IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.560/2015

Mohan .. Appellant/A1

Vs

State by
The Inspector of Police,
Needamangalam Police Station,
Tiruvarur District. .. Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned District and Sessions Judge, Thiruvarur, made in S.C.No.48 of 2013 dated 22.08.2013.

For Appellant : Mr.S.Mohamed Ansar

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

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.48 of 2013 on the file of the learned District and Sessions Judge, Thiruvarur. Originally, there was yet another accused by name Rahmath Nisha. The case against Mrs.Rahmath Nisha was split up and tried separately. So far as the present Sessions Case is concerned, the appellant/accused alone was tried for the offence under Section 302 of IPC. By judgment dated 22.08.2013, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 6 months. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Suseela, aged about 18 years. She was the sister of P.W.3. She was residing along with P.W.3 in Sunnambukulathur Village in Tiruchirappalli District. She was working as a Sales Girl in Chennai Silks Stores at Tiruchirappalli. Somehow, the accused/appellant came into contact with the deceased, when she was working in the shop. He told the deceased that he had love for her and at last, proposed to marry her.

(b) On 13.05.2012 at 07.00 a.m., as usual, the deceased left her house informing P.W.3 and the other family members that she was proceeding to Chennai Silks Stores for work. But, it is alleged that she did not go to the shop and instead, the accused met her and took her to Velankanni in Nagapattinam District. He kept her in a private lodge in Velankanni. On the next day that was on 15.05.2012, the accused brought his wife Mrs.Rahmath Nisha also to the same lodge. While in the lodge, the appellant/accused tried to sexually exploit the deceased. Thereafter, it is stated that the accused along with his wife (the accused in the case split up) took the deceased in a bus from Velankanni. Near Needamangalam Railway Gate at Vaiyakalathur Village, all the three got down from the bus. The accused along with his wife took the deceased to a nearby place and suddenly, the appellant/accused took out a knife from his waist and attacked the deceased in the river bed. The deceased sustained a number of injuries. She cried for help. Both the accused ran away from the scene of occurrence.

(c) P.Ws.1 and 2, on hearing the alarm raised by the deceased, rushed to the place of occurrence. They found the accused and his wife fleeing away from the place of occurrence. The deceased was lying with injuries, struggling for life. They arranged for an Ambulance and took her to Tanjore Medical College Hospital where they admitted her as inpatient.

(d) P.W.11 an Assistant Surgeon at Tanjore Medical College Hospital examined the deceased at 08.19 p.m. on 15.05.2012. He found the following injuries:

> ''1. Multiple laceration of various dimensions over face at varying depth and blood bleeding;
>
> 2. Multiple laceration of various dimensions over both hands/ear; and
>
> 3. Laceration over neck approximately 10 x 5 c.m. exposing middle trachea.''

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He admitted her as inpatient. It is stated that then, after few days, she was taken to the Government Hospital at Tiruchirappalli where she died on 03.06.2012 at 09.00 a.m.

(e) When the deceased was undergoing treatment at Tanjore Medical College Hospital, on receiving intimation from the hospital, P.W.15, the then Sub-Inspector of Police, went to the hospital, recorded the statement of the deceased, returned to the police station and registered a case in Crime No.165 of 2012 under Section 307 of IPC against the appellant herein and his wife Mrs.Rahmath Nisha on the file of Needamangalam Police Station at 12.00 midnight on 15.05.2012. The FIR was received by the learned Magistrate at 04.00 p.m. on 17.05.2012.

(f) The investigation was taken over by P.W.17. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch at the place of occurrence on 15.05.2012 and also recovered blood stained earth and sample earth from the place of occurrence. He examined few more witnesses including P.Ws.1 and 2 and recorded their statements. On 04.06.2012, after the demise of the deceased, he altered the case into one under Section 302 of IPC. On 05.06.2012 at 8.00 a.m. at Olimathi Bus Stop, he arrested both the accused in the presence of the witnesses. On such arrest, the appellant herein/accused gave a voluntary confession in which he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1 knife.

(g) P.W.11 Dr.Ravikumar conducted autopsy on the body of the deceased on 04.06.2012 at 02.45 p.m. He found the following injuries:

> ''Wounds:
>
> 1. A sutured wound 2 c.m. in length on the right side of face near the angle of mouth.
>
> 2. Four healed wounds of varying dimension with evidence of suture on the right side of face.
>
> 3. Infected lacerated wound on the front of neck, 9 c.m. x 2 c.m. x muscle deep.
>
> 4. An infected wound 8 c.m. in length with evidence of suture on the right side neck.
>
> 5. Partially healed incised transverse wound on the front of right side of chest 14 c.m x 1 c.m. x muscle deep.

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6. A middle vertical healed wound with evidence of suture 7 c.m. in length on the front of abdomen - Surgical treatment.

7. An infected wound with evidence of suture 4 c.m. from the midline on the front of left side of chest.

8. An infected wound with evidence of suture 7 c.m. in length in the back of right hand.

9. An infected wound with evidence of suture on the back of centre of neck 13 c.m. x 3 c.m. x mucle deep.

10. An infected wound on the back of varying dimensions and muscle deep on the back of right chest.

11. Five infected wound of varying dimension and muscle deep on the back of left shoulder.

The above mentioned wounds are ante-mortem. No other external, internal or bone wound.

Other findings : Peritoneum - intact. Cavity empty. Pleura - Intact, cavity - empty. Pericardium - Intact, cavity - straw colour fluid. Heart - Normal in size. Myocardium - Normal. Chambers - Fluid blood. Valves - Normal. Coronary vessels patent. Great Vessels - Normal. Lungs - Cross Section pale. Larynx, Tachea - Intact. Mucosa - pale. Hyoid bone - intact. Stomach - Light yellow colour fluid, no specific smell. Mucosa - pale. Oesophagus - intact. Mucosa and pancreas - Pale. Gall Bladder - Empty, no stone. Liver, Spleen and Kidneys - cross section pale. Omentum and Mesentery - intact, normal. Small intestine - Yellowish chyme, no specific smell. Mucosa - pale. Appendix - intact,normal. Larger intestine filled with gas. Urinary Bladder - intact, empty. Uterus : Normal in size cross section empty. Pelvis, Scalp, Skull bones and Membranes - intact. Sinuses, Brain vessels - Full. Brain petechiae present. Cerebo-spinal fluid - clear. Vertebral column and cord - intact. All other internal organs on cross section pale.''

Ex.P.5 is the Postmortem Certificate. He 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.

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(h) P.W.17 collected the medical records, examined few more witnesses and on completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined and 14 documents and 3 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 have spoken about the fact that on hearing the alarm raised by the deceased, when they rushed to the place of occurrence, they found the appellant and his wife fleeing away from the place of occurrence. They have further spoken that they admitted the deceased in Tanjore Medical College Hospital. P.W.3, the brother of the deceased has stated that the deceased left his house on 13.05.2012 in the morning, but in the evening she did not return. After having heard about the fact that the deceased was admitted in the hospital, when he went to Tanjore Medical College Hospital, the deceased narrated the entire occurrence to him. Thus, he speaks about the oral dying declaration made by the deceased. P.W.4 is the sister-in-law of the deceased. She has not stated anything incriminating. P.W.5 has stated that he identified these two accused in the police station. P.W.6 has stated that the police enquired with him about the accused. P.W.7 has stated about the arrest of the accused, disclosure statement made by the accused and the consequential recovery of M.O.1 from his possession. P.W.8 has also spoken about the same fact. P.W.9 has stated that he is the relative of the deceased. He went to the hospital and saw the deceased while she was undergoing treatment.

5. P.W.10 has spoken that he treated the deceased at Tanjore Medical College Hospital on 15.05.2012 at 6.00 p.m. He has also spoken about the injuries found on the body of the deceased. He has further stated that at that time, the deceased was conscious and she told that a known male and a known female stabbed her with knife. P.W.11 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.12 has spoken about the chemical analysis conducted by him on the material objects. P.W.13 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.14 is an employee of the lodge in Velankannai where the accused stayed along with the deceased. He has stated that on 13.05.2012 at 04.00 p.m., a room was booked in the name of

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Rahmath Nisha where a man and two women were staying. After two days, they left the lodge without even informing them. P.W.15 has spoken about the registration of the case on the statement of the deceased. P.W.16 has stated that he handed over the Alteration Report to the learned Magistrate. P.W.17 has spoken about the investigation done and the final report filed by him.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. Though several grounds have been raised by the learned Counsel for the appellant, mainly, he contended that though it is stated by P.W.3 that when he went to Tanjore Medical College Hospital, the deceased made a long statement narrating the entire occurrence which would amount to dying declaration, the medical records pertaining to the treatment given to the deceased both at Tanjore Medical College Hospital and at the Government Hospital, Tiruchirappalli, have not been produced. According to the learned Counsel for the appellant, it is doubtful as to whether the deceased would have been in a fit state of mind to make such a statement to P.W.3 as it is stated.

9. We summoned P.W.17 the Inspector of Police before this Court. We perused the case diary and also the entire case records. We found that except the entries made in the Accident Register by P.W.10 at Tanjore Medical College Hospital, no other medical records had been collected during the investigation by P.W.17. If the entire medical records pertaining to the deceased maintained by Tanjore Medical College Hospital is available, it would certainly reveal as to whether the deceased was in a fit state of mind to make a dying declaration or not. It is not known as to why, the same has not been collected and similarly, what was the date on which the deceased was taken to the Government Hospital at Tiruchirappalli, is also not available for verification. Further, why she was shifted to Government Hospital, Tiruchirappalli, is also not known. What was the condition of the deceased while she was undergoing treatment at the Government Hospital, Tiruchirappalli is also not known. These are all serious flaws in the case of the prosecution.

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10. In view of the same, we are unable to come to a conclusion as to whether the deceased would have been in a position to state the facts to P.W.3 as he has claimed. In the absence of these documents and the relevant oral evidences of the doctors, we feel that it would be difficult to do justice to the parties. Further, it is unfortunate that the Additional Public Prosecutor, who conducted the trial, also did not notice these anamolies and to rectify the same at the time of trial. The trial court was also not attentive to ensure that these evidences are all on record by exercising its power under Section 311 of Cr.P.C. Therefore, we deem it appropriate to set aside the conviction and sentence imposed on the appellant and remand the matter back to the trial court for fresh disposal in accordance with law. Since we are remanding back, we are not expressing any view in respect of the other grounds raised by the defence. We keep all the defences open for the accused.

11. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the trial court are set aside and the case in S.C.No.48 of 2013 on the file of the learned Sessions Judge, Thiruvarur, is remanded back to the file of the trial court for fresh disposal. The above documents shall be collected, copies be furnished to the accused in advance and then be proved in evidence by summoning the necessary witnesses by the prosecution. The prosecution shall be at liberty to recall any witness and to lead additional documentary evidence also. Similarly, the accused is at liberty to recall any witness already examined and to cross-examine them further and also to lead evidence on the side of the defence both oral and documentary. At any rate, the trial court shall dispose of the case afresh, within a period of twelve weeks from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
   Needamangalam Police Station,
   Tiruvarur District.

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2. The District and Sessions Judge,
Thiruvarur.

3.The District Session Judge and Judicial Magistrate No.I,
Needamangalam.

4.The District Collector,
Thiruvarur District.

5.The Judicial Magistrate,
Needamangalam.

6.-Do- Thro The Chief Judicial Magistrate,
Needamangalam.

7.The Superintendent,
Central prison,
Trichy.

8.The Public Prosecutor,
High Court, Chennai.

9.The District Collector,
Tiruvarur District.

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

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Mohamed Ansar, Advocate Sr.41445[25/10/2016]

Crl.A.No.560/2015

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srg 31/08/2016

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