

Bail Slip
The Appellant/sole Accused was enlarged on bail in and by the order dated 13.04.2016 made in CrI.MP.3129/2016 in CrI.A.222/2015 on the file of the High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.222 of 2015

Suresh @ P.Suresh Kumar ... Appellant/sole Accused

Vs

State rep. By
Inspector of Police,
H-4 Korukkupet Police Station,
Chennai ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chennai in S.C.No.55 of 2013 dated 13.04.2015.

For Appellant : Mr. A.Ramesh,
Legal Aid Counsel

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

JUDGEMENT

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

The sole accused in S.C.No.55 of 2013 on the file of the learned Sessions Judge, Mahila Sessions Court, Chennai, is the appellant herein. He stood charged for offences under Sections 302 and 506(ii) I.P.C. By judgment dated 13.04.2015, the trial Court convicted the accused for the offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for six months, however, acquitted him from the charge under Section 506(ii) IPC. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Thiripurasundari, is the second wife of P.W.1. The accused is the sister's son of the deceased. The deceased used to help the accused, financially. The deceased and P.W.1 did not have any issue and therefore they adopted a male child, namely, Karthick. Since the deceased adopted the child, the accused had grievance that instead of giving properties to him, the deceased may settle the same in favour of her adopted son. On 04.06.2012, when P.W.1 was about to go to school to give lunch for their adopted son, there was a quarrel between the accused and the deceased. P.W.1 compromised them and thereafter went to the school. When he was returning back, he heard some noise from inside the house and found the house was locked from inside. Hence, with the help of P.Ws.2, 3 and 4, P.W.1 broke open the door and at that time, he found the accused attacking the deceased with a knife and on seeing them, the accused threatened them and ran away. Immediately, P.W.1 went to the police station and lodged a complaint, Ex.P.1.

3. P.W.17, Inspector of Police, who was in-charge of the respondent police station, based on the complaint, registered a case in Crime No.547 of 2012 under Sections 302 and 506(ii) IPC and after sending the First Information Report to the Judicial Magistrate Court, he commenced the investigation, reached the scene of occurrence and prepared an Observation Mahazar(Ex.P.2) and a Rough Sketch (Ex.P.18) in the presence of the witnesses. He also recovered bloodstained soil(M.O.3), knife (M.O.2). While the accused escaped from the scene of occurrence, he also sustained injury on his leg and P.W.17

collected the blood stained soil(M.O.4), where the accused sustained injury. Then, he conducted inquest on the dead body of the deceased, in the presence of panchayathars and prepared an Inquest Report Ex.P.19. Then, he sent the body of the deceased for postmortem to the Government Stanley Medical College Hospital.

4. P.W.16, Doctor, working in the Government Stanley Medical College Hospital, Chennai, conducted postmortem on the body of the deceased on 05.06.2012, at 12.20 p.m., and found the following injuries:

" Cornea Hazy, pupils dilated, finger and toe nails were pale, mucous membranes of mouth lips and tongue were pale. With following antimortem injuries:

STAB WOUNDS :

1. an oblique oval shaped stab wound with regular margin 2 x 1x throacic cavity deep on the front of left side of the chest at the 4th intercostal space. 11 cm lateral to the front of mid line of sternum. The injury cutting the intercostal muscles, pleura and 1 x 0.5 cm x 1 cm stab wound on the anterior surface of the left lower lobe. left side throacic cavity contained 50 gms of clotted blood and 250 ml of fluid blood.
2. An oblique oval stab wound with regular margins 2 x 1 x muscles deep on the front of left side of the chest at the 5th intercostal spac, 5 cm from the front of mid line of the chest.
3. An oblique oval stab wound with regular margins 2 x 1 x muscle deep on the front of left side of the chest and the 5th intercostal space, 7 cm from the front of mid line of the chest.
4. An oblique stab wound 1.5 x 1 cm x muscle deep on the front of right side of the chest at the 4th intercostal space 4 cm away from the lateral border on the sternum.

5. An oblique oval stab wound with upper end is pointed lower end is blunted measuring 1.5x1 cm x muscle cavity on the front of upper part of mid line the abdomen and below the xiphisternum.
6. Two number stab wound with regular margins each measuring 1.5x 1cmx muscle deep on the front of upper part of right side of the abdomen 1 cm lateral to the mid line of the abdomen and 1 cm below the injury No.5.
7. An oblique cut injury with regular margins 3 x 2 cm x bone deep on the fronto left ankle joint.
8. An oblique cut injury with regular margins 4 x 1cmx bone deep outer aspect of the lower part of left fore arm 6 cm above the left wrist.
9. An oblique cut injury 3 x2 cm x bone deep on the back of left wrist.
10. An oblique stab wound with regular margins 2 x 1cm x muscle deep on the back of left chest 1 cm below the medial to inferior angle of the left scapula. "

Ex.P.16 is the postmortem certificate. P.W.16 was of the opinion that the deceased would appear to have died of shock and hemorrhage due to stab wound to the left lung.

5. Since the accused also sustained injury, he was admitted in Stanley Medical College Hospital. P.W.17 recorded the statement of the Doctor, who treated the accused. Then, P.W.17 recorded the statements of the Doctor, who conducted postmortem on the dead body of the deceased and other witnesses. As the regular Inspector of Police joined duty, P.W.17 handed over the case records to P.W.18, the regular Inspector of Police of the respondent police station.

6. Then, P.W.18, continued the investigation and arrested the accused, on 06.06.2012, formally, in the Stanley Medical College Hospital and on such arrest, the accused gave a voluntary confession. P.W.18 recovered bloodstained shirt and bloodstained pant of the accused (M.Os.5 & 6). After completing the investigation, he laid charge sheet against the accused.

7. 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 18 witnesses were examined and 21 documents were exhibited, besides 9 Material Objects.

8. Out of the witnesses examined, P.W.1 is the husband of the deceased. According to him, on the date of occurrence, the accused quarreled with the deceased stating that she was taking steps to settle her property in favour of her adopted son, without giving anything to him and he compromised them and then he went to school taking lunch for his adopted son and when he returned back, he saw the accused attacking the deceased with a knife. But, in his cross examination, he has stated that P.W.6 informed him about the occurrence, then, he came back to his house and at that time, police and a lot of public were present in the house.

9. P.W.2 is another eye-witness to the occurrence. He is a building supervisor and he has stated that he heard noise from the house of P.W.1 and upon hearing noise, he, along with P.Ws.3 and 4, rushed to the house, by found it locked from inside and hence, they broke open the door and found the accused attacking the deceased with a knife and after threatening them, the accused jumped out of the balcony and due to which the leg of the accused was fractured. But, in his cross examination, he has stated that he did not see the accused attacking the deceased. P.W.3 is a neighbour of P.W.1. According to him, he also broke open the door along with other witnesses and saw the accused standing there with a knife and after seeing them, he dropped the knife and jumped out of the house. But, in his cross examination, he has stated that he only saw the deceased inside her house and he did not see anybody else.

10. P.W.4, Drinking Water Supplier, has stated that he knew the accused and he saw the accused jumping from the balcony and also saw fire in the kitchen of the deceased's house. But, in his cross examination, he has stated that he saw the deceased and did not see the accused. P.W.5 has turned hostile. P.W.6, another neighbour of the deceased, has stated that he saw the accused injured, after jumping from the balcony and she only arranged for an auto to send the accused to hospital.

11. P.W.7 is a mahazar witness who witnessed the recovery of bloodstained soil (M.O.3), knife (M.O.2) and also recovery of bloodstained soil (M.O.4) from the place, where the accused jumped down. P.W.8 is the class teacher of the adopted son of the deceased and P.W.1. P.W.9, has stated that he saw

the accused in the Government Stanley Medical College Hospital with injuries in his leg. He is also a witness to the confession statement given by the accused. P.W.10, is a Professor in the college where the accused pursued his degree course and according to him, the accused discontinued the course.

12. P.W.11, Doctor, who admitted the accused in Stanley Medical College Hospital, has stated that he treated him and issued Accident Register, Ex.P.11 and found a swelling and abrasions on his left leg. P.W.12 is the photographer who took photographs of the body of the deceased at the scene of occurrence. P.W.13 is the Scientific Officer, working in the Forensic Lab, who examined the material objects and gave a report Ex.P.12. P.W.14, another Scientific Officer, working in the Forensic Science Department, Dharmapuri, has stated that he examined the internal parts of the deceased and gave a report Ex.P.13. P.W.15, Deputy Director of Forensic Science Department, has stated that he examined the blood group of the deceased and gave a report, Ex.P.15 and also examined the blood stained material objects wherein the blood group of the deceased matched. P.W.16, the Doctor, has stated that he conducted postmortem on the dead body of the deceased and issued postmortem report, Ex.P.16. P.W.17 is the Inspector of Police, who registered the complaint, conducted the investigation and recovered material objects. P.W.18 has spoken that he continued the investigation and arrested the accused and after completion of investigation, he laid the charge sheet.

13. 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 of witness on his side.

14. Having considered all the above, the trial Court found the accused guilty under the charge of murder and accordingly, sentenced him as detailed in the first paragraph of this judgment, however, acquitted him from the charge under Section 506(ii) IPC Aggrieved over the same, the accused/appellant is before this Court with this appeal.

15. We have heard Mr.A.Ramesh, the learned Legal Aid counsel, appearing for the appellant and Mr.M.Maharaja, the learned Additional Public Prosecutor, appearing for the State and we have also perused the records, carefully.

16. The learned counsel for the appellant would submit that even though there are four eye-witnesses to the occurrence, in their cross examination; all of them have stated that they did not witness the occurrence and hence, they cannot be considered as eye-witnesses to the occurrence and except their

evidence, there is no evidence available to establish the guilt of the accused. Apart from that, he submitted that the motive is also not established by the prosecution in this case. He further submitted that since P.W.1 is said to be the author of the First Information Report, in his cross examination, he has stated that he heard the news through P.W.6 and went to his house and saw the police and a lot of public there and hence, the First Information Report is also fabricated one.

17. Per contra, the learned Additional Public Prosecutor would submit that even though all the eye-witnesses have categorically stated that on receipt of information, they went and saw the occurrence, when they were cross examined, after a long gap of time, they have contradicted their own version and hence, their version during cross-examination cannot be taken into consideration as they were won over by the accused. Apart from the evidence of the above witnesses, he submitted that there are other circumstances available to establish the guilt of the accused and the prosecution has clearly established the guilt of the accused, by means of other evidence and hence, he sought for dismissal of the appeal.

18. We have considered the rival submissions.

19. There are four eye-witnesses to the occurrence. P.W.1 is the husband of the deceased. He was examined by the prosecution on 03.06.2013. But, after a number of adjournments, he was cross examined only on 11.03.2014. Likewise, P.W.2 was examined by the prosecution on 03.06.2013, but he was cross examined only on 11.03.2014. Almost, after completion of 9 months from the date of chief examination, P.Ws. 1 and 2 have been cross-examined. P.W.3 was examined by the prosecution on 27.08.2013, but, he was cross examined on 11.03.2014, after a lapse of 7 months. P.W.4 was examined by the prosecution on 24.09.2013 and he was cross examined only on 11.03.2014., after 6 months. Even though all of them stated, in their chief examination, that they witnessed the occurrence, but, in their cross examination, they have turned around. Thus, it is a clear case, where the accused has won over all the above witnesses.

20. The Hon'ble Supreme Court, time and again, has repeatedly held that once the examination in chief is over, cross examination should be completed on the same day and if the examination of witnesses continued till late hours, then only it can be adjourned for the next day for cross-examination and the tactics of cross examination after a long time is only anathema to the concept of proper and fair trial. Recently, in the case reported in 2015 (3) Supreme Court Cases 220 in Vinod Kumar vs State of Punjab, it has held as follows :

" 57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to

note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say "Awake! Arise!" . There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial judges with a command to follow the principles relating to trial in a requisite mannner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."

21. Despite the directions issued by the Hon'ble Supreme Court, the trial Courts are adjourning the cross examination of witnesses without any reason whatsoever and finally, the accused by the long adjournments, pressurise the witnesses and gain over them by adopting all kinds of methods. The instant case is an example to the same and even the husband of the deceased had turned around opposite in his cross examination.

22. Apart from the above eye-witnesses, the prosecution has clearly established the case by the other evidence that at the time of occurrence, the accused came out of the house and jumped out from the balcony and in that course, he also got fracture injuries on his leg and he was admitted in the hospital. P.W.6, a neighbour of the deceased, in her evidence has stated that she saw the accused with injuries. P.W.11, doctor, has stated that he admitted the accused in the Government Stanley Hospital, gave treatment to the accused and issued Accident Register, Ex.P.11. The Investigating officer has also collected bloodstained soil from the place, where the accused sustained injuries. Hence, the prosecution has established the presence of the accused in the deceased's house at the time of occurrence and he has also sustained some injuries, but the accused did not explain his presence in the scene of occurrence. Apart from that, the motive for the occurrence has also been proved by the prosecution, through the evidence of P.W.1. It is a strong circumstance against the accused. Hence, considering the evidence of P.Ws.1 and 4, there are adequate circumstances, to establish the guilt of the accused.

23. In the above circumstances, we are of the considered view that it is only this accused who caused injuries

on the deceased, which ultimately resulted in her death. Hence, the prosecution has clearly established the guilt of the accused. We find no ground to interfere with the judgment of the trial court. Thus, the appeal fails and it deserves to be dismissed.

24. In the result, the criminal appeal is dismissed and the conviction and sentence imposed by the trial Court is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Magalir Sessions Court,
Chennai.
- 2.The Public Prosecutor,
High Court, Madras.
- 3 The Inspector of Police
H-4, Korukkupet Police Station,
Chennai
- 4 The Superintendent
Central Prison, Puzhal, Chennai
- 5 The Director General of Police
Mylapore, Chennai 4
- 6 The District Collector Chennai
- 7 The Section Officer
Criminal Section, High Court, Madras
- 8 XV Metropolitan Magistrate Court,
George Town, Chennai

9 Do thro the Chief Metropolitan Magistrate,
Chennai

+1cc to Mr.Mr. K. Ramesh, Advocate, S.R.No.38388

ak(CO)
md(27/02/2017)

Cr1.A.No.222 of 2015



WEB COPY