

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE DR. JUSTICE P. DEVADASS

Criminal Appeal No.328 of 2012

Naravala @ Balamurali

.. Appellant/Accused

Vs.

State rep. by
Inspector of Police
Aathur Police Station
Aathur
Crime No.1424/2008

.. Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.86/2010 by the learned Additional District and Sessions Judge, Fast Track Court No.I, Salem, dated 04.06.2010 .

For Appellant : Mr.M.A.R.Pragash
for Mr.Arokiamaniraj

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by Dr.P.DEVADASS, J.)

The appellant is the sole accused in the Sessions Case in S.C.No.86/2010 on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Salem.

2. On 04.06.2010, the learned Additional Sessions Judge found him guilty under Section 302 IPC and sentenced him to life imprisonment with a fine of Rs.1,00,000/-, with default sentence of one year rigorous imprisonment.

3. The case of the prosecution briefly runs as under:-

(i) PW-2's son and daughter are the deceased and PW-3. The deceased was married to PW-7. Due to some family problem, the deceased was living as a tenant in the house of PW-4. On

30.08.2008, in the said house, she was found dead with multiple injuries.

(ii) PW-1 VAO lodged Ex.P-1 complaint with PW-17 Inspector of Police, Aathur Police Station. He registered this case (Ex.P-12 FIR). He send the express FIR to the Court.

(iii) PW-17, took up his investigation. He visited the scene place. Prepared Ex.P-2 Observation Mahazar in the presence of PW-1 and his Assistant. Drew Ex.P-13 Rough Sketch of the scene place. In the presence of said witnesses, he seized bloodstained sarees (MOs-1 and 2), bloodstained petty-coat (MO-3), bloodstained towel (MO-4), bloodstained cement portion (MO-5) and ordinary cement portion (MO-6) under Ex.P-3 mahazar. In the presence of panchayatdars, he conducted inquest over the dead body [Ex.P.14 inquest report]. He has requested the hospital authorities to conduct post-mortem (Ex.P-5).

(iv) On 31.08.2008, at about 2.30 p.m., at the said hospital, P.W.8 conducted autopsy on the dead body of the deceased and noticed the following injuries :-

(1) Reddish black incised wound 10 x 5 x 5 cm around the right side neck.

(1) Reddish black incised wound 8 x 4 x 4 cm right collar area exposing clavicle.

(2) Reddish black incised wound 12 x 5 x 5 cm outer aspect of right shoulder.

(3) Reddish black incised wound 5 x 3 x 2 cm over aspect of right mid arm.

(4) Reddish black incised wound 5 x 2 x 2 cm vertically over flex aspect of right elbow.

(5) Reddish Black incised wound 6 x 3 x 3 cm vertically inner aspect of right elbow.

(6) Penetrating injury 10 x 4 x peritoneal deep obliquely over the right lumbar region with protruded coils of intestine and part of the stomach.

(7) Reddish black incised wound 2 x 1 x 1 cm over the umbilicus.

(8) Reddish black incised wound 3 x 1 x 1 cm just above and left of umbilicus.

(9) Reddish black incised wound 4 x 1 x 1 cm left lumbar region.

(10) Reddish black incised wound 6 x 1 x 1 cm just above and left of the wound No.(10).

(v) P.W.8 opined that the deceased would appear to have died 48 to 72 hours prior to autopsy due to shock and hemorrhage, due to injury to the vital organs i.e., neck vessels and abdominal vessels, stomach and intestines (Ex.P-4 Postmortem Certificate and Ex.P-8 final opinion).

(vi) PW-18 Inspector continued the investigation. He examined further witnesses and recorded their statement. On 16.12.2008, at about 3 a.m., near MGR Statue, near Poonamallee Bus-stop, in the presence of PW-14 and another person, PW-18 had arrested the accused. In their presence, he recorded his confessional statement (Ex.P-9). Based on that, in their presence, PW-18 recovered soori Knife (MO-7) and iron rod (MO-8), cellphone (MO-9) under Ex.P-10 Mahazar.

(vii) PW-18 obtained call details (Ex.P-11) of cell phone conversation from Airtel official. He obtained the chemical report. Concluding his investigation, PW-17 filed the Final Report for an offence under Section 302 IPC as against the accused in the committal Court.

4. The committal Court furnished to the accused copies under Section 207 Cr.P.C., committed the case to the Court of Sessions, Salem under Section 209 Cr.P.C.

5. Upon committal, the learned Additional Sessions Judge, upon hearing both sides and on consideration of the case-records framed a charge under Section 302 IPC as against the accused. The accused pleaded not guilty to the charge.

6. Prosecution examined PWs-1 to 18, marked Exs.P-1 to 18 and exhibited MOs-1 to 9.

7. The learned Additional Sessions Judge, examined the accused under Section 313 Cr.P.C on the incriminating aspects appearing in the prosecution evidence. He denied his complicity in this case. No defence evidence was let in.

8. The Trial Court, appreciating the evidence, found the accused guilty under Section 302 IPC and sentenced him as stated already in paragraph No.2, supra.

9. The learned counsel for the appellant would contend that this case is based on certain circumstantial evidence. However, none of the circumstance has been proved. PWs-9 and 11 examined to speak about the last seen theory cannot be believed, because, there was a complete silence for about 1-½ months. The cell phone conversation between the accused and the deceased was sought to be projected as an incriminating piece of evidence by examining the official of the Airtel Cell Phone company/PW-16. His evidence cannot be pressed into service since no investigation has been directed towards I.M.F. Number. Further, there is no clear cut evidence establishing that the cell phone seized from the deceased had been used by the deceased by examining a competent witness.

10. The learned counsel for the accused would further contend that Section 27 Evidence Act recovery introduced in this case is a stage managed show. The chain of circumstances found cut everywhere. The prosecution has thoroughly, failed to prove the charge levelled against the accused beyond all reasonable doubts.

11. On the other hand, the learned Additional Public Prosecutor would submit that the evidence of PWs-9, 11 and 16 forms a complete chain without any missing link, unerringly proceeding towards the accused as the author of the crime. In the circumstances, the Trial Court has rightly convicted and sentenced the appellant.

12. We have anxiously considered the arguments of both sides, perused the entire materials on record and the impugned judgment of the Trial Court.

13. Now the question is, whether the charge under Section 302 IPC has been established by the prosecution beyond all reasonable doubts.

14. The dead body of the deceased was found on 30.08.2008 in a rented premises. She died of homicidal violence.

15. This case is based on the circumstantial evidence.

16. It is well settled that in a case based on circumstantial evidence the proved circumstances must form a complete chain, without any missing link, unerringly proceeding towards the only conclusion that the accused is the author of the crime, excluding any hypothesis of innocence in his favour.

17. Now, in this case, the prosecution relies on the following circumstances:

- (i) The deceased was lastly seen alive with the accused;
- (ii) Shortly, thereafter, the accused was seen rushing out from the scene house;
- (iii) Cell phone conversation between the accused and the deceased;
- (iv) Section 27 Evidence Act Recovery.

18. Now, we shall proceed to see, whether the circumstances are proved by the prosecution and whether they form a complete chain, without any missing link, thereby linking the accused with the death of the deceased.

19. The deceased seems to have led a wayward life. PW-7, her husband, was not happy with her. There were quarrel between them. In the circumstance, leaving her child the deceased was living alone in the house belonging to PW-4 as a tenant.

20. PW-9 has been examined to speak that one day prior to the occurrence he had seen the deceased in the company of the accused in an auto at about 11 a.m. In his cross-examination, PW-9 admits that he had seen several time the deceased going along with many persons. PW-9 has stated that he had seen lastly the deceased alive in the company of the accused on 29.08.2008. However, there was complete silence for about 1-½ months from the said date. Only after 1-½ months, PW-9 made the revelation to PW-17, the Investigation Officer. As per the evidence of P.W.9, he had so seen the deceased along with the accused only for few minutes. He kept it in his memory for 1-½ months and recounted the same to PW-17. In the facts and circumstances, he cannot be believed.

21. According to PW-11, on 29.08.2008, at about 3.30 p.m., he had seen the accused rushing out from the scene house. According to PW-11, he had so seen the accused only for the first time.

22. PW-11 kept quiet about this information for about 1-½ months. In the interregnum period, he did not reveal it to anyone. He had disclosed this information to Police only after 1-½ months. In the facts and circumstances, PW-11 does not deserve any implicit reliance on his evidence.

23. The cellphone of accused stated to have been seized. The prosecution seeks to allege that the accused was in constant touch with the deceased through cell phone. Further, two friends of the accused have been examined to speak that the accused told them of his contact with the deceased. They have not seen the deceased at any point of time.

24. The cell phone seized from the deceased belongs to someone. There must be some connecting link to prove that the cell phone belongs to the deceased. There must be evidence to show that it was used by the deceased. Some person, who has close acquaintance with the deceased, must have been examined to speak that the cell phone has been used by the deceased. No such evidence has been let in. In such circumstances, the cell phone conversation cannot be accepted as an incriminating circumstance.

25. So much of information leading to the discovery of a fact is relevant under Section 27 of Evidence Act. Ex.P-9 disclosure statement said to have been recorded by PW-17, Investigation Officer, from the accused. PW-17 has stated that in pursuance of the information in Ex.P-9, the accused had produced MO-1 soori knife and MO-2 iron rod and they were recovered by PW-17. PW-14 has been examined as a mahazar witness to speak about this recovery. A close reading of the evidence of PW-14 would show that he could not able to furnish vital details

as to the said seizures. The defence has made substantial dent in the evidence of PW-14 through the cross-examination. Thus, the Section 27 Evidence Act Recovery is doubtful.

26. Thus, none of the circumstances have been established. They do not form a complete chain unerringly proceeding towards the accused. They were found broken everywhere. Now excluding the said circumstances what remains is suspicion and surmises. They are not substitute for legal proof to record a finding of guilty. Thus, the prosecution has failed to establish the charge framed under Section 302 IPC as against the accused beyond all reasonable doubts.

27. In the result, this Criminal Appeal succeeds and the same is allowed. The conviction recorded and the sentence awarded to the appellant in Sessions Case No.86 of 2010 by the learned Additional Sessions Judge, Fast Track Court No.I, Salem, are set aside. The appellant is acquitted from the charge levelled against him. Fine amount, if paid, shall be refunded to him. The bail bond executed by the appellant shall stand discharged.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

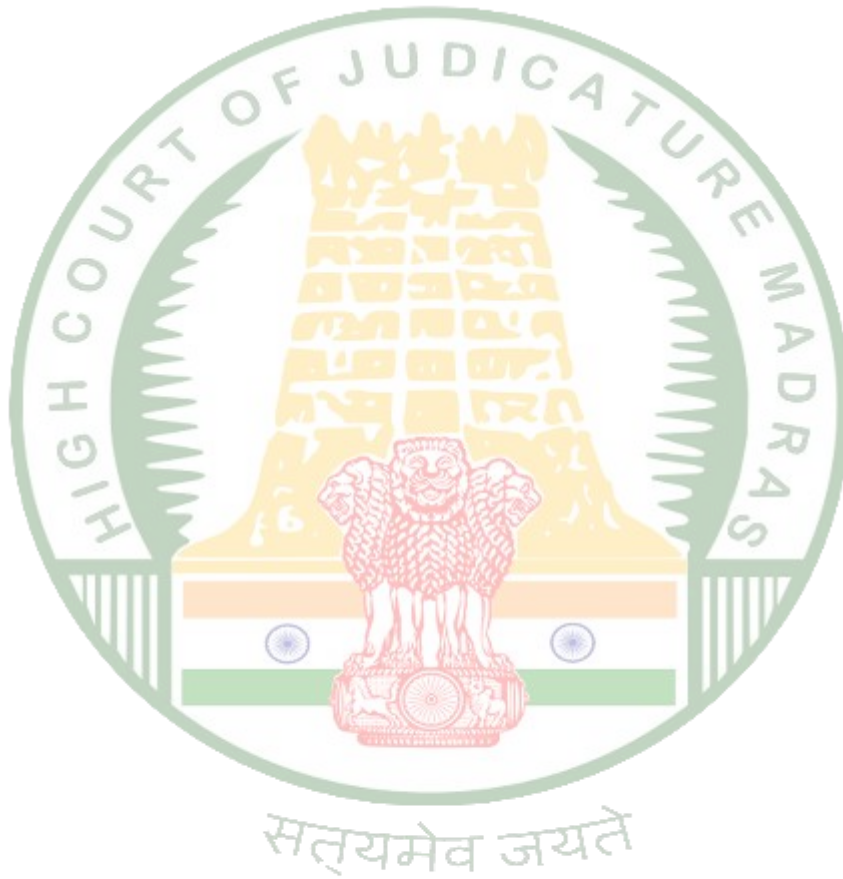
- 1.The Additional Sessions Judge,
Fast Track Court No.I,
Salem.
- 2.-Do- Thro The Principal Sessions Judge,
Salem.
- 3.The Superintendent of Prison,
Central Prison, Kadapa.
- 4.The Inspector of Police
Aathur Police Station
Aathur.
- 5.The Additional Public Prosecutor,
High Court, Madras.

6.The Judicial Magistrate No.1,
Attur.

7.-Do- Thro Chief Judicial Magistrate,
Salem.

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