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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

Cr1.A(MD)No.243 of 2013

E.Lakshmi @ Muthu Lakshmi

.. Appellant/ Accused

Vs.

State rep. By
The Inspector of Police,
Murappanadu Police Station,
Thoothukudi District.
(Crime No.49 of 2011)

.. Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying this Court, to call for the records relating to the judgment dated 03.01.2012 passed in S.C.No.173 of 2011 on the file of the learned Principal Sessions Judge, Thoothukudi and to set aside the judgment and conviction.

For appellant	: Mr.M.Gnanagurunathan, Advocate
For Respondent	: Mr.C.Ramesh Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in Crime No.49 of 2011, in S.C.No.173 of 2011 on the file of the learned Principal Sessions Judge, Thoothukudi. She stood charged for the offences under Sections 302 and 380 I.P.C. The trial Court, by judgment dated 03.01.2012, convicted her and sentenced her under Section 302 I.P.C. to undergo Life Imprisonment and also imposed fine of Rs.1,000/- and, in default, to undergo further six months Rigorous Imprisonment and for the offence under Section 380 I.P.C.,



sentenced to undergo one year Rigorous Imprisonment and also imposed fine of Rs.500/- and, in default, to undergo further four months Rigorous Imprisonment. Challenging the said judgment passed in S.C.No.173 of 2011, the appellant/accused in Crime No.49 of 2011, is before this Court with this present appeal and she is, right now, in Special Prison for Women, Tiruchirappalli, undergoing the imprisonment.

2.The brief case of the prosecution is as follows;

On 14.02.2011 at about 4.00A.M, the accused has attempted to open the box consisting of jewels kept in the deceased Nallathaiammal's house. On hearing the said sound, the said deceased Nallathaiammal woke up and objected and thereafter, the accused has hit the head of the deceased Nallathaiammal several times, over the grinding stone kept in the bathroom and as a result of which the deceased Nallathaiammal has died on the spot. The appellant / accused, after committing the said murder and also committed theft of nine sovereigns of her jewels and a cash of Rs.35,000/- kept in a box and thereby the appellant / accused committed the offences liable for punishment under Sections 302 and 380 I.P.C.

2.1. In order to prove the case of the prosecution, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and also marked 14 exhibits as Ex.P.1 to Ex.P.14 and also Material Objects as M.O.1 to M.O.10.

2.2. P.W.1, Leelavathi has stated that the deceased Nallathaiammal has resided in her house at West Street, lonely. On the date of occurrence, at 7.00A.M, P.W.1 has proceeded to buy milk, and at that time, she has heard the crying noise of P.W.2 Vandimalaichi, residing in the neighbouring Street, who is the granddaughter of the deceased Nallathaiammal. Thereafter, she has gone to the house of the deceased Nallathaiammal and found the deceased Nallathaiammal lying on the floor, with bloodstains over her head and face. Thereafter, she has gone to the Murappanadu police station and lodged a complaint as per Ex.P.1. The accused Lakshmi @ Muthulakshmi is the wife of P.W.2 Vandimalaichi's husband's brother. The accused has come to the deceased house, four days prior to the occurrence to enquire about the death of Vandimalaichi's mother-in-law. Immediately, after the death of the deceased Nallthaiammal, P.W.2, namely, Vandimalaichi has searched for the accused and she has also searched for the jewels and informed P.W.1 that the jewels and cash have found to be missing from the box and the P.W.1 has informed about the said details to the police and the police have conducted investigation.



2.3. P.W.2, Vandimalaichi has stated that she is the granddaughter of the deceased Nallathaiammal and she has also corroborated the evidence of P.W.1. M.O.1 to 5 are the jewels belonging to herself and the deceased which have been kept by the deceased Nallathaiammal in her house and M.O.6 is the cash of Rs.35,000/- also kept by the deceased in her house. P.W.3, Dr.Selvamurugan has stated that on 16.02.2011, he has conducted Postmortem on the dead body of the deceased Nallathaiammal and issued Postmortem Certificate as per Ex.P.3 and also Ex.P.4 and Ex.P.5 are the amended certificates to Postmortem Certificate. P.W.4, Raja has stated that he has come to the scene of occurrence, at that time, the Inspector of Police has prepared Observation Magazar and he and one Appadurai have signed in the said Magazar as per Ex.P.6 and he has also signed in the Athatchi as per Ex.P.7 for the recovery of M.O.7 Grinding stone. P.W.5, Murugan has stated that he has signed in the Ex.P.8 Athatchi for the recovery of M.O.1 to 6. P.W.6, Thiru.Sernthaiyan, Head Constable has stated that he has handed over the dead body for Postmortem to the hospital and after the Postmortem, he has handed over the dead body of the deceased Nallathaiammal to her relatives and he has also handed over the M.O.8 and M.O.9, namely, the dresses of the deceased to the police station and Ex.P.9 is the Passport. P.W.7, Tmt.Bindhu Kumari has stated that she has submitted Express F.I.R to the learned Judicial Magistrate, Thiruvaigundam and Ex.P.10 is the Passport. P.W.8, Franklin Utro Willson, Sub Inspector of Police has stated that he has received the complaint from P.W.1 on 14.02.2011 at 9.00A.M and he has registered a case in Crime No.49 of 2011 under Section 302 I.P.C and he has registered the F.I.R as per Ex.P.11.

2.4. P.W.9, Thiru.Murugesan, Inspector of Police has stated that he has taken the investigation in the present case and prepared Observation Magazar as per Ex.P.6 and Rough Sketch as per Ex.P.12 and recovered M.O.7 Grinding stone in the Athatchi before the witnesses and he has prepared Inquest Report as per Ex.P.13. P.W.10, Thiru.Ravi, Inspector of Police has stated that he has taken further investigation in the present case on 15.02.2011 and on 18.02.2011, he has arrested the accused in the presence of P.W.5 and Mariappan and recorded her voluntary confession statement and during the confession, the accused has handed over the M.O.1 to 6 and M.O.10(series) and also he has recovered the said material objects in the Athatchi as per Ex.P.8. Further, P.W.10 has stated that he has prepared the Alteration Report as per Ex.P.14 and also he has enquired the P.W.3, Postmortem Doctor who has conducted Postmortem on the dead body of the deceased and he has received Ex.P.3 Postmortem Certificate and after, investigation, he has filed Final Report on 29.04.2011.



3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and she has stated that she is an innocent and she is not involved in the case.

4. Having considered all the above materials on record, the trial Court has convicted the accused, as mentioned in the beginning of this judgment and challenging the said judgment, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the Lower Court has failed to note that there is no direct evidence and there is only circumstantial evidence, which lacks a linking factor, connecting the accused with the crime and hence on believing the said circumstantial evidence, the punishment imposed on the appellant is liable to be set aside. The accused/appellant has to be acquitted by giving the benefit of doubts. The Lower Court has failed to see that from the evidences of P.W.1, P.W.2 and P.W.5, the presence of the appellant/accused in the house of the deceased, prior to the occurrence, can not be believed. The prosecution in order to put up the case, it has filed the case as against the appellant herein. The conditions, precedent for the conviction, based on the circumstantial evidence, have not been established by the prosecution. In the absence of any other positive evidences to conclude that the accused and the deceased have been last seen together, it is not correct to come to the conclusion of the guilt of the appellant. The recovery of article used in the commission of offence has to be taken into consideration with other incriminating circumstances brought on record by the prosecution.

6. The points that arise for consideration in the present Criminal Appeal are as follows:-

i) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

ii) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

7. Analysis, discussions and findings with regard to the above mentioned points:-

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The learned counsel for the appellant has submitted that the Trial Court has committed error in convicting the appellant on



the basis is highly unbelievable, insufficient and unconvincing evidences of the prosecution. The appellant/accused has been wrongly implicated in the commission of the crime by the prosecution. Further, the learned counsel appearing for the appellant has submitted that when several independent witnesses are available, the prosecution has purposely chosen to examine the P.W.2, Vandimalaichi, who is none else than the granddaughter of the deceased and there are no eyewitnesses for the occurrence and a whole case rest on the evidences of P.W.1 and P.W.2 and their evidences are not clear and cogent, Further, the evidences of P.W.1 and P.W.2 have not inspired the confidence to believe the case of the prosecution. There are serious infirmity in the case of the prosecution. Further, the evidences of the prosecution witnesses are not clear and cogent, about the offence alleged to be done by the appellant. There are no believable evidences on record to establish the case of the prosecution and hence the case of the prosecution is unbelievable and unreliable.

8. On the other hand, the learned Additional Public Prosecutor has submitted that the reasons given by the Lower Court for recording the Judgment of Conviction against the appellant, are based upon the proper appreciation of the evidences and material records submitted by the prosecution. Further, he has submitted that the evidences of prosecution witnesses coupled with Exhibits and Material Objects are clear and satisfactory and also with hypothesis of the guilt of the appellant and the Lower Court has passed well-reasoned and well-merited judgment.

9. Further, the learned Additional Public Prosecutor has submitted that the deceased Nallathaiammal is the grandmother of the P.W.2 Vandimalaichi and the said Vandimalaichi's jewels have been kept by the said Nallathaiammal, for the safe custody.

10. Further, P.W.1, Leelavathy has deposed in her evidence that she is staying in Anavaradhanallur North Street and the deceased Nallathaiammal is known to her and the accused is also known to her and the P.W.2 Vandimalaichi is the granddaughter of the deceased and 10 months before giving evidence, at 7.00A.M early morning, she has gone to buy milk, at that time she has seen the granddaughter of Nallathaiammal, namely P.W.2 crying in the house of the deceased and she has gone inside the house and seen the dead body of the deceased Nallathaiammal and the deceased Nallathaiammal's face and head are found to be stained with blood and also she has seen a Grinding stone near the body and she has gone to the police station and lodged a complaint as per Ex.P.1. In the said Ex.P.1 complaint also, P.W.1 has categorically stated that she has seen the deceased Nallathaiammal on 14.02.2011 at 7.00A.M and the dead body of the deceased has been seen with the bloodstain near the Grinding stone. Thereafter, she has lodged the complaint to the police on the same day, i.e.,



14.02.2011 at 9 hours. Further, P.W.2, Vandimalaichi has also clearly deposed in her evidence that she has seen the body of the deceased Nallthaiammal and she has called the P.W.1 and shown the dead body of her grandmother and thereafter, they have searched for the M.O.1 to 5 jewels and M.O.6(series) currency notes and the same have been found to be missing, and the accused / appellant is the relative of P.W.2, and the accused has stayed along with the deceased in the same house, as the accused has come to the house of the deceased, with regard to the death of the aunty of P.W.2 and after the death of the deceased, the accused is found to be missing and the jewels are also found to be missing. Further, P.W.2 has clearly identified the said jewels and cash, namely, M.O.1 to M.O.6.

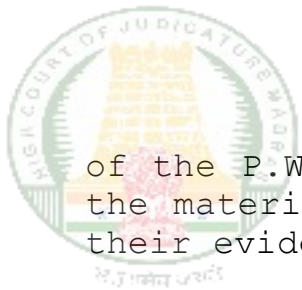
11. P.W.3, Dr.Selvamurugan has deposed that he has conducted Postmortem on the dead body of the deceased Nallathaiammal and also pointed out in the Postmortem Certificate of Ex.P.3, the following injuries.

"1) Lacerations : 3 x 0.5cm x bone deep over right parietal region, 3 x 0.5 x 0.5cm over left parietal area 2.5 x 1 x 0.5cm over left parietal area 1cm below above said injury and 1 x 0.5 x 0.5cm over left temporal area lies 3cm below injury No.3.

2) On dissection of Head : Scalpel contusion of size 15 x 8cm over right front temporal area.

3) Abrasion of size 2 x 1cm over right side of chin."

Further, he has also clearly stated in the Ex.P.3 Postmortem Certificate that the deceased has got the above mentioned 1- 3 injuries and also he has given final opinion that the deceased would appear to have died of acute Myocardial infarction. Further, P.W.4, Raja has specifically deposed that he and one Appadurai have signed in Ex.P.6 Observation Magazar and also he and one Appadurai have signed in Ex.P.7 Athatchi for the recovery of M.O.7 Grinding stone. Further, P.W.5, Murugan has pointed out that just before two days prior to the occurrence, the accused has come to the house of the deceased and stayed there as a guest. P.W.6, Thiru.Seranthaiyan has clearly deposed that he has handed over the dead body of the deceased Nallathaiammal to the Government Medical College Hospital , Tirunelveli for conducting Postmortem as per Ex.P.2 requisition received from the Inspector and after conducting Postmortem, he has handed over the dead body of the deceased to the relatives and also he has handed over the M.O.8 and M.O.9, namely, the dresses of the deceased to the police station and Ex.P.9 is the passport. Further, the evidences



of the P.W.1 and P.W.2 are also consistent and corroborative with the material records and exhibits of the present case, and hence, their evidences cannot be brushed aside.

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12. Further, P.W.7, Tmt.Bindhu Kumari has specifically deposed that she has submitted Express F.I.R. to the learned Judicial Magistrate, Thiruvaigundam on 14.02.2011 at 1.00P.M itself. Further, in the present case, the F.I.R. has been filed in Crime No.49 of 2011 at 14.02.2011, namely, on the date of occurrence itself and the learned Judicial Magistrate has received the said F.I.R on 14.02.2011 at 1.00P.M and there is no undue delay in lodging the complaint and the registration of the case and also submitting the F.I.R to the concerned Judicial Magistrate. P.W.8, Thiru.Franklin Utro Wilson, Sub Inspector of Police has pointed out that about the registration of the case, based upon the complaint in the present case in Crime No.49 of 2011 and also the registration of F.I.R as per Ex.P.11 and also about submitting the same to the Court and concerned Higher Officials. Further, P.W.9, Thiru.Murugesan, Inspector of Police has particularly deposed that he has prepared Observation Magazar as per Ex.P.6 and Rough Sketch as per Ex.P.12 and the same has been attested by the P.W.4 and one Appadurai as per Ex.P.6 Athatchi and he has also recovered the M.O.7 Grinding stone with bloodstain as per Ex.P.7 Athatchi, in the presence of P.W.4 and one Appadurai on 14.02.2011. In Ex.P.12 Rough Sketch, P.W.9 has clearly stated about the place of occurrence. P.W.10, Thiru.Ravi, Inspector of Police has clearly deposed that he has recovered M.O.Nos.1 to 5 and M.O.10 jewels of the deceased and also M.O.6 (series) currency notes for the value of Rs.35,000/- in the Athatchi as per Ex.P.8, in the presence of P.W.4 Murugan and Mariappan and also, after completing the thorough investigation, he has filed the Final Report on 29.04.2011. Further, the evidences of P.W.1 and P.W.2 are not only corroborated by the medical evidences but also by other contemporaneous materials collected during the course of the investigation.

13. In this connection, it is useful to refer to the decision reported in **(2011) 3 SCC 306**, in the case of **Wakkar V. State of U.P.**, it is clearly observed as follows:-

"Entire case depended upon evidences of P.Ws.1, 3, 2 and 6. It is they who spoke about incriminating circumstances and chain of events. On facts, held, circumstances and chain of events, conclusively establish involvement of appellants in committing crime of murder of deceased."

In the present case also, the Trial Court has not convicted the appellant, solely based on recoveries and in fact,



there are other relevant circumstances and materials as mentioned above and also the circumstances, suggesting the involvement of the accused in committing the crime of murder of the deceased Nallathaiaammal.

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14. While assessing and evaluating the materials on record of the present case, it is seen that the case of the prosecution is probable and reliable. Further, it is seen that the Lower Court Judgment does not suffer from any material infirmity. Further, the Lower Court has passed the Judgment on proper appreciation of evidences and also furnished cogent reasons for convicting the appellant herein. Therefore, there is no good reason for this Court to interfere with the judgment of the Lower Court. Further, it is seen that the view taken by the Lower Court is a reasonable view and well reasoned Judgment has been passed by the Lower Court and it cannot be said that the view of the Lower Court is not a reasonable conclusion on facts and also on law. There is tangible motive for the accused to commit the offence as alleged by the prosecution.

15. Based on the proper appreciation of evidences and also the documents, the Lower Court has recorded the above mentioned just conviction and sentence. For the afore-said reasons and also having considered the entire material on records, this Court is unable to accept the contentions raised on behalf of the appellant herein.

16. Further, it is settled law that if the Lower Court has not ignored material and relevant fact or the Lower Court has not misread the material evidences or ignored material records, then the Appellate Court is not competent to reverse the decision of the Lower Court. In the present case also, it is seen that the prosecution has established the chain of circumstances and also the allegations brought against the appellant, are sufficiently proved and established.

17. Further, in the present case also, on a cumulative consideration of the above mentioned entire evidences of the prosecution and also exhibits and material objects, it is found that the prosecution has established the allegation made against the appellant by producing the reliable, trustworthy and credible witnesses, exhibits and material objects, in the present case. It is found that the prosecution has produced cogent, natural and trustworthy evidence and material objects and exhibits to establish the crime committed by the accused.

18. On a careful scrutiny of the entire materials on record, it is found that the reasons given by the Lower Court for conviction of the accused are fairly sound. Further, the finding given by the Lower Court is in accordance



with proper appreciation of evidence and also the view taken by the Lower Court is reasonable.

19. **In the result**, the conviction and sentence imposed on the accused / appellant / Lakshmi @ Muthu Lakshmi in Crime No.49 of 2011 passed in S.C.No.173 of 2011, dated 03.01.2012 on the file of the learned Principal Sessions Judge, Thoothukudi is confirmed and the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Thoothukudi.
2. The Judicial Magistrate, Srivaikuntam
3. The Chief Judicial Magistrate, Thoothukudi
4. The Inspector of Police,
Murappanadu Police Station, Thoothukudi District.
5. The Special Prison for Women,
Tiruchirappalli. (In duplicate for communicate to the accused)
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.Gnanagurunathan,Advocate Sr.No.47825

pmu

AA/JGB-DP/29.09.2015/9p-9c

Crl.A.(MD)No.243 of 2013
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