

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.448 of 2014

Chinnadurai

..

Appellant

Vs

State rep. By
Inspector of Police,
Kotagiri Police Station,
The Nilgiris District,
Crime No.18 of 2010

..

Respondent

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 29.11.2013 passed in S.C.No.12 of 2011 on the file of Mahalir Neethimandram (Fast Track Mahila Court) of the Nilgiris at Uthagamandalam.

For Appellant : Mr. I.C.Vasudevan

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.12 of 2011 on the file of the Mahalir Neethimandram (Fast Track Mahila Court), The Nilgiris at Uthagamandalam. He stood charged for the offences under Sections 382 and 302 IPC. By judgment dated 29.11.2013, the trial Court convicted the accused and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo six months rigorous imprisonment for the offence under Section 302 IPC and to undergo 5 years rigorous imprisonment and to pay a fine of Rs.2000/-, in default to undergo three months rigorous imprisonment for the offence under Section 382 IPC. The trial Court has directed the sentence imposed on the accused to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-
<https://hcservices.ecourts.gov.in/hcservices/>

The deceased, namely, Lakshmi, is the mother of P.W.1 and they were residing at Batcha Thottam, Kookalthorai., in which, P.W.1 and his family were living in a separate house and the deceased and his father were living in the adjacent house. The accused and his family members were also residing in the same village. Due to some land dispute between the families of the deceased and the accused, they were not in talking terms. On 17.01.2010, P.W.1 and his family members left the house for their work and while they returned to their house at about 2.30 p.m., they saw their mother sitting in a cot outside the house and the accused attacking their mother with wooden log and also removing the ear stud and chain from her person and thereafter, the accused ran away from the scene. When, they reached the house, they found the deceased dead. Immediately, P.W.1, preferred a complaint.

3. P.W.14, the Sub-Inspector of police attached to respondent Police Station, on receipt of the complaint, Ex.P1, registered a case in Crime No.18 of 2010, for the offence under sections 302 and 379 IPC. Thereafter, he sent the First Information Report-Ex.P.18 and complaint Ex.P.1 to the Judicial Magistrate and the copies thereof to higher officials.

4. P.W.16, the Inspector of Police, after receipt of the First Information Report, started the investigation. On 17.01.2010, at about 7.00 p.m., he proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2 and a Rough Sketch, Ex.P.22, in the presence of P.W.4 and another witness. He also seized blood stained soil, M.O.4 and sample soil, M.O.5 and blood stained gunny bag, M.O.6 under a Mahazar, Ex.P.3. Thereafter, he conducted inquest on the body of the deceased in the presence of Panchayathars and prepared an Inquest Report, Ex.P.23. He also recorded statements of some witnesses and sent the body for postmortem, through one Ramakrishnan, Head Constable. P.W.5, Assistant Surgeon, working in the Government Hospital, Kotagiri, conducted autopsy on the body of the deceased, on 18.01.2010, between 10.45 a.m. to 11.45 a.m., and found the following injuries:

" External Injuries : सत्यमेव जयते

1. Laceration of size about 4 x 2 x 2 c.m. Over left zygomatic region with depressed fracture of left zygomatic arch.
2. Laceration and tear in left ear pinna and ear lobule size about 5 x 1 x 1 c.m.
3. Tear at right ear lobule seen (Oblique shape).

Internal Injuries :

1. Clotted blood seen on the left parietal region beneath the scalp.
2. Ring fracture of skull bone along the coronal suture extending from left zygomatic arch to right zygoma.
3. Depressed fracture of left zygoma.
4. Extra dural hemorrhage found at left parietal hemisphere region.
5. Stomach filled with semisolid food particles.
6. Intestine filled with partially digested food

particles.

7. Heart, lungs, liver, spleen and all other internal organs normal in appearance."

Ex.P.5 is the Postmortem Report. P.W.5 also gave opinion that the deceased would appear to have died of vital organ injuries (brain). On 20.01.2010, at about 2.30 p.m., he arrested the accused at Kattabettu in the presence of P.W.9 and another witness. On such arrest, the accused gave a voluntary confession and based on the disclosure statement of the accused, P.W.16 seized material objects, such as, Lungi-M.O.7, Towel-M.O.8, Cloth bag-M.O.9, plastic bag-10, beetle leaf-M.O.11, Wooden log-M.O.1, 32gms gold chain- M.O.2, under a Mahazar, Ex.P.12. After taking the finger prints of the accused, he sent the accused for judicial custody. Based on his confession, he also seized an ear stud, worn by the deceased, from one Saravana Finance at Kotagiri and also seized a receipt for pledging the jewel. Subsequently, on 21.01.2010, P.W.1 identified the gold chain and the ear stud as that of the deceased. Thereafter, P.W.16 recorded the statements of the Doctor, who conducted postmortem and other witnesses. On completion of investigation, he laid charge sheet against the accused.

5. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 23 documents were exhibited, besides 17 Material Objects.

6. Out of the witnesses examined by the prosecution, P.Ws.1, 2 and 3 are eyewitnesses to the occurrence. P.W.1 is the son of the deceased. His evidence is that on the date of occurrence, after finishing their work, while they were returning home, he saw the deceased sitting in a cot outside her house and the accused attacking her with wooden log and removing her ear stud and gold chain and thereafter ran away, immediately, he went to the respondent police and lodged a complaint, Ex.P.1. P.W.2 is the wife of P.W.1. P.W.3 is the brother's wife of P.W.1. They have also spoken about the fact that while they were returning to home, they saw the accused attacking the deceased with a wooden log and removing ear stud and gold chain from her, thereafter the accused ran away from the place of occurrence.

7. P.W.14, Sub-Inspector of Police, working in the respondent police, has spoken about the registration of the case. P.W.16, Inspector of police has spoken about the investigation conducted by him. He has deposed about the inquest conducted by him before the panchayathars on the body of the deceased, arrest of the accused on 20.01.2010, recording of voluntary confession given by the accused in the presence of witnesses and seizure of M.Os.1,2 & 7 to 11, based upon the disclosure statement, under Mahazar Ex.P.12. He has also spoken that he seized a ear stud worn by the deceased from one Saravana Finance at Kotagiri, where the accused pledged the jewel and also seized the receipt for pledging the jewel. P.W.5, Doctor, working in the Government Hospital, Kotagiri, has spoken about the

autopsy conducted on the body of the deceased and the issuance of Postmortem Certificate, Ex.P.5 and the final opinion regarding the cause of death.

8. P.W.6, Assistant Director, Forensic Science Lab, has spoken about the chemical examination conducted by him on the material objects. According to him, chemical examination revealed that there were blood stains in all the material objects. P.W.7, a resident of Kookalthorai, has stated that on the date of occurrence, he saw the accused running in a tension mood. P.W.8, who is the son of P.W.3, has stated that he saw the dead body of the deceased. P.W.9 is a witness to the arrest of the accused and also to the recovery of material objects, including the gold chain and the ear stud from Saravana Finance at Kotagiri. P.W.10 is an employee of Saravana Finance at Kotagiri, where the accused is said to have pledged the ear stud of the deceased. His evidence is that on 17.01.2010, at about 4.15 p.m., the accused pledged the jewel and received Rs.2000/- and he issued receipt for the same and also identified M.O.3, at the time of adducing evidence before the Court. P.W.11 is the owner of Saravana Finance, Kotagiri. He has also spoken about the pledging of the jewel by the accused and seizure of the same by P.W.16, from his shop.

9. P.W.12, Head Clerk in the Judicial Magistrate Court, Ooty, sent the material objects for chemical examination. P.W.13, a car driver, has spoken about the recovery of M.O.13 black colour jerkin, which belonged to the accused, under Ex.P.16 Mahazar, from SNR Lodge at Mettupalayam. P.W.14, Sub-Inspector of Police has registered the case and after postmortem he recovered M.Os.14 to 16 from the deceased and handed over the same to P.W.16. P.W.15, Finger Print Expert, has taken finger prints of the deceased and the accused and compared the same and gave a report, Ex.P.21. P.W.16, the investigating officer, has stated that he arrested the accused, recovered material objects and after completion of investigation, filed charge sheet against the accused.

10. 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 chose to examine any witness or mark any documents.

11. Having considered all the above materials, the trial Court convicted the appellant/accused, as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

12. We have heard Mr.I.C.Vasudevan, learned counsel for the appellant and Mr.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. The learned counsel for the appellant would submit that all the eye-witnesses to the occurrence are closely related to the deceased and they are all interested witnesses. It is his further

submission that the alleged recovery was also not proved by the prosecution and it is only stage managed. He added that since there is a previous enmity between the accused and the deceased family, the accused has been implicated in this case. The accused cannot found guilty of the offences based on the interested testimony of the eyewitnesses in the absence of any other independent witness corroborating their evidence, is his bone of contention.

14. Per contra, the learned Additional Public Prosecutor would submit that there are three eye-witnesses to the occurrence and eventhough, they are all related, they have cogently narrated the occurrence and their evidence are natural and there is no reason to disbelieve the same. He further submitted that based on the confession of the accused, the ear stud(M.O.3), which belonged to the deceased, has been recovered from one Sarava Finance, Kotagiri, where he pledged the jewel and this also strengthens the prosecution case and therefore, he sought for dismissal of the appeal.

15. We have considered the rival submissions.

16. In the instant case, there are three eye-witnesses. To the occurrence. P.W.1 is the son of the deceased. P.W.2 is the wife of P.W.1. P.W.3 is the sister-in-law of PW.1. They are all residing in the same house. The deceased and the father of P.W.1 are living in the neighbouring house of P.W.1. It is their evidence, in one voice, that at the time of occurrence, after completing their work, while they were returning back to their house, they saw the accused attacking the deceased with a wooden log and removing the ear stud and gold chain from the person of the deceased. The accused is not a stranger. He is living behind their house and there is also a previous enmity between them. Apart from that, at the time of occurrence, P.W.7, a resident of the above village, has saw the accused running in a tension mood. The evidence of eye-witnesses, eventhough they are related to the deceased, are all natural and reliable. All of them have seen the accused attacking the deceased and snatching the gold chain and ear stud from the person of the deceased. Hence, there is no reason to disbelieve their evidence.

17. Apart from that, another important circumstance is the recovery of jewels based on the disclosure statement of the accused, which belonged to the deceased and P.W.1 has properly identified them as that of the deceased. Ear stud, M.O.3, belonged to the deceased has been pledged by the accused on the date of occurrence, at about 4.00 clock, in a private finance, namely, Saravana Finance run by P.W.11 and the same was recovered based on the disclosure statement of the accused. P.W.10 and P.W.11, being the employee and owner of the Saravana Finance Company, have also categorically stated that it is only the accused, who pledged the jewel with them. They also produced copy of the receipt for pledging the jewel. Hence, the possession of the stolen article, immediately after the occurrence with the accused has been proved. But, there is no explanation by the accused as to how he came to possess those jewel. Hence, the presumption under Section 114(a) of the Evidence Act, squarely applies. In the absence of any explanation for possession of the

stolen article, only an adverse inference can be drawn against the accused, that it is only he, who stolen the jewells and also committed the murder. Hence, we are of the considered opinion that the prosecution has proved the guilt of the accused beyond any reasonable doubt and there is no reason to interfere with the judgment of the trial court. Thus, we do not find any merit at all in this appeal.

18. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The conviction and sentence imposed on the appellant by the trial Court in S.C.No.12 of 2011 Dated 29.11.2013 is hereby confirmed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

mrp

To

1. Mahalir Neethimandram (Fast Track Mahila Court),
Nilgiris at Uthagamandalam.
- 2 The Judicial Magistrate, Kothagiri
- 3 The Chief Judicial Magistrate, Coimbatore
- 4 The Superintendent Central Jail, Coimbatore
- 5 The Inspector of Police, Kotagiri Police station, Nilagiris District
- 6 The District Collector, Coimbatore
- 7 The director General of police, Mylapore, Chennai-4
- 8 The Public Prosecutor, High court, Madras

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RD 30/12/2016

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