

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU  
AND  
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.487 of 2015  
and  
M.P.No.1 of 2015

1. Kumar @ Kumaran

2. Eathiraj ... Appellants/Accused

Vs

State represented by  
The Inspector of Police,  
Velipalayam Police Station,  
Nagapattinam District.  
Cr.No.7/2010

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,  
to set aside the conviction and sentence made in S.C.No.23 of  
2011 dated 30.09.2014 on the file of Mahila Court (FTC),  
Nagapattinam.

For Appellant : Mr. S.P.Siva Pradosh

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

JUDGEMENT

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

A1 and A2 in S.C.No.23 of 2011 on the file of Mahila  
(Fast Track ) Court, Nagapattinam, are the appellants herein.  
A1 stood charged for the offences under Sections 302, 201  
r/w.109 I.P.C. A2 stood charged for the offences under  
Sections 302 r/w.34 and 201 IPC. The trial Court convicted A1  
under Section 302 IPC and sentenced him to undergo  
imprisonment for life and to pay a fine of Rs.3000/- in  
default to undergo simple imprisonment for one year,  
convicted A2 under Section 201 IPC and sentenced him to  
undergo rigorous imprisonment for one year and to pay a fine  
of Rs.1000/- in default to undergo simple imprisonment for 3  
months. The trial Court acquitted A1 from the charge under  
Section 201 r/w.109 IPC and acquitted A2 from the charge under  
Section 302 r/w.34 IPC. Challenging the said conviction and  
sentence, the appellants are before this Court with this  
Criminal Appeal.

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

The deceased, in this case, one Sasikala, was the wife of A1. A2 is the brother of A1. The marriage between the deceased and A1 took place on 23.08.2009 and at the time of marriage, she was given sufficient dowry. After some time, A1 started demanding more dowry from the deceased and also suspected the fidelity of the deceased. Hence, there were frequent quarrel between A1 and the deceased. On 07.01.2010 at about 8.00 a.m., A2 in this case is said to have brought the deceased to the hospital and P.W.17, Doctor, working in the Government Hospital, Nagapattinam, declared the death of the deceased. At that time, A1 was also taken to the hospital by A2 alleging that he also attempted to commit suicide by hanging. P.W.17, issued an Accident Register to the deceased, Ex.P.11. So far as A1 is concerned, he has not found any ligature mark and had given Accident Register, Ex.P.12.

3. P.W.1, the uncle of the deceased received information that both the deceased and A1 were admitted in the Government Hospital. Immediately, he rushed to the hospital and found the deceased dead. Hence, he lodged a complaint (Ex.P.1) before the respondent police.

4. On receipt of the said complaint, P.W.21, the Inspector of Police, registered a case in Crime No.7 of 2010 under Section 174 Cr.P.C. Since, the deceased died within 3 months from the date of marriage, P.W.21, handed over the investigation to P.W.18, the Deputy Superintendent of Police and also sent the First Information Report (Ex.P.17) to the R.D.O, P.W.19.

5. On receipt of the First Information Report, P.W.18, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.3, Rough Sketch, Ex.P.13 and recovered blood stained bed sheet and saree in the presence of P.W.5 and another witness. P.w.19, the R.D.O., Nagapattinam, on receipt of the First Information Report, went to the hospital and conducted inquest on the dead body of the deceased in the presence of panchayathars and during the inquest, he came to know that there is no dowry demand and it is a case of murder and prepared Inquest Report, Ex.P.15.

6. P.W.18, the D.S.P., on receipt of the inquest report, altered the First Information Report into 302 and 201 IPC and the alteration report is Ex.P.8. He handed over the investigation to P.W.21.

7. In the meantime, P.W.20, the Doctor, working in the Government General Hospital, Nagapattinam, on 07.01.2010, at 2.00 p.m., conducted postmortem on the dead body of the deceased and found the following injuries:-

" External injuries:

Multiple semicircular shaped lacerated wounds seen over the right side of the face over the cheek and chin and right side of the neck. Congestion seen over the right side of the neck. "

Ex.P. 16 is the Postmortem certificate. He was of the opinion that the deceased appears to have died of asphyxia probably due to throttling.

8. P.W.21, continued the investigation, and arrested the accused on 13.01.2010 at 9.00 a.m. and on such arrest, he voluntarily given a confession and he sent the accused to judicial custody. He then examined the witnesses and after completion of investigation, he filed the charge sheet.

9. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 21 witnesses were examined and 17 documents were exhibited, besides 8 Material Objects.

10. Out of the witnesses examined, P.W.1 is the uncle of the deceased. According to him, on receipt of the information that the deceased was in hospital, he went to the hospital and saw the deceased dead and gave a complaint (Ex.A1) to the respondent police. Based on his complaint a case was registered under Section 174 Cr.P.C. P.W.2 is the mother of the deceased. She spoke about the dowry demand and also quarrel between A1 and the deceased. P.W.3 is the brother of the deceased, he also spoke about the dowry demand. P.W.4 and P.W.5 turned hostile. P.W.6 spoke about the arrest of the accused. P.W.7 turned hostile. P.W.8, an Auto driver, took the deceased to the Government hospital in his Auto. P.W.9 turned hostile. P.W.10, photographer, had taken photographs of the dead body of the deceased.

11. P.W.11 is the Assistant Director of Forensic Science Department conducted examination of viscera of the deceased and gave Report Ex.P.5. P.W.12, a Head Clerk, in Judicial Magistrate Court, Nagapattinam, received Biological Report Ex.P.6 and Serology Report Ex.P.7. P.W.13, Head Constable, handed over the alteration report, Ex.P.8 to the Court. P.W.14, Head Constable, accompanied the dead body of the deceased and identified the dead body for postmortem. P.W.15 is the Head constable, who submits the M.Os.6 to 8 to the police station. P.W.16 turned hostile. P.W.17, Doctor, found the deceased dead and sent the dead body of the deceased to Mortuary and also admitted A1 in the hospital. He issued Ex.P.11, Accident register for the deceased and Ex.P.12, Accident Register for A1. P.W.18, Deputy Superintendent of



Police, Nagapattinam, conducted investigation and based on the inquest report, altered the case into 302 and 201 IPC. P.W.19, R.D.O., Nagapattinam, conducted inquest on the dead body of the deceased and gave report Ex.P.15. P.W.20, the Doctor, who conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.21, took up the case for further investigation, arrested the accused, recovered the material objects and after completing the investigation, he laid the charge sheet against both the accused.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witnesses nor did they mark any documents on their side.

13. Having considered all the above, the trial Court found accused/Appellants guilty under the said charge and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, accused/Appellants are before this Court with this Criminal Appeal.

14. We have heard Mr. S.P. Siva Pradosh, learned counsel appearing for the appellants and Mr. M. Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. It is a case of circumstantial evidence. It is a settled principle of law in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused.

16. Keeping the above principle in mind, we analyze the facts of the present case. In the instance case, there is no evidence to prove the guilt of the accused. Even though P.Ws. 1, 2 and 3 have spoken about the dowry demand, there is no charge framed for the demand of dowry. It is only A2, who took the deceased to the hospital and A1 also is said to have attempted to commit suicide. There is no investigation with regard to the alleged attempt of suicide said to have been committed by A1. From the medical evidence, the possibility of suicide also cannot be ruled out. In the above circumstances, we are of a considered view that the prosecution did not prove the circumstances beyond any reasonable doubt. In the above circumstances, the appellants are entitled for acquittal.

17. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused by the learned Mahila (Fast Track) Court, Nagapattinam, in

S.C.No.23 of 2011, dated 30.09.2014, are set aside and appellants/accused are acquitted. The fine amount, if any paid, shall be refunded to them. Consequently, connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

- 1.The Judicial Magistrate No.2, Nagapattinam.
- 2.do thro'The Chief Judicial Magistrate, Nagapattinam.
3. The Mahila (Fast Track) Judge,  
Nagapattinam.
- 4.do thro'The Principle and District Sessions Judge,  
Nagapattinam.
- 5.The District Collector, Nagapattinam.
- 6.The Director General of Police, Mylapore, Chennai.
- 7.The Public Prosecutor,  
High Court, Madras.
- 8.The Inspector of Police,  
Velipalayam Police Station,  
Nagapattinam.
- 9.The Superintendent, Central Prison, Cuddalore.

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krd 14/2

Cr1.A.No.487 of 2015

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