

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

Criminal Appeal No.532 of 2015

State rep. by
The Public Prosecutor
High Court, Madras,
Yethapur Police Station. Appellant/Complainant

-Vs-

A.Subbarayan Respondent/Accused

This Criminal Appeal has been preferred to allow this appeal and set aside the judgment of acquittal of the respondent/accused passed by the Court of Sessions, Salem Division, Salem in S.C.No.373 of 2012 dated 14.07.2014.

For Appellant : Mr.E.Raja
Additional Public Prosecutor

For Respondent : Mrs.Jayasri Baskar

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

This is an appeal against the acquittal preferred by the State. The respondent is the sole accused in S.C.No.373 of 2012 on the file of the learned Sessions Judge, Salem Division at Salem. The respondent stood charged for offences under Sections 302 and 404 I.P.C. By judgment dated 14.07.2014, the Trial Court acquitted him from both the charges. Challenging the same, the State has come up with this appeal.

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

The deceased in this case was one Ayyammal. On 02.05.2012, the deceased had gone to a nearby forest taking the goats for grazing. At that time, it is alleged that the accused emerged there, attacked the deceased with a wooden log, killed her and

then removed a pair of golden ear studs from the ear lobes. Then he threw the dead body into a nearby bush and fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

3. P.W.1 is the husband of the deceased. He has stated that the deceased, who had gone for grazing the goats did not return. Therefore, he along with his son and daughter went in search of her and found the dead body of the deceased. Thereafter, according to him, he went to Yethapur Police Station and made a complaint at 8.00 a.m. on 03.05.2012. Ex.P1 is the complaint and Ex.P.15 is the FIR. P.W.14, the then Sub-Inspector of Police on receipt of the said complaint registered a case in Crime No.167 of 2012 under Sections 302 and 392 IPC against the accused. In the complaint, P.W.1 has stated that he had suspicion over the accused and that is how, his name came to be mentioned in the FIR. P.W.14 forwarded both the documents to the Court, which were received by the learned Magistrate at 4.45 p.m. on 03.05.2012.

4. P.W.15, the then Inspector of Police took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness. He arranged for a photographer to take photos at the place of occurrence. Accordingly, from 26 angles photographs were taken. Then he conducted inquest on the body of the deceased at the place of occurrence and then forwarded the same for post-mortem.

5. P.W.12- Dr.Ramanisekar, conducted autopsy on the body of the deceased on 03.05.2012 at 3.15 p.m. He found the following injuries:

- "1. Abrasion over right side of neck extending from right mastoid process to centre of neck (12x2 cm)
- 2.Abrasion over side of neck extending from right mastoid process to right clavicle (12 x 2 cm)
- 3.Multiple abrasions over right collar bone
- 4.Graced abrasion over outer aspect of right fore arm (15 x 1 cm)
- 5.Laceration over right forehead (2 x 0.5 x 1 cm)
- 6.Laceration over mid occipital region (10 x 2 x bone deep)
7. Laceration over right ear lobule (1x 1 x 0.5 cm)
8. Laceration over left ear lobule (2 x 1 x 0.5 cm)
- 9.Abrasion over right maxilla (2 x 1 cm)
- 10.Peeling of cuticles of the inner aspect of left leg and left cheek and left forearm."

Ex.P9 is the post-mortem certificate and Ex.P10 is the final opinion. According to him, the death of the deceased was due to

shock and hemorrhage and due to multiple injuries found on the body of the deceased.

6. P.W.15 recovered sample earth, blood stained earth and blood stained material objects found in the place of occurrence under a Mahazar and forwarded the same to the Court. On 06.05.2012 at 6.00 a.m., he arrested the accused at Puthirakavundanpalayam in the presence of P.W.8 and another witness. On such arrest, he gave voluntary confession, in which he disclosed the place where he had pledged the pair of gold ear studs and in pursuance of the same, he took the Police and the witnesses to the jewellery shop under the name and style of Usha Jewellery and identified the same from the said shop. P.W.15 recovered M.O.6 - ear studs, M.O.15 - bag and M.O.16 - Shirt under a Mahazar. On returning to the Police Station, he sent the accused to the Court. Then he examined the doctor and collected the post-mortem certificate. He examined many more witnesses. On 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 15 witnesses were examined and 26 documents were exhibited, besides 16 Material Objects.

8. Out of the said witnesses, P.Ws.1 to 3, the husband, son and daughter of the deceased respectively have stated that on the date of occurrence, the deceased went for grazing the cattle to a nearby forest but she did not return. They further stated that on the next day morning around 6.00 a.m., they found the dead body of the deceased. Thereafter, P.W.1 gave complaint to the Police. P.W.2 has identified the golden ear studs (M.O.6) as that of the deceased. P.W.4 has stated that when the deceased was grazing the cattle, the accused was found somewhere near the said place. P.W.5 has stated that around 3.00 p.m., on one day, he found the accused with a wooden log. But this witness has not stated as to where, when and at what place she found the accused. P.W.7 has spoken about the preparation of Observation Mahazar and Rough Sketch. P.W.8 has spoken about the arrest of the accused and the consequential recovery of material objects including M.O.6. P.W.9 - relative of the deceased has also stated that he went in search of the deceased. P.W.10 yet another relative has also stated about the same facts. P.W.11 is the jewellery shop owner. He has stated that the accused came to his shop and pledged ear stud for Rs.2000/-. He issued receipt for the same. Ex.P7 is the receipt. But he has not identified the ear stud. P.W.12 has spoken about the post-mortem conducted

and his final opinion regarding the cause of death. P.W.13 has spoken about the chemical analysis conducted on the material objects, which revealed that there were blood stains. P.W.14 has spoken about the registration of the case and the complaint of P.W.1. P.W.15 has spoken about the investigation done and final report filed.

9. 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 witness on his side nor marked any document in his favour. His defence was a total denial.

10. Having considered all the above materials, the trial Court acquitted the appellant and that is how the State is before this Court with this Criminal Appeal.

11. We have heard the learned Additional Public Prosecutor appearing for the State, the learned counsel appearing for the respondent and we have also perused the records carefully.

12. This is a case based on circumstantial evidence. From the evidences of P.Ws.1 to 3, the prosecution, in our considered view has proved that on 02.05.2012, the deceased as usual in the morning went to the nearby forest taking the cattle for grazing, but she did not return. The dead body of the deceased was found on 03.05.2012 at 6.00 a.m. According to the medical opinion, the death of the deceased was due to multiple injuries found on the body of the deceased. From these evidences, the prosecution has succeeded in establishing that the deceased had died a homicidal death, sometime between 5.00 p.m. on 02.05.2012 and 6.00 a.m. on 03.05.2012. Now the question is who is the perpetrator of the crime. In order to prove the same, the prosecution mainly relies on the recovery of M.O.6 from P.W.11, in pursuance of the disclosure statement made by the accused. Here in this case, M.O.6 was pledged to P.W.11 under a receipt. P.W.11 has not identified M.O.6 as the pair of ear studs allegedly pledged to him by the accused. He has stated that a ear stud was pledged, whereas M.O.6 contains two pieces of ear studs. It is not explained to the Court as to why P.W.11 was unable to identify the M.O.6 in Court. Further, in the photographs taken at the place of occurrence, ear studs were found on the body of the deceased on her ears. It is not explained to the Court as to how M.O.6 is found in the photograph. For these reasons, the Trial Court has disbelieved the version of the prosecution regarding the arrest of the accused and recovery of M.O.6 in pursuance of the alleged disclosure statement made by the accused. We are unable to take a different view from that of the one taken by the Trial Court in this regard. We do not find any perversity in

the said conclusion arrived at by the Trial Court. Apart from that, the prosecution relies on the evidence of P.W.4, who has stated that on one day, the accused was found somewhere near the place where the deceased was grazing the cattle. But he has admitted that the accused and the deceased were relatives and he found both were talking in cordial terms. Thereafter, the accused has left the place. Therefore, the evidence of this witness cannot be conclusive to go to prove the alleged guilt of the accused. The Trial Court has appreciated these evidences in their proper perspectives and has come to the right conclusion that the prosecution has failed to prove the case beyond reasonable doubts. A close scrutiny of the entire evidences available on record would go to show that there is no defect or perversity in the conclusion arrived at by the Trial Court. In our considered view too, the prosecution has failed to prove the case beyond reasonable doubts. Therefore, the accused is entitled for acquittal. We do not find any merit at all in this appeal.

13. In the result, the criminal appeal fails and the same is accordingly dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional District & Sessions Judge,
Salem.
(Incharge of Sessions Judge, Mahila Court, Salem)
- 2.The Sessions Court,
Salem Division, Salem.
- 3.The Superintendent,
Sub Jail, Attur,
Salem District.
- 4.The Judicial Magistrate No.I,
Salem.
- 5.The Chief Judicial Magistrate,
Salem.

6.The District Collector,
Salem.

7.The Director General of Police,
Chennai.

8.The Public Prosecutor
High Court, Chennai.

+lcc to Mrs.Jayasri Baskar, Advocate, S.R.No.43987

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SAI (CO)
CA(20/09/2016)



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