

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2016

CORAM

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

Criminal Appeal No.617 of 2015

1.Mani @ Surya @ Manikandan [A1]
2.Velu [A2]
3.Govindaraj [A3]

... Appellants

-Versus-

State Rep. by
The Inspector of Police,
Erode Taluk Police Station,
Erode District.
[Crime No.465 of 2012]

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned Sessions Judge, Mahila [Fast Track] Court, Erode, in S.C.No.25 of 2015 dated 17.08.2015.

For Appellant(s) : Mr.M.Camyles Gandhi [Court appointed Legal Aid Counsel] for Appellants 1 and 2/A1 and A2

Mr.I.C.Vasudevan for 3rd Appellant/A3

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

JUDGEMENT

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

The appellants are Accused Nos.1 to 3 in S.C.No.25 of 2015 on the file of the learned Sessions Judge, Mahila Sessions [Fast Track] Court, Erode. They stood charged for various offences as detailed below

Charge Number	Charge(s) framed against	Penal provision under which charge framed
1	A1 to A3	Section 460 of IPC
2	A3	Section 302 of IPC
3	A1 and A2	Section 302 r/w 107 of IPC
4	A1 to A3	Section 394 of IPC

The trial court, by judgement dated 17.08.2015, convicted all the three accused as detailed below:-

Rank of the Accused	Penal provision under which conviction recorded	Quantum of Sentence Imposed
A1 and A2	Section 460 of IPC	Imprisonment for life and to pay a fine of Rs.5,000/- each in default to suffer simple imprisonment for a further period of two years
A1 and A2	Section 302 r/w 107 r/w 109 of IPC	Imprisonment for Life and to pay a fine of Rs.5,000/- each in default to suffer simple imprisonment for a further period of two years
A1 and A2	Section 394 of IPC	Imprisonment for life and to pay a fine of Rs.5,000/- each in default to suffer simple imprisonment for a further period of two years
A3	Section 460 of IPC	Imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a further period of two years

Rank of the Accused	Penal provision under which conviction recorded	Quantum of Sentence Imposed
A3	Section 302 of IPC	Imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a further period of two years
A3	Section 394 of IPC	Imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a further period of two years

Challenging the above said conviction and sentences, A1 to A3 are before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Valliammal. She was residing at No.46, Nochikattuvalasu, Pudhur, Erode, along with her son Mr.Boopathi (P.W.1). P.W.1 was running a grocery shop at Soorapattu. A1 to A3 noticed that the deceased was alone at her house. Utilizing the opportunity, they decided to commit house breaking and theft in the said house.

3. On 06.07.2012, around 11.00 p.m., scaling down the compound wall of the house of the deceased, all the three accused trespassed into the house of the deceased. Then, they broke down the main doors of the house and entered into the house. On reaching the deceased, who was then sleeping, A1 closed her mouth with hands, A2 held the deceased and A3 stabbed her with knife. The deceased died on the spot. A1 and A2, thus, instigated A3 to kill the deceased. Then, they removed a pair of gold bangles worn by the deceased and ran away from the scene of occurrence.

4. P.W.1 is the son of the deceased. He has stated that on 06.07.2012 around 10.30 p.m. after having closed his shop, he along with his wife, returned to his house at 11.00 p.m. At that time, the main doors of the house were slightly kept opened. The lights were put on. There was an unusual murmur from the deceased. At that time, P.W.5 had also come there. When all the three on hearing the murmur further went into the house,

they found A1 closing the mouth of the deceased, A2 holding the deceased and A3 stabbing the deceased. P.W.1 shouted. All the three, on noticing them, fled away from the scene of occurrence by pushing them aside. When they went near the deceased, they found the deceased with injuries and her gold bangles were missing. P.W.1 cried for help. P.W.1 and others gave a chase, but, the accused ran away. The deceased succumbed to the injuries within a short while.

5. P.W.1, thereafter, went to Erode Taluk Police Station at 03.00 a.m. on 07.07.2012 and made a complaint (Ex.P.1). P.W.13, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.465 of 2012 under Sections 302 and 380 of IPC. Ex.P.10 is the FIR. Then, he forwarded both the complaint-Ex.P.1 and the FIR-Ex.P.10 to the jurisdictional court which were received by the learned Magistrate at 08.00 a.m. on 07.07.2012. In the mean while, P.W.13 handed over the case diary to the Inspector of Police for investigation.

6. P.W.13 took up the case for investigation, proceeded to the place of occurrence, prepared an observation mahazar (Ex.P.3) and a rough sketch (Ex.P.11) in the presence of P.W.9 and another witness. Then, he recovered some blood stained granite floor tiles (M.O.4) and sample granite floor tiles (M.O.5) from the place of occurrence in the presence of the same witnesses under a mahazar (Ex.P.4). He also recovered a soori knife (M.O.3) which was found at the place of occurrence under a mahazar (Ex.P.4). He examined P.Ws.1, 3, 4 and 5 and recorded their statements. He conducted inquest on the body of the deceased and forwarded the dead body to the hospital for postmortem.

7. P.W.2, Dr.R.Venkatesh, conducted autopsy on the body of the deceased at 10.00 a.m. on 07.07.2012. He found the following injuries:-

"External injuries: (1) An incised wound near left sterno mastoid joint about 1 cm below measuring 3 x 2 cm and 5 cm depth involving major carotid vessels, cut, tear, blood oozing.

(2) Lacerated injury 3 cm below the injury No.1 measuring 2 x 2 cm and 4 cm depth involving major carotid vessels and blood oozing and esophagus cut".

Ex.P.2 is the postmortem certificate. He gave opinion that the deceased would have died of due to shock and hemorrhage as a result of injuries found on the body. He further opined that the said injuries could have been caused by a weapon like knife.

8. In the course of investigation, P.W.14 arrested all the three accused on 08.07.2012 at 09.00 a.m. in the presence of P.W.9 and another witness. On such arrest, A3 handed over a gold bangle (M.O.1) from his pocket. Similarly, A1 produced another gold bangle from his pocket (M.O.2). P.W.14 recovered the same under mahazars Ex.P.5 and Ex.P.6 respectively. On the disclosure statement made by A2, P.W.14 recovered the blood stained dress materials (M.Os.6 to 8) from him under a mahazar (Ex.P.7). On returning to the police station P.W.14 forwarded all the three accused to the court for judicial remand. He also forwarded all the material objects to the court. The chemical analysis report revealed that there were human blood stains on all the material objects. The investigation was thereafter continued by P.W.15. On completing the investigation, he laid charge sheet against A1 to A3.

9. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. A1 to A3 denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 13 documents and 11 material objects were marked.

10. Out of the said witnesses, P.Ws.1, 3, 4 and 5 are the eye witnesses to the occurrence. P.W.1 is the son, P.W.3 is the daughter in law and P.W.5 is the son in law of the deceased. They have stated that when they returned to the house of the deceased after having closed their grocery shop, they found all these three accused in the hall of the house of the deceased and killing her. They have vividly spoken about the individual overt act of all the three accused. P.W.4 has spoken only on hearsay information.

11. P.W.2, the doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.6 has stated that on 06.07.2012 around 11.00 p.m, three persons were found escaping from the house of the deceased. P.W.6 is the brother in law of the deceased. He has further stated that two golden bangles worn by the deceased were found missing from the person of the deceased. But, he has not identified the accused.

12. P.W.7 has stated that on 06.07.2012 at 10.30 p.m., when he was returning from Karukkampalayam Village, these three accused were found somewhere near the house of the deceased. P.W.8 has stated that on 06.07.2012 at 11.30 p.m., he was informed by P.W.1 about the occurrence. He is yet another son of the deceased. P.W.9 has stated about the preparation of the observation mahazar and the rough sketch by the police at the

place of occurrence and also the recovery material objects from the place of occurrence. He has also spoken about the arrest of all the three accused and the consequential recoveries of material objects from their possession. P.W.10 has spoken about the photographs taken at the place of occurrence. P.W.11 has spoken about the fact that he handed over the FIR and the complaint to the Magistrate. P.W.12 has stated that he took the dead body of the deceased from the place of occurrence to the hospital and identified the same to the doctor for postmortem. P.W.13 has spoken about the registration of the FIR and the initial investigation done by him. P.W.14 and P.W.15 have spoken about the further investigation conducted by him. P.W.15 has further spoken about the filing of charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial. Having considered all the above, the trial court convicted the appellants/A1 to A3 and accordingly sentenced them as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

14. We have heard the learned counsel appearing for the appellants/A1 to A3 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

15. As we have already narrated above, in this case, P.Ws.1, 3, 4 and 5 have claimed to be the eye witnesses. According to them, at 11.00 p.m. on 06.07.2012 when they returned to their house after having closed their grocery shop, they found the door of main entrance of their house kept slightly opened. At that time, the lights were put on. When they further entered into the house, they found all the three accused killing the deceased. The FIR in this case is stated to have been registered at 03.00 a.m. on 07.07.2012, but, the same had reached the hands of the learned Magistrate at 08.00 a.m. Absolutely, there is no explanation for the same. This creates an initial doubt in the case of the prosecution. Had it been true that the occurrence was witnessed by these witnesses, who are family members of the deceased, it would not have taken such a long time for the FIR to be registered and then the same to reach the hands of the learned Magistrate. The distance between the police station and the place of occurrence is hardly 7 km. This doubt is further supported by the evidence of P.W.6. P.W.6

has stated that the police arrived at the scene of occurrence at 03.00 a.m. itself. When they came to the place of occurrence, the main door of the house was found locked. It was not kept opened as it is projected by the prosecution. The police broke open the main door, entered into the house and found the dead body. If that be so, the story of the prosecution that P.Ws.1, 3, 4 and 5 had seen the occurrence inasmuch as the main door was kept opened cannot be true. P.W.8 has also stated that on hearing about the occurrence, he went to the place of occurrence and only thereafter, P.W.1 went to the police station and made the complaint. Further, it is not a murder for gain as it is projected. All these three accused belong to the same village. There was some motive between the two families. Therefore, the possibility of false implication also cannot be ruled out. The recoveries of one bangle each from A1 and A3 are also highly artificial and doubtful. The occurrence was on 06.07.2002 whereas the accused were allegedly arrested on 08.07.2012. Till such time, it is difficult to believe, that these accused had kept the bangles, that too each one bangle by A1 and A3. By all probabilities, the deceased who was left alone in the house, would have been found dead around 03.00 a.m. to 04.00 a.m. or in the morning and thereafter only the FIR would have come into being after due deliberation. This doubt, which is very reasonable in the mind of the court, has not been cleared by the prosecution. Though P.W.1, 3, 4 and 5 claimed to be the eye witnesses, a careful scrutiny of their evidences make their evidences suspicious. In the absence of any corroboration from any other sources corroborating their evidences, it is too difficult to sustain the conviction of A1 to A3.

16. For the foregoing reasons, the judgement of the trial court convicting and sentencing the appellants needs interference at the hands of this court.

17. In the result, this criminal appeal is allowed. The conviction and sentences imposed on A1 to A3 by the trial court are hereby set aside and they are acquitted of from all the charges. Fine amount already paid, if any, shall be refunded to them.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Sessions Judge,
Mahila [Fast Track] Court,
(Mahalir Fast Track Court), Erode.
2. Do Through the Principal Sessions Judge,
Erode.
3. The Judicial Magistrate No.I,
Erode.
4. Do Through The Cheif Judicial Magistrate,
Erode.
5. The Inspector of Police,
Erode Taluk Police Station,
Erode District.
6. The Superintendent,
Central Prison,
Coimbatore.
7. The District Collector,
Erode.
8. The Director General of Police,
Mylapore, Chennai 04.
9. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.M.Camyles Gandhi, Advocate, S.R.No.39816

Cr1.A.No.617 of 2015

SV(CO)
CA(24/10/2016)

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