

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 02.08.2018****CORAM :****THE HONOURABLE MR.JUSTICE C.T.SELVAM****And****THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED****CRL A (MD) No.433 of 2016****CrI.M.P. (MD) No.6007 of 2017**

1.Suresh @ Suresh Kumar

2.Sekar @ Kalidoss

... Appellants/Accused Nos.1 & 2

Vs.

The State rep. by the

Inspector of Police,

Thanjavur Tamil University Police Station,

Thanjavur District.

(Crime No.141 of 2007)

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to call for the judgment dated 18.10.2016 made in S.C.No.245 of 2010, on the file of I Additional District and Sessions Judge (PCR), Thanjavur and set aside the conviction and sentence imposed against the appellants/accused and allow the above appeal by acquitting the accused.

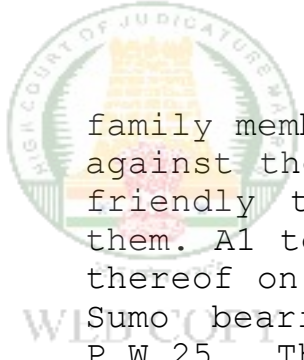
For Appellants : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

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.)**

The appellants/accused Nos.1 & 2 have filed the Criminal Appeal, challenging the judgment, dated 18.10.2016, in S.C.No.245 of 2010 on the file of I Additional District and Sessions Judge (PCR), Thanjavur in and by which, A1 & A2 were convicted under Sections 120-B, 201, 364 and 302 I.P.C. and sentenced to undergo 10 years Rigorous Imprisonment with fine of Rs.10,000/- each, in default, one year Rigorous Imprisonment for offence under Section 364 I.P.C., Life Imprisonment with fine of Rs.10,000/- each, in default, one year Rigorous Imprisonment for each of the offences under Section 120-B and 302 I.P.C. and 5 years Rigorous Imprisonment with fine of Rs.5,000/- each, in default, 6 months Rigorous Imprisonment for offence under Section 201 I.P.C.

2.The prosecution case is that P.W.25 married the deceased, who belonged to a different community against the wishes of her



family members 10 months prior to the occurrence. Nursing a grudge against the deceased, the first accused put up facade of being on friendly terms with deceased and P.W.25 and frequently visited them. A1 to A9 conspired to murder the deceased and in furtherance thereof on 16.05.2007 at about 12.30 a.m., A1 to A7 came in a TATA Sumo bearing Reg.No.TN-65-F-5655 and abducted Sureshkumar and P.W.25. They dropped off P.W.25 at Vasanthanoor Village near Devakottai in the house of A8 i.e. in the house of mother of P.W.25 and took the deceased to Thorimayapuram Karuvaikadu at about 5.30 a.m. A1 to A6 beat and kicked the deceased and strangled him using a cloth. They thereafter concealed the body of the deceased in a nearby bush. Thereafter, on the night of 16.05.2007, A1, A2 and A5 buried the body of the deceased at the Pambaru River at Sirukambaiyur and burnt his inner wear, shirt and lungi. In the course of the same transaction, A8 mother of P.W.25 caused her miscarriage. The accused were charged for the offences punishable under Sections 120(b), 364, 302, 506(i), 313 and 201 I.P.C. On committal, the case was tried in S.C.No.245 of 2010 on the file of learned I Additional District and Sessions Judge (P.C.R.), Thanjavur. Before trial Court, prosecution examined 35 witnesses and marked 44 exhibits and 10 material objects. None were examined on behalf of defence nor were any exhibits marked.

3. When the accused were 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.

4. On appreciation of materials before it, trial Court, under judgment dated 18.10.2016, while acquitting A3 to A9, convicted A1 and A2 under Sections 120-B, 201, 364 and 302 I.P.C. and sentenced to undergo 10 years Rigorous Imprisonment with fine of Rs.10,000/- each, in default, one year Rigorous Imprisonment for offence under Section 364 I.P.C., Life Imprisonment with fine of Rs.10,000/- each, in default, one year Rigorous Imprisonment for each of the offences under Section 120-B and 302 I.P.C. and 5 years Rigorous Imprisonment with fine of Rs.5,000/- each, in default, 6 months Rigorous Imprisonment for offence under Section 201 I.P.C. Against such finding, the present appeal has been filed.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor for the respondent and perused the evidence on record.

6. The present is a case where the body of the deceased has been found on a river bank. The prosecution necessarily would have to prove that it was the accused, who had abducted P.W.25 and the deceased from their house. The prosecution also, in the facts of the case, would have to establish that the body of the deceased was disposed of at the instance of the accused. On the first count, it is P.W.25, who could best have deposed thereto. P.W.25, wife of

the deceased, has not supported the prosecution case and has been treated hostile. The other person to speak to personal knowledge of P.W.25 and the deceased having been abducted, is the owner of the house, in which P.W.25 and deceased resided viz., P.W.2. His evidence does not go beyond informing that some persons came at night and abducted P.W.25 and deceased. No specific names of the persons, who did so have been spoken to by him. P.Ws.3 to 11 have deposed that they came to know of the abduction through P.W.2. Therefore, there is absolutely no material in proof of the abduction by the accused in the cases. Even while informing so, this Court might have had reason to find that P.W.25 had deposed falsely towards supporting her family members, A1 being her brother and A8 being her mother, if the prosecution had been otherwise able to show with certainty that the body of the deceased was recovered at the instance of the accused. The prosecution fails also on such count. Confessions of A1 and A2 have been marked as Exs.P.43 and 44. The same have been attested by P.W.12, Assistant of Village Administrative Officer and one Ranganathan, Village Administrative Officer. While the said Ranganathan was not examined, the evidence of P.W.12 is to the effect that he and the Village Administrative Officer were called to the police station and he signed the statement at the instance of the Village Administrative Officer but the confession had not been recorded in their presence. The first of the three investigating officers viz., P.W.33 had spoken to taking custody of the accused on 29.05.2007, who had surrendered before Court on 20.05.2017 and of recording confession of A1 and A2 on such date at 5.00 p.m. This is in keeping with P.W.16, Thasildar, who deposed that on 29.05.2007 he had been informed of the body of the deceased having been found at the river bank. According to the prosecution, the body was exhumed in the presence of P.W.14, Village Administrative Officer and one Sonaimuthu as seen from Exs.P.14 and 32. The said Sonai Muthu has not been examined. P.W.14 has not deposed to the body being recovered from a place pointed out by the accused. When we read this position with the evidence of P.W.12, which is to the effect that he had merely signed some statements as required by the police while at the police station, the veracity of Exs.P.43 and 44 become highly doubtful. P.W.26 is another Village Administrative Officer, who attested the mahazar relating to the recovery of the apparel of the deceased. He too has stated that the accused had not identified the body at the spot. Therefore, the prosecution has failed to establish through confessions of the accused that they informed matters within their special knowledge and on such discovery, recovery was effected pursuant thereto. Of course, through superimposition tests as established in Ex.P.27, it has been established that the body recovered indeed was that of the deceased in the case. When we apply the basic principle of proof beyond reasonable doubt, the present prosecution case necessarily fails.



7. We repeatedly find, trial Courts are marking the entire confession statements of accused as exhibits. It is only such part of the confession which leads to discovery of a fact as informed under Section 27 of the Indian Evidence Act that could be marked.

8. When there is absolutely no material to support the prosecution case, the conviction and sentence stands wrongly arrived at by the trial Court and the same is liable to be set aside.

9. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants/A1 and A2 by learned Principal District and Sessions Judge, Thanjavur in S.C.No.245 of 2010, dated 18.10.2016, are set aside. The appellants are acquitted of the charges levelled against them. Fine amount, if any, paid by the appellants shall be refunded to them. The appellants/A1 & A2 are directed to be set at liberty forthwith, if they are not required for detention in connection with any other case. Consequently, connected Miscellaneous Petition shall stand closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(Cs-IV)

To

1. The I Additional District and Sessions Judge (PCR),
Thanjavur.
2. -do- Thro The Principal District Judge, Thanjavur.
3. The Judicial Magistrate No.2,
Thanjavur.
4. -do- Thro The Chief Judicial Magistrate, Thanjavur.
5. The District Collector, Thanjavur.
6. The Director General of Police,
Mylapore, Chennai.
7. The Superintendent of Prison, Trichy.
8. The Inspector of Police,
Thanjavur Tamil University Police Station,
Thanjavur District.



9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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

SJ

VB/SKN/SAR4/05.10.2018/5P/12C

Judgment made in
CRL A (MD) No. 433 of 2016
02.08.2018