

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.12.2018

PRONOUNCED ON : 24.01.2019

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE B.PUGALENDHI
Crl.A.Nos.300 & 301 of 2018
and
Crl.M.P.Nos.6998 & 7007 of 2018

Kasthuri ... Appellant/Accused No.2 in
Crl.A.No.300/18

Govindaraj ... Appellant/Accused NO.1 in
Crl.A.No.301/18

Vs.,

State through
The Inspector of Police,
Gudiyatham Police Station,
Vellore District.
Crime No.533 of 2013 ... Respondent in both appeals

COMMON PRAYER: Appeals filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence imposed by the learned I Additional District & Sessions Judge, Vellore, in S.C.No.23 of 2015, dated 26.04.2018.

For Appellants : Mr.R.Sankarasubbu in Crl.A.300/2018
Mr.M.Selvam in Crl.A.301/2018

For Respondent : Mr.K.Prabakaran,
(in both Appeals) Addl., Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was made by B.PUGALENDHI,J.,)

Criminal Appeal No.300 of 2018 is filed by the Accused No.2 and Criminal Appeal No.301 of 2018 is filed by the Accused No.1 in Crime No.533 of 2013. The appellants in both appeals were charged for the offences punishable under Sections 120(b), 302,

201 r/w 109 IPC by the respondent police and were tried before the learned 1st Additional District and Sessions Judge, Vellore, in S.C.No.23 of 2015. The trial Court found them guilty for the offence punishable under Section 120(b) IPC and convicted and sentenced them to undergo two years rigorous imprisonment each. They were also found guilty for the offences punishable under Sections 302 of IPC, convicted and sentenced to undergo life imprisonment with a fine of Rs.5,000/- each, in default of fine amount, three months rigorous imprisonment was also imposed. The appellants were also found guilty for the offences punishable under Section 201 r/w 109 of IPC to undergo 7 years rigorous imprisonment with a fine of Rs.1,000/- in default of fine amount, one month rigorous imprisonment was ordered. As against the conviction and sentence passed by the trial Court in S.C.No.23 of 2015, dated 26.04.2018, the above appeals have been filed.

2. Since the appeals are arising out of the same crime number, they are taken up together and disposed by way of this common judgment.

3. The case of the prosecution is that the 1st appellant Kasthuri, married the deceased Somasundaram 20 years back and they are having four children. The 2nd appellant/Govindaraj was having illegal intimacy with the 1st appellant/ Kasthuri. The deceased was a drunkard and quarrelled with his wife/A2 on 02.12.2013 due to which, the second accused/1st appellant, got aggravated and developed a grudge against the deceased. She entered into a criminal conspiracy with her paramour, the first accused. Pursuant to the same, A1 and A2 took Somasundaram to Sithantham Village in Kudiyatham Taluk on 03.12.2013 and administered him with some poisonous substance in the liquor. When the deceased refused to drink the same, A1 strangled him with cellphone charge wire and also with his hands and A2 forcibly smashed the private part of her husband and caused death. To screen the evidence, A2 along with A1, went to Bargur Police Station, on 16.12.2013 and lodged a complaint at about 07:00 p.m. Based on that complaint, a case was registered in Cr.No.605 of 2013 as man missing.

4. In the meantime, a dead body was found lying on the thorny bush in S.No.81/2 of Sithanthur Village, which was noted by the Village Menial one Ashokan and on his information, the Village Administrative Officer, P.W.1, visited the place of occurrence and reported the same to the Sub-Inspector of Police, Kudiyatham Taluk Police Station/P.W.14 in Ex-P1. P.W.14 after registering the complaint in Cr.No.533 of 2013 under Section 174 Cr.P.C., proceeded to the place of occurrence, prepared rough sketch, Ex-P13 and observation mahazar, Ex-P5. He also conducted

inquest on the deceased body and the inquest report was marked as Ex-P14.

5. P.W.15 took up the investigation in this case and obtained the postmortem certificate and altered the offences to Section 302 IPC. He had also arrested the accused Nos.1 and 2 on 29.12.2013 at Vettuvanam Village Bus stand and recovered M.O-1, a white shirt from the thorny bush. Further investigation was conducted by PW-16, who, in turn, filed the final report as against the appellants. During the trial, on the side of the prosecution, 16 witnesses were examined, Ex-P1 to Ex-P50 and MO-1 to MO-8 were marked.

6. The available evidence from the prosecution witnesses are as follows:

(i) P.W.1, the de facto complainant/ Village Administrative Officer (V.A.O.,) of Olakasi Village would state that on information, he visited the place of occurrence on 04.12.2013 and found the dead body of the deceased. He lodged the complaint, Ex.P.1 before the Sub Inspector of Police, Gudiyatham Taluk Police Station/ P.W.14.

(ii) P.W.2 is a ward member, who states that he had witnessed the dead body and intimated regarding the same to the V.A.O. He would further submit that 25 days later to his complaint, the police came to the place of occurrence along with Accused No.2 and had recovered the shirt/M.O.1.

(iii) P.W.3, an Auto driver, had stated that on 03.12.2013 at about 2:45 p.m., the accused persons A1 & A2 along with the deceased went to Kumbathamman temple in his auto rickshaw and returned back on the same day at about 4:00 p.m. According to him, A-1 and A-2 alone returned and when he questioned about the deceased, he was told that the deceased had gone to work.

(iv) P.W.4, is the owner of a pesticide shop at Pallikonda and he states that he has sold the pesticide 'Sicorin' to A-1.

(v) The Administrative Authority of Kumbathamman temple was examined as P.W.5. and according to him, prior to the occurrence, A1 and A2 have visited the temple along with the deceased and worshipped the Goddess and then, went away through the back side exit of the temple.

(vi) P.W.6, Tmt.Vijaya, residing in the same village of the deceased has spoken that she saw the accused persons at the bus stand, when they were about to travel to Bargur from Poosinayakanoor.

(vii) P.W.7 & P.W.8 are the parents of the deceased.

In their deposition, they have stated that prior to the occurrence, their son went along with A2/daughter-in-law from their house and later they noticed that A2 alone returned back home. When A2 was questioned about the deceased, she has replied in a suspicious manner and therefore, they lodged a complaint before the Bargur Police Station.

(vii) P.W.9 is the son of the deceased and he identified the deceased as his father from the photographs shown by the police.

(viii) P.W.10 and P.W.11 are the witnesses for the rough sketch and the observation mahazar.

(ix) Dr.Selvaraj, P.W.12 is the doctor who conducted post mortem on the body of the deceased. The Post Mortem Certificate is Ex.P.8 and he issued his final opinion report/Ex.P.9 based on the chemical analysis report/Ex.P.11.

(x) P.W.13 is the Head constable of Gudiyatham Taluk Police Station, who identified the dead body of the deceased before the doctor for post mortem and after completion of post mortem, handed over the body to the relatives of the deceased.

(xi) P.W.14 is the Sub Inspector of Police, Gudiyatham Taluk Police Station, who registered a case in Gudiyatham Taluk Police Station in Crime No.533 of 2013, which is marked as Ex.P.12. He conducted further investigation of the case and visited the place of occurrence and prepared the rough sketch /Ex.P.13, observation mahazar/Ex.P.5 and conducted inquest on the dead body and submitted the inquest report/Ex.P.14.

(xii) P.W.15, is the Inspector of Police, Peranampattu Police Station i/c Gudiyatham Taluk Police Station conducted further investigation of the case and arrested accused persons A-1 & A-2 and recorded their confession statements, which are marked as Ex.P.2 & Ex.P.3. He also seized the M.O's under cover of seizure mahazar/Ex.P.4 and remanded the accused persons to judicial custody.

(xiii) P.W.16, is the Inspector of Police, Gudiyatham Taluk Police Station who conducted further investigation of the case and filed the charge sheet against the accused persons-A1 & A2 before the Court.

Upon consideration of the evidence, the trial Court convicted A-1 for the offences 120 (B), 302 and 201 r/w 109 I.P.C. and A-2 for offences 120(B), 302 and 201 I.P.C. Hence, the Appeal.

7. Heard Mr.R.Sankarasubbu, learned counsel for the appellants and Mr.K.Prabakar, Additional Public Prosecutor appearing for the respondent State and we have carefully considered the evidences, materials on record and rival contentions.

8. Admittedly, there is no eye witness and the prosecution case is based on circumstantial evidence. The circumstances which were relied upon by the trial Court to convict the appellants are based on the evidence of P.W.3, 4 & 5. In every case, based upon the circumstantial evidence, the question that needs to be determined is, whether the circumstances relied upon by the prosecution are proved by reliable and cogent evidences and whether all the link in the chain of circumstances are complete so as to rule out the possibility of innocence of the accused.

9. The Hon'ble Supreme Court in the case of Padala Veera Reddy vs State of A.P. reported in 1991 SCC Criminal 407 laid out the test which has to be adopted in dealing with cases of circumstantial evidence and the same is extracted as under:

"15. In Padala Veera Reddy Vs. State of A.P., it was laid down in a case of circumstantial evidence such evidence must satisfy the following test:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

10. P.W.3 is an auto driver, who is said to have taken the deceased along with the accused persons to Kumbathamman Temple in his auto on 03.12.2013 at about 2:45 p.m. and on the same day, at about 4:00 p.m. A1 and A2 alone returned home. His statement was recorded by the Sub Inspector of Police on 04.12.2013. In the said statement, there is no identification

referred for the accused persons. Moreover, the said statement recorded on 04.12.2013 has reached the Court only on 30.04.2014 after five months.

11. P.W.3 herein is the resident of Vettuvanam village. The occurrence had taken place at Sithathur village and the distance between the villages of Vettuvanam and Sithathur is around 5 kms. There is no reference about the auto number in the statement as well as in the evidence given during the cross examination. He would admit that he is not having any driving license or badge to run the auto. The accused No.1 herein belongs to a different village and there is no evidence to show how P.W.3 knows accused no.1. If he would have really known the accused, then he would have informed the Sub Inspector of Police/ P.W.14, when he was examined on 04.12.2013. The police has not conducted any identification parade in this case. During the cross examination, P.W.3 has also stated that he did not drive the auto on the date of occurrence and being afraid of the police, he had deposed before the Court. The evidence of P.W.3 is not trust worthy and therefore, it cannot be relied to sustain the conviction.

12. P.W.4 is examined as a pesticide shop owner and he sold the pesticide namely 'Sicorin' to A1. His statement was also recorded on 04.12.2013 but the same reached the Court only on 30.04.2014 after five months. In the statement before the police he has stated that, on 03.12.2013 at about 12:00 p.m. an unknown person came and purchased the pesticide 'Sicorin'. There is no identification parade but during the evidence, he deposed as if he is aware of A-1.

13. Toxicological report/ Ex.P.11 would disclose that there is no presence of any poisonous substance in the stomach of the deceased. According to the Scientific Officer of Regional Forensic Science Laboratory, the stomach and its contents, intestine and its contents, liver, kidney and brain were examined by them and there is no presence of alcohol or any other poison in the said samples. This report of the scientific expert in Ex.P.11 cuts at the root of the prosecution and the entire prosecution case that the accused had administered poison to the deceased and also strangled him causing death, is shattered. In view of the evidence of the Scientific Expert, no reliance can be given to the evidence of P.W.4.

14. P.W.5 is the administrator of Kumbathamman Temple, where the dead body was recovered on the back side of the temple. His statement was also recorded on 04.12.2013, but reached the Court on 30.04.2014 after five months. There is no identification parade conducted.

15. The motive for the crime, according to the prosecution is that, A-2 was having intimacy with A-1 and the deceased was a drunkard, who picked up a quarrel with A-2 on 02.12.2013, due to which A-2 got aggravated and developed grudge against the deceased and entered into a criminal conspiracy with A1 to cause death of her husband. Pursuant to the said criminal conspiracy, A1 & A2 took the deceased on 03.12.2013 and committed the occurrence.

16. The father and mother of the deceased were examined by the prosecution as P.W.7 & P.W.8. They did not support the case of the prosecution that there was any intimacy between A1 and A2 and there was an occurrence on 02.12.2013 on account of which, the offence was committed. It is to be observed that in a case based on circumstantial evidence, proof of motive will be an important corroborative piece of evidence. If motive is indicative and proved, it would sustain the probability of the commission of offence. But in this case, there is no evidence to establish the motive for the occurrence and according to P.W.7 & P.W.8, the accused No.2 and the deceased were living happily.

17. The trial Court considered the confessions made by the accused persons to believe the motive and convicted the accused. The arrest and confession is also not proved by the prosecution in this case. The accused were arrested in 29.12.2013 at Vettuvanam bus stop and pursuant to the confession of A-1, P.W.15 recovered the shirt, M.O.1 in the presence of P.W.1 and P.W.2. P.W.1 in his evidence would state that 15 days after his complaint, police called him to the Police Station during the evening hours at about 4:00 p.m. and when he went to the Police Station, the accused were there and certain documents were typed in the police station and signatures were obtained in the Police Station. Thus, the arrest and recovery is also not proved.

18. Above all, the Investigation Officer has not conducted any scientific test to fix the dead body is that of the deceased. The dead body was recovered on 04.12.2013 and the same was subjected to post mortem only on 19.12.2013. According to the doctor, the body is of an unknown male, aged about 30-35 years. When the case of the prosecution is that the deceased is aged about 45 years, the Investigation Officer has not taken any steps to identify the dead body.

19. Upon consideration of the facts and circumstances of the case, we are of the view that the circumstances and evidence adduced by the prosecution do not prove the guilt of the accused persons beyond reasonable doubt and therefore, the benefit of doubt has to be given to the accused persons and the conviction of the appellants made in S.C.

No.23 of 2015 dated 26.04.2018 on the file of the 1st Additional District and Sessions Judge, Vellore is liable to be set aside and

accordingly, the appellants are acquitted of all the charges.

20. Bail bond, if any, executed by the appellants/ Accused Nos.1 & 2 and the sureties shall stand terminated. Fine amount, if any, paid by the appellants/Accused Nos.1 & 2 shall be refunded to them.

21. In the result, both the Criminal Appeals are Allowed. The appellants shall be released forthwith. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sts

To

1.The I Additional District & Sessions Judge,
Vellore.

2.The Principal District Judge,
Vellore.

3.The Judicial Magistrate,
Gudiyatham.

4.do Thro The Chief Judicial Magistrate,
Vellore/Gudiyatham.

5.The District Collector,
Vellore.

6.The Director General of Police,
Mylapore, Chennai-4.

7.The Inspector of Police,
Gudiyatham Police Station,
Vellore District.

8.The Additional Public Prosecutor,
Madras High Court,
Chennai.

9.The Superindent,
Central Prison,
Vellore.

10.The Superindent,
Special Prison for Women,
Vellore.

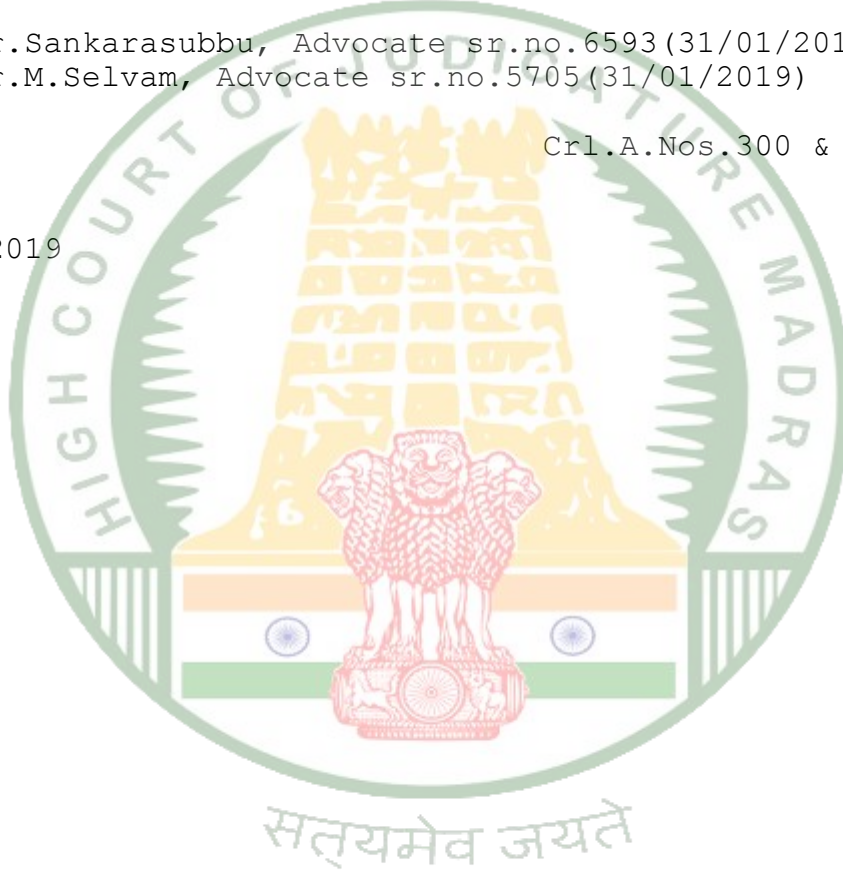
11.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.Sankarasubbu, Advocate sr.no.6593(31/01/2019)

+1cc to Mr.M.Selvam, Advocate sr.no.5705(31/01/2019)

Cr1.A.Nos.300 & 301 of 2018

nr 30/01/2019



WEB COPY