

(2016) 06 MAD CK 0105

MADRAS HIGH COURT

Case No: Criminal Appeal No. 740 of 2013.

Ramesh - Appellant
@HASH State Rep. by
The Inspector of Police,
Tirupur Rural Police
Station, Tirupur District.
[Crime No.5748 of
2010]

APPELLANT

Vs

RESPONDENT

Date of Decision: June 1, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, Section 302, Section 392, Section 449

Citation: (2016) 4 MLJCriminal 266

Hon'ble Judges: S. Nagamuthu and V. Bharathidasan, JJ.

Bench: Division Bench

Advocate: Mr. N. Manokaran, Advocate, for the Appellant; Mr. M. Maharaja, APP, for the Respondent

Final Decision: Allowed

Judgement

S. Nagamuthu, J. - The appellant is the sole accused in S.C. No. 3 of 2012 on the file of the I Additional Sessions Judge, Tirupur. He stood charged for offences under Sections 302, 449, 392 and 201 of IPC. After trial, by judgement dated 21.06.2013, the trial court convicted the accused for offences under Sections 302, 449, 392 and 201 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for three months for offence under Section 302 of IPC; to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,000/- [no default sentence was imposed] for offence under Section 449 of IPC; to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,000/- [no default sentence was imposed] for offence under Section 392 of IPC and to undergo simple imprisonment for

three years and to pay a fine of Rs. 500/- [no default sentence was imposed] for offence under Section 201 of IPC. Challenging the above said conviction and sentence, the sole accused is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows :- The deceased in this case was one Mrs.Mangathal. She was residing at Mangattu Thottam in Kalaipalayam. She was living alone at her house. In that farm, she raised maize crops and after selling the same, she kept cash of Rs. 12,000/- with her. She was wearing a gold ring. She was owning two bangles weighing 1■ sovereigns each. She used to keep the same in the steel bureau at her house.

3. On 19.08.2010, the deceased alone was at her house. On the next day morning, at about 08.00 a.m. she was found dead. The body was found half burnt. P.W.1, the son in law of the deceased, on getting information about the same, rushed to the house of the deceased. After verifying that the deceased was no more, immediately, he went to Tirupur Rural Police Station and made a complaint on 20.08.2010 at 10.30 a.m. P.W.16, the then Sub Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in crime No.5748 of 2010 under Sections 302 and 201 of IPC. Ex.P.12 is the FIR. She forwarded both the complaint-Ex.P.1 and the FIR-Ex.P12 to the court which were received by the learned jurisdictional Magistrate at 06.45 p.m. on 20.08.2010. Then, he handed over the case diary to the Inspector of Police.

4. P.W.19, took up the case for investigation. He went to the place of occurrence at 12.00 noon on 20.08.2010, prepared an observation mahazar (Ex.P2) at the place of occurrence in the presence of P.W.5 and another witness. He prepared a rough sketch also showing the place of occurrence. Then, he recovered a piece of electric silk wire, a piece of white colour blood stained charred in-skirt, an ever silver spatula, a piece of half burnt cloth, a gold ring weighing 3.300 grams, a blood stained gunny bag, a beedi butt, a burnt wax coated match stick, some blood stained cement/plaster flooring and sample cement/plaster flooring under a mahazar (Ex.P3) from the place of occurrence in the presence of the same witnesses. Then, he conducted autopsy on the body of the deceased and prepared an inquest report (Ex.P28). P.W.18, forwarded the body of the deceased to the hospital through a police constable for postmortem and submitted an alteration report.

5. P.W.16, Dr. T. Jeyasingh, conducted autopsy on the body of the deceased at 10.15 a.m. on 21.08.2010. He found the following injuries on the body of the deceased:-

"Appearances found at the post-mortem:-

Skeletonized and charred body of a female aged about 65 years. Finger and toe nails were bluish in colour. Postmortem burns noted all over the body from head to upper half of the both legs. The neck, upper limbs chest and abdomen found almost charred. The pelvic region and upper part of the both thigh found partly charred. Heat fracture noted on

lower end of right humerus and lower end of left tibia. Left upper limb completely charred. Part of the scalp hairs was found singed. Post mortem blisters noted on front of left lower thigh and dorsum of right foot.

The following ante mortem injuries noted on the body:-

- Dried laceration 5 x 4 m noted on right side cheek, on dissection the underlying tissue found contused.

- Dried laceration 4 x 3 cm noted on left forehead just left to midline

- Dried laceration 5 x 4-2 cm noted on left femoral region

- Dried laceration 10 x 5-2 cm noted on right occipital region

- Dried laceration 6 x 1.5-1 cm noted on left forehead and outer aspect of left eye, on dissection the underlying tissue found contused.

- on dissection of Scalp, Skull and Dura: Sub scalp reddish contusion 15 x 10 cm noted on left fronto parieto temporal region and 8 x 7 cm noted on right occipito parietal region. Epidural dried hematoma weighing about 10 grams noted on left fronto temporal region. Brain tissues found cooked and dried. Dura found intact and leathery in nature. Dried superficial blood stains noted on the sub dural and sub arachnoid spaces.

On dissection of neck: Neck muscle found charred which is post mortem in nature, except right sterno clavicle, the underlying small muscles, body of Hyoid bone with right side greater cornu and Larynx & Trachea: Cut section shows mucosa dried and no evidence of soot particles. Fracture noted on upper 3rd of right greater cornu of hyoid bone with surrounding tissue found contused. The left side greater cornu of hyoid bone found charred which is postmortem in nature.

On dissection of thorax: Dried reddish Contusion 3 x 2 cm noted on right side sternum at the level of 5th right rib. All thoracic and abdominal organs found partly charred with leathery in nature over the outer aspect and partly dried and friable over the inner aspect. The abdominal content could not be made out due to partly charred and partly dried and friable in nature. Peritoneal and pleural cavities-empty.

On examination of right leg: The inner and posterior aspect of the muscle found charred which is postmortem in nature. The anterior aspect of the skin muscle found intact. There is no evidence of any electric mark found in the available skin surface. Reddish contusion 3 x 1 cm noted on lateral aspect of right ankle joint."

He preserved right femur and hairs and sent them for D.N.A. profiling. He also preserved skull bone and sent the same for superimposition test. Ex.P.4 is the postmortem. After having received the expert opinion, P.W.16, the Doctor, opined that the death was due to

shock and haemorrhage as a result of injuries found on the neck and head of the deceased. Ex.P.5 is his final opinion.

6. In the course of investigation, P.W.19 examined many more witnesses and recorded their statements. But, no clue was available to unearth the crime. On 21.08.2010, P.W.1 informed P.W.19, the Inspector of Police, that the cell phone of the deceased was found missing. Again, when he examined P.W.1 and his wife, he came to know that cash of Rs. 12,000/- and a pair of gold bangles totally weighing 3 sovereigns were also found missing from the house. Therefore, he altered the penal provisions of the case from under Sections 302 and 201 of IPC into under Sections 302, 201 and 380 of IPC. Until 23.08.2010, he was not able to detect the crime. After him, the investigation was taken over by his successor (P.W.20).

7. P.W.20 examined few more witnesses. He collected the file photograph of the deceased and forwarded the same for superimposition test with the skull of the dead body. The report revealed that the dead body was that of the deceased. But, P.W.20, was not able to detect as to who were the perpetrators of the crime. The investigation was thereafter taken over by P.W.1.

8. P.W.21, in the course of investigation, examined many more witnesses. When the investigation was at the hands of P.W.21, it is alleged that the accused voluntarily appeared before P.W.12, the then Village Administrative Officer, Muthapalayam at 07.30 a.m. and wanted to confess. P.W.18 his Assistant was then by his side. He allowed the accused to confess orally. P.W.12 reduced the said confession into writing. The accused also produced a cell phone (M.O.4) to P.W.12. P.W.12 prepared a special report and then, he took the accused to the police station and produced him before P.W.21 along with the extra judicial confession and the material object. On such production, P.W.21 arrested the accused in the presence of the witnesses. On such arrest, the accused disclosed that he had hidden a pair of bangle at his house. In pursuance of the same, the accused took the police to his house at Harijan Colony, Sakthi Vinayagar Nagar, Koduvoy and produced M.Os.2 and 3 from the place of hide out. P.W.21 recovered the same under a mahazar (Ex.P11). On returning to the police station, he forwarded the accused to the court and handed over the material objects also to the court. Later on, he collected postmortem certificate and examined the doctor who conducted autopsy and recorded his statement. Thereafter, the investigation was taken over by his successor P.W.22. P.W.22 examined the Doctor who conducted autopsy and recorded his further statement. On completing the investigation, P.W.22 laid charge sheet against the accused.

9. Based on the above materials, the trial court framed as many as four charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 20 documents and 7 material objects were marked.

10. Out of the said witnesses, P.W.1 is the son in law of the deceased. He has stated that the deceased alone was residing at her farm house. He has further stated that on 20.08.2010 around 08.00 a.m. on receiving an information that the deceased was found lying dead and the body was half burnt, he, immediately, rushed to the place of occurrence and after verifying the fact, he made a complaint to the police. He has further identified M.Os.2 to 4, besides M.O.1, as properties belonged to the deceased. P.W.2 a neighbour has stated that on 20.08.2010, in the morning, he saw the dead body of the deceased and informed P.W.1. P.W.3 was then working in the farm of the deceased. He has stated that in the usual course on 20.08.2010, he came to the farm and when he went into the house of the deceased, he found the deceased lying dead and he informed the same to others. P.W.4, the daughter of the deceased and wife of P.W.1 has stated that the deceased was living alone in the farm house and on 20.08.2010, she heard that the deceased was found dead with burn injuries. She has further identified M.Os.2 to 4 as that of the deceased.

11. P.W.5 has spoken about the preparation of mahazar and the rough sketch and also the recovery of material objects from the place of occurrence. P.W.6 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.7 has stated that prior to the occurrence, he purchased maize stock from the deceased and paid a sum of Rs. 21,470/- on 02.08.2010 to her. He has further stated that for the purpose of transporting the maize stocks purchased by him, he had engaged a mini lorry in which P.W.8 and the accused were sent as load-men. P.W.8 was one among the load-men. He has also stated so. P.W.9 is a relative of the deceased. He has stated that he saw the accused loading maize onto the lorry on 02.08.2010. P.W.10 has stated that on 19.08.2010 at 09.00 p.m., he found the accused moving somewhere near the place of occurrence. P.W.11, a vendor in the market, has stated that in the usual course he came to the house of the deceased on 20.08.2010 and at that time, he found the dead body of the deceased.

12. P.W.12, the star witness for the prosecution, has spoken about the extra judicial confession made by the accused on 29.10.2010. He has further stated about the disclosure statement made to P.W.21 and the consequential recovery of M.Os.2 and 3. He has further stated that M.O.4, the cell phone was produced by the accused to him. P.W.13 has stated that he saw the accused on 19.08.2010 at 07.00 p.m. somewhere near the place of occurrence. P.W.14 the police constable has stated that he took the dead body of the deceased and handed over the same to the hospital and later on, identified the same, for postmortem. P.W.15 has stated that around 08.15 p.m. on 19.08.2010 he saw the accused moving somewhere near the place of occurrence. P.W.16 has spoken about the registration of the case on the complaint made by P.W.1 under Ex.P.1. P.W.17 has stated that he conducted superimposition test on the skull forwarded for test and found that the file photograph of the deceased tallied with the skull of the dead body. P.W.18, the Village Assistant has stated that when the accused appeared and gave extra judicial confession to P.W.12, he was also present. He has

further stated about the recovery of M.Os.2 to 4. P.Ws.19 to P.W.22 were the investigating officers in the case. They have stated about the investigation done by them respectively and P.W.23 has, apart from the investigation done by him, has spoken about the call details of the cell phone of the deceased collected by him and the filing of charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

14. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement and accordingly sentenced him. Challenging the above said conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

15. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. This is a case based on circumstantial evidence. The first and the foremost circumstance projected by the prosecution is that on 19.08.2010, the deceased alone was at her house in the night. There is no denial of this fact. We do not find any reason to reject the same.

17. The next circumstance is that on 20.08.2010 around 08.00 a.m., the dead body of the deceased was found. P.W.6, the Doctor, who conducted autopsy on the body of the deceased, has opined that the death was due to injuries on her neck and head. We accept the said opinion of the Doctor. From these proved facts, the prosecution has succeeded in establishing that the deceased had died some time between 07.00 p.m. on 19.08.2010 and 07.30 a.m. on 20.08.2010. The prosecution has also succeeded in establishing that the death was a homicide.

18. As we have already narrated above, in Ex.P.1, there was nothing mentioned about the missing of any property from the house of the deceased. For the first time on 21.08.2010, P.W.1 informed the police that the cell phone belonging to the deceased was found missing. Again on the next day, he informed the police that cash of Rs. 12,000/- and a pair of gold bangles weighing 3 sovereigns in total were also found missing. P.Ws.1 and 4 have now reiterated the same in court. Thus, from the evidence of P.Ws.1 and 4, the prosecution has established that in the same transaction in which the deceased was killed, her cell phone, cash of Rs. 12,000/- and a pair of gold bangles weighing 3 sovereigns were also stolen away.

19. From the above narration of the proved facts, it is crystal clear that there has to be a presumption raised that the person who caused the death of the deceased had stolen away M.Os.2 to 4 in the same transaction. To this extent, the prosecution case is clear

and the same has also been established.

20. The next question is as to, who was the perpetrator of the above crime? P.W.19 conducted investigation till 23.08.2010. But, he was not able to detect the crime. From 23.08.2010 onwards and until 18.10.2010, P.W.20 continued the investigation, during which period also, he was not able to detect anything.

21. P.W.21 took up the case for investigation on 18.10.2010. It was only during this period, it is alleged that, on 29.10.2010, the accused had gone to house of P.W.12, the then Village Administrative of Muthupalayam Village, early in the morning and made an extra judicial confession in the presence of P.W.8. But, the learned counsel for the appellant/accused has pointed out that P.W.13 has stated even in chief examination that on 19.08.2010 around 07.00 p.m., he found the accused moving somewhere near the farm of the deceased. Then, on the next day, that was on 20.08.2010, he found the dead body of the deceased. But, according to the case of the prosecution, until 29.10.2010, the involvement of the accused in this crime was not known to anybody. P.W.13 who claims to have seen the accused around 07.00 p.m. on 19.08.2010 did not disclose the same to anybody. In his chief examination, he has stated that within four days from 20.08.2010, when he was asked to come to the police station for interrogation, he went to the police station and while he was interrogated, the accused was very much available in the custody of the police on arrest. Absolutely, there is no explanation for this admission made by P.W.13. This witness was not treated as hostile. Thus, we do not find any reason to reject the evidence of this witness. He has stated that he found the accused in the custody of the police on arrest within four days from 20.08.2010. If this part of the evidence is accepted, then, the story of the prosecution that the accused surrendered before P.W.12 on 29.10.2010, made a confession and also made a disclosure statement to P.W.21 out of which M.Os.3 and 4 were recovered and that the accused produced M.O.2 to the Village Administrative Officer (P.W.12). If the extra judicial confession and the disclosure statement leading to recovery of M.Os.2 to 4 are rejected then, there is no evidence against the accused to connect him with the crime.

22. Of course, P.Ws.7 to 9, have stated that in the month of August, on a previous occasion, that was on 02.08.2010, the accused had come to the farm house of the deceased to load maize stocks which were purchased by P.W.7 from her. Then, P.Ws.10, 13 and 15 have stated that they saw the accused moving in the village between 07.00 p.m. and 09.00 p.m. on 19.08.2010. P.W.13 had seen him at 07.00 p.m.; P.W.15 had seen him between 08.00 a.m. and 08.15 p.m.; and P.W.10 had seen him at 09.00 p.m. on 19.08.2010. According to them, they found the accused so moving in a suspicion circumstance. Had it been true that they had seen the accused on 19.08.2010, between 07.00 p.m. and 09.00 p.m. somewhere near the house of the deceased, after having come to know that the deceased had been done to death, these witnesses would not have kept mum without disclosing the above vital information either to the family members of the deceased or to the police. They are not strangers, they are closely related to the deceased. The very fact that having not disclosed the above vital

information to the police for such a long time until the accused was arrested on 29.10.2010 would falsify their evidences. Therefore, we are unable to act upon their evidences.

23. The learned Additional Public Prosecutor would submit that M.O.4 cell phone was produced by the accused to P.W.12 when he had surrendered on 29.10.2010. But, the fact remains that the ownership of the cell phone has not been proved by collecting necessary documents. Though P.W.21 has stated during cross examination that he knew the IME Number of the cell phone, he did not verify the ownership. P.W.23 has stated that he collected the in-coming and out-going call details for the cell-phone from the service provider. But, the persons, who are competent to speak about the call details have not been examined. Moreover, no certificate has been obtained as required under Section 65-B of the Evidence Act to prove the electronic records as primary evidence. Thus, the evidence of P.W.23 would not in any manner help the case of the prosecution. Thus, there was no investigation to establish the ownership of M.O.4-cellphone. So far as the recovery of M.Os.3 and 4 from the possession of the accused is concerned, as we have already pointed out, it is highly unbelievable. Since the accused was in the custody of the police within four days from 20.08.2010, it is difficult to believe that M.Os.3 and 4 were kept by the accused at his house and they were recovered out of his disclosure statement on 29.10.2010. There are lot of doubts in the case of the prosecution. Thus, we hold that the prosecution has miserably failed to prove the case beyond all reasonable doubts and so, the appellant/accused is entitled for acquittal.

24. In the result, the criminal appeal is allowed. The conviction and the sentences imposed on the appellant/accused are hereby set aside and he is acquitted of all the charges. Fine amount already paid, if any, shall be refunded to him.