

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.415 of 2016

Suresh @ Dhanasekar

..

Appellant

Vs

State rep. By
Inspector of Police,
Sulur Police Station,
Coimbatore,
Crime No.774 of 2004.
Respondent

...

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the order of conviction and sentence imposed on the appellant by the learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.66 of 2011, on 11.12.2014.

For Appellant : Mr.C.D.Sugumar

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

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JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The sole accused in Sessions Case No.66 of 2011, on the file of the learned Additional District and Sessions Court, Coimbatore, is the appellant herein. He stood charged for offences under sections 451, 392, 302 and 201 IPC. After trial, by judgement dated 11.12.2014, the trial Court convicted the accused for the offences under Sections 451, 392, 302 and 201 IPC and sentenced him to undergo (i) Rigorous

Imprisonment for 3 years and to pay a fine of Rs.1000/- in default to undergo Simple Imprisonment for one month for the offence under Section 451 IPC; (ii) Rigorous Imprisonment for 3 years and to pay a fine of Rs.1000/- in default to undergo Simple Imprisonment for one month for the offence under Section 392 IPC; (iii) imprisonment for life and also to pay a fine of Rs.1000/- in default to undergo Simple Imprisonment for 3 months for the offence under Section 302 IPC ; and (iv) Rigorous Imprisonment for 2 years and to pay a fine of Rs.500/- in default to undergo Simple Imprisonment for one month for the offence under Section 201 IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

The deceased, in this case, Suseela, is the mother of P.Ws.1 and 2. Deceased, P.Ws.1 and 2 are residing in the same house in Subbarampalayam in Arasur village. The deceased was looking after a small petty shop adjacent to their house. The accused, in this case, who is a cousin brother of the father-in-law of P.W.1, namely, P.W.4 and the accused were looking after a rabbit farm near the house of the deceased. On 03.10.2004, in the early morning, P.Ws.1 and 2 and their family members went to Palani. The deceased was all alone in the house. At about 4.00 p.m., P.Ws.1 and 2 came back from Palani and found the deceased missing. The petty shop was also found open and they searched for the deceased in vain. Hence on 04.10.2004, they lodged a complaint for women missing. On 05.10.2004, at about 5.00 p.m., P.W.2 found a gunny bag in the rabbit farm of the accused. When, P.W.2 questioned the accused, he said it is food for rabbits, so he came back. On the next date, on 06.10.2004, P.W.4 went to the rabbit farm and smelt foul smell coming from the gunny bag. Hence, he immediately called P.Ws.1 and 2 and when they opened the gunny bag, they found the body of the deceased, in a highly decomposed condition. Based on the saree worn by the deceased, they identified her. At that time, the accused also came there and he, immediately, left the place under the guise of making phone call, but he did not return. Then P.W.1 lodged a complaint before the respondent police and based on the complaint, a case in Crime No.774 of 2004 was registered for the offences under Sections 302 and 201 IPC.

3. P.W.17, Inspector of Police, attached to the respondent police, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.14) and drew a Rough Sketch (Ex.P.17), in the presence of witnesses. He also made arrangements for taking photographs of the dead body of the deceased in the scene of occurrence. He recovered bloodstained earth(Ex.P4) and sample earth (Ex.P.5) and also the gunny bag (M.O.3),

under a Mahazar, Ex.P.2. Then, he conducted inquest on the dead body of the deceased between 9.00 a.m and 1.00 p.m, on 06.10.2004, in the presence of panchayathars and prepared Inquest Report, Ex.P.16. Thereafter, he sent the dead body for postmortem to Government Medical College and Hospital, Coimbatore, through P.W.16, Head Constable.

4. P.W.15, Professor in the Forensic Science Department, Medical College and Hospital, Coimbatore, conducted autopsy on the dead body of the deceased on 06.10.2004, at about 3.15 p.m. and found the following injuries:-

" External injuries

1. Sub conjunctival hemorrhage seen in both eyes.
2. Contusion seen over both lips, tip of the nose, below the chin, left upper chest, Anteromedial aspect of middle of left arm, Antero lateral aspect of left forearm, Lateral aspect of left lower chest and antero lateral aspect of right upper and middle arm.

Internal Injuries:

Sub scalp contusion involving both anterior frontal and midparietal regions of the scalp. Skull intact., brain liquified reddish gray in colour 5 x 4 cms size stone found in the oral cavity "

Ex.P.11 is the postmortem Certificate issued by P.W.15. He also gave a final opinion that the deceased died due to asphyxia, by smothering.

5. P.W.17, Inspector of Police, enquired and recorded the statements of witnesses. Based on the investigation, he altered the case into under Sections 302, 380 and 201 IPC and sent the altered First Information Report, Ex.P.18 to the jurisdictional Magistrate Court. In the meantime, on 11.10.2004, the accused appeared before P.W.10, Village Administrative Officer, Arasur village and voluntarily gave a confession stating that since he was under heavy debt, in order to discharge the debt, he murdered the deceased and also stolen the jewels of the deceased and pledged the same in a pawn broker shop. After recording the statement of the accused, Ex.P.3, P.W.10 produced him, along with his Special Report, Ex.P.4, before P.W.17, Inspector of Police.

6. P.W.17 arrested the accused and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement, he recovered gold chain(M.O.1) and ear studs (M.O.2), belonging to the deceased, which were pledged by the accused in the pawn broker shop run by P.W.13. P.W.17 also recovered a sum of Rs.1050/- (M.O.6) and he also seized the blood stained shirt of the accused (M.O.7). P.W.17 then recorded the statement of the doctor, who conducted postmortem

on the dead body of the deceased. On completion of the investigation, P.W.17 laid charge sheet against the accused.

7. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 17 witnesses were examined and 26 documents and 11 material objects were marked.

8. Out of the witnesses examined, P.W.1 is the son of the deceased. According to him, on 03.10.2004, his entire family left for Palani and the deceased was all alone in the house and when, they returned back, they found the deceased missing. He has further stated that subsequently, on 06.10.2004, they found the dead body of his mother in a gunny bag in the rabbit farm maintained by the accused and at that time, the accused was also present and immediately, he left the place under the guise of making a phone call but he has not returned after that and found the jewels worn by the deceased were missing and hence, he lodged a complaint before the respondent police. He also stated that he identified the gold chain and ear studs (M.Os.1 and 2), which were recovered from the accused, as that of the deceased.

9. P.W.2 is another son of the deceased. He has deposed that he also identified the jewels of the deceased (M.Os.1 and 2). Both P.Ws. 1 and 2 stated that prior to the occurrence, the accused asked some loan from the deceased, but, she refused. P.W.3 is the daughter-in-law of the deceased and wife of P.W.1. It is her evidence that she along with P.Ws.1 and 2, found the body of the deceased in a gunny bag and also identified the gold jewels (M.Os.1 and 2). P.W.4 is the father-in-law of P.W.1. According to him, the accused is his cousin and the accused was running a rabbit farm in his land and on 06.10.2004, he smelt bad smell coming from a gunny bag in the rabbit farm and he along with P.Ws.1 and 2 opened the gunny bag and found the body of the deceased in a highly decomposed condition. P.W.5 is a witness to the Observation Mahazar and also recovery of M.Os.4 and 5. P.W.6 turned hostile. P.W.7 is a financier, from whom the accused borrowed a sum of Rs.5,000/-. According to him, the accused failed to repay the amount and the guarantor (P.W.8) of the accused paid the amount on behalf of the accused and P.W.8, who is the guarantor for the said loan has given evidence on the same line.

10. P.W.9 turned hostile. P.W.10 is the Village Administrative Officer, before whom, the accused appeared on 11.10.2004 and voluntarily gave an extra judicial confession. P.W.11 turned hostile. P.W.12 is a milk vendor. According to him, on the date of occurrence, he went to the house of the deceased for supplying milk and at that time, the deceased was not there and only the accused received the milk. P.W.13 is a Pawn Broker. According to him, on 06.10.2004, the accused

pledged the chain(M.O.1) and ear studs (M.O.2) and received a sum of Rs.6000/-. He also gave receipt (Ex.P.6) for the same. P.W.14, Assistant Director in the Forensic Science Lab, examined the material objects and filed a report. P.W.15 is the professor in the Forensic Science Department, Medical College Hospital, who conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.16, Head Constable, submitted the First Information Report to the Judicial Magistrate Court. P.W.17, Inspector of Police, investigated the case, arrested the accused, recovered the material objects and recorded the statement of the witnesses and laid charge sheet.

11. 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 examine any witness nor mark any documents.

12. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

13. We have heard Mr.C.D.Sugumar, learned counsel for the appellant and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

14. It is a case based on circumstantial evidence. The prosecution relied upon the following circumstances to prove the guilt of the accused. The accused was in need of money. Hence, he had approached the deceased and asked for loan, but, she had refused. P.Ws.1 to 4 have clearly spoken about the same. This is the first circumstance, and the prosecution has proved the same through the evidence of P.Ws 1 to 4.

15. The second circumstance relied upon by the prosecution is the conduct of the accused. The deceased was found missing from 03.10.2004. From the evidence adduced, on 05.10.2004, when P.Ws.1 and 2 smelt a bad smell coming from the gunny bag found in the rabbit farm maintained by the accused and questioned the accused, he simply said that it was food for rabbits. On 06.10.2004, when P.W.4 smelt a bad smell coming from the gunny bag, he, along with P.Ws.1 and 2, had opened the gunny bag and found the dead body of the deceased. At that time, the accused was also present there, but, immediately, he left the place and was absconding thereafter. Since the dead body was found in the gunny bag in the rabbit farm maintained by the accused, which was in the exclusive knowledge of the accused, he is bound to explain the same. But, there is no explanation from the accused. Apart from that he was also absconding from the place after the body was found.

16. The third circumstance relied upon by the prosecution is the extra judicial confession given by the accused. It is the evidence of P.W.10, Village Administrative Officer, on 11.10.2004, the accused himself appeared before him and voluntarily gave a confession admitting the guilt. P.W.10 has recorded his statement and obtained his signature and along with his Special Report, he produced the accused before the Investigating Officer. P.W.17 arrested the accused and on such arrest, he has voluntarily given a confession stating that he has pledged the stolen jewels in the pawn broker shop, owned by P.W.13. Based on the disclosure statement, P.W.17 has recovered the chain (M.O.1), Ear studs (M.O.2) . Those jewels have also been identified by P.Ws.1,2 and 3 as that of the deceased. It is an yet another circumstance relied upon by the prosecution and proved by it.

17. So far as the extra judicial confession is concerned, the accused has voluntarily gave a confession before the Village Administrative Officer admitting his guilt and it is also corroborated by the recovery of stolen articles as per the disclosure statement made by the accused. Hence, there is no reason to disbelieve the extra judicial confession.

18. The next strong circumstance is recovery of stolen articles from the accused. The stolen articles, belonged to the deceased, were found in possession of the accused, immediately after the occurrence and he alone pledged the jewels in the pawn broker shop, owned by P.W.13, which were recovered based on the disclosure statement of the accused. Hence, it could be presumed under Section 114(a) of the Evidence Act that it is only this accused who has stolen the jewels of the deceased and also committed murder. Even though it is a rebuttable presumption, the accused has not given any explanation to rebut the presumption for the possession of the stolen articles. Hence, in our considered view, the prosecution has proved the chain of circumstances, unerringly pointing the guilt of the accused. Hence, we find no merit in the appeal and accordingly, it is liable to be dismissed.

19. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. It is reported that appellant is in jail. Appellant is directed to undergo the remaining period of sentence as imposed by the trial Court.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The I Additional District and Sessions Judge,
Coimbatore.

2.Thro The Principal District Judge, Coimbatore

3.The Judicial Magistrate, Palladam.

3a.-do-thro The Chief Judicial Magistrate, Coimbatore

4.The Inspector of Police, sulur Police Station, Coimbatore

5.The Superintendent, Central Prison, Coimbatore

6.The Director General of Police, Mylapore, Chennai-4

7.The Superintendent of Police, Coimbatore District

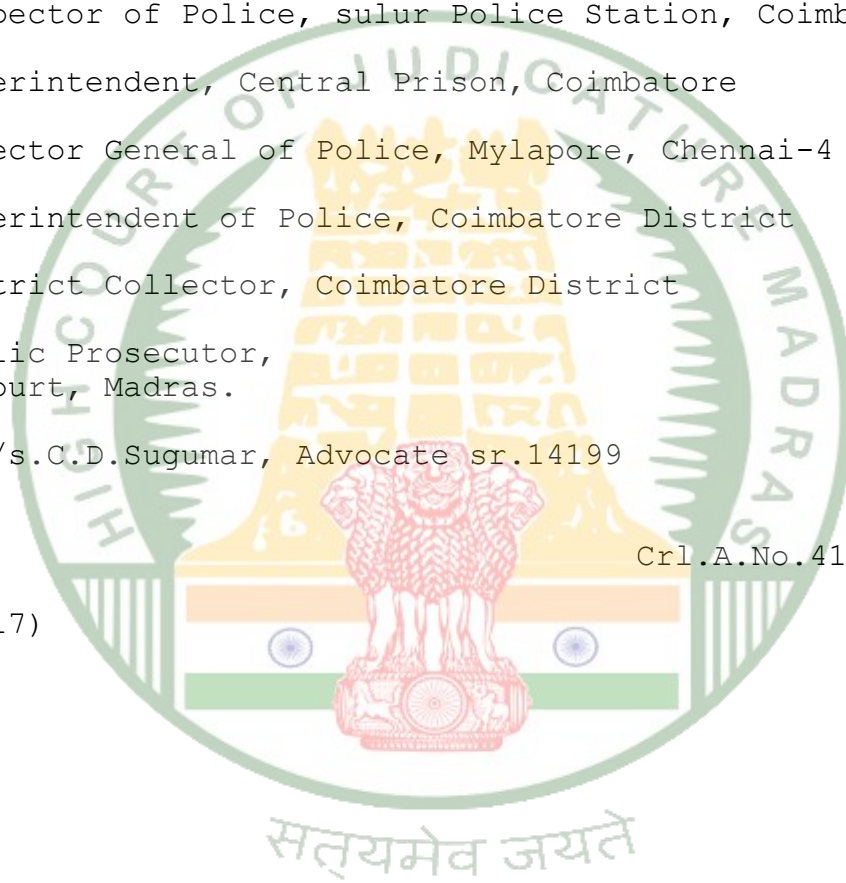
8.The District Collector, Coimbatore District

9.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.C.D.Sugumar, Advocate sr.14199

Cr1.A.No.415 of 2016

gm1 (co)
ss (9/2/2017)



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