

JOHN ANTHONISAMY @ JOHN

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v.

STATE, REP. BY THE INSPECTOR OF POLICE

(Criminal Appeal No. 466 of 2017)

JANUARY 19, 2023

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**[M. R. SHAH AND C.T RAVIKUMAR, JJ.]**

*Penal Code, 1860 – s.302 r/w s.201 – Murder – Circumstantial evidence – Purported extra-judicial confession – Effect – Five accused including appellant (A-1) – Prosecution case that in pursuance of a conspiracy, the accused persons killed the deceased and stole/took away his car – PW11 (Sub inspector) closed the case as undetected – However, case was subsequently re-opened and investigation initiated by police witness (PW30) on basis of confessional statement made in letter allegedly written by appellant to PW22 – Trial Court convicted appellant u/s.302 r/w s.201 IPC – Conviction confirmed by High Court – Challenge to – Held: It was contended by appellant that he was convicted on confessional statement in his letter /communication to PW22 and the instant case being a case of circumstantial evidence, therefore, unless and until the complete chain of events were proved and established, he could not have been convicted on confessional statement – However, High Court did not give much weightage so far as the letter /communication by appellant addressed to PW22 is concerned and therefore, it cannot be said that appellant was convicted on the confessional statement made in the letter /communication concerned – Further, as rightly observed by the High Court, by other circumstances the prosecution established and proved that the deceased was killed after his car was stolen/taken away by the appellant – First strong circumstance against the appellant was that the dead body was exhumed from the place identified by appellant and super imposition test and DNA examination proved that the dead body was that of the deceased – Second strong circumstance against the appellant was that the car was recovered from the place and the person disclosed by the appellant – Another circumstance against the appellant was that the car engine and gear box sold by him was recovered from PW-17 on disclosure statement made by appellant – Conviction of appellant accordingly confirmed.*

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A        **Dismissing the appeal, the Court**

- HELD :** 1. It is the case on behalf of the appellant that he has been convicted on the confessional statement and therefore, in case of circumstantial evidence and unless and until the complete chain of events were proved and established, he could not have been convicted on confessional statement. However, the so-called communication by the appellant addressed to PW-22 is as such not believed by the High Court being secondary evidence and the same has not been proved. Therefore, as such the High Court has not given much weightage so far as the letter/communication is concerned. Therefore, it cannot be said that the appellant has been convicted on the confessional statement made in the letter /communication. [Para 6.1][286-E-H; 287-A]
2. During investigation, appellant disclosed the place where he had buried the dead body of the deceased. The dead body was exhumed from the place identified by appellant. Thereafter, the super imposition test was conducted and the DNA examination was conducted on the bones and the skull and it was proved that the dead body was that of the deceased. [Para 6.2][287-B-D]
3. There is a recovery of car driven by the deceased from the place and the person disclosed by appellant. The prosecution has successfully proved the same by examining PW-16, a person to whom the stolen car was sold by appellant. [Para 6.3][287-E-F]
4. The prosecution has been successful in proving that the car engine and gear box which were sold by the appellant was recovered from PW-17 on the disclosure statement made by appellant. [Para 6.4][287-G-H]
- F        5. It is rightly observed by the High Court, by other circumstances the prosecution has established and proved that the deceased was killed after his car was stolen /taken away by the appellant. [Para 6.5][288-D-E]
- CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 466 of 2017.
- G        From the Judgment and Order dated 22.07.2016 of the High Court of Judicature at Madras in Criminal Appeal No.171 of 2015.  
Rakesh K. Sharma, Ms. N. S. Nappinai, V. Balaji, Asaithambi Msm, C. Kannan, Nizamuddin, Advs. for the Appellant.
- H        Dr. Joseph Aristotle S., Shobhit Dwivedi, Ms. Vaidehi Rastogi, Sanjeev Kr. Mahara, Advs. for the Respondent.

The Judgment of the Court was delivered by A

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned final judgment and order dated 22.07.2016 passed by the High Court of Judicature at Madras in Criminal Appeal No. 171/2015, by which, the High Court has dismissed the said appeal preferred by the appellant herein – original accused No. 1 and has confirmed the conviction and sentence imposed by the learned Trial Court for the offences punishable under Section 302 read with Section 201 of the IPC, the original accused No. 1 has preferred the present appeal. B

2. The prosecution case is elaborately stated by the High Court in the impugned judgment in paragraph 2. As per the case of the prosecution, the deceased was employed as a driver by PW-1 to drive a taxi owned by him. On 26.06.2006 at about 06.30 a.m., the deceased left his house after informing his wife. That thereafter, he did not return. C

2.1 That A-1 was also driving a taxi for some time and in such a way he knew the deceased. It was alleged that all the accused persons on 23.05.2006 hatched a conspiracy to engage the car driven by the deceased and after taking him to a far-off isolated place, kill him and then to steal the car and other personal belongings owned by the deceased. As per the prosecution case, in pursuance of the said conspiracy, on 26.05.2006, A-2 to A-5 met A-1 at Pollachi Thermutti Bus Stop. Then, A-1 spoke to the deceased and fixed him for going to Udumalpet in the taxi driven by the deceased. Accordingly, the deceased came in the taxi to Thermutti Bus Stop. Then, all the five accused got into the taxi. The taxi proceeded towards Udumalpet. When it was nearing the village known as Ammapatti at an isolated place, the accused wanted the deceased to stop the car for a while. The deceased stopped the car, as soon as the car came to a halt suddenly A-2 came to strangulate the deceased by neck. A-3 and A-4 tied the hands of the deceased and A-5 tied the legs of the deceased with ropes. Then, they put the deceased in between the front and back seats of the car. A-3 to A-5 sat on the back seat of the car and ensured that the deceased was not crying. The car was driven by A-1. D E F G H

- A            The deceased died. All the five accused put the dead body of the deceased into the pit and buried the same. Thereafter, all the five accused ran away from the scene of occurrence with the car.
- B            2.2 PW-1 tried to contact the deceased on 26.06.2006 over phone, but his phone was found to be switched off mode and PW-1 went to the house of deceased and met PW-3 and PW-3 informed him that after 26.06.2006 at about 6.30 am deceased was not seen. After the search the deceased was not found and therefore, PW-1 made a complaint to the Police on 30.06.2006. PW-11, the then Sub-Inspector of Police registered a case as Crime No. 363/2006 under Section 406 of IPC. That thereafter, an FIR was assigned to the jurisdictional court. That thereafter, PW-11 started investigation. He recorded the statement of the relevant witnesses. However, thereafter, PW-11 closed the case on 04.02.2007 as undetected. The learned Magistrate accepted the closure report. However, thereafter on the basis of a letter alleged to have been written by A-1 addressed to PW-22 which was received by him on 29.12.2007, by which A-1 had alleged to have confessed that he along with other accused engaged the taxi in question, took the driver (deceased), killed him and buried the dead body and took away the taxi. According to the confessional statement recorded in the said letter some parts of the car were taken by A-2 to A-5. PW-22 went to the Police Station along with the said letter on 30.12.2007 and handed over the letter to PW-30. On the basis of the same, the investigation begun. On the basis of the statement of A-1, the place where the car was hidden and the dead body was buried came to be recovered. Thus, the dead body was recovered at the instance of A-1. PW-30 altered the case into one under Sections 302 and 396 of IPC. PW-30 arrested A-1. During the investigation, on disclosure statement of A-1, PW-30 recovered the car without engine and the gear box from PW-16 as identified by A-1. On the disclosure statement of A-1, the car engine and the gear box were also recovered. As observed hereinabove, the dead body was exhumed from the place identified by A-1. Post-mortem of
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the deceased was conducted. Several injuries were found. On completion of the investigation, PW-30 filed the chargesheet against all the accused. The case was committed to the Sessions Court. The accused pleaded not guilty and therefore, all of them came to be tried for the offence under Section 302 and other offence of IPC.

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2.3 The prosecution examined a number of witnesses. PW-16 can be said to be the star witness from whom the car driven by the deceased was seized by the Police on the disclosure statement made by A-1. After conclusion of the prosecution evidence, further statements of the accused under Section 313 CrPC were recorded. The accused denied the allegations against them. The accused examined DW-1 in their defence. On appreciation of evidence the learned Trial Court convicted A-1 – appellant herein. The judgment and order of conviction and sentence passed by the learned Trial Court has been confirmed by the High Court by the impugned judgment and order. Hence, the present appeal at the instance of the appellant – original accused No. 1.

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3. Ms. N.S. Nappinai, learned counsel has appeared on behalf of the appellant – accused and Dr. Joseph Aristotle S., learned counsel has appeared on behalf of the State.

4. Learned counsel appearing on behalf of the accused has vehemently submitted that in the present case the prosecution case is based solely on the circumstantial evidence. It is submitted that it is settled law that before convicting an accused each link in the chain ought to be established such that it leads to the irresistible conclusion of guilt of the accused.

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4.1 It is submitted that in the present case, the prosecution has not established that the death of the deceased was homicidal. It is submitted that as such the doctor who performed the post-mortem was not able to give any definite opinion as to the cause of the death.

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4.2 It is submitted that in the present case both, learned Trial Court as well as the High Court has convicted the accused based on the confessional statement/extra judicial confession. It is submitted that as per the settled proposition

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- A of law extra judicial confession is weak evidence. It is submitted that recovery pursuant to the confession of accused does not establish anything beyond possession of stolen goods and it does not implicate accused of committing murder.
- B 4.3 It is submitted by the learned counsel appearing on behalf of the accused that in the present case the recovery of the dead body from the place shown by A-1 and that recovery of car without engine and gear box from the place identified by A-1 and thereafter, recovery of gear box of the car from PW-16 cannot be believed as the same was on the basis of the confessional statement/disclosure statement. It is submitted that therefore, the circumstances set out by the High Court do not support the prosecution case.
- C 4.4 It is further submitted that so far as the recovery of the dead body from the place identified by A-1 is concerned, it is submitted that as such on 31.12.2007, after the arrest, A-2 gave a voluntary confessional statement before Police in which he disclosed the place of burial. It is submitted that the place of burial was disclosed by A-2. It is submitted that therefore the place of burial of the dead body was within the prior knowledge of Police.
- D 4.5 It is further submitted that when PW-22 received the extra judicial confession letter on 29.12.2007, which he handed over to the Police on 30.12.2007 in that letter place of burial of the dead body was mentioned. It is submitted that the place of burial was disclosed on 29.12.2007 itself. It is submitted that the Police arrested A-1 at the instance of PW-22 on 30.12.2007. It is submitted that as such the alleged extra judicial confession letter addressed to PW-22 received on 29.12.2007 is not believable at all and as such the Courts below has not believed the same. It is submitted that the said letter has been rejected by the High Court. It is submitted that therefore, the entire investigation can be said to be tainted and cannot be relied upon.
- E 4.6 It is vehemently submitted that the place of burial was not discovered from A-1's confessional statement but it was
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- discovered already from A-2's confession and extra judicial confession. It is submitted that therefore, the appellant – accused could not have been convicted on the basis of recovery of the dead body on the alleged disclosure made by the A-1. A
- 4.7 Now so far as the recovery of the car without engine and gear box recovered from the place identified by A-1 is concerned, it is submitted that for the aforesaid the High Court has relied upon PW-16 evidence. It is submitted that however, the learned Trial Court rejected the PW-16 evidence and suspected the recovery of M.O.1, M.O.2 and M.O.3 i.e., the car, engine, and gear box, respectively. It is submitted that while accepting PW-16 evidence, the High Court has failed to consider and/or discuss the evidence recorded by the learned Trial Court. B
- 4.8 Now so far as the recovery of engine and gear box of the car recovered from PW-17 is concerned, it is submitted that all the witnesses in connection with the recovery of stolen objects like PW-17 and PW-23 did not support the recovery of car – M.O.1. It is submitted that therefore, the alleged recovery of gear box, engine and car speakers stated to have been recovered in pursuance of alleged confession are not acceptable. C D
- 4.9 It is submitted that therefore when the prosecution case rests only on the above circumstantial evidence, each of which is demonstrably untrustworthy and inadequate to sustain the serious charges against the accused, the prosecution is required to establish the guilt of the accused beyond reasonable doubt and/or to substantiate each link to sustain the conviction, which the prosecution has failed. E F
- 4.10 It is further submitted by the learned counsel appearing on behalf of the accused – appellant that A-1 has already undergone 15 years in prison for a crime which he did not commit and therefore, it is prayed to allow the present appeal and acquit the accused. G
5. Learned counsel appearing on behalf of the State while opposing the present appeal has vehemently submitted that in the present case, H

- A the dead body was exhumed from the place shown and identified by A-1. It is submitted that the place of burial shown by A-1 and the identification of the body by him has been duly proved by the prosecution. The evidence of anthropology of expert is accepted. It is submitted that even the stolen car was also recovered on the basis of disclosure statement made by A-1.
- B 1. It is submitted that engine and gear box were found to be in custody of PW-17 on the basis of disclosure statement made by A-1. It is submitted that PW-17 has deposed that some parts were sold by A-1. It is submitted that aforesaid crucial circumstances have not at all been explained by the accused in his further statement under Section 313 CrPC.
- C It is submitted that deposition of DW-1 has been rejected by the Court(s). It is submitted that therefore, no error has been committed by the Courts below in convicting the accused for the offence punishable under Section 302 and other offence of IPC.
  - D 5.1 Making the above submissions, it is prayed to dismiss the present appeal.
  - E 6. We have heard learned counsel appearing on behalf of accused as well as the State. We have gone through the findings recorded by the learned Trial Court as well as the High Court while holding the appellant – accused No. 1 guilty for the offence punishable under Sections 302 and 201 of IPC.
  - F 6.1 It is the case on behalf of the appellant – accused No. 1 that he has been convicted on the confessional statement and therefore, in case of circumstantial evidence and unless and until the complete chain of events were proved and established, he could not have been convicted on confessional statement.
  - G However, from the judgment(s) and order(s) passed by the learned Trial Court as well as the High Court, it cannot be said that the appellant has been convicted on the basis of confessional statement. In the present case, there is no confession by the accused that he committed the offence, which has been relied upon by the Court. It is required to be noted that the so-called communication by the accused No. 1 addressed to PW-22 is as such not believed by the High Court being secondary evidence and the same has not been proved. Therefore, as such the High Court has
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not given much weightage so far as the letter/communication is concerned. Therefore, it cannot be said that the appellant – accused No. 1 has been convicted on the confessional statement made in the letter/communication. A

- 6.2 However, at the same time, it can be seen that the communication/letter received by Police on 30.12.2007 was the cause for reopening of the case, as earlier the case was closed on 04.02.2007 as untraceable. That thereafter, the actual investigation began by PW-30. That thereafter, during investigation A-1 disclosed the place where he had buried the dead body of the deceased. The dead body was exhumed from the place identified by A-1. Thus, it was a case of recovery of the dead body at the instance of the accused from the place which was disclosed by the accused who can be said to be in exclusive knowledge of the place where the dead body was buried. That thereafter, the super imposition test was conducted and the DNA examination was conducted on the bones and the skull and it was proved that the dead body was that of the deceased. This is the first strong circumstance against the appellant – A-1 which has led to his conviction. B
- 6.3 That thereafter, even the car which was driven by the deceased at the relevant time was recovered from PW-16 which was at the instance of the accused himself. That there is a recovery of car driven by the deceased from the place and the person disclosed by the accused No. 1 – appellant. The prosecution has successfully proved the same by examining PW-16, a person to whom the stolen car was sold by the appellant – accused No. 1. This is the second strong circumstance against the appellant – accused No. 1. C
- 6.4 That thereafter, the prosecution has been successful in proving that the engine and gear box which were sold by the appellant – accused No. 1 was recovered from PW-17. The engine and gear box of the stolen car were found from the custody of PW-17 on the disclosure statement made by A-1. Though, PW-17 has turned hostile, however, at the same time, the recovery of engine and gear box from PW- G
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- A            17 which were recovered on the disclosure statement made by A-1 has been established and proved by the prosecution by examining Police witness – PW-30, we see no reason to disbelieve PW-30 on the aforesaid. This is another circumstance against the appellant – accused No. 1. Thus
- B            on the basis of the aforesaid strong circumstances when the learned Trial Court as well as the High Court has convicted the accused – appellant for the offences under Sections 302 and 201 of IPC, we see no reason to interfere with the same in exercise of powers under Article 136 of the Constitution of India.
- C            6.5 Now so far as the submissions made on behalf of the appellant that the prosecution has failed to prove that the death of deceased was the homicidal as in the post- mortem report the cause of death was unascertainable is concerned, it is required to be noted that as the dead body was buried and was found after numbers of months, it may not be possible for the prosecution to prove that the death was a homicidal death. However, at the same time and as rightly observed by the High Court, by other circumstances the prosecution has established and proved that the deceased was killed after his car was stolen/taken away by the appellant – accused No. 1.

F            7. Considering the aforesaid facts and circumstances, we are more than satisfied that the High Court has not committed any error in dismissing the appeal and confirming the judgment and order of conviction and sentence imposed by the learned Trial Court convicting the appellant – accused No. 1 for the offences punishable under Sections 302 and 201 of IPC.

7.1        In view of the above and for the reasons stated above, no interference of this Court is called for. The appeal deserves to be dismissed and is accordingly dismissed.