

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:30.06.2016

CORAM:

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

CrI.A.No.500 of 2015

Saraswathi

... Appellant/Sole
accused

vs.

The State, rep. by
The Inspector of Police,
Sulur Police Station,
Coimbatore District.
(Cr.No.69/2013)

...
Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of the learned 5th Additional Sessions Judge, Coimbatore made in S.C.No.7 of 2014, dated 28.07.2015, convicting the appellant to undergo Life Imprisonment and to pay a fine of Rs.1,000/- for the offence punishable under Section 302 IPC, 7 years Rigorous Imprisonment with fine of Rs.1,000/-, for the offence punishable under Section 449 IPC and 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- for the offence punishable under Section 392 IPC.

For Appellant : Mr.G.Chandrasekar

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

JUDGMENT

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

The sole accused in S.C.No.7 of 2014 on the file of the learned 5th Additional District and Sessions Court, Coimbatore, is the appellant herein. She stood charged for the offences under Sections 449, 392 and 302 IPC. The Trial Court, by judgment dated 28.07.2015, convicted the accused for the offences under Sections 449, 392 and 302 IPC. The trial Court sentenced the accused to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Rigorous Imprisonment for the offence under Section 449 IPC, to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Rigorous Imprisonment for the offence under Section 392 IPC and to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Rigorous Imprisonment for the offence under Section 302 IPC. The trial Court ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased one Perumal Ammal, aged about 85 years, was residing with P.W.1, who is the daughter of the deceased, at 7th Street, Selvapuram, Kannampalayam, Suler Taluk. The deceased was known to the accused and the accused used to visit the house of the deceased, frequently. On 25.01.2013, at about 02.15 p.m., P.W.1 was taking bath and the deceased was alone in her room. After taking bath, when P.W.1 came out from the bathroom, she saw the accused removing bangles from the hands of her deceased mother and when she raised alarm, the accused pushed down P.W.2, who was residing at the upstairs of the house of P.W.1 and P.W.3, who was standing in front of the house of P.W.1, and ran away. Thereafter, P.W.1 went into her mother's room and found her mother dead, with stab injury near left ear and immediately, she informed her relatives and went to the police station and lodged a complaint against the accused.

3. P.W.13-Sub Inspector of Police, on receipt of the complaint [Ex.P1], registered a case in Crime No.69 of 2013 against the accused for the offences punishable under Sections 302 and 380 of Indian Penal Code [Ex.P15] and the same was sent to the Judicial Magistrate Court No.7, Coimbatore and copies thereof to higher police officials. P.W14-Inspector of Police,

on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar [Ex.P2] and drew a Rough Sketch [Ex.P14] and also recovered Bloodstained Spectacles [M.O.6] and Walking Stick, in the presence of witnesses and in the presence of Taluk Forensic Science Officer and Finger Print Expert. He conducted inquest from 06.00 p.m., to 09.00 p.m., in the presence of witnesses. Ex.P15 is the Inquest Report. Then, he sent the dead body to the Government General Hospital, Coimbatore, for conducting post-mortem. On 26.01.2013 at 16 hours, he arrested the accused near Singanallur bus stand. On such arrest, she gave a voluntarily confession statement at 16.30 hours and based on such disclosure statement, P.W.14 further recovered two gold bangles, weighing 1 ½ sovereign [M.O.1], from the accused in the presence of witnesses. P.W.11-Dr.Jayasingh, who was working in the Government General Hospital, Coimbatore, conducted post-mortem on the dead body of the deceased and found the following injuries:-

"Appearance found at post mortem:-

Moderately nourished body of a female aged about 85 years. Finger and toenails were pale.

The following ante mortem injuries noted over the body:

1) A single edged knife in situ noted on left side angle of mandible. On removal of the knife, A Transverse stab wound 3x1 cm noted on the left side angle of the mandible and lateral aspect of the neck. The medial sharp end is 8 cm left to angle of mouth and the lateral blunt end is 3 cm below to the left ear lobe. On dissection the wound cutting the underlying muscles, nerves, vessels and lower lateral part of ascending ramous of mandible through and through and passing through the oral cavity and ends in the inner aspect of right side mandible just posterior to the third molar.

2) Incised wound 3x0.5 cm x skin deep noted over left cheek and just 1 cm above to wound no.1. The medical end is sharp and the lateral end is blunt.

3) Incised wound 3x0.5 cm x skin deep noted over left cheek just 0.5 the above to wound no.2. The medical end is sharp and the lateral end is blunt.

4) Incised wound 2x0.5 cm x skin deep noted over lower border of left side angle of

mandible. The medical end is sharp and the lateral end is blunt.

5) Transverse Stab wound 3x1x4 cm muscle deep noted over back of left side lower neck. The lower border of the wound is 2 cm above to the C-7 Vertebra. The left end is sharp and right end is blunt. On dissection the wound passes obliquely, downwards, forwards and piercing the underlying neck muscles, nerves, vessels and piercing the carotid sheath and its content.

OTHER FINDINGS:

- Peritoneal & Pleural cavities - empty.
- Hyoid bone: Intact.
- Larynx and Trachea: Cut section pale
- Heart - all chambers contains about few cc of fluid blood, coronaries patent.
- Stomach contains about 100 grams of partially digested food particles, no specific smell, mucosa pale.
- Small Intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale.
- Spleen, Kidneys, Lungs, Liver and Brain - Cut section pale.
- Urinary bladder-empty
- Uterus Absent
- Blood preserved for analysis

OPINION: The deceased would appear to have died of MULTIPLE STAB INJURIES NECK and its corresponding INTERNAL INJURIES. The death would have occurred 12 to 24 hours prior to autopsy".

4. P.W.11 issued Post-mortem Certificate Ex.P10. He opined that the deceased would appear to have died of multiple stab injuries on the neck and its corresponding internal injuries. Further, P.W.14 recorded the statements of some other witnesses and he handed over the investigation to P.W.15-Inspector of Police, Sulur Police Station. On receipt of the case records, P.W.15 continued the investigation and recorded the statement of the Doctor, who conducted post-mortem. Then, he examined other witnesses and recorded their statements. After completion of investigation, he filed the charge sheet against the accused before the Magistrate Court No.7, Coimbatore.

5. Based on the above materials, the Trial Court framed charges as mentioned in the first para of this Judgment and the accused denied the same as false. In order to prove the case of prosecution, as many as 15 witnesses were examined and

16 documents and 8 material objects were marked.

6. Out of the examined witnesses, P.W.1, who is the daughter of the deceased, is an eye witness to the scene of occurrence. According to her, both the deceased and the accused were residing in the same area and on the date of occurrence, at about 02.00 p.m., she was taking bath and the doors were opened and the deceased was in her room, alone and when she came out after taking bath, she saw the accused removing bangles from the deceased and immediately, she raised alarm and the accused ran away and when P.W.2 and P.W.3, who are neighbours, came out from their houses and tried to catch her, the accused pushed them down and, ran away and immediately, she lodged a complaint before the respondent police and during investigation, she also identified the bangles owned by the deceased, which was recovered from the accused. P.W.2 is a tenant in the house of P.W.1 and she is also known to the accused, as she used to visit the deceased, Perumal Ammal, frequently. It is her evidence that after hearing the noise, she came out from the room and when she tried to catch hold her, the accused pushed her down and ran away. P.W.3 is a neighbour of the deceased. She is also known to the accused, very well. According to her, after hearing the noise, she also came out from the house and when she also tried to catch hold the accused, she pushed her down and ran away. P.W.4 is the son of P.W.1. He has stated that after hearing noise, when he came to the house, P.W.1 informed him of the occurrence. P.W.5 is the friend of P.W.4. According to him, he saw the accused when she entered inside the house of P.W.1. P.W. 6 is Mahazar witness to the recovery of bloodstained SOC Gauze Bandage [M.O.7] and SOC Gauze Bandage [M.O.8]. P.W.7 is witness to the arrest of the accused and also recovery of two gold bangles [M.O.1] under Ex.P4. P.W.8 is the photographer, who took photos of the dead body of the deceased at the scene of occurrence. P.W.9 is the Assistant Director, Taluk Forensic Science Lab, Coimbatore. He examined material objects and gave his report. P.W.10 is the Head Constable, who carried the dead body to the Government General Hospital, Coimbatore and also identified the dead body for conducting post-mortem. P.W.11 is the Doctor, who performed post-mortem on the dead body of the deceased and issued post-mortem certificate, Ex.P10. P.W.12 is the Finger Print Expert working in the Finger Print Department, Coimbatore. He has stated that he lifted the finger prints from the door and knife and compared the same with the accused and gave an opinion that both the finger prints tallied. Ex.P12 is his report. P.W.13 is the Sub Inspector of Police, who registered the case in Crime No.69 of 2013 for the offence under Sections 302 and 380 IPC. P.W.14 is the Inspector of Police, who commenced the investigation, conducted inquest and recovered Bloodstained Spectacles [M.O.6] and Walking Stick in the presence of the witnesses and in the presence of Taluk Forensic Science Officer and Finger

Print Expert and also recovered two Gold Bangles [M.O.1] from the accused and he handed over the investigation to P.W.15. P.W.15 has stated that he continued further investigation, recorded the statement of the doctor, who performed autopsy and other witnesses and after completion of investigation, he filed charge sheet against the accused before the concerned Court.

7. When the above incriminating materials were put the accused under Section 313 of the Code of Criminal Procedure, the accused denied the same as false. On the side of the accused, the accused did not examine any witness and mark any documents.

8. Having considered the above materials, the trial Court convicted and sentenced the accused, as mentioned in the first para of this judgment. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

9. We have heard Mr.G.Chandrasekar, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

10. Out of the examined witnesses, P.W.1 is the daughter of the deceased. In her evidence, she has deposed that the deceased was residing with her and on the date of occurrence, at about 2.00 p.m., she was taking bath and when she came out from the bath room, she saw the accused removing the bangles of the deceased. It is her further evidence that when she raised alarm, the accused ran away from the scene of occurrence, thereafter, she saw her mother dead with stab injury on her neck, then, she informed her son and lodged a complaint before the respondent police. P.W.2 is a tenant in the house of P.W.1. According to her, after hearing the noise, she came out from her house, at that time, she saw the accused, when she tried to catch her, she pushed her down and ran away from the house of the deceased. P.W.3 is neighbour, she also known to the accused and in her evidence she has stated that after hearing the noise, she also came out from her house and when she tried to catch hold the accused, she pushed her down and ran away. P.W.4 is the son of P.W.1. His evidence is that after hearing the noise, he went to the house of PW1 and he saw the deceased found dead. P.W.5 is the friend of P.W.4 and he has stated that he saw the accused going inside the house of the deceased at the time of occurrence. P.W.6 is a witness to Ex.P3, observation mahazar and also recovery of M.O.7 and M.O.8. P.W.7 is a witness to the arrest of the accused and also recovery of M.O.1, bangles from the accused. P.W.8 is the photographer, who took photos at the scene of occurrence. P.W.9 is the Assistant Director of Taluk Forensic Department and he has examined the material objects and given a report, Ex.P6. P.W.10 is the

Doctor, who performed post-mortem on the dead body of the deceased and he has given a report. He has opined that the deceased would appear to have died due to multiple stab injuries on the neck and corresponding internal injuries. P.W.12 is the Finger Print Expert, who has taken finger prints from the door of the house P.W.1 and compared with the finger prints of the accused and he has given a report that both the finger prints tallied. P.W.13 is the Sub Inspector, who registered the First information Report. P.W.14 conducted the investigation and arrested the accused. P.W.15 continued the investigation of the case and filed the charge sheet against the accused before the concerned Judicial Magistrate Court.

11. The deceased, Perumal Ammal, aged about 85 years, was residing with his daughter P.W.1. The accused is known to her and she used to visit her frequently. According to P.W.1, on the date of occurrence, when P.W.1 came out from the bathroom, she saw the accused removing bangles from the hands of the deceased and when she raised alarm, the accused ran away. At that time, P.W.2, who is a tenant in the house of P.W.1 has tried to catch hold the accused, but she has pushed down her and ran away from the scene of occurrence. P.W.3 is a neighbour, it is her evidence that after hearing noise, she saw the accused and when she tried to catch hold the accused, the accused pushed her down and ran away from the scene of occurrence. P.W.5 is the friend of P.W.4 and he has seen the accused, when she entered inside the house of P.W.1. Hence, from the evidence of P.W.1,2,3, and 5, the presence of the accused at the scene of occurrence, is clearly established by the prosecution through their evidence. According to P.W.1, she saw her mother with stab injuries on the neck and found her dead and immediately, she filed a complaint before the respondent police. Subsequently, P.W.14 Inspector of Police has arrested the accused and on such arrest, she has given a voluntary confession statement and based on the disclosure statement, P.W.14 has recovered two bangles belonged to the deceased, from the accused and these bangles were identified by P.W.1 as that of the deceased. Absolutely there is no explanation from the accused for the possession of bangles belonged to the deceased. In view of the evidence of P.W.1, daughter of the deceased, residing along with the deceased, the presence of P.W.1 cannot be doubted.

12. Hence, we have no reason to disbelieve the evidence of P.W.1. The another important circumstance is the recovery of gold bangles belonged to the deceased from the accused, which was recovered on the next day of the occurrence. Hence, under Section 114 clause (a) of the Evidence Act, we can presume that the accused has committed robbery and murdered the deceased, even though it is a rebuttable presumption, absolutely, there is no explanation by the accused to rebut the said

presumption. Hence, we are of the considered view that it is only the accused, who has committed the murder and the robbery. In the above circumstances, the criminal appeal fails and consequently, the same is liable to be dismissed.

13. In the result, this Criminal Appeal is dismissed and the conviction and sentence imposed on the accused in S.C.No.7 of 2014 on the file of the learned 5th Additional District and Sessions Judge, Coimbatore, are hereby confirmed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The 5th Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate Court No.7,
Coimbatore.

3.The Inspector of Police,
Sulur Police Station,
Coimbatore District.

4.The Public Prosecutor,
High Court, Madras.

5.The Principal District and Sessions Judge,
Coimbatore

6.Thro The Chief Judicial Magistrate Coimbatore

7.The Superintendent Central Prison for Women
Vellore

8.The District Collector coimbatore

9.The Director General of Police
Mylapore, Chennai-04

copy to

The Section Officer
Criminal Section
High court Madras

Crl.A.No.500 of 2015

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