



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2018

CORAM

**THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED**

Cr1.A.(MD)No.212 of 2016

P.Ganesan

.. Appellant/Accused No.1

Vs.

State Through represented by
The Inspector of Police,
Chinnadharapuram Police Station,
Aravakuruchi Circle,
in Crime No.63/2012

.. Respondent/Complainant

COMMON PRAYER: These criminal appeals have been preferred under Section 374 (2) Cr.P.C against the judgment dated 23.11.2015 made in S.C.No.11 of 2015 by learned Principal Sessions Judge, Karur.

For Appellant : Mr.Vinod Sathya Lazar
for
Mr.R.Pandimaharaja

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.)**

There are two accused in the case. The second accused being a juvenile, a separate charge sheet was filed against him.

2.Challenge is made to the Judgment of learned Principal Sessions Judge, Karur, made in S.C.No.11 of 2015, whereby the appellant stood charged under Sections 120(B), 364, 302 and 397 IPC r/w Section 201 IPC, and on trial, he was found not guilty under Section 364 IPC but found guilty under Sections 120(B), 302, 394 and 201 IPC and convicted and sentenced as below:- (i)Under Section 302 IPC, to undergo life imprisonment and fine of Rs.50,000/-, in default, rigorous imprisonment for two years;



(ii) Under Section 120(B) IPC, rigorous imprisonment for 7 years and fine of Rs.10,000/-, in default, rigorous imprisonment for 18 months;

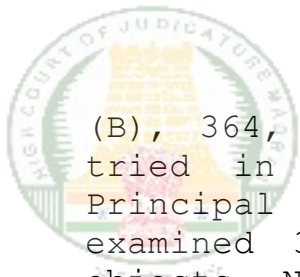
(iii) Under Section 394 IPC, 10 years rigorous imprisonment and fine of Rs.30,000/-, in default, rigorous imprisonment for two years;

(iv) Under Section 201 IPC, 7 years rigorous imprisonment and fine of Rs.10,000/-, in default, rigorous imprisonment for 18 months;

(v) All the sentences were to run concurrently.

(vi) Set off under Section 428 Cr.P.C. was permitted.

3. The prosecution case is that the appellant/accused had borrowed a sum of Rs.1,75,000/- from the deceased. In order to collect the same, the deceased often used to visit the house of the accused and developed illicit intimacy with the wife of the appellant/accused. Hence appellant and co-offender conspired to do away with the deceased and rob his jewellery. In pursuance thereof, appellant invited the deceased to his garden and when they were taking liquor alcohol, the juvenile accused attacked him on his head and caused his death. Thereafter, they robbed his jewels and in order to screen the offence, they put him in his car and set it on fire towards making it appear an accident. On 16.04.2012, P.W.1 - Prabakaran, Village Administrative Officer, Gudalur pit I Village, received a message from P.W.11-Subburathainam, over phone that a car had hit a tree on Thennilai-Chinnadharapuram road near Subburathinam's house and caught fire. P.W.1, went to the place of occurrence and found a burnt dead body inside the car. P.W.1, preferred a complaint before the Inspector of Police at Chinnadharapuram Police Station at about 1.00 a.m. on 17.04.2012. P.W.32, Sub-Inspector of Police registered the complaint in Crime No.63 of 2012 under Section 174 Cr.P.C. and sent the body to Government Hospital, Pallapatti for postmortem. He took up investigation, went to the scene and prepared observation mahazar Ex.P.9, as also rough sketch Ex.P.28. On 21.04.2012, at 11.00 a.m., he arrested the accused and recorded their confessions in the presence of P.W.1. Thereafter, the Inspector of Police, examined the accused and recorded their confessional statements. Based on the confession of the accused, he recovered M.O.2-bracelet; M.O.3-gold chain; M.O.4-T-shirt; M.O.5-a dollar and M.O.6-a ring from the house of the juvenile accused. He also recovered M.O.7-iron rod; M.O.8-7UP bottle and M.O.9-Beer bottle. P.W.33 took up further investigation and examined all the witnesses and recorded their statements. Since, he was also transferred, he handed over the records to P.W.34, who examined the witnesses once again. P.W.34, collected blood samples of the deceased and sent the same to the Forensic Sciences Laboratory and after getting report therefrom, he laid a charge sheet informing commission of offences under Sections 120



(B), 364, 302 r/w 397 and 201 IPC. On committal, the case was tried in Special S.C.No.11 of 2015 on the file of learned Principal Sessions Court, Karur. Before trial Court, prosecution examined 34 witnesses and marked 33 exhibits and 16 material objects. None were examined and no document was marked on behalf of defence.

4.1. P.W.1 - Prabakaran is the complainant. His complaint is marked as Ex.P.1. He deposed that on 16.04.2012, when he was preparing accounts for the ensuing Jamabandhi along with his assistant, he received a phone call that a car had hit a tree on Thennilai-Chinnadharapurak road. The deceased was first seen by P.W.1.

4.2. P.W.2 - Gurusamy, spoke to visit of the police to scene of occurrence, preparation of rough sketch and observation mahazar and recovery of Material Objects.

4.3. P.W.3 - Pitchai, Fireman, spoke to finding the car at large, putting out the fire and of issuing a certificate Ex.P11.

4.4. P.W.4 - Pandian and P.W.5-Muthumani spoke to hearing of the occurrence and going to the Government Hospital, Pallapatti.

4.5. P.W.6 - Senthilkumar, elder brother of the deceased Kannan, spoke to identifying the car of the deceased and of handing over the photographs-M.O.12 series of the deceased as also informing his cellphone number.

4.6. P.W.7 - Kannan, Sub-Registrar of Co-operative Society and P.W.8 - Meena, Secretary of Pachapalayam Primary Agricultural Co-operative Society, spoke to the pledging of jewels by accused.

4.7. P.W.9 - Kannusamy, Appraiser of Pachapalayam Primary Agricultural Co-operative Society, corroborated the versions of P.Ws.7 and 8.

4.8. P.W.10 - Keerthana, wife of deceased Kannan, spoke to identifying the jewels worn by deceased.

4.9. P.W.11 - Subburathinam, spoke to informing of car having caught fire to P.W.1 over phone.

4.10. P.W.12 - Indramurthy, spoke to last seeing the deceased along with the accused Ganesan on 16.04.2012 at about 7.30 p.m. near Olapalayam bus stand. P.W.19-Navaneethakrishnan also was examined to speak to the last seen theory.

4.11. P.W.13 - Thangavel, the original owner of Maruti car - M.O.1, spoke to purchase of the said car by deceased and of not ~~of registration.~~
<https://hccs.court.gov.in/hccs/>

4.12. P.W.14 - Ramesh, Cashier of Petrol bunk at Vellakkovil,



spoke to purchase of petrol by the appellant/accused on 16.04.2012 at about 09.00 p.m.

4.13. P.W.15 - Karuppanna Goundar, father of the deceased, spoke to identifying the photo shown by police and the blood test conducted on him and his wife.

4.14. P.W.16 - Sasikumar, resident of Vellakovil, spoke to availing of loan from deceased and of knowing of the death of deceased.

4.15. P.W.17 - Suresh @ Balasubramani and P.W.18 - Anand, friends of deceased, spoke to the illicit intimacy of the deceased with the wife of accused.

4.16. P.W.20 - Madhavan, Personal Assistant to the Regional Transport Officer, Perambalur spoke to issuing of certificate of ownership of two wheeler bearing Regn.No.T.N.46-D-4969.

4.17. P.W.21 - N.Easwaramoorthy, Motor Vehicles Inspector Grade I in the Regional Transport Office, Karur, spoke to the inspection of Maruti car bearing Regn.No.T.N.43-A-3262 and of issuing a certificate to the effect that there was no mechanical fault.

4.18. P.W.22 - Rajendran, Junior Scientific Officer, Forensic Sciences Laboratory, Tiruchirappalli, spoke to examination of viscera of deceased and of submitting report that they did not contain toxic substances.

4.19. P.W.23 - Renukadevi, Tutor in Tiruchirappalli Government Medical College Hospital, spoke to examination of hyoid bone of the deceased and of certifying that it was in tact.

4.20. P.W.24 - Dr.Dhanapal, spoke to taking of blood samples from the parents of the deceased and of sending the same for DNA examination.

4.21. P.W.25 - C.Jaya, Scientific Officer, Regional Forensic Sciences Laboratory, Tiruchirappalli spoke to various tests conducted by her.

4.22. P.W.26 - Lakshmi Balasubramaniam, Deputy Director, Forensic Sciences Laboratory, Chennai spoke to the DNA test conducted by him.

4.23. P.W.27- Thiruvengadam, spoke to handing over body of the deceased to K.A.P.Viswanatham Medical College Hospital, Tiruchirappalli and Forensic Sciences Laboratory.

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

4.24. P.W.28 - Dr.Puvanendran, who conducted post-mortem on the body of deceased, opined that the deceased would appear to



have died owing to head injuries.

4.25. P.W.29 - Srinivasan, Head Constable, spoke to taking the parents of the deceased to Karur Government Hospital for D.N.A. Test.

4.26. P.W.30 - Venugopal, Special Sub-Inspector of Police, spoke to registration of case in Crime No.63 of 2012 u/s.174 Cr.P.C., and of forwarding Ex.P27, Original First Information Report to Judicial Magistrate No.2, Karur and copies thereof to higher officials.

4.27. P.W.31 - C.Pandian, a resident of Aravakurichi, witnessed as regards visiting the scene.

4.28. P.W.32 - Sugumar, Inspector of Police, spoke to visiting the place of occurrence, preparation of mahazars, recovery of material objects, arrest of accused, examination of witnesses and alteration of F.I.R.

4.29. P.W.33 - Salai Ram Sakthivel, Inspector of Police, conducted further investigation and examined the witnesses and recorded their statements.

4.30. P.W.34 - Arunachalam, Inspector of Police, examined the witnesses, collected blood samples from the parents of the deceased and sent the same to the Forensic Sciences Laboratory. On completion of investigation, he filed charge sheet informing commission of offences under Sections 120(B), 364, 302 r/w 397 and 201 IPC.

5. When the accused was examined under Section 313 Cr.P.C. regards the incriminating materials against him, he denied his complicity and stated that he had been falsely implicated.

6. On appreciation of materials before it, trial Court, under judgment dated 23.11.2015, convicted the appellant/A1 for offence under Sections 120(B), 302, 394 and 201 IPC. Against such finding, the present appeal has been filed.

7. Heard Mr. Vinod Sathya Lazar, learned counsel appearing for appellant and Mr. S. Chandrasekar, learned Additional Public Prosecutor appearing for the respondent.

8. Learned counsel for appellant submitted that the deceased had been found burnt and dead in his car stationed at a Highway. In the prosecution, appellant/accused had borrowed a sum of Rs.1,75,000/- from deceased. In order to collect the money, the deceased often used to visit the house of the accused and had

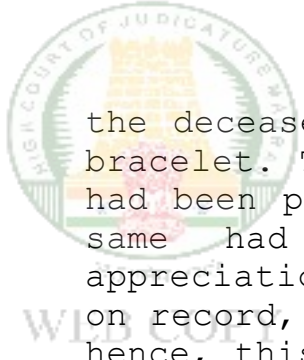


developed illicit intimacy with the wife of the appellant/accused. The deceased had met his death owing to the injury caused to his head and he had been set on fire thereafter. The body of the deceased was found at Thennilai-Chinnadharapum Road near Subburathinam's house. on 16.04.2012 at about 10.15 p.m. The body of the deceased was first seen by P.W.1-Village Administrative Officer, who informed the respondent police, who in turn called for the services of the fire service Department. There was no doubt that the deceased had been done to death before his body was set on fire, as the postmortem certificate-Ex.P.26 informs 'No suit particles in trachea', which would not be the case, had the deceased suffered death by burning. However, learned counsel submitted that the prosecution rested its case on circumstantial evidence. The circumstances placed against the appellant/accused are that jewels, viz., a bracelet and a chain without dollar belonging to the deceased, had been pledged by the appellant/accused. A ring bearing the alphabet 'K', which was the initial of the deceased had been recovered from the juvenile accused. The prosecution sought to support its case through the evidence of P.Ws.12 and 19, that the deceased had last been seen in the company of this appellant/accused.

9.Learned counsel submitted that the recovery of the bracelet and chain could not be put against the appellant, since, besides both being of general make. P.W.10, the wife of the deceased had spoken to identifying the same at the police station, but had not identified the same in Court. Learned counsel would submit that the prosecution theory of the deceased having been seen in the company of the appellant by P.Ws.12 and 19 also does not hold water, inasmuch as a reading of the evidence in chief of P.W.12 reveals that such witnesses have not specifically spoken to seeing the appellant in the company of the deceased. P.W.12 in cross had admitted that he had first informed of seeing the deceased in the company of the appellant only when examined by the police and that he had not informed any identifying features of the two persons, whom he allegedly had seen with the deceased.

10.The statement of P.W.12 under Section 161(3) of Cr.P.C. was recorded only on 28.09.2013, i.e., nearly 1 ½ years after the occurrence and the same reached the Court, even later on 19.11.2013. Similarly the statement of P.W.19 under Section 161(3) of Cr.P.C. had been recorded on 15.08.2013 and reached Court on 19.11.2013. Under such circumstances, in the absence of corroborative evidence, the appellant is entitled for acquittal. The above position made clear that the investigating agency was totally clueless in the case and falsely had implicated the appellant.

<https://hcservices.courts.gov.in/hcservices/> Additional Public Prosecutor submitted that both P.Ws.12 and 19 have spoken to seeing the appellant in the company of the deceased. Hence, the last seen theory is proved. Further,



the deceased had owned a gold chain with a fish dollar and a gold bracelet. The gold chain without fish dollar and the gold bracelet had been pledged by the appellant as exhibited in Ex.P.13 and the same had been recovered pursuant to his confession. On appreciation of such position and also the other material evidence on record, the trial Court has rightly convicted the appellant and hence, this Court ought not to interfere.

12. On consideration of the rival submissions, this Court informs that the appellant is entitled to acquittal for the following reasons:-

(1) P.W.10, wife of the deceased had identified the jewels only at the police station and not in Court. It is only evidence tendered in Court that is substantial;

(2). Both P.Ws.12 and 19 have been examined and their 161(3) statements have been recorded after a period of 1½ of years and the same reached the Court only on 19.11.2013. The necessary inference is that these witnesses have been put up to prop up a dead prosecution case;

(3). In the lease, the prosecution ought to have conducted Identification Parade towards lending credibility to its story of appellant being involved in the occurrence. Jewellery allegedly recovered on confession are of general makes. In the absence of proper identification of the accused, such recovery does no good whatsoever to the prosecution case.

13. Given the above infirmities in the prosecution case, it becomes necessary not to delve further thereon. The prosecution has failed to prove its case beyond reasonable doubt. Therefore, the appellant is entitled to acquittal.

14. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/A1 in S.C.No.1 of 2015, dated 23.11.2015 are set aside. The appellant is acquitted of the charges levelled against him. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bonds executed by the accused shall stand cancelled.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-IV)



- 1.The Principal Sessions Judge, Karur.
- 2.The Judicial Magistrate NO.II, Karur.
- 3.The Chief Judicial Magistrate , Karur.
- 4.The Inspector of Police,
Chinnadharapuram Police Station,
Aravakuruchi Circle,
- 5.The Superintendent of Central Prison,
Trichy.
- 6.The District Collector, Karur.
- 7.The Superintendent of Police, Karur.
- 8.The Director General Of Police,
Mylapore, Chennai-4.
- 9.The Additional public Prosecutor,
Madurai Bench Of Madras High Court,
Madurai.

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

+1CC to MR.R.PANDI MAHA RAJA, ADVOCATE IN SR.NO.72221.

RJ2

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10.07.2018