

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2016

CORAM:

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

Criminal Appeal No.443 of 2016

Vanitha

.. Appellant/Accused

Vs.

State by:

The Inspector of Police
Annamalai Nagar Police Station
Cuddalore District
(Cr.No.205/2014)

.. Respondent/Complainant

Prayer: CRIMINAL APPEAL filed under section 374(2) of Cr.P.C. against the order dated 23.3.2016 passed in S.C.No.287 of 2014 on the file of II Additional District and Sessions Court, Chidambaram.

For Appellant : Mr.A.Arasu Ganesan

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 conviction and sentence dated 23.03.2016 passed in Sessions Case No.287 of 2014 by the Additional District and Sessions Court, Chidambaram.

2. The case of the prosecution is that at the time of occurrence, the deceased, viz., Ganesan has served as Sub Inspector of Police in Annamalai Nagar Police Station. During tenure of his service, the accused, by name, Vanitha has had acquaintance with him and with an intention to marry the deceased, she divorced her husband and very often both of them have used to live as husband and wife in the house of the deceased. On 9.7.2014, the deceased has married one Sathya.

After knowing the factum of marriage, with an intention to murder the deceased, on 21.7.2014, the accused has come to the house of the deceased and on 22.7.2014, at about 20.00 hours, the accused has impelled the deceased to consume liquor and accordingly, he has taken the same. Taking advantage of sozzle mood of the deceased, she placed him on a cot and subsequently by using a knife, she attacked him indiscriminately and due to her overtacts, he passed away.

3. After occurrence, one Govindasami (P.W.1) has given a complaint to the Sub Inspector of Police (P.W.18) and the same has been registered in Crime No.205 of 2014. The complaint alleged to have been given by him has been marked as Ex.P.1.

4. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.24, has taken up investigation, examined the connected witnesses and also collected relevant materials. The Investigating Officer has also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Abirami (P.W.14) has conducted Post Mortem and She found the following external and internal injuries:-

"External Injuries:-

- (i) 6 x 3 x 4cm cut injury rt.side of chin exposing mandible
- (ii) 3 x 1 x 2 cm cut injury at junction of chin & neck exposing neck muscle
- (iii) 8 x 4 x 5 cm cut injury on center of neck extending from midline of neck towards rt.shoulder exposing clavicle. Muscles seen exposed & major vessels of the neck cut.
- (iv) 12 x 5 x 10 cm cut injury over rt.side of neck
- (v) 12 x 4 x 10 cm cut injury below injury no.4
- (vi) 7 x 5 x 4cm cut injury over manubrium of sternum
- (vii) 13 x 7 x 8 cm cut injury below rt.shoulder
- (viii) 6 x 3 x 7 cm laceration above injury No.7
- (ix) 19 x 7 x bone depth (right shoulder) cut injury (humerus bone exposed)
- (x) 4 x 1 x 2cm cut injury rt.upper arm (upper region 1/3)
- (xi) Lt.Hand: 3rd, 4th, 5th fingers cut & broken. Index finger amputated
- (xii) cut injury 6 x 1 x 2 cm between ring finger & dorsum of hand
- (xiii) cut injury 9 x 1 x 3 cm between the

finger and dorsum of hand Rt side of neck:

- (xiv) 7 x 2 x 4 cm horizontal cut injury
- (xv) 6 x 1 x 2 cm horizontal cut injury below rt. ear -prone position
- (xvi) 17 x 4 x 4 cm cut injury extending from about 5 cm below nape of neck
- (xvii) 3 x 1/2 x 2 cm cut injury -three in number over lt. shoulder
- (xviii) 10 x 3 x 3 cm cut injury from midline of neck to rt. side of neck

Internal examination:

Upper end of sternum cut. Thorax cavity filled with blood. Ribs intact. Heart intact. pale, chambers empty, Lungs- intact, congested, liver, kidney, spleen, intestine pale, intact, stomach-intact, pale, filled with dark brown fluid about 200ml. Hyoid bone preserved. Bladder intact, empty pelvis intact. skull intact. Brain, membranes-pale"

The Post Mortem Certificate has been marked as Ex.P.8.

5. The Investigating Officer has conducted further investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court No.I, Chidambaram and the same has been taken on file in P.R.C.No.26 of 2014.

6. The Judicial Magistrate No.1, Chidambaram, after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Cuddalore Division and the same has been taken on file in Sessions Case No.287 of 2014 and subsequently made over to the trial court.

7. The trial court, after hearing arguments of both sides and upon perusing relevant documents, has framed a charge against the accused under Section 302 of the IPC and the same has been read over and explained to her. The accused has denied the charge and claimed to be tried.

8. On the side of the prosecution, P.Ws.1 to 24 have been examined and Exhibits P.1 to P.22 and Material Objects 1 to 15 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 her, she denied her complicity in the crime. No oral and documentary evidence have

been adduced on the side of the accused.

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 her to undergo life Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

11. The consistent case put forth on the side of the prosecution is that during the relevant period, the deceased, viz., Ganesan has served as Sub Inspector of Police in Annamalai Nagar Police Station. The accused has had acquainted with him and both of them have used to live as husband and wife. Considering the illicit intimacy of the accused with the deceased, with an intention to marry him, she divorced her husband. On 9.7.2014, the deceased has married one Sathya and after knowing the factum of marriage, with an intention to murder him, on 21.7.2014, she has come to the house of the deceased and made him to consume liquor and on 22.7.2014, at about 20.00 hours, while the deceased has been in a sozzle mood, she attacked him by using a knife indiscriminately and due to her overtacts, he passed away.

12. Even though on the side of the prosecution, P.Ws.1 to 24 have been examined, no direct/eye witness is available in respect of occurrence. The entire case of the prosecution is based upon circumstantial evidence. Since the entire case of the prosecution is based upon circumstantial evidence, there shall not be any missing link in the evidence adduced on the side of the prosecution and every link has to point out towards the accused.

13. The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the conviction and sentence passed by the trial court:

(i) There is no eye witness so as to connect the accused with the crime.

(ii) The specific evidence given by P.W.1 is that after reaching the place of occurrence, immediately he has not informed to the police nor his son has informed.

(iii) Since the police have not identified the accused, the service of sniffer dog has been utilized.

(iv) Absolutely, there is no evidence with regard to alleged illicit intimacy between the accused and deceased.

(v) The specific case of the prosecution is that the accused

is said to have given confession and the same is nothing but a weak piece of evidence and the same cannot be relied upon.

14. In order to controvert the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor appearing for the respondent has equally contended that in the instant case, both P.Ws.1 and 2 have seen the accused on the date of occurrence near the house of the deceased and apart from their evidence, P.Ws.3 and 4 have spoken about the alleged intimacy of the accused with the deceased and one of the neighbours, by name Sekar (P.W.13) has given clear evidence to the effect that the accused has used to make frequent visit to the house of the deceased and apart from their evidence, some material objects have been recovered, as pointed out in the confession of the accused, in her presence and the same have been subjected to serology test, wherein it is found that blood stains found in saree, jacket and petticoat are identical with the blood of the deceased and the trial court, after considering the overwhelming evidence available on the side of the prosecution, has rightly invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed by the trial court do not warrant interference.

15. As rightly pointed out on the side of the appellant/accused, the entire case of the prosecution is based upon circumstantial evidence.

16. The specific case of the prosecution is that prior to occurrence, both the accused and deceased have had illicit intimacy with each other. For the purpose of proving the above factual aspect, the Court has to meticulously analyze the evidence given by the following witnesses.

17. The brother of the deceased, by name Iyyappan, has been examined as P.W.3 and his specific evidence is that P.W.1 has told him that the deceased has had illicit intimacy with the accused. Likewise, one Govindasami, who is none other than the maternal uncle of the deceased as well as P.W.3 has clearly deposed to the effect that the deceased has had illicit intimacy with the accused and he has also warned him. Barring the evidence given by P.Ws.3 and 4, one of the neighbours, viz., Sekar (P.W.13) has given clinching evidence to the effect that the accused has used to make frequent visit to the house of the deceased. From the conjoint reading of the evidence given by the witnesses mentioned supra, the Court can unflinchingly come to a conclusion that the accused has had illicit intimacy with the deceased.

18. Now the Court has to analyze as to whether the accused has had connection with the alleged crime. It has already been pointed out that there is no eye witness on the side of the prosecution so as to point out the guilt of the accused. For the purpose of proving the alleged circumstances so as to point out the guilt of the accused, the following witnesses have been examined.

19. It is an admitted fact that P.W.1 is the author of Ex.P.1, Complaint. In Ex.P.1, it is clearly stated that the accused has committed the crime. The specific evidence given by P.W.1 and also P.W.2 is that on the date of occurrence, both of them have proceeded towards the house of the deceased and within a distance of 10 feet, both of them have seen the accused and she has locked the door of the house of the deceased. As noted down earlier, P.W.13 has also corroborated the aforesaid piece of evidence to a certain extent, by way of saying that the accused has used to make frequent visit to the house of the deceased. Therefore, it is very clear that on the date of occurrence, the accused has come to the house of the deceased.

20. The prosecution has utilized the service of finger print expert and serologist.

21. It is seen from the records that the Inspector of Police (P.W.24) has arrested the accused and she has voluntarily given a confession statement and the admitted portion of the same has been marked as Ex.P.4. On the basis of confession statement alleged to have been given by the accused, from the place of occurrence, all relevant material objects, including the Saree, Petticoat and Jacket of the accused have been recovered and the same have been subjected to chemical examination and the concerned witness has been examined as P.W.21 and the specific evidence of P.W.21 is that blood stains found in the weapon as well as dresses are one and the same.

22. Apart from the material objects, as pointed out earlier, the prosecution has utilized the service of finger print expert and he has been examined as P.W.15 and his specific evidence is that the finger print found in the material objects are identical with the finger print of the accused. Therefore, it is quite clear that the prosecution has clearly established the circumstances, which pointed out the accused towards the crime. It is not an exaggeration to say that there is no missing link in the evidence adduced on the side of the prosecution so as to point out the accused.

23. It has already been discussed and decided that prior to occurrence, both the accused and deceased have had illicit

intimacy with each other and both of them have lived as husband and wife for a short span. The accused with an intention to marry the deceased, has divorced her husband. But, to her utter dismay, the deceased has married one Sathya and after knowing the factum of marriage, with an intention to murder the deceased, the accused has come to the house of the deceased and on the fateful day, she indiscriminately attacked on his person by using a knife.

24. It has already been pointed out that for the purpose of proving the illicit intimacy of the accused with the deceased, the prosecution has adduced replete evidence. Likewise, the prosecution has adduced requisite evidence for the purpose of proving the circumstances under which the Court can easily come to a conclusion that the accused has committed the crime. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused are of no use.

25. The trial court, after evaluating the evidence available on record, has rightly found the accused guilty under section 302 of Indian Penal Code. In view of the discussions made earlier, this Court has not found any subsisting 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 conviction and sentence passed against the appellant/accused in S.C.No.287 of 2014 by the trial court are confirmed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

ajr

To

1. II Additional District and Sessions Court, Chidambaram.
2. The Principal Judge, Cuddalore.
3. The Judicial Magistrate No.1,
Chidambaram.

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4. The Chief Judicial Magistrate,
Chidambaram.

5. The Superintendent,
Special Prison for Women, Salem.

6. The District Collector,
Cuddalore.

7. The Director General of Police,

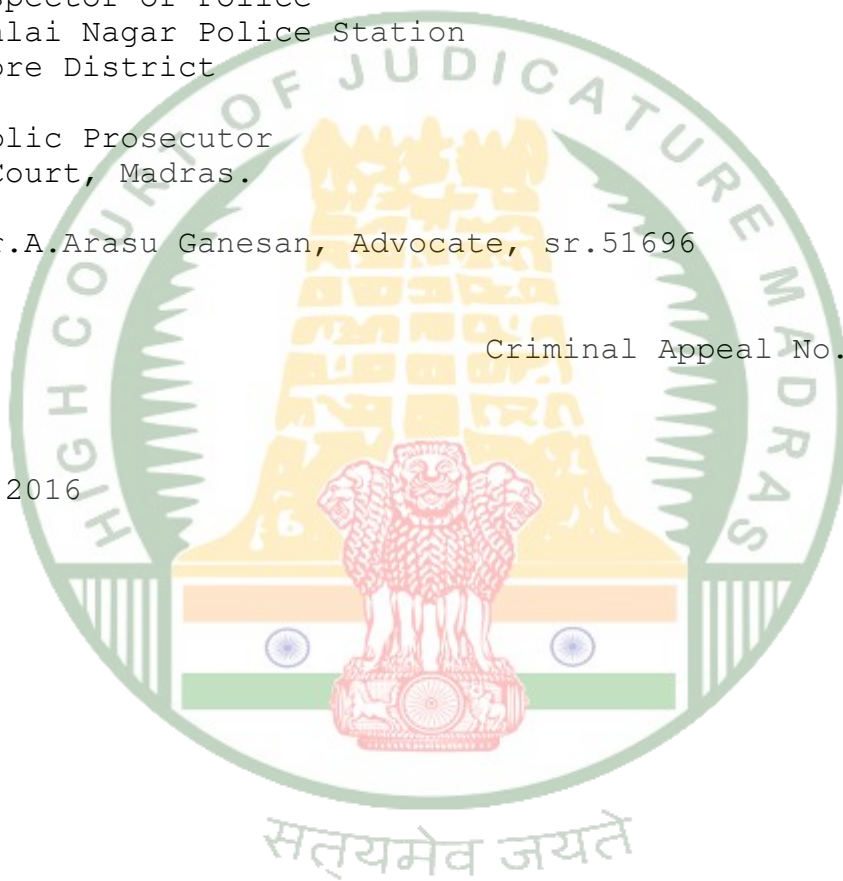
8. The Inspector of Police
Annamalai Nagar Police Station
Cuddalore District

9. The Public Prosecutor
High Court, Madras.

1 cc to Mr.A.Arasu Ganesan, Advocate, sr.51696

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kra 28.09.2016



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