

BAIL SLIP

The Appellants/Accuseds namely 1.Giri @ Vellingiri, S/o.Late Rangasamy, 2.G.Manojkumar, S/o.S.Gopalsamy, 3.Anand @ Vijayanand, S/o.V.R.Selvaraj, were directed to be released on bail as per order of this court dated 04.10.2018 in Crl.Mp.No.15601 of 2017 in Crl.A.No.775 of 2017 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.07.2019

Delivered on : 02.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.775 of 2017

1.Giri @ Vellingiri
2.G.Manojkumar
3.Anand @ Vijayanand

... Appellants/Accused

Vs.

The State, represented by
The Inspector of Police,
M-4, Thudiyalur Police Station,
Coimbatore.

Crime No.2166 of 2009

.. Respondent/complainant

Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code as against the judgment passed in S.C.No.107 of 2015 dated 11.10.2017 on the file of I Additional District and Sessions Court, Coimbatore, convicting and sentencing the appellants/accused Nos 1, 3 and 4 to undergo life imprisonment for the offence under Section 302 IPC and to pay a fine of Rs.5000/- each, in default to undergo further period of three months simple imprisonment, and was also convicted and sentenced to undergo two years R.I., for the offence punishable under section 201 IPC and to pay a fine of Rs.2,000/- each, in default to undergo one month simple imprisonment and set aside the same.

For Appellant : Mr.C.M.Gunasekaran for
Mr.V.Purushothaman

For respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellants, who were arrayed as A1, A3 and A4 on the file of I Additional District and Sessions Court, Coimbatore in S.C.No.1107 of 2015, were found guilty of the offences punishable under Sections 302 and 201 IPC and were sentenced as under.

Provision under which convicted	Sentence
Section 302 IPC	Life imprisonment and fine of Rs.5000 each, in default to undergo further period of three months simple imprisonment.
Section 201 IPC	Two years R.I., and fine of Rs.2000/- each, in default to undergo one month simple imprisonment.

However, they were acquitted of the charges under Section 120-B, 148 and 364 read with 149 IPC. Challenging the aforesaid conviction and sentence, the present Criminal Appeal has been filed.

2. Case of the Prosecution:

2.1. The appellants/Accused Nos.1, 3 and 4 are friends along with A2 and A5. The deceased-Unni @ Ramesh was the brother of the second appellant. On 14.02.2009, the deceased picked up a quarrel with the second appellant, who refused to give money for drinking. Enraged over the conduct of the deceased, all the accused joined together and hatched a conspiracy. Thereafter, they joined together abducted the deceased and committed the offence by strangulating his neck with accelerator cable wire-M.O.5 and attacked him with an iron rod-M.O.4. After committing the offence, the body was dumped in the well belonging to one Gopalsamy attracting the punishment under Section 201 read with 141 IPC.

2.2. Admittedly no complaint is given by anybody. On

04.10.2009, P.W.18-V.Mohanraj, Inspector of Police attached to Kottur Police Station interrogated A1 on the information given by P.W.3-Village Administrative Officer, before whom A1 is alleged to have surrendered and given extra judicial confession in Crime No.314 of 2009 of Kottur Police Station, which was filed under Sections 364, 302 and 201 IPC. On the same day, P.W.18 gave a Report-Ex.P11 to PW.12-Selvaraj, who is the Sub Inspector of Police, Thudiyalur Police Station. On receipt of Ex.P11-Report, P.W.12 registered a case in Crime No.2166 of 2009 of Thudiyalur Police Station under Sections 147, 148, 364, 302 and 201 IPC as against the appellants.

2.3. On the same day, P.W.21-Mohan, who is the Inspector of Police at the relevant point of time and working in the Thudiyalur Police Station, went to the scene of occurrence and prepared Ex.P16 -Observation Mahazar and Ex.P24 Rough Sketch. He has also conducted inquest on the body of the deceased and prepared an Inquest Report-Ex.P26. After completion of the inquest, the dead body was sent for post mortem through P.W.11.

2.4. On the same day, P.W.11-Head Constable, who is working in Thudiyalur Police Station, kept the skull of the deceased in the mortuary of CMC Hospital at Coimbatore and gave Ex.P10-Special Report to P.W.21.

2.5. On 05.10.2009, P.W.19-Dr.Jeyasingh conducted the post mortem and issued Ex.P22-Post Mortem Certificate. He did not find any antemortem injuries and could not give any definite opinion on the cause of death.

2.6. Ex.P4 is the signature of the P.W.3 in the Confession, which was allegedly made by A1 before P.W.3-Village Administrative Officer on 04.10.2009. Ex.P4 says that it has been given in the presence of Police before the Thudiyalur Police Station in Crime No.314/2009, which was registered with Kottur Police Station. Thereafter, P.W.21 took custody of A1 on 18.10.2009 and pursuant to the confession statement given by him on 20.10.2009, recovery of driving licence belonging to the the deceased was effected. This recovery was also attested by P.W.3.

2.7 P.W.21 sent the thigh bone of the deceased for examination. The examination revealed that it belonged to a lady. This was done in the year 2009. Thereafter, the skull was sent on 26.03.2012 for scientific examination. The scientific examination of the skull indicates that of the deceased both with respect to DNA and superimposition technique. P.W.23-Saravanan, who has taken charge as Inspector of Police of the Thudiyalur Police Station on 05.09.2014 has filed the Final Report. He had stated that the skull was sent for examination

from the Police Station, though he did not know who had signed it.

3. Before the trial Court, the prosecution has examined 24 witnesses while marking Exs.P.1 to P.40 and M.Os.1 to 10.

4. In compliance with the mandate of Section 313-A of the Criminal Procedure Code, incriminating materials were placed before the appellants and they denied the same.

5. The trial Court gave the following finding in paragraph 12, which can be quoted in favour of the appellants.

"Seeing from the angle of witnesses, there is no evidence to prove the prosecution version of recovery of material objects based on the confession of the accused. The prosecution has not proved the recovery of weapons as mandated by law. The scientific investigation or reports says that the deceased is Unni @ Ramesh. But on the contrary there was a DNA report by the Forensic Department saying that the first bone sent for examination belongs to the female body which suggest that the prosecution case is false. Before this Court only medical evidence and official witnesses evidence alone available to consider the matter on merits."

6. However, the trial Court convicted the appellants substantially relying upon Section 27 of the Indian Evidence Act. Incidentally, the trial Court placed reliance upon the evidence of P.W.17-Assistant Director of Forensic Science Department, who gave Ex.P21- DNA Test Report. This coupled with the fact that the deceased was missing, made the trial Court render its conviction against the appellants.

7. The learned counsel appearing for the appellants would submit that the extra judicial confession produced before the Court was not exhibited. The confession statement said to have been given under Ex.P4 by A1 cannot be termed as extra judicial confession since it has been given in the presence of the police and in the police station. Inasmuch as P.W.3-Village Administrative Officer himself has turned hostile with respect to the aforesaid confession, no credence can be given to the subsequent recovery and the subsequent confession given before P.W.21. The Assistant, by name one Manoharan, who also signed the aforesaid statements was also not examined. There is absolutely no evidence adduced to show that A1 has accompanied P.W.3 and other police officers to the well from where the

skeleton was taken. Even the evidences of prosecution witnesses would show that the skeleton was intact and therefore, no reliance can be made on the DNA Test. There is also no evidence to show that the place, in which, the skull was kept and to whom it was sent and that too, after two years. Most of the witnesses turned hostile including P.W.3. Though P.W.21 has stated that earlier the thigh bone sent for examination was part of the skeleton but the report stated as femur bone of female. Motive has not been proved as we are dealing with the case of circumstantial evidence. The alleged recovery has not been proved. The trial Court committed an error in treating the so-called statement made before P.W.3 as that of the extra judicial confession. In the earlier case, which was investigated for the death of some other person alleged to have been found in the same place, the accused were acquitted. Even P.W.4 has not mentioned about the presence of A1 and he has also not signed in the recovery mahazar. P.W.19, who is the post mortem Doctor has clearly stated that there are no external injuries and therefore, the recovery of iron rod even assuming true, would not help the case of the prosecution. Thus, the conviction and sentence would require interference.

8. The learned Additional Public Prosecutor appearing for the State would contend that the trial Court rightly relied upon the recovery made which is permissible under Section 27 of the Indian Evidence Act, 1872, coupled with the evidence of P.W.17. As the deceased was not found, the trial Court rightly drew its inference. Therefore, no interference is required.

9. We are dealing with the case of circumstantial evidence and therefore, motive does have a role to play. In the case on hand, almost all the witnesses, including one of the official witnesses turned hostile. Therefore, the motive part, as alleged against the appellants does not stand proved. P.W.3, the Village Administrative officer, to whom the confession statement has been given by A1, turned hostile. Even the statement said to have been made under Ex.P4 would clearly show that it has been given in the police station and in the presence of the police. The occurrence was about eight months prior to the registration of the First Information Report. We do not find any other statement i.e., extra judicial confession given by A1 before P.W.3 and that too, in the light of his evidence. The Assistant of P.W.3, who is said to have signed along with him also has not been examined. The subsequent confession made by A1 in the custody of P.W.21 also cannot be accepted for the purpose of recovery since P.W.3 has turned hostile as he was also a witness. Thus, we are of the view that the recovery under Section 27 of the Indian Evidence Act, 1872, has not been proved by the prosecution.

10. We may note, even P.W.18 has not stated that A1 was present at the time of removing the skeleton and the skull from the well. P.W.4-Arulkumar, who is a chance witness, has also turned hostile and has not signed the mahazar. However, even he has not stated anything about the presence of A1. We may note that though A1 was examined by P.W.18 on 04.10.2009, there was no recovery at all.

11. Thus, from the above, we are constrained to disbelieve the so-called recovery. We find that the trial Court, after giving the finding in paragraph 12, which we recorded earlier, ought not to have placed reliance upon the recovery.

12. M.O.4-Iron rod was recovered pursuant to the confession made by A3. The evidence of P.W.19-Doctor, who did post mortem, would clearly show that there were no antemortem injuries on the deceased. He had further stated that he could not give any definite opinion about the cause of death. Therefore, the recovery of M.O.4-Iron rod would not help the case of the prosecution. Similarly, M.O.1-Auto rickshaw not being connected with the occurrence also does not add strength to the prosecution case. We may note, insofar as the recovery made from A4 is concerned, P.W.14, who is the witness, did not support the case of the prosecution.

13. From the evidence of P.W.23, it is clear that no one knew who has sent the skull for scientific examination and how it was preserved. On the contrary, the evidence available would show that the skeleton was taken as a whole and the first part sent was that of the deceased. Even assuming that the evidence of P.W.17 can be accepted, the same, by itself, could never be a ground to convict the appellants. The primary question for consideration before us is as to whether the appellants committed the major offence under Section 302 IPC or not. As discussed above, the circumstances under which and whose authority the skull is preserved for more than 2 ½ years is not known.

14. Thus, we find that there is absolutely no evidence available on record creating a circumstance linking the accused alone to the offence committed. We neither find any circumstance nor the existence of the chain implicating the appellants. After all, a mere suspicion, however strong it may be, cannot be a ground to convict a person. As we find absolutely no evidence to implicate the appellants with the alleged murder of the deceased, we are constrained to set aside the conviction and sentence rendered by the trial Court.

15. Accordingly, the conviction and sentence imposed on the appellants/A1, A3 and A4 in S.C.No.107 of 2015 on the file of

the I Additional District and Sessions Court, Coimbatore, on 11.10.2017 are set aside and the Criminal Appeal stands allowed. The appellants are acquitted of the charges under Sections 302 and 201 IPC., and the fine amounts, if any, paid by the appellants/A1, A3 and A4, shall be refunded to them. The bail bond, if any, executed by them during trial, shall stand cancelled. The appellants/A1, A3 and A4 are directed to be released forthwith, unless their custody is required in connection with any other case.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
M-4, Thudiyalur Police Station,
Coimbatore.
Crime No.2166 of 2009
- 2.The Additional Public Prosecutor,
High Court, Chennai.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Judicial Magistrate No.I,
Coimbatore.
- 5.The Chief Judicial Magistrate,
Coimbatore, (For Information)
- 6.The Ist Additional District and Sessions Judge,
Coimbatore.
- 7.The Section Officer,
Criminal Section, High Court, Madras-104.

+1cc to Mr.V.Purushothaman, Advocate, S.R.No.66147

Criminal Appeal No.775 of 2017

VSNII(CO)
CS/18/09/2019