

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.A. No.387 of 2011

Velu @ Vadivelu ... Appellant/ Accused

-v-

State by Inspector of Police,
Tirupur Rural Mangalam Police Station. ... Respondent/
(Cr.No.5/2001) Complainant

Appeal preferred under Section 374(2) of Cr.P.C. against the conviction and sentence imposed in judgment dated 30.12.2010 made in S.C. No.305 of 2002 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.V) Coimbatore at Tirupur.

For appellant : Mr.S.Paneerselvam

For Respondent : Mr.V.M.R.Rajentren, APP

JUDGMENT

(Order of the Court made by S.TAMILVANAN,J.)

The appeal is directed against the conviction and sentence imposed in Sessions Case in S.C. No.305 of 2002 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.V) Coimbatore at Tirupur.

2. Appellant stands convicted for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and convicted u/s.392 IPC and sentenced to undergo ten years rigorous imprisonment. Aggrieved by the said conviction and sentence, the appellant has preferred this criminal appeal. As per the Judgment, considering the poverty of the appellant/accused, no fine was imposed.

3.The case of the prosecution, in brief, is as follows:

On 31.01.2001, at about 12.45 p.m., when the deceased Rajammal was crazing her cattle at Andithottam, accused Velu @ Vadivelu came there to catch squirrel. He saw the deceased was wearing thali chain. He wanted to snatch the

thali chain and hence, she put a white nylon rope on the neck of the deceased and strangled, due to which, the deceased fell down. Then he put the stone on her head, removed the thali chain, removed stud from one ear. As he could not able to remove the stud from another ear, he cut the ear with knife and removed the stud and went away.

3.1.PW3/husband of the deceased came to his house in the evening and saw the deceased was not in their house. He enquired one Mariappan, a neighbour of the deceased and Mariappan, who told him that the cattle were returned, however, the deceased did not return. Hence, Mariappan went to search the deceased at Andithottam, where he saw the deceased had fallen down facing downwards. He saw injuries on her face and head. He thought that the deceased could have died due to hit by the cattle. He brought the deceased to his house with the help of others, at about 6.30 p.m. PW7/son of the deceased came to his house at 7.30 p.m, then they have buried the body in the night itself.

3.2.On 02.02.2001 at about 6.00 a.m., the accused came to PW2/ Panchayat President's house and he told him that he had committed murder and asked to save him. PW2 informed PW1/Village Administrative Officer over phone and asked him to be present in his office. Then he took the accused to PW1. He handed over Thali chain and white nylon rope to PW1 and asked him to take action. PW1 recorded the statement of the accused and got his signature therein. PW1 and PW2 went to police station with the accused, at about 8.30 a.m. PW1 gave Ex.P9/report. PW15/Inspector of Police registered the case in Crime No.5/2001 under Section 302 and 379 IPC. He recovered the properties under Form No.95. PW15 recorded the alleged confession from the accused at about 9.00 a.m., then went to scene of occurrence with the accused and prepared Ex.P.8/observation mahazar and Ex.P.26/sketch at about 10.30 a.m. He recovered blood stained earth, stone and sample earth in the presence of witnesses at 11.00 a.m. Accused took MO5/knife from the bush and produced to the Investigation Officer. He recovered MO5 under a Mahazar at 11.45 a.m. in the presence of witnesses. The Investigation Officer, recovered MO2/Kammal at 12.45 p.m. Then he came to police station at 2.30 p.m, sent the recovered properties to the Court. He sent requisition to PW12 Tahsildar to take the dead body from the place of burial for inquest. PW12 held inquest and examined the witnesses. PW14 and 16/Doctors conducted postmortem on 03.02.2001 at about 11.00 a.m and Ex.P.25 is the postmortem certificate. PW17/Sub Inspector of Police took up investigation on 03.02.2001 and PW18/Inspector of Police filed charge sheet.

4. In order to establish the case, the prosecution has examined P.Ws. 1 to 18; marked Exs.P1 to 33 and Material Objects M.Os.1 to 12. No witness was examined and document or Material Object was marked on the side of the defence.

5. The Trial Court, after analysing the oral and documentary evidence, convicted and sentenced the accused as already stated above.

6. Mr.S.Paneerselvam, learned counsel appearing for the appellant submitted that the prosecution has not established the guilt against the appellant beyond reasonable doubt and the Judgment of conviction suffers from serious infirmities and inconsistencies. Learned counsel for the petitioner would contend that the case is foisted against the appellant and further contended that there is no direct eyewitness to this case and that the entire case rests on the circumstantial evidence, however, the alleged guilt is not established against the appellant / accused.

6.1. Learned counsel for the appellant would further submit that PW3/husband of the deceased and PW7/son of the deceased had no suspicion that it could have been a homicidal death and not taken any step to lodge any complaint to the police, though the police station is within 3 k.ms. He would contend further that PW3 deposed in his evidence that he took the cattle to Andithottam in the morning and then went to out of station and that he came to his house at 5.00 p.m. and he did not see his wife in the house. When he enquired Mariappan, a neighbour of the deceased told him that the deceased did not come to the house, though the cattle were returned. PW3 and Mariappan went to Andithottam and saw the deceased, lying dead facing downwards and that he saw the injury on the face and head. Then he took the deceased to his house. PW4/elder sister's daughter of the deceased and one Saroja came to his house. At the time of bathing ceremony, they told PW3 that there was no stud in the ear of the deceased and that there was also a cut injury in one ear and that Thali chain of the deceased was also missing and also found injury on her neck. However, it is strange as to why PW3 and PW7 had not taken any step to give complaint in the police station. PW3 did not see cut injury on the ear of the deceased, at the time of taking the body from the occurrence place. PW3 and PW7 have not noted the missing of Thali chain. Though PW4 and one Saroja told about the missing of jewels and cut injury on the ear and also injury on the neck of the deceased, PW3 and PW7 did not suspect anyone and also not worried about the missing of the jewels and also injuries on the deceased and they took immediate steps only to bury the body in the night itself. The conduct and behaviour of PW3 is contrary to the case of the prosecution.

6.2. Learned counsel further submitted that one Marimuthu, who accompanied the husband of the deceased, to search the deceased, was not examined as witness and that the complete chain of the circumstantial evidence has not

been completed to connect the crime against the accused. Hence, he prays for allowing the appeal.

7. Per contra, Mr.V.M.R.Rajentren, learned Additional Public Prosecutor contended that the prosecution has established its case beyond all reasonable doubts and according to him, minor discrepancies found in the evidence of the prosecution witnesses would not affect the prosecution case in its entirety. Learned Additional Public Prosecutor would submit that merely because of the fact that the defence has pointed out certain discrepancies, the whole version of PW3, PW5 and PW7 cannot be rejected. Hence, he prays for dismissal of the appeal.

8. We have carefully considered the contentions put forward by either side and perused the impugned judgment of conviction and other materials available on record.

9. As per the prosecution version, the appellant is the sole accused in this case. Learned counsel for the appellant / accused submits that there is no eye witness for the case and the entire case is based on the extra judicial confession recorded by PW1/VAO. Though the occurrence had taken place on 31.01.2001 at about 12.45 p.m., based on the extra judicial confession, the case was registered only on 02.02.2001. PW3/husband of the deceased has categorically deposed that he was available in the village on the date of occurrence and he could see the dead body of his wife and that there were injuries found in the head and face of the deceased. As per his evidence, he did not see the missing of Thali chain, weighing about 9 sovereigns and the ear stud and the injuries in the ear of the deceased. Though PW4 told PW3 about the missing of Thali chain, ear stud and the alleged cut injury in the ear of the deceased, no complaint was given to register a case as suspicious death, under Section 174 Cr.P.C. Appellant/accused was taken to the Police Station by PW1 and PW2, only after the alleged extra judicial confession, said to have given by the appellant/ accused. As per the evidence of PW1, on 02.02.2001 at about 6.00 a.m. in the morning, he was called by PW2/the President of Mangalam Panchayat. PW2 has deposed that PW1/Village Administrative Officer was present at 06.30 a.m. at the office of VAO. As contended by the learned counsel for the appellant, when VAO was available in his office at 6.30 a.m., PW2 along with the appellant/accused came to his office and the appellant/accused gave the extra judicial confession that was recorded by him. It is a self contradiction so far as the evidence of PW1 and PW2 are concerned, since they have stated that only on the calling of PW2, PW1 was present at his office at about 6.30 a.m. on 02.02.2001. However, in the 161 statement, PW1 has not stated anything about the

phone call given by PW2 asking him to wait in his office till his arrival. However, that is available in their evidence, which shows the later development in their evidence.

10. As per the criminal jurisprudence, it is the duty of the prosecution to record and register the case in time and after collecting evidence, no case should be registered to suit the convenience of the prosecution. In the instant case, it is crystal clear that case is not registered on the date of occurrence that is on 31.01.2001, though PW3/the husband of the deceased and other witnesses have spoken to about the blood injury sustained by the deceased and other circumstances alleged by the prosecution.

11. It is stated in Ex.P2 that MO1/Thalikodi was weighing 9 sovereign. According to PW1, Ex.P1 and Ex.P2 were prepared in his office and then they went to the police station and handed over the accused with Ex.P1, Ex.P2, along with Thalikodi and Nylon rope to PW15 at the police station, only thereafter Ex.P30/FIR was prepared. However, he has deposed in his cross examination that he mentioned Talikodi as 9 sovereigns, without measuring the weight. He wrote Ex.P2 in his office, before seeing PW15/Inspector of Police and further he has stated that he did not mention in Ex.P2 that accused had produced the blood stained nylon rope. PW15/ Inspector of Police deposed that PW1 has stated that only nylon rope was produced during investigation. After seeing the weight of Thalikodi, PW1 mentioned in Ex.P1 that Thalikodi was weighing 9 sovereigns. It shows that Ex.P1 and Ex.P2 were prepared at the police station, after PW1 saw PW15/Inspector of Police, as argued by the learned counsel for the appellant / accused. PW12/Thasildar deposed that there was no mention about the weight of the thalikodi in Ex.P16. PW3/the husband of the deceased and PW7/son of the deceased have also not mentioned about the weight of the thalikodi.

12. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the appellant and the learned Additional Public Prosecutor, we are of the view that the guilt against the appellant has not been proved beyond reasonable doubt. Therefore, we find it just and reasonable to allow the appeal, by giving benefit of doubt in favour of the appellant / accused.

In the result, the Criminal Appeal is allowed and the conviction and sentence imposed by judgment dated 30.12.2010 made in S.C. No.305 of 2002 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.V) Coimbatore at Tirupur is set aside. The

appellant is directed to be set at liberty forthwith unless his presence is required in connection with any other case. The fine amount, if any paid already is ordered to be refunded to the appellant. The bail bond if any, executed by the appellant shall stand cancelled.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

vga / tsvn

To

1. The Additional District and Sessions Judge
(Fast Track Court V) Coimbatore

2. do thro the Principal Sessions Judge
Coimbatore

3. The Judicial Magistrate No.2,
Tiruppur

4.The Inspector of Police,
Tirupur Rural Mangalam Police Station.
Tirupur.

5.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

6. The Superintendent
Central Prison
Coimbatore

7. The Director General of Police
Mylapore, Chennai

8. The District Collector
Coimbatore

9. The Section Officer
Criminal Section,
High Court, Madras-104

MSM (CO)
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