**(2010) 07 MAD CK 0307**

**Madras High Court (Madurai Bench)**

**Case No:** Criminal A. (MD) No. 88 of 2009

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| Murugan @ Amman Thoppu<br>Murugan @ Eral Murugan | | APPELLANT |
| | Vs | |
| State | | RESPONDENT |

**Date of Decision:** July 1, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34, 342, 364, 392

**Hon'ble Judges:** M. Duraiswamy, J; M. Chockalingam, J

**Bench:** Division Bench

**Advocate:** S. Muthalraj, for the Appellant; N. Senthurpandian, Additional Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

**Judgement**

M. Chockalingam, J.

Challenge is made to a judgment of the Additional Sessions Division, Fast Track Court No. I, Tuticorin, made in S.C. No. 129 of 2007 whereby the accused/appellant stood charged under Sections 342, 392 read with 396, 364 read with 34 and 302 read with 34 of IPC, tried, found guilty under Sections 392, 364 read with 34 and 302 read with 34 of IPC and awarded 10 years Rigorous Imprisonment along with a fine of Rs. 1,000/- and default sentence u/s 392 IPC, 10 years Rigorous Imprisonment along with a fine of Rs. 1,000/- and default sentence u/s 364 read with 34 of IPC and life imprisonment along with a fine of Rs. 1,000/- and default sentence u/s 302 read with 34 of IPC.

2. Short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W.35 was carrying on his brick chamber in front of which the deceased Dhanasekaran was also having his brick chamber. Three months prior to the occurrence, P.W.7 complained to the deceased that A-1 Subramani @ Subri beat

him. On hearing this, the deceased asked A-1 to tender apology. P.W.30, a car broker, transacted car purchase for A-1 under the agreement Ex.P16. P.W.36 was using the same. While it was being actually taken for sand theft, it was recovered by P.W.6 Tahsildar. The same was also handed over to P.W.39, the Sub Inspector of Police, Eral, who registered a case in Crime No. 286 of 2005 as found in Ex.P22, the FIR. A-1 had an impression that it was actually done by the deceased. The appellant was employed under A-1. He borrowed Rs. 15,000/- from P.W.8. When the amount was not returned, a complaint was given by the deceased on behalf of P.W.8 to the police, and thus the appellant/accused developed animosity against the deceased.

(b) While the matter stood thus, on the date of occurrence, i.e., 3.9.2005, the deceased who was working in his brick chamber, left the same at about 10.45 P.M., towards his house in his M.O.1, motorbike. At about 11.45 P.M., P.W.10, who was going along with his friend in a motorbike, found the deceased in the company of all the three accused. Thereafter, at about 12.15 A.M., P.Ws.11 to 14 have seen all the three accused and also the deceased travelling in a motorbike together. The deceased did not come home.

(c) On 4.9.2005 at about 7.30 A.M. on the western side of Tuticorin - Tirunelveli Main Road the dead body of the deceased was found by P.W.17, the Village Menial, who informed to P.W.16, the Village Administrative Officer. On verification, P.W.16 proceeded to the respondent police station and gave Ex.P1, the complaint, to P.W.40, the Sub Inspector of Police, who in turn registered a case in Crime No. 674 of 2005 u/s 302 of IPC. The printed FIR, Ex.P23, was despatched to the Court through a Constable.

(d) P.W.45, the Inspector of Police of that Circle, on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P2, and also a rough sketch, Ex.P33. He also recovered M.Os.13 to 15 from the place of occurrence. Then he conducted inquest on the dead body in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P34. The dead body was sent to the Government Hospital for the purpose of autopsy.

(e) P.W.33, the Medical Officer, attached to the Department of Forensic Medicine, Thoothukudi Government Medical College, Thoothukudi, on receipt of the requisition, conducted autopsy on the dead body of Dhanasekaran and has issued a postmortem certificate, Ex.P21, with his opinion that the deceased would appear to have died of shock and haemorrhage due to heavy cut injury to neck.

(f) Pending investigation, the Investigator arrested A-1 on 17.9.2005. He gave a confessional statement voluntarily, which was recorded. The admissible part is marked as Ex.P6, pursuant to which he produced M.O.17, cash of Rs. 15,000/-, which was recovered under a cover of mahazar, Ex.P7. M.O.16, cell phone, M.O.18, motorbike, M.O.19, towel, and M.O.1, motorbike, produced by him, were also

recovered under a cover of mahazar. Following the same, the present appellant was arrested on 18.9.2005, when he came forward to give a confessional statement. The same was recorded. The admissible part is marked as Ex.P26. Following the same, he produced M.O.2, cell phone, M.O.23, shirt, and M.O.24, lunghi, which were recovered under a cover of mahazar. On the same day, A-2 was arrested when he gave a confessional statement. The same was recorded. All of them were sent for judicial remand.

(g) The test identification parade was conducted pursuant to the requisition made, as per the orders of the Chief Judicial Magistrate by P.W.32, Judicial Magistrate No. I Kovilpatti. The identification parade proceedings are marked as Ex.P19. P.W.46, the Inspector of Police of that Circle, took up further investigation and on completion of the same, filed the final report.

3. Before the matter was committed, one of the accused namely A-1, died and so far as A-2 was concerned, he also absconded. Then the case was split up in respect of A-3, the present appellant. The case was committed to Court of Sessions, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 46 witnesses and also relied on 37 exhibits and 30 material objects. On completion of the evidence on the side of the prosecution, the appellant was questioned u/s 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which he flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced on either side, and took the view that the prosecution has proved the case beyond reasonable doubt and hence found him guilty and awarded the punishment as referred to above. Hence this appeal at the instance of the appellant.

4. Advancing arguments on behalf of the appellant, the learned Counsel Mr. S. Muthalraj has made the following submissions which, according to him, would suffice to set aside the judgment of the trial Court.

(i) The case of the prosecution was that on 3.9.2005 during night hours, A-1 to A-3 have abducted the deceased and also caused his death, and it was also a murder for gain. Even as per the prosecution case, A-1 and A-2 had a grudge, and they were on inimical terms since they had got sufficient motive. But, insofar as A-3, who is the present appellant, no motive was attributed at all. What was all brought to the notice of the trial Court was that he was only an employee of A-1. Except this, there was nothing available to the prosecution to attribute anything against him, and hence it was a case where A-3 had no motive.

(ii) Apart from the above, it was a murder for gain. But, nothing has been recovered from him. No cash was recovered from him. What was recovered from him even as per the prosecution case was only a cell phone, M.O.2, shirt, M.O.23, and lunghi, M.O.24. Thus the prosecution could not establish the fact that the appellant had got anything to do or role to play in the alleged murder for gain.

5. The learned Counsel would further submit that as far as the last seen theory is concerned, P.W.10 to 14 have nowhere stated that the accused travelled along with the deceased in a motorbike; that they have categorically stated that he also went in another motorbike and thus it would be quite clear that the last seen theory cannot be applied to him.

6. Added further the learned Counsel that all the witnesses have seen them in a junction which was actually proceeding between Tirunelveli and Tiruchendur near a Chemical Factory; but the place where the dead body was found is actually situated at Tirunelveli and Tuticorin Main Road and thus the last seen theory cannot be applied to the present facts of the case; that under the circumstances, the prosecution has miserably failed to bring home either the involvement or the guilt of the accused/appellant; but the trial Court has taken an erroneous view and found him guilty, and hence the judgment of the trial Court has got to be set aside and the appellant be acquitted.

7. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

8. It is not in controversy that one Dhanasekaran, the husband of P.W.2, was done to death in an incident that had taken place in the night hours of 3.9.2005. Following the inquest made and the preparation of the inquest report by the Investigator, P.W.45, the dead body was subjected to postmortem by P.W.33, the Medical Officer. The Doctor has given a categorical opinion before the trial Court as a witness and also through the contents found in the postmortem certificate, that he died out of shock and haemorrhage due to heavy cut injury to neck. Thus the prosecution has proved the fact that he died out of homicidal violence as rightly recorded by the learned Judge of the trial Court.

9. In order to substantiate the charges levelled against the appellant/accused, the prosecution had no direct evidence to offer. On scrutiny of the available materials, this Court is of the considered opinion that the prosecution had suffice evidence to indicate the same. It is not that this Court is unmindful of the caution made by the Apex Court and also by the rulings of this Court that in a given case where the prosecution rests its entire case on the circumstantial evidence, it must place and prove all necessary circumstances which must not only constitute a chain without a snap, but also be pointing to the hypothesis that except the accused no one could have committed the offence. Even after the application of this settled principle of law, this Court is satisfied that the prosecution has proved the guilt of the accused. The following circumstances are noticed by the Court.

10. The first circumstance is the last seen theory spoken to by P.Ws.10 to 14. All the witnesses are actually strangers. P.W.10 has spoken to the fact that at about 11.45 P.M., he saw all the accused persons going in a motorbike along with the deceased; that they were all travelling in two motorbikes and all the three accused persons and

the deceased were actually found. Apart from the said witness, P.Ws.11 to 14 have categorically stated in one voice that at about 12.15 A.M., the deceased was actually taken in a motorbike by A-1 and A-2, and A-3, who is the appellant herein, was also going in another motorbike, and they have all witnessed the same. At this juncture, the contention put forth by the learned Counsel for the appellant is that P.Ws.10 to 14 have nowhere spoken to the fact that the accused has actually travelled in the same motorbike along with the deceased during night hours and that too in the witch hour, all the accused persons have travelled in two motorbikes, and A-1 and A-2 have actually taken the deceased in the motorbike. It is pertinent to point out that all the witnesses have been taken for the test identification parade, and it was conducted by the Judicial Magistrate No. I, Kovilpatti, examined as P.W.32, and the identification parade proceedings have been marked as Ex.P19. No infirmity or illegality is noticed or brought to the notice of the Court. In that identification parade, which was done within a reasonable time, all the witnesses have clearly identified A-3 who is the appellant before the Court. Now, at this juncture, it remains to be stated that all the witnesses are actually strangers and not in any way interested either in the deceased or in any way inimical to the appellant. Under the circumstances, the learned trial Judge was perfectly correct in accepting the evidence of these witnesses and has also accepted the last seen theory.

11. Added circumstance is the recovery of M.O.2, cell phone, M.O.23, shirt, and M.O.24, lunghi. They were all actually recovered from the present appellant. It was the appellant who at the time of arrest, gave a confessional statement voluntarily, and the same was recorded in the presence of witnesses. One of the witnesses to the said statement has also been examined in whose presence the appellant/accused has produced M.Os.2, 23 and 24. P.W.1, the close relative of the deceased, has identified that all these material objects belonged to the deceased. Once all these clothes were worn by the deceased and also the cell phone, M.O.2, happened to be in the custody of the appellant, it is for him to explain how he came into custody of these material objects which belonged to the deceased. The arrest, confession and also recovery of these items which belonged to the deceased and are found to be in the custody of the appellant would also be pointing to the nexus of the appellant with the crime. Thus it can be well stated that the last seen theory and also the recovery of the above material objects which were actually in the custody of the appellant/accused and produced pursuant to his confessional statement, would suffice pointing to the guilt of the accused.

12. The contention put forth by the appellant''s side that no specific motive is attributed cannot be countenanced, and the appellant was actually employed during the relevant time under A-1, and apart from that, no cash or anything has been recovered from him, though it was a case of murder for gain cannot be countenanced. In the instant case, cash of Rs. 15,000/- was actually recovered from A-1 at the time of his arrest and pursuant to the confessional statement made by him. Now the contention put forth by the learned Counsel for the appellant do not

carry merit whatsoever. In the case on hand, though the prosecution rested its case on the circumstantial evidence, the above two circumstances, in the considered opinion of the Court, are so strong enough pointing to the involvement of the appellant/accused in the murder in question. Under the circumstances, the learned trial Judge was perfectly correct in coming to the conclusion and finding him guilty under the above provisions of law and awarding the punishment referred to above. This Court is unable to see anything to disturb either factually or legally, the judgment of the trial Court.

13. In the result, this criminal appeal fails, and the same is dismissed.