

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.841 of 2013

Sudhakar

... Appellant/Accused

-Vs-

The State rep. by
The Inspector of Police
Taluk Police Station
Villupuram.

... Respondent/Complainant

This Criminal Appeal has been preferred against the judgment and sentence of the Principal Sessions Judge, Villupuram in S.C.No.227 of 2010 dated 28.03.2013 convicting him and sentenced to undergo 2 years R.I. under Section 506(ii) of IPC and further sentenced to undergo life imprisonment under Section 302 IPC and also imposed fine of Rs.3000/- and in default 6 months R.I. and to set aside the same.

For Appellant : Mr.A.R.Suresh

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.227 of 2010 on the file of the learned Principal Sessions Judge Villupuram. He stood charged for offences under Sections 302 and 506(ii) IPC. By judgment dated 26.03.2013, the trial Court convicted him under both the charges and sentenced to undergo imprisonment for

life and to pay a fine of Rs.3,000/-, in default to undergo six months imprisonment [whether simple imprisonment or rigorous imprisonment not mentioned] for the offence under Section 302 IPC; and sentenced to undergo rigorous imprisonment for two years for the offence under Section 506(ii) IPC. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

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

[a] The deceased in this case was one Mrs.Kalaivani. She was already married to one Mr.Murugan. Out of the said wedlock, she had three children. After having lived with Mr.Murugan for 12 years, the deceased deserted him, developed illicit intimacy with the accused and started living with the accused at No.103/C K.K.Nagar, Radhakrishnan Street Extension at Villupuram. Thus, the life of the deceased with the accused was for a period of 2-1/2 years. During the said period, the accused developed a suspicion that the deceased had developed illicit intimacy with many persons including P.Ws.6 and 7. The accused, on many occasions, reprimanded the deceased for her said conduct. But, the deceased did not show any change in her attitude.

[b] On 27.07.2009, the deceased had gone to her parental home at Tirukkanur. It is further alleged that, while returning to her house on the same day, she had bought beer and invited P.W.6 to her house. P.W.6 took beer at the house of the deceased as served by her. This came to the knowledge of the accused. He questioned the deceased, as to how could she serve beer to P.W.6, instead of serving nothing to him. This again resulted in a quarrel. Again at 9.30 p.m., on the same day, the deceased had invited P.W.6 to come to her house, to go for cinema. On seeing P.W.6 at his house, the accused questioned the deceased as to why P.W.6 had come to her house. The deceased told him that she was going for a cinema along with P.W.6. This infuriated the deceased. It is further alleged that immediately the accused started attacking the deceased with hands. The deceased went into her bedroom. The accused followed her and attacked her with hands. The deceased fell on the cot. The accused sat on her when she was lying and strangled her to death. P.W.6 who witnessed the occurrence, ran away from the scene of occurrence. The deceased died on the spot. One Aravani Seenu witnessed the occurrence. The accused intimidated him also.

[c] Thereafter, on 28.07.2009, the accused himself contacted P.W.1, the mother of the deceased and informed her that the deceased had committed suicide by hanging. P.W.1 and

her sisters P.Ws.2 and 3 along with the aunt of the deceased [P.W.4], went to the house of the deceased. The accused was still there. The dead body of the deceased was lying. They found certain abrasions and contusions on the body. They were told by the accused that the deceased had committed suicide by hanging. But, P.Ws.1 to 4 had a suspicion over the said statement. Therefore, P.W.1 went to Villupuram Taluk Police Station and made a complaint under Ex.P1 at 12.30 p.m. on 28.07.2009. P.W.11, the then Inspector of Police of Villupuram Taluk Police Station, on receipt of the said complaint, registered a case in Cr.No.558 of 2009 under Section 174(1) Cr.P.C. Ex.P12 is the FIR. He forwarded Ex.P1 [Complaint] and Ex.P12 [FIR] to the Court, which were received by the learned Magistrate at 10.45 p.m. on 28.07.2009.

[d] Taking up the case for investigation, P.W.11 proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch at the place of occurrence in the presence of P.W.5 and another witness. Then, he conducted inquest on the body of the deceased in the presence of panchayatdars and forwarded the same for post-mortem. From the place of occurrence, he recovered a blood stained bed sheet and broken bangle pieces under a mahazar.

[e] P.W.10 conducted autopsy on the body of the deceased on 28.07.2009 at 4.30 p.m. He found the following injuries:

"External injuries:

1. A superficial ligature mark [very thing not typical mark] anterior aspect of neck 10 x 2 cm.
2. One day old lacerated injury left arm 3x2x1cm
3. One day old lacerated injury left thigh 2x1x1/2cm
4. Lacerated wound posterior aspect of vagina and cervix 1 x 1 cm
5. II nd degrees prolapse of uterus present
6. Abrasion over the cervix 2 x 1 cm.

Ex.P6 is the Post-mortem Certificate. He gave opinion that the deceased would appear to have died of vagal shock due to hanging, and also shock and haemorrhage due to the internal haemorrhage.

[f] Based on the above post-mortem opinion, P.W.11, on 28.07.2009, altered the case into one under Sections 323, 324 and 302 IPC. Ex.P16 is the Alteration Report. On 29.07.2009 at 3.00 p.m., at Villupuram four road junction, he arrested the

accused in the presence of P.W.8 and another witness. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden a screw driver and a saree. In pursuance of the same, the accused took the police and the witnesses to the place of hide out and produced M.Os.1 and 4. P.W.11 recovered the same under a mahazar in the presence of the same witnesses. At his request, the material objects were sent for chemical examination. The Report revealed that there were blood stains on all the material objects including the screw driver. On completing the investigation, P.W.11 laid charge sheet against the accused.

3. Based on the above, the trial Court framed charges under Sections 302 and 506(ii) IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 20 documents were exhibited, besides 8 Material Objects.

4. Out of the said witnesses, P.Ws.1 to 4 who are the family members of the deceased, have stated about the relationship between the accused and the deceased and also about the motive. They have further stated that the deceased had come to the house of P.W.1 on 27.07.2009 and on the same day returned to the house of the accused. They have further stated that on the next day by about 11.00 a.m., the accused gave a phone call to P.W.1 and informed her that the deceased had committed suicide by hanging. P.Ws.1 to 4 have spoken about the said fact. P.W.5 has spoken about the Observation Mahazar and the recovery of material objects from the place of occurrence. P.Ws.6 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 has spoken about the arrest of the accused and the consequential recovery of M.Os.1 and 4, on his disclosure statement. P.W.9 has spoken about the photographs taken by him at the place of occurrence on the request of P.W.11. P.W.10 has spoken about the post-mortem conducted by him and his Final Opinion regarding the cause of death. P.W.11 has spoken about the investigation done and his Final Report.

5. 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 choose to examine any witness nor he did mark any document in his favour. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused for the offences u/s 302 and 506(ii) IPC. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

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

8. This is a case based on circumstantial evidence, as there is no eye witness to the occurrence. As we have already pointed out, P.Ws.6 and 7 have turned hostile, whereas, according to the prosecution, P.W.6 had seen the entire occurrence. Now, what is available for the prosecution is the evidences of P.Ws.1 to 4, who have stated that, when they visited the house of the deceased, a dead body was found lying and there were also abrasions and contusions on the body of the deceased. The case of the accused is that the deceased committed suicide by hanging, whereas, according to the prosecution case, the accused strangled her and caused her death.

9. In a case based on circumstantial evidence of this nature, when there is a dispute regarding the cause of death, it is the bounden duty of the prosecution to prove the case beyond reasonable doubts that the death of the deceased was not due to suicidal hanging. In order to prove that the death was not due to suicidal hanging, the prosecution relies on the opinion offered by P.W.10, who conducted autopsy on the body of the deceased.

10. A perusal of the evidence of P.W.10 would go to show that the death of the deceased was due to vagal shock due to hanging. The Doctor had also found internal haemorrhage. The Doctor has been cross examined on this aspect. Nowhere the Doctor has ruled out the possibility of the death due to suicidal hanging. Even the positive opinion of the Doctor itself is that the death was due to hanging. The case of the accused itself is that the deceased died due to suicidal hanging. Thus, the prosecution has failed to rule out the possibility of the death having been caused due to suicidal hanging. When that be so, the benefit arising out of the said doubt, regarding cause of death, should be extended only to the accused. Thus, we hold that the prosecution has failed to prove that the death of the deceased was due to homicidal violence. Absolutely there is no other evidence incriminating the accused. The recoveries, M.Os.1 and 4 would not in any manner go to help the prosecution, because the link between these material objects and the crime has not been established by the prosecution. Thus, we find that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled to acquittal.

In the result, the appeal is allowed. The conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted of all the charges. The fine amount, if any paid, by the appellant shall be returned to him. Bail bond, if any executed, shall stand discharged.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gms

To

1. The Judicial Magistrate No.1,
Villupuram.
- 2.-do- Thro The Chief Judicial Magistrate,
Villupuram.
3. The Principal Sessions Judge, Villupuram.
4. The Superintendent Central Prison, Cuddalore.
(with copies in duplicate for communication to the Accused)
5. The Superintendent of Central Prison,
Cuddalore.
- 6.The Inspector of Police
Taluk Police Station, Villupuram.
7. The District Collector, Villupuram.
8. The Director General of Police, Mylapore, Chennai-4.
- 9.The Public Prosecutor High Court, Chennai.

CrI.A.No.841 of 2013

MG(CO)
Eu 28.04.16

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