

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.107 of 2014

Shagul Hameeth Appellant/Accused

vs.

State, by
The Inspector of Police,
Kamanaickenpalayam Police Station,
Thirupur.
(Crime No.310 of 2006) Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 21.03.2013 passed by the learned
Principal Sessions Judge, Tirupur, in S.C.No.33 of 2012.

For Appellant : Mr.T.Muruganantham
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The sole accused in Sessions Case No.33 of 2012, on the file of the learned Principal Sessions Judge, Trippur is the appellant herein. He stood charged for offences under sections 498(A) and 302 IPC. The Trial Court by judgement dated 21.03.2013 convicted the appellant/ accused for the offence under Sections 302 and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one month for the offence under Section 498(A) of IPC.

Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased in this case, one Shakilabanu is the wife of the accused. P.W.1 is the mother of the deceased. P.W.2 and P.W.3 are the brothers of the deceased. The deceased earlier married to one Abbas and they got divorced. Subsequently, she married the accused on 25.09.2005. Right from the date of marriage, the accused harassed the deceased demanding dowry and sent her to the parental house. When the deceased was pregnant, the accused demanded Rs.10,000/- from P.W.1, but she refused to give money. After 10 days, the accused sent the deceased to her parental house, after some time, the accused came to the house of P.W.1 and requested her to send the deceased with him, and he also promised that he will not harass her any more, P.W.1 also took steps to arrange separate house for the accused and the deceased at Palladam, on that day night the accused stayed back in P.W.1's house. Next day morning, P.W.1 and 2 took lunch for P.W.3, who is working in a shop, and when they returned back to their house, they saw the accused cutting the throat of the deceased with a knife. On seeing P.W.1 and 2, the deceased ran away, after hearing the news, P.W.3 also came to the house immediately. P.W.1 and P.W.3 went to the police station and lodged a complaint, Ex.P.1.

3. P.W.16, the Inspector of Police working in respondent police station, on receipt of the complaint registered a case in Crime No.310 of 2016 for an offence under section 498(A) and 302 IPC and prepared F.I.R. Ex.P.18 and proceeded to the scene of occurrence, prepared Observation Mahazar Ex.P.19 and Rough Sketch Ex.P.20. He took the photograph of the scene of occurrence and recovered M.O.1 knife, blood stained cement slab and sample cement slab and mat M.Os.5 to 7 in the presence of P.W.10 under Mahazar Ex.P.6. Then he conducted inquest on the dead body of the deceased in the presence of panchayatdars between 4.15 p.m. and 7.15 p.m. and prepared Inquest Report Ex.P.21, then sent the dead body for postmortem to the Palladam Government Hospital. On 2.11.2016, he arrested the accused in the presence of witnesses and on such arrest, he voluntarily gave confession and based on the disclosure statement, he recovered the blood stained shirt, baniyan and lungi M.Os.2, 3 and 4 under Ex.P.5 Mahazar. P.W.9, doctor working in the Palladam Government Hospital conducted postmortem on the body of the deceased and found the following injuries :

External Injuries : Incised like Laceration is present in front of the middle of the neck measuring 4 x 10 c.m. exposing the front of trachea . It extends 6 c.m. On the left side from the mid-line of the neck and 4cm on the right from the middle of the neck, on the

right side tracheal muscles are exposed on the left side pre-tracheal muscle and nuero vascular bundle are exposed nuero vascular bundle is totally severed. The wind pipe is cut at the level of the lower border of thyroid cartilage. The whole area of trachea is cut except a small soft tissue portion about 1 cm in the posterior aspect.

2. Irregular abrasion with mark suggestive of teeth about 4 x 5 m on the lateral aspect of anterior surface of right forearm."

Postmortem Report is Ex.P.2 and he also gave opinion that the deceased would have died of shock and hemorrhage, due to the injury on the neck, 18 to 30 hours before the time of autopsy.

4. P.W.16 recorded the statement of the Postmortem doctor, recovered jewels worn by the deceased, and blood stained nighty, inskirt and a bra (M.Os.14 to 16). He sent the material objects for chemical examination. After recording the statements of other witnesses and on completing the investigation, he laid charge sheet against the accused.

5. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 16 witnesses were examined and 22 documents and 16 material objects were marked.

6. Out of the witnesses examined, P.W.1 is the mother of the deceased and also an eye witness to the occurrence. She spoke about the marriage between the accused and the deceased. She also spoke about the harassment meted out by the deceased at the hands of the accused. Her further evidence was that, the accused used to demand money from the deceased, when the deceased was pregnant, the accused came to the house of P.W.1 along with the deceased and demanded Rs.10,000/-. When she refused, they went back to their home. After that, the accused sent the deceased to her house. After some time, the accused himself came to the house of P.W.1 and promised her that he will not harass the deceased, in the above circumstances, P.W.1 also had taken steps to arrange a separate house for them at Palladam and the accused stayed in their house on that night. In the morning, on the date of occurrence, both P.W.1 and 2 took lunch to P.W.3, who is working in a shop. When they came back, they saw the accused stabbing the deceased with knife inside the house. After seeing them, the accused ran away. Immediately, they informed the same to P.W.3 and P.W.1 and P.W.3 went to the police station and lodged Ex.P.1 complaint. P.W.2 is the brother of the deceased, he is also an eye witness to the

occurrence. According to him, when they were returning back to their home, the accused cut the deceased with a knife on her throat and after seeing them, the accused ran away. P.W.3 is another brother of the deceased, he spoke about the dowry demand and also the presence of the accused in the house of P.W.1. P.W.4 is the maternal uncle of the deceased and has spoken about the dowry harassment of the accused. P.W.5 and P.W.6 turned hostile. P.W.7 is the house owner where P.W.1 and deceased were residing. P.W.8 turned hostile.

7. P.W.9 is the doctor who conducted postmortem autopsy on the body of the deceased and gave postmortem report Ex.P.2. After the arrest of the accused, he was taken to the hospital for some minor injuries on him. P.W.9, doctor examined the accused and found a small abrasion on his left hand and he opined that the injuries are trivial in nature.

8. P.W.10 is the Village Administrative Officer, he is the witness to the arrest and recovery. P.W.11 is the photographer who took photos of the scene of occurrence and the dead body. P.W.12 is the Head Clerk in the Judicial Magistrate Court, he has sent the Material Objects for chemical examination. P.W.13 is a jewel appraiser, he appraised the jewels of the deceased. P.W.14 was the Head Constable who had taken the dead body to the hospital and identified the same to the postmortem doctor. P.W.15, a Head Constable who has handed over the F.I.R. in the Judicial Magistrate Court. P.W.16 is the Inspector of Police, who registered the F.I.R., conducted investigation and arrested the accused and recovered the material objects and filed charge sheet.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he did not examine any witness nor marked any documents.

10. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

11. We have heard Mr.T.Muruganantham, learned counsel for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. The learned counsel for the appellant would submit that P.Ws.1 and 2, who are eye witnesses are mother and brother of the deceased and they are interested witnesses and their evidence cannot be believed as their presence in the scene of occurrence is doubtful. Apart from that, the recovery was also not properly proved by the prosecution and in the absence of any corroborative evidence, the appellant cannot be convicted only

on the basis of the testimony of P.Ws.1 and 2.

13. Per contra, the learned Additional Public Prosecutor would submit that even though P.W.1 and 2 are mother and brother of the deceased and as the occurrence took place in their house, their presence is natural and hence their presence cannot be doubted and sought for dismissal of the appeal.

14. We have considered the rival submissions. P.W.1 and 2 are the eye witnesses to the occurrence. The occurrence had taken place in the house of P.Ws.1 to 3. It is their evidence that the accused harassed the deceased and demanded dowry and at the time of occurrence, the deceased was pregnant and she was sent to their house. After some time, the accused came to their house and promised that he will not harass the deceased. Believing the words of the accused, they have also taken steps to arrange a separate house for the accused and the deceased at Palladam. On the previous date of occurrence, the accused stayed in their house. On the next day morning, P.W.3 went for his work. P.W.1 and 2 had taken lunch for P.W.3. When P.W.1 and 3 came back, they saw the accused cutting the throat of the deceased and after seeing them, the accused ran away. This is the consistent evidence of all the eye witnesses. So far as the dowry demand is concerned, P.W.4, maternal uncle of the deceased has also stated that the deceased complained to him that the accused harassed her. The occurrence happened in the house of P.Ws.1 to 3, the parental house of the deceased. It is their evidence that the accused came to their house the previous day and stayed there. And on the next day, at about 12.30 p.m., the accused cut the throat of the deceased and murdered her. The presence of P.W.1 and 2 in the scene of occurrence is natural and there is no reason to disbelieve their evidence. Even though, they are interested witnesses, their evidence is cogent and natural and we are fully convinced to accept the evidence of P.W.1 and 2, as held in SARVAN SINGH AND OTHERS VS. STATE OF PUNJAB reported in 1976 (4) Supreme Court Cases 369, that

"It is not the law that the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interest witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration."

Hence, the arguments advanced by the learned counsel for the appellant that the witnesses being close relatives shall not be relied upon has no relevance.

Regarding the injuries of the accused is concerned,

according to P.W.9 doctor, it is only small abrasion on his left hand and he complained of pain in thumb and knee and he informed the doctor that when he was trying to assault his wife, the injuries caused to him. On his own admission, the injuries are caused to him, while he was attacking the deceased. Apart from that, the injuries found on the accused are very minor in nature. and in Sucha Singh and another Vs State of Punjab 2003 (7) Supreme Court Cases 643 it has been held that

"Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible." and it has also been held that

"26. Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it out weights the effect of the omission on the part of the prosecution to explain the injuries."

Hence the non explanation of such injuries will not affect the prosecution case. In the above circumstances, we are of the considered opinion that the prosecution has proved the case beyond all reasonable doubt and the appeal fails and the same is liable to be dismissed.

15. In the result, the Criminal Appeal is dismissed and the judgment of the learned Principal Sessions Judge, Tirupur in S.C.No.33/2012 dated 21.03.2013 is confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To

- 1.The Principal Sessions Judge,
Tirupur.
- 2 The Judicial Magistrate, Palladam
- 3 do Thro The Chief Judicial Magistrate, Coimbatore
- 4 The Superintendent, Central Prison, Coimbatore
- 5 The District Collector, Coimbatore
- 6 The Director General of Police, Mylapore, Chennai 4

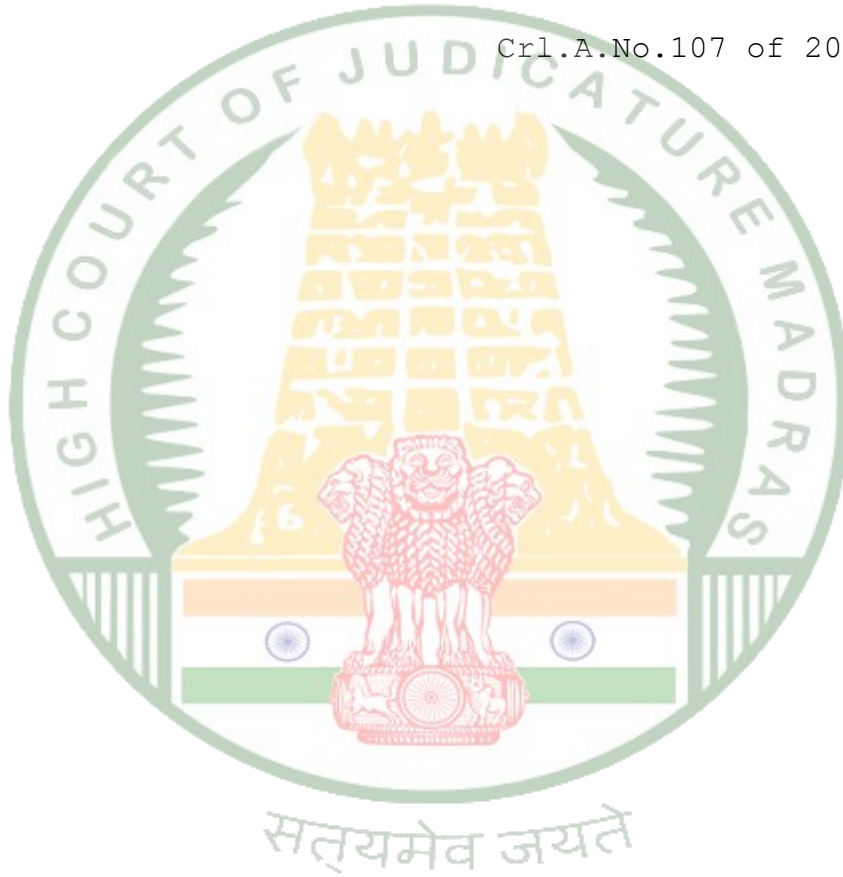
7.The Inspector of Police,
Kamanaickenpalayam Police Station,
Thirupur.

8.The Public Prosecutor,
High Court,
Madras.

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

msn (CO)
md (21/12/2016)

Crl.A.No.107 of 2014



WEB COPY