



Crl.A.No.435 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 27..09.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

Criminal Appeal No.435 of 2019
&
Crl.M.P.No.10335 of 2019

Appu
Son of Thambiraj

..... Appellant / A3

-Versus-

State Rep. by
The Inspector of Police,
Sadras Kalpakkam Police Station,
Kanchipuram District.
[Crime No.554 of 1997]

.... Respondent / Complainant

Appeal filed under Section 374(2) of Cr.P.C. against the judgement and order of conviction and sentence dated 20.06.2002 made in S.C.No.46 of 1998 on the file of the Principal District and Sessions Judge at Chengalpattu.

For Appellant/A3 : *Mr.C.Samivel*
Legal Aid Counsel
For Respondent/State : *Mr.M.Babu Muthumeeran,*
Addl. Public Prosecutor



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JUDGEMENT

Challenging the judgement and order of conviction and sentence dated 20.06.2002 made by the learned Sessions Judge, Sessions Division of Chengalpattu, in S.C.No.46 of 1998 convicting A3/appellant herein for offence under Section 302 r/w 34 IPC to undergo imprisonment for life, A3 has come up with the present Criminal Appeal. No fine was imposed by the trial court for the offence under Section 302 IPC. There were three accused in this case. Though the appellant/A3 and the other accused viz., A1 and A2 were found guilty on the other charges viz., under Section 457, 341 and 392 of IPC, the trial court has not imposed separate sentence on those charges for the reason that A1 to A3 were sentenced to imprisonment for life for the major offence of murder.

2.0 The prosecution case runs thus:

2.1 The deceased Subramanian was residing in the First Floor at D.No.7/3, Vaniyar Street, Sadras, Chengalpattu, along with his family comprising his wife - S.P. Visalatchi (P.W.2) and his son. Subramanian was around 46 years old at the time of his death. His son had met with an accident



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and was admitted in a hospital in Chennai. Therefore, his wife - S.P.Visalatchi (P.W.2) had gone to Chennai and was taking care of her son. While Subramanian was alone at home, in the night of 11.09.1997, Mohan @ Mohan Kumar (A1), Suresh (A2) and Appu (A3) gained entry into his house, tied him up with wires, viz., iron box wire (M.O.31), nylon rope light green in colour (M.O.32), nylon rope blue in colour (M.O.33) and telephone wire (M.O.34), covered his face with a bed-sheet and committed his murder by throttling. Thereafter, they decamped with several articles from there. This fact came to light only on 13.09.1997, when a visitor came to visit Subramanian. Since Subramanian did not open the door, the said visitor informed his neighbour Sunil (P.W.1). When Sunil (P.W.1) and his friend one Sekar scaled over the back side wall of the house and peeped inside, they were shocked to find the dead body of Subramanian lying in the hall with his hands and legs tied and bed-sheet over his face.

2.2 Thereafter, police was informed and a written complaint (Ex.P1) was given by Sunil (P.W.1) based on which, Ramapandian (P.W.10), Sub-Inspector of Police registered a case in Sadras Police Station Crime No.554



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of 1997 u/s 302 IPC on 13.09.1997 at 09.00 hours against unknown persons and prepared the printed FIR (Ex.P17), which reached the jurisdictional Magistrate on the same day at 04.45 p.m. as could be seen from the endorsement thereon.

2.3. Investigation was taken over by Abdul Majeeth (P.W.11), Inspector of Police who went to the place of occurrence and prepared an observation mahazar (Ex.P11) and a rough sketch (Ex.P18) in the presence of Iyyappan (P.W.4) and one Vanjinathan (not examined). From the place of occurrence, the investigating officer (P.W.11) seized certain clue materials under the cover of a mahazar (Ex.P12) in the presence of the above witnesses and those clue materials were marked as M.O.10 to M.O.17. Selvaraj (P.W.7), Finger Print Expert, came to the place of occurrence and lifted chance finger prints and also the finger prints of the deceased Subramanian. Thereafter, the investigating officer conducted inquest on the body of the deceased and prepared an inquest report (Ex.P19). Then, the dead body was sent to the Government Hospital, Chengalpattu, for postmortem where Dr.Yogam (P.W.6), Professor of Forensic Medicine, performed autopsy on the



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body of the deceased Subramanian and issued the post-mortem certificate (Ex.P13). Dr.Yogam (P.W.6) has noted five external injuries. The body was found to be decomposed. After completing the post-mortem and obtaining the viscera report, Dr.Yogam (P.W.6) opined as under:-

“Opinion:- The deceased would appear to have died of compression force applied on the antero-posterior aspect of the neck, resulting in spinal column injury sustained by him”

2.4 After the postmortem, the nylon ropes and the wire, with which the body was tied, were handed over to Perumal (P.W.9), Head Constable, which were, during trial, marked as M.O.31 to 37. Visalatchi (P.W.2), wife of Subramanian, gave two separate lists of articles that were found missing in the house and the said lists were marked as Ex.P2 and Ex.P20. The breakthrough in the case came with the arrest of A1 on 15.09.1997 at 01.00 p.m. Based on the disclosure of A1, the investigating officer (P.W.11), seized a Philips Tape Recorder with Radio (M.O.1), a Panasonic Colour Television (M.O.6), a Remote Control for TV (M.O.7), and a Silver Key Chain with green and red colour coating (M.O.8) from the house of Anandan (P.W.5)



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under the cover of a mahazar (Ex.P5) in the presence of Pachaiyappan (P.W.3) and one Rajendran (not examined). Apart from that, based on the statement of A1, a silver kuthuvilakku (M.O.9) was seized from the house of A1 under the cover of a mahazar (Ex.P4) in the presence of the above said witnesses. Interrogation of A1 revealed the involvement of A2 and A3, who were by then gone to Chennai. Therefore, the investigating officer took A1 to the house of A2 as identified by A1 and from where a Timex Writ Watch (M.O.2) was recovered under the cover of a mahazar (Ex.P8) in the presence of P.W.3 and another. Based on the information provided by A1 and A2, the house of A3 was identified and A3 was arrested on 15.09.1997 at 09.20 p.m. Based on the disclosure statement of A3, the investigating officer seized a black colour Rexin Jip Bag (M.O.3), Citizen Wrist Watch (M.O.4) and Titan Watch (M.O.5) under the cover of a mahazar (Ex.P.10) in the presence of P.W.3 and another.

2.5 After examining various witnesses and collecting the reports of the experts, the investigating officer, completed the investigation and filed a final report in P.R.C.No.22 of 1997 on the file of the Judicial Magistrate,



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Thirukazhukundram, under u/s 457, 341, 302 and 395 of IPC against A1 to

WEB COPY A3.

3. On the appearance of A1 to A3 before the committal court, the provisions of Section 207 of Cr.P.C. were complied with and the case was committed to the Court of Session, Chengalpattu in S.C.No.46 of 1998 and was tried by the said court.

4. The trial court framed charges under Sections 457, 341, 302 r/w 34 and 392 IPC and when questioned, A1 to A3 pleaded not guilty. To prove the case, the prosecution, examined 11 witnesses, marked 27 documents and apart from that, a Form-95 dated 14.09.1997 was marked as Ex.C.1 and 37 material objects. When A3, the appellant was questioned under Section 313 of Cr.P.C. on the incriminating circumstances appeared against him, he denied the same. However, no explanation whatsoever was offered by him. No witness was examined from the side of the defence nor any document marked

5. After considering the evidence brought on record, the trial court, by



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judgement dated 20.06.2002, convicted A3 along with A1 and A2 as stated in the first paragraph of this judgement. Challenging the judgement and order of conviction and sentence, A1 and A2 filed an appeal in Crl.A.No.1233 of 2002 and a Division Bench, which heard the appeal, confirmed the conviction and sentence by judgement dated 27.10.2004. Since A3 did not file any appeal, on the intervention of the Legal Services Authority, Mr.C.Samivel, Advocate was nominated to file an appeal on behalf of A3. Mr.C.Samivel, accordingly, filed the present appeal with a delay of 6007 days and by order dated 19.06.2019 in C.M.P.No.8064 of 2019, the delay in filing the appeal was condoned by this court and the Criminal Appeal was taken on file.

6. Heard Mr.C.Samivel, learned Legal Aid Counsel for the appellant/A3 and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor for the respondent/State.

7. We also carefully perused the findings of this Court dated 27.10.2004 made in Crl.A.No.1233 of 2002 filed by the co-accused. But,



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nevertheless, we went into the evidence on record independently.

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8. P.W.1-Sunil, the neighbour, has stated that on 11.09.1997, while he was at home, a person came to the house of Subramanian and finding Subramanian's house locked, he came to his house and asked about the whereabouts of Subramanian. The learned counsel for A3 contended that this visitor has not been examined by the prosecution and therefore, the same is fatal to its case. But, we are of the view that the non-examination of that person would have no impact in the case at hand because, it was P.W.1-Sunil, who out of curiosity, scaled over the wall, gained entry into the house through the rear side and found the dead body of Subramanian lying in the hall with hands and legs tied by wires. Apart from that, P.W.1-Sunil has not stated anything about the accused. On the complaint given by P.W.1-Sunil, the investigating officer has set the law in motion.

9. The learned counsel for A3 contended that P.W.5-Anandan in his chief examination has stated that all the looted articles were recovered from



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his house but, the police had shown the recovery of only M.O.1 and M.O.6 to M.O.8 and not the others.

10. We carefully perused the evidence of P.W.5-Anandan. He has not in any manner implicated Appu (A3). He has only implicated A1 and has further stated that A1 confessed to him that he and his friends had committed the murder of Subramanian and requested P.W.5-Anandan to keep the looted articles temporarily in his house. P.W.5-Anandan has not stated that A2 and A3 had accompanied A1 to his house. Though P.W.5-Anandan had slipped substantially in the cross examination, his evidence has been accepted by this court in Crl.A.No.1233 of 2002 for sustaining the conviction of A1 and A2.

11. As regards the allegation against accused Appu (A3), pursuant to his arrest and disclosure, M.O.3 & M.O.4 were recovered from his house in Chennai, for which, he has not given any satisfactory explanation. The seizure has been established via the evidence of P.W.11 corroborated by P.W.3. The seized articles belonged to the deceased which is evident from the list (Ex.P.2) given by P.W.2-Visalatchi. P.W.2-Visalatchi identified M.O.3 &



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M.O.4 in the court as they belonged to her husband. In such view of the matter, we find that the prosecution has established the case against A3/appellant herein beyond doubt.

12. For the foregoing discussions, this criminal appeal is devoid of merits and the conviction and sentence imposed on A3/appellant by the trial court does not call for any interference by this court.

In the result, this Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant/A3 are confirmed.

We place on record our appreciation to Mr.C.Samivel (Enrolment No.193/2002) for the neat presentation of the case and direct the Secretary, High Court Legal Services Committee, Chennai, to pay Rs.10,000/- (Rupees Ten Thousand only) as fees to him. Consequently, connected MP is closed.

Index: yes/no
Speaking/Non-Speaking Order

[P.N.P., J.] [TKR, J.]
27..09..2022

kmk
To

- 1.The Principal District and Sessions Judge, Chengalpattu.
- 2.The Inspector of Police, Sadras Kalpakkam Police Station, Chengalpattu District.
- 3.The Superintendent, Central Prison, Puzhal, Chennai.



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4.The Public Prosecutor, High Court, Madras.

5.The Secretary, High Court Legal Services Committee, Chennai.

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P.N.PRAKASH.J.,
AND
RMT. TEEKAA RAMAN.J.,

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