



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

And

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)No.182 of 2016

and Crl.M.P. (MD) Nos.6238 and 6239 of 2017

1.Arun Kumar @ Arun

2.Palanimagam

... Appellants/Accused Nos.1 & 2

Vs.

The Assistant Superintendent of Police,

Vallam Sub Division,

Thanjavur District.

(Crime No.278/2012)

... Respondent/Complainant

Prayer: Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, praying to set aside the judgment of conviction dated 01.10.2015 made in S.S.C.No.72 of 2012 on the file of the learned 1st Additional District and Sessions Judge, (PCR), Thanjavur.

For Appellants : Mr.Veerakathiravan

Senior Counsel for M/s.G.Mariappan

For Respondent : Mr.S.Chandrasekar

Additional Public Prosecutor

J U D G M E N T

(The Judgment of the Court was delivered by C.T.SELVAM, J.)

Appellants/Accused have filed the Criminal Appeal, challenging the judgment, dated 01.10.2015, in S.S.C.No.72 of 2012, on the file of learned I Additional District and Sessions Judge (P.C.R.), Thanjavur, in and by which, the first appellant was convicted for offences under Sections 364, 120-B and 302 I.P.C. and sentenced to undergo life imprisonment and to pay fine of Rs.10,000/-, in default, further imprisonment of one year for each of the offence under Sections 364 and 302 I.P.C. and sentenced to undergo 10 years R.I. and to pay a fine of Rs.5,000/-, in default, further imprisonment of 6 months and the second appellant was convicted for offences under Sections 120-B and 302 I.P.C. and sentenced to undergo life imprisonment and to pay fine of Rs.10,000/-, in default, further imprisonment of one year for the offence under Section 302 I.P.C. and sentenced to undergo 10 years R.I. and to pay a fine of Rs.5,000/-, in default, further imprisonment of 6

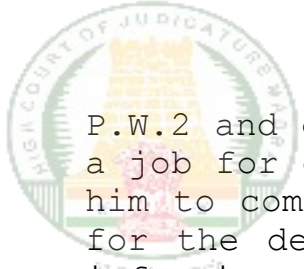


months for the offence under Section 120-B I.P.C.

2. The prosecution case is that the accused, who are son and father belonged to Hindu Kallar Community and the deceased belonged to Hindu Parayan Community. The accused conspired to murder the deceased since he had married one Abirami, who is the sister of A1 and daughter of A2 and in furtherance of the conspiracy, on 25.05.2012 at 9.00 p.m. A1 asked the deceased to come to Pudupattinam Bus Stop to collect a gold chain for his daughter's first birthday. Thereafter, A1 picked up the deceased on his bicycle and took him to the Northern Bank of Vadasery Channel and at about 10.00 p.m. both the accused abused him touching upon his caste, murdered him and stole a 3 gram gold ring worn by the deceased.

3. P.W.1, brother of the deceased, preferred a complaint before Sub Inspector of Police at Thanjavur Taluk Police Station on 26.05.2012. P.W.16, Sub-Inspector of Police registered the complaint in Crime No.278 of 2012 under Section 302 I.P.C. and prepared Ex.P.18 FIR. P.W.17, Inspector of Police took up investigation, went to the scene, recovered M.Os.12 to 15 and prepared observation mahazar Ex.P.2, as also rough sketch Ex.P.19. On the same day at 12.15 p.m. he conducted inquest over the body of the deceased and prepared Ex.P.21 - Inquest Report and sent the body to Government Medical College Hospital, Thanjavur through Elangovan - Special Sub-Inspector of Police for post-mortem. The Post-mortem Report is Ex.P.17. He examined the witnesses and recorded their statements. He altered the F.I.R from 302 I.P.C. to Sections 147, 148, 149, 120(b), 302 I.P.C. r/w Section 3(2)(v) SC/ST (POA) Act, 1989 and prepared alteration report Ex.P.20. He completed his investigation and handed over the file to P.W.18 - Assistant Superintendent of Police, Vallam Police Station for further investigation on 27.05.2012. P.W.18 examined the witnesses and recorded their statements. On 05.06.2012, he made a request to the Judicial Magistrate to record the statements of P.Ws.1, 2 and 6 under Section 164 Cr.P.C. On 08.06.2012, he took the accused into police custody and on 13.06.2012 recorded the confessional statement of accused in the presence of P.W.8 - Rajendran and another and recovered M.Os.1 and 5 to 11. Upon completion of investigation, P.W.18 filed a charge sheet informing commission of offences under Sections 120-B, 364, 302 and 379 I.P.C. r/w 3 (2) (v) SC/ST (POA) Act. On committal, the case was tried in S.S.C.No.72 of 2012 on the file of learned I Additional District and Sessions Judge (P.C.R.), Thanjavur. Before trial Court, prosecution examined 18 witnesses and marked 24 exhibits and 16 material objects. None were examined on behalf of defence nor were any exhibits marked.

<https://hcservices.apjts.gov.in/hcservices/> - Rajkumar is the brother of the deceased. His complaint is marked as Ex.P.1. He deposed to the love marriage of



P.W.2 and deceased, receipt of Rs.5,00,000/- by A1 towards getting a job for deceased at TASMACH shop, deceased informing of A1 asking him to come to Pudupattinam Bus Stop to collect a chain as a gift for the deceased's daughter for her first birthday, P.W.5 - Raja informing about deceased going to see A1, search for the deceased, one Chezhan informing of seeing a dead body on the northern bank of Vadachery channel, seeing the dead body of the deceased with cut injuries, missing of deceased's ring and of his complaint to the police.

4.2. P.W.2 - Abirami, wife of the deceased and P.W.3 - Palanivelu, father of the deceased corroborated the evidence of P.W.1.

4.3. P.W.4 - Kamaraj, paternal uncle of the deceased, apart from corroborating the evidence of P.W.1, spoke to seeing the deceased in the company of the accused on the night of occurrence.

4.4. P.W.5 - Raja, spoke to informing of P.W.1 about deceased leaving him to see A1 on the day of occurrence.

4.5. P.W.6 - Mariyasoosai spoke to deceased giving Rs.5,00,000/- to A1 for getting a job in TASMACH shop.

4.6. P.W.7 - Mohanraj, spoke to the search and sighting of the body of the deceased.

4.7. P.W.8 - Rajendran - Village Administrative Officer, spoke to visit of the police to scene of occurrence, preparation of rough sketch and observation mahazar, confession of the accused and recovery of Material Objects.

4.8. P.W.9 - Murugadoss - Tahsildar, spoke to issuance of community certificates to deceased as well as accused.

4.9. P.W.10 - Avina - Scientific Officer, Forensic Science Laboratory, Thanjavur, spoke to Serological Report on the blood found on the material objects as also the blood group of deceased.

4.10. P.W.11 - Gnanammal - Junior Engineer, TNEB, spoke to the power cut on the date of occurrence.

4.11. P.W.12 - Dr.Rajkumar, who conducted post-mortem on the body of deceased, opined that the deceased appeared to have died due to effects and complications of multiple injuries involving major blood vessels in the head and neck region.

4.12. P.W.13 - Mirulalini, Head Constable, spoke to handing over the blood samples of deceased to Forensic Science Laboratory, Thanjavur.

4.13. P.W.14 - S.Muthuvel, Head Constable, spoke to handing over the Material Objects to Forensic Science Laboratory, Thanjavur.

4.14. P.W.15 - Kumutha - Typist, Camp Office of Assistant Superintendent of Police, Vallam spoke to typing of statements of witnesses on computer.

4.15. P.W.16 - P.Sharmila - Sub-Inspector of Police, spoke to receipt of complaint from P.W.1, registration of case in Crime No.278 of 2012 u/s. 302 I.P.C., and of forwarding Ex.P.18, Information Report to Judicial Magistrate No.II, Thanjavur.



4.16. P.W.17 - Justin Prabakaran was the Inspector of Police, spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses and alteration of F.I.R.

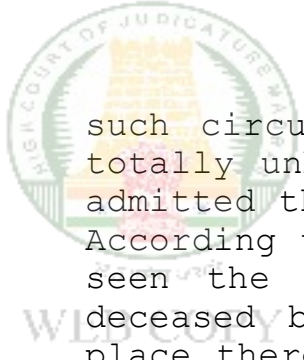
4.17. P.W.18 - Vijayakumar, Assistant Superintendent of Police, spoke to taking the accused to police custody, recording of confession statement, recovery of material objects, examination of witnesses and upon completion of investigation filing of charge sheet informing commission of offences under Sections 120-B, 364, 302 and 379 I.P.C. r/w 3 (2) (v) SC/ST (POA) Act.

5. When the accused was examined under Section 313 Cr.P.C. on the incriminating materials against them, they denied their complicity and stated that they had been falsely implicated in the case.

6. On appreciation of materials before it, trial Court, under judgment dated 01.10.2015, convicted the first accused for offences under Sections 364, 120-B and 302 I.P.C. and sentenced him to undergo life imprisonment and to pay fine of Rs.10,000/-, in default, further imprisonment of one year for each of the offences under Sections 364 and 302 I.P.C. and sentenced to undergo 10 years R.I. and to pay a fine of Rs.5,000/-, in default, further imprisonment of 6 months and convicted the second appellant for offences under Sections 120-B and 302 I.P.C. and sentenced to undergo life imprisonment and to pay fine of Rs.10,000/-, in default, further imprisonment of one year for the offence under Section 302 I.P.C. and sentenced to undergo 10 years R.I. and to pay a fine of Rs.5,000/-, in default, further imprisonment of 6 months for the offence under Section 120-B I.P.C. Against such finding, the present appeal has been filed.

7. Heard learned Senior Counsel for appellants and learned Additional Public Prosecutor for respondent.

8. Learned Senior Counsel for appellants submitted that it is the prosecution case that the deceased went missing on the night of 25.05.2012; that P.W.1, P.W.4 and others made a search for him; not being able to find him, P.W.1 proceeded towards the police station; when they received a call informing that a body was found on the Northern banks of the Vadasery Channel, They went to the scene, found the body of the deceased. Complaint was then lodged at Vallam Police Station, Thanjavur District. A case was registered in Crime No.278 of 2012. A reading of the complaint informs suspicion against 6 persons i.e., A1, A2 and four others. Neither in the complaint, nor in the inquest or in the statement under Section 164 Cr.P.C. tendered by P.W.1 before learned Judicial Magistrate No.III, Thanjavur on 14.06.2012 had the position of P.W.4 having last seen the deceased in the company of the deceased and of the deceased riding pillion on a cycle used by A1 had been informed. Learned Senior Counsel would state that in



such circumstance, the evidence of P.W.4 informing such fact is totally unbelievable. P.W.1 - complainant/brother of the deceased admitted that P.W.4 is his paternal uncle and immediate neighbour. According to the inquest report - Ex.P.21 the person, who had last seen the deceased was one Raju - P.W.5. The spotting of the deceased by P.W.5 is spoken to also in the complaint, but the place thereof is Thanjavur i.e., at a distance of 10 kms from the scene. P.W.2 - wife of the deceased has spoken to first appellant/A1, the deceased and herself having spent time at the river bed in the night hours on 10 to 12 occasions. She has also admitted to a sum of Rs.5,00,000/- having been entrusted by the deceased to first appellant/A1 towards the deceased securing a job at TASMACH through the appellant/A1. Learned Senior Counsel brings to notice of this Court that this appeal had been heard in full on an earlier occasion. The appeal is again posted before this Bench. On the earlier occasion this Court was informed that the statement of P.W.1 under Section 164 Cr.P.C. has not been marked by the prosecution before the trial Court since reading thereof would adversely affect the prosecution case. Learned Senior Counsel further submits that a copy of the statement of P.W.1 recorded under Section 164 Cr.P.C. has been produced before this Court. A reading of the same shows that no mention has been made therein of P.W.4 having seen the deceased in the company of the accused, although the same was recorded 15 days after the occurrence. Learned Senior Counsel would further submit that the prosecution case is based on circumstantial evidence and conviction in a case of such nature cannot be arrived at unless there is an unbroken chain of circumstances pointing unerringly to the guilt of the accused. In the present case, the very initial link sought to be established through the evidence of P.W.4 falls to the ground. Submitting as above, learned Senior Counsel prays for acquittal.

9. Learned Additional Public Prosecutor on the other hand submitted that the prosecution had presented materials which unerringly point to the guilt of the accused. P.W.4, who had spoken to the last seen theory informed that the deceased had been taken on a bye-cycle by A1. The scene of occurrence was 10 kms away from the place deceased was last seen. The deceased had got off a bus at 9.40 p.m. The postmortem report which places the time of death as between 12 to 24 hours also lends support to the prosecution case that the deceased had been done to death soon after having been seen in the company of A1 at 9.45 p.m. Postmortem has been conducted at 4.00 p.m. i.e., within 24 hours of the occurrence. Learned Additional Public Prosecutor further submitted that at the instance of A1, ring - M.O.1 has been recovered pursuant to his confession. That such ring belonged to deceased had been spoken to by P.W.2. P.W.4 had informed that when he saw the deceased, he was wearing a blue colour pant and green shirt. M.Os.3 and 4, which were the clothes found on the body of the deceased. M.Os.10 and 11 - weapon had been sent for



serological analysis and the report confirms that the same contains human blood stains. The weapon had been recovered on the confession of A1 and therefore his involvement in the occurrence was proved beyond doubt.

10. We have considered the rival submissions.

11. The evidence of P.W.2 points to a good relationship maintained between A1, her husband - deceased and herself as she has spoken to having spent much time together on the river bed. The evidence of P.W.1 also points to a close relationship between the deceased and the first appellant since she has admitted to a sum of Rs.5,00,000/- having been paid by deceased to A1 towards securing a job at TASMAC. Both as per the complaint - Ex.P.1 and the inquest report - Ex.P.11, the person who last saw the deceased alive is P.W.5. If indeed P.W.4 had witnessed the deceased alighting from a bus at 9.45 p.m. and his being taken pillion on a cycle by A1, it would stand to reason that he would have informed such position to P.W.1 and others on the very night. To expect him to be part of the search party on the night of 25.05.2012 and the party which proceeded to the police station towards informing missing of the deceased, as spoken to by P.W.1, would be totally unnatural. The evidence of P.W.4, who is an immediate relative of the deceased and his neighbour/paternal uncle is totally unbelievable. When so, the last seen theory projected by the prosecution falls to the ground. It would be highly unsafe to place a conviction on the basis of alleged recovery of M.O.1 at the instance of the accused.

12. In the result, this Criminal Appeal shall stand allowed. The conviction and sentence imposed by learned I Additional District and Sessions Judge, (P.C.R.), Thanjavur in S.S.C.No.72 of 2012 on 01.10.2015 against appellants/A1 and A2 are set aside. Appellants / A1 and A2 are acquitted of all charges. Fine amount, if paid shall be refunded to appellants / A1 and A2. Appellants/A1 and A2 shall be released forthwith from the prison, if they are no longer required in connection with any other case. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

<https://hcservices.courts.gov.in/hcservices/>
1. The Additional District and Sessions Judge (P.C.R.),
Thanjavur.



2. The Judicial Magistrate No.2,
Thanjavur.

3. The Chief Judicial Magistrate,
Thanjavur.

4. The Superintendent ,
Central prison, trichy.

5. The Assistant Superintendent of Police,
Vallam Sub Division,
Thanjavur District.

6. The Superintendent of Police,
Thanjavur

7. The Director General of Police,
Chennai

8. The Sub-inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur

9. The District Collector,
Thanjavur

10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai-23

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The Section Officer,
Criminal Record Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.G.MARIAPPAN, Advocate SR.No.69343
Sj
MK/KAK/SAR 2/06.08.2018/7P/15C

Judgment made in
CRL A (MD) No.182 of 2016
21.06.2018