

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.518 of 2014

A.Gajalakshmi ... Appellant /
De-facto Complainant

Vs

1. State represented by
The Inspector of Police
Myladuthurai Police Station
Mayiladuthurai. ... Respondent
No.1/

Complainant

2. P.John ... Respondent No.2/
Accused

Appeal against the Judgment of acquittal passed by the learned Sessions Judge, Mahalir Fast Track Court, Nagapattinam, in S.C.No.79 of 2012 on 29.05.2014, under Section 372 of the Code of Criminal Procedure.

For Appellant : Mr.T.Dhamodaran
(No appearance)

For Respondent - 1 : Mr.E. Raja
Additional Public Prosecutor

For Respondent - 2 : No appearance

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The present appeal is filed by the appellant against the order of acquittal passed in S.C.No.79 of 2012 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Nagapattinam. The appellant is the de-facto complainant/PW.1.

The second respondent herein is the sole accused in the above Sessions Case and he stood charged for an offence under Section 302 IPC. The trial Court, after elaborate trial, acquitted the accused. Challenging the above said order of acquittal, the appellant is before this Court with this Appeal.

2. The prosecution case in brief, is as follows:-

(a) The deceased, in this case, one Muthulakshmi, is the daughter of the appellant and the wife of PW.6. The appellant and PW.6 are residing at Ulunthukuppai Village, Mayiladuthurai Taluk. The deceased was married to PW.6 and they were living separately, in the same village. The accused is also a resident of the same village and he developed illicit intimacy with the deceased. When the accused family members were taking steps for arranging marriage of the accused, he compelled the deceased to marry him, but she refused. On 26.05.2012 at about 8.30 p.m, the accused called the deceased to PW.1's house and compelled her to marry him. When the deceased refused to do so, the accused strangled her with a dhoti and caused her death.

(b) At about 10.30 p.m, PW.6, husband of deceased, came to PW.1's house and enquired about the deceased and as they could not find her, they went in search of her. Ultimately, they found her dead near the place where her father was buried. Then they took her to the hospital belonged to the accused's father, where she was declared dead. Then, PW.1 lodged a complaint (Ex.P1).

(c) PW.12 - Sub-Inspector of Police, Mayiladuthurai police station, on receipt of Ex.P1 complaint at about 10.00 a.m on 27.05.2012, registered a case in Crime No.657 of 2012 under Section 174 Cr.P.C. Ex.P9 is the First Information Report.

(d) PW.13, Inspector of Police (in-charge), Mayiladuthurai police station, commenced investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P10) and also drew a rough sketch (Ex.P11). PW.13 also recovered a Mosquito Repellent (M.O.1) and hair pins (M.O.2). Since the dead body was shifted to Government Hospital, Mayiladuthurai, he conducted inquest on the dead body in the hospital, in the presence of panchayatdars and prepared an inquest report (Ex.P13). Then PW.13 sent a requisition to Government Hospital for conducting autopsy on the dead body, through PW.10 - Head Constable.

(e) PW.9 - Assistant Civil Surgeon, working in Government Hospital, Mayiladuthurai, conducted autopsy on the dead body and found the following injuries:-

"No external injuries except rope mark
seen over neck.

B/L Nasal discharge (Lt) Approximately

10 ml mucoid in nature. Hands opened. Eyes closed. B/L bluish colour eyelid (upper). (Lt). Jaw - B/L bluish coloured swelling seen (Lt). Tongue protruded. Tongue tip seen with black coloured. Sternum - intact. Heart - approximately 150 ml (Lt). Liver - congested. Stomach - 200 ml Rice food particles. Kidney - pink coloured (Lt.). Intestine - Faecal mass (Lt.). Neck - Rope mark seen over neck. Cut Section Neck - Tracheal Ring Normal. Hyoid bone - No fracture. Blood clot seen below Hyoid bone (Lt). Skull - Two contusion size about 3 x 2 x 1 cm size (Lt.) Parietal region (Lt.). Skull - No fracture seen. Brain - sub dural hemorrhage (Lt.). Ext. Crania - intact, No injury. Uterus - intact."

He issued postmortem report (Ex.P7) and gave opinion regarding the cause of death as follows:-

"The death is due to Hanging Strangulation with Cerebral Hypoxia with Respiratory arrest".

(f) PW.13 then recorded the statements of some witnesses and based on the investigation, he altered the offence into Section 302 IPC and the altered First Information Report is Ex.P8. On 27.05.2012 at about 7.00 p.m, PW.13 arrested the accused and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement, he recovered dhoti (M.O.7) used by the accused. Then PW.13 handed over the investigation to regular Inspector of Police. The regular Inspector of Police recorded the statements of postmortem Doctor, Junior Scientific Officer and other witnesses and after completion of investigation, he filed charge sheet.

3. Considering the above materials, the trial Court framed a sole charge for the offence under Section 302 IPC. The accused denied the same. In order to prove the charge, the prosecution examined 13 witnesses and marked 16 documents and 7 material objects.

4. Out of the witnesses examined, PW.1 is the mother of the deceased. She has spoken about the illicit intimacy between the accused and the deceased. PW.2 is the sister of PW.1. She is living with PW.1. She has also spoken about the illicit intimacy between the accused and the deceased. P.Ws.3 to 5 have turned hostile. PW.6 is the husband of deceased. According to him, after coming to know about the illicit intimacy between the accused and the deceased, he warned the deceased and there were frequent quarrels between them. He has further deposed that on

26.05.2012, he found her wife/deceased missing and subsequently, he found her dead near the graveyard of his father-in-law. PW.7 is a witness to arrest of the accused and the confession statement given by the accused. PW.8 is the Scientific Officer working in Forensic Lab, Tanjore. He has spoken about the examination of the visceral parts of the deceased and issuing a report (Ex.P6). PW.9 is the Assistant Civil Surgeon in the Government Hospital, Mayiladuthurai. He has stated that he conducted autopsy on the dead body and gave opinion regarding the cause of death. PW.11 is the Special Sub-Inspector of Police who handed over the First Information Report to the Tahsildar and also the altered First Information Report to the Judicial Magistrate Court. PW.12 is the Sub-Inspector of Police working in Special Cell, Nagapattinam. He has spoken about registering the complaint and preparing the First Information Report. PW.13 is the Inspector of Police (in-charge) of the respondent police. PW.13 has stated that he conducted investigation, arrested the accused and recovered material objects and after recording the statements of witnesses, he handed over the investigation to the regular Inspector of Police of the respondent police. After completion of investigation, regular Inspector of Police filed charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused neither examined any witnesses nor marked any documents.

6. Considering the above materials, the trial Court acquitted the accused. Challenging the order of acquittal by the trial Court, the appellant / defacto complainant is before this Court with this appeal.

7. When the case was taken up for hearing, there was no representation on behalf of the appellant as well as the second respondent. We have heard the learned Additional Public Prosecutor appearing for the first respondent and perused the records carefully.

8. It is a case based on circumstantial evidence. We find absolutely no evidence to connect the accused with the murder. P.Ws.1, 2 and 6 are the mother, aunt and husband, respectively, of the deceased. They have only spoken about the illicit intimacy between the accused and the deceased. Apart from that, there is no circumstance proved by the prosecution to connect the accused with the murder. Even the medical evidence did not corroborate the prosecution theory of strangulation. PW.9 - Doctor, who conducted autopsy, did not give any definite opinion as to the cause for death. Even according to him, the death may

be due to hanging or strangulation with Cerebral Hypoxia with Respiratory arrest. Hence, the theory of suicide also cannot be ruled out.

9. It is settled principle of law that in a case of circumstantial evidence, the prosecution should prove all the circumstances beyond any reasonable doubt and the proved circumstances should form a complete chain unerringly pointing the guilt of the accused. But in the instant case, the prosecution has failed to prove the circumstances relied on by it, beyond any reasonable doubt unerringly pointing to the guilt of the accused. The trial Court, after considering all the materials carefully, acquitted the accused. We find no perversity in the judgment of the trial Court.

10. It is settled law that in a case of acquittal, there is double presumption in favour of the accused. The first presumption of innocence is available to him. Under the criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an order of acquittal, the presumption of his innocence stands reaffirmed and strengthened by the trial Court. In the instant case, the trial Court, after considering the entire evidence properly, acquitted the accused and We find no reason to interfere with the order of acquittal. Hence, the Criminal Appeal is liable to be dismissed and accordingly, dismissed.

11. In the result, the Criminal Appeal is dismissed and the order of acquittal passed by the learned Sessions Judge, Mahalir Fast Track Court, Nagapattinam, in S.C.No.79 of 2012 on 29.05.2014 is confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahalir Fast Track Court,
Nagapattinam.

2. The Inspector of Police
Myladuthurai Police Station
Mayiladuthurai.

3 The Judicial Magistrate I, Myladuthurai

4 The Superintendent of Police
Nagapattinam District

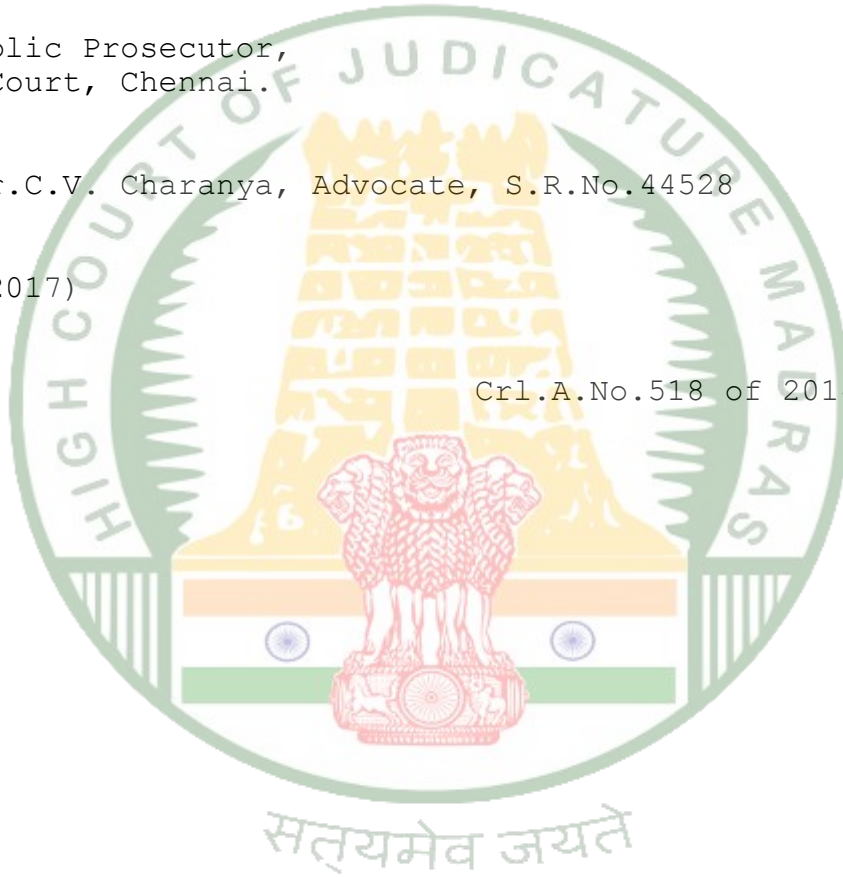
5 The District Collector
Nagapattinam District

6. The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.C.V. Charanya, Advocate, S.R.No.44528

gmi (CO)
md(23/02/2017)

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