

Annaduurai and Another Vs. State Rep. by the Inspector of Police, Mecheri Police Station, Salem District

Annaduurai and Another Vs. State Rep. by the Inspector of Police, Mecheri Police Station, Salem District

SooperKanoon Citation : sooperkanoon.com/1188674

Court : Chennai

Decided On : Aug-30-2016

Judge : The Honourable Mr . Justice S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal Nos. 619 & 198 of 2016

Appellant : Annaduurai and Another

Respondent : State Rep. by the Inspector of Police, Mecheri Police Station, Salem District

Judgement :

Common Judgement

S. Nagamuthu, J.

1. The appellant in Crl.A.No.198 of 2016 is Accused No.1 and the appellant in Crl.A.No.619 of 2016 is Accused No.2 in S.C.No.262 of 2007 on the file of the learned II Additional Sessions Judge, Salem. They stood charged for offences under Section 450 of IPC and under Section 396 of IPC [Two counts]. The trial court, by judgement dated 18.02.2016, convicted both A1 and A2 under Sections 450 and 396 of IPC and sentenced them to rigorous imprisonment for ten years and fine of Rs.1,000/- each in default to suffer simple imprisonment for a further

period of six months for offence under Section 450 of IPC; and to imprisonment for life and fine of Rs.2,000/- each for each count in default to suffer simple imprisonment for a further period of six months for offence under Section 396 of IPC [Two counts]. Challenging the above said conviction and sentences, A1 has come up with Crl.A.No.198 of 2016 while A2 has come up with Crl.A.No.619 of 2016.

2. The case of the prosecution in brief is as follows:- One Mr.Kulanthai Gounder [hereinafter referred to as 'D1'] and his wife Mrs.Kandayammal [hereinafter referred to as 'D2'] were living together at their own house near Balamurugan Engineering College at Chinna Sathapadi, Salem District. They were aged 65 and 60 years respectively. They were also considerably rich. On the intervening night of 11.04.2006 and 12.04.2006, D1 and D2 were alone in their house. It is also alleged that around 01.00 a.m on 12.04.2006, A1 and A2 along with 4 other juvenile accused by force trespassed into the house of D1 and D2 with a view to commit dacoity. On trespassing into the house, it is alleged that A1, with the help of the juvenile accused, attacked D1 with a chisel and killed him. In the same transaction, it is alleged that A2 with the help of the juvenile accused, strangled D2 by neck and killed her. A2 also stamped her with legs. After having killed both D1 and D2, they opened the bureau at the house of the deceased and decamped a cash of Rs.30,000/- from the bureau. They also removed the gold jewels namely, Mos.2, 3 and 5 from A2 and M.Os.4 and 6, gold ring and silver waist cord from D1. Abandoning the dead bodies inside the house, A1 and A2 along with the juvenile accused escaped from the house of the deceased with the decamped jewels and cash. The occurrence was not witnessed by anyone.

3. P.W.1 is the brother of the deceased and he has been living separately with his family. On 11.04.2006 around 05.00 p.m. he had gone to the house of the deceased and after having a talk with D1 and D2 for some time, he returned to his house. On 12.04.2006 around 04.00 a.m. one Mr.Govindan, who had gone to the house of the deceased, found both D1 and D2 lying with injuries in a pool of blood. He has informed the same to P.W.1. P.W.1, in turn, immediately rushed to the house of the deceased and found the deceased lying dead. Then, he, immediately, informed P.W.2, the son of the deceased. P.W.2 also rushed there.

Thereafter, P.W.1 went to Mecheri Police Station and made a complaint (Ex.P.1) on 12.04.2006 at 07.30 a.m. P.W.18, the then Inspector of Police, Mecheri Police Station, on receipt of the said complaint, registered a case in Crime No.118 of 2006 under Sections 302, 457 and 380 of IPC. Ex.P.35 is the FIR. In the complaint, P.W.1 mentioned about the missing of gold and silver ornaments. Since the assailants were not known, he mentioned so in the complaint. P.W.18, thereafter, forwarded both the complaint (Ex.P.1) and FIR (Ex.P.35) to the court.

4. P.W.18, thereafter, taking up the case for investigation at 09.00 a.m. on 12.04.2006 visited at the scene of occurrence. He prepared an observation mahazar (Ex.P.3) and a rough sketch (Ex.P.36) in the presence of P.W.3 and another witness. He recovered some blood stained earth and some sample earth from the place of occurrence. At his request, P.W.16, the Finger Print Expert had arrived at the scene of occurrence. He thoroughly examined the house of the deceased and found some chance finger prints on the bureau in the house of the deceased. P.W.18, thereafter, conducted inquest on the bodies of the deceased one after the another and then, he forwarded the dead bodies to the hospital for post-mortem.

5. P.W.7, Dr.Kesavalingam, conducted autopsy on the body of D1 at 04.10 p.m. on 12.04.2006 and found the following injuries:-

Injuries (1) Irregular laceration on right parietal region of scalp 6 x 1.5. x 0.5 cms bone deep O/d of scalp contusion of right frontal, parietal and temporal region of scalp 12 x 7 x 0.5 cms dark red

2. Sub dural and sub arachnoid haemorrhage over both cerebral hemispheres of brain

(3) contusion on anterior abdomen 10 x 6 cms dark red

(4) Contusion on omentum 8 x 5 cms dark red (antemortem)

Ex.P.26 is the post-mortem certificate. He gave opinion that all the five injuries found on the body of D1 could have been caused by a weapon like Chisel (M.O.18). He further opined that the death of D1 was due shock and haemorrhage

as a result of head injuries.

6. P.W.8 Dr.S.S.Meera, conducted autopsy on the body of D2 at 04.50 p.m. on 12.04.2006. She found the following injuries:-

Injuries (1) Right eye conjunctival congestion present tongue bitten by teeth protruded out face congested and cyanotic

(2) Finger nail mark abrasion present on right side neck 4 in Nos. and left side neck 3 in nos. (Dark brown in colour)

(3) O/D contusion on right side neck 6 x 4 cms dark red and contusion on left side neck 5 x 4 cms dark red

(4) Contusion on right side chest wall 10 x 8 cms dark red and contusion on left side chest wall 12 x 10 cms dark red

(5) Contusion on anterior abdomen 5 x 4 cms dark red

(6) Inward fracture of greater cornu of hyoid bone and fracture of thyroid cartilage present (Antemortem)

Ex.P.28 is the post-mortem certificate. She gave opinion that the injuries on the neck of the deceased could have been caused by manual strangulation. She further opined that the death of the deceased was due to asphyxia as a result of throttlings. So far as the injuries on the chest is concerned, she opined that the same could have been caused by stamping with leg.

7. P.W.18 came to know that on 09.05.2006, the juvenile accused Sathish @ Sathiskumar surrendered before the learned Judicial Magistrate No.IV, Salem and he was detained in the juvenile home. When the investigation was in progress, on 10.05.2006 at 01.00 p.m. A1 appeared before P.W.5, the then Village Administrative Officer of Panchukalipatti village. On such appearance, A1 wanted to confess orally. Having ascertained that A1 was in a mood to confess voluntarily, P.W.5 allowed him to confess orally. P.W.5 reduced the same into writing. Ex.P.4 is the said confession. P.W.5 also prepared a special report (Ex.P.5). P.W.5, thereafter, took A1 to the police station and produced him before P.W.18 at 02.30

p.m. along with the special report (Ex.P.5) and the extra judicial confession (Ex.P.4). On such production, P.W.18, arrested A1. While in custody, A1 gave a voluntary confession to P.W.18. He also disclosed that he would identify the place where the juvenile accused-Muthu, Karuvayan @ @ Ganapathy and Ganapathy would normally be available and also the place where he had hidden a chisel and also the blood stained dress materials. In pursuance of the said disclosure statement (Ex.P.7), A1 took the police and the witnesses to his house and produced the chisel with blood stains, blood stained shirt and blood stained lungi. P.W.18 recovered the blood stained chisel (M.O.18), blood stained half sleeve shirt (M.O.19) and blood stained lungi (M.O.20) under a mahazar (Ex.P.8) in the presence of the same witnesses.

8. Then at 05.30 p.m., A1 took P.W.18 and the witnesses to a jewellery shop known as DaKshinamurthy Jewellers and identified one Ms.Kavitha (P.W.13). On interrogation, P.W.13 accepted that A1 had pledged a thali kodi weighing 48.270 grams (M.O.2). P.W.18 recovered the same under a mahazar (Ex.P.9). On 10.05.2006 at 07.30 p.m. on being identified, P.W.18 arrested the juvenile accused Muthu at 08.30 p.m. He arrested the other juvenile accused Karuvayan @ Ganapathy and Ganapathy also one after the another. On such arrest, the juvenile accused Muthu gave a voluntary confession in which he disclosed the place where he had hidden a silver waist cord and his dress materials which were worn by him at the time of occurrence. In pursuance of the same, he took the police and the witnesses to his house and produced a pant (M.O.21), a blood stained shirt (M.O.22) and a cash of Rs.315/- (M.O.23 series - hundred rupee currency 3 Nos, ten rupee currency 1 No. and 1 five rupee currency 1 No.) under a mahazar (Ex.P.11). He also produced sliver waist cord (M.O.7) P.W.18 recovered the same under a mahazar (Ex.P.13). The juvenile accused Karuvayan @ Ganapathy gave a voluntary confession in which he disclosed the place where he had hidden a blood stained pants and a blood stained shirt, a cash of Rs.230/- and also a gold thali studded with red stone. He accordingly produced, the gold thali studded with red stone (M.O.3), cash of Rs.230/- (M.O.24-series, 2 Nos. of hundred rupee currency 2 Nos. and 3 Nos. of ten rupee currency], the blood stained pants (M.O.25) and the blood stained shirt (M.O.25). P.W.18 recovered the same as produced by the said accused under a mahazar (Exs.P.15 and P.16).

On 10.05.2006 itself, he altered the case into one under Section 396 of IPC. Ex.P.39 is the alteration report.

9. In the course of further investigation, on 11.05.2006 at 07.30 a.m. the juvenile accused-Ganapathy made a disclosure statement in which he disclosed the place where he had hidden a cash of Rs.275/- , a torch light and blood stained clothes. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced cash of Rs.275/- (M.O.27 series- 2 Nos. of hundred rupee currency, 1 No. of fifty rupee currency , 1 No. of twenty rupee currency, and 1 No. of five rupee currency), blood stained pant (M.O.28) and blood stained shirt (M.O.29), torch light (M.O.30). P.W.18 recovered the same under mahazars (Exs.P.18 and P.19) The juvenile accused-Sathish @ Sathishkumar took P.W.18 and the witnesses to his house and in pursuance of his disclosure statement, two gold thali balls weighing 1.320 grams (M.O.6) a blood stained half sleeve shirt and a pants were recovered. On 14.05.2006, A2 appeared before P.W.6, the then Village Administrative Officer of Pukkampatti Village. On such appearance, at 09.00 a.m. A2 gave a voluntary confession orally which P.W.6 reduced into writing. Ex.P.20 is the said extra judicial confession. He prepared a special report (Ex.P.21). Then, P.W.6 took the accused to the police station and produced him before P.W.18 along with the special report and the extra judicial confession. P.W.18 on such production arrested A2. While in custody, A2 made a voluntary confession to P.W.18 out of the said disclosure statement of A2, a gold ring weighing 4 grams (M.O.4), a cellphone (M.O.31) and a silver chain (M.O.34), a blood stained pants (M.O.35), a blood stained half sleeve shirt (M.O.36), cash of Rs.260/- (M.O.32 series - 2 Nos. of hundred rupee currency, and 1 No. of fifty rupee currency and 1 No. of ten rupee currency), a receipt (M.O.22) evidencing the purchase of cellphone and a polythene cover (M.O.33) were recovered under a mahazar (Ex.P.24).

10. On 14.05.2006 P.W.18 produced A2 before the then Executive Magistrate cum Revenue Divisional Officer, Mettur at 04.00 p.m. It is alleged that A2 made a voluntary confession before P.W.17. Ex.P.34 is the said confession allegedly made by A2 to P.W.17. P.W.18, thereafter, forwarded the accused to the court for judicial remand and also handed over the material objects. While the accused

were in his custody, P.W.18 took sample finger prints of A1 and A2 by following the procedure established by law. They were sent to the finger print expert (P.W.15) for comparison. On comparison, P.W.15 found that one chance finger print lifted from the bureau at the house of the deceased tallied with the finger print of A1 and another chance finger print lifted from the bureau at the house of the deceased tallied with the finger print of A2. At the request of P.W.18, the material objects were also sent for chemical examination. The report revealed that there were blood stains on most of the material objects. On completing the investigation, P.W.18, laid charge sheet against the accused and prosecuted the juvenile accused before the Juvenile Justice Board.

11. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 18 witnesses were examined, 42 documents and 40 material objects were marked.

12. Out of the said witnesses, P.W.1, the brother of D1 has stated that he found both D1 and D2 alive at 05.00 p.m. on 11.04.2006 at their house. He has further stated that on 12.05.2006 he found both D1 and D2 lying dead in the house with injuries. When he visited the house, the bureau was kept opened and that the valuable properties and cash kept in the bureau had been stolen away. He has also spoken about the complaint made by him to the police. P.W.2 is the son of the deceased. He has stated that he was informed about the death of D1 and D2. When he came to the house of D1, he found both D1 and D2 lying dead in a pool of blood. He has also spoken about the missing of gold jewels namely, M.Os.2 to 7 from the person of the deceased and also cash of Rs.1,00,000/- which was kept in the bureau. He has stated that he identified M.Os.2 to 7 as that of the deceased after they were recovered from the accused. P.W.3 has spoken about the preparation of observation mahazar and the rough sketch at the place of occurrence and also the recovery of material objects from the place of occurrence by the police.

13. P.W.4 has stated that on 11.04.2006 around 10.00 p.m. he traveled in a bus from Salem to Sathapadi village. Six persons who were not previously not known

to him also travelled in the same bus. When he got down at Sathapadi bus stop, those six persons also got down from the bus. Thereafter, he returned to his house whereas all the six persons were still standing on the road. On the next day, at 05.00 a.m. he came to know that both D1 and D2 had been done to death. During trial, he identified, these two accused as the persons among six who were seen by him on the previous day of occurrence.

14. P.W.5 has stated that A1 surrendered before him at 01.00 p.m. on 10.05.2006 when he was in his office. He has further stated about the extra judicial confession made by A1. He has also stated about the arrest of A1 by P.W.18 on being produced by him, the disclosure statement made by A1 and the consequential recovery made by the police. He has also stated about the arrest of all the three juvenile accused on being identified by A1 and the consequential recoveries of material objects on their disclosure statements. P.W.6, the then Village Administrative Officer of Pukkampatti Village, has spoken about the fact that on 14.05.2006 at 09.00 a.m. A2 appeared before him at his office at Pukkampatti. On such appearance, according to him, A2 gave a voluntary confession which he reduced into writing Ex.P.20 is the extra judicial confession. He has further stated that he produced A2 before P.W.18 and on the disclosure statement made by him before P.W.18, a gold ring (M.O.4), nokia cellphone (M.O.31), cash of Rs.260/- (M.O.32 series) were recovered. M.O.4, the gold ring is the one which was recovered from A2. P.W.7 has spoken about the autopsy conducted on the dead body of D1 and his final opinion regarding the cause of death. P.W.8 has spoken about the autopsy conducted on the dead body of D2 and her final opinion regarding the cause of death. P.W.9 has stated that on 19.05.2006, the juvenile accused Sathish @ Sathiskumar made a voluntary confession while in custody of the police. He has further spoken about the recovery of material objects from him on his disclosure statement.

15. P.W.10 has stated that he was running a Chilly Chicken shop at Kamaneri Bus Stop. On 11.04.2006 around 08.00 p.m. six persons who were previously not known to him came to his shop and ate chilly chicken. On the next day, he came to know about the death of D1 and D2. He has identified these two accused in court as the persons among six who had come to his shop on the previous day of

occurrence.

16. P.W.10 was running a small shop at Kamaneri Village. He has stated that between 08.00 and 08.30 p.m. on 11.04.2006 six persons who were previously not known to him came to his shop, and they have had tiffin in his shop and left. Later, he came to know about the death of the deceased. P.W.12 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.13, the witness to whom A1 had pledged the jewels, has not stated anything incriminating against the accused. However, she was not treated as hostile by the prosecution. P.W.14 has stated that A1 produced the nokia cellphone and cash of Rs.2727/- on 12.04.2006 under Ex.P.22 receipt. P.W.15, the Head Constable has stated that he took the dead bodies to the hospital and handed over the same at the hospital for postmortem. P.W.16 is an important witness for the prosecution. He has stated that he lifted four chance finger prints from the bureau at the house of the deceased and out of the four, one tallied with the finger print of D2 and another finger print was smudged and therefore, it was not fit for comparison. According to him, the third chance finger print tallied with the finger print of A1 and the last one tallied with the finger print of A2. P.W.17 was the then Revenue Divisional Officer at Mettur. According to her, on 14.05.2006 P.W.18 produced A2 before her and she recorded the confession statement of A2. Ex.P.34 is the said confession. P.W.18 has spoken about the registration of the case, the investigation done by him and the filing of final report against the accused.

17. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness on their side, but, a recovery mahazar dated 14.05.2006 was marked as Ex.D.1. The defence of the accused was a total denial. Having considered all the above, the trial court convicted the appellants/accused and sentenced them as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 and A2 are now before this Court with the present criminal appeals.

18. We have heard the learned counsel appearing for the appellants/A1 and A2 and the learned Additional Public Prosecutor appearing for the respondent/State

and we have also perused the records carefully.

19. This is a case based on circumstantial evidence. The first and the foremost circumstance is that both D1 and D2 were living together at their house near Balamurugan Engineering College at Chinna Sathapadi, Salem District. From the evidence of P.W.1, the prosecution has proved that D1 and D2 were lastly seen alive at their house at 05.00 p.m. on 11.04.2006 when P.W.1 had gone to the house of the deceased. Both D1 and D2 were found lying dead in a pool of blood with injuries on their body on the next day that was on 12.04.2006 at 04.00 a.m. The evidences of P.Ws.7 and 8, the doctors, who conducted autopsies on the bodies of D1 and D2 respectively would go to show that D1 and D2 had been done to death by causing mechanical violence. Thus, the prosecution has proved beyond any reasonable doubt that both D1 and D2 were done to death at their house some time between 05.00 p.m. on 11.04.2006 and 04.00 a.m. on 12.04.2006.

20. P.W.1, the brother and P.W.2, the son of the deceased, have stated that the gold and silver ornaments worn by the deceased and cash from the bureau were found stolen away. There is a mention about the same, at the earliest point of time, in Ex.P.1. P.Ws.1 and 2 have elaborately spoken about the same and that they have given the details of the properties stolen. It is also in evidence that the gold jewels Mos.2, 3, 5 and 6 were worn by D2 and M.Os.4 and 7 were worn by D1. From the evidences of P.Ws.1 and 2, the prosecution has thus proved that the murders of D1 and D2 and the robbery of these valuable properties and cash of Rs.1,00,000/- were committed in one and the same transaction. Thus, it is inferable that the persons who committed robbery only would have committed the murders of both the D1 and D2.

21. Now, the question is as to who were the perpetrators of the crime. The first and the foremost evidence available on record to prove the same is the evidence of P.W.16. P.W.16, the Finger Print Expert has stated that as requested by P.W.18, he visited the scene of occurrence on 12.04.2006. He thoroughly examined the entire house for chance finger prints, if any, and at last, he found four chance finger prints on the bureau found at the house of the deceased. He

developed the same and photographed. Out of the four chance finger prints, the first one tallied with that of D2 and the second one was in a smudged condition and therefore, the same was not fit for comparison. He has categorically stated that the third one tallied with the admitted left thumb finger print of A1 and the last one tallied with the admitted left ring finger print of A2. A1 and A2 have got no explanation to offer as to how their finger prints came into being on the bureau that was kept deep inside the house where the dead bodies of both A1 and A2 were found lying in a pool of blood with injuries. A1 and A2 have not even explained whether they had any occasion to visit the house of the deceased for any other purpose. The non explanation by A1 and A2 in respect of their finger prints on the bureau is a very strong incriminating evidence to prove that A1 and A2 barged into the house of the deceased at or about the time of occurrence.

22. The next piece of circumstance is the extra judicial confession given by A1 to P.W.5 on 10.05.2006. According to P.W.5, A1 came to him around 01.00 p.m. when he was at his Office and made a voluntary confession thereby confessing that he along with A2 and the juvenile accused committed murders of both D1 and D2 and had stolen away the properties.

23. The learned counsel for the appellants would submit that A1 would not have made such extra judicial confession at all and there are lot of doubts about the same. Though attractive, we do not find any force at all in the said argument. The learned counsel would point out that there was no reason for A1 to have chosen a total stranger to confess his guilt. But, in our considered view, the reason for A1 to choose P.W.5 for the purpose of confessing his guilt has been stated by A1 in the confession itself. He has stated that out of fear for police, he went to the local Village Administrative Officer and confessed to him. In our considered view, P.W.5 is, after all, an independent Village Administrative Officer who had no grudge against A1 at all. Thus, we hold that the evidence of P.W.5 is fully believable and thus, the extra judicial confession of A1 to P.W.5 stands proved.

24. The next circumstance is the disclosure statement made by A1 to P.W.18. It was only out of the said disclosure statement made by A1 in the presence of the witnesses to P.W.18 while he was in custody, the blood stained dress materials, a

gold thali chain (M.O.21) were recovered. M.O.21 has been proved to be a stolen property. According to the case of the prosecution, the said gold jewel was pledged by A1 to P.W.13. P.W.13 has stated that she had forgotten as to who pledged the jewel. Still the witness was not treated as hostile though there were possibilities of the witness have been won over by the accused. But, the evidence of P.W.18 which is duly supported by contemporaneous record namely, the recovery mahazar would clinchingly prove the recovery of stolen properties from the possession of A1. A1 has got no explanation to offer as to how he came to possess the stolen properties. This would give rise to a presumption as provided in Section 114 of the Evidence Act that A1 was one of the perpetrators of the crime.

25. The next circumstance is the extra judicial confession made by A2 to P.W.6. P.W.6, yet another Village Administrative Officer, has stated that A2 appeared before him at 09.00 a.m. on 14.10.2006 voluntarily and made an extra judicial confession. Here again, the learned counsel for the appellants would submit that since P.W.6 was a total stranger to A2, he would not have chosen to confess. This argument also does not persuade us. As we have already pointed out while discussing about the confession of A1, here again A2 has also given the reason as to why he had chosen P.W.6 to confess his guilt. P.W.6 is also an independent Village Administrative Officer, who had no grudge against A2. Therefore, we hold that the evidence of P.W.6 is also fully believable. From out of the same, the prosecution has proved that A2 made a voluntary confession in which he has stated that he along with A1 and the juvenile accused had committed murders of both D1 and D2 and had stolen away their properties.

26. The next circumstance is the recovery of the stolen property from the possession of A2. There is no reason to reject the case of the prosecution in respect of the recovery of the silver chain from his possession on 14.05.2006. A2 has got no explanation to offer. From out of this evidence, we have to presume as provided in Section 114 of the Evidence Act that he was one of the perpetrators of the crime.

27. The learned Additional Public Prosecutor would submit that P.W.10 and P.W.11 had seen A1 and A2 some where near the place of occurrence at or about

the time of occurrence. But, we are not able to attach any credence to the evidences of P.Ws.10 and 11 because there was no test identification parade held to test their veracity. They were total strangers to A1 and A2. When that be so, in the absence of Test Identification Parade, it is difficult to believe the identity made by P.Ws.10 and 11 of A1 and A2 for the first time in court. Therefore, we reject the evidences of P.Ws.10 and 11.

28. In a case of this nature, it is the law that the circumstances projected should be proved beyond all reasonable doubts and all such proved circumstances should form a complete chain so as to unerringly point to the guilt of the accused and that there should not be any other hypothesis which is inconsistent with the guilt of the accused. Here, in this case, as we have elaborately discussed, the circumstances namely, the presence of the finger prints of A1 and A2 on the bureau at the house of the deceased, the extra judicial confessions made by A1 and A2, the disclosure statements made by them and the consequential recoveries of the stolen properties, the failure of A1 and A2 to explain their possession of the stolen properties would all clinchingly go to form a complete chain unerringly pointing to the guilt against the accused. More so, the presumptions raised under section 114 of the Evidence Act, though are rebuttable, have not been rebutted by A1 and A2 either by direct or circumstantial evidence. Thus, from out of the unrebutted presumptions raised under section 114 of The Evidence Act, coupled with the other proved circumstances, we hold that the prosecution has clearly proved the charges against A1 and A2 beyond all reasonable doubts that they are the perpetrators of the crime. The trial court was thus right in convicting both A1 and A2 for the offence of house trespass and also for the offence of dacoity with murder and the same do not require any interference at the hands of this court at all. But, the trial court, in our considered view, ought to have framed a charge under Section 302 of IPC [Two counts] also. It is needless to point out that an offence under Section 396 of IPC is an offence against property, whereas an offence under Section 302 of IPC is an offence affecting human body. In the course of same transaction, if an offence affecting human body and an offence against property are committed, they constitute two different offences and thus, there should have been two charges namely charge under Section 302 of IPC [Two counts] for murders and under Section 396 of IPC [Two counts] for dacoity

with murders. But, the trial court framed only a charge under Section 396 of IPC and therefore, we find no other option but to confirm the conviction under Section 396 of IPC [Two counts] and also under Section 450 of IPC.

29. Now, turning to the quantum of sentences, the trial court has imposed only a minimum punishment prescribed for offence of house trespass and insofar as the offence of house-trespass is concerned the sentence imposed by the trial court is proportionate to the gravity of offence. Thus the sentences imposed by the trial court also do not at all require any interference at the hands of this court.

30. For the foregoing reasons, the criminal appeals fail and the same are liable only to be dismissed.

31. In the result, the criminal appeals are dismissed and the conviction and the sentences imposed on the appellants are hereby confirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com