

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.559 of 2014

Tamizh Selvan ... Appellant

Vs

State by Inspector of Police,
N.T Police Station,
Cuddalore. ... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 05.09.2014 and made in S.C.No.9 of
2014 on the file of the learned District Mahila Sessions Judge,
Cuddalore.

For Appellant : Mr.Philip Ravindran

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.9 of 2014 on the
file of the learned District Mahila Sessions Judge, Cuddalore. He
stood charged for offences under Sections 341, 302 & 506(ii)
I.P.C. By judgment dated 05.09.2014, the trial Court convicted
the appellant/accused for offences under Sections 341, 302 & 506
(ii) I.P.C., and sentenced him to pay a fine of Rs.500/- in
default to undergo simple imprisonment for one week for offence
under Section 341 I.P.C., and to undergo imprisonment for life
and to pay a fine of Rs.1,000/- in default to undergo rigorous
imprisonment for two years for the offence under Section 302
I.P.C., and to undergo rigorous imprisonment for five years for
the offence under Section 502(ii) I.P.C. Challenging the said
conviction and sentence, the appellant/accused is before this
Court with this Criminal Appeal.

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

The deceased in this case was one Ms.Mahalakshmi. She was studying M.S.W course in St.Joseph College, Cuddalore. The accused is closely related to the deceased. The accused wanted to marry the deceased and made a proposal, which was rejected by the deceased as well as her family members. But, being aggrieved over the same, the accused gave trouble to the deceased. Hence, on 05.03.2013, P.W.19, the father of the deceased, gave a complaint to the respondent Police and an enquiry was conducted wherein, the accused appeared and gave assurance that he would not give any disturbance to the deceased. Based on the above, the complaint was closed by the respondent Police. Even thereafter, the accused started giving trouble to the deceased. In order to protect the deceased from any untoward act at the hands of the accused, P.W.19, used to drop and pick up the deceased from her college in a Car. On 26.09.2013, there was a college function, the deceased came early to the college in Bus and asked his brother, P.W.1, to come and pick-up her after completion of the function. After the function was over, at 2.30 pm when the deceased came out of the college along with her friends viz., P.Ws.2, 3, 4 and few others, P.W.1 was waiting for the deceased near the college gate with a car to pick-up her, suddenly, the accused came there in a Bike and started attacking the deceased with a knife, indiscriminately and at one stage, the knife was broken while he was stabbing the deceased on her shoulder. Immediately, he took out another knife and cut the throat of the deceased and fled away from the scene of occurrence, in his motor cycle. When P.W.1 tried to save the deceased, the accused threatened and also criminally intimidated him and others.

3.Immediately, P.Ws.1 to 4 took the deceased to the Government Hospital, Cuddalore where, she was declared dead by P.W.12 - Dr.Vijay Anand Thambiah. He also issued an Accident Register Ex.P.4 in this regard. Thereafter, P.W.1, the brother of the deceased, went to N.T Police Station, Cuddalore and made a complaint (Ex.P.1). P.W.20, the then Sub Inspector of Police received the same and registered a case in Crime No.495/2013 for offences under Sections 341 & 302 I.P.C. Ex.P.15 is the First Information Report. P.W.20 forwarded both the documents Ex.P.1 (complaint) and Ex.P.15 (F.I.R.,) to the Court and which were received by the learned jurisdictional Magistrate at 8.00 pm on 26.09.2013. P.W.20 sent copies of F.I.R., to higher police officials.

4.On receipt of Ex.P.15 (F.I.R.,), P.W.21, the then Inspector of Police (Incharge), took up the case for investigation and he conducted inquest on the body of the deceased, in the presence of panchayatdars in the hospital between 4.45 pm and 6.15 pm. Ex.P.16 is the Inquest Report. Then P.W.21 sent the body for post mortem. He also recorded the statements of witnesses and then proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.14 and another

witness. He also recovered blood stained soil and sample soil under a mahazar. Thereafter, he examined some other witnesses viz., P.Ws.2, 3, 4, 5 & 6 and recorded their statements.

5.At about 10.00 pm on 26.09.2013, the accused surrendered before the respondent Police. On such surrender he made a voluntary confession and the same was reduced into writing by P.W.21, in the presence of P.W.14 and another witness. Based on the disclosure statement, P.W.21 recovered knife (M.O.2) and he also recovered the motor cycle (M.O.3) used by the accused at the time of occurrence. P.W.21 requested the Finger Print Expert to lift finger prints from M.O.2 (knife). P.W.21 also recovered M.O.1, the knife which was taken from the body of the deceased.

6.In the mean time, P.W.13 - Dr.Nithya Janaki, conducted autopsy on the body of the deceased and found the following injuries:-

"External Injuries:-

Shoulder (1) Stab injury - partially stabbed stainless steel knife 8 cm in the right shoulder region. Broken handle seen from the outside. The knife was removed. 8 cm., of the knife with curved end seen partially inside the body. wound admits depth 8 cm. Outer: 5 cm. only wound. Margins are elevated. Depth about 9 cm inside the anterior axillary fold. The wound is freeze in nature oozing muscles exposed. A separate lacerated wound measuring 3 x 3 cm adjoining the penetrating wound fresh in nature.

2.Right shoulder incised wound 2x2x1cm

3.stab injury over right shoulder 4 x 1 x 2 cm

Chest:-

4.Stab injury 2 x 0.5x1cm in the right side of the chest

5.Stab injury 3x0.5x1cm in the right side of the chest

6.cut laceration found in the right chest 5 cm below the nipple measuring 3 x 1 x 1.5 cm wound is fresh in nature.

Back:-

Incised wound 2x0.5x2cm found in the lower part of the back above the gluctal megum

Incised wound 3x0.5cm x1cm below the injury No.7.

Neck:-

9.multiple cut, stab, lacerated wound present in the neck which was described below deep cut lacerated wound about 22 cm in length upper border. Lower border - 28 cm present in the neck region. In the centre of the wound 15 cm left side 7 cm, left side end of the wound - 3cm right side end of the wound 5 cm. Depth about 5 cm description of wound No.9:- Neck region is deeply exposed. All the great vessels are seen in outside. Underlying muscles are incised ingested all bleeds - the injury extends from below the left ear bone to right side of the neck just midpoint of the right merelible. The injury extending upto the lower just above the both clavicles. Left side of the Sterno mastoid in the stagy margin. Carotid vessels are wind pipe is cut open. Upper margin of the wound irregular and stagy. Curvilinear in the uppetime left margin is straight. Posterior wall of the neck in outside is contused bleeds in push all the wounds are fresh in nature. Hyoid bone is precise.

10.Incised wound 3 x 1.5x1cm in the left thigh near the left knee intact. All injury are fresh in nature."

Ex.P.7 is the post mortem certificate. P.W.13 has opined that the death was due to shock and hemorrhage due to the stab injuries found on the vital organs of the deceased.

7.P.W.21, recovered saree (M.O.8); jacket (M.O.9) and inskirt (M.O.10) of the deceased under a mahazar and sent the same for chemical examination. The report revealed that there were bloodstains in these material objects.

8.Thereafter, the case was taken up for further investigation by P.W.22, the then Inspector of Police. After examining other witnesses viz., the post mortem Doctor and the Finger Print Expert, he filed final report against the accused for offences under Sections 341, 302 & 506(ii) I.P.C.

9.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 22 witnesses were examined and 17 documents were exhibited, besides 10 Material Objects were marked.

10. Out of the said witnesses, P.W.1 is the brother of the deceased. He has deposed that he was waiting outside the college to pick up the deceased and when the deceased came out of the college, along with her friends, the accused appeared there and attacked the deceased with two knives and when he tried to save his sister, the deceased, the accused threatened and also criminally intimidated him and others. It is his further evidence that the deceased died instantaneously and thereafter, he made a complaint (Ex.P.1) to the respondent Police. P.Ws.2, 8 & 9 are eye witnesses to the occurrence. P.W.2 has stated that when she, along with the deceased, came out of the college, the accused came there and attacked the deceased with knives, indiscriminately and thereafter fled away from the scene of occurrence. P.Ws.8 & 9 have also vividly spoken about the entire occurrence. P.Ws.3 to 6, though claim to be eye witnesses to the occurrence, they have turned hostile and they have not supported the case of the prosecution, in any manner. P.W.7 is the milk shop owner and he has also turned hostile and he has not supported the case of the prosecution in any manner. P.Ws.10 & 11 are the Forensic Experts. They have spoken about the examination conducted by them on the material objects and the report submitted by them. The report revealed that there were bloodstains in all the material objects. P.W.12, Doctor, who examined the deceased declared her dead. P.W.13 is the Doctor who conducted autopsy on the body of the deceased and according to her, the deceased would have died due to stab injuries. P.W.14, the then Village Administrative Officer, has spoken about the recovery of material objects and he is also a mahazar witness. P.W.15, the then Special Sub Inspector of Police, has spoken about the Left Thumb Impression (LTI) obtained from the accused and sending the same for comparison with the finger prints lifted from two knives (M.Os.1 & 2). P.W.16, the then Assistant Superintendent of Police, has spoken about the examination of the finger prints of the accused with the finger prints found on two knives (M.Os.1 & 2). The report revealed that the finger prints found on M.Os.1 & 2 and the LTI of the accused are tallied with each other. A Professor of the St. Joseph College, where the deceased studied, was examined as P.W.17 and she has spoken about the presence of the deceased in the college on the occurrence day. Copy of the attendance register was marked as Ex.P.13. P.Ws.18, 20 & 21 have spoken about the registration of F.I.R; the investigation conducted and filing of final report filed in this case. P.W.19, who is the father of the deceased, has spoken about the earlier complaint made by him to the respondent Police about the torture given by the accused to the deceased.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, no witness was examined however, a letter written by the deceased to the accused was marked as Ex.D.1. His defence was a total denial.

12. 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.

13. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. The learned counsel for the appellant/accused would submit that P.W.1, being the brother of the deceased, P.Ws.2, 8 & 9 being the friends and studying with the deceased, are interested witnesses and hence, their evidences ought not to have been taken into account by the trial Court. Since, the other eye witnesses namely, P.Ws.3 to 7 have turned hostile, the conviction of the appellant solely based on the eye witness account of P.Ws.2, 8 & 9 is liable to be set aside. Further, the appellant cannot be found guilty based on the interested testimony of the so-called eye witnesses. Apart from that, recovery was not proved by the prosecution.

15. The learned Additional Public Prosecutor appearing for the State would submit that there are nine eye witnesses. Even though, P.Ws.3 to 7 have turned hostile, the remaining eye witnesses viz., P.Ws.2, 8 & 9, who were all studying in the college are independent witnesses and they have seen the occurrence very closely. Further, P.Ws.2, 8 & 9 are co-students studying in the college where the deceased studied and therefore, their presence at the time of occurrence cannot be doubted at all and further, they have vividly spoken about the entire occurrence. He would further submit that from the evidence of P.W.19, the father of the deceased, that on an earlier occasion, due to the torture given by the accused to the deceased, he made a complaint to the respondent Police in C.S.R.No.90/2013 and the same was enquired into and closed by the respondent Police on the undertaking given by the accused that he would not disturb the deceased anymore. Hence, from and out of the evidence of the said witness, the motive has been established. The learned Additional Public Prosecutor would further submit that recovery of knives (M.Os.1 & 2) and the comparison of the finger prints found on the same with the finger prints of the accused tallied with each other. Hence, from and out of the same, it is proved that it was this accused who stabbed the deceased and committed the murder.

16. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the state and we have also perused the records carefully.

17. This is a case where a college going girl was attacked in front of the college and the same was witnessed by as many as nine eye witnesses. Even though, some of the eye witnesses have

turned hostile, P.W.1, the brother of the deceased, who was waiting in front of the college gate to pick-up the deceased, saw the occurrence and he also gave the complaint within a short time. P.W.2 is the classmate of the deceased and when she along with the deceased came out of the college, P.Ws.8 & 9 and some other students studying in the same college were also present at the time of occurrence and they saw the accused attacking the deceased with knives. P.Ws.2, 8 & 9 are all independent witnesses and there is no reason to disbelieve their evidences as they have no axe to grind against the accused.

18. So far as the motive is concerned, the accused is closely related to the deceased. He wanted to marry the deceased. The said proposal was not accepted by the deceased as well as her family members and earlier, P.W.19, the father of the deceased, has given a complaint against the accused before the respondent Police and in the enquiry, the accused appeared and given an assurance that he will not give any trouble to the deceased. Based on the same, the said complaint was closed. The same was marked as Ex.P.14. P.W.20, the then Sub Inspector of Police, who conducted enquiry has also spoken about the same. Apart from that, it is also the evidence of P.W.2 that since the marriage proposal was not accepted by the deceased and her family members, the accused started disturbing the deceased. Hence, it is established by the prosecution that out of frustration, the accused murdered the deceased. The recovery of M.O.2, based on the disclosure statement made by the accused and the finger print found on the knife (M.O.2) when compared tallied with that of the accused.

19. By taking into consideration all the above facts, we find that the prosecution has proved the guilt of the accused beyond reasonable doubt and we find no reason to interfere with the judgment of the trial Court.

20. In the above circumstances, the Criminal Appeal fails and accordingly, the same is dismissed thereby confirming the conviction and sentence imposed on the appellant by the trial Court in S.C.No.9 of 2014 dated 05.09.2014.

jbm

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Sd/-
Assistant Registrar (CS III)
/TRUE COPY/

Sub-Assistant Registrar

To

1.THE JUDICIAL MAGISTRATE
NO.II, CUDDALORE.

2.THE CHIEF JUDICIAL MAGISTRATE,
CUDDALORE.

3.THE DISTRICT MAHALIR SESSIONS
JUDGE, CUDDALORE

4.THE PRINCIPAL AND DISTRICT
SESSIONS JUDGE, MAHILA COURT, CUDDALORE.

5.THE INSPECTOR OF POLICE,
CUDDALORE NEW TOWN [N.T.] POLICE STATION,
CUDDALORE.

6.THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

7.THE DISTRICT COLLECTOR,
CUDDALORE.

8.THE DIRECTOR GENERAL OF POLICE
MYLAPORE, CHENNAI.

9.THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1CC to MR.PHILIP RAVINDRAN Advocate SR.NO.32547

Cr1.A.No.559 of 2014

KJI[CO]

MK:02/01/2017

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