

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.07.2016**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.**24** of **2014**

S.Venkatesan

.. Appellant

- Vs -

State rep by Inspector of Police,
Minjur Police Station.
(Cr.No.398 of 2009)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned IV Additional District and Sessions Judge, Ponneri in S.C.No.216 of 2011 dated 15.07.2013.

For Appellant : No Representation

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

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J U D G M E N T**(Judgment of the Court was delivered by S.Nagamuthu, J.)**

The appellant is the sole accused in S.C.No.216 of 2011 on the file of the learned IV Additional District and Sessions Judge, Ponneri. He stood charged for offence under Section 302 I.P.C. By judgment dated 15.07.2013, the trial Court convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The appellant is the husband of the deceased Mrs.Devi. P.W.2 is the male child of the deceased and the accused. All these three were residing together in their house at Mariamman Koil Street, Nallaerimedu, Minjur. It is the further case of the prosecution that the accused had suspicion over the fidelity of the deceased. Thus, he had grudges against her.

2.2. On the night intervening 28.06.2009 and 29.06.2009, it is alleged that the accused stabbed the deceased with a suri knife and also attacked her with a wooden log. Then, he strangulated her with hands and caused her death. The occurrence took place inside the

house of the accused. On the complaint made by P.W.1, who is the father of the deceased, a case in Crime No.398 of 2008 under Section 302 I.P.C. was registered against the accused.

2.3. P.W.13, the then Inspector of Police took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of the witnesses and recovered the bloodstained earth and sample earth from the place of occurrence. He also recovered the bloodstained clothe found near the place of occurrence.

2.4. On the same day, he arrested the accused at the bus stop in the presence of witnesses. On such arrest, the accused gave a voluntary confession, out of which, he produced the wooden log and a bloodstained shirt and a bloodstained lungi. P.W.13, recovered the same under a mahazar. Then, he forwarded the accused to Court and handed over the material objects also to the Court. After inquest, P.W.13 forwarded the body for postmortem.

2.5. P.W.8 Dr.Sridevi conducted autopsy on the body of the deceased on 29.06.2009. She found the following injuries:

*"External Examination: A lacerated injury of
6x4x2 cms extending from the right side of*

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occipital to about 2 cms in front of right ear cutting through the right ear / obule (pinna) exposing the underlying occipital bone of the skull. 8 x 5 cms contusion present in the right cheek. Left eye contusion present. Multiple abrasions in front of neck present. No other external injuries.

Internal examination: # size 5 x 2 x 2 cms. Linear, fracture of right occipital skull bone. Entracheal hemorrhage present. Brain edematous. Hyoid bone – intact. Thoracic cavity, lungs – congested. Heart – normal, Liver, spleen, kidney – congested. Stomach – contain 200 ml of undigested food particles. Small intestine – congested, large intestine – bloated with gas. Uterus and ovaries – normal in size, uterus cavity empty.”

Ex.P5 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to fracture of occipital bone about 10 to 12 hours prior to the conduct of postmortem.

2.6. The investigation was thereafter taken over by his successor P.W.14. He examined the doctor, collected the medical records and

finally on completing the investigation, he laid the chargesheet against the accused.

2.7. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., which the accused denied. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 14 documents and 14 material objects were marked.

2.8. Out of the said witnesses, P.W.1 is the father of the deceased. He has stated that on hearing about the occurrence, he went to the place of occurrence, found the dead body of the deceased and then made a complaint to the police. P.W.2 is the son of the deceased. He has stated that on 28.06.2009, during the night, he was sleeping in the house. On that day, there was a quarrel between the accused and the deceased and after the quarrel was over, he fell asleep. He was sleeping with his grandfather in a different portion of the house. In the chief examination, he has stated that he found the accused strangulating the deceased by neck with his hands and the accused fled away from the scene of occurrence. But during cross examination, he has stated that he was sleeping with his grandfather and he did not see the occurrence. He came to know that his mother was no more only in the morning on the next day.

2.9. P.W.3 is a neighbour of the deceased. He has stated that he found the dead body of the deceased on the next day. P.W.4 has stated about the frequent quarrel between the accused and the deceased. He has not stated anything incriminating against the accused. P.W.5 is the mother-in-law of the deceased, she has not stated anything incriminating. P.W.6 is the brother-in-law of the accused. He has also not stated anything incriminating against the accused.

2.10. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of the material objects from the place of occurrence. P.W.8 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.9 the learned Magistrate has stated that he recorded the statement of P.W.4 under Section 164 Cr.P.C. P.W.10 a constable has stated that he took the dead body from the place of occurrence on the directions of P.W.13 and handed over the same to the doctor for postmortem.

2.11. P.W.11 has stated that he handed over the F.I.R. and the complaint to the learned Magistrate on 29.06.2009. The records reveal that they were handed over to the learned Magistrate at 01.30

p.m. on 29.06.2009. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.13 and 14 have spoken about the investigation and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. Since there was no representation for the appellant / accused we could not hear him. We heard the learned Additional Public Prosecutor and we have also perused the records carefully.

5. We find that it is a case where there is no evidence at all against the accused. Therefore, on considering the records available and on hearing the arguments of the learned Additional Public Prosecutor, we proceed to dispose of this appeal.

6. As we have already pointed out, absolutely, there is no evidence against the accused. The only evidence upon which the prosecution relies on is the evidence of P.W.2, the son of the

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deceased. In chief examination, he has stated that he was sleeping with his grandfather. However he has stated that he found the accused strangulating his mother and then fled away from the scene of occurrence. But during cross examination, he has disowned the same. He has stated that he was sleeping with his grandfather in a different portion of the house and he came to know that his mother was no more only on the next day morning.

7. According to medical evidence, the death was due to fracture of the skull. Absolutely, there is no evidence that the accused caused the said injury on the head of the deceased. The evidence of P.W.2, in our considered view, cannot be the sole basis for conviction because the admission made by him during cross examination that he did not witnessed the occurrence at all.

8. In view of the above, we find no option but to acquit the accused holding that the prosecution has failed to prove the case beyond reasonable doubts.

9. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant / accused by the learned IV Additional District and Sessions Judge, Ponneri in S.C.No.216 of 2011 dated 15.07.2013 is

set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) Since the appellant / accused is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

(S.N.J.) (V.B.D.J.)
21.07.2016

Index : Yes
kua/kk

S.NAGAMUTHU,J.

&

V.BHARATHIDASAN,J.

kua/kk

To

1. The IV Additional District and Sessions Judge,
Ponneri.
2. The Inspector of Police,
Minjur Police Station.
3. The Public Prosecutor,
Madras High Court.

Crl.A.No.24 of 2014

21.07.2016