



HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.11.2019

Delivered on : 09.12.2019

WEB COPY

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE RMT. TEEKAA RAMAN

Criminal Appeal No.673 and 724 of 2017
& CrI.M.P.No.1258 of 2018

1.Samsudheen

2.Manikandan

... Appellant/Accused 1 & 2
in CrI.A.No.673/2017

3.Kavitha

... Appellant/Accused No.3
in CrI.A.No.724/2017

Vs.

The State, represented by
The Inspector of Police,
Keelakupam Police Station,
Crime No.197 of 2016,
Villupuram District.

.. Respondent /complainant

Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code as against the judgment made in S.C.No.346 of 2016 dated 16.09.2017 on the file of III Additional District and Sessions Judge, Kallakurichi District, convicting the appellants 1 to 3 for the offence under Section 120-B read with 302 IPC and sentencing them to undergo life imprisonment with a fine of Rs.1000/- each in default to undergo one month simple imprisonment and convicting appellants 1 and 2 for the offences under Sections 364, 328, 302, 404 and 201 read with 302 IPC and sentencing them to undergo life imprisonment under Sections 364 and 302 IPC; 10 years RI(each) under Section 328 IPC; 3 years (each) under Section 404 IPC and 7(each) years u/s 201 r/w 302 IPC and pay a total fine of Rs.5,000/- each (each sentence Rs.1000/- each) and in default to undergo one



WEB CTS

month simple imprisonment on each sentence; and third accused is convicted for the offence under Section 364 r/w 109 and 302 r/w 109 IPC and sentencing him to undergo life in both the offences and a fine of Rs.1000/- in both the sections (total Rs.2000/-) and in default to undergo one month S.I., in both the offences.

For Appellants in: Mr.V.Gopinath, S.C., for
Crl.A.673/2017 Mr.L.Mahendran

For Appellant in : Mr.R.John Sathyan
Crl.A.724/2017

For respondent : Mr.K.Prabhakar,
in both appeals Additional Public Prosecutor

COMMON JUDGMENT

M.M.SUNDRESH, J.

Criminal Appeal No.673 of 2017 has been filed by the appellants, who have been arrayed as A1 and A2 whereas Criminal Appeal No.724 of 2017 is by A3. The appellants 1 to 3 have been convicted for the offence punishable under Section 120-B read with 302 IPC and sentenced to undergo life imprisonment with a fine of Rs.1000/- each, in default to undergo one month simple imprisonment and appellants 1 and 2 have been convicted for the offences punishable under Sections 364, 328, 302, 404 and 201 read with 302 IPC and sentenced to undergo life imprisonment under Sections 364 and 302 IPC (each); 10 years RI (each) under Section 328 IPC; 3 years (each) under Section 404 IPC and 7 years (each) u/s 201 r/w 302 IPC and pay a total fine of Rs.5,000/- each (each sentence Rs.1000/-) and in default to undergo one month simple imprisonment on each sentence; and the third accused has been convicted for the offences punishable under Section 364 r/w 109 and 302 r/w 109 IPC and sentenced to undergo life in both the offences and imposed a fine of Rs.1000/- in both the sections (total Rs.2000/-) and in default to undergo one month S.I., in both the offences.

2. Prosecution case in brief:

2.1. The appellant/A3 in Crl.A.No.724 of 2017 was the wife of the deceased -Senthil. The deceased was running mixture company in the premises of brother of A1. A1 was running mineral water company in the same compound. A1 developed intimacy with A3. The deceased, while having relationship with P.W.15-Pappathi, borrowed a sum of Rs.3.5 lakhs from her. P.W.15 was insisting for the repayment. The deceased came to



WEB COPS

know about the relationship between A1 and A3 and threatened to expose them and as a bargain, demanded a sum of Rs.5 lakhs from A1. A2 was a friend of A1. All the accused on 08.09.2016 at about 4.00p.m., conspired together and decided to do away the deceased. The conspiracy was known to P.W.14-Sathish, who is the close relative of the deceased, and he over heard it.

2.2. On 16.09.2016, A1 and A2 promised to get the money to the deceased and took him in a Bolero Green car bearing Registration No.TN-46-M 0820. They gave sleeping pills to the deceased by mixing it with soft drink. Thereafter, A1 who was driving the vehicle, stopped it, while A2 strangled the deceased with a piece of wire, A1 pressed his face. Later, the body of the deceased was thrown away.

2.3. P.W.1-Jeyabalan, who is the Village Administrative Officer, on 17.09.2016 at 8.00a.m., heard that a body was lying on the road. Immediately, he along with P.W.2-Kamarajan, the Village Assistant, went to the scene and saw the dead body of the deceased. They proceeded to Keelakuppam Police Station and lodged a complaint Ex.P1. On receipt of the complaint, P.W.28-Sub Inspector of Police, registered a case under Section 174 Cr.P.C., in Crime No.197/2016 and Ex.P12 was the First Information Report.

2.4. P.W.32-Karthikeyan was the Inspector of Police, who on receipt of Ex.P12-First Information Report, took up the investigation. He prepared rough sketch under Ex.P2 and observation mahazar under Ex.P3. Ex.P18 is the Inquest Report.

2.5. On 21.09.2016 at about 8.00a.m., A1 and A2 were arrested and in the presence of P.W.13-Village Administrative Officer, Koogaiyur, under Exs.P5 and P7, confession statements of A1 and A2 respectively, were recorded and Ex.P6 is the Seizure mahazar. Material Objects, such as, Bolero car and sim card were seized from A1 under M.Os.3 and 4 respectively. Recoveries have also been made under Ex.P8 from A2 in the form of cash for a sum of Rs.200/- which was marked as M.O.5. Under Ex.P9, further recoveries were made and marked as M.Os.8 to 11 viz., bank card, pharmacy card, discount card and electrical wire. Thereafter, A3 has been arrested. After completing the investigation, P.W.32-Investigating Officer, filed a final Report.

2.6. Before the trial Court, the prosecution examined 32 witnesses in total to substantiate their case while marking Exs.P1 to P28 along with M.Os.1 to 23. On the part of the defence, only one witness has been examined as D.W.1 to show



that there was no such petrol bunk as projected by the prosecution.

2.7. After framing charges, the appellants were placed with the incriminating materials and questioned under Section 313-A of the Criminal Procedure Code. There was denial by the appellants.

2.8. The trial Court, placing reliance upon the evidence of P.W.14 coupled with the recoveries M.Os.7 to 11, accordingly convicted the appellants and sentenced them as aforesaid. Challenging the same, the present criminal appeals have been filed.

3. Evidence of Witnesses:-

3.1. P.W.1 is the Village Administrative Officer, who gave the complaint under Ex.P1. P.W.2 is the Village Assistant. However, in his cross examination, he had stated that when both, he and P.W.1 went to the scene of occurrence, police was already there. P.W.3 is the sister of the deceased. It is her evidence that A3 did not show any remorse on the death of the deceased. She further deposed about the relationship between A1 and A3. This witness had stated about the illicit relationship between P.W.15-Pappathi and the deceased-Senthil. According to this witness, P.W.15 used to quarrel with the deceased compelling him to marry her, failing which, her money should be returned. P.W.15 has threatened A3 that she would be done away with. She further deposed that when she was examined by the police on 24.09.2016, the accused were present in the police station. It is her further evidence that after the death of the deceased, P.W.14-Sathish and one Ranjith had informed about overhearing the conspiracy by the accused near the Supermarket. She further stated in her cross examination that it is not correct to state that P.W.14 has not stated about the conspiracy by the accused earlier. We may note that this evidence is contrary to the evidence of P.W.14.

3.2. P.W.4 is the father of the deceased, who also speaks about the illicit relationship of the deceased with P.W.15 and borrowal of the money. He deposed that the deceased left home on 16.09.2016 at about 7.30p.m., stating that he was leaving to Chennai for the purchase of Mixture machine. He further stated that the deceased was having doubt on the character of A3 with respect to her alleged relationship with A1. Thus, P.W.4 has stated about the character of the deceased and his relationship with P.W.15 and their money transaction. In fact, this witness has spoken about the fact that the deceased has borrowed money from several persons.



3.3. P.W.5 is the mother of the deceased. She deposed that on 17.09.2016 some one talked to her from her son's mobile phone. As she was having doubt over the voice, the call was cut. She also speaks about the illicit relationship of A1 and A3. We may note that P.W.18, who stated to have called P.W.5 on 17.09.2016, has turned hostile.

3.4. P.Ws.9 and 10 are the Medical Shop owners from whom sleeping pills were allegedly purchased, but both the witnesses turned hostile.

3.5. P.W.13 is the Village Administrative Officer, who speaks about the confession statement made by A1 and A2 after arrest on 21.09.2016 followed by recoveries. According to this witness, the material objects were found on the Tractor tyre. He also conscious of the difference

between Tractor and Trailor. He admitted that no such reference has been made in Ex.P7 about the seized objects from the Tractor tyre. He has further acknowledged in his statement given under Section 161 Cr.P.C., that the recovery has also been made on the front tyre of the Trailor.

3.6. P.W.14 is the main witness in this case. As stated, he is a close relative of the deceased. He firstly speaks about the occurrence on 08.09.2016. According to this witness, he and one Ranjith saw all the accused at the Supermarket talking with each other. It was over heard by them. However, they do not reveal it to anyone else. Again the very same persons saw the deceased, A1 and A2 going in A1's car. He was also present at the time of inquest. However, in his cross examination, he had stated that he did not inform anybody including P.W.3, which is contrary to her statement. He had further stated that such a statement has been made by him in the Court for the first time. He admitted that the car was covered with Sun light paper and no one could see from outside. It is his further admission that the deceased was having relationship with many ladies which lead to quarrel with A3. From the aforesaid evidence, we could see that P.W.14 strangely deposed that he did not inform about either of the two incidents even after knowing the death of the deceased. Apart from the same, he has seen the deceased at about 8.00p.m., from the Petrol bunk along with A1 and A2 going in a Bolero car, in which the persons travelling inside cannot be seen due to the sun light paper. Therefore, the occurrence was at night and the vehicle in which they travelled was covered with sun light paper. Thus, the evidence of P.W.114 is certainly not trustworthy. We may note that there is no



explanation by the prosecution for non examining the other person viz.,Ranjith, who was along with P.W.14 on both the occasions. We are not in a position to appreciate the evidence of P.W.14 for one more reason. There is a lingering doubt on the place at which he was positioned while seeing the deceased along with A1 and A2. D.W.1 is the Labour Inspector, who has deposed that no such petrol bunk is in existence in that place.

3.7. P.W.15 is the witness, who had relationship with the deceased as per the evidence relied upon by the prosecution. This witness has also stated that the deceased borrowed the loan from her. She also made demand for repayment. The deceased agreed to repay the money on Saturday, wherein the occurrence took place on Friday. She has further stated that she was kept in the police station on 17.09.2016 till

the deceased was cremated and was sent thereafter. The further evidence let in by her was that the deceased threatened P.W.16-Ramu @ Ramachandiran, who was supposed to marry her. The evidence of P.W.15 is in tune with P.W.16. This witness also speaks about the relationship between him and the deceased.

3.8. P.W.19 is the witness, who signed Exs.P2-rough sketch and P3-observation mahazar, turned hostile. P.W.20, though turned hostile, however, has deposed in his cross examination that he and the deceased were having liquor on 16.09.2016 at about 5.00p.m.

3.9. P.W.22 is the Doctor, who conducted post mortem and issued Ex.P10-post mortem certificate. The post mortem certificate would reveal the presence of Ethyl Alcohol and Alprazolam. It is his further evidence that his view was sought for by the prosecution while showing the wire, which was allegedly used for strangulation.

3.10. P.W.24-Palanivel is the one who is running maize business. He had installed CCTV camera within and outside his office. When the police enquired to see the CCTV footage, he had taken the CCTV recording through pendrive and handed over the CD to the police. He had stated that he did not see the number of the vehicle clearly.

3.11.P.W.25 is the police officer, who took a copy of the recording from the control room. She was also present at the time of recoveries. She had clearly deposed that the registration number was not visible.

3.12. P.W.27 is the Special Sub Inspector, who accompanied



the investigating officer. He had stated that the recoveries have been made from the Tractor Trailor tyre.

3.13. P.W.32 is the Investigating Officer. He has also deposed that the Bolero car was covered with sun light paper and it was not feasible to see from outside with the glass, if they were closed. He has further deposed that there is no evidence to show that the mobile phone was used by A3 and there is no recovery from her. The details about tower location was also not collected by him. He has not examined the owner of the Bolero vehicle. He was quite conscious of the fact that the Tractor was different from the Trailor. There was no document to find out the Registration number of the vehicle which is seen in the CCTV footage.

4. The trial Court, as stated, accepted the case of the prosecution and accordingly convicted the appellants as aforesaid.

5. Submissions of the learned counsel appearing for the appellants:

There is absolutely no link to the events projected by the prosecution. The evidence of P.W.14 ought not to have been accepted by the trial Court. The recoveries are not in accordance with law. The Mobile Phones recovered were not used admittedly. There is no evidence to show that A1 gave mobile phone to A3 and they were used between them. The last seen theory as propounded by the prosecution has not been proved. If the accused could destroy the mobile phones used, they could have destroyed the other materials used as well, particularly, when the body of the deceased was thrown away by removing the identity of the deceased. The vehicle used as alleged by the prosecution could not be identified. There may be many such vehicles. The prosecution was not clear as to who committed the offence. It was not known as to how liquor was found in the body of the deceased. A2 has not been identified even by P.W.14. There is absolutely no evidence against A3. Recovered mobile phones were not used in the commission of crime. The trial Court has placed wrong reliance in the evidence of P.W.14 coupled with the recovery. Therefore, the appeals have to be allowed by setting aside the judgment of the trial Court.

6. Submissions of the learned Additional Public Prosecutor:

The learned Additional Public Prosecutor appearing for the State would submit that the recordings in the CDs would clearly show the movement of the Bolero car and the colour of the car is clearly identified. Minor discrepancies per se cannot be the sole factor. Witnesses speak about the recoveries



including the belongings of the deceased. The trial Court considered the entire matter in extenso while convicting the accused. Thus, the criminal appeals require to be dismissed.

7. DISCUSSION:-

7.1. During the hearing, we permitted the Additional Public Prosecutor to look at the CDs to find out as to whether the number of the vehicle is feasible to be seen or not. It is fairly submitted by the learned Additional Public Prosecutor that it is not so.

7.2. Admittedly, the prosecution was not able to fix the accused at the earlier point of time. The factum of suspicion was more on P.Ws.15 and 16. This is for the reason, the prosecution witnesses have spoken about the illicit relationship between P.W.15 and the deceased coupled with the money transaction. They also speak about the strained relationship. That is the reason why she was kept in custody for some time. P.W.14, as stated, does not inspire confidence of the Court. He neither informed anybody about the occurrence on 08.09.2016 nor whispered about it later. This unexplained silence on the part of P.W.14 shakes the credibility of the witness. While it can be stated that there was no need to disclose the conspiracy between A1 and A3, he could have done it after the occurrence on 16.09.2016. There is absolutely no whisper about the non examination of the other person, by name, Ranjith, who was said to have been present on both the occasions. The evidence of P.W.14 is also contrary to the evidence of P.W.3 and D.W.1. Though he had stated that he received a bill for filling the petrol, the same has not been marked. We are dealing with the vehicle abducting the accused, travelling during the night time, covered with sun light paper. P.W.14 himself has stated that the windows were covered with sun light papers. It is nobody's case that the windows are kept open. If that is the case, then in all probability, P.W.14 would not have seen the presence of the deceased and accused in the vehicle, as spoken by him, when the windows are admittedly covered with sun light papers. Thus, viewing from any angle, the version of P.W.14 appears to be totally unreliable.

7.3. Merely because, there was a suspicion against A3, she cannot be implicated on surmise alone. Once the evidence of P.W.14 falls to the ground, there is no other material available to implicate A3. No Mobile phone has been recovered from her nor any other material object, which has got any iota of evidence to the crime. The very basis of the prosecution is that the accused 1 and 2 administered the sleeping pills and other prohibited substance on the deceased and thereafter strangled him. Both the medical shop owners from whom,



alleged to have been purchased, tuned hostile. Therefore, it is not known as to who gave the pills to the deceased. Besides, the deceased was also found to be under the influence of alcohol. The prosecution has not explained the circumstance under which alcohol was found in the body of the deceased.

7.4. Much reliance has been made on the recoveries. If A1 and A2 were quite conscious of throwing the body after committing the offence in a different place, it would only defy the logic with the material object belonging to the deceased along with the wire being found in open. Even here, there is a discrepancy between the place from which it was recovered. It is not clear as to whether it was found in the front portion of the Tractor tyre or Tractor tyre.

7.5. The Mobile phones recovered do not help the case of the prosecution. Though the prosecution has stated that the mobile phones used were destroyed, there is no material to substantiate the same nor any effort was made to trace them after the confession statement given. Similarly, we do not find any evidence to show that A1 gave his another mobile phone to A3.

7.6. Admittedly, the CDs marked do not indicate the registration number of the vehicle. There may be many such vehicles passing by at the relevant point of time. From the evidence available we can only say that the registration number of the vehicle was not available in the records produced before the Court and as authorised by the learned Additional Public Prosecutor. Therefore, from the recovery of the vehicle we cannot hold that it was actually used for the offence committed. After all, we are indeed dealing with the case involving circumstantial evidence. Suspicion however strong can never be a substitute for the evidence.

8. Conclusion:-

The trial Court, in our considered view, has not taken into consideration the relevant issues. Once we hold that the evidence of P.W.14 and the so called recovery cannot be sustained in the eye of law, the case of the prosecution loses its steam. Therefore, we have no other option except to reverse the conviction and sentence rendered by the trial Court. Accordingly, the conviction and sentence imposed on the appellants in S.C.No.346 of 2016 dated 16.09.2017 on the file of III Additional District and Sessions Court, Kallakurichi, stand set aside and the criminal appeals are allowed. The appellants/A1 to A3 are acquitted of the charges framed against them and the fine amounts if any paid, shall be refunded to them. The appellants/A1 and A2 viz., Samsudheen and Manikandan, in CrI.A.No.673 of 2017 are directed to be released forthwith, unless their custody is required in connection with any other



case. The appellant/A3 viz., Kavitha, in Crl.A.No.724 of 2017 is concerned, the bail bond, if any, executed by her shall stand cancelled. Consequently, Connected criminal miscellaneous petition stands closed.

WEB COPY

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

raa

To

- 1.The Inspector of Police,
Keelakuppam Police Station,
Crime No.197 of 2016,
Villupuram District.
- 2.The Public Prosecutor,
High Court, Chennai.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Superintendent,
Special Prison for Women, Vellore.
5. The III Additional District and Sessions Judge,
Kallakurichi.
- 6.do Thro The Principal District Judge,
Villupuram.
- 7.The District Collector,
Villupuram.
- 8.The Director General of Police,
Mylapore, Chennai.



Copy to:

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

+1cc to Mr.L.Mahendran, Advocate sr.102590

Criminal Appeal Nos.673 & 724 of 2017

gmr(co)
nr 20/12/2019