

IN 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.601 of 2015

Jagan @ Jayasuriya ... Appellant/A1

Vs

State rep. By
Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur.
(Crime No.499 of 2007) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed by the learned Sessions Judge, Mahila (Fast Track) Court, Tiruppur in C.M.P.No.407 of 2015 in S.C.No.30 of 2012 dated 10.09.2015.

For Appellant : Mr. C.Prabakaran

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

JUDGEMENT

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

A1, in S.C.No.30 of 2012 on the file of the learned Sessions Judge, Mahila (Fast Track) Court, Tiruppur, is the appellant herein. Totally there are three accused. All the three accused stood charged for the offence under Sections 120(b), 376(2)(g) and 392 and 302 IPC. Earlier by a judgment dated 25.09.2014, the trial Court convicted the appellant/A1 for the offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for 10

years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one year and acquitted him from the other charges, trial Court also acquitted A2 and A3 from all the charges. This Court by an order dated 25.03.2015, made in Crl.A.No.115 of 2015, remanded the matter to the trial Court and directs the trial Court to consider the provisions of Section 302 IPC and impose appropriate sentence as contemplated under law. Thereafter, petition was filed in C.M.P. No. 407 of 2015 in S.C.No.30 of 2012, before the Mahila (Fast Track) Court, Tiruppur and on 10.09.2015, the trial Court convicted the appellant under section 302 IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for one year. Challenging the said conviction and sentence, the appellant/A1 is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Philomina, is the mother of P.Ws.11 and 12. They were residing in the house of P.W.1. A1 and A2, in this case, were also residing in the first floor in the same house. The appellant/A1 wants to marry P.W.11, the daughter of the deceased and since, the appellant/A1 is already married, the deceased refused for the same. Hence, the appellant developed enmity against the deceased. On the date of occurrence, namely 10.07.2007, all the accused taken the deceased to the house of P.W.13, the deceased and all the accused consumed liquor. Thereafter, all of them raped the deceased and took the deceased and threw her into a well and caused her death. Apart from that they have also stolen the purse of the deceased and also taken the money.

3. P.Ws.11 and 12, daughters of the deceased, found their mother was missing, they started searching for her. After 10 days, somebody informed them that a body was found floating in the well. Immediately, they rushed there and identified the body of their mother based on the Saree on the dead body, immediately, P.W.11, went to the police station and gave a complaint (Ex.P.12).

4. P.W.16, on receipt of the complaint, registered a case in Crime No.499 of 2017, under Section 174 Cr.P.C and forwarded the First Information Report Ex.P.13 to the Court and to the higher officials.

5. P.W.17, the Inspector of Police, on receipt of the First Information Report, commenced the investigation

and reached the scene of occurrence, prepared Observation Mahazar, Ex.P.2 and Rough Sketch, Ex.P.14 . Then, he conducted inquest on the dead body of the deceased in the presence of Panchayathars, prepared Inquest Report (Ex.P.15) and sent the body for postmortem to Government Hospital, Tiruppur through P.W.9, Head Constable.

6. P.W.8, the Doctor, working in the Government Hospital, Tiruppur, conducted postmortem/autopsy on the dead body of the deceased and gave a postmortem Report, Ex.P.11. Since the body was in a highly decomposed condition, he could not give any opinion about the cause of death.

7. Subsequently, on 26.11.2007, the appellant appeared before P.W.7, Village President of Mudhalipalayam village and gave extra judicial confession admitting his guilt and P.W.7 recorded the extra judicial confession (Ex.P.4) and produced him before the investigating officer, P.W.17. P.W.17 arrested the appellant and then, he altered the charge under sections 376(2)(g) and 302 IPC, and on such arrest, appellant has given a voluntary confession, based on the disclosure statement of the appellant/A1 (Ex.P.7) P.W.17 recovered the hand bag (M.O.2) under the cover of Mahazar, Ex.P.8, in the presence of the witnesses and thereafter, he arrested the other two accused and based on their disclosure statement, he recovered money purse(M.O.3). Then, P.W.17 recorded the statement of P.Ws.11, 12 and other witnesses and the doctor, who conducted postmortem/autopsy on the dead body of the deceased. After completing the investigation, he laid the charge sheet on 15.05.2008 against the appellant/A1.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment. The appellant denied the same. In order to prove the case of the prosecution, as many as 17 witnesses were examined and 16 documents were exhibited, besides 3 Material Objects.

9. Out of the witnesses examined, P.W.1 is the house owner, where the appellant/A1 and deceased were residing. He spoke about the quarrel between the appellant and the deceased family and he also identified the dead body of the deceased. P.W.2 is the witness to the Observation Mahazar. P.W.3 is also a witness to the Observation mahazar. P.W.4 and P.W.5 are the witnesses to the arrest of the appellant/A1 and also witnesses to the confession statement given by the appellant/A1 before P.W.7. P.W.6 is the another resident of Ponnapuram and also witness to the voluntary confession given by A1 to

the Investigating Officer and also witness to the recovery of hand bag (M.O.2).

10. P.W.7 is the Village president of Mudalipalayam village, before whom, the appellant/A1 appeared and gave an extra judicial confession. P.W.8 is the doctor, who conducted postmortem/autopsy on the dead body of the deceased and gave postmortem certificate, Ex.P.11. P.W.9, the Head Constable, who accompanied the dead body of the deceased for postmortem/autopsy to the Government Hospital and identified the dead body for postmortem. P.W.10 turned hostile. P.Ws.11 and 12 are the daughters of the deceased. They spoke about the motive for the occurrence and also they have seen the appellant/A1 and the deceased together before the occurrence, thereafter the deceased was found missing, they identified the dead body of the deceased later P.W.11 gave the complaint.

11.P.W.13 is the friend of the accused. On 10.07.2007, at about 11.00 a.m., his house was found opened and inside the house, he saw the deceased and A1 having sexual intercourse and he warned the appellant/A1. He also found that the deceased and the appellant were in a drunken mood. P.W.14, the photographer had taken photograph of the deceased at the scene of occurrence. P.W.15, Head Clerk, sent the material objects for chemical examination. P.W.16, Sub-Inspector of Police, registered the complaint and forwarded the First Information Report, Ex.P.13 to the Court and to the higher official. P.W.17, Inspector of Police, conducted investigation, recorded the statement of the witnesses, arrested the accused and recovered the material objects. After completion of investigation, he laid charge sheet against 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 mark any documents on their side.

13.Having considered all the above, the trial Court found the appellant/A1 guilty under Section 302 IPC and accordingly, sentenced him as detailed in the first paragraph of this judgment and acquitted the other two accused. Aggrieved over the same, the appellant/A1 is before this Court with this appeal.

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

15. This is a case of circumstantial evidence. The first and foremost circumstance relied upon by the prosecution is the motive for the occurrence. The appellant and the deceased were residing in a same building, which belongs to P.W.1. According to P.Ws.11 and 12, the daughters of the deceased, the appellant wants to marry P.W.11. Since the appellant was already married, the deceased refused for the same hence, the appellant quarreled with the deceased. P.W.1, the house owner also spoke about the quarrel. It is the further evidence of P.W.11 is that appellant used to threaten the deceased and her family members and appellant also went to the company, where P.W.11 was working and created problem. In the above circumstances, the deceased used to accompany P.W.11 to her working place fearing the appellant. From the above, it was established by the prosecution that the appellant has a motive against the deceased.

16. The next circumstance relied upon by the prosecution was that P.Ws.11, 12 and 13 have seen the appellant/A1 and the deceased together before the occurrence. According to P.W.11, soon before the occurrence, when P.W.11 and the deceased went to the bus stop and all the accused were standing in the bus stop, they called the deceased and talking with her. Since, P.W.11, did not like that, she went to the house alone, thereafter, the deceased was found missing. P.W.12 also corroborates the evidence of P.W.11.

17. P.W.13 is the person, who is residing in the house opposite to the house of A2. According to him, on 10.07.2010, at about 11.00 p.m., he saw the deceased and appellant/A1 had intercourse in his house and at that time, A2 and A3 were standing outside the house and he warned them. Thereafter, all of them left the house. From the above evidence, it was established by the prosecution that the appellant and the deceased were together soon before the occurrence.

18. The next important circumstance is the extra judicial confession given by the appellant before P.W.7, the President of Mudalipalayam Village. According to him, on 26.11.2007, the appellant/A1 appeared before him and gave a statement admitting his guilt. He recorded the statement of the appellant and produced him before the investigating officer, P.W.17. In the instant case, there is no evidence to prove that the extra judicial confession was given by the appellant on compulsion or threat or coercion. The appellant voluntarily appeared before the village President and has given a confession admitting his guilt, hence, there is no reason to disbelieve the extra judicial confession. Considering all the above

circumstances, we are of the opinion that the prosecution has proved the guilt of the appellant/A1 beyond any reasonable doubt. Thus, the appeal fails and deserves to be dismissed.

19. In the result, the criminal appeal is dismissed and the conviction and sentence imposed by the trial Court is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Sessions Judge,
Magalir (Fast Track) Court,
Tiruppur.
 2. The Judicial Magistrate II ,
Tiruppur.
 3. The Chief Judicial Magistrate,
Tiruppur.
 4. The Superintendent
Central Prison,
Coimbatore.
 5. The District Collector,
Tirupur.
 6. The Director General of Police,
Mylapore,
Chennai-4.
 7. The Inspector of Police,
Tiruppur Rural Police Station,
Thiruppur.
 8. The Public Prosecutor,
High Court, Madras.
- +lcc to Mr.Prabakaran, Advocate, S.R.No.38686

su(CO)
rs(09/01/2017)

Cr1.A.No.601 of 2015