



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 30.01.2023

Pronounced on : 02.02.2023

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.A.(MD).Nos.620 of 2019, 10, 58 and 150 of 2020

Crl.A.(MD).No.620 of 2019

1.Muthukrishnan

2.Ayyappan

3.Suresh

....Appellants/ Accused Nos.3 to 5

VS.

State represented by
The Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.
(Crime No.161/2008).

....Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to call for the records from the Lower Court and to duly set aside the judgment passed in S.C.No.239 of 2013 on the file of the IV Additional Sessions Judge, Tirunelveli, dated 31.10.2019.



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

For Appellants : Mr.A.S.Krishnan

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

Crl.A.(MD).No.10 of 2020

Sulthan

....Appellant/ Accused No.8

vs.

The State represented by
The Inspector of Police,
Valliyoore Police Station,
Tirunelveli District.
(Crime No.161 of 2008).

....Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to call for the entire records pertaining to the judgment rendered by the learned 4th Additional Sessions Judge, Tirunelveli, Tirunelveli District in S.C.No.239 of 2013 dated 31.10.2019 and set aside the same and consequently acquit the appellant honourably.

For Appellant : Mr.A.Kesavan

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

Crl.A.(MD).No.58 of 2020

Siva

....Appellant/ 7th Accused



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

vs.

State represented by
Inspector of Police,
Valliyoor Police Station,
Valliyoor,
Tirunelveli District.
(Crime No.161 of 2008).

....Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to allow the appeal by calling for the records in the judgment dated 31.10.2019 passed in S.C.No.239 of 2013, on the file of the IVth Additional District and Sessions Judge, Tirunelveli District and set aside the same.

For Appellant : Mr.K.Rajeshwaran

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

Crl.A.(MD).No.150 of 2020

1.Muthupandi @ Arunachala Muthupandi

2.Ganesan @ Katta Ganesan

....Appellants /
Accused No.1 and 6

vs.

State represented by
The Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.
(Crime No.161 of 2008).

....Respondent / Complainant



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

Prayer : Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the entire records pertaining to the judgment delivered by the learned IV Additional Sessions Judge, Tirunelveli District in S.C. No.239 of 2013 vide judgment dated 31.10.2019 and set aside the same and consequently acquit the appellants.

For Appellant : Mr.R.Anand

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

COMMON JUDGMENT

SUNDER MOHAN, J.

The above appeals have been filed challenging the judgment passed in S.C.No.239 of 2013 on the file of the learned IV Additional Sessions Judge, Tirunelveli District, dated 31.10.2019. Crl.A.(MD).No.150 of 2020 is filed by A1 and A6, Crl.A.(MD).No.620 of 2019 is filed by A3 to A5, Crl.A.(MD).No.58 of 2020 is filed by A7 and Crl.A.(MD).No.10 of 2020 is filed by A8.

2. The appellants were convicted for the offence under Section 302 IPC and sentenced to life imprisonment with a fine of Rs.5000/-, in default



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

to undergo two years simple imprisonment, for the offence under Section 365 IPC and sentenced to three years rigorous imprisonment with a fine of Rs.2000/-, in default to undergo one year simple imprisonment, for the offence under Section 147 IPC and sentenced to one year rigorous imprisonment with a fine of Rs.1000/-, in default to undergo three months simple imprisonment and for the offence under Section 201 IPC and sentenced to three years rigorous imprisonment with a fine of Rs.2000/-, in default to undergo one year simple imprisonment.

3. The case of the prosecution is that the deceased Bhagavathy was a friend of A8, Sulthan. They both were in the habit of doing unnatural sex. A1 is working as a driver for one Mani, who owned a Maruti omni van bearing Registration No.TN 72 AZ 0471. Accused Nos.2 to 8 were working as auto drivers near Valliyoor bus stand. On 23.04.2008, the deceased came home for dinner. However, since no dinner was available at home, he went to Valliyoor bus stand at about 9.30 PM to buy food. The accused saw Bhagavathy and conspired to take him so that they can also indulge in unnatural oral sex with the deceased. Since the deceased refused to come along with the accused, A2 to A8 forced the deceased into the Maruti van,



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

which was driven by A1. When the deceased threatened the accused that he would complain to the Police, the accused decided to do away with the deceased. On 24.04.2008 at about 1.00 AM, the accused dropped the deceased. At that time, A6 told the other accused that if they let the deceased go, he would complain to the Police and they would all be in trouble. Therefore, all the accused caught hold of the deceased and banged his head against a wall and when the deceased fell down, took a stone and crushed his head, as a result of which he died. Thereafter, with intention to screen the offence, they took the body of the deceased to a graveyard at Arasakulam and buried it. They had also burnt the dress of the deceased.

4. It is further the case of the prosecution that the family members of the deceased, namely, the sisters P.W.1 and P.W.3, started searching for the deceased. They waited till morning since they thought that the deceased would have gone for a movie in the night. Since the deceased did not turn up, they started searching for him. At that time, P.W.2 is said to have told them that he saw the deceased along with eight accused on the night of 23.04.2008. P.W.1 therefore went to the Police Station at about 2.00 PM on 24.04.2008 and gave a complaint to the respondent stating that the deceased



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

was kidnapped by the accused. The respondent registered the complaint in Crime No.161 of 2008 for the offences under Section 147 and 365 IPC. In the said complaint, P.W.1 had named all the eight accused. On 25.04.2008 at about 11.00 AM, A1 Muthupandi, A2 Lakshmanan and A7 Siva appeared before P.W.12, the Village Administrative Officer and gave an extra judicial confession in the presence of P.W.15, the Village Assistant. Thereafter, P.W.12 produced the accused along with the confession to the Investigating Officer, P.W.17. P.W.17 arrested the accused and recorded the confession of the accused. A1 pointed out the place of occurrence. The Investigating Officer seized two parts of broken skull, a pair of chappals, blood stained earth, granite stone weighing 4 ½ Kilograms, a checked white shirt, a trouser and a black pair of chappals at the scene of occurrence at about 12.45 PM. Thereafter, the Investigating Officer exhumed the body of the deceased in the presence of P.W.11, Tahsildar, on the information given by A1. P.W.14, Doctor, who conducted postmortem, found the following injuries:

“1)Transversely placed cut injury, 6x4 cm seen on the center of epigastric region.

2) Transversely placed cut injury, 3x2 cm seen on the lower



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

thigh (L).

3) Cut injury 2x1 cm below the left knee on the outer aspect.

Head: Asymmetrical. Crush injury to the skull bone, along with the scalp. Skull bones found in pieces. Cranial cavity empty.

Base of skull: seen in pieces. Upper jaw bones found irregularly fractured. Teeth loosened.”

P.W.14, Doctor, opined that, *“the deceased would appear to have died of complications of multiple injuries”*. The Investigating Officer collected other evidence and filed the final report.

5. Before the Trial Court, the prosecution examined 18 witnesses and marked exhibits P1 to P29. The defence had not examined any witnesses. The accused denied the incriminating circumstances put against them under Section 313 CrPC. The Trial Court found that the prosecution had established the case beyond reasonable doubt and convicted and sentenced the accused as stated earlier. A2 died pending the trial. A1, A3 to A8 were convicted and they are before us.

6. The learned counsel for the appellants submitted that

(i) the case based on circumstantial evidence has not been established



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

by the prosecution. The circumstances relied upon by the prosecution are as follows:

- a) the evidence of P.W.1 and P.W.3, who heard from P.W.2 that the deceased was last seen with the accused.
- b) the recovery of the body of the deceased on the confession of A1.
- c) the recovery of broken parts of skull from the scene of occurrence.
- d) the extra judicial confession of A1, A2 and A7 made before P.W.12, Village Administrative Officer.
- e) the opinion of the Doctor that it was a homicidal death.

(ii) The learned counsel submitted that P.W.1 and P.W.3's evidence is hearsay. P.W.2, who is alleged to have told them that he last saw the deceased with the accused, had turned hostile. Therefore, P.W.1 and P.W.3's evidence with regard to circumstances of last seen cannot be accepted.

(iii) The extra judicial confession given to P.W.12, Village Administrative Officer cannot be believed, since Village Administrative Officer had, in his evidence, admitted that the confession was first written by him and thereafter, it was typed at the Police Station. He would further



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

admit that he was not aware as to what was typed at the Police Station. He had signed Ex.P10 and in the confession of the accused at the Police Station. The Village Administrative Officer was treated as hostile partly by the prosecution and was subjected to cross-examination. The learned counsel further submitted that P.W.15, the Village Assistant, had given a totally different version as regards the place where the alleged confession was typed. Hence, no reliance can be placed on the alleged confession given to Village Administrative Officer.

(iv) The learned counsel further submitted that the prosecution had not established that the body exhumed was that of the deceased and the parts of the skull found at the scene of occurrence matched with the exhumed body allegedly found on the confession of A1. Therefore, the circumstances of recovery of body and parts of skull cannot be of any avail to the prosecution.

7. The learned Additional Public Prosecutor for the respondent submitted that even though P.W.2 turned hostile, P.W.1's evidence has to be accepted. She had given complaint immediately after P.W.2 informed her



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

that he saw the deceased with the accused. There was no reason for P.W.1 to falsely implicate the accused. The learned Additional Public Prosecutor further submitted that the first accused pointed out to the Investigating Officer, the scene of occurrence and also the place where the deceased was buried. His knowledge about these two places is a strong circumstance against the accused. The confession given by A1, A2 and A7 before the Village Administrative Officer need not be doubted. It is the case of the prosecution that the Village Administrative Officer had written the confession and thereafter, since his handwriting was not legible, it was typed. This would not affect the voluntariness or the truthfulness of the confession given by the accused. The Doctor had clearly opined that it was a case of homicidal death and all the circumstances put together point out only to the guilt of the accused.

8. Heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the respondent.

9. We find from the prosecution case that the circumstance of last seen together was sought to be established through the evidence of P.W.2.



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

It is the case of the prosecution that P.W.2 informed P.W.1 and thereafter, P.W.1 lodged a complaint on 24.04.2008 at about 2.00 PM. P.W.2 has turned hostile. In such circumstances, the evidence of P.W.1 would be hearsay. We cannot infer last seen from the evidence of P.W.1 and P.W.3. Therefore, the circumstance relied upon by the prosecution has not been established by the prosecution.

10. As regards the extra judicial confession said to have been given to P.W.12, the Village Administrative Officer, we find that P.W.12 was treated hostile on a particular aspect by the prosecution. Be that as it may. P.W.12 had stated in his evidence that he had signed the confession and other documents at the Police Station. The relevant portion of his evidence is extracted hereunder:

“4 vjphpfisAk; fhty; epiyak; mioj;J te;jgpd;G vd; Kd;G fhty; epiyaj;jpy; itj;Jjhd; 29.4.2008 md;W gpwg;gpf;fg;gl;l mj;jhl;rp kw;Wk; xg;Gjy; thf;F%yq;fspy; ehd; ifnahg;gk; nra;Njd; vd;wjhy; rhpjhd;.”

Apart from the above evidence, he had also stated that the confessions recorded by him were typed at the Police Station. P.W.15, who had assisted



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

P.W.12, had come up with another version which is contrary to P.W.12's version and the prosecution case itself. In the light of the above evidences, the extra judicial confessions alleged to have been given by A1, A2 and A7 have to be discarded.

11. The recovery of broken parts of skull and the exhumed body pursuant to A1's confession also does not advance the prosecution case in any manner. The prosecution has failed to establish that the exhumed body belonged to that of the deceased. The Investigating Officer had stated in the cross-examination that the mother of the deceased identified the body based on a tattoo on the hand of the deceased, which reads as “Vuy; mUzhryrhkp”. However, unfortunately, she could not be examined by the prosecution because she died before the trial commenced. However, P.W.1 had not stated in her evidence as to how she identified the accused when his face and head was totally damaged. The prosecution had not conducted any skull super imposition test to fix the identity of the body exhumed. Further, they had also not taken steps to compare the broken parts of the skull found in the scene of occurrence with the skull in the exhumed body.



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

WEB COPY

12. Thus, we are of the view that the prosecution has not conclusively established the circumstances against the accused. In a case of circumstantial evidence, the first step for the prosecution is to conclusively establish the circumstances and then show that the circumstances form a complete chain, which point out only to the guilt of the accused. Since the prosecution in the instant case has not crossed the first step, the appellants are entitled to acquittal.

13. In the result, the Criminal Appeals are allowed and the judgment in S.C.No.239 of 2013 dated 31.10.2019 is set aside. The accused are set at liberty. Bail bonds, if any executed by the appellants, shall stand cancelled. Fine, if any paid by them, shall be refunded.

[G.J.,J.] [S.M.,J]
02.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

WEB COPY

To

- 1.The IV Additional Sessions Judge,
IV Additional Sessions Court,
Tirunelveli District.
- 2.The Inspector of Police,
Valliyoore Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Crl.A(MD)Nos.620 of 2019, 10, 58 and 150 of 2020

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

Lm

Judgment made in
Crl.A.(MD).Nos.620 of 2019, 10, 58 and 150 of 2020

02.02.2023