

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2015
DELIVERED ON : 29.10.2015

CORAM

THE HON'BLE DR.JUSTICE S.TAMILVANAN
and
THE HON'BLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.134 of 2014
and
M.P.No.1 of 2014

Selvi
W/o.Sekar @ Rajasekar ... Appellant/A1

-vs-

The State represented by its
Inspector of Police,
Karumalaikudal Police Station,
Salem District.
Crime No.692 of 2001 ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal
Procedure Code against the judgment dated 17.12.2002 in
S.C.No.260 of 2002 on the file of learned Additional District
and Sessions Judge, Fast Track Court I, Salem, Salem District.

For Appellant : Mr.V.Paarthiban
for E.Kannadasan

For Respondent : Mr.V.M.R.Rajentren
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by C.T.SELVAM, J.)

Appellant and three others faced trial in S.C.No.260 of 2002 on the file of learned Additional District and Sessions Judge, Fast Track Court I, Salem, Salem District. The trial Court, under judgment dated 17.12.2002, convicted appellant/A1 for offences under Sections 302 and 201 r/w 302 IPC and sentenced her to life imprisonment and fine of Rs.1,000/- i/d 1 year R.I. for offence u/s.302 IPC, 7 years R.I. and fine of Rs.1,000/- i/d. 1 year R.I. for offence u/s.201 r/w 302 IPC. Against such finding, the present appeal has been filed.

2. The case of the prosecution is that A2, A3 and A4 respectively are husband, brother and mother of A1 and they are residing at Raman Nagar, Karumalaikoodal. PW-1 was also residing at such place. A2 had an illicit relationship with PW-1. Angered thereby, A1 warned PW-1 not to continue such relationship and also threatened her of doing away with her son. The deceased/son of PW-1, came to the house of A1, to play with her son on 26.12.2001 at about 05.00 p.m. A1 indiscriminately assaulted the deceased, caused injuries all over his body, strangled his neck using a copper wire and caused his death. A1 draped the body and kept the same in the kitchen towards screening the offence. In collusion with A1, A2 to A4 attempted to throw the body of the deceased into the waters of a Dam.

3. PWs.1 and 2, parents of the deceased, preferred a complaint [Ex.P1] on 27.12.2001, at 10.30 p.m., before PW-10, Sub-Inspector of Police, Karumalaikudal Police Station, who registered a case in Crime No.692 of 2001 for offences u/s.302 and 201 IPC. The printed First Information Report, Ex.P13, was forwarded to Court. PW-11, Inspector of Police, Karumalaikudal Police Station, took up investigation on the same day. He went to the scene at 11.30 p.m., prepared observation mahazar [Ex.P3] and rough sketch [Ex.P14] in the presence of PW-4 and another. He conducted inquest in the presence of panchayatdhars between 11.30 p.m. and 03.00 a.m. The inquest report is Ex.P15. He examined PWs.1 to 4 and three others and recorded their statements. He sent the body for post-mortem through PW-9, Head Constable, along with a requisition [Ex.P6]. Post-mortem was conducted by PW-6, Doctor. The post-mortem report is Ex.P7 and the same reads thus:

"Post-mortem Certificate

Regarding the body of a male aged about 8 years, named Dinesh S/o.Asokan. Requisition received at 8.30 a.m. on 28.12.2001 from the Inspector of Police of Kamalaikoodal with his letter NO.692/2001 dated 28.12.2001. Body in charge of Police Constable No.Gr.I PC 1176 named Gopal.

Identification and cast marks-

(1)a wound scar right ankle joint.

(2)a wound scar left hip.

The body was first seen by the undersigned at 10 a.m. in 28.12.2001. Its condition then was RM (passes) not present. Post-mortem commenced at 10 a.m. on 28.12.2001 at Mortuary Government Hospital, Mettur.

Appearances found at the post-mortem - Body of male, lying on its back. Eyes closed. Teeth 6+6+6+6.

Tongue kept in.

(1) Blackish discoloration of face, chest and abdomen. Blisters seen over chest and abdomen. Bleedings in nostrils and mouth.

External Injuries:-

- (1) an abrasion 3cm x 3cm on right scapular region
- (2) abrasion over the thigh left 2 x 3 cm. Peeling of skin left thigh.
- (3) A linear wire mark (wire in situ) in front of neck extended from 3'' below right ear obliquely extending upto left ear nape of neck. A knot mark seen 1 cm x 1 cm right side neck above 4 cm below right mandible. On dissection the underlying area is pale in colour. Punch mark with petechial haemorrhage present, laceration of right sternocleidomastoid muscle, carotid arteries right side

Internal Examination:-

Hyoid bone is secured. Thyroid cartilage preserved. Trachea and larynx congested. Heart 200 gms. Chambers empty. Lungs right 280 gms., left 240 gms. c/o. Congested mucous collection present. Liver 800 gms c/o. Congested. Stomach containing 200 ml. partially digested food particles. Intestine empty kidney 90 gms each. congested. Spleen 80 gms. c/s congested. Bladder empty. Skull no # Brain liquification started. Scrotum congested. Right testis swollen.

The following organs preserved:

- (1) Hyoid bone.
- (2) Thyroid cartilage
- (3) stomach and its contents
- (4) portion of intestine
- (5) portion of liver
- (6) one kidney

Opinion:- The deceased would appear to have died about 2 to 3 days prior to autopsy.

Cause of death: reserved pending chemical analysis report.

In continuation of investigation, PW-11 went in search of the accused along with PW-5, Village Administrative Officer and others. At about 08.00 a.m., on identification by witnesses, he arrested A1 near Sirusi, recorded her confession in the presence of witnesses and obtained their signatures. Thereafter, he arrested A2 to A4 near Karupureddiur Road. He recorded the confession of A2 in the presence of witnesses and obtained their signatures. He took the accused to the police station and forwarded them to Court. He examined PW-5 and another and recorded their statements. On 21.12.2001, he sent the incriminating materials for chemical analysis through constable Varadharajan. On receipt of chemical analysis report on 30.04.2002, he examined PW-6, Doctor and recorded his statement. Upon completion of investigation, he filed a charge sheet, informing commission of offences u/s.302 and 201 IPC.

4. To substantiate its case, the prosecution examined PWs.1 to 11, marked Exs.P1 to P15 and M.Os.1 to 5. None were examined on behalf of accused. On questioning under Section 313 Cr.P.C., the accused denied their involvement in the case.

5. Learned trial Judge, on appreciation of evidence, has found the accused guilty, convicted A1 for offences under Sections 302 and 201 r/w 302 IPC and A2 to A4 for offence u/s.202 IPC and sentenced A1 to life imprisonment and fine of Rs.1,000/- i/d 1 year R.I. for offence u/s.302 IPC, 7 years R.I. and fine of Rs.1,000/- i/d 1 year R.I. for offence u/s.201 r/w 302 IPC and sentenced A2 to A4 to 6 months S.I. and fine of Rs.1,000/- each i/d 3 months S.I. Hence, the present appeal.

6. Heard Mr.V.Paarthiban, learned counsel for appellant and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor. Perused the materials available on record.

7. Learned counsel for appellant submitted that there absolutely was no material to prove the guilt of appellant/accused. There were no eye witnesses and the appellant/accused had been roped in merely on suspicion. The body of the deceased, a young boy, aged about 8 years, had been found in an uninhabited house. In support of such contention, learned counsel submits that the observation mahazar only notes the presence of a stove in the kitchen but did not mention any other article as found in the premises. Learned counsel contended that PW-11, Investigating Officer, had deposed that he had not noted in the observation mahazar the other articles found at the place despite having seen them. PW-11 had denied the defence statement that he had not taken photographs since doing so would reveal that the place where the body of the deceased boy was found was an uninhabited one. The prosecution falsely has projected the appellant/accused and her family as tenants therein. None had seen the appellant/accused at the scene nor had any recovery which would point to her guilt been effected through her. PW-2, the father of the deceased boy, had admitted that an occurrence wherein his wife/mother of the deceased boy, questioned the appellant/accused regards her son having beat the deceased and whereupon the appellant/accused resorted to abusive language, had taken place 3 to 4 months prior to the occurrence. But therefor, there were no misgivings between them. Therefore, the alleged motive of appellant/accused having threatened to do away with the deceased at the time of such occurrence was farfetched. Though PW-1 has informed of last seeing the deceased on 26.12.2001 at 03.00 p.m. and of having seen him deceased at 07.00 p.m. the next day, PW-6, Doctor, who had conducted the postmortem on 28.12.2001 had conceded that the death could have been occasioned 4 to 5 days

prior thereto.

8. Heard learned Additional Public Prosecutor on the above submissions.

9. As rightly contended by learned counsel for appellant/accused, the motive suggested by the prosecution viz., of PW-1/ mother of the deceased having questioned the appellant/accused regards her son having beat the deceased, whereupon the appellant/accused resorted to abusive language and threatened to do away with the deceased at the time of such occurrence, is farfetched. PW-2, father of the deceased boy, admitted to the minor misunderstanding between the accused and PW-1/his wife 3 to 4 months prior to the occurrence and that thereafter there had been no further misgivings. The admission of PW-11, Investigating Officer, that he had noticed also other articles other than the stove at the scene but had not mentioned the same in the observation mahazar coupled with the fact that no photographs of the scene have been caused, renders worthy of consideration the defence contention that the body of the deceased was found in an uninhabited house. It is only when the prosecution conclusively proves that the body of the deceased was found in the house of the accused, that the accused would have to explain such position. PW-6, Doctor, had also admitted the possibility of the deceased having met his death 4 to 5 days prior to postmortem. The evidence of PW-2/father of the deceased, that he had gone in search of his son to the house of the appellant/accused, questioned her husband as to why the accused alone was missing when all others were present, rather is artificial. Given the attendant facts and circumstances, this Court would hold that the prosecution had not conclusively proved the guilt of the appellant and the benefit of doubt would flow to her.

This Criminal Appeal is allowed. The conviction and sentence imposed by learned Additional District and Sessions Judge, Fast Track Court I, Salem, Salem District, in S.C.No.260 of 2002 on 17.12.2002, are set aside and the appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to the accused. Bail bond(s), if any, executed by her shall stand cancelled. The appellant is directed to be released forthwith, if her detention is not required in any other case. Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR (CS-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

- 1.The Additional District and Sessions Judge,
Fast Track Court I,
Salem, Salem District.
2. -do- thro' the Principal Sessions Judge, Salem
3. The Superintendent, Special prison for Women, Vellore.
4. The Inspector of Police,
Karumalaikudal Police Station,
Salem District.
5. The District Collector, Vellore,
6. The Director General of Police,
Mylapore, Chennai.
- 7.The Public Prosecutor,
High Court, Madras.

+1 CC to MR.E.Kannadasan Advocate. SR.NO. 58985

Pre-delivery Judgment
in
Criminal Appeal No.134 of 2014

CO-EV
JD 26/11/2015

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