

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.29/2016

State rep. by the Inspector of Police,
Jolarpet Police Station,
Vellore District.

.. Appellant/Complainant

Vs

Sundar @ Sundaresan

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court, Tirupathur, Vellore District, made in S.C.No.123 of 2008, dated 03.05.2010.

For Appellant : Mr.E.Raja,
Addl. Public Prosecutor

For Respondent : Mr.S.V.Karthikeyan

JUDGMENT

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

This is an appeal against acquittal. The State is the appellant. The respondent was the sole accused in S.C.No.123 of 2008 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Tirupathur, Vellore District. He stood charged for offences under Sections 450, 302 and 309 of IPC. By judgment dated 03.05.2010, the trial court acquitted the respondent from all the charges. Challenging the same, the State has come up with this Criminal Appeal.

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

(a) The deceased in this case was one Mrs.Radhika. P.W.1 is her mother-in-law. P.W.4 is her husband. P.W.4 and the deceased were residing in their own house at Ottappatti Kollakkottai Village. P.W.1 was residing with her husband in a different portion of the said house. It is alleged that the accused had developed illicit intimacy with the deceased. This came to the knowledge of P.W.4. He warned both the accused as well as the deceased. Thereafter, the deceased stopped all her connections with the accused. The accused was enraged over the same.

(b) It is further alleged that on 25.06.2007, around 10.00 a.m., the

deceased was at her house. She was engaged in rolling beedies. At that time, it is alleged that the accused trespassed into the house of the deceased and quarreled with her as to why she had stopped her illicit intimacy with him. In the said quarrel, it is alleged that the accused took out a "Vettukathi" and cut the deceased repeatedly. Then, according to the case of the prosecution, he caused injuries to himself in an attempt to commit suicide. The deceased raised alarm. P.W.1, on hearing the alarm, rushed to the house of the deceased. The house was bolted from inside. She found through the window that the accused was cutting the deceased repeatedly. She raised alarm. The neighbours came to the house of the deceased and they broke open the door of the house of the deceased. The deceased died on the spot. Then, they took the deceased and the accused to the hospital.

(c) P.W.13, the then Inspector of Police, received an unanimous phone call, when he was at Jolarpet Police Station that the deceased had been killed. Immediately, he rushed to the place of occurrence, recorded the statement of P.W.1 and on returning to the police station, he registered a case in Cr.No.598 of 2007 under Section 302 of IPC on 25.06.2007 at 11.45 a.m. against the accused. Ex.P.1 is the complaint and Ex.P.29 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 04.30 p.m. on the same day. Then, he

went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of the witnesses. He recovered blood stained earth and sample earth from the place of occurrence. He arranged for photographs being taken at the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

(d) P.W.9 Dr.Meenakshi conducted autopsy on the body of the deceased on 25.06.2007 at 4.30 p.m. She found the following injuries:

"External appearance:

Injury No.1 : Cut injury left side of neck of measuring size 10 c.mn. x 4 c.m. transversely extending upto the back of the neck.
C5 C6 Cervical vertebra fracture. This is 3 in number.

2. 5 c.m. x 2 c.m. cut injury seen over the left mandible.
3. 10 c.m. x 5 c.m. cut injury seen over the left arms.
4. Cut injury 5 c.m. x 1/2 c.m. middle of the scale.
5. Cut injury 2 x 3 c.m. seen over the left elbow.
6. Cut injury 3 x 3 c.m. over the left eyebrow.
7. Lacerated injury - lower lip.
8. 3 x 2 c.m. cut injury left forearm.
9. 5 x 2 c.m. cut injury right shoulder.

Chest - normal. Lungs-Normal. Heart : Normal. Abdomen

opened. Stomach normal. Kidneys normal. Spleen Normal. Liver normal. Large Intestine, Small Intestine Normal. Bladder Normal. External Genitalia normal."

Ex.P.19 is the Postmortem Certificate. She gave opinion that the death was due to shock and hemorrhage due to the injuries found on the body of the deceased. She further opined that the death of the deceased would have been caused by a weapon like M.O.13.

(e) The accused was taken to the hospital where P.W.2 Dr.Saravanan examined him on 25.06.2007 at 04.10 p.m. He found a cut injury measuring 8 x 4 c.m. horizontally on his neck. He treated him as inpatient. He was discharged from the hospital on 05.07.2007. He opined that the said injury on the accused would have been caused by a cut inflicted by himself. Ex.P.3 is the Accident Register.

(f) P.W.13 during the course of investigation, arrested the accused on 05.07.2007 at 04.45 p.m. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden a shirt. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.10 shirt. P.W.13 recovered the same under a Mahazar. Then, on returning to the police station, he forwarded the accused to court for judicial

remand and handed over the material objects also to court. He made a request to the court to forward the material objects for chemical examination. Thereafter, on completing the investigation, he 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 43 documents and 13 material objects were also marked.

4. Out of the said witnesses, P.W.1, claims to have witnessed the occurrence. She has stated about the complaint made by her to the police. P.W.2 Doctor has spoken about the injuries sustained by the accused and the treatment given to him. P.W.3 Forensic Expert has spoken about the chemical analysis conducted on the material objects. P.W.4 is the husband of the deceased. He did not witness the occurrence. He has spoken to the fact that he heard about the occurrence later on. P.Ws.5 and 6 are the neighbours of the house of the deceased. They have stated that on hearing the alarm raised, when they went to the house of the deceased, it was locked inside. When they broke open the door, they found the deceased lying in a pool of blood. P.W.7

has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence and the recovery of the material objects from the accused. P.W.8 has turned hostile. He has not supported the case of the prosecution in any manner. P.W.9 has spoken about the postmortem conducted and her final opinion regarding cause of death. P.W.10 has spoken about the statements recorded from the witnesses under Section 164 of Cr.P.C. P.W.11 has spoken about the arrest of the accused and the consequential recovery of the material objects on his disclosure statement. P.W.12 has spoken about the chemical examination conducted. P.W.13 has spoken about the registration of the case and the investigation done and the final report filed by him.

5. 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 to mark any document on his side. Having considered all the above, the trial court acquitted the accused. That is how, the State is before this Court with this appeal.

6. We have heard the learned Additional Public Prosecutor appearing for the State, the learned Counsel appearing for the respondent/accused and we have also perused the records carefully.

7. In the instant case, the prosecution relies mainly on the evidence

of P.W.1. P.W.1 in her evidence has stated that she witnessed the entire occurrence. But in her earliest statement made to the police vide Ex.P.1, she has not stated that she witnessed the entire occurrence. Thus, the evidence of P.W.1 is contradicted by Ex.P.1 complaint. There is no explanation on her part as to why she did not disclose at the earliest point of time that she has seen the accused attacking the deceased. Thus, her evidence is of no use to the case of the prosecution. This has been duly appreciated by the trial court.

8. Apart from that, the prosecution relies on the evidence of the neighbours of the deceased, namely P.Ws.2 and 5, who have stated that on hearing the alarm raised, when they went to the house of the deceased, they found the door was locked from inside. They broke open the door and inside the house, they found the deceased lying in a pool of blood. Therefore, their evidence is also of no use to the case of the prosecution.

9. Above all, it is the case of the prosecution that the accused caused injuries to himself in an attempt to commit suicide. Absolutely, there is no evidence for the same. The injury found on the accused has not been explained away by the prosecution. It is the defence that when he and the deceased were alone in the house of the deceased, someone entered into the house, attacked both the deceased and the accused and leaving them in a pool of blood, the

assailant escaped from the scene of occurrence. This possibility has not been ruled out by the prosecution. It is the positive case of the prosecution itself that the accused had illicit intimacy with the deceased. Therefore, as it is contended by the learned Counsel for the accused, the possibility for someone else entering into the house, attacking both the deceased and the accused cannot be ruled out. These aspects have been duly considered by the trial court to acquit the accused. In our considered view, there is no flaw in the said finding of the trial court warranting interference at the hands of this Court. We do not find any perversity in the conclusion arrived at by the trial court. In such view of the matter, we do not find any merit at all in this appeal.

10. In the result, the appeal fails and the same is accordingly dismissed.

[S.N., .J.] [V.B.D.J.,]

03.08.2016

Index : Yes

Internet : Yes
tsi

To

1. The Inspector of Police,
Jolarpet Police Station,
Vellore District.
2. The Additional District and Sessions Judge,
Fast Track Court,
Tirupathur, Vellore District
3. The Public Prosecutor,
High Court, Chennai.

S.NAGAMUTHU,J.
and
V.BHARATHIDASAN, J.
tsi

Judgment in
Crl.A.No.29/2016

03.08.2016

