

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.09.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Criminal Appeal No.442 of 2016

Meganathan

.. Appellant

Vs.

State by Inspector of Police
Gobichettypalayam Police Station
Erode District

.. respondent

Prayer: CRIMINAL APPEAL filed under section 374 of Cr.P.C. against the judgment dated 25.6.2015 passed in S.C.No.58 of 2014 on the file of Sessions Court, (Magalir Neethimandram (Magalir Fast Track Court), Erode, Erode District.

For Appellant : Mr.M.Purushothaman

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

JUDGMENT

*(Judgment of the Court was delivered by
A.SELVAM, J)*

Challenge in this Criminal Appeal is to the convictions and sentences dated 25.6.2015 passed in Sessions Case No.58 of 2014 by the District and Sessions Court/Mahilar Neethimandram (Magalir Fast Track

Court), Erode.

2. The case of the prosecution is that the deceased Kalamani is the wife of one Perumal. Both the deceased and accused by name Meganathan are having illicit intimacy for a period of 12 years and prior to 6 months from the date of occurrence, the deceased has abnegated the alleged relationship between her and accused and subsequently, she developed new illicit intimacy with one Gopal. Having enraged at the conduct of the deceased, with an intention to murder her, on 26.11.2013 at about 3 p.m, the accused directed the deceased to come to an Irrigation Channel, which situates near the graveyard in Gopichettipalayam and accordingly, the deceased has gone there. The accused has questioned the subsequent conduct of the deceased. Since the deceased has failed to concede the advice as well as demand of the accused, the accused has jugulated the deceased by using a towel and also stabbed her by using a knife and due to his overtacts, she passed away. After knowing the fact that she passed away, the accused has placed the dead body in water with a view to screen evidence.

3. After occurrence, the accused has voluntarily met the Village Administrative Officer by name Saravana Kumar (P.W.1) and given an extra-judicial confession and the same has been recorded by P.W.1. On the basis of alleged extra-judicial confession of the accused, P.W.1 has prepared a report and subsequently handed over to the concerned Sub Inspector of Police and a case has been registered in Crime No.906 of 2013. The extra-judicial confession alleged to have been given by the accused has been marked as Ex.P.1 and the complaint given by P.W.1 has been marked as Ex.P.2.

4. On receipt of Exs.P.1 and P.2, the investigating officer, viz., P.W.12 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, P.W.6/Dr.Thangadurai has conducted postmortem and he found the following external and internal injuries:

"External Examination:

Partially decomposed with peeling of the epidermis;
maggots seen; Lacerated wound in the anterior abdominal

wall 15x4x3 cm with risceration of abdominal organs. Eyelids opened; nose and mouth forthy discharge, tongue-protuded out; all the internal organs-partially decomposed; hyoid - preserved. Stomach-empty. Uterus -empty. No fracture of skull bones. Brain-liquified. Hyoid bone-preserved and sent for analysis."

The Postmortem Certificate has been marked as Ex.P.6.

5. The Investigating Officer, viz., P.W.12 has continued investigation and after his transfer, his successor in office, viz., P.W.13 has continued investigation and after completing the same, laid a final report on the file of Judicial Magistrate No.1, Gobichettipalayam and the same has been taken on file in P.R.C.No.4 of 2014.

6. The Judicial Magistrate No.1, Gobichettipalayam, after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Erode Division and the same has been taken on file in Sessions Case No.58 of 2014 and subsequently made over to the

file of the trial court.

7. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed the first charge against the accused under Section 302, second charge against him under section 201 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

8. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exhibits P.1 to P.16 and Material Objects 1 to 8 have been marked.

9. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, D.W.1 has been examined and Exs.D.1 and D.2 have been marked.

10. The trial court, after hearing arguments of both sides and also after perpending the evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo life Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. The trial court has also found him guilty under section 201 of the Indian Penal Code and sentenced him to undergo 7 years rigorous imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

11. The sum and substance of the case of the prosecution is that the deceased Kalamani is the wife of one Perumal, who has been examined as P.W.7. Both the accused and deceased have had illicit intimacy with each other for a period of 12 years and prior to six months from the date of occurrence, the deceased has deserted the accused and developed new illicit intimacy with one Gopal. Having enraged at

the conduct of the deceased, with an intention to murder her, on 26.11.2013 at about 3 p.m., the accused has directed her to come to the place of occurrence and also asked her to avoid the illicit intimacy with Gopal, but the deceased has told him that she is not ready to abide the request made by the accused. Under such circumstances, the accused by using his towel has jugulated her and also attacked her by using a knife and after knowing the fact that she passed away, he placed the dead body into Water so as to screen evidence.

12. The case of the prosecution can be vivisected as follows:

- (i) illicit intimacy between the accused and deceased;
- (ii) circumstantial evidence.

13. The learned counsel appearing for the appellant/accused has raised the following points so as to supplant the convictions and sentences passed against the appellant/accused.

- (i) In the instant case, no eye witnesses have been examined so as to prove the factum of occurrence.

(ii) The husband of the deceased has been examined as P.W.7 and her mother has been examined as P.W.4, but they have not preferred any complaint with regard to missing of the deceased and also with regard to occurrence.

(iii) On the side of the prosecution, the persons, namely Vadivel and Mathi have been examined as P.Ws.3 and 5 and P.W.5 has stated that at about 1.30 p.m., he has seen both the accused and deceased in the place of occurrence, whereas P.W.3 has not stated the specific time in his evidence. Further, in Ex.P.1, the confession alleged to have been given by the accused, no time has been mentioned.

(iv) In Ex.P.6, Postmortem Certificate, the condition of dead body has been clearly mentioned and there is no possibility for identifying the same.

(v) The alleged new paramour of the deceased by name Gopal has not been examined.

(vi) In the instant case, no proper/acceptable identification of the dead body has been done on the side of the

prosecution.

14. In order to controvert the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has sparingly contended that in the instant case, plenitude of evidence is available on the side of the prosecution for the purpose of proving that the deceased and accused have had illicit intimacy with each other and further replete evidence is available in the form of circumstantial evidence for the purpose of proving that prior to occurrence, both the accused and deceased have been seen together in the place of occurrence and the trial court, after considering the overwhelming evidence available on record, has rightly invited convictions and sentences against the appellant/accused and therefore, the convictions and sentences passed by the trial court do not warrant interference.

15. The learned counsel appearing for the appellant/accused has drawn the attention of the Court to the following decisions:

(i) In **2003 (10) CTCOL 158** (Pachaimuthu vs. State rep.by

Inspector of Police), in paragraph No.21, the Division Bench of this Court has observed as follows:

"21. The last seen theory could be well made applicable, if the deceased and the accused were seen together, in a closed room or in a closed house, or fenced area, where others had no entry or in other words others' entry was prohibited or ruled out. Then only, unhesitatingly last seen theory could be made applicable, on the presumption that both were seen together alive at some point of time and later on one is dead and another is absconding; and under that circumstances, absconding person might have committed the crime. This kind of situation or materials are not available in this case. There are very many possibilities for the access of others also to the scene of crime. No one could have committed this crime, except the accused, is also not ruled out. As aforementioned, the accused and the deceased were seen together, after the death of the deceased, the accused absconded, also not proved to our satisfaction. Therefore, on the presumption, since the accused alone was with the deceased lastly, convicting this accused, as did by the trial court, in our considered opinion, is beyond our

comprehension. The apex court of this land, repeatedly held that if a conviction is to be sustained, there should be no loose end and every event or circumstance should be linked together without giving any crack and if the chain of circumstance is snapped, at one point, the convicting the accused is unsafe, and the benefit fo doubt should be given to him. All the circumstances relied on by the prosecution are proved to be unworthy of credence, and the reasons assigned by the trial court for convicting the accused also not based on sound judicial reasoning. As rightly pointed out by the trial court, the investigation is shabby, bereft of particulars and there are number of loopholes requiring cementing. The admitted position being so, many doubt had arisen automatically, in our minds about the involvement of the accused, for which, we are unable to find out any answer, because of the materially inconsistent, evidence available on record, having mutual contradictions, omissions, etc."

(ii) In **(2008) 3 SCC 210** (Sattatiya alias Satish Rajanna Kartalla vs. State of Maharashtra), the Hon'ble Supreme Court in paragraph No.26 has observed as follows:

"26. The next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal or three dates, ie. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of "Ganesh Bhuvan" from which clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also casts serious doubt on the genuineness and bona fides of recovery of clothes. The recovery of half blade from the roadside from beneath the wooden board in front of "Ganesh Bhuvan" is also not convincing. Undisputably, the

place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially denied by the fact that even though as per the chemical examiner's report the bloodstains found on the shirt, pants and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and the High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human bloodstains on the clothes of the accused and half blade were sufficient to link him with the murder."

16. It is true that the evidence given with regard to last seen theory has to be taken into consideration on the basis of facts and circumstances of a given case. Likewise if a material object has been seized in an open place, the Court need not give much importance.

17. In the instant case, as adverted to earlier, the entire case of

the prosecution rests upon two aspects.

18. The first and foremost aspect is that prior to occurrence, for a period of 12 years, both the accused and deceased have had illicit intimacy with each other and prior to 6 months from the date of occurrence, the deceased has severed her relationship from the accused and having enraged at her conduct, the accused has committed the crime.

19. For the purpose of proving the first aspect, on the side of the prosecution, the mother of the deceased has been examined as P.W.4 and husband of the deceased has been examined as P.W.7 and one Maran, who is none other than the junior paternal uncle of the deceased has been examined as P.W.8. All of them have consistently stated to the effect that the deceased has had illicit intimacy with the accused. Apart from their evidence, on the side of the prosecution, Ex.P.1, Extra Judicial confession statement has been filed, wherein also it has been explicitly stated to the effect that the accused has had illicit

intimacy with the deceased.

20. Even assuming without conceding that Ex.P.1 is a weak piece of evidence, the Court cannot belittle the evidence given by mother as well as husband of the deceased and their specific evidence is that prior to occurrence, both the accused and deceased have had illicit intimacy with each other. Therefore, the first aspect, on which the case of the prosecution rests, has been clearly proved.

21. As rightly pointed out on the side of the accused, in the instant case, no eye witnesses are available for the purpose of connecting the accused with the crime, but on the side of the prosecution, one Vadivel and Mathi @ Gunamathi have been examined as P.Ws.3 and 5 and their specific evidence is that on the date of occurrence, they have seen both the accused and deceased in the place of occurrence.

22. In fact, this Court has analyzed the entire evidence given by P.Ws.3 and 5 and ultimately found that even a suggestion has not been put to them with regard to motive. Under the said circumstances, the

entire evidence given by P.Ws.3 and 5 can be accepted. Since P.Ws.3 and 5 have given clear evidence to the effect that prior to occurrence, both of them have seen the accused as well as deceased in the place of occurrence, this Court is of the view that the second aspect of the matter has also been proved on the side of the prosecution.

23. The first and foremost point raised on the side of the appellant/accused is that in the instant case no eye witnesses have been examined.

24. It is true that no eye witnesses have been examined for the purpose of proving the alleged crime of the accused. However, on the side of the prosecution, enormous evidence is available for the purpose of proving the alleged illicit intimacy between the accused and deceased and last seen theory. Under such circumstances, the first and foremost point advanced on the side of the appellant/accused is of no use.

25. The second point urged on the side of the appellant/accused is that even though P.Ws.4 and 7 are nothing but mother and husband of

the deceased, they have not preferred any complaint.

26. It is true that they have not preferred any complaint with regard to missing of the deceased or the alleged crime. However, the Police have set the law in motion on the basis of Exs.P.1 and P.2. Simply because P.Ws.4 and 7 have not preferred any complaint, that does not mean that the entire case of the prosecution is unbelievable.

27. The third contention put forth on the side of the appellant/accused is that the specific evidence given by P.W.5 is that he has seen both the deceased and accused at about 1.30 p.m., whereas no time has been mentioned by P.W.3, the alleged last seen witness. Even though P.W.5 has given a specific time and P.W.3 has not mentioned about time, it does not militate the case of the prosecution.

28. The fourth contention put forth on the side of the appellant/accused is that in Ex.P.6, the Postmortem Certificate, the condition of the body has been mentioned and therefore no witness

could identify the deceased properly.

29. It is true that the dead body of the deceased has been recovered in decomposed position. Even P.W.4, mother of the deceased has given a specific evidence to the effect that the entire dead body has been covered by a cloth and she has only seen a hand, but at the same time P.W.7 has given a clear cut evidence to the effect that he identified the jacket as well as saree worn by the deceased at the time of missing. The evidence given by P.W.7 has really lent support to the case of the prosecution with regard to identification.

30. The fifth point urged on the side of the appellant/accused is that the prosecution has failed to examine the new paramour of the accused, by name Gopal.

31. The specific case of the prosecution is that both the accused and deceased have had illicit intimacy for a period of twelve years and prior to six months from the date of occurrence, she severed her relationship with the accused and subsequently developed new illicit

intimacy with one Gopal.

32. It is true that on the side of the prosecution, the said Gopal has not been examined. However, for the purpose of proving the alleged illicit intimacy between the accused and deceased, as pointed out earlier, replete evidence is available on the side of the prosecution. Further, examination of Gopal does not arise in this case. Under such circumstances, the last point urged on the side of the appellant/accused is also sans merit.

33. Even at the risk of repetition, the Court would like to narrate that in the instant case, for the purpose of proving the alleged illicit intimacy between the accused and deceased, enormous evidence is available on the side of the prosecution and also for the purpose of proving the last seen theory on the side of the prosecution, uncontroverted evidence is available by way of examining P.Ws.3 and 5. Under such circumstances, the prosecution has clinchingly proved the guilt of the accused punishable under sections 302 and 201 of the Indian

Penal Code. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/accused and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this **Criminal Appeal is dismissed.** The convictions and sentences dated 25.6.2015 passed against the appellant/accused in Sessions Case No.58 of 2014 by the trial court are confirmed.

Index:Yes/No
ajr

(A.S.,J.) (P.K.,J)
16.09.2016.

To

1. Sessions Court,
(Magalir Neethimandram (Magalir Fast Track Court),
Erode, Erode District.
2. Inspector of Police
Gobichettypalayam Police Station
Erode District
3. The Public Prosecutor
High Court, Madras.

**A.SELVAM,J.
AND
P.KALAIYARASAN,J.**

ajr

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