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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.02.2015
CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Crl.A.(MD)Nos.14 & 69 of 2014

Mahesh .. Appellant/2nd Accused in Crl A(MD)No.14/2014

Ayyankalai .. Appellant/1st Accused in Crl A(MD)No.69/2014

Vs.

State rep.by
The Inspector of Police,
Thirupparankundram Police Station
Perungudi Police Station,
Crime No.171 of 2007
Madurai District.

.. Respondent/Complainant in both Appeals.

Criminal appeals filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 19.12.2013 passed in Sessions Case No.95 of 2009 by the District and Sessions Court/Mahila Court/Mahalir Neethimandram, Madurai.

For Appellant	:	Mr.T.K.Gopalan Crl.A(MD)No.14/2014
For Appellant	:	Mr.V.Kathirvelu, Senior Counsel for Mr.K.Prabhu Crl.A(MD)No.69/2014
For Respondent	:	Mr.K.S.Duraipandian Addl.Public Prosecutor (both appeals)

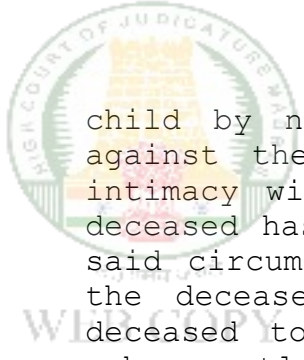
Judgment reservation : 30.01.2015
Judgment delivered on : 19.02.2015

COMMON JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)

The convictions and sentences passed in Sessions Case No.95 of 2009 by the District and Sessions Court/Mahila Court/Mahalir Neethimandram, Madurai are being challenged in the present Criminal Appeals.

2. The crux of the case of the prosecution is that the first accused is the son of the accused 5 and 6. The accused 2 and 4 are the friends of the first accused and third accused is the maternal uncle of first accused. Prior to 3¼ years, the first accused has married the deceased by name Pappu and both of them have been blessed with a female



child by name Thamilarasi. The deceased has used to make accusation against the first accused by way of saying that he has had illicit intimacy with other women. The first accused has used to say that the deceased has had illicit intimacy with one Veeranan S/o.Raman. Under the said circumstances, all the accused have contrived themselves to murder the deceased and in pursuance of their conspiracy, they brought the deceased to an isolated place which situates in Survey No.34/120 and subsequently attacked her and after her demise, they put the body into a well and by way of using thorns, screened the evidence. After occurrence, father of the deceased by name Thomas @ Paulraj has given a complaint and the same has been marked as Ex.P1.

3. On receipt of Ex.P1, the Investigating Officers viz., PWs.21, 22 and 25 have conducted investigation and the doctor by name Natarajan (PW20) has conducted autopsy on the body of the deceased and found the following internal and external injuries:

Identification and caste marks:

Could not be made out due to decomposition.

Appearances found at the postmortem

800 gms of decomposed fleshy mass is noted.

4. The postmortem report has been marked as Ex.P10. After completing investigation, the Investigating Officer has laid a final report against the accused on the file of the Judicial Magistrate Court, No.VI, Madurai and the same has been taken on file in PRC No.51 of 2009.

5. The Judicial Magistrate, No.VI, Madurai after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.95 of 2009.

6. The trial court after hearing both sides and upon reappraising the evidence available on record has framed first charge against the accused 1, 5 and 6 under Section 498-A of the Indian Penal Code and also under Section 4 of Dowry Prohibition Act; second charge against the accused 1 to 4 under Section 120(b) of the Indian Penal Code; third charge against the second accused under Section 314 of the Indian Penal Code ; fourth charge against the accused 1 to 4 under Section 302 of the Indian Penal Code; fifth charge against them under Section 314 of the Indian Penal Code and sixth charge against them under Section 201 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution, PWs.1 to 25 have been examined and Exs.P1 to P25 and M.Os.1 to 8 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, DW1 has been examined and Ex.D1 has been marked.



9. The trial Court after evaluating the available evidence on record has found the accused 1 and 2 guilty under Sections 120(b), 342, 302, 314 and 201 of the Indian Penal Code and sentenced them to undergo imprisonment as stated in the Judgment. Against the convictions and sentences passed by the trial Court, Criminal Appeal (MD)No.69 of 2014 has been preferred by the first accused and Criminal Appeal (MD)No.14 of 2014 has been preferred by the second accused.

10. The learned counsel appearing for the appellants/accused 1 and 2 have contended with great vehemence that in the instant case, absolutely there is no evidence on the side of the prosecution so as to connect the accused 1 and 2 with the crime and the trial Court without considering the fact that the prosecution has not adduced acceptable/trustworthy evidence against the accused 1 and 2 has erroneously found them guilty under Sections 120(b), 342, 302, 314 and 201 of the Indian Penal Code and sentenced them to undergo imprisonment as stated in the Judgment. Under the said circumstances, the convictions and sentences passed by the trial Court are liable to be set aside.

11. The learned Additional Public Prosecutor has contended that in the instant case, so as to connect the accused 1 and 2 with crime, some acceptable evidence is available on the side of the prosecution and on that basis, the trial Court has rightly invited convictions and sentences against the accused 1 and 2 and therefore, the convictions and sentences passed by the trial Court do not require interference.

12. In the instant case, no direct evidence is available so as to prove the alleged occurrence.

13. The father of the deceased by name Thomas @ Paulraj has been examined as PW1 and he simply stated about the previous occurrence. The wife of PW1 by name Vellaiammal has been examined as PW2 and brother of the deceased namely Paulpandi and Ammasi have been examined as PWs.3 and 4 and a sister of the deceased by Selvi @ Kalaiselvi has been examined as PW5 and their specific evidence is that both the deceased and PW2 have gone to temple, from where, the second accused has taken the deceased and subsequently they have not found her. Except the said piece of evidence, no other piece of evidence is available so as to connect the accused 1 and 2 with the crime.

14. It has already been pointed out that PWs.1 to 5 have stated in their evidence that from a temple, the second accused has taken the deceased by way of saying that her husband wants to live with her.

15. On the side of the prosecution, replete evidence is available for the purpose of showing that prior to occurrence no concordial relationship is in existence between the first accused and deceased and various panchayats have been convened. Since no congenial atmosphere has been in existence in the marital life of the first accused and deceased, it is not possible on the part of the parents of the deceased to allow the deceased to go with the second accused.

16. It has already been pointed out that the prosecution has not adduced any direct evidence so as to connect the accused 1 and 2 with the crime. The trial Court has invited convictions and sentences against the



accused 1 and 2 simply on the basis of the aforesaid fact to the effect that the second accused has taken the deceased from a temple. The aforesaid theory put forth on the side of the prosecution cannot be accepted simply on the basis that there is no congenial atmosphere in the marital life of the deceased prior to occurrence.

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17. The trial Court without considering the fact that no acceptable/trustworthy evidence is available on the side of the prosecution so as to point out guilt of the accused 1 and 2 has erroneously invited convictions and sentences against them. In view of the discussions made earlier, this Court has found acceptable force in the contention put forth on the side of the appellants/accused 1 and 2. Therefore, viewing from any angle, the convictions and sentences passed by the trial Court are not factually and legally sustainable and the same are liable to be set aside.

18. In fine, these Criminal Appeals are allowed. The convictions and sentences passed in Sessions Case No.95 of 2009 by the District and Sessions Court/Mahila Court/Mahalir Neethimandram, Madurai are set aside and the appellants/accused 1 and 2 are acquitted. Fine amounts if any paid by them are ordered to be refunded forthwith. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

\\True copy\\

Sub Assistant Registrar

To

1. THE DISTRICT AND SESSIONS JUDGE
MAHILA COURT/ MAHALIR NEETHIMANDRAM, MADURAI.
2. -DO-THRO'THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, MADURAI.
3. THE JUDICIAL MAGISTRATE NO.VI, MADURAI.
4. -DO-THRO'THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
5. THE DIRECTOR GENERAL OF POLICE CHENNAI
6. THE DISTRICT COLLECTOR MADURAI DISTRICT
7. THE INSPECTOR OF POLICE, THIRUPPARANKUNDRAM POLICE STATION,
PERUNGUDI POLICE STATION, MADURAI DISTRICT,
8. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
(WITH REQUIRED COPIES TO COMMUNICATE EACH OF THIS ACCUSED)
9. THE ADDL. PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO : THE SECTION OFFICER, CRIMINAL SECTION
MADURAI BENCH OF MADRAS HIGH COURT MADURAI.

+1CC TO MR.T.K.GOPALAN, ADVOCATE SR.NO.7755
+1cc to MR.K.PRABHU ADVOCATE IN SR.No. 7996.

Pre delivery Judgment in
Crl.A.(MD)Nos.14 & 69 of 2014
19.02.2015