



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD)No.496 of 2018

Sankar @ Seeni

.. Appellant/Sole Accused

-vs-

State

rep. by the Inspector of Police,

Iluppur Police Station,

Pudukkottai District.

(Crime No.79 of 2014).

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to set aside the judgment and conviction dated 23.02.2016 by the learned Additional District and Sessions Judge, Special Court for EC & NDPS Act Cases, Pudukkottai, in S.C.No.54 of 2015, and a equit the appellants.

For Appellant

: Mr.R.Senthil Kumar

For Respondent

: Mr.S.Ravi

Standing Counsel for State

JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellant is sole accused in S.C.No.54 of 2015, on the file of the learned Additional District and Sessions Judge, Special Court for EC & NDPS Act Cases, Pudukkottai. He stood charged and convicted for the offences under Sections 364, 302, 394 and 201 I.P.C. and sentenced as follows:

Convicted under Section	Sentence Imposed	Fine	Default Sentence
364 I.P.C.	Life Imprisonment	Rs.1,000/-	3 Years R.I.
302 I.P.C.	Life Imprisonment	Rs.1,000/-	3 Years R.I.
394 I.P.C.	Life Imprisonment	Rs.1,000/-	3 years R.I.
201 I.P.C.	7 years R.I.	Rs.1,000/-	1 Year R.I.

The sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.



2.The case of the prosecution in brief as follows:

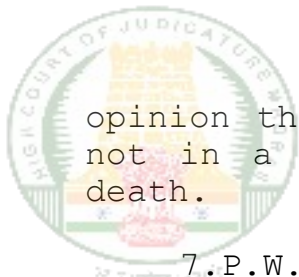
The deceased Yuvaraj, a seven year old boy, was studying in II, Standard, is the son of P.Ws.1 and 2 and they are residing at Kottaittheru, Iluppur. The accused also belongs to the same Village and he is well known to the deceased family. On 08.11.2014, the deceased boy was found missing. At that time, P.W.1, father of the deceased boy was at Chennai. After receipt of the information, he rushed to his Village and searched for the boy. Since, they could not find him, on 10.11.2014, went to the respondent Police Station and lodged a complaint (Ex.P.1) to P.W.10, the Sub-Inspector of Police.

3.Based on that complaint, an F.I.R.(Ex.P.9) has been registered by P.W.10, Sub Inspector of Police, in Crime No.79 of 2014, for "boy missing" and sent the original F.I.R. to the Judicial Magistrate and copies to the higher officials and one copy to P.W.14, Inspector of Police, for investigation.

4.On 12.11.2014, the appellant/accused appeared before the Village Administrative Officer, P.W.8, at about 11.00 a.m. and voluntarily given a confession, admitting the guilt that on 08.11.2014, at 5.45 p.m., he committed the murder of the deceased boy, stolen the talisman worn by him and sold it to P.W.7. P.W.8 recorded his confession (Ex.P.2) and produced the accused before P.W.14, along with the confession and his report (Ex.P.3).

5.Based on the confession, P.W.14 altered the offence into Sections 302, 397 and 201 I.P.C. and he has prepared the Alteration Report (Ex.P.15), sent the same to the Judicial Magistrate and arrested the accused. Thereafter, the accused has voluntarily given a confession (Ex.P.4) in the presence of P.W.8 and another, wherein, he identified the place, where the body has been buried. P.W.14 recorded the same at 1.30 a.m. and proceeded to the scene of occurrence along with the accused and prepared Observation Mahazar (Ex.P.5) and Rough Sketch (Ex.P.16) and recovered the body of the deceased child in the presence of the witnesses. P.W.14 had conducted inquest from 4.45 p.m. to 6.15 in the presence of Panchayatars, prepared Inquest Report (Ex.P.17) and sent the body of the child for autopsy with a requisition (Ex.P.14) through P.W.9, Head Constable to Government Hospital, Pudukkottai. The accused also identified a jewelry shop belongs to P.W.7, where he sold the talisman (jhaj;J), stolen from the deceased, and P.W.14 recovered the same in the presence of the witnesses. Thereafter, he remanded the accused to judicial custody on 13.11.2014 and examined P.Ws.1 to 11 and P.W.13 and recorded their statements. As P.W.14 was transferred, he handed over the investigation to P.W.15.

6.In the meantime, P.W.12, Doctor, working at Government Hospital, Pudukkottai, conducted postmortem autopsy on 13.11.2014 at
<https://hcservices.courts.gov.in/hcservices/> prepared postmortem report (Ex.P.13) and gave his



opinion that, the deceased's body was highly decomposed and he was not in a position to give any opinion relating to the cause of death.

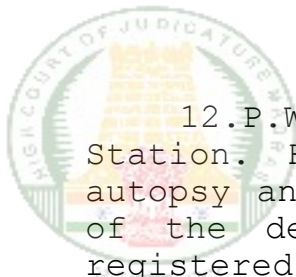
7.P.W.15, Inspector of Police, continued the investigation and examined P.Ws.11 and 12 and recorded their statements and after completing the investigation, filed the final report for the offences under Sections 364, 302, 397 and 201 I.P.C.

8.Considering the above materials, the trial Court framed charges as stated above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 15 witnesses, marked 17 documents and also produced 7 material objects.

9.Out of the witnesses examined, P.W.1 is the father of the deceased. According to him, the boy was missing from 08.11.2014, at that time, he was at Chennai. On receipt of the information, he came from Chennai and searched for his son along with his relatives, they could not find him and he lodged a complaint (Ex.P.1) to the respondent police. According to him, at the time of missing, the boy worn a talisman in his neck. On 12.11.2014, the police informed that a body was found near Santhanakaruppar Temple. He went there and identified the body of the deceased, based on the dress worn by him. He was informed that the accused has committed the murder of the deceased and stolen the talisman worn by him and he has also identified M.Os.1 to 3, the talisman and the dress worn by his son. P.W.2, the mother of the deceased, she reiterated the testimony of P.W.1 and identified M.Os.1 to 3.

10.P.W.3, a resident of Iluppur, and residing in the same street in which accused was residing. According to him, on 08.11.2014, between 5.00 and 5.30 p.m., he saw the accused taking the deceased. Thereafter, at about 7.00 p.m., he saw the accused returned back alone. P.W.4 is also a resident of Kottaittheru, Iluppur, knows both the deceased and the accused. On 08.11.2014, at 5.30 p.m. he saw the accused taking the deceased near Santhanakaruppar Temple. P.W.5 is another witness, examined to prove the last seen theory. He stated that on 08.11.2014 at 5.45 p.m., the accused has taken the boy near Santhanakaruppar Temple.

11.P.W.6 was doing scrap business. According to him, on 09.11.2014, the accused approached him and sought his help to sell the talisman and he took him to a jewelry shop. P.W.7 is the jewelry shop owner, who purchased the talisman and the broken talisman was recovered from him. P.W.8 is the Village Administrative Officer, before whom, the accused has appeared and voluntarily given a confession and thereafter, he took the accused to the respondent police, where the accused gave confession, and he has attested the confession. He was also present when the body was exhumed near Santhanakaruppar Temple.



12.P.W.9 is a Head Constable working in the respondent Police Station. He took the dead body to the Hospital for postmortem autopsy and after postmortem handed over the body to the relatives of the deceased. P.W.10 is the Sub-Inspector of Police, who registered the F.I.R. for "boy missing", based on the complaint given by P.W.1 and he has also given wide advertisements in the newspapers, radio and Television Channels regarding the missing boy. P.W.11, a Scientific Officer, working in the forensic lab and has received the Material Objects for examination.

13.P.W.12, Doctor, who conducted autopsy and issued postmortem certificate (Ex.P.13) , which reads as follows:

"The body was first seen by the undersigned at 12.30 PM on 13.11.2014. Its condition then was Decomposed state with maggots. Post-mortem commenced at 12.30 PM on 13.11.2014.

Appearances found at the post-mortem:

Highly decomposed body of male boy approximately 90cm height with dark colour drawer, blue colour T-shirt, which is identified by HC 524 Mr.Ragavan. Autopsy was done in GH mortuary, Pudukkottai. Body lies on back, hair easily pluckable. Teeth - 3 / 4 - 3 / 3. Soft tissue over extremities not seen. Eye ball, nose, tongue decomposed. Soft tissue over neck decomposed. Heart, lung, liver, spleen, kidney, brain - liquified. Hyoid bone intact. Skull, spinal cord - intact. Cartilages over neck decomposed. Body full of maggots present.

Opinion as to cause of death-

- a) Reserved pending report of _____
- b) The deceased would appear to have died of COULD NOT BE POSSIBLE BECAUSE OF HIGHLY DECOMPOSED STATE OF BODY."

He was of the opinion that the body was highly decomposed and he cannot give reason for the death.

14.P.W.13 is the brother of P.W.1. He identified the dead body. P.W.14 is the Inspector of Police, who conducted the investigation, altered the F.I.R., recovered the body and sent it for postmortem and also recorded the statements of witnesses and recovered the material objects. P.W.15, Inspector of Police continued the investigation and filed the final report under Sections 364, 302, 397 and 201 I.P.C.

15.The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false. The accused marked a F.I.R. registered in Crime No.81 of 2014 on 11.11.2014, for an offence under Section 392 I.P.C. to show that the accused had been falsely implicated in this case.



16. Having considered the above materials, the trial Court convicted the appellant/accused and sentenced him as state above. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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17. Mr. R. Senthil Kumar, learned counsel appearing for the appellant submitted that it is a case of circumstantial evidence and the prosecution mainly relied on the last seen theory, wherein, P.Ws. 3 to 5 said to have seen the deceased along with him before the occurrence. According to him, all the witnesses belong to the same village and known to each other. From 08.11.2014 to 12.11.2014, they have not disclosed anything about the accused. Only after the accused was arrested, they have given their statements only on 12.11.2014, where all the witnesses said to have seen the accused along with the deceased before the occurrence. So far as recovery of M.O.1 is concerned, no ledger was recovered from P.W.7, jewelry shop owner and produced before the Court to show that the accused has sold the talisman. This creates a strong suspicion regarding the recovery.

18. Learned counsel for the appellant further submitted that the extra-judicial confession said to have been given by the deceased also proved. There is no occasion for the accused to appear before him and give the voluntary confession and the respondent police have created a false statement. That apart, the medical evidence is not corroborating the prosecution, P.W.12, doctor, has clearly stated that the body was highly decomposed and hence, he could not give any opinion about the cause of death. Hence, the case of the prosecution that the appellant strangled the boy and caused his death is not proved.

19. Learned counsel for the appellant further submitted that the boy was missing from 08.11.2014, but P.W.1 has given the complaint on 10.11.2014. It also creates a clear doubt on the case of the prosecution. The learned counsel further submitted that none of the circumstances, relied on by the prosecution, have been proved beyond reasonable doubt. The trial Court without considering the evidence in proper perspective, convicted the accused. Hence, he prayed for acquittal of the appellant/accused.

20. Opposing the same, Mr. S. Ravi learned Standing Counsel for State would submit that the accused and the deceased belong to the same village and they know to each other. P.Ws. 3 to 5 have clearly stated that just before the occurrence on 08.11.2014, they have seen the accused taking the deceased near the scene of occurrence and the accused did not adduce any explanation to rebut the same. The second strong circumstance is the accused appeared before the Village Administrative Officer and has voluntarily given a confession. Thereafter, he was arrested and on the confession given to the Village Administrative Officer, the body was found out near the



Santhanakaruppar Temple, which is a strong circumstance against the accused.

21. According to the learned Standing Counsel for State, yet another strong circumstance is recovery of stolen article on the confession of the accused. P.Ws.6 and 7 spoke about the stolen talisman, which was identified by P.Ws.1 and 2, and there is no plausible explanation from the deceased. Hence, the prosecution has clearly established the chain of circumstances unerringly pointing to the guilt of the accused and the trial Court, considering all those circumstances, rightly convicted the accused and there is no reason to interfere with the well considered judgment of the trial Court.

22. We have considered the rival submissions and also perused the records carefully.

23. In this case of circumstantial evidence, the deceased, a small boy residing in the street, where the appellant also resides, he is well known to the appellant. The first and foremost circumstance relied upon by the prosecution is last seen theory. P.Ws.3 to 5, who are all residing in the said village, deposed that on 08.11.2014, at about 5.30 p.m., they saw the accused along with the deceased near the Santhanakaruppar Temple, which is the scene of occurrence. P.W.3 stated that at about 5.00 to 5.30 p.m., the accused took the boy and at 7.00 p.m., he returned alone. The prosecution established through P.Ws.3 and 4 that the deceased boy was with him just before the occurrence. In those circumstances, the burden shifts on the accused and it is for him to explain as to how the incident has happened and what happened to the deceased soon before the occurrence. But the accused failed to offer any plausible explanation for the same, which is a strong circumstance against the accused.

24. In a similar case, the Hon'ble Supreme Court in ***Pattu v. State of T.N. [(2019) 4 SCC 771]***, held as follows:

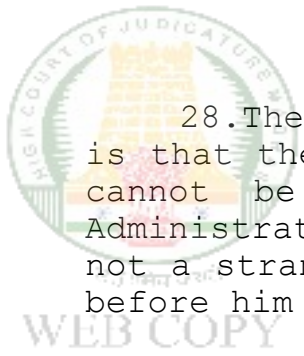
"63. It is needless to observe that it has been established through a catena of judgments of this Court that the doctrine of last seen, if proved, shifts the burden of proof onto the accused, placing on him the onus to explain how the incident occurred and what happened to the victim who was last seen with him. Failure on part of the accused to furnish any explanation in this regard, as in the case in hand, or furnishing false explanation would give rise to a strong presumption against him, and in favour of his guilt, and would provide an additional link in the chain of circumstances. (***See Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434; Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681.***)"



25.The next circumstance, relied upon by the prosecution is Extra-Judicial Confession given by the accused before P.W.8, Village Administrative Officer. Even though extra-judicial confession is a very weak piece of evidence, considering other circumstances relied on by the prosecution regarding the accused identifying the place in which the body was buried, the recovery of the body of the deceased and the recovery of the talisman, the extra-judicial confession gains importance. In this case, the accused has given an extra-judicial confession before the Village Administrative Officer, who is a known person, to whom the accused has clearly admitted his guilt. Thereafter, the accused was produced before the P.W.14, Inspector of Police, to whom the accused has voluntarily given a confessional statement, and based on the admissible part of the confession only the body was recovered, which is a strong circumstance against the accused. Further, based on the confession of the accused, the stolen article, namely, talisman, worn by the deceased boy was recovered from P.W.7, jewelry shop owner. P.W.6, is known to the accused and with his help he sold the stolen article to P.W.7. Stolen article was also recovered immediately after the occurrence and both P.Ws.1 and 2 identified the same. In the above circumstances, there is a presumption against the appellant under Section 114(a) of the Indian Evidence Act, and in absence of any explanation by the accused, it can be very well presumed, it is only the accused/appellant, who has stolen the talisman from the deceased. All those circumstances form a chain, which unerringly point out the guilt of the accused.

26.The learned counsel for the appellant would contend that, P.Ws.3 to 5, who said to have seen the deceased with the company of the accused soon before the occurrence did not say anything till 12.11.2014. Only after four days, after the arrest of the accused, they made such statements before the investigation officer. That contention cannot be accepted, because till 13.11.2014, nobody know the whereabouts of the boy. Since the appellant/accused and deceased belongs to the same Village, there is no reason for them to suspect the accused, by the witnesses. Only after they came to know from the other Villagers that the accused had committed the murder, they gave the statements.

27.The next contention of the learned counsel for the appellant is that even though stolen article was recovered from P.W.7, no ledger or receipt has been produced by the prosecution to support the same. P.W.7 is not a pawn broker and he is running a jewelry shop and he is said to have received the stolen the property from P.W.7. In that circumstances, he cannot be excepted to issue any receipt for purchase and also maintain any entry in his ledger . Hence, non production of the ledger or receipt is not fatal to the case of the prosecution.



28.The next submission of the learned counsel for the appellant is that the extra-judicial confession given by the accused to P.W.8 cannot be relied on. P.W.8 is none other than the Village Administrative Officer, a person belongs to same Village and he is not a stranger. Hence, there is no surprise that, accused appearing before him and has given voluntary confession.

29.The further contention of the learned counsel appearing for the appellant is that even though the stolen property was recovered from P.W.7, no crime has been registered against him also creates doubt that he is a branded witness. Merely because no criminal case has been registered against P.W.7, it cannot be presumed that the recovery was not proved by the prosecution.

30.Insofar as the conviction imposed by the trial Court under Section 394 I.P.C. is concerned, considering the available materials, including the medical evidence, there is no material available to show that the accused has voluntarily caused injury and in such circumstances, the conviction under Section 394 I.P.C. needs to be modified into one under Section 380 I.P.C.

31.Considering all those materials and the totality of circumstances, we are of the view that the prosecution has proved the guilt of the accused and the trial Court has rightly convicted the appellant/accused for the offence under Sections 364, 302 and 201 of I.P.C.

32.In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/Accused, by the Additional District and Sessions Judge, Special Court for EC and NDPS Act Cases, Pudukottai, in S.C.No.54 of 2015, by the judgment dated 23.02.2016, under Sections 364, 302 and 201 I.P.C. are confirmed and the conviction and sentence imposed under Section 394 I.P.C. are hereby set aside, instead the appellant/accused is convicted under Section 380 I.P.C. and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for one month. The sentences imposed shall run concurrently and the sentences already undergone shall be given set off under Section 428 Cr.P.C. After the period of Appeal, M.O.1 shall be handed over to the legal heirs of the deceased and M.Os.2 to 7 shall be destroyed.

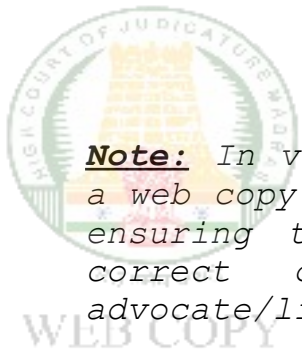
Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional District and Sessions Judge,
Special Court for EC and NDPS Act cases,
Pudukkottai.
- 2.The Judicial Magistrate,
Keeranur,
Pudukkottai District.
- 3.The Inspector of Police,
Iluppur Police Station,
Pudukkottai District.
- 4.The Superintendent, Central Prison,
Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal No. (MD) No.496 of 2018
17.08.2021

RK (06.10.2021) 9P 8C