

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.493 of 2013

Sathya

.. Appellant/Accused

Vs

State represented by its
The Inspector of Police,
Tiruppur South Police Station,
(In Crime No.3688 of 2011)
Tiruppur District.

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the order of conviction and sentence passed on her by
the learned I Additional District and Sessions Judge, Tiruppur
in S.C.No.292 of 2011 dated 25.04.2013.

For Appellant : Mr.K.S.Kaviarasu
(Legal aid counsel)

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is the sole accused in S.C.No.292 of 2011 on
the file of the learned I Additional District and Sessions
Judge, Tiruppur. She stood charged for offences under
Sections 302 & 392 I.P.C. By judgment dated 25.04.2013, the
trial Court convicted the accused for offence under both the
charges and sentenced her to undergo imprisonment for life
and to pay a fine of Rs.2,000/- in default to undergo simple
imprisonment for six months, for offence under Section 302
I.P.C., and to undergo rigorous imprisonment for 10 years and
to pay a fine of Rs.2,000/- in default to undergo simple

imprisonment for six months, for the offence under Section 392 I.P.C. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Amudha. The deceased and the accused were co-employees in a banian factory known as "M/s.Scorts Banian Company" near Tamil Nadu Theater at Tiruppur. Except the meager income from out of her work, the accused did not have sufficient means to run the family. The deceased used to wear Thali, a pair of ear studs and a pair of drops in gold. The accused noticed the same and she developed an intention to commit murder of the deceased to commit robbery of the above gold jewels.

3.On 14.05.2011, in usual course, in the morning, the deceased went to the factory for work. In normal course, she would have returned from the factory in the evening. On 14.05.2011, she did not return to house. P.W.1, the mother of the deceased went in search of the deceased. According to the further case of the prosecution, at 1.00 pm on 14.05.2011, the accused wanted the deceased to visit her house, so that they can go together to the factory, to receive their salary. Believing the said words, the deceased went to the house of the accused. At that time, she would have been wearing the above stated gold jewels. As already planned, the accused took the deceased to a bush near the bank of a lake in front of her house and attacked the deceased with a crow bar on her head. The deceased fell down in a pool of blood and became unconscious. The deceased removed the Thali chain, ear studs, pair of drops and gold balls from the body of the deceased. Then, the accused returned to her house. On the same day, at 7.00 pm, the husband of the accused while returning to his house, found the deceased lying at the place of occurrence. He informed his brother Mr.Anand about the same. Mr.Anand, immediately rushed to the place of occurrence. He found the deceased struggling for life with injuries. Immediately, he made an arrangement to take the deceased to the Government Hospital at Tiruppur. The Doctor, declared the deceased dead. On hearing the said information, P.W.1 immediately went to the Government Hospital, Tiruppur. She came to know that the deceased had already been declared dead. When she saw the dead body of the deceased, she found missing of the above gold jewels. Then, she went to the Tiruppur South Police Station and made a complaint at 11.00 am on 15.05.2011. P.W.12, the then Sub Inspector of Police on receipt of the said complaint under Ex.P.1, registered a case in Crime No.3688/2011 for offences under Sections 302 & 392 I.P.C. Ex.P.13 is the F.I.R. He forwarded both Exs.P.1 and P.13 to Court which were received by the learned Judicial Magistrate, Tiruppur at 1.00

4. Thereafter, the case was taken up for investigation by P.W.13, the then Inspector of Police. He proceeded to the place of occurrence at 11.45 am on 15.05.2011 and prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness and he also recovered the blood stained earth and the sample earth from the place of occurrence under a mahazar in the presence of same witnesses. Then, on going over to the Government Hospital, Tiruppur, he conducted inquest on the body of the deceased between 1.00 pm and 2.00 pm on 15.05.2011 and prepared Ex.P.15, inquest report. He examined P.Ws.1 to 6 and recorded their statements. Then he forwarded the dead body of the deceased for post mortem. P.W.9, conducted autopsy on the body of the deceased on 15.05.2011 at 3.15 pm and he found the following ante mortem injuries:-

1. Transversely oblique laceration 5 x 1 cm x scalp deep noted over right side frontal and supra orbital region

2. A vulsion type of laceration 15 x 6 cm x scalp deep noted over right fronto parieto temporal region.

3. Avulsion type of laceration 6 x 4 cm x bone deep noted over left parieto temporal region.

4. Laceration 5 x 2 cm x bone deep noted over left mid parietal region.

5. Vertically oblique laceration 5 x 1 cm x bone deep noted over left posterior parietal and occipital region.

6. Laceration 2 x 1 cm x full thickness noted over left mid ear lobe.

7. Right ear lobe hole found tear.

8. Curved scratch abrasion 1 x 0.25 cm x scalp deep noted over left side chin just below to mandible.

9. Abrasion 2 x 0.5 cm noted over right upper neck 1 cm below to angle of left mandible.

10. Abrasion 1 x 0.5 cm noted over right upper neck 1 cm below to angle of left mandible.

11. Multiple small abrasions with the underlying contusion noted over mid chin over the area of 3 x 2 cm.

12. Scratch abrasion 4 in number in varying length noted over front of upper neck

13. Abrasion 2 x 1 cm noted over posterior aspect of left side upper neck."

the final opinion regarding the cause of death. According to P.W.9, the deceased would appear to have died of head injuries sustained by her. When the investigation was in progress, on 18.05.2011, at 6.00 pm, the accused on her own volition, appeared before P.W.7 the then Revenue Inspector, Tiruppur. On such appearance, the accused wanted to confess in respect of the death of the deceased. P.W.7 allowed her to so confess. P.W.7 heard the entire confession and then prepared a report under Ex.P.4. Taking the accused along with the said report, P.W.7 went to Tiruppur South Police Station at 8.00 pm and produced the accused before P.W.13.

6.P.W.13, in turn, arrested the accused in the presence of P.Ws.7 & 8. On such arrest, the accused gave a voluntary confession, in the presence of the same witnesses. In the said confession, she disclosed the place where she had hidden the jewels and also the blood stained crow bar. In pursuance of the same, she took the Police and the witness to the place of hide out and took out a blood stained crow bar, a saree, a jacket and produced the same. P.W.13 recovered the same in the presence of same witnesses. Then she took P.W.13 and witnesses to the Palladam Road, Tamil Nadu theater and from a bush near the said Theater, she produced the jewels (M.Os.6 to 9). P.W.13 recovered the same under a mahazar, in the presence of the same witnesses.

7.On returning to the Police Station, P.W.13 forwarded accused to Court. He also forwarded all the material objects to Court for chemical examination. He collected post mortem certificate and examined the Doctor and also few more witnesses. Finally, on completing investigation, he laid charge sheet against the accused.

8.Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 21 documents were exhibited, besides 14 Material Objects.

9.Out of the said witnesses, P.W.1 who is the mother of the deceased has stated that on 14.05.2011, the deceased went to the factory lastly and thereafter, she did not return. She has further stated that the deceased was found lying with injuries at about 7.00 pm on 14.05.2011 and thereafter, she was taken to the hospital. She has further spoken about the complaint made to the Police. P.W.2, is a close relative of the deceased. He has stated that on 14.05.2011, the deceased and the accused had together gone to the house of the accused and thereafter, the deceased did not return. P.W.3, who is a co-worker working along with the deceased and accused has stated that on 15.05.2011, he heard that the deceased had been

done to death. P.W.4 is also a co-worker of the deceased and he has stated that on 14.05.2011, he found the accused and the deceased near Fabrication Section of the company. He has further stated that on the next day, he informed the same to the mother of the deceased. P.W.5 is also a close relative of the deceased. He has stated about the information passed on by the accused, on an earlier occasion, about her poverty. P.W.6 has spoken about the preparation of observation mahazar and rough sketch and also the blood stained earth and the sample earth from the place of occurrence. P.W.7 has spoken about the extra judicial confession given by the accused to him on 18.05.2011 at 6.00 pm. He has further stated that on being produced to the Police, the accused gave a voluntary confession out of which, the material objects more particularly, M.Os.3 to 9 were recovered. P.W.8 has also spoken about the arrest of the accused and the voluntary confession made by her and the consequential recovery. P.W.9 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.10 has spoken about the fact that he took the dead body of the deceased and handed over the same to Doctor for post mortem. P.W.11 is yet another co-worker. P.W.12 has spoken about the registration of the case and P.W.13 has spoken about the investigation done in this case.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. However, she did not choose to examine any of the witnesses on her side.

11. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced her as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

12. When this appeal was taken up for hearing on 07.04.2016, the learned counsel on record for the appellant/accused withdrew his appearance. Therefore, we have appointed Mr. K.S. Kaviarasu, learned counsel, as a legal aid counsel to appear on behalf of the appellant/accused.

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

14. This is a case based on circumstantial evidence. It is needless to point out that, in a case based on circumstantial evidence, the prosecution has to prove the circumstances projected by it beyond reasonable doubts and all such proved circumstances should form a complete chain, without any

break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution.

15.P.W.1 has stated that the deceased went to the factory for work on 14.05.2011, in the morning and thereafter, she did not return home. P.W.4 has stated that she found the deceased alive in the factory at about 2.30 pm on 14.05.2011. At that time, the accused was also in the company and thereafter, the deceased was not seen. On the same day, at 7.00 pm, the deceased was lying with injuries and she was taken to the Government Hospital, Tiruppur, where she was declared dead. Thus, it has been clearly established by the prosecution that, at the place of occurrence, the deceased sustained injuries between 2.30 pm and 7.00 pm on 14.05.2011. According to the Doctor, the death was due to shock and haemorrhage due to the head injuries and thus, it is only a homicide.

16.Now, the question is who caused the death of the deceased. In order to prove the same, the prosecution mainly relies on the confession made by the accused to P.W.7 on 18.05.2011 and the consequential recoveries of M.Os.3 to 9.

17.According to the case of the prosecution, on 18.05.2011, at 6.00 pm, the accused, on her own volition, went to P.W.7 and made a voluntary confession. But, that confession has not been reduced into writing by P.W.7. P.W.7 has further stated that he only prepared a report about the said extra judicial confession. He has further stated that on being produced before P.W.13, the accused made a disclosure statement, out of which, M.Os.3 to 9 were recovered. This is very seriously disputed by the accused.

18.The learned counsel for the appellant would point out that the accused did not abscond and she was very much in the police Station and she was under interrogation on 15.05.2011 itself. The learned counsel has taken us through the evidence of P.Ws.1 & 5. A perusal of the cross examination of P.Ws.1 & 5 would go to show that they have tacitly admitted that the accused was in the Police Station from 15.05.2011 morning onwards. They have also stated that the accused was interrogated like anybody else and she was kept in the police custody from 15.05.2011 onwards. P.W.1 has gone to the extent of saying that even the accused came to the Police Station and consoled her. From these evidences, it has been clearly established that the accused was very much in the Police custody under interrogation from 15.05.2011 onwards.

19.If the said evidences of P.Ws.1 and 5 are taken into account, the case of the prosecution that the accused went to

P.W.7 on 18.05.2011 at 6.00 pm and made a confession and after arrest, on the disclosure statement made by the accused, M.Os.3 to 9 were recovered, cannot be believed. In our considered view, the said facts spoken by P.Ws.7, 8 & 13 are not trust worthy. If this part of evidence is rejected, absolutely, there is no other evidence against the accused to connect the accused with the crime.

20.The learned Additional Public Prosecutor appearing for the State would submit that P.W.4 has stated that the deceased was have found in the company lastly at 2.30 pm on 14.05.2011. Assuming that it is true, it is not incriminating because, there was nothing unnatural for the accused and the deceased, together in the factory, where they were working. The learned Additional Public Prosecutor would further submit that P.W.5 has stated that the accused had told about her poverty. This may be true. But, that will not give any indication that the accused was the perpetrator of the crime. As we have already pointed out, in this case which is based on circumstantial evidence, we find that the prosecution has failed to prove any of the circumstances projected against the accused. Thus, the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

21.In the result, the Criminal Appeal is allowed and the conviction and sentence for the offence under Sections 302 & 392 IPC imposed on the appellant by the learned I Additional District & Sessions Judge, Tirupur in S.C.No.292 of 2011 by the judgment dated 25.04.2013 are hereby set aside. The appellant is acquitted of the charges levelled against her and she is directed to be set at liberty forthwith unless her presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to her. Bail bond, if any, shall stand discharged.

Sd/- सतयमेव जयते
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

jbm

To

1. I Additional District and Sessions Judge,
Tiruppur.

2. The Judicial Magistrate, Avinashi

3. Do-Thro'The Chief Judicial Magistrate,
Coimbatore.

4. The Superintendent,
Central Prison, Coimbatore.

5. The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.

6. The District Collector,
Coimbatore.

7. The Public Prosecutor,
High Court, Madras.

Crl.A.No.493 of 2013

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