



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.12.2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

Criminal Appeal Nos.39, 584 and 853 of 2002

R.Ganesan	..	Appellant in C.A.No.39 of 2002
Kanagaraj	..	Appellant in C.A.No.584 of 2002
Marimuthu	..	Appellant in C.A.No.853 of 2002

-Vs-

State rep. by
Inspector of Police,
B8, Variety Hall
Police Station,
Coimbatore. .. Respondent in all the three C.As.

Criminal Appeals against the judgment dated 31.10.2001 rendered in S.C.No.86 of 2001 on the file of II Additional Sessions Judge, Coimbatore.

For Appellant in C.A.39/2002	: Mr.T.Jaishankar
For Appellant in C.A.584/2002	: A.S.Chakravarthy
For Appellant in C.A.853/2002	: Mr.V.Sairam,
For Respondent	: Mr.E.Raja, Addl.P.P.

COMMON JUDGMENT

V.KANAGARAJ, J

The above Criminal Appeals have been preferred against the judgment dated 31.10.2001 rendered in S.C.No. 86 of 2001 by the Court of II Additional Sessions Judge, Coimbatore, thereby convicting the appellants/accused for the commission of offences punishable under Sections 302 read with 34 and 392 I.P.C. and sentencing them to undergo imprisonment for life for the offence under Section 302 r/w 34 I.P.C. and to undergo rigorous



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imprisonment for five years and each of them to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 392 I.P.C. further directing the sentences to run concurrently.

2. The case of the prosecution is that A1 to A3 are friends; that the deceased Srinivasan is the goldsmith and he originally belonged to Andipatti but he was staying at Coimbatore at the scene of occurrence in the second floor of the building where the occurrence took place;; that on 29.8.2000 at about 4.30 a.m. A1 to A3 assembled at the scene of occurrence with the common intention to commit murder of Srinivasan and to commit theft of gold jewels and they knocked at the door and when Srinivasan opened the door, A2 closed the mouth of Srinivasan with his hands, A3 assaulted him with 'Thottilkattai' on the head of Srinivasan, and further caught hold of the hands of Srinivasan and pushed him into the bathroom. In the course of the same transaction A1 tied the legs of Srinivasan with a piece of bed-sheet, A3 tied his hands from the backside with another piece of bed-sheet and thereafter A1 strangled the the said Srinivasan with a piece of bed-sheet with intention to kill him, as a result of which the victim Srinivasan died of asphyxia due to compression of the neck; that immediately after the said act the accused committed theft of 191.8 grams of gold jewels belonging to the deceased Srinivasan and hence, the charge for the commission of offence punishable under Sections 302 r/w 34 I.P.C and 392 I.P.C.

3. The Court of II Additional Sessions Judge, Coimbatore, having conducted a trial in which the prosecution has brought forth oral and documentary evidence and the material objects, of which for the oral evidence 15 witnesses have been examined as P.Ws. 1 to 15 and for documentary evidence 28 documents have been marked as Exs. P.1 to P28, besides marking 25 Material Objects as M.Os. 1 to 25 in proof of the case of the prosecution to the standards required under law that is 'proof beyond reasonable doubts' and having appreciated the evidence placed on record the Court of II Additional Sessions Judge, Coimbatore, had ultimately arrived at the conclusion held the appellants/accused No. 1 to 3 guilty of the commission of offences under Sections 302 r/w 34 and U/s 392 I.P.C. and had sentenced them as aforementioned.



4. It is only challenging the said conviction and sentence as arrived at and ordered by the Court of II Additional Sessions Judge, Coimbatore, as per its judgment dated 31.10.2001 the above convicts 1 to 3 have come forward to prefer the above Criminal Appeals each independently on certain grounds as brought-forth in the grounds of Appeals such as that the Court below failed to see that the prosecution has not brought home the guilt of the appellants beyond all reasonable doubts; that the Court below has further failed to seen that each and every circumstance relied on by the prosecution does not point to the guilt of the appellants; that the court below erred in convicting the appellants merely on the basis of alleged recovery of jewels and on the basis of confession statement of the co-accused; that the court below ought to have seen that the appellants have been falsely implicated and convicted without any material whatsoever. On such grounds, the appellants would ultimately pray to set aside the conviction and sentence passed at by the trial Court in its judgment and would pray to set them at liberty.

5. Heard the learned counsel appearing on behalf of the appellants and the learned Additional Public Prosecutor appearing on behalf of the respondent State.

6. During arguments, learned counsel appearing on behalf of the appellants besides narrating the facts and events as it has been put forth on the part of the prosecution before the Court below would also point out certain vital aspects encircling the oral and documentary evidence, particularly pointing out that the trial Court has based its conviction and sentence depending wholly on the circumstantial evidence of P.W.2, P.W.3 and P.W.4; that the facts disclosed do not constitute an offence under Section 302 r/w 34 I.P.C. especially when the accused persons were not seen with the deceased by any witness of the prosecution; that since the deceased's room was locked by P.W.4 and the key was given to the deceased, there is no evidence regarding the entry of the deceased into his room on a specific time by any witness; that admittedly the entire case was charge-sheeted only on the basis of the circumstantial evidence and there is no eye-witness to the alleged occurrence said to be committed by the accused; that mere recovery of articles on the basis of confessions given by the appellants itself can not be the sole ground to prove the charges framed



against them unless reliable and cogent evidence has been let in by the prosecution against the accused to prove their guilt; that in this case the alleged recovery said to be made by the respondent at the instance of A-1 from the house of A-3 create doubts as to the genuineness of the story of the prosecution; that when the entire case is based on the circumstantial evidence and there is no eye witness to the alleged occurrence, the duty of the prosecution to prove the charges framed against accused by way of cogent and chain of circumstances without leaving to any doubt and the same should be proved beyond all reasonable doubts as laid down by the highest court of this land; that the evidence of P.W.7 is totally contradicted from his statement before the respondent since he is said to have heard the alleged occurrence from the A-1 much earlier than the first informant P.W.1 and his evidence is only in the nature of extra judicial confession; that whether the deceased was in the habit of locking the door from inside while he was sleeping in the night was not mentioned; that if the door has a locking facility inside the room, the accused persons entry is not at all possible in the early morning; that since the other inmates are there both in the first floor as well as in the second floor, if the inside lock was broken open by the accused persons, it must be heard by the inmates; that the prosecution failed to explain how the accused persons entered the room to commit the murder; that the prosecution miserably failed to enquire the neighbours and inmates residing in the first and second floors especially when the occurrence took place in the early morning at 5. a.m.

7. The learned counsel would further submit that P.Ws. 2 and 3 are the persons who have seen the accused immediately after the commission of the offence on 29.8.2001, but P.W.1 gave complaint only on 31.8.2001 and strangely P.Ws. 2 and 3 have been examined by the police only on 3.9.2001 and 4.9.2001; that from the statement whether he saw the accused after the commission of offence must be known to the persons those who are the occupants of the neighbouring rooms of the deceased, but no one was examined immediately; that according to P.W.9 on 20.8.2000 he handed over 285.79 grams of gold and placed orders with the deceased Srinivasan for manufacture of 145 ear-studs each weighting 2 grams, but in Ex.P.10 it is mentioned as 244.31 grams; that this difference would give doubt in the case of prosecution; that according to the prosecution with the aid of



'Thotttil Kattai' A3 assaulted on the head of the deceased, strangely neither the 'Thotttilkattai' nor the blood-stain was sent for chemical examination; that no jewel was recovered from A3; that just to link the person with the evidence they recorded the statement and recovered 'Thotttilkattai' that is not relevant to the offence at all; that the jewels recovered from the accused are not identified by any person even through P.W.9 who is alleged to have given gold to the deceased or through P.W.4 who assisted the deceased in making the jewels; that the prosecution never tried to identify the jewels through P.W.4; that according to prosecution one Nazar was employed to break-open the lock of the door, but he was not examined by the prosecution. On such arguments, they would pray for acquittal of the appellants.

8. The learned counsel for the appellants would also cite the following judgments reported in

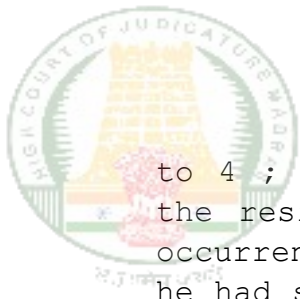
(i) 2001(3) SCC 451 (Kanthai Mishra alias Kanthaiya Misra v. State of Bihar)

(ii) 2001(8) SCC 722 Limbaji & Others v. State of Maharashtra)

(iii) 2003 CCR 20 (SC) (Kantilal @ K.L.Gordhandassoni v. State of Gujarat)

9. So far as the first judgment cited above is concerned it is held therein:

" Circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that the same is wholly inconsistent with innocence of the accused and is consistent only with his guilt. The incriminating circumstances for being used against the accused must be such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In a case of circumstantial evidence the whole endeavour and effort of the court should be to find out whether the crime was committed by the accused and the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the accused. If the circumstances proved against the accused in a case are consistent either with



to 4 ; that P.W.2 has seen the accused 1 to 3 coming out from the residence of the deceased Srinivasan immediately after the occurrence; that the specific evidence of P.W.2 would show that he had suspicion over the accused; that P.W.4 is none other than the brother of A1 who was working with the deceased for some time and demanded money for his marriage expenses, for which his master refused and in that situation A1 had the motive against the deceased; that A2 and A3 are the friends of A1; that P.W.7 is the important witness with whom A1 gave extra judicial confession on 29.8.2000.

13. The learned Additional Public Prosecutor would further submit that murder and robbery are the integral parts of transaction and that both cannot be separated. It is for the accused to explain about the possession of articles belonging to the deceased as contemplated under Section 114A and 106 of Evidence Act. At this junction he would cite a decision of the Hon'ble Apex Court reported in 2001(1) SCC Criminal 323 (Gura Singh v. State of Rajasthan) wherein it is held:

"Extra judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. That the evidence in the form of extra judicial confession made by the accused to witness cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be found on such evidence alone. It is not open to the court trying the criminal case to start with a presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witness who speak for such a confession."



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"The retraction of extra judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. An unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised."

On such arguments, the learned Additional Public Prosecutor would pray for dismissal of the above Criminal Appeals.

14. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for all the appellants in the above Criminal Appeals and the learned Additional Public Prosecutor contra, what could be assessed from the facts and circumstances of the case and in evidence is that it is a case of murder for gain in which the occurrence has taken place on 29.8.2000 at 4.30 a.m. and the accused were the appellants/convicts 1 to 3 who are friends of whom the first appellant Ganesan was once employed by the deceased in his jewellery business. Since the appellant Ganesan demanded money for the expenses of his ensuing marriage and the same having been denied by the deceased Srinivasan, aggrieved he enlisted the other two appellants and all the three joining hands with each other having gone to the place of residence cum business and with intent to cause his murder and rob the jewels, on 29.8.2000 at 4.30 a.m. they having knocked at the doors of



the deceased, the moment the deceased Srinivasan opened the same, the second appellant having closed his mouth with his hands, the third appellant assaulted him with the 'Thottilsattam' on his head and further holding his hands from behind pulled him inside the bathroom when the first appellant tied his legs, the third appellant tied his hands from behind, and with the common object of causing murder of the deceased Srinivasan while the first appellant held his legs, the second and third appellants strangled him to death by a piece of bed-sheet cloth, thus all the three appellants who were the accused Nos. 1 to 3 respectively before the trial Court became liable to be prosecuted and punished for the commission of the offence under section 302 r/w Section 34 I.P.c. and on the same date, place and time and in the course of the same transaction the appellants/accused 1 to 3 robbed all the gold studs weighing 191.9 grams, thus, the appellants 1 to 3 became liable to be punished for the commission of the offence under Section 392 I.P.c.

15. As already seen above, the prosecution whose duty it is to prove its case beyond all reasonable doubts has examined 15 witnesses, and marked 28 documents besides marking 25 material objects in proof of the case to the standards required under law, in appreciation of which in the context of the facts and circumstances of the case of the prosecution and in application of the law on the subject, the trial court has arrived at the conclusion to convict and sentence all the three appellants herein in the manner aforementioned. It is only testifying the validity of the judgment of the lower Court, the appellants have come forward to prefer the above appeals on certain grounds as brought forth in the memorandum of the appeals.

16. A careful perusal of the judgment of the trial Court would reveal that the said court having traced the facts pleaded in the case of the prosecution and thereafter assessing the evidence adduced by each and every witness and the documentary evidence and the material objects placed on record through those witnesses examined and framing its own points for consideration would also start bringing the circumstances encircling the whole of the prosecution case as revealed through all the materials placed on record such as P.W1 the owner of the building wherein the deceased was a tenant having gone to the place of residence



of the deceased in the second floor as usual on 31.8.2000 and since the door was locked from inside he had looked inside through the window, when he sensing a bad smell, with the help of two other persons, he would lodge the complaint in Ex.P1 to the police. The trial Court would also establish the identity of the deceased through P.W1's evidence. P.W.15 the Inspector of Police and Investigating Officer then visiting the spot having made arrangements to break open the door would see inside, the body of the deceased Srinivasan his hands, legs and neck tied with rope and the body was in a decomposed state.

17. The lower Court would also trace the events that followed, P.W.15 initiating such measures to hold the inquest, conduct the post-mortem through P.W.11 and would obtain P.13 Post-mortem Certificate and would carefully go into the opinion offered by the expert medical witness to the effect that the deceased would appear to have died by 48 to 72 hours prior to the autopsy due to asphyxia due to compression of the neck and therefore, easy conclusions have been arrived at by the trial Court that the death of the deceased was not natural but homicidal.

18. The trial Court would then go into the other aspects revealed through the investigation by P.W.15 in the examination of the witnesses and while the Investigating Officer was on the search with the help of the local Village Administrative Officer and his assistants he was able to cause the arrest of the first and second appellants and recording their confession statements, would cause recovery of M.O.3 cycle under the cover of Ex.P4 mahazar and thereafter recovery of M.O.7 series numbering 30 kept inside M.O.4 resin bag and M.O.8 series numbering 36 and the M.O.9 series numbering 42 and M.Os. 10 to 12 series under the cover of Ex.P5 mahazar and thereafter would recover M.Os. 13 series numbering 14 and M.O.15 series numbering 50 from the residence of the second appellant under the cover of Ex.P16 recovery mahazar.

19. The learned trial Judge would then focus his attention on the vital evidence adduced on the part of the P.W.7 through whom the appellant Ganesan had given extra-judicial confession regarding the commission of the offence and thereby robbing the M.Os. from the place of the deceased and it is this witness who advised the appellant Ganesan to surrender



and in the extra-judicial confession the appellant Ganesan would also reveal that joining hands with the other appellants herein they all perpetrated the crime.

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20. The trial Court would then assess the evidence of P.W.13 with whom 22 grams of gold items were sold for a sum of Rs.8,100/- on 29.8.2000 and again on 30.8.2000 certain other items for a sum of Rs.10,500/- and the ingots weighing 49.40 grams i.e. M.O.20 has been recovered on 28.10.2000. Likewise the other entrustments and recoveries of the gold jewels would be accounted for through proper evidence and the identification of those jewels to be belonging to the deceased Srinivasan would also be appreciated by the trial Court.

21. The learned trial Judge would then assess the circumstantial evidence made available for the commission of the offence through P.W.1, the owner of the building, P.W.2 the neighbour who knew the first appellant since he was working under the deceased particularly P.W.2's evidence who saw the appellant Ganesan on 29.8.2000 at 5.30 a.m. coming out of the residential portion of the building locking of the door and keeping the key with him. This witness would also see the pockets of the appellant Ganesan appeared bulging and when he questioned without answering anything the appellant Ganesan had left the place and thereafter P.W.2 would also leave for his native place and on coming to know of the occurrence he had informed the police about himself having seen appellant Ganesan on 29.8.2000 at the place of the deceased. Likewise, P.W.3 who used to stay with the deceased would pay visit to his place on 29.8.2000 at about 5.00 a.m., when he would see a cycle parked at the entrance of the building and all the three appellants coming from the residential portion of the deceased and he would also see the pockets of the appellant Ganesan appeared bulging and the second appellant keeping a wooden log in his hand and when this witness enquired about the deceased, they did not reveal anything and thereafter this witness on seeing the door locked had gone away from that place and these informations would be divulged to the police on coming to know of the occurrence.

22. The trial Court would then assess the evidence of P.W.5 in whose residence the third appellant was a tenant and this witness would also supply with the circumstantial evidence



of the third appellant having come along with the other appellants on 29.8.2000 in the early morning at 4.00 A.M. and they would all leave the place at that time together and this witness would also identify all the three appellants by name. Likewise, P.W.4 would also supply with circumstantial evidence in a reliable manner and this witness being the brother of the appellant Ganesan would also supply with the motive for the murder of the deceased since the first appellant was not supplied with the money by the deceased which was demanded by him for the purpose of his marriage just prior to the occurrence and from the evidence of this witness not only the fact that the first appellant was deliberately in search of money through some source or other but also this witness would account for all the appellants conferring together during the night of the occurrence and from the evidence of this witness the circumstance that all the three appellants joining hands with each other went to the place of residence of the deceased that night and the commission of the offence and the motive behind the offence and the strained relationship in between the appellant Ganesan and the deceased immediately prior to the occurrence would be taken note of by the trial Court.

23. The trial Court from these witnesses and their depositions would find natural evidence adduced on their part so as to serve as a chain of successive events through the circumstantial evidence and would also consider the arguments advanced on the part of the both, the prosecution and the defence, further considering the other evidence made available on record and ultimately reject the contentions of the defence and having faith the evidence adduced by the witnesses and the circumstances created through their evidence particularly the recovery of the items of jewels and the manner in which they have been recovered from the appellants particularly from the first and second appellants herein and would arrive at the unshakable conclusions to hold that the prosecution has brought home the guilt of all the above three appellants so as to award the punishments mentioned supra.

24. In the process of arriving at such conclusions the trial Court has not only brought forth the evidence and has discussed the merit of the same with the legal parameters so as to ultimately arrive at the conclusion to hand-down the convicting judgment. Whether it is the conclusion arrived at by



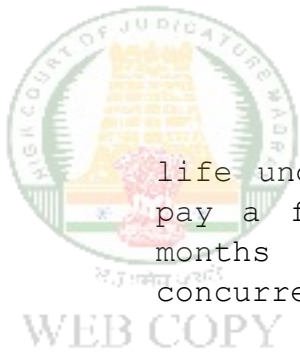
the trial Court or the manner in which the said conclusions have been arrived at are beyond suspicion and this Court is not able to see any error of law or perversity in approach whether it is concerned with the discussions held on facts and circumstances or the appreciation of evidence and therefore, the interference of this Court sought to be made on the part of the appellants is neither necessary nor warranted in the circumstances of the case.

25. It is not only the evidence of P.Ws. 2 and 3 serving as strong circumstances in seeing the appellants coming from the place of residence of the deceased closing the door and the appellant Ganesan keeping the key with him and both his pant pockets appeared bulging with the articles stuffed into the same and the other circumstantial evidence supplied by P.W.1, P.W.4 and P.W.5 leading to the arrest of all the appellants and the recoveries effected through them from proper witnesses and accounting for those jewels robbed from the house of the deceased and all these circumstantial evidence coupled with the medical and police evidence have unerringly supplied the linkage for the trial Court to arrive at the conclusion that the murder of the deceased was committed by all these appellants joining hands with each other at the time, place and in the manner alleged by the prosecution and therefore, valid conclusions have been arrived at by the trial Court to convict and sentence all the three appellants in the manner aforementioned which does not at all require any interference by this Court and hence with the following judgment:

In result,

(i) all the above Criminal Appeal Nos.39 of 2002, 594 of 2002 and 853 of 2002 preferred by appellants No.1 to 3 respectively do not merit acceptance and they become only liable to be dismissed and they are dismissed accordingly;

(ii) the judgment dated 31.10.2001 rendered by the Court of II Additional Sessions Judge, Coimbatore, in S.C.No.86 of 2001 thereby convicting all the appellants/accused for the commission of the offences punishable under Section 302 r/w 34 and 392 I.P.C. and sentencing them to undergo imprisonment for



life under Section 302 I.P.C. and for R.I. for 5 years and to pay a fine of Rs.1000/- i/d to undergo R.I. for further six months under Section 392 I.P.C. and the sentences to run concurrently are hereby confirmed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE II ADDITIONAL SESSIONS
JUDGE, COIMBATORE

2. THE PRINCIPAL SESSIONS JUDGE
COIMBATORE

3. THE SUPERINTENDENT,
CENTRAL PRISON
COIMBATORE

4. THE INSPECTOR OF POLICE
B8, VARIETY HALL POLICE STATION
COIMBATORE

5. THE DISTRICT COLLECTOR
COIMBATORE

6. THE DIRECTOR GENERAL OF POLICE
CHENNAI

7. THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS

JUDGMENT IN
C.A.NOS.39,584 & 853/2002

je (co)

28.12.2004

bp