

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.773/2015

Siva .. Appellant/sole accused

Vs

The State rep by
The Inspector of Police,
Krishnagiri Taluk P.S.,
Krishnagiri District
Crime No.210 of 2013

.. Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Krishnagiri in S.C.No.142 of 2014, dated 26.11.2015.

For Appellant : Mr.A. Sundaravadhanan
For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.142 of 2014 on the file of the learned Sessions Court, Mahila Court, Krishnagiri. He stood charged for the offences under Sections 302 IPC. By judgment dated 26.11.2015, the trial court convicted the accused for the offence punishable under Sec.302 IPC and sentenced to undergo life imprisonment with a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. Challenging the said conviction and sentence, the appellant is 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.Kasthuri. The accused is her husband. After marriage, they were residing at

Jalaagandapuram in Salem Town. Some time after the marriage accused and the deceased started residing with P.W.2, the mother of the deceased at Salem Town. The accused was working in a lorry lath in Krishnagiri, which was owned by P.W.3. The accused had a suspicion that the deceased had developed illicit intimacy with P.W.9 Velu. This has been attributed to be the motive for the occurrence.

(b) It is further alleged that on 25.06.2013 around 2.00 p.m, when the deceased was alone at the house of P.W.2, the accused came to the house, killed her by hitting with stones while she was sleeping on the cot and leaving the dead body on the cot itself left the place of occurrence. The stone, with which the deceased was hit, was lying there. The occurrence was not noticed by anyone.

© It is the further case of the prosecution that P.W.1 Village Administrative Officer was informed by his Assistant at 5.30 p.m on 25.06.2013 that the deceased was lying dead inside the house of P.W.2 with injuries. P.W.1 immediately visited the scene of occurrence and saw the deceased lying with injuries. Therefore, P.W.1 went to Krishnagiri Town Police Station at 8.00 p.m and made a complaint.

(d) P.W.12, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Cr.No.210/2013 for the offence publishable under Sec.302 IPC. Ex.P.1 is the complaint and Ex.P.12 is the First Information Report. Since the assailant was not known then, in Ex.P.1, P.W.1 has mentioned that the deceased has been attacked by an unknown person. The case was taken up for investigation by P.W.13. He visited the place of occurrence at 9.00 p.m on 25.06.2013, prepared Observation Mahazar and a Rough Sketch in the presence of witnesses. He conducted inquest on the body of the deceased and forwarded the same for Post Mortem.

(e) P.W.11 Doctor Dr.K. Uma Maheswari conducted autopsy on the body of the deceased on 26.06.2013 at 1.30 p.m. She found the following injuries on the body of the deceased:

"Regarding the body of a female aged about 22 years, named Mrs.Kasthoori. Requisition received at 1.20 p.m On 26.06.2013 from the Inspector of Police, Krishnagiri with his Lr.No.210/13 u/s 302 IPC dated 26.06.13. Body incharge of Police Constable No.WPC 1184 named Mrs.Venkataramani.

Identification and caste marks

- 1) ABM on the right lat. Aspect of abdomen
- 2) ABM over left thigh
- 3) A wound scar over right lateral aspect of

leg

The body was first seen by the undersigned at 1.30 p.m on 26.06.2013. Its condition then was Rigor Mortis present in all 4 limbs. Post Mortem commenced at 1.30 p.m on 26.06.13. Appearance found at the post-mortem body of a female lying on its back with both upper arms fluxed upwards and cloths blood stained. Eyelids closed. Nose bloody discharge present Mouth and lips partially opened and tongue inside the mouth teeth 8/8 8/8. No discharge from ears. Mammy glands and abdomen normal.

External Injury:

1. A lacerated wound 4x1x bone depth below (Right) eye.
2. Route of nose depression Fracture in the nasal bone.
3. A lacerated wound 5x1x1 cm over (Right) parieto occipital region.

Internal Examination:

1. Opening of thorax - No Fracture over ribs thoracic cavity empty.
2. Heart 300 gms c/s pale heart empty.
3. Lungs 240 & 300 gms (Right left c/s pale)
4. Hyoid Bone - intact
5. Stomach - 300 gms of partially digested food particles seen
6. Liver 1400 gms c/s pale
7. Spleen and Kidney c/s Pale
8. Intestine - distended with gas
9. Bladder empty
10. Uterus c/s pale and empty
11. Opening of head - opening of skull transverse fracture separating frontal bone from the rest of the skull bone fracture of orbit bone (right) side, fracture (right) temporal bone exposing brain tissue.

The following items are numbered and sealed and preserved for chemical analysis:

- a. Stomach and contents
- b. Intestines and contents
- c. Sample of Liver
- d. Kidney
- e. Preservative
- f. Hyoid Bone

g.Vaginal Smear

Concluded at 2.30 p.m on 26.06.13. Death would have occurred 18 to 24 hrs. prior to Autopsy. Result pending for Chemical analysis report.

I FSD Ref.SLM/BIOL/397/B

Ref: 1.PM No.165/13 dt.26.06.13

2. Cr.No.210/13 of KGI TK PS

Vaginal smear for spermatozoa study

Did not detect spermatozoa in the smear of the above two slides.

II. FSD Ref.SLM/TOX.H/890/13

The following item were sent

1. Stomach and contents
2. Intestines and contents
3. Liver
4. Kidney
5. Preservative

The above 5 items were examined out - poison was not detected in any of them.

Death would have occurred due to shock and haemorrhage and sudden cardiopulmonary arrest due to injury of vital organ. Skull Brain (Both intra cranial and extra cranial haemorrhage).

Sd/-

Assistant Surgeon
Govt.Head Quarters Hospital
Krishnagiri

(f) Ex.P.6 is the Postmortem Certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage and due to multiple injuries found on the body of the deceased.

(g) P.W.13 took up the investigation, recovered blood stained clothes from the body of the deceased. He examined few more witnesses and recorded the statement. A Sniffer Dog was brought to the scene of occurrence, but the same proved futile.

(h) P.W.13 arrested the accused at 7.00 p.m on 27.06.2013 at Royakottai Junction. On such arrest, the accused made voluntary confession, in which he disclosed in the presence of witness the place where he had hidden the blood stained clothes. In pursuance of the same, he took the police and witness to the place of occurrence and produced the blood stained clothes. P.W.13 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the accused to Court for judicial

remand and forwarded the material objects to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects, including the stone, recovered from the place of occurrence and also the shirt, recovered from the accused. On completing the investigation, laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges 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 13 witnesses were examined and 14 documents and 8 material objects were also marked.

4. Out of the said witnesses, P.W.1, the Village Administrative Officer had stated that he was informed at 5.30 p.m on 25.06.2013 that a dead body one Kasthuri was found inside the house of P.W.2. He has further spoken about the complaint made by him. He has also spoken about the preparation of the observation mahazar and the rough sketch and the recovery of material objects from the place of occurrence.

5. P.W.2, the mother of the deceased has stated that the accused and the deceased were staying at her house at Jalagandapuram, Krishnagiri District. She has further spoken that on the day of occurrence, early in the morning at 6.00 a.m, she left for her work spot, leaving the deceased in the house. At 5.30 p.m, when she returned, she found the deceased lying dead.

6. P.W.3 is the brother of the deceased. According to him, the accused was working in his lorry lath. He has further stated that on the day of occurrence till 12.00 noon, the accused was working in the lorry shed. P.W.3 left for his house. Again when he returned to work at 3.00 p.m, the accused was also present there.

7. P.W.4 is the sister-in-law of the deceased. She has stated that the deceased told her that on two occasions, the deceased was being harassed by the accused, suspecting her fidelity. P.W.5 is also the relative of the deceased. She has also stated about the same fact, spoken by P.W.4. P.W.6 has spoken about the arrest of the accused and the consequential recovery of blood stained shirt.

8. P.W.7 of Sniffer Dog Squad has stated that he brought the dog at 7.00 p.m on 25.06.2013, but the same proved futile, as no clue could be gathered from the same. P.W.8 has not stated anything incriminating against the accused.

9. P.W.9 is an important witness. He stated that he was working along with the accused as a lorry mechanic. On the date of occurrence, according to him, the accused was very much available in the work shop at 5.30 p.m. He was informed that the deceased was found lying dead at her house. When he went to the house the accused accompanied P.W.9 and he was very much available.

10. P.W.10 has spoken about the post mortem conducted and the final report regarding the cause of death. P.W.11 Scientific Expert from the Forensic Lab has stated about the chemical examination conducted on the Material Objects. P.W.12 has spoken about the registration of the case. P.W.13 has spoken about the investigation done and final report filed.

11. 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 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 with this appeal.

12. 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.

13. This is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubt and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us examine the circumstances projected by the prosecution.

14. The first and foremost circumstance is the fact that the deceased was last seen alive around 6.00 a.m on 25.06.2013 by P.W.2, the mother of the deceased. Around 5.30 p.m, when she returned home, she found the dead body of the deceased lying on the cot. P.W.10 Dr.Uma Maheswari, who conducted autopsy on the body of the deceased, has opined that the death of the deceased was due to shock and hemorrhage and due to multiple injuries on the body of the deceased.

15. From these evidences we are of the view that the

deceased was done to death by someone between 6.00 a.m on 25.06.2013 and 5.30 p.m on the same day. Thus, the death of the deceased was homicidal.

16. Now the question is who are the perpetrators of the crime.

17. As has already been pointed out there is no eyewitness to speak about the occurrence. The prosecution relies only on a few circumstances. The first circumstance is that according to P.W.2, on the day of occurrence at 6.00 a.m, she left for work spot and at that time, the deceased and the accused were alone in the house. It is the case of the prosecution that the accused was not seen until he was arrested on 27.06.2013 at 7.00 p.m. The learned Additional Public Prosecutor submitted that this unnatural conduct of the accused would go to blithely prove that he was the perpetrator of the crime.

18. The learned counsel for the appellant would submit that there is no truth in the allegation and that the accused was also available till 27.06.2013 at 7.00 p.m. The learned counsel would also point out that there is enough evidence to show that the accused was very much available in the work shop along with P.W.9 and on hearing about the occurrence, he rushed to the house along with P.W.9.

19. We have considered the said submissions.

20. P.W.3 the brother of P.W.2 has stated that on the date of occurrence, as usual, at 9.00 a.m, the accused came to the lorry shed and worked till 12.00 noon. P.W.3 left for his house. At that time, the accused was still engaged in work. When P.W.3 returned to workshop at 3.00 p.m. he found that the accused was still working. P.W.9 is a co-worker of the accused. He has stated that the accused was working in the lorry workshop from morning to evening. He has stated that till 5.30 p.m the accused was working along with him and around 5.30 p.m. he was informed that the deceased was found lying dead in the house. P.W.9 therefore rushed to the house of the deceased along with the accused.

21. This conduct of the accused in rushing to the house, is consistent with his plea of innocence. Apart from that, during cross examination of P.W.9, has stated that when he along with the accused rushed to the place of occurrence, the police had already arrived at the place of occurrence. More specifically, he had stated that around 5.15 p.m, the police authorities arrived at the scene of occurrence and they commenced the investigation, but according to the police, the case was registered only at 8.00 p.m. From the evidences of P.W.9 and

P.W.3, it is clearly established that there was no unnatural conduct of the accused and the conduct is consistent only with his innocence.

22. The learned counsel would point out that though it is stated by P.W.2 that the First Information Report was registered only at 8.00 p.m, it is in the evidence of P.W.9 that the police authorities had arrived at the scene of occurrence at 5.15 p.m. Apart from that P.W.7 Head of the Sniffer Dog Squad has stated that at 7.00 p.m, he received information from the police to come to the scene of occurrence along with sniffer dog. Accordingly, he went to the place of occurrence.

23. When the First Information Report was registered at 8.00 p.m, it is not explained to the Court as to how P.W.7 Head of the Sniffer Dog Squad was summoned to arrive at the place of occurrence at 7.00 p.m itself.

24. According to the evidences of P.W.12 and P.W.13 until 8.00 p.m, no information was received about the occurrence in the police station. It is not explained as to what was the earliest information which was received by the police, which made them to come to the place of occurrence at 5.00 p.m. This also creates doubt in the case of the prosecution.

25. Thus, in our considered view the only circumstance, the prosecution relies on is the conduct of the accused, which has not been proved, to be inconsistent, with his plea of innocence. As already stated the accused has conducted himself in a natural manner and has not shown any abnormal behaviour which would only go to reflect his innocence.

27. Under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived of only by following the procedure established by law. The said procedure denotes a fair procedure where the proof of guilt is made beyond reasonable doubts. In other words, the Court cannot afford to convict an individual on mere surmises or suspicion. In the instant case, the prosecution has not even succeeded in establishing a suspicion against the accused. Thus, we hold that the trial Court has convicted the appellant/accused only on mere surmise and therefore the same should not be allowed to sustain. We hold that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubts and therefore the appellant/accused is entitled for acquittal.

28. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court in S.C.No.142 of 2014,

dated 26.11.2015 are set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Krishnagiri Taluk P.S.,
Krishnagiri District
2. The Sessions Judge, Mahila Court, Krishnagiri
3. The Public Prosecutor,
High Court, Chennai.
- 4 The Superintendent
Central Prison, Vellore
- 5 The Judicial magistrate
No.II Krishnagiri
- 6 The Chief Judicial Magistrate,
Krishnagiri

+1cc to Mr.A. Sundaravadhanan, Advocate, S.R.No.72247

vsn(CO)
md(06/01/2017)

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