.



17. P.W.14, stated that on investigation of the case, he examined the Investigating Officer Krishnamoorthy, Rajendran and H.C Singaram and the Head Clerk to the Judicial Magistrate and recorded their statements separately. He had given a requisition to the Judicial Magistrate to send the M.Os for chemical analysis. After completion of investigation, on 25.06.2010 he filed a charge sheet against the accused for the offences under Section 302 and 201 r/w 302 of IPC.

18. In order to prove the case of the prosecution, the evidence of P.W.1 who is the Panchayator and PW.2 and PW.4, who are the daughters and wife of the deceased respectively. They have clearly spoken about the motive of the accused with the deceased.

19. PW.3, one of the villagers, who was present in the Panchayat has spoken about the motive and the challenge made by the accused in the Panchayat. Therefore, from the evidence of PW.5, who has deposed that the accused had taken gunny bag in front of his TVS and along with the Juvenile accused. Admittedly in this case, no eye witnesses for murder of the deceased. However, from the evidence of PW1 to PW4 motive and also challenge made by the accused have been proved. The juvenile accused have given the confession statement before the panchayatars, that he along with the appellant/accused had killed the deceased and taken the deceased in gunny bag and thrown in the bush near the Dam. Subsequently, body of the deceased was recovered in the presence of the witnesses. The prosecution is able to prove the case through circumstantial evidence. From the above said oral and documentary evidences, it is proved that the accused have committed the offence under Section 302 and 201 IPC. However, the State have not filed any appeal against the findings rendered by the Sessions Judge.

20. Under the said circumstances, there is no reason, to interfere with the judgment of the trial Court. Hence this appeal is dismissed and the conviction and sentence passed against the appellant is hereby confirmed.

21. In the result, the Criminal Appeal stands dismissed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ub



To

1. The Additional Sessions Judge,
Dharmapuri.
2. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
VR Section, High Court, Madras.
4. The Inspector of Police,
Mahendra Mangalam Police Station,
Dharmapuri District.
5. The Superintendent of Central Prison,
Vellore.

CRL.A.No.59 of 2013

SPD(CO)
GN(10/09/2018)