

(2016) 06 MAD CK 0167**MADRAS HIGH COURT****Case No:** CRL.A. Nos. 123, 149, 154, 165 and 264 of 2015.

Dinesh (C.A. No. 123/2015/A5) -

Appellant @HASH tate by the
Inspector of Police, Gudiyatham
Taluk Police Station,
Gudiyatham, Vellore District in
all C.As.

APPELLANT

Vs

RESPONDENT

Date of Decision: June 28, 2016**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, Section 201, Section 302, Section 34, Section 364, Section 379

Citation: (2016) 4 MLJ Criminal 394**Hon'ble Judges:** S. Nagamuthu and V. Bharathidasan, JJ.**Bench:** Division Bench**Advocate:** Mr. R. John Sathyan for M/s. M. Kumar, Advocates, for the Appellant in C.A. No. 149/2015; Mr. R. John Sathyan for M/s. G. Vinodhkumar, Advocates, for the Appellant in C.A. No. 123 and 154/2015; Mr. R. John Sathyan for M/s. Swami Subramaniam, Advocates, fo**Final Decision:** Allowed**Judgement**

S. Nagamuthu, J. - The appellants are the accused 1 to 5 in S.C. No. 21 of 2013 on the file of the learned I Additional District and Sessions Judge, Vellore. They stood charged for offences under Sections 120 - B, 364, 302 read with 34, 379 and 201 of IPC. The trial court framed as many as five charges as detailed below :

Sl. No.	Charge Number	Rank of Accused	Penal Provision
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1	Charge No. 1	Accused 1 to 5	120 - B IPC
2	Charge No. 2	Accused 1 to 4	364 IPC
3	Charge No. 3	Accused 1 to 4	302 r/w.34 IPC
4	Charge No. 4	Accused No. 1	379 IPC
5	Charge No. 5	Accused 1 to 4	201 IPC

By judgment dated 25.02.2015, the trial court convicted all the accused and sentenced them as detailed below :

Accused	Conviction	Sentence
A1	Convicted under sections 120-B IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to undergo 3 months rigorous imprisonment.
	Convicted under section 364 of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs. 1000/-, in default, to undergo rigorous imprisonment for two months.
	Convicted under section 302 read with 34 of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/-, in default, to undergo rigorous imprisonment for 6 months.
	Convicted under section 379 IPC	Sentenced to undergo rigorous imprisonment for 3 years.

	Convicted under section 201 of IPC	Sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for 3 months.
A2	Convicted to under A4 section 120-B of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to undergo 3 months rigorous imprisonment.
	Convicted under section 364 of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs. 1000/-, in default, to undergo rigorous imprisonment for two months.
	Convicted under section 302 read with 34 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/-, in default, to undergo rigorous imprisonment for 6 months.
	Convicted under section 201 of IPC	Sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for 3 months.
A5	Convicted under section 120-B of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to undergo 3 months rigorous imprisonment.

Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

(a) The deceased in this case was one Mr. Murugan. He was studying II Year Diploma Course in a Polytechnic at Kudiyatham. P.W.4 was also studying along with the

deceased. The accused 1 to 3 are the neighbours of P.W.4. It is alleged that the accused 1 to 5 had girl friends. It is further alleged that one of the girl friends of the accused was eve-teased by the deceased. The accused, therefore, developed grudges against the deceased. This is stated to be the motive for the occurrence. It is further alleged that all these accused on 17.04.2010 at about 09.00 a.m., near Thattaparai Lake, conspired to kill the deceased. In pursuance of the same, the accused 1 to 4 spoke to the deceased at about 10.30 a.m. on 17.04.2010 and asked him to come to Jangalapalli Bus Stand. Accordingly, the deceased went there in a cycle. Then, the accused 1 to 4 abducted the deceased to Mordhana Dam. It is also alleged that the accused 1 to 4 killed the deceased by pushing him against a Wall. Thereafter, they removed the cycle and the silver waist cord of the deceased, threw the dead body and covered the same with dust and fled away from the scene of occurrence.

(b) According to the further case of the prosecution, P.W.1, the father of the deceased was at his house on 17.04.2010 morning at 10.30 a.m. At that time, the deceased attended a phone call, which came to him. Then, he told P.W.1 that he was going along with his friends to Mordhana Dam. Accordingly, he went in a cycle. Thereafter, the deceased was not seen anywhere. P.W.1 and other family members went in search of him. He could not be found. On 19.04.2010, they went to the Polytechnic College where the deceased was studying. They were informed that the deceased could not come to the college also. Therefore, P.W.1 made a complaint to the Gudiyatham Taluk Police Station on 19.04.2010 at 7.00 p.m.

(c) P.W.14, the then Inspector of Police registered a case in Crime No.79/2010 for "boy missing". Ex.P.18 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 10.30 a.m. on 20.04.2010. Thereafter, P.W.20 took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(d) P.W.13 conducted autopsy on the dead body of the deceased on 21.04.2010 at 12.10 a.m. He found the following :

"A moderately nourished male body symmetrical lying on its back. Blackish upper thorax. Neck and Head upper limbs. Brownish - Abdomen, lower limbs and pelvis. Sexual organs - penetration well developed and found normal. Hair black - Easily pulled out. Tooth are easily pulled out. Upper and lower incisor and canine are absent - upper and lower premolar and molar tooth are present. Maggots - extremely present in orbit, nasal and mouth cavity in the anterior part of neck and upper chest, eyes, nose, mouth on ear floor of mouth - parts of neck anterior to cervical vertebrae are decomposed. Lot of maggots are moving around. Eyes, nose, mouth and its contents such as tongue, lips, floor of mouth-parts of neck anterior to cervical vertebrae are missing.

External Injuries : Lower end of $\frac{1}{3}$ right humerus is seen - open wound decomposed. Other wounds not able to make out due to decomposition and moving maggots all around the area. Mandible seen without soft tissue. Both clavicle and aversed from sternum are present.

Internal Examination:

Neck - Decomposed, sutures could not be identified. Only maggots are moving around. Searched for hyoid bone. Some firm tissues are collected and sent for hyoid bone analysis.

Thorax : Both clavicle are detached from sternum and seen aversed from sterno clavicle. There is fracture of 1, 2, 3, 4, 5 RIBS at anterior parts of $\frac{1}{3}$ side. Due to decomposition, mass about 100 gms are present. Heart about 50 gms found.

Abdomen : Stomach contains partially digested rice particles about 100 gms. Liver decomposed - 300 gms. Spleen - 30 gms.

Intestine preserved for examination. Scalp decomposed. Skull - No fracture seen - No brain tissue and covering seen - only many maggots are present. No fracture on the base of skull."

He gave opinion that the death of the deceased was due to the fracture of the multiple ribs and the consequential injuries to the lungs which had resulted in shock and hemorrhage. He further opined that the death would appear to have occurred within 3 to 4 days prior to the date of postmortem.

(e) When the investigation was in progress, it is alleged that the accused 1 and 2 surrendered before P.W.6, the local Village Administrative Officer on 23.04.2010 at 07.00 a.m. He took them to P.W.14 and produced them.

(f) P.W.14 arrested the accused 1 and 2. The 1st accused gave a voluntary confession in which he disclosed the place where he had hidden a cycle and two pieces of waist cord. In pursuance of the same, the 1st accused took the police and the witnesses to the place of hide out and produced M.O.1 Cycle and M.O.2 two pieces of a single waist cord made up of silver and the 2nd accused also gave a voluntary confession out of which no recovery of anything was made. Then, he arrested the accused 3 to 5 on the same day at 3.45 p.m. He forwarded all the accused to court and finally, he laid charge sheet against all the five accused.

3. Based on the above, the trial court framed charges as detailed in the first paragraph of the judgment. They denied the same. In order to prove the case, on the side of the prosecution, 15 witnesses were examined and 21 documents and 10 material objects were marked.

4. Out of the said witnesses, P.Ws.1 to 3 are the father, mother and brother respectively of the deceased. They have stated that the deceased left the house on 17.04.2010 around 10.30 a.m. by informing them that he was going to Mordhana

Dam. Thereafter, he did not return. Then, the complaint was made on 19.04.2010 at 07.00 p.m. P.W.4 is a friend of the deceased. He has stated about the eve - teasing made by the deceased against one of the girl friends of the accused. According to him, on 17.04.2010, around 11.00 a.m., he was waiting for a bus at Chella Sempalli Bus Stand. At that time, the accused 1 to 4 and the deceased were proceeding in cycles. When he enquired, they told that they were going to Mordhana Dam. P.Ws. 5, 7, 8 and 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 the Village Administrative Officer has stated that the accused 1 and 2 surrendered before him on 17.04.2010 at 7.00 a.m. and then, he produced them before the police. P.W.10, who is the brother-in-law of the deceased, has also spoken about the motive. P.W.11 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and also the recovery of the material objects like blood stained earth, sample earth, the black colour chappals of the deceased, a knife, spade with handle and a crowbar. P.W.12 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.13 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.Ws.14 and 15 have spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused 313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the Trial Court convicted all the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

6. We have heard the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. This is a case based on circumstantial evidence. The first and foremost circumstance projected by the prosecution is that the deceased left his home at 10.30 a.m. on 17.04.2010. He told P.Ws.1 to 3 that he was proceeding to Mordhana Dam with his friends. Thereafter, he was not seen. His dead body was only found on 23.04.2010 around 02.00 p.m. Thus, the prosecution has clearly established that the deceased died somewhere between 10.30 a.m. on 17.04.2010 and 02.00 p.m. on 23.04.2010. Thus, the prosecution has established that the death of the deceased was due to homicide.

8. Now, the question is as to who caused the death of the deceased. In order to prove this circumstance, the prosecution relies on the evidence of P.W.4, a friend of the deceased, who has stated that he saw the accused 1 to 4 along with the deceased at Chella Sempalli Bus Stand. All were going together in cycles. In our considered opinion, this circumstance, even assuming to be true, cannot go to conclusively prove that these four accused, namely, A1 to A4 were responsible for the death of the deceased. After all, they were all friends.

9. P.W.6 is the Village Administrative Officer. He has stated that on 23.04.2010 at 7.00 a.m., the accused 1 and 2 surrendered before him and confessed to the guilt. But, P.W.6 had not recorded the said statements. As rightly pointed out by the learned Counsel for the appellants, P.W.1 during cross - examination has admitted that on 22.04.2010 itself, all the five accused were kept in the police custody in the police station. He identified them in the police station. P.W.2 has stated that within 2 or 3 days of the making of the complaint, she found all the four accused in the police station in custody. She has further stated that the cycle as well as the waist cord were also there at the police station at that time. Thus, it has been established by the accused that they were kept in the police station in police custody as early as on 22.04.2010 itself. Therefore, the story of the prosecution that the accused 1 and 2 voluntarily surrendered before P.W.6 on 23.04.2010 cannot be believed.

10. It is the further case of P.W.6 that he produced the accused 1 and 2 before P.W.14. P.W.14 has stated that on the confession given by the 1st accused, the cycle belonging to the deceased and the waist cord belonging to the deceased were recovered. This also cannot be believed, because, the accused were in custody of the police from 22.04.2010 onwards. Further, P.Ws.1 and 2 have admitted that when they saw the accused in the police station, the cycle and waist cord were also shown to them by the police. Thus, P.W.2 has specifically stated that on 22.04.2010, she identified all the five accused as well as the cycle and the silver waist cord at the police station. Therefore, the theory of the prosecution that these material objects were recovered on the disclosure statement made by the 1st accused cannot be believed. If these evidences are disbelieved, we find no other evidence against the accused. But the trial court convicted the accused on mere surmises which is not permissible in law. For these reasons, we hold that the prosecution has failed to prove the case beyond all reasonable doubts and therefore, the appellants are entitled for acquittal.

11. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/accused 1 to 5 are set aside and they are acquitted. The bail bonds, if any, executed by the appellants, shall stand cancelled. The fine, if any, paid by the accused, shall be refunded to the respective accused.