



BAIL SLIP

The Petitioner/Accused was released on bail namely Murugan s/o kandasamy, vide order dated 19.3.13 made in CrI.M.P.No.1/13 in CrI.A 34/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Criminal Appeal No.34 of 2012

Murugan
S/o.Kandasamy

... Appellant/Sole Accused

-vs-

State represented by
The Inspector of Police,
Harur Police Station,
Dharmapuri District.
Crime No.574 of 2009

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code against the judgment of learned Principal District and Sessions Judge, Dharmapuri, passed in S.C.No.134 of 2010 dated 20.12.2011.

For Appellant : Mr.G.Udayasankaran
for Mr.S.Shanthakumari

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.)

WEB COPY

This appeal arises against judgment of learned Principal District and Sessions Judge, Dharmapuri, passed in S.C.No.134 of 2010 on 20.12.2011, convicting appellant/accused for offence u/s.302 IPC and sentencing him to life imprisonment and fine of Rs.2,000/- i/d 3 years R.I.

2. The case of the prosecution is that the deceased was the second wife of appellant/accused and due to dispute over property, the appellant/accused, with an intention to kill the deceased, assaulted her indiscriminately with a knife and caused her death on 28.07.2009, at about 04.00 p.m.

3. Paramasivam, de facto complainant, preferred a complaint [Ex.P12] on 28.07.2009 at about 05.30 p.m., before PW-15, Inspector of Police, Harur Police Station, who registered a case in Crime No.574 of 2009 for offence u/s.302 IPC. Ex.P13 is the printed First Information Report. On 29.07.2009 at about 05.45 a.m., PW-15 visited the scene of crime, prepared observation mahazar [Ex.P2] and rough sketch [Ex.P14] in the presence of PW-8 and another. He caused photographs to be taken by PW-11. The photographs are MO-11 series. He conducted inquest on the body of the deceased at 07.00 a.m. in the presence of PWs.1, 3, 4, 6, 7 and others and panchayatdhars. The inquest report is Ex.P15. After completion of inquest, he sent the body to Harur Government Hospital, through PW-13, Head Constable, for post-mortem along with a requisition [Ex.P9]. PW-10, Doctor, conducted post-mortem. The post-mortem report is Ex.P10 and the same reads thus:

"Post-Mortem Certificate

Regarding the body of a female aged about 30 years, named Geetha. Requisition received at 10.30 a.m. on 29.07.2009 from the Inspector of Police of Harur Police Station with his letter No.574/2009 dated 29/07/2009. Body in charge of Police Constable No.HC 368 Named Mr.Govinda Rajan.

Identification and caste marks:

1. ABM on right thigh
2. ABM on left knee joint
3. A wound scar on left leg.

The body was first seen by the undersigned at 10.30 a.m. on 29/07/2009. Its condition then was RM present

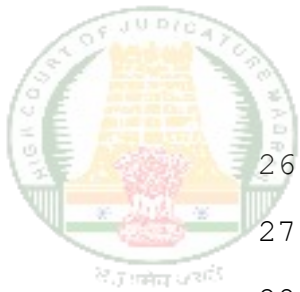


WEB COPY

in all four limbs. Post-mortem commenced on 12.30 p.m. on 29.07.2009. Appearances found at the post-mortem - A body of female lying on its back eyes closed. Mouth partially opened, tongue inside the mouth, teeth 8/8, 8/8, fus present over anal region.

Internal Examination:-

1. Stab injury on right side neck 3x2x2 cm. Posterior triangle of neck.
2. Stab injury on right side neck 2 x 1 x ½ cm
3. Stab injury 3 x 2 x 2 cm right mandible region
4. Stab injury right side below the breast 2 x 2 x 1 cm, right hypochondrial region.
5. Stab injury right side upper abdomen near midline 2 x 2 x ½ cm
6. Stab injury right side 2 x 2 x ½ cm upper abdomen midline.
7. Stab injury 2 x 2 x ½ cm on umbilical region of abdomen right side.
8. Stab injury 2 x 1 x ½ cm right intac region
9. Stab injury left hypochondria 3 x 1 x ½ cm.
10. Stab injury 3 x 1 x ½ cm right lumbar region.
11. Abrasion left hypochondria 1 x 1 cm.
12. Stab injury left arm near axilla 3 x 2 x 2 cm.
13. Stab injury left arm lateral side, 3 x 1 x 3 cm.
14. Stab injury 3 x 1 x 1 cm above left scapular region of back.
15. Stab injury 3 x 2 x 3 cm left scapular region, back side of body blood continuously oozing from the wound.
16. Stab injury, inter scapular region, midline 3 x 2 x 1 cm.
17. Stab injury 3 x 1 x 3 cm below the left scapular region
18. Multiple linear abrasions left side neck below the left ear.
19. Stab injury 1 x 1 x ½ cm above the left clavicular region.
20. Stab injury right arm 3 x 1 x ½ cm medial side, upper half.
21. Stab injury back of right arm 3 x 1 x ½ cm.
22. Multiple lacerated wound right forearm.
23. Stab injury 2 x 1 x 1 cm right wrist.
24. Lacerated wound 3 x 1 x ½ cm middle of right forearm.
25. Stab injury 3 x 2 x ½ cm right forearm middle 1/3rd, exterior aspect.



WEB COPY

26. Stab injury 4 x 2 x 1 cm upper 1/3rd of right thigh, lateral aspect.
27. Lacerated wound 2 x ½ x ½ cm upper 1/3rd of right thigh.
28. Lacerated wound 3 x 1 x ½ cm middle 1/3rd of right thigh.
29. Incised wound 4 x 3 x ½ cm middle 1/3rd of thigh lacerated aspect.
30. Abrasion left knee 5 x 4 cm.
31. Multiple contusion right breast.
32. Contusion 3 x 2 x ½ cm medial side of left thigh lower 1/3rd
33. Contusion 2 x 3 x 1 cm medial side of left thigh lower 1/3rd
34. Lacerated wound right scapular region 3 x 3 x 3 cm.
35. Stab injury 1 x 1 x ½ cm above left hip.
36. Stab injury 2 x 1 x 1 cm right scapula.
37. Stab injury 3 x 1 x 1 cm below the right scapular region of bone blood continuously oozing from the wound.
38. Stab injury 2 x 1 x 1 cm right, below the scapular region back of the body.

Internal examination:- Hyoid bone intact. Ribs left 7th rib region. There was a contusion 4 x 3 x 2 cm near the sternal end. Ribs intact. Heart chambers empty c/s pale. Liver lacerated wound 2 x 2 x ½ cm right side c/s pale.

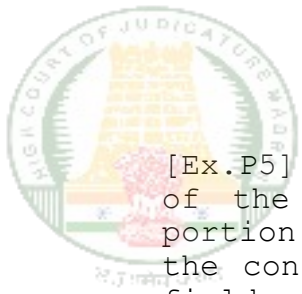
Lungs:- Left side lung contusion 3 x 2 x 1 cm. Kidney pale. Normal.

Stomach:- Undigested rice 200 gms present. Uterus empty, normal.

Skull bones:- Intact. Brain solid intact.

OPINION: - Cause of death due to shock and haemorrhage due to multiple injuries. The deceased would appear to have died of 20-22 hours prior to autopsy."

In continuation of investigation, PW-15, examined PW-4 and another and recorded their statements. In the presence of PW-8 and another, he collected blood stained earth [M.O.1], sample earth [M.O.2] and blood stained guava tree stick [M.O.3] under Ex.P3 at the scene of crime. He collected blood stained earth [M.O.4], sample earth [M.O.5] and a pair of ladies slippers [M.O.6] at the house of the deceased at 10.30 a.m. under Ex.P4 in the presence of the same witnesses. He collected case properties [M.Os.12 to 23] from PW-13, Head Constable, under Form-95. On 30.07.2009, PW-8, Village Administrative Officer and another produced the accused before PW-15 along with a report



[Ex.P5]. Thereafter, PW-15 recorded the confessional statement of the accused in the presence of witnesses. The admissible portion of the confessional statement is Ex.P6. On the basis of the confessional statement, he took the accused to a sugar cane field and recovered a blood stained knife [M.O.7] in the presence of witnesses. The seizure mahazar is Ex.P7. Thereafter, he collected a blood stained pant [M.O.8], shirt [M.O.9] and a plastic bag [M.O.10] under Ex.P8. He examined PWs.8, 9 and two others and recorded their statements. He forwarded the accused to judicial custody. On 05.08.2009, he examined PWs.11, 12, 13 and one another and recorded their statements. He sent a requisition [Ex.P16] to Judicial Magistrate, Harur, seeking permission for chemical analysis. Obtaining permission, he sent the incriminating materials for chemical analysis under Ex.P17. He examined PW-10, Doctor, who conducted the post-mortem and recorded his statement. The serology report is Ex.P18 and the biological report is Ex.P19. Upon completion of investigation, he filed charge sheet informing commission of offence u/s.302 IPC.

4. To substantiate its case, the prosecution examined, PWs.1 to 15, marked Ex.P1 to P19 and MOs.1 to 23. None were examined on the side of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied the charges.

5. On appreciation of evidence, the trial Court found the appellant guilty of offence under Section 302 IPC, convicted him to life imprisonment and imposed fine of Rs.2,000- i/d 3 years R.I. Against his conviction and sentence, the appellant is before this Court with this Criminal Appeal.

6. Learned counsel for appellant contended that the first informant had not been examined and the failure of the prosecution to do so was fatal to its case. Learned counsel next contended that even if the first informant had been examined to speak in keeping with the contents of the First Information Report which informs his presence at the scene and his having witnessed the occurrence, such deposition would have been of no avail to the prosecution since the evidence of PW-1, in chief, is to the effect that she alone was present at the time of occurrence and that the de facto complainant Paramasivam and others came later. To add to the prosecution's woes, such witness, in cross, would inform that she had proceeded to the scene on hearing the screams of the deceased, had then not seen anyone present and that she had no direct knowledge of who had murdered the deceased. Learned counsel further contended that

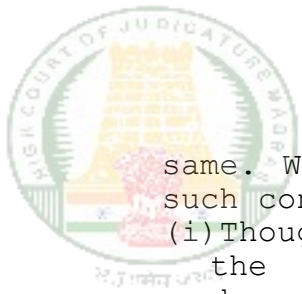


PWs.2 to 4, who were examined as eye witnesses had turned hostile. No reliance could be placed on evidence of PW-8, Village Administrative Officer, who had spoken to the extra judicial confession tendered to him by the accused two days after the occurrence i.e., on 30.07.2009. PW-8 had not recorded any extra judicial confession but had merely forwarded the accused along with Ex.P5, report, to PW-15. Both the arrest and recoveries of murder weapon [M.O.7] under Ex.P7 and appellant's clothes [M.Os.8 & 9] under Ex.P8 were unbelievable. PW-5 had deposed to having proceeded to the scene after being informed by her grandsons and others that her daughter, the deceased, had been done to death. None of such persons had been examined. Learned counsel submitted that in the attendant circumstances, the prosecution case bristles with infirmities and in effect was rendered one of no evidence in support thereof. Given the above, the prosecution case necessarily would fail.

7. Learned Additional Public Prosecutor contended that the occurrence was of 28.07.2009 at 04.00 p.m. The First Information Report had been registered within 1 ½ hours i.e., 05.30 p.m. and the same had reached the Magistrate by 07.40 p.m. on the same day. PW-1 had spoken to witnessing the occurrence and of finding the deceased at the scene with a knife and of his thereafter having run away. He would seek to explain away the non-examination of de facto complainant informing that the case has entered trial on 14.09.2011 and the de facto complainant had died on 18.04.2011. The deceased had met a gruesome death, having suffered as many as thirty eight injuries at the hands of the appellant/accused. The appellant/accused had appeared before the Village Administrative Officer and confessed to the crime. On his being produced before PW-15, his confessional statement has been recorded under Ex.P6 and thereupon, MO-7, the knife used by appellant/accused had been recovered under Ex.P7. The serology report [Ex.P18] revealed that both the murder weapon as also the clothes of the deceased were of 'O' blood group. In the circumstances, non-examination of other witnesses was of no material consequence. The prosecution has proved its case beyond all reasonable doubt and hence, the finding of conviction is to be sustained.

8. This Court has considered the rival submissions and perused the materials available on record.

9. The post-mortem report [Ex.P10] informs that the deceased had suffered a most gruesome death. Even so, we are to satisfy ourselves that it was the appellant/accused, who had caused the



same. We, given the attendant facts, are not able to arrive at such conclusion for the following reasons:

(i) Though the issue has not been canvassed, we are certain that the genesis of the occurrence lies at the house of the deceased. Ex.P2 - Observation Mahazar, informs that besides a pair of slippers of the deceased, blood stains were found at her door step, 25 feet away from where her body was found. Apparently, the blood stains were occasioned owing to injuries suffered by the deceased before she reached the place where her body was found for - the dead don't walk and in any event do not visit to shed blood at their door steps.

(ii) the de facto complainant had not been examined at the trial. If the reason therefor is because he had died prior thereto, it was for the prosecution to inform so by producing proof of his death before the trial Court. This, the prosecution has failed to do.

(iii) Even if for the purpose of argument, we are to accept that the reason behind the non-examination of the de facto complainant is that he was no more when the case entered trial, the evidence of PW-1 would falsify that which is informed in the First Information Report [Ex.P12] viz., that the de facto complainant was a witness to the occurrence. In chief-examination, PW-1 clearly has deposed to only her having been at the scene at the time of occurrence and that others appeared on the scene upon hearing her cries. She has deposed that the de facto complainant came a little later. In cross, she has further admitted to proceeding to the scene upon hearing the screams of the deceased and of finding no one there. Therefore, such evidence, besides informing that she had not been a witness to the occurrence also rules out the possibility of the de facto complainant having been witness thereto. PWs.2 and 3 examined as witnesses to the occurrence and PW-4 as witness to the appellant/accused making his getaway, have turned hostile.

(iv) Under Ex.P5, PW-8, the ever obliging Village Administrative Officer, has reported a confession of the accused on the date next to the occurrence to PW-15, Investigating Officer. The very projection of an extra judicial confession by the accused raises some doubt regards the presence of persons at the scene, a story which the prosecution has sought to achieve through PWs.1 to 4 and wherein, for reasons aforesaid, the prosecution miserably has failed.

(v) In the circumstances, recovery of knife [M.O.7] at the instance of the appellant/accused is not of much consequence. Neither is the confirmation by the serology report that the



blood stains on the knife and that on the clothes on the body of the deceased [M.Os.12 to 14] were of one and the same group viz., 'O', since 'O' is the most common blood group.

(vi) Ex.P13 - First Information Report registered at the instance of Paramasivam, de facto complainant, informs that he had witnessed the occurrence. The possibility of his so having done is ruled out by the evidence of PW-1. Even if the prosecution version of the occurrence having taken place at 04.00 p.m. is accepted, there is much delay in the First Information Report reaching the Magistrate at 07.40 p.m. The First Information Report informs the scene of crime to be 1½ km from the police station and it is the evidence of PW-15 Investigating Officer that the Judicial Magistrate Court is between 100 and 125 mtrs. away from the police station. The proximity of time and place and attendant factors determine whether there is a delay in the First Information Report reaching the Magistrate. In a given case, a delay of a day might be immaterial while in another delay of an hour may be most material. The probability of the First Information Report in the instant case being a doctored document, is high.

This Criminal Appeal is allowed. The conviction and sentence imposed on appellant/accused by trial Court, are set aside. He is acquitted of charges. He is directed to be set at liberty forthwith, unless his custody is required in connection with any other case. The bail bond(s), if any executed by him, shall stand cancelled. The fine amount, if paid by him, shall be refunded.

Sd/-

Assistant Registrar (CS-II)

True Copy

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Dharmapuri.

2. The Judicial Magistrate,
Harur.



3.-Do- The chief Judicial Magistrate,
Dharmapuri at Krishnagiri.

4.The Inspector of Police,
Harur Police Station,
Dharmapuri District.

5.The Public Prosecutor,
High Court, Madras.

6.The superintendent,
Central Prison, Vellore.

+lcc to Mr.s.shanthakumar, Advocate Sr.53531

Criminal Appeal No.34 of 2012

rsi[col
srg 4/11/2015