

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 20-06-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.496 of 2014

Madappan ...Appellant

-vs-

State,
represented by Inspector of Police,
Palacode, Palacode Police Station,
Dharmapuri District.
(Cr.No.393/2011). ...Respondent

Appeal against the judgment, dated 17.09.2014, made
in S.C.No.58 of 2012 on the file of Fast Track Court-cum-
Mahila Sessions Court, Dharmapuri.

For appellant : Mr.R.Sankarasubbu

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

JUDGMENT

(Judgment of the Court was delivered by S.Nagamuthu,J.)

Appellant is the sole accused in S.C.No.58 of 2012 on the file of Fast Track Court-cum-Mahila Sessions Court, Dharmapuri. He stood charged for the offences under Sections 364, 376, 302 and 201 IPC read with Section 302 IPC. By judgment, dated 17.09.2014, the trial Court convicted him for the said offences and sentenced him to undergo life imprisonment for the offence under Section 302 IPC; to undergo rigorous imprisonment for seven years under Section 376 IPC; to undergo rigorous imprisonment for five years for the offence under Section 364 IPC; and to undergo rigorous imprisonment for three years for the offence under Section 201 IPC read with Section 302 IPC. No fine was imposed. However, a sum of Rs.25,000/- was ordered to be paid as compensation. 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. P.W.1 Mrs.Chitra is a resident of Jyothipatti village in Krishnagiri District. P.W.5 is her husband. The deceased in this case, Ms.Sevvanthi, was their daughter. On account of some matrimonial dispute, P.W.1 and P.W.5 were living separately. The child, namely, the deceased was residing with P.W.1. She was studying in a local school. P.W.1 was working in the farm of the accused, as a Coolie. The accused also belongs to the same village. On an earlier occasion, a criminal case was registered against the accused in Crime No.761 of 2007 on the file of Palacode Police Station for the offence under Section 366 IPC., on the allegation that he had kidnapped one Valarmathi. It is alleged that on account of the said case, the accused hatched a plot to commit murder of the deceased Sevvanthi.

2.2. It is alleged that on 04.08.2011, P.W.1 had gone to the farm of the accused, for work. On that day, the accused told her that he would take the deceased on his motorcycle and leave her in the school. Accordingly, in the morning, he took the deceased on his motorcycle under the pretext of taking her to school. According to the case of the prosecution, the accused, instead of taking the deceased to school, took her to a vacant land behind Chelliamman temple at Palacode, where he raped her. Thereafter, according to the prosecution case, he killed her, by strangulating her with a lungi and, with a view to erase the evidence, he dropped the dead body of the deceased into a well near the place of occurrence and disappeared.

2.3. The occurrence was not witnessed by anyone. On the next day, at 06.00 a.m., P.W.4 and others saw the dead body of the deceased in the well. P.W.1, who was searching for the deceased from the evening of 04.08.2011, came to know about the lying of the body in the well. She rushed to the well and found the body therein. Thereafter, she went to Palacode Police Station and made a complaint on 05.08.2011 at 09.00 a.m. P.W.19, the then Inspector of Police, on receipt of the said complaint under Ex.P-1, registered a case in Crime No.393 of 2011 under Section 174 Cr.P.C., for suspicious death. Ex.P-18 is the F.I.R. He forwarded both the documents to the Court and took up the case for investigation. He went to the place of occurrence and prepared Observation Mahazar and Rough Sketch in the presence of witnesses. Then, he lifted the body out of well, conducted inquest on the body of the deceased, and recovered the material objects, namely, personal belongings of the deceased, including the books. He examined many witnesses at the spot. Then, he forwarded the dead body for post-mortem. P.W.7, doctor, conducted autopsy on the body of the deceased on 05.08.2011 at 01.45 p.m. He found the following injuries :

"External Injuries:-

1. About 4x3 c.m abrasion inside face? the infra orbital region reddish brown with ? scar.

2. About 2x1 c.m abrasion over right (n.c) submandibular region with reddish brown with ? scar.

3. about 2x1 c.m abrasion over chin with reddish brown.

4. Multiple small abrasion over left iliac crest, lower thigh and largest one is 4x3 c.m scar with reddish brown with ? scar.

5. about 6x2 c.m abrasion over left foot.

6. About 8x2 c.m ligature mark transvers non continues with deep (n.c) extendur from midline front of neck to left side upper 1/3 middle 2/3 of SNM muscle with just above Thyroid cartilage with edges are not well defined. Along edges of depression thinline of Hemorrhage present (n.c) face superly face in(?)edimates? (n.c) haemorrhage seen on eyelid, conjunctive behind ears scalp. Hymen round (n.c) opened allowing three finger freely with irregular edges with deep vagina. Pathoulous with yellowish white semisolid material present over vagina with (n.c) less obvious which froth absent in mouth and nostril forchips hair stain absent over pubic area, thigh, lower abdomen, No abrasion contusion found over both breast, No bite mark seen.

Internal Examination:-

Chest no rib fracture lungs normal inside and congested fine froth (n.c) absent and peel? of lungs was not floated? in water.

Heart all four chamber contain clotted blood. Stomach - empty no water mud? food on the stomach cavity. Intestine contain Gas and (n.c). Liver, Spleen, Kidney are normal inside and congested uterus on 6x4x2 c.m. inside and cavity small triangular with empty cavity, Skull No fracture. Membrane intact. Brain congested with (n.c) Haemorrhage, Hyoid bone intact (No fracture), Small Haemorrhage with (n.c) present. Adjacent (n.c) sub cut tissue, just deep to the ligature mark. Mucus membrane of Pharynx, larynx shown Haemorrhage (n.c) with absent. Intestine of the carotid artery normal following viscera sent for chemical anlysis of viscera 1. Stomach, intestine with contents 2. Kidney 3.

Liver 4. Hyoid bone surrounding muscle. 5. Preservative(?) with smear study for vaginal content (two slides)."

Ex.P-4 is the Post-mortem Certificate. The doctor gave opinion that the deceased had died due to strangulation.

2.4. During the course of investigation, on 06.08.2011, at 02.00 p.m., at Vellalamuthur Bus Stop, P.W.19 arrested the accused in the presence of P.W.11 and another witness. On such arrest, the accused disclosed the place where he had hidden the lungi. In pursuance of the said disclosure statement, the accused took the police and the witnesses to the place of hide-out and produced the lungi, M.O.3. TVS 50, M.O.1, was also recovered from the accused. Then, he forwarded the accused to the Court for judicial remand. He examined the doctor and collected medical records. The accused was sent for medical examination. P.W.16, doctor, examined him and gave opinion that the accused was matured enough and capable of performing sexual intercourse with a woman. On completion of investigation, P.W.19 laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in first paragraph of its judgment against the accused and he denied the same.

4. In order to prove the case, on the side of prosecution, as many as 19 witnesses were examined, 27 documents and 11 material objects were marked.

5. Out of the said witnesses, P.W.1 has stated that the accused took the deceased on his motorcycle at 08.00 a.m., on 04.08.2011, under the guise of leaving her in the school. She has further stated that in the evening, the deceased did not return home and, therefore, she was in search of her. She came to know that the dead body of the deceased was found in the well on the next day. P.Ws.2 and 4 have stated that they found the dead body in the well at 06.00 a.m. on 05.08.2011. P.Ws.3,6,7 and 9 have spoken only about hearsay information and they have not stated anything incriminating against the accused. P.W.5, father of the deceased has stated that he was informed that the deceased was found missing on 04.08.2011 and, on the next day, he came to know that the dead body of the deceased was found in the well. P.W.7 has spoken about the post-mortem conducted and his final opinion, regarding the cause of death. P.W.10 has spoken about the earlier occurrence, in which the accused was involved, which is stated to be the motive for the occurrence. P.W.11 has spoken about the arrest of the accused and the consequential recovery of lungi and motorcycle. P.W.12 has spoken about the photographs taken at the occurrence, at the request of P.W.4. P.W.13, Head Constable, has stated that he took the dead body of the deceased from the place of occurrence and handed over the same for post-mortem. P.W.14, Head Clerk, of the learned

Magistrate Court, has stated that she forwarded material objects for chemical examination. P.W.15 has spoken about the earlier occurrence, in which the accused was involved, which is stated to be the motive for the occurrence. P.W.16 has stated that on examination of the accused, he has opined that the accused was potent. P.W.17, Forensic Expert, has stated that there were neither blood stains nor semen found on any of the material objects, including the lungi, recovered from the accused. P.W.18 and P.W.19 have spoken about the investigation done and the final report filed.

6. When the above incriminating materials were put to the accused, he denied the same as false. However, on his side, he examined one Sivasekaran as D.W.1, who was a teacher in the school, where the deceased was studying. He has stated that on the day of occurrence, the deceased came to the school and attended the classes till 04.020 p.m. He has produced the Attendance Register also. He was the Class Teacher of the deceased.

7. Having considered all the above, the trial Court found the accused guilty of the charges and convicted him thereunder, as stated above. That is how, he is before this Court with this appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor, appearing for the State, and also perused the materials available on record carefully.

9. This is a case, based on circumstantial evidence. The first and foremost circumstance projected by the prosecution is that on 04.08.2011 at 08.00 a.m., the accused took the deceased on his motorcycle under the guise of leaving her in the school. According to the prosecution case, instead of taking her to the school, the accused took the deceased to the place of occurrence, raped her, killed her and threw the dead body into the well. But, D.W.1, the Class Teacher of the deceased, has stated that on 04.08.2011, the deceased came to the school and attended the classes till 04.20 p.m. Thus, the prosecution case that the accused, without taking the deceased to the school, had taken her to the place of occurrence, raped her, killed her and threw the dead body into the well cannot be presumed. According to D.W.1, the deceased left the school at 04.20 p.m. After 04.20 p.m., till 06.00 a.m., what had happened to the deceased and what was her movement have not been investigated at all by the police. The only evidence available is that the deceased was found dead in the well on the next day at 06.00 a.m. Though it is stated that it was a rape, there is no evidence of any rape available. The doctor, who conducted autopsy, has stated that the deceased died due to strangulation. Thus, the prosecution has succeeded in establishing that the deceased died out of homicidal violence. But, absolutely, there is no evidence either direct or

circumstantial, to prove that it was this accused, who caused the death of the deceased. In other words, absolutely, there is no evidence against the accused.

10. A perusal of the judgment of the trial Court would go to show that the trial Court convicted the accused on mere surmise. Article 21 of the Constitution of India mandates that life and liberty of an individual can be deprived of, only by following the procedure established by law. The procedure so enshrined in Article 21 includes proof of guilt beyond reasonable doubts. In other words, the Court cannot afford to convict a person out of mere surmise or suspicion. Here, in this case, the prosecution has not succeeded even to establish a suspicion against the accused. Thus, in our considered view, the conviction and sentence imposed by the trial Court cannot be sustained. The appellant is, therefore, entitled for acquittal.

11. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted of the charges. Bail bonds, if any executed by the appellant, shall stand cancelled.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
Palacode, Palacode Police Station,
Dharmapuri District.
- 2.Fast Track Court-Mahila Sessions Court,
Dharmapuri.
- 3.The Public Prosecutor,
High Court,Madras
4. The Principal District and Sessions Judge,
Dharmapuri.
5. The District Collector, Dharmapuri District.
6. The Superintendent Central prison, Vellore.
7. The Judicial Magistrate, Palacode.

8. -do- Thro. The Chief Judicial Magistrate, Dharmapuri.

9. The Superintendent of Police, Dharmapuri.

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