

Velmurugan Vs. State

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Court : Chennai

Decided On : Jun-19-2008

Reported in : 2008CriLJ4511

Judge : P.D. Dinakaran and ;K.N. Basha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120, 201, 302, 363 and 364;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : CrI. Appeal No. 429 of 2007

Appellant : Velmurugan

Respondent : State

Advocate for Def. : N.R. Elango, Addl. Prosecutor

Advocate for Pet/Ap. : S. Gowri Shankar, Adv.

Judgement :

P.D. Dinakaran, J.

1. The important and interesting question that arises for our consideration in this appeal is:

Whether in a case based on circumstantial evidence, not proving the motive is fatal to the prosecution, when other circumstances connecting the accused with

the commission of crime are substantiated ?

2. The sole accused in Sessions Case No. 179 of 2006 on the file of Principal Sessions Judge, Vellore District, appeals against the conviction and sentence imposed on him.

3. Originally, charges were framed against the appellant/accused along with another by name Durai Murugan for offences under Sections 120(b), 364, 302 and 201 I.P.C. But, before the trial commenced, the other accused Durai Murugan died and hence, the charges levelled against him abated. The appellant, on being tried before the Court of Sessions, was convicted as charged, and was sentenced to one year rigorous imprisonment for the offence under Section 120(b) I.P.C; five years rigorous imprisonment under Section 364 I.P.C.; imprisonment for life under Section 302 I.P.C; and two years rigorous imprisonment for the offence under Section 201 I.P.C. No fine amount was imposed and the sentences were ordered to run concurrently. Aggrieved over the said conviction and sentence, the appellant has preferred the present appeal.

4. The allegation in the charge sheet laid against the appellant and another by name Durai Murugan (hereinafter referred to as 'deceased accused'), before the Magistrate's Court is that on 13.8.2005, in order to commit the murder of a minor boy by name Vinothkumar, the appellant and the deceased accused conspired to kidnap the said minor boy and in furtherance of such conspiracy, kidnapped the boy; committed his murder by strangulating his neck; and thereafter, by covering the face of the body with a cloth and after pouring petrol on the face, set fire and thereby, committed offences punishable under Sections 120(b), 364, 302 and 201 I.P.C.

5. The material facts that lie in short compass are stated thus:

(a) The prosecution case was built up on the basis of the complaint lodged by one Anandan, who was examined as P.W. 1 in the case. P.W. 1 - Anandan is the father of the deceased minor boy Vinothkumar and is residing at Vellakottai village along with his wife and four children - two daughters and two sons. The deceased is the second son studying IV standard at the relevant point of time. On 13.8.2005,

the boy went to school in the morning and finding him not returned till 8.30 p.m., P.W. 1 went in search of his son and enquired with his relatives and villagers. P.W.4, Kalaiarasi, a resident of the same street, informed P.W. 1 that she saw the appellant/accused taking his son in a motor bike around 8.45 p.m. When enquired with one Sampath, brother-in-law of P.W.1 and one Anjalai, wife of said Sampath, they also informed that they saw the boy in the company of the accused in a motor bike around 9.00 p.m. P.W.3 - Senthil Kumar also informed P.W.1 that he saw the deceased boy in the company of the appellant/accused around 9.00 p.m. going towards Vaniyambadi. As the accused is a relative of P.W. 1, P.W. 1 thought that the boy would come back to the house. But, till the next day morning the boy did not come back and P.W. 1, perturbed by the same, again started searching for his son. At about 7.00 a.m., one Govindasamy informed P.W. 1 that he saw the boy sitting in a motor bike in between the appellant/accused and the deceased accused around 4.00 a.m. on that day. According to P.W. 1, the appellant/accused was having a grudge against the family of the deceased as though they have done a witch craft against his family and hence, P.W.1 suspected that the accused might have kidnapped his son. Alleging that the appellant/ accused joining with the deceased accused kidnapped his son Vinothkumar, P.W. 1 lodged a complaint at about 9.00 a.m. on 14.8.2005 before Alangayam police station, which was registered by P.W. 15, Sub-Inspector of Police, in Crime No. 235 of 2005 under Section 363 I.P.C. Ex.P. 15 is the printed F.I.R. and the same was sent to Court as well as to superior officials.

(b) In the meanwhile, at about 7.45 a.m. on that day, P.W. 14, Sub-Inspector of Police, Kandhili Police Station, received an information over phone from one Kannan that a burnt body of a boy aged 10 years is found at Velakkalnatam road near Ondikattai, proceeded to the spot with his police party and found the dead body. While he was observing the spot, he received a wireless message from the police station about the registration of a complaint at Alangayam police station given by P.W. 1 and accordingly, he informed about the dead body of the boy to the Inspector of Police, Alangayam police station.

(c) P.W. 16, Inspector of Police, Alangayam police station, who undertook the investigation in Crime No. 235 of 2005 registered under Section 363 I.P.C. based

on Ex.P.1 complaint, on receipt of the information from Kandhili police station about the dead body of a boy aged 10 years, reached the spot at about 10.00 a.m., taking P.W. 1 and his wife along with him. On reaching the spot, P.W. 1 identified the dead body as that of his son Vinothkumar by looking into his clothes and the wound found on the leg. A statement, Ex.P.2. was recorded from P.W.I after he identified the dead body, in which also P.W. 1 implicated the appellant/accused and the deceased/accused. In the meantime, at about 12.00 noon, P.W.6, Village Administrative Officer of Paniyandapilli village, on receipt of information, reached the scene of occurrence along with his menial.

(d) P.W. 16, based on the statement. Ex.P.2, given by P.W.I, altered the penal provisions in crime No. 235 of 2005 from 363 I.P.C. to Sections 364, 302 and 201 I.P.C. and sent the express F.I.R., Ex.P. 16, to Court and took up investigation. In the presence of P.W.6 and another, he prepared observation mahazar, Ex.P.3 and rough sketch, Ex.P. 17. The scene of occurrence and the dead body were caused to be photographed by photographer, P.W. 10. He recovered M.Os. 1, 2, 4, 5 and 6 from the scene of occurrence under a cover of mahazar, Ex.P.4. In the presence of panchayatdars and witnesses, inquest was conducted between 3.00 p.m. and 6.00 p.m. and Ex.P. 18 is the inquest report. During inquest, witnesses were examined and their statements were recorded, after which, the body was sent to the hospital with a requisition for postmortem.

(e) P.W. 12, Senior Assistant Surgeon attached to Government Hospital, Vaniyambadi, on receipt of the requisition and the dead body, conducted post-mortem at 9.00 a.m. on 15.8.2005; noticed the appearances found on the dead body and reduced the same in Ex.P.14, post-mortem certificate. He reserved his opinion as to the cause of death pending report of chemical analysis and forensic report.

(f) P.W. 16, continuing with his investigation, sent the material objects, viz., M.Os. 1, 2, 4, 5 and 6 to Court with-a request to forward the same for chemical examination. On 15.8.2005 at about 1.00 p.m., he arrested the appellant/accused and the deceased/accused at Vellakuttai Kootroad and pursuant to the admissible portion of the confession statement given by the appellant/accused, which is

marked as Ex.P.5, P.W. 16 recovered M.O.7 - cable wire and M.O.8 -plastic bottle with petrol under a mahazar, Ex.P.6. At about 5.30 p.m., on being pointed out by the appellant/accused at the workshop of P.W.8, Bajaj Caliber motorbike bearing Registration No. TN-20-X-3596, M.O.3, was seized under a mahazar, Ex.P.7. The deceased accused also gave a confession statement, pursuant to the admissible portion of which, viz., Ex.P.8, an autorickshaw bearing No. TN-23-W-4095, M.O.9, was seized under a mahazar, Ex.P.9. The seized material objects were sent to Court along with a requisition for chemical analysis. Thereafter, P.W.16 examined official witnesses and other witnesses and recorded their statements.

(g) He also issued a requisition to Court to send the viscera and other internal organs already preserved by the doctor, P.W. 12, from the dead body of the boy, to the laboratory for obtaining the opinion of the scientific experts. On receipt of Exs.P. 12 and P. 13, hyoid bone report and chemical analyst report, the doctor, P.W. 12, opined as to the cause of death that the deceased died due to strangulation. P.W.16 obtained Exs.P. 12 to P. 14 from the doctor and examined and recorded his statement. On various dates, he examined official witnesses and recorded their statements. He obtained Ex.P. 10 series, photographs and negatives from the photographer and after completing investigation, laid the charge-sheet against both the accused for the offences already referred to above on 22.10.2005.

(h) During the initial questioning, the accused denied their involvement in the crime and hence, the case was committed to Court of Session, which framed charges against both the accused. The accused pleaded not guilty of the charges levelled against them and hence trial commenced. Since the second accused died before trial, the trial proceeded only against the appellant/accused. The prosecution, in order to substantiate the charges, marched 16 witnesses and produced 22 exhibits as well as 9 material objects, as referred to earlier.

(i) The trial Court, on scrutiny of the entire materials placed before it and on considering the arguments advanced on both sides, convicted and sentenced the appellant/accused as referred above. Exasperated by the same, the present appeal has been preferred by the appellant/accused.

6. The learned Counsel for the appellant/accused strenuously assailing the judgment of conviction and sentence, submits that since the case is purely based upon circumstantial evidence, the prosecution has to establish all the links in the chain of circumstances and even if one link is missing, the appellant/accused is entitled for acquittal. He submits that in the instant case, the prosecution failed to establish the motive part of the occurrence, which assumes importance in the case of circumstantial evidence and the case proceeded mainly based on the last seen theory spoken to by P.Ws.3 to 5 and recovery of material objects, which circumstances are not at all sufficient to connect the appellant/accused with the crime. Therefore, the learned Counsel submits that this is purely a case for acquittal.

7. Opposing the above contention of the learned Counsel for the appellant, the learned Additional Public Prosecutor submits that even in the absence of motive, if there are other sufficient circumstances proving to the guilt of the accused, the conviction can safely be based upon such circumstances. He further submits that the last seen theory as spoken to by witnesses and the recovery of material objects clinchingly connect the accused with the crime without any missing link and therefore, the conviction and sentence are sustainable in law.

8. We heard and considered the submissions of both sides and perused the entire materials placed on record.

9. It is not in dispute that the deceased boy Vinothkumar died out of homicidal violence. The evidence of the doctor P.W. 12, who conducted post-mortem and who issued Ex.P. 14, post-mortem certificate coupled with Exs.P. 12 and P. 13, hyoid bone and chemical analyst's reports, established the fact that the deceased died of strangulation. The doctor has also stated in his evidence that death could have been due to strangulation of neck with a wire like M.O.7. Hence, we have no hesitation to hold that the prosecution has succeeded in establishing the cause of death.

10. The points for consideration are:

(i) Whether the prosecution has established the case against the accused without a shadow of doubt and

(ii) Whether in a case based on circumstantial evidence, not proving the motive is fatal to the prosecution, when other circumstances connecting the accused with the commission of crime are substantiated ?

11. The prosecution case hinges upon circumstantial evidence, as the occurrence was not witnessed by anyone. Before delving into the issue, it is apt to refer the ruling on the circumstantial evidence.

12.1 In *Sharad Birdhichand Sarda v. State of Maharashtra* : 1984 CriLJ1738 , it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established and they are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12.2 Again, in *Padala Veera Reddy v. State of A.P.* : AIR 1990 SC79 it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

12.3 The above judgments were quoted with approval by the Apex Court in the judgment in Manjunath Chennabasapa Mudalli v. State of Karnataka .

13. It is, therefore, clear that the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. Keeping this in mind, let us proceed to analyse the circumstances which the prosecution relied upon to bring home the guilt of the accused.

14. The chain and the links that constitute the circumstances are:

(i) motive as put forth by the prosecution through the complaint, Ex.P. 1, lodged by P.W.I;

(ii) the deceased minor boy was seen by P.W.4 in the company of the accused in a motorbike at 8.45 p.m. on 13.8.2005;

(iii) at about 9.00 p.m., P.W.3 saw the deceased in the company of accused in a motor bike;

(iv) at about 4.00 a.m. on the next day, i.e. on 14.8.2005, P.W.5 saw the deceased in the company of appellant/accused and deceased accused;

(v) recovery of M.Os.7 and 8, cable wire and plastic bottle with petrol at the instance of appellant/accused after his arrest;

(vi) recovery of motor bike, M.O.3 from P.W.8 at the instance of appellant/accused; and

(vii) non-explanation of the accused when questioned under Section 313 Cr.P.C. against incriminating circumstances.

15. From the above circumstances, it can be culled out that the prosecution relied upon the motive for the accused to commit the crime, last seen theory spoken to by P.Ws.3 to 5, the recovery of material objects pursuant to the arrest of appellant/accused at his instance and his non-explanation for the same during his questioning under Section 313 Cr.P.C.

16. The first circumstance is whether the accused had enmity against the deceased which impelled him to commit the offence. It could be seen from the available materials that in Ex.P. 1, the complaint given by P.W. 1 suspecting that the appellant/accused had kidnapped his son Vinothkumar, which was registered under Section 363 I.P.C., it has been stated that the accused had a suspicion that the family of PW-1 had done witch craft against the accused family and hence, the accused harboured a grudge against the deceased. But, P.W. 1, in his evidence, has not at all whispered anything about the appellant/accused harbouring a grudge against him, which impelled him to commit the offence. It is to be noted at this juncture that though the first information statement is not a substantive piece of evidence and it can be used either to corroborate or contradict the maker thereof, it is earliest document to come into existence and merely because the prosecution has failed to elicit the aforesaid motive for the appellant/accused to commit the murder in the chief-examination of P.W.I, it cannot be wholly brushed aside.

17.1 Even assuming that the motive part of the occurrence has not been substantiated by the prosecution through P.W.I in his chief-examination, it cannot be said that since the motive has not been established, the substratum of the prosecution case itself goes, as contended by the learned Counsel for the

appellant/accused.

17.2 It is true that in a case of circumstantial evidence motive plays a significant role. But, it is also well settled that if there are other circumstances which would lead to the only conclusion that it was the accused alone and none else who committed the murder, then the motive becomes immaterial. At this juncture, it would be apt for us to refer the various decisions of the Apex Court on this point.

18.1 In *Atley v. State of U.P.* : 1955 CriLJ1653 , the Apex Court has held that where there is clear evidence that the person has committed the offence, it is immaterial where no motive for commission of the crime has been shown. Quoting this with approval, the Apex Court in its subsequent decision in *Ganeshlal v. State of Maharashtra* , has held thus:

In circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the motive of the offence does not signify the non-existence of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction. The absence of motive, which may be one of the strongest links to connect the chain would not necessarily become fatal provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from the proved circumstances.

18.2 Again in *Mulakh Raj v. Satish Kumar* , it has been held as follows:

Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the

prosecution case.

18.3 Further, in *Jarnail Singh v. State of Haryana* , the Apex Court held thus:

7. It is true that normally there is a motive behind every criminal act and that is why the investigating agency as well as the Court while examining the complicity of an accused, first try to ascertain as to what was the driving force which compelled the accused to commit the crime in question. But with complex growth of society and which has also produced complex characters, the actions and reactions of persons either on the accused side or on the prosecution side are not very easy to ascertain and judge. It is a matter of common experience that even a small or trifle incident has a different reaction on different persons. That is why it is not always easy for the Court to weigh and judge as to whether under the circumstances brought on record by the prosecution, in normal course the accused concerned could have acted as alleged by the prosecution.

8. That is why this Court has repeatedly expressed the view that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. But at the same time it must be impressed that motive behind a crime is a relevant fact and normally prosecution is expected to adduce evidence in respect thereof. Experience shows that one or other motive moves-the culprit to a certain course of action. In cases where prosecution is not able to establish a motive behind the alleged crime it assumes importance especially in cases where the prosecution rests on circumstantial evidence or on witnesses who have an inimical background. Proof of motive on the part of the accused persons to commit an offence satisfies the judicial mind about the likelihood of the authorship but in its absence it is only proper on the part of the court to have a deeper search. But if the Court is satisfied that evidence adduced, oral or circumstantial, establishes the charge against the accused, the prosecution case cannot be rejected saying that there was no immediate impelling motive on the part of the accused persons to commit the crime.

18.4 In *Tarseem Kumar v. Delhi Admn.* , it has been held thus:

Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the Court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question.

18.5 In *State of Gujarat v. Anirudhsing* , the Apex Court has held that the motive gets locked in the mind of the makers and it is difficult to fathom it and that if the motive is proved that would supply a chain of links but absence thereof is not a ground to reject the prosecution case. Again in *Uday Kumar v. State of Karnataka* , it has been held that in a case of circumstantial evidence, motive is one of the circumstances which assumes importance but it cannot be said that in the absence thereof, other proved circumstances although complete the chain would be of no consequence.

18.6 In *Mani Kumar Thapa v. State of Sikkim* , the Apex Court held that if the prosecution is able to establish beyond all reasonable doubt from other circumstantial evidence that it is the accused alone who could have committed the murder, the absence of the motive will not hamper a safe conviction.

18.7 The Apex Court has reiterated the above view in *Yuvaraj Ambar Mohite v. State of Maharashtra* (2006) 12 SCC 512 , wherein it is held that circumstances brought on record by the prosecution clearly demonstrate that it was the appellant alone who committed the murder and in that view of the matter absence of motive would be immaterial.

18.8 From the above decisions of the Apex Court, it is crystal clear and is also well settled that motive lacks its significance even in a case of circumstantial evidence if at all the other proved circumstances undoubtedly pointing to the guilt of the accused. Keeping the above well settled principles in mind, let us find out whether the prosecution is able to prove the other circumstances which would only lead to the guilt of the accused.

19. The circumstances which the prosecution relied upon other than the motive, as already stated, are the last seen theory brought out through the evidence of P.Ws.3 to 5, the recovery of material objects pursuant to the confession statement of the accused and his non-explanation under Section 313 Cr.P.C.

20.1 P.W.4 - Kalaiarasi is the first person who is alleged to have seen the deceased boy in the company of appellant/accused at 8.45 p.m. on 13.8.05. According to P.W. 1, it is the usual practice of his son Vinoth-kumar that after returning from school around 5.00 p.m., he would go out for play and would return in a few hours; but on 13.8.2005, finding him not returned even at 8.30 p.m., P.W. 1 got anxious and went in search of him and enquired with his neighbours. P.W.4, who is a neighbour residing in the same street, informed him that she saw the appellant/accused going to his house in a motorbike around 8.45 p.m. and while returning, the deceased was sitting at his back.

20.2 The next is the evidence of P.W.3 -Senthilkumar. It is his evidence that he is working in an auto workshop at Vaniyambadi and he used to go to work at 8.30 a.m. and return to house only around 9.15 p.m. in the night and on 13.8.05, while he was returning in a bus after attending his work at Vaniyambadi at 9.00 p.m., he saw the appellant/accused taking the deceased boy in a motor cycle and that he informed the same to P.W. 1 and others when they complained about missing of the boy.

20.3 The next is the person by name Govindasamy, who is examined as P.W. 5 in the case. According to him, he also searched the boy along with P.W.I initially in the evening of 13.8.05 and on the next day at about 4.00 a.m., when he started to go for Nimmiyapatti in order to collect labourers for brick work, he saw the deceased boy sitting in a motor bike in between the appellant/accused and

deceased accused, and that he called the appellant/accused, for which the appellant/accused did not respond. Thereafter, he informed the same to P.W.I, who, in turn, lodged the complaint before the police, which was registered under Section 363 I.P.C.

20.4 From the above evidence of P.Ws.3 to 5, it is evident that from the night of 13.8.2005 till the next day morning at 4.00 a.m., the deceased boy was seen in the company of the appellant/accused and thereafter, the boy was not seen alive by anyone and only his dead body was found near Velakkalnatham, which was identified by P.W. 1. When the above circumstance of the deceased last seen alive in the company of the appellant/accused was put against the appellant/accused, he did not offer any explanation. As laid down by the Apex Court in Joseph v. State of Kerala , the flat denial of each and every circumstance that was put to the accused under Section 313 Cr. P.C. is also an additional piece of evidence against him. The non-explanation of the appellant/accused for taking the son of P.W. 1 along with him would also substantiate the offence of kidnapping and hence, we hold that the prosecution has succeeded in establishing the offence under Section 364 I.P.C.

21.1 The next piece of evidence is the recovery of M.Os. 1 and 2 - burnt clothes found on the dead body, M.O.3 - motorbike used by the appellant/accused at the time of occurrence, M.Os.4 and 5 - burnt tar pieces and sample tar piece, M.O.6 - burnt match stick, M.O.7 - cable wire used to strangulate the neck of the boy and M.O.8 -a plastic bottle containing orange colour liquid, used for screening the offence by setting fire to the face of the boy.

21.2 According to P.W. 14, the investigating officer, on taking up investigation in the case, he proceeded to the spot and from the scene of occurrence, he recovered M.Os.1, 2, 4, 5 and 6 under a mahazar attested by P.W.6, Village Administrative Officer and another. Thereafter, he arrested the appellant/accused and the deceased accused on 15.8.2005 and pursuant to the admissible portion of the statement given by appellant/accused, he caused the recovery of M.Os.7 and 8 on being pointed out by him. The mahazar prepared by the investigating officer for the recovery of material objects has been attested by P.W.7, who, on oath,

corroborates with the evidence of P.W. 14. During the course of investigation, P.W. 14 sent all the above material objects to Court with a request to send them for chemical analysis. The chemical analysis report, Ex.P.21, revealed that M.O.1 and M.O.2 - burnt clothes, were found to contain petrol and M.O.8, a plastic bottle containing 10 ml of orange liquid, was found to be petrol. That apart, the doctor, P.W. 12, who conducted autopsy, noticed the face and the entire scalp hair singed, swollen, congested and in blackish discolouration and also noticed multiple blisters/blebs on the entire right upper arm front, back of chest and on the abdomen area. The doctor has stated in his evidence that on account of strangulating with a cable wire, the death would have occurred and that by setting fire after pouring petrol on the body, the said blisters are possible.

21.3 Further more, the appellant/accused, pursuant to his confession statement, took the police to the workshop of P.W.8 and pointed out the motor bike which he used at the time of commission of offence and the same was recovered under a mahazar. It is the evidence of P.W.8, an independent witness, that on 14.8.2005 at about 6.30 a.m., the appellant/accused came to his workshop and requested him to do repair works in his motorbike and that he told the appellant/accused that it will take some time to repair the bike and therefore, the appellant/accused went away by boarding a bus and thereafter, did not return back. He has further stated that around 5.00 or 5.30 p.m., the police came to his shop and seized the motor bike and that he identified the motor bike as M.O.3.

21.4 The above evidence of P.W.6, P.W.7, P.W.8, P.W. 12 and P.W. 14, who are independent witnesses having no axe to grind against the appellant/accused, unambiguously makes it clear that the above recoveries have been effected only at the instance of the appellant/accused and as such, an inference could easily be drawn that the appellant/accused, after the commission of offence of murder by strangulating the neck of the boy with the cable wire, covered the face of the boy with a cloth; poured petrol on the face and thereafter, set fire by throwing a lighted match stick. Here again, the accused had no explanation to offer when he was questioned under Section 313 Cr.P.C. as to the incriminating circumstance with regard to the recoveries, which obviously becomes an additional link in the chain as held by the Apex Court in the case of Joseph, cited supra.

21.5 The above circumstances, in our considered opinion, undoubtedly demonstrate the complicity of the appellant/accused in the commission of crime with regard to abduction, charge of murder and screening of offence and we have no doubt at all that it was the appellant/accused alone who is responsible for the cause of the death of the boy Vinothkumar.

Now the question arises whether the conviction of the appellant/accused under Section 120(b) I.P.C. can be sustained. The charge is that the appellant/accused conspired with another by name Duraimurugan and committed the offence of murder. The said Duraimurugan died before commencement of trial and hence, the charges levelled against the said Duraimurugan abated. But, however, the trial Court proceeded on the basis that both the accused conspired with each other to commit the murder of the boy and accordingly, convicted the appellant/accused for the said offence. On a perusal of materials, we find that there is absolutely no evidence with regard to the conspiracy hatched between the two accused. That apart, the evidence that is available connecting the deceased/accused with the crime is the recovery of autorickshaw pursuant to his confession and the evidence of P.W. 5 -Govindasamy, who saw the deceased boy in the company of both the accused in a motor bike. It is the case of the prosecution that the deceased accused hired the autorickshaw, M.O.9, from P.W.9 at the time of commission of offence and according to P.W.9 also, he used to rent his auto to others and that near Vaniyambadi bus stand, the deceased accused took his auto on hire. But, there is no other material to show that both the accused took the deceased boy in the said autorickshaw at the time of occurrence; on the contrary, P.W.5 would state that he saw the deceased boy sitting in between the appellant/accused and the deceased/accused in a motor bike. Further, the motive as alleged by the prosecution, even though not substantiated, is only against the appellant/accused and the deceased/accused had no motive for having conspired with the appellant/accused in order to commit the murder of the boy. Hence, we are of the confirmed opinion that the trial Court has conspicuously erred in coming to a conclusion that the charge of conspiracy is made out. We, accordingly, set aside the conviction and sentence imposed on the appellant/accused under Section 120(b) I.P.C.

22. For the foregoing reasons, we hold that though the prosecution has failed to substantiate the motive part of the occurrence, it has succeeded in establishing the other circumstances to form a complete chain without any missing link and therefore, we are of the confirmed opinion that it was the appellant/accused alone, who kidnapped the boy; commit his murder by way of strangulation; and thereafter, set fire to the face of the deceased boy in order to screen the evidence. But, however, we hold that there is absolutely no material for connecting the appellant/accused with regard to the offence of conspiracy and hence, we set aside the conviction and sentence imposed under Section 120(b) I.P.C., while confirming the conviction and sentence as far as other penal provisions are concerned.

In the result,

(i) the conviction and sentence imposed on the appellant/accused under Sections 364, 302 and 201 I.P.C. are confirmed;

(ii) the conviction and sentence imposed under Section 120(b) I.P.C. are set aside; and

(iii) the appeal is, accordingly, partly allowed.

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