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*Crl.A.No.150 of 2015*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2023

PRONOUNCED ON : 02.03.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

CRL.A.No.150 of 2015

Venkatachalam

... Appellant/1<sup>st</sup> accused

Vs.

State rep. by  
The Inspector of Police,  
Sipcot Police Station,  
Krishnagiri District.  
(Crime No.240/2010)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C against the judgment of conviction and sentence under Section 201 IPC passed by the learned Additional District and Sessions Judge, Hosur, Krishnagiri District in SC.No.18 of 2011 dated 09.03.2015.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.R.Murthi  
Government Advocate (Crl.Side)

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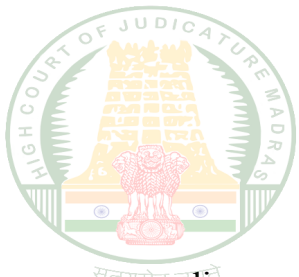


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## **JUDGMENT**

This Criminal Appeal has been preferred challenging the conviction and sentence passed against the appellant by the learned Additional District and Sessions Judge, Hosur, Krishnagiri District on 09.03.2015 in SC.No.18 of 2011.

2. There are totally four accused in this case. The appellant is the 1<sup>st</sup> accused. The case of the prosecution is that on 26.06.2010 at about 11.00 p.m accused 1 to 3 murdered one Pasavaraj (who was the husband of the 2<sup>nd</sup> accused) by conspiring with the 4<sup>th</sup> accused. The motive for the occurrence is said to be the illegal intimacy of the 1<sup>st</sup> accused with the 2<sup>nd</sup> accused, which was disliked by the husband of the 2<sup>nd</sup> accused and he reprimanded them. In pursuant to the conspiracy among the accused 1 to 4, the accused 1, 2 and 4 went to the house of the 2<sup>nd</sup> accused in a Tata Sumo vehicle bearing Registration No.TN 27-D 5009. After entering into the house of the 2<sup>nd</sup> accused, A4 caught hold of the legs of the deceased Pasavaraj by preventing him from escaping; the 3<sup>rd</sup> accused pressed his face with a pillow and the 1<sup>st</sup> accused and 2<sup>nd</sup> accused strangulated and killed him. In order to cause the



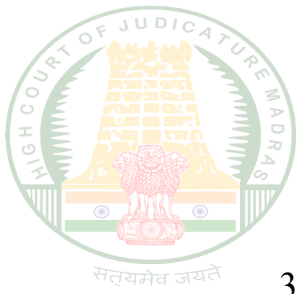
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disappearance of the evidence, the accused 1 to 4 took the dead body of the deceased Pasavaraj in the Tata Sumo to Balacury village and on the way the vehicle hit on a tree and stopped. Thereafter, the accused ran away.

2.1. After investigation, charge sheet has been filed against the accused for the offences under Sections 302 read with 120(B) and 201 IPC. The case was taken cognizance and copies were furnished. The charges were framed against the accused for the offences under Sections 302 read with 120(B) and 201 IPC and when the accused were questioned and they pleaded not guilty.

2.2 During the course of trial, on the side of the prosecution, 17 witnesses have been examined as PW1 to PW17 and Exs.P1to P19 were marked and M.O.1 to 16 were marked. After concluding the trial and after considering the materials available on record, the learned trial Judge found the 1<sup>st</sup> accused guilty for the offence under Section 201 IPC alone and convicted and sentenced him by imposing a punishment of 7 years R.I along with a fine of Rs.1,000/- and in default to pay the fine and to undergo one year R.I. The other accused have been acquitted and the first accused was acquitted from all other charges framed against them. Aggrieved over that, the first accused has preferred the present appeal.



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3. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent. Perused the entire materials available on record.

4. The learned counsel for the appellant submitted that when the charges under Sections 302 and 201 IPC have been framed based on the same evidence and when the charge of murder itself not accepted, the accused cannot be convicted for the offence under Section 201 IPC alone. In support of his contention, he relied on the judgement of the Hon'ble Supreme Court held in *State of U.P Vs. Kapil Deo and another* reported in *191 Supp(2) SCC 170*. The learned trial Judge, who convinced with the evidence on record and found the appellant not guilty for the offence of murder, ought to have acquitted him from the offence of causing disappearance of evidence under Section 201 IPC.

5. The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the learned Trial Judge had found the accused guilty for the offence under Section 201 IPC, by deeply scrutinising the evidence and documents produced before him. The prosecution proved each

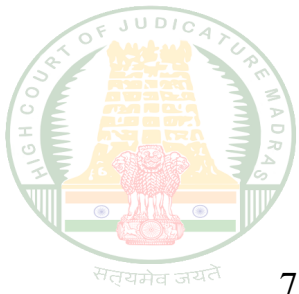


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and every circumstances pointing out to prove the guilt of the accused and that cannot be toppled by stating that the Court should not convict the accused for the offence under Section 201 IPC, since the accused was acquitted from the offence charged under Section 302 IPC.

6. The deceased Pasavaraj was the husband of the 2<sup>nd</sup> accused. The motive for the occurrence as stated by the prosecution is the illegal intimacy between the 1<sup>st</sup> accused and the 2<sup>nd</sup> accused and that was disliked by the husband of the 2<sup>nd</sup> accused. In order to eliminate the husband of the 2<sup>nd</sup> accused, the accused had conspired among themselves and murdered him. Since the motive for the occurrence is said to be the illegal intimacy between the 1<sup>st</sup> and 2<sup>nd</sup> accused, the prosecution has got a bounden duty to prove the said fact. On this aspect, Mr.Nagaraj and Mrs.Seekkiammal were examined as PW-2 & PW-3. PW2 is the brother of the deceased Pasavaraj and PW-3 is his mother. Though PW-2 has stated that the 2<sup>nd</sup> accused and 1<sup>st</sup> accused had illegal intimacy, the Court did not proceed to rely on the evidence of PW-2. It is submitted by the defence that PW-2 cannot be a reliable witness for the reason that he had a motive against the 2<sup>nd</sup> accused to amass the share of the property of the deceased Pasavaraj by sending her to prison.



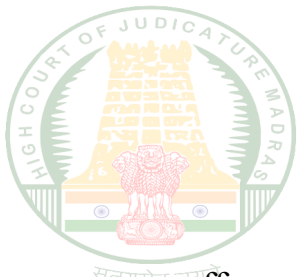
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7. However, The evidence of PW-3, who is the mother of the deceased is very relevant because she did not have any motive against anyone. She has stated in her evidence that her deceased son Pasavaraj and his wife/2<sup>nd</sup> accused herein did not have any problem between themselves and they had lived a peaceful marital life. The Court believed the version of PW-3 and arrived at a conclusion that the deceased Pasavaraj and the 2<sup>nd</sup> accused were in cordial terms and hence, the story of illegal intimacy between the 1<sup>st</sup> and 2<sup>nd</sup> accused is unreliable.

8. In that case, the motive for the accused to murder the deceased Pasavaraj does not arise. The trial Court has come to the conclusion that the basic ingredient for the offence under Section 302 IPC have not been proved.

9. This is a case which does not have any eye-witness for the occurrence and hence, the Court has to go with the circumstantial evidence only. In the absence of proof for illegal intimacy between the 1<sup>st</sup> and 2<sup>nd</sup> accused, no criminal charges can be fastened against the accused for the offence under Section 302 IPC. The learned trial Judge after having come to the conclusion that there is no evidence to find the accused guilty for the



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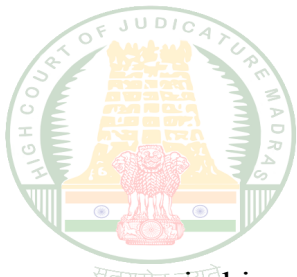
offence of murder, has proceeded to record that the 1<sup>st</sup> accused for the offence under Section 201 IPC.

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10. This is obviously based on the evidence of PW-8 & PW-9. PW-8 has stated in his evidence that he had seen someone running out of the car. The car did not belong to either of the accused. As per the case of the prosecution, the car was taken by the 1<sup>st</sup> accused from PW-9.

11. PW-11/Sowgath Ali, in his evidence has stated that the Tata Sumo car bearing Registration No.TN-27 D/5009 was given by him to one car broker Ilaiyaraja in the year 2010. The said Ilaiyaraja, who was examined as PW-11 has stated in his evidence that he handed over the car to PW-9/Gowrappan for arranging the sale of the same.

12. The learned Trial Judge relied on the evidence of PW-9, who had stated that on 26.10.2010 the 1<sup>st</sup> accused requested a car from him by stating that his mother was not well and hence, he gave the car to him. This is the same car recovered by the prosecution. On the next day morning, he came to know that there was a dead body in the vehicle. PW-8/Appadurai has stated



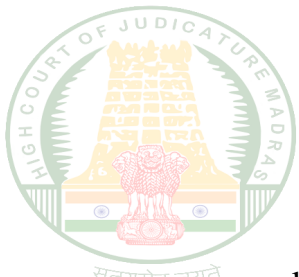
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in his evidence that on 27.10.2010 at about 3.30.a.m he found the Tata Sumo vehicle stopped by hitting against a tree and he saw a person running out from the car. By combining the evidence of PWs-8 & 9, the learned Trial Judge had arrived at a conclusion that the 1<sup>st</sup> accused was guilty of causing disappearance of evidence and harboured the offender.

13. The case of the prosecution itself is that the accused 1, 3 & 4 came together in the said Tata Sumo vehicle to the house of the 2<sup>nd</sup> accused and they murdered the husband of the 2<sup>nd</sup> accused at her house. None of the witnesses have stated that they had ever seen the 1<sup>st</sup> accused or other accused in the Tata Sumo vehicle at or near the house of the 2<sup>nd</sup> accused. The car was not recovered from the place of occurrence, but near Selappasanaampatti. PW-8 has simply stated that he has seen a person running away from the car, but he did not identify that person as the 1<sup>st</sup> accused. Since the occurrence is said to have taken place at the house of the 2<sup>nd</sup> accused, the body of the deceased ought to have taken from the house of the 2<sup>nd</sup> accused. As stated already, no evidence is available to show that the 1<sup>st</sup> accused along with accused 3 & 4 came to the house of the 2<sup>nd</sup> accused in the car for committing the crime. Had the car been taken by the 1<sup>st</sup> accused from PW-9 to the house of the 2<sup>nd</sup>





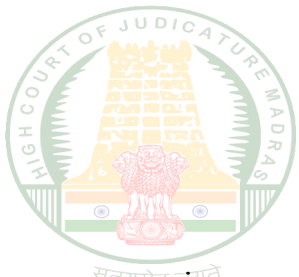
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accused and thereafter the offence was committed and the body of the deceased was lifted, the finger prints of the accused would have been found on the surface of the car or anywhere nearby. But no such finger prints have been recovered from the car or the place of occurrence.

14. Had the evidence available on record proved that the 1<sup>st</sup> accused and other accused had committed the offence of murder, the offence committed thereafter could have been very natural and probable. When the accused are not found guilty for the offence of murder, the continuity gets disrupted. Under such circumstances, the case cannot be segregated and shifted from the scene of occurrence to the place where the car has been seized, without any interconnection between the links and events. The prosecution did not file any appeal by challenging the judgement of acquittal as against this petitioner for the offence under Section 302 IPC also.

15. As rightly pointed out by the learned counsel for the appellant, the prosecution did not prove the fundamental fact that there was an offence committed and it was committed by the accused and for which purpose, he had taken the vehicle with an intention to conceal the material evidence viz., the dead body. Without proving the first two ingredients, the third ingredient



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i.e., causing disappearance of an offence will lose its hold. The learned Trial Judge without considering the above material aspects, had chosen to find the accused guilty for the offence under Section 201 IPC and hence, it is liable to be reversed.

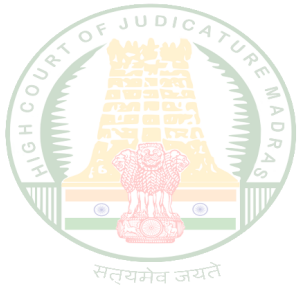
16. In the result, the Criminal Appeal is allowed. The conviction and sentence passed in SC.No.18 of 2011 by the learned Additional District and Sessions Judge, Hosur, Krishnagiri District dated 09.03.2015 is hereby set aside. The appellant is acquitted from all the charges including Section 201 IPC. The fine amount paid by him is ordered to be returned. The bail bond, if any, executed by the Appellant, shall stand cancelled.

**02.03.2023**

kmi

To

1. The Additional District and Sessions Judge,  
Hosur,  
Krishnagiri District.
2. The Inspector of Police,  
Sipcot Police Station,  
Krishnagiri District.
3. The Public Prosecutor,  
High Court of Madras,  
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**R.N.MANJULA, J**

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