

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM

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

Criminal Appeal No.657 of 2015

1.Arumugam
2.Kicha @ Krishnamoorthi
3.Thangavelu

... Appellants

-Vs-

State
Rep. by Inspector of Police
Roshanai Police Station
Tindivanam
(Crime No.420/2013)

... Respondent

This Criminal Appeal has been preferred to set aside the conviction imposed by judgment dated 16.09.2015 made in S.C.No.48 of 2014 on the file of the Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court) Villupuram, by allowing this appeal.

For Appellants : Mr.M.L.Ramesh

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 appellants are accused 1 to 3 in S.C.No.48 of 2014 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Villupuram. They stood charged for offences under Sections 449, 380, 302 r/w 34 IPC. By judgment dated 16.09.2015, the Trial Court convicted them under all the charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,00/- each, in default to undergo simple imprisonment for one year for the offence under Section 302 IPC; to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.500/- each, in default to undergo simple imprisonment for two months for the offence under Section 449 IPC and to undergo simple imprisonment for 7 years and to pay a sum of Rs.500/- in

default to undergo simple imprisonment for one year for offence under Section 380 IPC. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

The deceased in this case was one Mrs. Minnal. She was residing at Salai Village in Villupuram District. On the night intervening 26.06.2013 and 27.06.2013, the deceased was alone at her house. She was fast asleep. For the purpose of free air, she kept open the main door of the house. At that time, it is stated that all the three accused trespassed into the house of the deceased. The accused 1 and 2 held the deceased and the third accused cut the neck of the deceased with a knife. Then the third accused removed the gold jewels worth Rs.60,000/-. After decamping with these properties, all the three accused fled away from the scene of occurrence. The occurrence was not witnessed by any one. P.W.1, the son of the deceased, was informed by the sister's son of the first accused that her mother was dead. Then P.W.1 rushed to the house of the deceased and found the dead body with injuries and also noticed the missing of gold jewels. He then went to Roshanai Police Station and made a complaint at 8.30 a.m. on 28.06.2013. On receipt of the said complaint, P.W.15, the then Sub-Inspector of Police registered a case in Crime No.420 of 2013 under Sections 380 and 302 IPC. Ex.P1 is the complaint and Ex.P17 is the FIR. He forwarded both the documents to the Court, which were received by the learned Magistrate at 2.45 p.m. on 28.06.2013.

3. The case was taken up for investigation by P.W.16. He proceeded to the place of occurrence and prepared Observation Mahazar and Rough Sketch in the presence of witnesses at 10.00 a.m. He recovered blood stained earth, sample earth and blood stained material objects found in the place of occurrence in the presence of same witnesses under a Mahazar. He came to know that the dead body of the deceased had been taken to the mortuary at Government Medical College Hospital, Mundiampakkam. P.W.16 went there, conducted inquest on the body of the deceased and forwarded the same for post-mortem.

4. P.W.8 - Dr. Gitanjali conducted autopsy on the body of the deceased on 28.06.2013 at 3.45 p.m. She found the following injuries:

"1. An oblique cut injury seen over upper part of right side of neck of size 13 x 7 x 6 cms extending from below right ear to midline of front of neck - 4 cm below the chin - exposing the underlying tissues - cut and contused blood vessels, nerves, muscles and hyoid bone - Right side - greater horn cut and fractured.

2. A transverse cut injury of size 7 x 0.5 x 0.5 cms below injury No.1

3. A transverse scratch abrasions of size 8 cm below injury No.2.

4. Curvilinear abrasions - nail marks, seen over back of left ear over puna - 1.5 cm below - left nossil 1.5 cm - below right nossil - 2 in Nos. - 2 cm each left and right side of the neck - upper part below angle of mandible 1.5 cm - front of neck in the mid line below the left end of cut injury No.1 1.5 cm - supra eternal notch - 1.5 cm

5. Oblique interrupted abrasions - contused of size 7 x 0.5 x 1.5 cm over left side of neck. "

Ex.P11 is the post-mortem certificate and Ex.P12 is her final opinion. She gave opinion that the deceased had died due to shock and haemorrhage due to the injuries found on the body of the deceased.

5. The investigation was thereafter taken up by P.W.17, the successor of P.W.16. During the course of investigation, on 29.06.2013, all the three accused appeared before P.W.6 and gave confessions. But P.W.6 did not reduce the same into writing as spoken by the accused. Instead, he prepared a special report under Ex.P2 and then produced all the three accused before P.W.17 at 8.30 a.m. on 29.06.2013. P.W.17 arrested them and on such arrest, all the three accused gave independent voluntary confessions one after the other. In the said confession made, the first accused disclosed the place where he had hidden the gold jewels. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced M.Os.1 to 12. P.W.17 recovered the same under a Mahazar. P.W.17 then examined many more witnesses, collected medical evidence and examined the doctor. He made a request to Court to forward the material objects for chemical examination. The report revealed that there were human blood stains on all the material objects. On completing the investigation, he laid charge sheet against all the three accused.

6. Based on the above materials, the trial Court framed charges as detailed in the first para 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 17 witnesses were examined and 24 documents were exhibited, besides 19 Material Objects were marked.

7. Out of the said witnesses, P.W.1 has stated that he was informed about the fact that the deceased had been killed. He has further stated about the complaint made by him. He has also identified M.Os.1 to 12, stolen properties. P.W.2 has not stated anything incriminating. P.W.3 is the son-in-law of the deceased. He has spoken about the fact that he went to the hospital and brought the body of the deceased to the village.

P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 has also not stated anything incriminating. P.W.6 has spoken about the oral Extra Judicial Confession given by all the three accused. He has further stated that he produced all the three accused to P.W.17 and on the disclosure statement made to P.W.17 by the first accused, M.Os 1 to 12 were recovered. P.W.7 has spoken about the preparation of Observation Mahazar, rough sketch and also recovery of material objects from the place of occurrence. P.W.8 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.9 has spoken about the medical examination conducted on the material objects. P.W.10 is an important witness for the prosecution. He is a finger print expert. According to him, as requested by P.W.16, on 28.06.2013, he visited the place of occurrence and on a thorough examination, he found three chance finger prints in the almirah of the house, where the occurrence had taken place. Out of the same, according to him, the finger print slips of accused 2 and 3 tallied with one chance finger print found at the place of occurrence. Ex.P16 is his report. P.Ws.11 and 12 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.13 has stated that he handed over the dead body to the doctor for post-mortem as directed by P.W.16. P.W.14 - the daughter of the deceased has spoken only about the missing of the gold jewels. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.16 and 17 have spoken about the investigation done and final report filed.

8. 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 on their side nor marked any document in their favour. Their defence was a total denial.

9. Having considered all the above, the trial Court convicted the all the three accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellants are before this Court with this appeal.

10. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. The learned counsel for the appellants would submit that in this case, the prosecution relies on two circumstances. The first circumstance is that, according to the case of the prosecution, the arrest of all the three accused was made on 29.06.2013 and in pursuance of the disclosure statement made by the first accused, the stolen properties were recovered from his possession. The learned counsel would point out that as a matter of fact, all the three accused surrendered before the

Village Administrative Officer and made independent voluntary confessions. But such confessions were not recorded by P.W.6. He gave only a special report to the Police. The learned counsel would further point out that P.W.1 has admitted that even at the time when the case was registered, all the three accused were in the custody of the Police. Thus, according to the learned counsel, the Extra Judicial Confession said to have been given by the three accused on 29.06.2013 and the subsequent confession, which led to the disclosure of the stolen articles cannot be true.

12. The learned counsel for the appellants would submit that the next circumstance relied on by the prosecution is that P.W.10, visited the scene of occurrence on 28.06.2013 and lifted three chance finger prints and from them, two finger prints tallied with the finger prints of Accused 2 and 3. The learned counsel would submit that there is no evidence that the sample finger prints were taken from these two accused. He would further submit that the finger prints lifted from the place of occurrence were not supplied to the accused. According to the learned counsel, there is no evidence that the chance finger prints were either taken, or that chance finger prints so taken, tallied with the finger prints of Accused 2 and 3. For all these reasons, the learned counsel would submit that the appellants are entitled for acquittal.

13. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, the evidence of P.W.1 that even at the time when the complaint was made, these three accused were in the custody of the Police was only out of inadvertence and therefore, no weightage can be given to the same. He would further submit that though these three accused have given independent voluntary confession one after the other, the Village Administrative Officer has failed to record the same and he only gave a special report recording the same. He would further submit that on the disclosure statement made by the first accused, stolen properties were recovered. So far as the finger print evidence is concerned, the learned Additional Public Prosecutor would submit that it is true that the enlarged photographs of the chance finger prints taken from the place of occurrence were not furnished to the accused. He would further submit that sample finger prints were taken by the Police and they were produced before the Court, but they were omitted to be marked in evidence. On that score, according to the learned Additional Public Prosecutor, the case of the prosecution cannot be rejected.

14. We have considered the above submissions.

15. For the sake of convenience, let us take up the first circumstance regarding chance finger prints taken from the place

of occurrence. P.W.10 has stated in his evidence that he visited the place of occurrence and after thorough search, he lifted three finger prints from the place of occurrence. Out of the three finger prints, one tallied with the deceased. The other two tallied with that of Accused 2 and 3. But unfortunately, the enlarged photographs of these finger prints were not furnished to the accused under Section 207 Cr.P.C. It is stated that after the arrest of the accused, the finger prints of the accused were taken by following the procedure contemplated under the Identification of Prisoners Act. But the Investigating officer has not stated so in his evidence. The learned Public Prosecutor who conducted the trial was not vigilant enough to elicit these important facts and bring the same as evidence on record. The Finger print slips containing the admitted finger prints of the accused have not been marked in evidence. The copies of those documents were also not furnished to the accused. Only the final opinion of P.W.10 has been marked.

16. Thus in our considered view, the accused had not been afforded fair trial, by furnishing copies of documents as mandated under Section 207 Cr.P.C. and by leading sufficient evidence in respect of the chance finger prints taken from the place of occurrence. At the same time, on this flaw committed by the Police and the learned Public Prosecutor, we cannot close our eyes and allow justice to be killed at the very altar of justice. Therefore, to follow the procedure established, as required under Article 21 of the Constitution of India, we intend to remand the matter back to the Trial Court to follow the procedure and to deliver the judgment afresh. So far as the arrest of the accused and the consequential recovery of the material objects are concerned, we do not want to express any opinion at this stage and we keep it open for the trial court to consider the same.

17. We have perused the case diary, which contains the finger print slips of the accused. It is not explained to the Court as to why this was not marked in evidence. We regret to say that even the trial Judge was not vigilant to use his power under Section 311 Cr.PC and Section 165 of the Evidence Act, to bring on record necessary evidence to do justice to the parties. The Trial Judge had acted like a mute spectator without participating in the trial. We are only hopeful that on the case being remanded, the prosecution will evince interest to produce sufficient evidence by following the procedure and the trial Judge shall deliver judgment on fresh appreciation of all evidence.

18. In the result, appeal is allowed and the conviction and sentence imposed on the appellants are set aside. The case in S.C.No.48 of 2014 is remanded back to the file of the Sessions

Court, Magalir Neethi Mandram (Fast Track Mahila Court) Villupuram with the following directions:

i) The prosecution will be at liberty to recall any witness or to summon any witness afresh and examine him.

ii) The documents about which reference has been made herein above shall be furnished to the accused and those documents shall be proved in evidence by examining the necessary witnesses.

iii) The accused will also be at liberty to recall any witness already examined or to summon any witness afresh and to mark any document.

iv) The Trial Court shall appreciate the entire evidence afresh, and deliver judgment, within a period of twelve weeks from the date of receipt of a copy of this judgment.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

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

2.The Judicial Magistrate I, Tindivanam.

3.do thro'The Chief Judicial Magistrate, Tindivanam.

4.The District Collector, Villupuram.

5.The Director General of Police,
Mylapore, Chennai.

6.The Jail Superintendent, Central Prison,
Cuddalore.

7.The Inspector of Police
Roshanai Police Station
Tindivanam

8.The Public Prosecutor
High Court, Chennai.

+1 cc to M/s.V.Rajeswari,advocate,sr.40778

+1 cc to M/s.M.L.Ramesh, advocate,sr.41025.

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