

MURUGAN

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v.

STATE OF TAMIL NADU

(Criminal Appeal No. 1498 of 2010)

MAY 02, 2018

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[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860: ss. 364 and 302/34 –Kidnapping or abducting in order to murder – On facts, father not agreeing to proposal of main accused of marriage with his daughter – On the fateful day, main accused alongwith the appellant (his cousin brother) invited the father for dinner to main accused’s house, had dinner together, and immediately thereafter, the father died – Daughter had seen three of them sitting together and having dinner – Confessional statement of main accused and on basis thereof, recovery of weapons and clothes – Before trial could begin death of main accused – Conviction and sentence of appellant u/s. 364 and 302/34 by the courts below – On appeal, held: Chain of events appearing without any break, against the appellant which included the motive behind the commission of the crime followed by the manner in which the incident took place leading to the death of the father – Also accused last seen in the company of the deceased is a strong circumstance against the accused while appreciating the circumstantial evidence – Furthermore, death of the main accused was of no significance for the appellant’s prosecution since this was a case of common intention of the two accused persons to eliminate the father, and the appellant was found actively participating in the crime till last along with the other accused, who died – Thus, courts below rightly upheld the appellant’s conviction, based on circumstantial evidence which was proved by the prosecution by adducing ocular evidence.

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Dismissing the appeal, the Court

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HELD:1.1 When the Courts below have recorded concurrent findings against the accused person which are based on due appreciation of evidence, this Court under Article 136 of the Constitution of India would be slow to interfere in such

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A concurrent findings and would not appreciate the evidence *de novo* unless it is *prima facie* shown that both the Courts below did not either consider the relevant piece of evidence or there exists any perversity or/and absurdity in the findings recorded by both the Courts below. [Para 20] [683-B-C]

B 1.2 Having gone through the evidence, it is found that the findings are legally and factually sustainable in law. The two courts below rightly held that the appellant's conviction was based on circumstantial evidence which, in this case, the prosecution was able to prove it by adducing evidence. The prosecution was able to prove the chain of circumstances/events appearing against the
C appellant without any break therein and hence, the appellant's conviction deserves to be upheld. [Paras 21, 22] [683-D-E]

D 1.3 The motive, according to the prosecution, was that K had a grudge against the deceased because he was not agreeable to the K's proposal to marry his daughter-G. This was proved with the evidence of PWs-1, 2 and 3. It was rightly believed by the two Courts below. The prosecution then proved that the appellant along with K had gone to the house of the deceased for inviting him for dinner at K's house on the same night. The deceased accepted the invitation and went to K's house to have
E dinner with K and the appellant. When the appellant was sitting in the company of the deceased (M) till 11 P.M. along with K in his house and had dinner with M and K, which was seen by G and immediately thereafter M died, the appellant in cross-examination of PWs-1,2 and 3 was not able to elicit anything to discredit the
F evidence of the said three witnesses and to disprove the circumstances deposed against him. It was necessary for the appellant to have explained the aforementioned circumstances appearing against him in the proceedings under Section 313 of the Code. The appellant, however, failed to explain any circumstances and denied his involvement in the crime.
G [Para 25-28] [684-A-D]

H 1.4 From the evidence eight circumstances appeared against the appellant. These circumstances are: first motive was against the deceased due to his not agreeing to the proposal of marriage of K with his daughter; second, the appellant and K,

both being the cousins, knew each other very well; third, both went together to the house of the deceased to invite him for a dinner at K's house; fourth, all the three had dinner together at K's house; fifth, M died immediately after dinner; sixth, K gave his confessional statement; seventh, recovery of weapon and cloths at the instance of K; and eighth, the dead body was found lying near iron cot where M(deceased) had last dinner with K and the appellant. The mentioned eight circumstances do constitute a chain of events against the appellant and lead to draw a strong conclusion against the appellant and K for having committed the murder of M. It clearly establishes that both (K and the appellant) had a common intention to eliminate M. There could be no other person other than the appellant and K, who committed the crime in question. [Para 29-31] [684-E-H; 685-A]

1.5 A theory of "accused last seen in the company of the deceased" is a strong circumstance against the accused while appreciating the circumstantial evidence. In such cases, unless the accused is able to explain properly the material circumstances appearing against him, he can be held guilty for commission of offence for which he is charged. In the instant case, it was rightly held by the two courts below against the appellant and there is no good ground to disturb this finding. [Para 32] [685-B-C]

1.6 Death of K-main accused was of no significance so far as the appellant's prosecution is concerned. The reason being that this was a case of common intention of the two accused persons to eliminate M and the appellant was one of the accused persons, who was found actively participating in the crime till last along with the other accused, who died. [Para 34] [685-D-E]

1.7 The two Courts below were right in holding the appellant guilty of commission of the offences by properly appreciating the ocular evidence of the prosecution witness notwithstanding the death of the main accused, which was of no relevance for deciding the involvement of the appellant in commission of crime. There is no good ground to take a different view than what is taken by the two Courts below and concur with their reasoning and conclusion with the additional reasonings. [Paras 35-36] [685-F-G]

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1498 of 2010.

From the Judgment and Order dated 25.04.2007 of the High Court of Judicature at Madras in Criminal Appeal No. 804 of 2006.

B Chitrangda Rastravara, Ms. Aishwarya Bhati, T. Gopal, Ms. Tanuja Patra, Gp. Capt. Karan Singh Bhati, Advs. for the Appellant.

M. Yogesh Kanna, Mrs. Sujatha Bagadhi, Mrs. Maha Lakshmi, Ms. Nithya, Advs. for the Respondent.

The Judgment of the Court was delivered by

C **ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed by the accused against the final judgment and order dated 25.04.2007 passed by the High Court of Judicature at Madras in Criminal Appeal No. 804 of 2006 whereby the High Court dismissed the appeal filed by the appellant(Accused) and confirmed the order dated 02.08.2006 passed by the Additional Sessions Judge, Namakkal (Fast Track Court) in Sessions Case No.5 of 2006 convicting the appellant under Sections 364 and 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced him to undergo rigorous imprisonment for 7 years under Section 364 IPC and to pay a fine of Rs.1000/-, in default of payment of fine, to undergo further simple imprisonment for one month and imprisonment for life under Section 302/34 IPC and to pay a fine of Rs.5000/- in default of payment of fine, to undergo further simple imprisonment for two months. The sentences would run concurrently.

2. In order to appreciate the issues arising in the case, it is necessary to set out the prosecution case in detail:

F 3. One person by name "Kumar" (since dead) was the uncle of a girl "Geetha". At the relevant time, Geetha was in sixth standard. Kumar was married but living separately from his wife. Kumar and Geetha were living in the one locality at a short distance. Kumar had developed liking for Geetha and wanted to marry her.

G 4. Murugan (father of Geetha) was not agreeable to the Kumar's proposal to marry Geetha. Murugan(Geetha's father) used to say that Kumar had already ruined the life of his wife and now he wanted to ruin his daughter's life also. Kumar, on the other hand, used to threaten Geetha that one day he would kidnap her and marry her.

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5. It is the case of prosecution, that on 01.12.2002 afternoon, Kumar went to the house of Geetha and demanded “Chili” to cook mutton. At that time, Geetha was alone in the house. When Geetha refused him to give Chili, Kumar entered into the house and took Chili of his own and left the house saying that one day, he would kidnap her and rape her.

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6. On the same day at around 10 P.M., Kumar along with Murugan(appellant), who is his cousin brother (his aunt’s son) went to Geetha’s house and invited Murugan(Geetha’s father) for a drink and non-veg. dinner at his house. Murugan(Geetha’s father) accepted the invitation and went along with both of them to Kumar’s house.

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7. When Murugan(Geetha’s father) did not return home, Geetha (PW-1) alone went to Kumar’s house at around 11 P.M. to find out as to why her father has not returned so far and what was he doing in Kumar’s house for such a long time. On reaching there, she, however, found that trio (Kumar, Murugan and the appellant) were sitting in the room on one iron cot and were dining together. The trio told Geetha that her father - Murugan would be coming shortly. Thereafter Geetha returned to her house.

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8. Since Murugan did not return home till next day morning, Geetha (PW-1) and her mother Saroja (PW-2) went early morning to Kumar’s house to find out why Murugan has not returned so far to his house. The front door of the Kumar’s house was closed. Both of them, therefore, pushed the front door and on opening, they found that Murugan’s dead body was lying in the room near iron cot with many injuries on his body.

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9. It is this incident which gave rise to filing of FIR dated 02.12.2002 (Ex-P-18) by Geetha (PW-1) in PS Jedarpalayam, which was registered as Crime No. 224 of 2002 under Sections 302/364/34 of IPC. The police then started investigation, visited the house of Kumar, prepared Mahazar (Ex.P-13), drawn rough sketch (Ex.P-19), took photographs, prepared inquest report, recorded the statements of witnesses, conducted post-mortem of the dead body (Ex.P-4) and recovered the articles (M.O. 5 and 12).

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10. The police then on 03.12.2002 arrested Kumar, who confessed his guilt. His confessional statement was accordingly recorded (Ex.P-15). Thereafter the police recovered weapon used in the crime

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A (Aruval-MO-14) and the blood stained green shirts at his instance from his father's house. It was then followed by the appellant's arrest on the same day.

11. The police, on completing the investigation, filed the charge sheet against Kumar and the appellant herein for commission of the offences punishable under Sections 364 and 302/34 of IPC. The case was then committed to the Additional Sessions Judge, Namakkal for trial (Sessions Trial No. 5/2006).

12. Before the trial could begin, the main accused- Kumar died. The trial against him, therefore, stood abated whereas it continued against the co-accused –appellant herein. The appellant, however, abjured the guilt.

13. In order to prove the charges, the prosecution examined 12 witnesses, marked 20 exhibits and produced 15 material objects. In the proceedings under Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code"), the appellant was asked to explain the circumstances appearing against him but he denied the charges including the circumstances without offering any explanation.

14. By order dated 02.08.2006, the Additional Sessions Judge held the charges proved against the appellant and accordingly convicted him for commission of the offences punishable under Sections 364 and 302 read with Section 34 of IPC and awarded life imprisonment under Section 302 IPC and seven years under Section 364 and a fine amount of Rs. 5,000/- and Rs.1000/- respectively.

15. The appellant felt aggrieved by his conviction and the sentences awarded by the Additional Sessions Judge and filed appeal in the High Court.

16. By impugned judgment, the High Court dismissed the appeal and confirmed the judgment of the Additional Sessions Judge, which has given rise to filing of the appeal by way of special leave by the accused –Murugan in this Court.

17. Heard Ms. Chitrangda Rastravara, learned counsel for the appellant and Mr. M. Yogesh Kanna, learned counsel for the respondent.

18. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

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19. We have perused the evidence with a view to find out whether the approach, reasoning and conclusion arrived at by the two Courts below are legally sustainable or not. A

20. It is a settled principle of law that when the Courts below have recorded concurrent findings against the accused person which are based on due appreciation of evidence, this Court under Article 136 of the Constitution of India would be slow to interfere in such concurrent findings and would not appreciate the evidence *de novo* unless it is *prima facie* shown that both the Courts below did not either consider the relevant piece of evidence or there exists any perversity or/and absurdity in the findings recorded by both the Courts below etc. B C

21. We, however, made endeavour to peruse the evidence with a view to find out as to whether the concurrent findings of both the Courts below have any kind of infirmity or/and whether the concurrent findings are capable of being legally and factually sustainable or need to be reversed. Having gone through the evidence, we are of the view that the findings are legally and factually sustainable in law. D

22. In our considered opinion, the two Courts below have rightly held that the appellant's conviction was based on circumstantial evidence which, in this case, the prosecution was able to prove it by adducing evidence. In other words, we also find that the prosecution was able to prove the chain of circumstances/events appearing against the appellant without any break therein and hence the appellant's conviction deserves to be upheld. E

23. On perusal of the evidence, we find that the prosecution examined three witnesses (PW-1, PW-2 and PW-3) to prove material circumstances and the chain of events against the appellant which first included the motive behind the commission of the crime followed by the manner in which the incident took place leading to the death of Murugan. F

24. The motive, according to the prosecution, was that Kumar had a grudge against the deceased because he was not agreeable to the Kumar's proposal to marry his daughter-Geetha. This was proved with the evidence of PWs-1, 2 and 3. It was believed by the two Courts below and, in our opinion, rightly. G

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A 25. The prosecution then proved that the appellant along with Kumar had gone to the house of the deceased for inviting him for dinner at Kumar's house on the same night. The deceased accepted the invitation and went to Kumar's house to have dinner with Kumar and the appellant.

B 26. It was then proved that Geetha (PW-1) had gone to Kumar's house at around 11 P.M. to see why her father did not return to his house and on reaching there, she found all the three sitting on iron cot and were having dinner. As per post mortem report, it was proved that Murugan died between 11 P.M. and 12 P.M. the same night.

C 27. In our opinion, when the appellant was sitting in the company of the deceased (Murugan) till 11 P.M. along with Kumar in his house and had dinner with Murugan and Kumar and immediately thereafter Murugan died, the appellant in cross-examination of PWs-1,2 and 3 was not able to elicit anything to discredit the evidence of the abovesaid three witnesses and to disprove the circumstances deposed against him.

D 28. That apart, in our opinion, it was necessary for the appellant to have explained the aforementioned circumstances appearing against him in the proceedings under Section 313 of the Code. The appellant, however, failed to explain any circumstances and denied his involvement in the crime.

E 29. We find from the evidence eight circumstances appearing against the appellant. These circumstances are: First motive was against the deceased due to his not agreeing to the proposal of marriage of Kumar with his daughter; Second, the appellant and Kumar, both being the cousins, knew each other very well; Third, both went together to the house of the deceased to invite him for a dinner at Kumar's house; F Fourth, all the three had dinner together at Kumar's house; Fifth, Murugan died immediately after dinner; Sixth, Kumar gave his confessional statement; Seventh, recovery of weapon and cloths at the instance of Kumar; and Eighth, the dead body was found lying near iron cot where Murugan(deceased) had last dinner with Kumar and the G appellant.

30. In our view, the aforementioned eight circumstances do constitute a chain of events against the appellant and lead to draw a strong conclusion against the appellant and Kumar for having committed the murder of Murugan.

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31. In our view, it clearly establishes that both (Kumar and the appellant) had a common intention to eliminate Murugan. In our view, there could be no other person other than the appellant and Kumar, who committed the crime in question. A

32. A theory of “**accused last seen in the company of the deceased**” is a strong circumstance against the accused while appreciating the circumstantial evidence. In such cases, unless the accused is able to explain properly the material circumstances appearing against him, he can be held guilty for commission of offence for which he is charged. In this case, it was rightly held by the two Courts below against the appellant and we find no good ground to disturb this finding. B C

33. We are not impressed by the submission of the learned counsel for the appellant when she argued that Kumar (main accused) having died without facing the trial, the present appellant is entitled for a clean acquittal because nothing now survives against the appellant after Kumar’s death for appellant’s prosecution. We do not agree with this submission. D

34. In our view, death of Kumar was of no significance so far as the appellant’s prosecution is concerned. The reason being that this was a case of common intention of the two accused persons to eliminate Murugan and the appellant was one of the accused persons, who was found actively participating in the crime till last along with the other accused, who died. E

35. In our view, the two Courts below, therefore, were right in holding the appellant guilty of commission of the offences in question by properly appreciating the ocular evidence of the prosecution witness notwithstanding the death of the co-accused, which was of no relevance for deciding the involvement of the appellant in commission of crime. F

36. We, therefore, find no good ground to take a different view than what is taken by the two Courts below and concur with their reasoning and conclusion with our additional reasoning elaborated above. G

37. The appeal is thus found to be devoid of any merit. It fails and is accordingly dismissed.