



Crl.A.(MD)No.106 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.02.2024	13.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

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1.Feroz Ahmaed, S/o.Bashir Ahamed
2.Pandikumar, S/o.Murugesan
3.Francis Prabu, S/o.Philomin Raj

... Appellants / A2 to A4

vs.

State Rep. by
The Inspector of Police,
CBCID Police Station,
Trichy District.
(Crime No.280 / 2009)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C., to call for the judgment dated 22.01.2020, made in S.C.No.164 of 2011, on the file of the III Additional District and Sessions Court, Tiruchirappalli, and set aside the same.

For Appellants	: Mr.N.Anandakumar
For Respondent	: Mr.R.Meenakshi Sundaram Additional Public Prosecutor



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JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

This Criminal Appeal is preferred by A2 to A4 against the conviction and sentence imposed in S.C.No.164 of 2011, dated 22.01.2020, on the file of the learned III Additional District and Sessions Judge, Tiruchirappalli.

2. On receiving information from one Mustafa [P.W.1] regarding missing of his brother Shahul Hameed since 01.03.2009, the respondent Police registered a case in Crime No.280 of 2009 on 03.03.2009 at 14.00 hours. On investigation, the body of the missing person was exhumed from the graveyard at Sangiliandapuram based on the confession statements of the accused persons. On completion of investigation, final report filed against A1 to A4. On committal, in S.C.No.164 of 2011, charges against A1 to A4 for the offence under Section 302 r/w. 34 I.P.C., and for the offence under Section 201 r/w. 34 I.P.C. against A1 to A3 were framed.



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3. The substance of the charges is that all the four accused in furtherance of common intention to murder Shahul Hameed, invited Shahul Hameed to No.34, Subbaiah Street, Sangiliandapuram, Trichy, on 01.03.2009. At about 10.30 p.m., A1 beat Shahul Hameed and strangulated him with hands. Then, A4 caught hold of Shahul Hameed, A2 and A3 tied the neck of Shahul Hameed with a belt and thereby, caused his death. Thereafter, to screen the evidence, A1 took the body of Shahul Hameed to Sangiliandapuram graveyard in his Car along with A2 and A3. A2 brought 5 litres of sulphuric acid. In the graveyard, placed the body of Shahul Hameed in a grave and poured the sulphuric acid over the body and closed the pit. Meanwhile, Francis Prabu (A4), parked the Hero Honda two wheeler bearing Registration No.TN-48-L-1382 near the wine shop, where the deceased usually come to buy liquor.

4. To prove the charges, the prosecution examined 19 witnesses, marked 17 exhibits and 5 material objects. Pending trial, A1 died, hence, the charges against him got abated. The trial Court on appreciating the evidence held them all guilty of offence punishable under Section 302 r/w. 34 of I.P.C. and sentenced them to undergo life imprisonment and to pay fine of Rs.1,000/-, in default, to undergo



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one year rigorous imprisonment. For offence under Section 201 r/w. 34 I.P.C., the trial Court sentenced A1 to A3 to undergo three years rigorous imprisonment and to pay a fine of Rs.500/-, in default, to undergo six months rigorous imprisonment.

5. The appellants herein are Accused Nos.2 to 4. Their contention in the appeal is that, it is a case based on circumstantial evidence. They further contended that, in the absence of direct evidence, the trial Court ought to have exercised more diligence and care in appreciating the testimony of interested witnesses. The deceased is the brother-in-law of the first accused. P.W.1 the de-facto complainant is the brother of the deceased. The F.I.R. was registered for man missing. The body alleged to have exhumed from a graveyard. No evidence to link the accused persons and the body exhumed from the graveyard nearly after six months from the date of missing.

6. The learned counsel for the appellants further submitted that the extra judicial confession alleged to have been given by A1 to the Village Administrative Officer [P.W.9], who has no acquaintance with A1, has been



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heavily relied upon by the trial Court and that the manner in which the said confession was given is shrouded with suspicion. The learned counsel for the appellants further submitted that neither for burying the body in the graveyard nor for exhuming the body, the prosecution able to cogently let in evidence to link the appellants. P.W.10 Village Administrative Officer and his Assistant had not said anything about the presence of the appellants when the alleged skull and bones were recovered from the graveyard. Furthermore, the prosecution has miserably failed to establish that the skull and bones, which exhumed from the graveyard belong to the deceased Shahul Hameed.

7. Per contra, the learned Additional Public Prosecutor submitted that it is case of circumstantial evidence. The circumstance, which has been proved by the prosecution indicate the guilt of the accused without any other hypothesis. P.W.1, the brother of the deceased had categorically deposed that on 01.03.2009 at about 05.00 p.m., his brother borrowed two wheeler of his friend Sheik Dawood and went out, but did not return home. Since Shahul Hameed was very close to John and Napoleon of Trichy, on the next day, he enquired Napoleon, who had informed that he and Shahul Hameed went to the movie on 01.03.2009 and



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returned around 10.00 p.m. When he searched for his brother, the two wheeler, in which, his brother used, was found abandoned near the wine shop. With the help of the duplicate key available with Sheik Dawood, they recovered the vehicle and handed it over to the Ariyamangalam Police Station. On the instruction of the Police, he gave complaint to Gandhi Market Police Station on 03.03.2009. Since there was some money dispute between his brother and brother-in-law of Shahul Hameed, there was suspicion on the brother-in-law of Shahul Hameed namely, Umar Farook [A1]. Further, there was also a misunderstanding between Shahul Hameed and his wife.

8. After filing of Habeas Corpus Petition to bring the person or body of Shahul Hameed, the Police intensified the investigation. While so, the accused surrendered before the Village Administrative Officer. Based on his confession, the body of the deceased Shahul Hameed was exhumed from the place identified by the accused. It was contended by the prosecution that, the Police was able to establish the link between the accused persons through call details, which corroborated the admissible portion of the confession made by the accused. The motive for the murder was well explained through P.W.1 and P.W.2, both brothers



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of the deceased. P.W.3, who is the brother of the first accused, did not support the case of the prosecution. However, one of his friends, Sheik Dawood [P.W.4] from whom, the two wheeler was borrowed by the deceased, had supported the case of prosecution that the vehicle was borrowed by the deceased from him on 01.03.2009 and thereafter, he did not see the deceased and his vehicle was found abandoned near a wine shop and in the pouch of the vehicle, he found Banana, Plastic glass and liquor bottle.

9. Relying upon the evidence of P.W.9 and P.W.10, Village Administrative Officers, the learned Public Prosecutor submitted that though these two witnesses have not spoken specifically about their presence while exhuming the body, they admit about the Mahazar prepared in their presence and the confession statement of the accused recorded in their presence. Therefore, it is the contention of the prosecution that, on cumulative assessment of evidence of these witnesses, it is seen that the accused, who went to the house of the deceased while he was alive, caused death and illegally buried the body in a graveyard. Therefore, the learned Additional Public Prosecutor submitted that the judgment of the trial Court is to be confirmed.



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10. Heard the learned counsel on either side and perused the record.

11. It is a case of circumstantial evidence. The prosecution though had taken all efforts to unravel the mystery as to how Shahul Hameed gone missing from 01.03.2009, they have miserably failed to establish the link between the accused and the presumed dead of Shahul Hameed and recovery of bones from a graveyard. This Court consciously use the expression 'presumed dead', because the skull and bones, which alleged to have been recovered by the Investigating Officer during the course of investigation had not been confirmed to be that of Shahul Hameed. The DNA Report, which is marked as Ex.P16 is inconclusive. No DNA Profile could be obtained from the sample sent for analysis.

12. It is a specific case of the prosecution that after strangulating Shahul Hameed at the house of A1, the body was removed by A1 to A3 in a car and it was buried in a pit at Sangiliandapuram graveyard. How A1 to A3 took the body inside the graveyard, which normally cannot have access without permission of the in-charge of the graveyard and how for more than six months, it was not noticed by the in-charge of the graveyard, all the questions beg answer from the



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prosecution. No one, who is in-charge and accountable for the graveyard, examined to believe the prosecution case that the bones and skull, which the Investigating Officer claimed to have recovered from the graveyard were in fact buried unauthorizedly by A1 to A3.

13. In this regard, the evidence of P.W.9 and P.W.10, who are the witnesses for the recovery gains significance. Their evidence is conspicuously silent about exhumation of the body from the graveyard. Dr.Renugadevi [P.W.16] is the witness, who speak about exhumation. She had conducted postmortem at the graveyard itself. The pit was dug in her presence, where pieces of skull and bones were recovered and sent for DNA analysis. The DNA analysis report says 'inconclusive'. The soil samples collected from the pit did not detect any acid or poisonous substance. Her report Ex.P8 totally falsifies the case of the prosecution that after murdering Shahul Hameed, A1 to A3 took the body to the graveyard, poured 5 litres of sulphuric acid over the body and thereafter closed the pit. Within six months, the entire body had got dissipated and only bones and skull were recovered from the pit. To hold the said bones and skull belong to Shahul Hameed, the prosecution has not let in any evidence.



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14. The theory of the prosecution that the body of Shahul Hameed was soaked with sulphuric acid before closing the grave is found to be false, because, the soil collected from the grave was negative to the test for any acid or poisonous substance. When the very recovery of the body of Shahul Hameed as projected the prosecution itself is found to be doubtful, the other evidence relied by the prosecution has to be totally disbelieved and rejected. To put it in other words, there are many missing links.

15. For the above said reasons, this Criminal Appeal is allowed. The conviction and sentences imposed on the appellants/A2 to A4 by judgment dated 22.01.2020, in S.C.No.164 of 2011, by the learned III Additional District and Sessions Judge, Tiruchirappalli, is set aside and they are acquitted from all the charges. Bail bonds stand cancelled. Fine amount already paid, if any, shall be refunded to them.

Index : Yes / No
NCC : Yes / No
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[G.J., J.] & [C.K., J.]
13.03.2024



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To

- 1.The III Additional District and Sessions Judge,
Tiruchirappalli.
- 2.The Inspector of Police,
CBCID Police Station,
Trichy District.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
C.KUMARAPPAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.106 of 2020

13.03.2024

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