

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-06-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.828 of 2013

Apple @ Sivaraman ... Appellant / Accused

-vs-

The State,
rep.by The Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District.
Cr.No.462/2011. ... Respondent / Complainant

Appeal against the judgment, dated 27.06.2013, made in
S.C.No.80 of 2012 on the file of Principal Sessions Judge,
Cuddalore.

For appellant : Mrs.TKS Bharathy Anandraj

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

JUDGMENT

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

Appellant is the sole accused in S.C.No.80 of 2012 on the file of learned Sessions Judge, Cuddalore. He stood charged for offences under Sections 392, 397 and 302 of IPC. The trial Court sentenced the accused to undergo imprisonment for life and pay a fine of Rs.5,000/- and, in default, to undergo rigorous imprisonment for a further period of six months for the offence under Section 302 IPC; to undergo rigorous imprisonment for a period of seven years and pay a fine of Rs.10,000/- and, in default, to undergo rigorous imprisonment for a further period of six months for the offence under Section 392 read with 397 IPC. Challenging the said conviction and sentence, the appellant is before this Court, by way of this appeal.

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

2.1. The deceased in this case was one Subramani. He was a resident of Kadampuliyur village in Cuddalore District. He was a Contractor, by profession. P.W.2, Rasathi, was often engaged by him, as a masonry worker. In due course of time, the deceased developed illicit intimacy with P.W.2. For about six months prior to the occurrence, they had such illicit relationship. On 15.09.2011, P.W.2 had gone to Panruti for taking treatment, due to her ill-health. From the hospital, she went to the local market.

From there, she contacted the deceased over phone and wanted him to come to Panruti. Even before the deceased could reach Cuddalore, P.W.2 started her travel in a bus. The deceased spoke to her over cell phone and wanted her to get down at Konjikuppam Bus Stop. Accordingly, she got down from the bus at the Bus Stop. The deceased came there on his motorcycle. He wanted P.W.2 to come with him to have sexual intercourse. Initially, she refused. But, the deceased persuaded her to accept for the same. Then, he took her on the motorcycle about one-and-a-half kilometres away from the main road, where, behind a compound wall of an oil company, they had sex. When they were so engaged in sexual activities, suddenly, the accused came to the spot. On seeing the accused, they got up and wore their dress. The accused wanted P.W.2 to agree for sex with him. When P.W.2 refused, he shouted at her as to why she was not inclined to have sex with him, though she had free sex with the deceased. Enraged over the said occurrences, P.W.2 shouted at the deceased, for having brought her to the said place. The deceased intervened and started quarreling with the accused. During the course of the said quarrel, the accused took a knife and attacked the deceased. The deceased warded it off. The accused pushed the deceased down and then cut him on his left leg. Then, the accused snapped away all the jewels, owned by P.W.2, and ran away from the scene of occurrence. Within a shortwhile thereupon, the deceased took up his cell phone and dialled to one Subbarayan (P.W.3). Since the deceased was not in a position to speak, he gave the cell phone to P.W.2 and wanted her to inform him. P.W.2 told P.W.3 that the deceased had met with an accident. She was waiting for Subbarayan and was standing by the side of the deceased, unable to do anything to save the deceased. But, even before Subbarayan and others could reach the place of occurrence, the deceased breathed his last. Then, P.W.2 came to the main road and was waiting there for them.

2.2. P.W.1 is the brother of the deceased. P.W.3 Subbarayan passed on the above information given by P.W.2, to P.W.1. P.W.4 Rajadurai is the son of P.W.1. He tried to contact the deceased over phone. The cell phone was taken by P.W.2. P.W.2 informed P.W.4 that the deceased had met with an accident. P.W.4 also told P.W.1 about the same. P.Ws.1 and 4, on the motorcycle, went to Keelkuppam Road, by which time, P.W.3 and two others had already come there. Then, all of them went into the cashewnut grove, where they found the deceased lying dead. P.W.1 found a cut injury on the left leg of the deceased. Immediately, P.W.1 proceeded to Kadampuliyur Police Station and lodged a complaint at 10.00 p.m. on 15.09.2011. P.W.10, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.462 of 2011 under Section 302 IPC. Ex.P-12 is the F.I.R. P.W.10 forwarded the complaint Ex.P-1 and P-11 identification parade report to the Court and handed over the case to the Inspector of Police, P.W.11, for investigation. P.W.11 took up the investigation, proceeded to the place of occurrence, prepared Observation Mahazar, Ex.P-2, and Rough Sketch, Ex.P-3, in the presence of P.W.6 and another witness. He recovered a Hero Honda motorcycle, bearing Registration No.TN 31 AA 6429, belonging to the deceased, which was parked near the dead body. A white colour Bra was lying there. He recovered the same under the Mahazar, Ex.P-4. Then, he forwarded the body for post-mortem, after inquest. P.W.7, Doctor Santhi, conducted autopsy on the body of the deceased on 16.09.2011 at 12.40 p.m., and she found the following injuries :

External Injuries - Incised wound seen at the back of (L) knee, bone deep, 8 cm x 6 cm x 4 cm; oblique with muscles, blood vessels are cut. Internal examination :- Ribs - intact. Heart - Chambers - empty. Lungs - pale. Hyoid bone - preserved. Stomach - empty, liver spleen, kidneys - pale. Intestines - empty. Bladder - empty. Skull - intact. Membranes - intact. Brain - pale. Spinal cord - intact.

Ex.P-8 is the Post-mortem Certificate, which reads as under :

"Body of a male lying on the back on the P.M. table with arms by its side symmetrical well nourished, hands empty, eye lids closed. No discharge from ears, nose, mouth. Mouth and lips partially opened. Tongue inside, teeth present. Thorax-well formed. Generative organs - Normal. External Injuries - Incised wound seen at the back of (L) knee, bone deep, 8 cm x 6 cm x 4 cm; oblique with muscles, blood vessels are cut. Internal examination :- Ribs - intact. Heart - Chambers - empty. Lungs - pale. Hyoid bone - preserved. Stomach - empty, liver spleen, kidneys - pale. Intestines - empty. Bladder - empty. Skull - intact. Membranes - intact. Brain - pale. Spinal cord - intact.

P.M.conducted at 3 pm on 16/9/22.

Time of death - 19 to 22 hours prior to P.M. examination. Stomach and its content, intestines and its content, liver, kidney, Hyoid bone and preservative preserved and sent for chemical analysis."

The doctor gave her opinion that the the deceased would appear to have died of shock and haemorrhage, due to the injury sustained.

2.3. P.W.12, Inspector of Police, continued the investigation from 06.11.2011. On the same day, at 02.00 p.m., he arrested the accused. At 02.30 p.m., in the presence of P.W.8 and another witness, the accused gave voluntary confession. In the said confession, he disclosed the place, where he had hidden the knife, lungi, banian and monkey cap. He also disclosed the place, where he had hidden the cash and jewels. In pursuance of the same, P.W.12 took the accused to his house, from where he produced M.Os.1 to 7, M.O.8 Thali, M.O.9 2 Gold Coins, M.O.10 Nose Stud, M.O.11 Anklet. He recovered all the materials objects under Observation Mahazars. On return to the Police Station, he forwarded the accused to the Court, for judicial custody on 07.09.2011. He altered the case into Sections 392, 394, 379 and 302 IPC and submitted the alteration report to the Court under Ex.P-13. Thereafter, he made a request to the learned Judicial Magistrate to conduct identification parade. P.W.9, District Munsif-cum-Judicial Magistrate, Neyveli, conducted identification parade of the accused on 15.09.2011 at 03.30 p.m. In the said identification parade, P.W.2 identified the accused. The investigation was, thereafter, taken over by P.W.13. He examined the doctor and collected medical records and, on completing investigation, he laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of its judgment, and the accused denied the same.

4. In order to prove its case, the prosecution examined as many as 13 witnesses; filed 18 documents; and marked 13 Material Objects.

5. Out of the said witnesses, P.W.1 is the victim as well as an eye witness to the entire occurrence. P.Ws.1,3,4 and 5 have deposed, that on information, they went to the place of occurrence and found the dead body of the deceased lying. P.W.3 has specifically stated that through the cell phone of the deceased, P.W.2 informed him that the deceased had met with an accident. P.W.4 has stated that he tried to contact the deceased through the cell phone, but the cell phone was picked up by P.W.2 and she informed him that the deceased had met with an accident.

6. It was on these informations, P.Ws.1 to 5 had gone to the place of occurrence and found the dead body. Since there was a cut injury on the body of the deceased, P.W.1 made a complaint, as stated above. P.W.6 has spoken about the preparation of Observation Mahazar, at the place of occurrence. P.W.7 has spoken about the post-mortem, conducted on the body of the deceased. P.W.8 has spoken about the disclosure statement made by the accused and the consequential recovery of the material objects, as narrated hereinabove. P.W.9 has spoken about the identification parade, conducted by him. He stated that during the parade, P.W.2 identified the accused. P.Ws.10 has spoken about the registration of the complaint. P.Ws.11 to 13 have spoken on the investigation done in the case.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. examination, he denied the same, as false, and his stand was one of total denial. However, on the side of defence, no witness was examined, but one document, namely Ex.D-1, was marked.

8. Having considered all the above materials, both oral and documentary, the trial Court found the accused guilty and convicted him, as stated in first paragraph of its judgment. Hence, the accused is before this Court with this appeal.

9. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor, appearing for the State.

10. Learned counsel for the appellant would submit that P.W.2, by her own conduct, has proved herself to be a liar and, therefore, her evidence cannot be believed. The learned counsel would further submit, that at the earliest opportunity, P.W.2 had informed P.Ws.3 and 4 that the deceased had met with an accident. The learned counsel would also point out that P.W.2 did not make any effort to save the deceased and that she disclosed about the occurrence very belatedly. According to the learned counsel, P.W.2 disclosed about the occurrence after many hours of the occurrence and, therefore, her evidence has to be discarded. Also, the learned counsel would submit that so far as the recovery of the jewels from

the possession of the accused is concerned, the same cannot be believed, as P.W.2 had not made any complaint to the police about the missing of jewels. Thus, according to the learned counsel, the story projected by the prosecution that the jewels belonging to P.W.2 were removed by the accused cannot be true and, for these reasons, the accused is entitled for acquittal.

11. We have heard the above submissions carefully.

12. As we have already stated, in this case, the prosecution relies mainly on the eye witness account of P.W.2. As for P.W.2, there is no denial of the fact that she was working as a masonry worker under the deceased. She has stated that she had illicit intimacy with the deceased for about six months. She has further claimed that she witnessed the entire occurrence. Bra, M.O.4, found at the place of occurrence, belongs to her, and it was found near the body of the deceased. The fact that the bra belongs to P.W.2 is not denied by the accused would lend support to the case of the prosecution that P.W.2 was present at the place of occurrence.

13. Of course, it is true, at the earliest point of time, P.W.2 informed P.Ws.3 and 4 that the deceased had met with an accident, but, the fact remains, that the injury found on the deceased would not have been sustained in an accident. The place of occurrence was in the midst of a cashewnut grove was also not in doubt. Therefore, obviously, the information passed on by P.W.2 to P.Ws.3 and 4 that the deceased had met with an accident is a false statement. The question is, whether on that score, P.W.2 can be branded as a liar? In our considered opinion, it is not so. Because, the victim is a woman, living with her husband and children and the illicit relationship between her and the deceased was a secret affair, P.W.2 had been frightened that if the information that she was with the deceased and she had sex with him was made public, that would certainly affect her family life. Because of the said reason, she would have misrepresented to P.Ws.3 and 4. She did not cause any more delay. On the arrival of the police, P.W.2 had disclosed the fact to the investigating officer, at the earliest point of time. A woman, living with a family, would not come forward with such a statement in normal course that she was sexually exploited by a man and the accused attempted to ravage her. Though P.W.2 is a solitary witness, in our considered view, she is fully believable and from and out of her evidence, the prosecution has clearly established that the death of the deceased was caused only by the accused.

14. In the same transaction, the accused had removed the gold jewels M.Os.8 to 11 from P.W.2. They were recovered from his possession on his disclosure statement. P.W.8 is an independent witness and a very responsible Village Administrative Officer. Therefore, we do not find any reason to doubt his credibility. Thus, from his evidence, it has been clearly established that the robbed jewels were only in the possession of the accused.

15. In this regard, we have to raise a presumption under Section 114 of the Indian Evidence Act that the accused alone had committed robbery of the jewels, because, he was found in possession

of the same, soon after the commission of theft. The accused has got no explanation to offer. Of course, the said presumption is rebuttable. But, the accused has not rebutted the said presumption, either by way of direct evidence or by means of circumstantial evidence. As such, the presumption raised under Section 114 of the Indian Evidence Act, which remains unrebutted, clearly proves the guilt of the accused. From and out of the evidence of P.W.2, the sole eye witness to the occurrence, and also on the recovery of jewels belonging to her from the possession of the accused soon after the commission of theft, we hold that the prosecution has proved its case beyond all reasonable doubts. Thus, the trial Court was right in convicting the accused for the offences under Sections 302 and 392 read with 397 IPC. Turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, proportionate to the guilt of the accused, which also, in our view, does not require any interference by this Court. Thus, we do not find any merit in this appeal.

16. In the result, this appeal fails and is dismissed. The conviction and sentence imposed by the trial Court is hereby confirmed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

- 1.The Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District.
- 2.The Principal Sessions Judge,
Cuddalore.
3. The Superintendent
Central Prison,
Cuddalore
4. The Judicial Magistrate Court NO.II
Panruti
5. do thro the Chief Judicial Magistrate Court
Cuddalore
6. The Additional Public Prosecutor
High Court, Madras

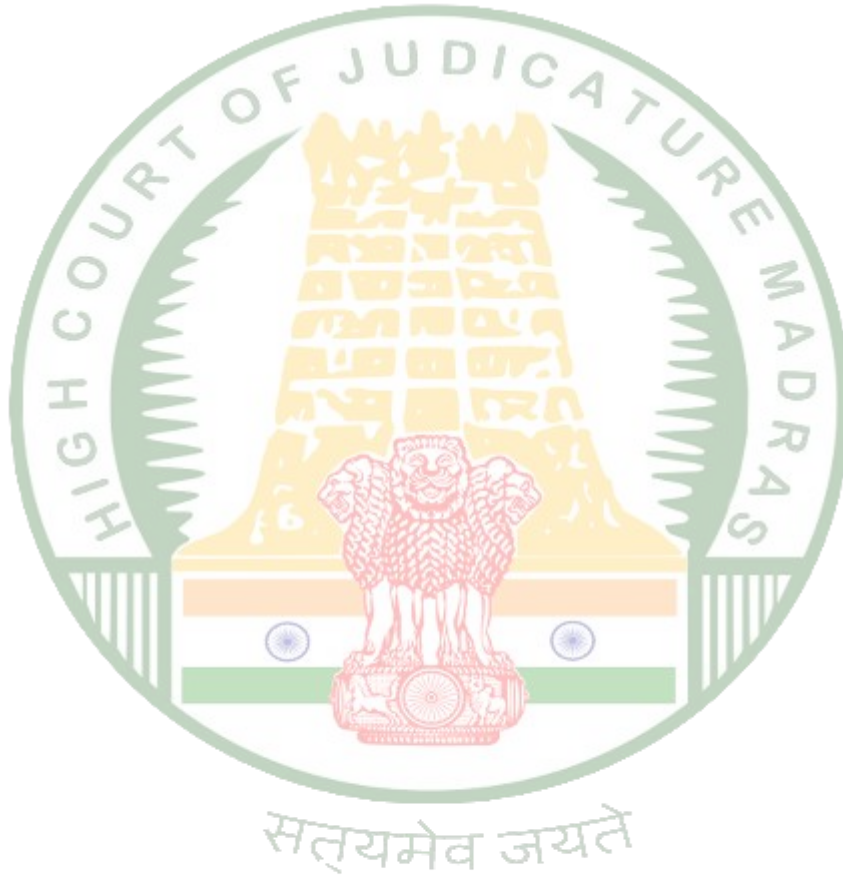
Copy to

The Section Officer
Criminal Section,
High Court, Madras

1 cc to M/s. T.K.S. Bharathy Anandraj, Advocate, Sr. 30469

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