

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.735 of 2015

and

Crl.R.C.No.1155 of 2010

Crl.A.No.735 of 2015

The State rep. by
The Inspector of Police,
Karungalpalayam Police Station,
Erode. (Cr.No.1013 of 2008) .. Appellant / Complainant

- Vs -

Sankar @ Rajsankar .. Respondent / Accused

Prayer:- Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court-I, Erode in S.C.No.170 of 2009 dated 19.08.2010.

For Appellant : Mr.V.M.R.Rajendran
Additional Public Prosecutor

For Respondent : Mr.S.Ashok Kumar
SC for Mr.P.Palaninathan

Crl.R.C.No.1155 of 2010

V.Srinivasan .. Petitioner / P.W.5

- Vs -

1. The State rep. by
The Inspector of Police,
Karungalpalayam Police Station,
Erode.
(Cr.No.1013 of 2008) .. 1st Respondent / Complainant

2. Sankar @ Rajsankar .. 2nd Respondent / Accused

Prayer:- Petition filed under Sections 397 and 401 of the Code of Criminal Procedure against the judgment of acquittal

passed by the learned Additional District and Sessions Judge, Fast Track Court-I, Erode in S.C.No.170 of 2009 dated 19.08.2010.

For Petitioner : Mr.C.S.Saravanan

For Respondent 1 : Mr.V.M.R.Rajendran
Additional Public Prosecutor

For Respondent 2 : Mr.S.Ashok Kumar
SC for Mr.P.Palaninathan

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C O M M O N J U D G M E N T

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

The respondent in CrI.A.No.735 of 2015 and the second respondent in CrI.R.C.No.1155 of 2010 is one and the same person, who is the sole accused in S.C.No.170 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court-I, Erode. He stood charged for offences under Sections 449, 320 and 380 I.P.C. By judgment dated 19.08.2010, the trial Court acquitted him from all the charges. Aggrieved over the same, challenging the acquittal, the State has come up with Criminal Appeal in CrI.A.No.735 of 2015 and the husband of the deceased has come up with Criminal Revision in CrI.R.C.No.1155 of 2010. So far as the criminal revision is concerned, in view of the proviso added to Section 372 Cr.P.C. w.e.f. 31.12.2009, this revision filed on 18.11.2010, is not maintainable and therefore the same is dismissed.

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

2.1. The deceased in this case was one Mrs.Maathangi @ Sujatha. P.W.5 is her husband. The deceased was residing at Karungalpalayam village. On 30.11.2008, there was a festival celebrated in the Mariamman temple at Karungalpalayam. The deity was taken in a procession. The accused also belongs to the same village. In the procession, there was a huge crowd of people. In the crowd, by accident, the accused touched the breast of the deceased. The deceased got wild. She scolded the accused in public which caused embarrassment and humiliation to the accused. This is stated to be the motive for the accused.

2.2. On 01.12.2008, on account of the above motive, the accused went to the house of the deceased when she was alone and killed her by stabbing her with a knife. The occurrence was not witnessed by anyone.

2.3. P.W.5 the husband of the deceased was working as a Surveyor in the District Collector's office in Erode District. P.W.5 and the deceased have a daughter by name Soundarya who

was doing seventh standard during the relevant time of occurrence. Usually, Ms.Soundarya used to go to her school in an Auto. But unfortunately, on 01.12.2008, the said Auto did not turn up. Therefore, P.W.5 took Soundarya in his motorcycle and after dropping her in her school, he went to Collector's office for his duty. In the evening, around 04.15 p.m., from his office, he went to the school, picked up his daughter and then returned to his house around 04.40 p.m. He found the doors of the house closed. On a simple push, it opened. Ms.Soundarya went into the house first followed by P.W.5. On entering into the house, Ms.Soundarya raised alarm stating that the deceased was lying with injuries. He rushed to the toilet of the house, where, to his shock, he found the deceased lying dead with lot of cut injuries on her body. Then, he sent Ms.Soundarya to inform P.W.1 who is his sister. P.W.1 immediately rushed to the house of the deceased. P.Ws.1 and 5 took the deceased to a nearby private hospital. The doctor after examining her declared her dead, not satisfied with the same, P.Ws.1 and 5 took the deceased to the Government hospital. The doctor at the Government Hospital again confirmed that the deceased was no more. Then the body was sent to the mortuary.

2.4. P.W.17, the then Sub Inspector of Police who was on bandobast duty in the temple festival, heard about the occurrence. Immediately, he rushed to the house of the deceased. P.W.1 gave a complaint to P.W.17. On returning to the police station, P.W.17 registered a case in Crime No.1013 of 2008 under Section 302 I.P.C. Ex.P1 is the complaint and Ex.P16 is the F.I.R. He forwarded both the documents to Court and the same was received by the learned Magistrate at 09.00 p.m. on 01.12.2008.

2.5. P.W.18 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. He recovered the bloodstained earth and sample earth from the place of occurrence. He arranged for a photographer to take photos of the place of occurrence. He recovered an Aruvamanai (vegetable cutter) and a knife found at the place of occurrence. On going over to the hospital, from 01.00 p.m. onwards, he conducted inquest on the body of the deceased and forwarded the body for postmortem.

2.6. P.W.15 Dr.Venkatesh conducted autopsy on the body of the deceased on 02.12.2008 at 10.30 a.m. He found the following injuries:

"Injuries: (1) Lacerated injury in front of the scalp 15x4x6 cms in depth (2) Contusion 10x6x4 cm starting from the front of the scalp and extending to the back of the scalp. (3) Contusion on the side of the occipital region (4) Fracture of skull measuring 20x10x15 cms.

(4) Incised wound measuring 6x4x2 cms near the thumb. (5) Fracture on the left side of the skull.

Internal Examination: Heart 300 gms. Right lung 450 gms and Left Lung 400 gms. Hyoid bone intact. Stomach contains undigested food particles. Liver - 1200 gms pale. Spleen - pale. Both kidneys pale. Bladder empty. Brain - 1200 gms and 100 ml of clotted blood present. Spinal Column intact."

Ex.P10 is the postmortem certificate and Ex.P11 is his final opinion. He gave opinion that the deceased died due to shock and hemorrhage due to the injuries found on the body of the deceased. He further opined that the cut injuries on the body of the deceased could have been caused by a knife and the crush injury on the head could have been caused by dropping a grinding stone (M.O.11).

2.7. P.W.18 recovered the bloodstained clothes from the body of the deceased. He examined many more witnesses. The investigation was thereafter continued by his successor P.W.19. When the investigation was in progress, it is alleged that the accused had gone to P.W.11 the Village Administrative Officer on 12.12.2008 at 08.00 a.m. The accused wanted to make a confession voluntarily and after ascertaining that he was voluntarily giving confession, P.W.11 allowed him to confess orally and he in turn reduced the same into writing. Ex.P4 is the said confession. Then, along with his special report, he produced the accused before P.W.19 on 12.12.2008. On such production, P.W.19 arrested the accused.

2.8. While in custody, he gave a voluntarily confession, in which, he disclosed the place where he had hidden two gold thalis, four gold thali balls with yellow thread. He also produced a shirt and a lungi with bloodstains. On returning to the police station, he forwarded the accused to Court for judicial remand and handed over the material objects also to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were bloodstains on all the material objects recovered from the place of occurrence and the clothes recovered from the accused. On completing the investigation, he laid chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined, 23 documents and 18 material objects were marked.

2.10. Out of the said witnesses, P.W.1 is the sister of P.W.5 and sister-in-law of the deceased. She has stated that

the deceased and P.W.5 were living together. On the day of occurrence, on receiving information from the daughter of P.W.5, she rushed to the house of the deceased and she found the deceased lying dead. She has spoken about the complaint made to the police. P.Ws.2 and 3 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4 has stated that he had took the deceased to the hospital along with P.Ws.1 and 5.

2.11. P.W.5 the husband of the deceased has stated that when he returned to the house in the evening by around 04.40 p.m. he found the deceased lying in the house. He has further stated that the yellow thali thread with thali balls and thali were found missing from the body of the deceased. P.W.6 Ms.Soundarya daughter of the deceased has stated that she found the dead body of the deceased when she returned to the house along with P.W.5. at 04.40 p.m. P.W.7 has spoken about the motive for the occurrence. P.W.8 has not stated anything incriminating against the accused. P.W.9 the constable has stated that he took the dead body after the inquest was over and handed over the same to the doctor for postmortem. P.W.10 has spoken about the preparation of observation mahazar and the rough sketch and recovery of the material objects including the grinding stone, knife and aruvamanai (vegetable cutter).

2.12. P.W.11 the Village Administrative Officer has spoken about the extra judicial confession allegedly given by the accused and the subsequent arrest. He has spoken about the recovery of M.Os.6 (Thanga thali and balls) and 7 (yellow thread) from the possession of the accused. P.W.12 the Constable has stated that she assisted the investigating officer. She has further stated that she handed over the dress materials recovered from the body of the deceased after postmortem was over to the Court. P.W.13 has stated that he handed over the F.I.R. and the complaint to the learned Magistrate.

2.13. P.W.14 Dr.Krishnasamy has stated that he was in the C.K.Hospital, which is a private hospital at 05.00 p.m. The deceased was brought to the said hospital for treatment at that time, he found her dead and he accordingly declared her dead. P.W.15 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.16 the Head Clerk of the learned Magistrate Court has stated that he forwarded the material objects to the forensic lab for examination on the orders of the learned Magistrate. P.W.17 has spoken about the registration of the case. P.Ws.18 and 19 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., he denied the same as false. However, he did not choose to examine any witness nor

to mark any document. His defence was a total denial. Having considered all the above, the trial Court acquitted him and therefore the State is before this Court with this appeal.

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

5. This is a case based on circumstantial evidence. The foremost circumstance is that according to the evidence of P.W.5, on 01.02.2008, when P.W.5 and P.W.6 left the house, the deceased was lastly seen alive around 08.00 a.m. Thereafter, at 04.40 p.m when they returned home, they found the deceased lying dead with extensive injuries on the body. According to the doctor who conducted autopsy, these injuries could have been caused by a knife and the injuries on the head could have been caused by a grinding stone. Thus, the medical evidence has established that it was a homicide. From the evidences of P.Ws.5 and 6, it has been established by the prosecution that the homicidal death of the deceased had occurred some time between 08.00 a.m and 04.40 p.m. on 01.12.2008. It is further stated that from the dead body of the deceased the yellow colour thali thread with two gold thali and four thali balls were found missing. But in the complaint, there is no mention about the missing of these material objects. The trial Court has raised doubt on account of the same.

6. Thereafter, it is alleged that the accused surrendered before the Village Administrative Officer on 12.12.2008 and at 08.00 a.m. he made a voluntary confession. The trial Court disbelieved the same. Ex.P4 is the extra judicial confession and Ex.P5 is the special report prepared by the V.A.O. P.W.5 has stated that as it was orally confessed by the accused, P.W.11 in turn, reduced the same into writing in his own handwriting. He has further stated that thereafter, in his own handwriting, he prepared the special report under Ex.P5. The trial Court has compared these two documents and found that they are in two different handwritings.

7. The learned Additional Public Prosecutor would submit that the said exercise done by the Court cannot be appreciated. But we do not find any force at all in the said argument of the learned Additional Public Prosecutor. As per Section 73 of the Indian Evidence Act, the Court has got power to compare the signature or the handwriting. In order to satisfy our judicial conscience, we went through Ex.P4 and Ex.P5, even for a naked eye, without any semblance of doubt, without there being any need for any expertise in the field of handwriting, one can say that these two documents are in two different handwritings. From this fact, the trial Court has disbelieved Ex.P4. Apart from that, the accused had no acquaintance with P.W.11. It is doubtful whether the accused would have chosen a total stranger to confess his guilt. For

these reasons, the trial Court has disbelieved Ex.P4 and consequentially, the trial Court has disbelieved the recoveries of M.Os.6 and 7 also from out of the alleged confession of the accused. The trial Court has doubted the very missing of M.Os.6 and 7 as there is no mention about the same in the F.I.R. The Village Assistant who allegedly attested the extra judicial confession has not been examined. Further though it is stated that he signed the said document, his signature is also not found. For these reasons, the trial Court has disbelieved the case of the prosecution and acquitted the accused.

8. In the case of this nature, where acquittal of an accused is challenged by the State, it is the settled law that even if two views are equally possible, the appellate Court cannot substitute its view in the place of the view taken by the trial Court. Unless the conclusion arrived by the trial Court is perverse, it is not possible to reject the same and to substitute the view of this Court.

9. Here, in this case, for sound reasons, the trial Court has rejected the prosecution case, in which, we do not find any infirmity warranting interference. In such view of the matter, we find no merit at all in this criminal appeal.

10. In the result, both the criminal appeal and the criminal revision are dismissed.

Kua/kk

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court-I, Erode.
2. The District and Sessions Judge,
Erode.
3. The Inspector of Police,
Karungalpalayam Police Station,
Erode.
4. The Judicial Magistrate No.I,
Erode.
5. The Chief Judicial Magistrate,
Erode.

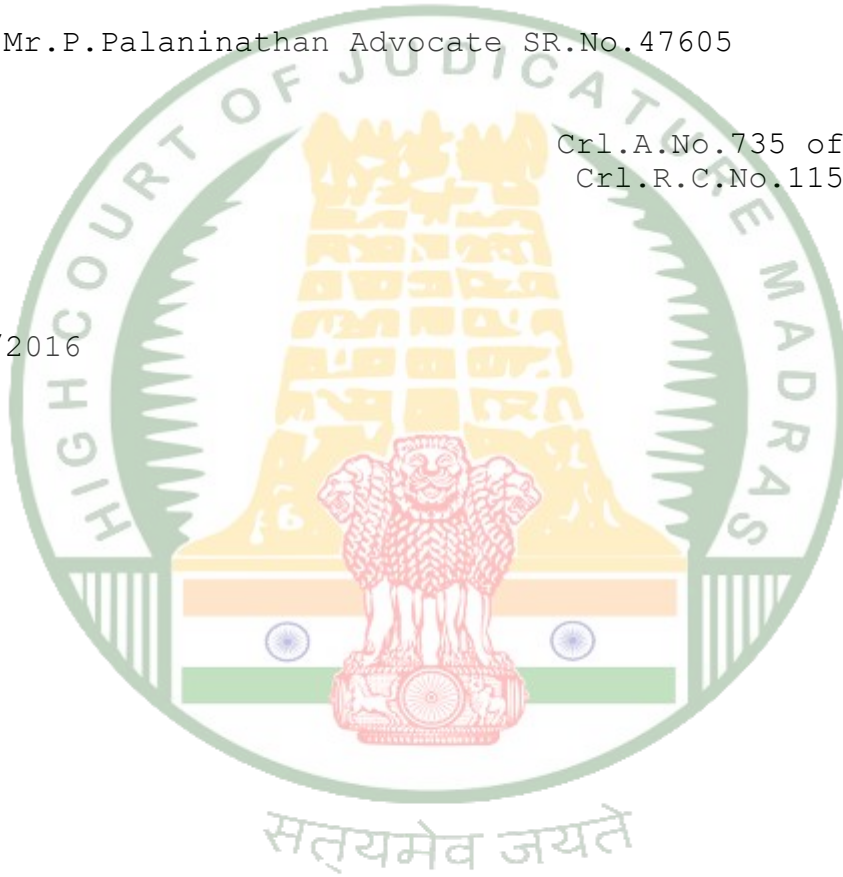
6. The Director General of Police,
Erode.
7. The District Collector,
Erode.
8. The Superintendent of Police,
Erode.
9. The Public Prosecutor,
Madras High Court.

+1 CC Mr.P.Palaninathan Advocate SR.No.47605

Crl.A.No.735 of 2015 and
Crl.R.C.No.1155 of 2010

NRJK

MSI 12/11/2016



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