

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2016

CORAM:

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.114 of 2013

K.Rajendran

... Appellant/Accused

-Vs-

State represented by
The Inspector of Police
Kondalampatti Police Station,
Salem
(Crime No.367 of 1996)

... Respondent/Complainant

This Criminal Appeal has been preferred against the judgment dated 17.2.2012, passed by the I Additional Sessions Judge, Salem, in C.C.No.53 of 2009.

For Appellant : Mr.G.Sundaravaradarajan for
Mr.P.Damodaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in Calendar Case No.53 of 2009, on the file of the First Additional Sessions Judge, Salem. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement, dated 17.2.2012, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo rigorous imprisonment for six months. 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:

(a) The deceased in this case was one Mrs.Chinnappappa. The accused is her husband. They were residing together at Amani Kondalampatti Village. P.W.5 is their son. It is alleged that the accused is a drunkard and he used to quarrel with the

deceased frequently, demanding money from her. It is further alleged that, on 11.3.1996, at about 2.00 a.m., when the deceased was sleeping in her house, the accused dropped a huge stone on her head and caused extensive head injuries. The deceased was taken to the hospital. There, on 19.3.1996 at 8.00 a.m., she succumbed to the injuries. Thus, according to the prosecution, the appellant committed the murder of the deceased.

(b) When the deceased was in the hospital, on receipt of intimation, P.W.9 rushed to the hospital and recorded the statement of P.W.1, as the deceased was in unconscious state. On returning to the police station, he registered a case, in Crime No.367 of 1996, under Section 307 of the Indian Penal Code, against the accused. Ex.P1 is the complaint and Ex.P10 is the First Information Report. He forwarded both the documents to the Court and handed over the case diary to the Inspector of Police for investigation.

(c) One Mr.Sellakumar, the then Inspector of Police took up the case for investigation (but he could not be examined in Court, as he had already passed away). P.W.13 assisted Mr.Sellakumar, the Inspector of Police, in the matter of investigation. P.W.14, the then Inspector of Police, along with P.W.13, had gone to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.15 and P.W.6. He also recovered the blood stained earth and sample earth from the place of occurrence, under a mahazar, in the presence of the same witnesses. Then, he examined many witnesses, including P.W.15 and recorded their statements.

(d) On 19.3.1996, after the death of the deceased at 8.00 a.m., on receipt of the death intimation, P.W.14 altered the case into one under Section 302 of the Indian Penal Code. Ex.P.18 is the Alteration Report. Then, on going to the hospital, he conducted inquest on the body of the deceased and forwarded the body for postmortem. P.W.10, Dr.Vallinayagam, conducted autopsy on the body of the deceased at 3.15 p.m. on 19.3.1996. He found the following injuries.

"INJURIES: (1) A sutured partly healed lacerated injury on the (R) frontal region of scalp 3.5 c.m. above (R) eyebrow, measuring 5.5 cm X 0.5 cm X bone deep.
(2) A sutured wound on (R) temporal region of scalp 3 cm X 1.2 cm X bone deep.
(3) A contusion on (R) temporal region of scalp 5 cm x 3 cm x 0.5 cm deep.
(4) A contusion on (L) temporo-occipital region of scalp 8x6x0.5 cm. deep.
(5) An abrasion 2 cm x 1 cm on outer aspect of (R) eyebrow.

(6) Subdural and sub arachnoid haemorrhages present over both cerebral hemisphere.
(7) Brain Oedematous on cut section.
(8) Fiss med-fracture (R) parietal bone
(9) Laceration (L) temporal of brain
Other injuries: Plemal cavity, peritoneal cavity empty. Pericardium - 10 ml, straw coloured fluid.
Heart: Both chambers contain clotted blood. myocardium normal. coronaries patent.
Liver Spleen, Kidneys - c/s congested.
Lungs: congested oedematous. Stomach: 30 ml greyish yellow fluid present. No smell.
Musa Pale. S. intestine : Yellowish. Chyme present. Uterus : Empty.Normal."

Ex.P11 is the postmortem certificate. The doctor opined that the death was due to the shock and haemorrhage due to the head injuries. P.W.14 made a request to the Court to forward the material objects for chemical examination. Then, he continued the investigation and laid charge-sheet against the accused.

3.Based on the above materials, the trial Court framed a lone charge against the accused, as stated in the first paragraph of this judgement. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined and 16 documents were exhibited, besides 7 Material Objects.

4.Out of the said witnesses, P.Ws.1 to 4 have stated that on the day of occurrence, at about 5.30 a.m., they found the deceased in unconscious state in her house, with injuries on her head and they have taken her to the hospital. P.W.5 is the son of the deceased, who had stated that on the crucial date, he was sleeping and in the morning when he woke up, he found his mother with injuries. P.W.6 has spoken about the observation mahazar prepared and the recovery of material objects from the place of occurrence. P.W.7 has spoken about the recovery of blood stained clothe from the body of the deceased. P.W.8 has spoken about the fact that he forwarded the material objects, on the orders of the Magistrate, for chemical examination. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.11 and 12 have spoken about the treatment given to the deceased and P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the investigation done by the Inspector of Police and the fact that he assisted him. P.W.15 has spoken about the observation mahazar prepared. P.W.14 has spoken about the investigation done by him and the final report filed.

5. 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 did he mark any document on his side. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused under Section 302 of the Indian Penal Code. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

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

8. The learned counsel for the appellant would submit that this is a case where there is absolutely no evidence at all against the appellant and the trial Court has convicted the appellant on mere surmise.

9. We have gone through the entire evidence let in by the prosecution. As we have already pointed out, P.Ws.1 to 4 have stated that they have found the deceased in unconscious state in her house with injuries on her head and they have taken her to the hospital. They have not seen the occurrence. P.W.5 is the son of the deceased. Though he has spoken about the entire occurrence, he has stated that at the time of occurrence, he slept and in the morning when he woke up, he found his mother with injuries. He has been treated as hostile. Except these evidences, there is no other evidence connecting the accused with the crime at all. Though the prosecution has succeeded in establishing that the deceased died due to head injuries, the prosecution has miserably failed to prove that it was this accused, who caused the head injuries, which resulted in the death.

10. Thus, in our considered view, here is a case where absolutely there is no evidence against the accused. As it has been guaranteed under Article 21 of the Constitution of India, the life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court of law, cannot convict an accused on mere surmises and conjectures. In this case, the judgement of the trial Court would reveal that the trial Court has convicted the accused only on mere surmises, which is illegal. In such view of the matter, we find that the conviction and sentence imposed on the appellant, are liable to be set aside and the appellant is entitled to be acquitted.

11.In the result, the appeal is allowed and the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted. The fine amount, if any, paid by the accused/appellant, shall be refunded to him forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Inspector of Police
Kondalampatti Police Station,
Salem.
- 2.The I Additional Sessions Judge, Salem.
3. The Principal Sessions Judge, Salem.
- 4 The Judicial Magistrate No.5, Salem.
5. Thro'The Cheif Judicial Magistrate, Salem.
6. The Superintendent, Central Prison, Coimbatore.
- 7.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

Crl.A.No.114 of 2013

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