

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.555 of 2015

Shanthi .. Appellant/Accused No.2

- Vs -

State rep by Inspector of Police,
West Police Station,
Villuppuram.
(Cr.No.356 of 2013) .. Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villuppuram in S.C.No.36 of 2014 dated 18.04.2015.

For Appellant : Mr.S.Mohamed Ansar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the second accused in S.C.No.36 of 2014 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villuppuram. The first accused was one Mr.Koki kumar @ Kumar @ Ashok Kumar. The first accused stood charged for offences under Sections 120(b), 448, 393 and 302 I.P.C. and the second accused / appellant herein stood charged for offences under Sections 120(b), 448, 393 and 302 r/w 34 I.P.C. By judgment dated 18.04.2015, the trial Court found both the accused guilty under all the charges. So far as the appellant / second accused is concerned, the trial court sentenced her to undergo imprisonment for life and pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one year for offence under Section 120(b) I.P.C.; to undergo imprisonment for life and pay a fine of Rs.1,000/- in default to

undergo simple imprisonment for one year for offence under Section 302 r/w 34 I.P.C.; to undergo simple imprisonment for one year for offence under Section 448 I.P.C. and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one year for offence under Section 393 I.P.C. Challenging the said conviction and sentence, the appellant / second accused alone is before this Court with this appeal.

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

2.1. The first accused, in this case was an auto driver. The second accused is the second wife of the first accused. Both of them were in search of job for the first accused, but they could not succeed. Their life thus was poverty stricken. In order to come out of the same, it is alleged that these two accused conspired to commit murder of the deceased Mrs.Sarala and to rob her of her valuable gold jewels.

2.2. It is further alleged that in pursuance of the said conspiracy, on 25.06.2013, around 12.30 p.m. the accused 1 and 2 went to the house of the deceased. The house was bolted from inside. The second accused tapped at the door of the house. The deceased from inside the house shouted that she was taking bath. The accused 1 and 2 were waiting outside. After sometime, the deceased opened the door believing that some known person had come. Suddenly, both the accused trespassed into the house. The second accused pretended as though she had come to enquiry as to whether there was any tuition teacher. When the deceased was answering, suddenly the first accused took out a knife from his waist, brandished the same against the deceased and directed her to part her with her jewels. The deceased tried to raise alarm. Suddenly, the first accused stabbed the deceased with a knife on the left cheek. The deceased died instantaneously. Removing the jewels and abandoning the dead body inside the house, both the accused fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

2.3. P.W.1 is the husband of the deceased. He has stated that the deceased was taking tuition classes at her house for the students. P.W.1 used to go to the shop to do his business at 04.45 a.m. itself and would return to the house at 01.00 p.m. and then return to the shop at about 04.00 p.m. everyday. On the date of occurrence, according to P.W.1, he went to the shop at 04.45 a.m. as usual. Normally, the deceased used to visit the shop at 01.00 p.m. On the date of occurrence, unusually the deceased did not come to the shop. Therefore, P.W.1 contacted her over phone. She attended the phone and told that she was at the house taking bath and she would come to the shop within five minutes.

2.4. Shortly thereafter, P.W.1 received a phone call from his friend Mr.Sudhakar that there was huge crowd of people standing in front of his house. Therefore, P.W.1 immediately rushed to his house. To his shock, he found that his wife was lying inside the house with stab injuries. There was a knife and handle of the knife lying by the side of the deceased. When he enquired the people standing there, they told that at around 12.45 p.m. on the same day the neighbours heard the cry of the deceased. Therefore, they rushed to the house of the deceased. At that time, they found a man aged about 25 years and a woman aged about 20 years leaving the house of the deceased with bloodstains. Villagers gave a chase but the assailants escaped from the scene of occurrence.

2.5. Having gathered these informations, P.W.1 went to Villuppuram West Police Station and made a complaint at 02.30 p.m. on 25.06.2013. P.W.14, the then Sub Inspector of Police on receipt of the said complaint, registered a case in Crime No.356 of 2013 under Section 302 I.P.C. Ex.P16 is the F.I.R. He forwarded both the documents to Court, which was received by the learned Magistrate at 10.30 p.m. on 25.06.2013.

2.6. P.W.21, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.10 and another witness. At his request, the police sniffer dog was brought to the place of occurrence. But, it could not get any clue. The forensic experts had also arrived at the request of P.W.21. He arranged for a photographer to take photographs. Then, he recovered bloodstained earth and sample earth from the place of occurrence and also the knife and the handle of the knife found at the place of occurrence under a mahazar. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.7. P.W.16 Dr.Gitanjali conducted autopsy on the body of the deceased on 26.06.2013 at 11.30 a.m. She found the following injuries:

“(I) External Examination: Eyes closed, mouth closed, elliptical shaped stab injuries seen over (a) over right breast 3 cms below right nipple - 3 cm x 1.5 cm x cavity deep. (b) over left side of abdomen 14 cm below left nipple 3 cm x 1.5 cm x cavity deep. (c) left axilla 1 cm lateral to left nipple 3 cm x 1.5 cm x cavity deep (d) left arm pit upper 1/3 aspect 3cm x 1.5 cm x 3 cm (e) cut spread between left thumb and left index finger - 3 cm x 1.5 cm x 2 cm. Greenish discolouration of skin over right stomach.

(II) On opening of the Head : Scalp contused o/d size 8 cm x 6 cm x 2 cm over the left

temporal panatela region. Bones and membranes intact. Brain normal in size cut section - congested, base of skull - intact.

(III) On opening of the thorax: rib cage - contusion of size 6 cm x 3 cm x 2 cm (below R nipple) right side of chest. On further dissection underlying 5th rib fractured left side. Heart appears normal in size great vessels, valves intact. Chambers contains two grams of clotted blood. Right lungs - lacerated injury over lower lobe of size 3 cm x 2 cm x 3 cm left lung - lacerated injury over both lobe of size 2 cm x 2 cm x 2 cm. About 750 ml of clotted blood seen in the thorax cavity.

(IV) On opening of the abdomen - contusion of size 5 cm x 4 cm x 1 seen over the undersurface of the anterior abdominal wall left side (corresponding to the injury of the surface) stomach - empty mucsia intact, liver, spleen and both kidneys - appears normal in size, cut section congested bladder empty uterus - 8 cm x 6 cm x 2 cm - cut section - cavity empty.

(V) Hyoid bone, pelvis and spinal column intact."

Ex.P13 is the postmortem certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased. She further opined that the said injuries could have been caused by a weapon like M.O.1 (knife).

2.8. On 01.07.2013, at 11.30 a.m. P.W.21 arrested both the accused at Melatheru Marriamman Kovil bus stand in the presence of P.W.13 and another witness. On such arrest, the first accused disclosed the place where he had hidden the bloodstained clothe. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced a full hand shirt, a pant, a thuppatta, a churidar pant and a churidar top. P.W.21 recovered the same under a mahazar. Then, on returning to the police station, he forwarded both the accused to the Court and the material objects also to the Court. He examined the doctor and collected the medical records. The investigation was thereafter taken over by P.W.22. On completing the investigation, he laid the chargesheet against the accused on 27.09.2013.

2.9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 22 witnesses were examined, 22 documents and 13 material objects were marked.

2.10. Out of the said witnesses, P.W.1 is the husband of the deceased. As we have already narrated, at the time of occurrence, he was not at his house. At around 01.00 p.m. he spoke to the deceased and thereafter he received information from one Sudhakar that there was a huge crowd of people in front of his house. He has further stated that when he returned to his house, he found his wife dead. He was informed by the neighbours viz., P.Ws.2,3,4 and 5 that by about 12.45 p.m. they found a man aged about 25 years and a woman aged about 20 years leaving the house of the deceased at around the time of occurrence.

2.11. P.Ws.2, 3, 4 and 5 are the neighbours of the deceased. They have stated that at around 12.45 p.m. they heard the distress call of the deceased. When they rushed to the house of the deceased, they found two persons a male and a female aged about 25 and 20 years respectively leaving the house of the deceased. When they went into the house, they found the deceased lying dead with stab injuries. They also found a knife and the wooden handle of the knife by the side of the deceased. When they gave a chase, the culprits vanished away from the scene of occurrence. They have identified these two accused as the person who left the place of occurrence at about the time of occurrence.

2.12. P.W.6 has stated that on 25.06.2013, at around 11.00 a.m. when he went to the Register's office, he found the first accused standing near Archana Hotel. P.W.7 has stated that on 25.06.2013 at around 12.15 p.m. he found both the accused were drinking cool drinks in a shop at Jhalana Mudali street at Villupuram. P.W.8 has also stated the same facts. P.W.9 has stated that he found both the accused at 11.30 a.m. near the house of the deceased. P.W.10 has spoken about the preparation of the observation mahazar and a rough sketch and also recovery of material objects from the place of occurrence.

2.13. P.W.11 has stated that on 25.06.2013 at 11.00 a.m. he found the accused 1 and 2 near Archana hotel. P.W.12 is the forensic expert. She has stated that he examined the material objects and found bloodstains in all the material objects including the knife. P.W.13 has spoken about the arrest of both the accused, the confession made by the first accused and the recovery of the clothes from out of the same. P.W.14 has stated that he had brought the police sniffer dog to the place of occurrence on the request made by P.W.21 but the dog did not get any clue. P.W.15, a constable has stated that he handed over the dead body to the Doctor for postmortem. P.W.16 has spoken about the postmortem conducted and her final opinion regarding the cause of death.

2.14. P.W.17 is a forensic expert who examined the visceral organs of the deceased and he has stated that there was no poison or alcohol. P.W.18 is the serology expert and he has stated that in the material objects, the grouping of the bloodstains could not be made out. P.W.19 has spoken about the registration of the case on the complaint of P.W.1. P.W.20 has stated that he handed over Exs.P1 and P6 to the learned Magistrate at 10.30 p.m. on 25.06.2013. P.Ws.21 and 22 have spoken about the investigation done and the final report filed.

3. 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 witness nor to mark any document on their side. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, the second accused alone is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor. We have also perused the records carefully.

5. This is a case based on circumstantial evidence. The foremost circumstance was that on the date of occurrence that was on 25.06.2013, the deceased alone was at her house. P.W.1 had gone to the shop. Around 01.00 p.m. he spoke to the deceased over cellphone to enquiry as to why she had not come to the shop, the deceased told that she was taking bath and soon she would come to the shop. From this evidence, the prosecution has established that the deceased was alive around 01.00 p.m. on 25.06.2013.

6. According to the further evidence of P.W.1, within a short while, he received a phone call from one Sudhakar that there was huge crowd of people in front of his house. Therefore, he rushed to his house and found the deceased lying dead with injuries. P.Ws.2 to 5 are the neighbours and they have stated that they heard the distress call of the deceased and when they have rushed to the house of the deceased and they found two people, a male and a female aged about 25 years and 20 years respectively, fleeing away from the scene of occurrence with bloodstains on their clothes. When they entered into the house, they found the dead body of the deceased with injuries. Thus, the prosecution has clearly established that the death of the deceased was caused by stab injuries around 01.00 p.m. on 25.06.2013. According to the medical evidence, the death was due to the stab injuries and the said injuries could have been caused by a knife. Thus, the prosecution has clearly established that the death of the deceased was a homicide.

7. Now the next question is who are the perpetrators of the crime. P.Ws.2 to 5 have stated that they saw a male aged about 25 years and a female aged about 20 years fleeing away from the scene of occurrence at the time when they went to the house of the deceased. From their evidences, it is crystal clear that the culprits are two in number and out of whom one is a male and the other is a female. To this extent, the prosecution had succeeded in establishing the circumstances.

8. According to the prosecution, those two persons who fled away from the scene of occurrence, as witnessed by P.Ws.2 to 5 are these two accused. In order to prove the same, the prosecution mainly relies on the identification made by these witnesses during trial. The alleged occurrence, as we have already stated was on 25.06.2013, whereas these witnesses were examined on 15.10.2014 i.e. about one year and four months thereafter. Admittedly, there was no test identification parade conducted. Though it is the admitted case of the prosecution that these two accused were already known to these witnesses. It is not explained to the Court as to why no step was taken by the investigating agency to arrange for such test identification parade. In the absence of such a test identification parade, as rightly contended by the learned counsel for the appellant, it is difficult to give any weightage for the identification made by these witnesses for the first time during trial in Court.

9. P.W.6 has stated that the first accused was standing near Archana hotel at 11.00 a.m. on 25.06.2013. Absolutely there is no evidence as to where the Archana hotel is located, whether it is by the side of the place of occurrence or anywhere else and it is also not the case that the first accused was previously known to this witness. P.W.7 has stated that around 12.15 p.m he found these two accused in a shop drinking cool drinks at Jhalna Mudali Street at Villupuram. It is not in evidence that these two accused were previously known to this witness. Further, it is not in evidence as to where the said shop is situated. P.W.8 has also stated about the same facts. P.W.9 has stated that around 11.30 a.m. on 25.06.2013, he found both the accused in front of the house of the deceased. Admittedly, the accused were not known to this witness previously. There was no test identification parade conducted for this witness also. P.W.11, has stated that he found these two accused at Archana hotel at 11.00 a.m. for him also, these accused were not previously known. There was no test identification parade conducted. Thus, no weightage could be given to the evidence of this witness also for want of proper test identification parade and also for want of further evidence as to where these accused were previously seen by them and as to whether the said place where these two accused were found was near the place of occurrence or elsewhere.

10. Apart from that, on the disclosure statement made by these accused, clothes were recovered and there were bloodstains on the same. But the grouping of the bloodstain was not deducted as the bloodstains were highly disintegrated. Thus, from the recovery of the bloodstained clothes it cannot be conclusively held that the second accused was one of the perpetrators of the crime.

11. In a case based on circumstantial evidence, it is well settled law that the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. In this case, applying the said principle, we are of the considered view that the circumstances proved by the prosecution has not unerringly point the guilt of the second accused. Therefore, we are inclined to acquit the appellant / second accused. We hold that the prosecution has not proved the case against the second accused beyond reasonable doubts. Since the first accused has not filed any appeal, we have no occasion to analyse the case against him.

12. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant / second accused by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villuppuram in S.C.No.36 of 2014 dated 18.04.2015 is set aside and she is acquitted.

(ii) The fine amount, if any paid, shall be refunded to her.

(iii) Since the appellant / second accused is in jail, she is directed to be set at liberty forthwith, unless her detention is required in connection with any other case.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court), Villuppuram.

2. The Inspector of Police,
West Police Station,
Villuppuram.

3. The Public Prosecutor,
Madras High Court.

4.-do- Thro The Chief Judicial Magistrate
Villuppuram

5.The Superintendent
Women Special Prison Vellore

6.The District Collector
Villuppuram District

7.The Director General of Police
Mylapore, Chennai-4

8.-do-The Principal Sessions Judge Villuppuram

9.The Judicial Magistrate No.1
Villuppuram

+1 cc to Mr.S.Mohammed Ansar Advocate sr 38732

Cr1.A.No.555 of 2015

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