

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE N. AUTHINATHAN

RT.No.2/2016 and CRL.A.No.748/2016

Manivel

...Appellant/Sole Accused

Versus

The State represented by
The Deputy Superintendent of Police
CBCID Trichy.
[Crime No.2/2014]

..Respondent

Appeal filed under section 372[4] Cr.P.C., against the judgment dated 29.09.2016 made in SC.No.26/2015 on the file of the learned Sessions Judge, Magalir Neethimandaram, [Fast Track Court], Tiruvarur.

For Appellant : Mr.R.Karthikeyan
Legal Aid Counsel &
Mr.R.Sivasubramanian,
Counsel engaged by the
accused/appellant

For Respondent : Mr.R.Rajarathinam
Public Prosecutor
assisted by
Mr.P.Govindarajan
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the Court was delivered by S.NAGAMUTHU, J.,]

The learned Sessions Judge, Fast Track Court, Mahila Court, Tiruvarur, has submitted the proceedings of the Sessions Case in SC.No.26/2015 on his file, to this Court for confirmation of the death sentence imposed on the sole accused Mr.Manivel [hereinafter referred to as "the accused"].

2 The accused stood charged for the offences u/s.341, 366, 354, 376, 302 and 201 read with 302 IPC and section 4 of the Tamil Nadu Prohibition of Harassment of Women [Amended] Act, 2002. By judgment dated 29.09.2016, the Trial Court convicted him under sections 341, 376, 302 and 201 read with 302 IPC and sentenced him to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for one week for the offence u/s.341 IPC ; to undergo imprisonment for life and to pay a fine of Rs.5000/- and in default, to undergo simple imprisonment for six months for the offence u/s.376 IPC ; sentenced to death and to pay a fine of Rs.1000/- for the offence u/s.302 IPC and to undergo imprisonment for seven years and to pay a fine of Rs.5000/- and in default, to undergo simple imprisonment for six months for the offence u/s.201 read with 302 IPC.

3 Seeking confirmation of the death sentence imposed by the Trial Court, the Trial Court has submitted the proceedings to this Court as per section 366 of the Code of Criminal Procedure. Challenging the said conviction and sentence, the appellant / accused has come up with the appeal in CrI.A.No.748/2016. That is how, both the proceedings, viz., RT.No.2/2016 as well as CrI.A.No.748/2016 are before us for disposal.

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

[A] The deceased in this case was one Kamala. She was hardly aged about 28 years. She was residing with her brother [P.W.1] at Ramanathapuram Village in Tiruvarur District. She was working in a Medical Shop known as "Karpagavinayaga Medical Shop" at Vadapathimangalam, which is a nearby town. She used to go to the said Medical Shop everyday in the morning and to return in the evening around 7.00 to 7.30 p.m. by her bicycle. In the usual course, on 23.11.2013, in the morning, in her bicycle, she went to the Medical shop. After the shop was closed around 7.00 to 7.30 p.m., she was returning to her village in her bicycle.

[B] It is the further case of the prosecution that shortly after 7.30 p.m., when she was nearing the place known as Kazhungadi, at Ramanathapuram Village, near a small channel, the accused was waiting for her by sitting on the culvert. It is further alleged that on seeing the deceased coming in her bicycle, the accused intercepted her and pushed her down from the bicycle. Then, he dragged her to a field situated 150 feet away from the main road. In the filed, in the midst of the crops, he pushed the deceased down and raped her. When the deceased resisted, he attacked her and smothered her to death.

Thereafter, it is alleged that he tied the body of the deceased with the cycle using the dupatta [shawl] of the deceased ; took the dead body along with the cycle to the channel and pushed the same into the water. The occurrence was not witnessed by anyone.

[C] P.W.1, the brother of the deceased, having waited for the deceased to return home in the night, went in search of her. But, he could not see her anywhere. However, he could see the accused passing through the place of occurrence in his motorcycle by keeping the headlight of the vehicle in the "off mode". P.W.27, who was passing through the place of occurrence, found the accused somewhere near the place of occurrence around 8.00 to 9.00 p.m., on 23.11.2013. When the accused was trying to move away from the scene of occurrence, he was found to be filled with some tension. P.W.27 followed him and enquired him as to why he was behaving in such a way. The accused told him that when he was coming in his motorcycle, it hit the bicycle in which the deceased was riding and in the said accident, the deceased along with her cycle, fell into the channel water. On hearing this statement from the accused, P.W.27 immediately got into the channel. Even from outside, with the help of the torchlight, he could see the handle bar of the cycle above the water level. He rushed into the water and tried to lift the cycle and along with the cycle. The dead body of the deceased also came, which was tied to the bicycle. Shocked over the same, he left it inside the water and came to the bank of the channel and then to the road. By that time, the accused had already vanished away from the scene of occurrence. Then P.W.27 informed P.W.2, who was coming there, about the same. P.W.2 also rushed to the place of occurrence and found the dead body. Then P.W.2 informed P.W.1 about the fact that the dead body of the deceased was lying in the water. P.W.1 rushed to the place of occurrence and after verifying the facts, he went to Vadapathimangalam Police Station and made a complaint at 800 a.m. on 24.11.2013.

[D] P.W.15, the then Sub Inspector of Police attached to Vadapathimangalam Police Station, on receipt of the said complaint, registered a case in Cr.No.140/2013 for the offence u/s.174 Cr.P.C. Ex.P.1 is the complaint and Ex.P.15 is the First Information Report. He forwarded both the documents to the Tahsildar, Needamangalam.

[E] The case was taken up for investigation by P.W.29, the Inspector of Police [In-charge] of the Vadapathimangalam Police Station. P.W.29 went to the place of occurrence, prepared an Observation Mahazar [Ex.P.6] and a Rough Sketch [Ex.P.30] in the presence of the witnesses. At this juncture, it needs to be mentioned that the dead body of the deceased was

already removed by P.Ws.1 and 2, believing that there was life in the body. After she was declared dead, the body was kept in the Mortuary of Tiruvarur Medical College Hospital.

[F] P.W.29, held inquest on the body of the deceased in the Government Medical College Hospital, Tiruvarur, on 24.11.2013 between 13.00 hours and 15.15 hours, in the presence of the Panchayatdars and witnesses and then forwarded the dead body for postmortem. Ex.P.31 is the Inquest Report.

[G] P.W.13, Dr.Ashraf Hussain, the then Assistant Medical Officer, attached to the Government Medical College Hospital, Tiruvarur, at the relevant point of time, conducted autopsy on the body of the deceased on 24.11.2013 at 16.40 hrs. He found the following injuries:-

"External Injuries:-

1. Abrasion 5 x 1 cm over right ear.
2. Abrasion 2 x 1 cm over left ear.
3. Multiple small contusions seen all over the face.
4. Abrasion 2 x 2 cm over nose.
5. Abrasion 2 x 1 cm over lower lip.
6. Abrasion 1 x 1 cm over upper lip.
7. Abrasion 2 x 1 cm over left thumb.

Other findings:-

Pleural cavity: empty. Peritoneal cavity : empty. Hyoid bone: Intact. Larynx and Trachea: Frothy mucous secretions present. Ribs: No fracture. Heart: Chambers empty. C/s. congested. Coronaries- Patent. Lungs, Liver, Spleen and Kidneys cut section congested. Brain: Scalp contusion of 2x1 cm over right temporal region. C/s. Hymen-not intact. Uterus: C/S empty. Both tubes and ovaries normal. Urinary bladder-empty."

Ex.P.11 is the Postmortem Certificate. The doctor collected the Vaginal fluid, Vaginal smear and pubic hair and forwarded the same to the Forensic Lab for examination. He also found rupture of Hymen. He gave his final opinion that the deceased would appear to have died of asphyxia due to smothering.

[H] P.W.18, the then Special Sub Inspector of Police, removed the clothes from the dead body of the deceased as soon as the postmortem was over on 24.11.2013. One Chudidhar Pant, one tops, a black colour slip, a white colour bra and a black colour panties and a shawl [total items 6], were collected by P.W.18 and handed over to P.W.29. [These material objects have been marked as follows:- Chudidhar Pant [M.O.11] ; Tops [M.O.12]

; Slip [M.O.13] ; Bra [M.O.14] ; Panties [M.O.15] and Shawl [M.O.17]. P.W.29, handed over these material objects to the Court and made a request to forward the same to the Forensic Sciences Laboratory at Thanjavur, for examination. Accordingly, they were sent to the Forensic Lab.

[I] When the investigation was in progress, it is alleged that on 26.11.2013, the accused on his own volition, surrendered before P.W.4, the then Village Administrative Officer of Kulamanickam Village in Tiruvarur District. On such surrender, the accused wanted to make a voluntary confession. Having ascertained that the accused was in a fit state of mind to make a voluntary confession, P.W.4 allowed him to confess. Accordingly, the accused confessed. P.W.4 prepared a report under Ex.P.2 [confession as spoken by the accused was not reduced into writing and Ex.P.2 is only a report]. Along with the said report [Ex.P.2], P.W.4 produced the accused to P.W.29 on the same day. P.W.29 arrested the accused and he altered the case into one u/s.376, 201 and 302 IPC. While in custody, the accused made a voluntary confession at 11.30 hrs on 26.11.2013. In the said confession, he disclosed the place where he had hidden his motorcycle [M.O. 7], a yellow colour shawl [M.O.9], grey colour T-shirt [M.O.8] and a blue colour lungi [M.O.10]. P.W.29, noticed that there were seminal stains on the lungi. He recovered the above material objects under a Mahazar. He forwarded the accused to the Court for judicial remand and also the material objects. At his request, all the material objects were again sent for chemical examination. The chemical analysis revealed that in M.O.15 [Panties], recovered from the dead body of the deceased, there were seminal stains. The vaginal fluid ; vaginal smear and the pubic hair collected from the dead body of the deceased, did not contain any seminal stain. The other material objects contained human blood stains. The DNA extracted from the seminal stains found on M.O.15 [Panties] was examined with the DNA extracted from the blood samples of the accused. This revealed that the seminal stain found on M.O.15 [Panties] was that of the accused. P.W.29 continued the investigation and collected all the reports from the Forensic Laboratory ; examined the doctors and collected the Medical Records.

[J] When the investigation was thus in progress, on a petition filed by P.W.1 alleging that the death of the deceased would not have been caused by a single person and since he had doubt regarding four persons, the investigation was transferred to CBCID. Accordingly, P.W.30, the Deputy Superintendent of Police, took up the case for investigation on 02.04.2014.

[K] P.W.30 conducted further investigation, verified

the correctness of the investigation done by P.W.29, finally found that the accused alone was responsible for the above crime. Therefore, he laid the charge sheet against the accused.

[L] Based on the above materials, the Trial Court framed charges against the accused as detailed in the second paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 30 witnesses were examined, 35 documents and 17 material objects were also marked.

[M] Out of the said witnesses, P.W.1, the brother of the deceased, has stated that the deceased used to go to the Medical shop at Vadapathimangalam village, everyday morning in the cycle and return in the evening around 7.00 to 7.30 p.m. On the date of occurrence, she did not return home. When P.W.1 went in search of the deceased, he found the accused near the place of occurrence fleeing away in his motorcycle. The headlight of the motorcycle was in "switch off" mode. He has further stated that around 22.30 hrs., P.W.2 informed him that the dead body of the deceased, tied to her bicycle with dupatta, was found lying in the channel, viz., the place of occurrence. He has further stated that he went to the place of occurrence, verified the said facts and thereafter, went to the Police Station on the next day morning and made a complaint. He has further identified the personal belongings of the deceased, viz., M.O.1-Bicycle ; M.O.2-Wrist Watch ; M.O.3-Handbag ; M.O.4-Purse ; M.O.5-Tiffin Box and M.O.6-Water Bottle. These materials were found in the field later on. P.W.2, is a resident of Ramanathapuram Village. He has stated that on the date of occurrence, around 22.15 hrs., he along with one Nagarajan, with the torchlight, went in a two-wheeler to go to Kothur village. On their way, near the place of occurrence, they found the accused standing. When they enquired the accused, he had told them that when he was coming in his motorcycle, it hit the bicycle in which the deceased was riding and the deceased fell into the channel water along with the cycle. Perpetrated on hearing the same, P.W.2 flashed the torchlight immediately into the channel. They found the handle bar of the cycle alone above the water level. Thereafter, they went into the water, tried to pull the cycle out and at that time, they found that the dead body of the deceased was tied to the cycle. Leaving it inside, they came to the main road. At that time, the accused had disappeared. Thereafter, according to P.W.2, he informed the occurrence to P.W.1 and P.W.1 thereafter, came to the place of occurrence and then, he made a complaint to the police. P.W.3 is also resident of Ramanathapuram village. He has stated that on hearing the alarm raised from the place of occurrence, he rushed to the said place

along with P.W.1. He found the dead body of the deceased tied to the cycle inside the water. P.W.4 is the Village Administrative Officer who as stated that the accused surrendered before him on 26.11.2013 and made a voluntary confession. He has further stated when he was produced before the police, the Inspector of Police arrested him and while in custody, the accused made a voluntary confession [vide Ex.P.3]. In pursuant to the said disclosure statement, he produced M.O.7 [Two Wheeler bearing Regn.No.TN-01-V-5058] ; M.O.8-T-Shirt ; M.O.9-Yellow Colour Shawl and M.O.10-Lungi, which were recovered by P.W.29 under Ex.P.4-Seizure Mahazar. P.W.5, a middle aged woman, aged 32 years, is a resident of Ramanathapuram Village. According to her, six months prior to the occurrence, when she was sitting in her house, the accused came there ; closed her mouth and tried to rape her. When she raised alarm, he ran away. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.7 is the employer of the deceased. He has stated that on the day of occurrence, around 19.00 hrs., the deceased left the medical shop for her village in her cycle. P.W.8 is another important witness for the prosecution. He is the resident of Ramanathapuram Village. According to him, on 23.11.2013 around 19.00 hrs., when he was returning from Vadapathimangalam Bazaar to his village, he found the accused sitting in culvert near the place of occurrence, viz., the channel. When he enquired, the accused told that he was waiting for a person. Thus, he had found the accused somewhere near the place of occurrence at or about the time of occurrence. P.W.9 is the resident of Ramanathapuram Village and he knew the accused. According to him, during the year 2013, he was in Kerala, doing some coolie work along with P.W.10. On one day, according to him, the accused, from the Cellphone of one Bhakthavatchalam [P.W.26] spoke to him, through the cellphone of P.W.10. At that time, the accused told P.W.9 that he had killed the deceased. Then, he switched off the cellphone and gave the same back to P.W.10. P.W.10 has stated that on 23.11.2013, around 19.30 hrs to 20.00 hrs., when he was working along with P.W.9 in Kerala, he received a call from the phone of one Bakthavatchalam [P.W.26] and the accused had spoken to him and the accused told P.W.10 that he wanted to speak to P.W.9. Accordingly, P.W.10, handed over the phone to P.W.9 and for some time, the accused spoke to P.W.9 and then, P.W.9 switched off the phone and returned the same to P.W.10. P.W.9, at that time, told P.W.10 that the accused had killed the deceased. P.W.11 is a resident of Kothur village. He has stated that in his field, a hand bag containing tiffin box, ladies purse ; a water bottle and a cash of Rs.50/- were found. They were recovered by the police. P.W.12, Dr.Arunkumar, has stated that he examined the accused on 05.12.2012 at the Government Medical College Hospital, Tiruvarur

and on such examination, he found that the accused had full development of his sexual organs. He further opined that the accused was successfully potential to have sexual intercourse with a woman. Ex.P.10 is the Certificate issued by him. P.W.13, Dr.Ashraf Hussain, has spoken about the postmortem conducted and his final opinion regarding cause of death. He has further stated that he has collected the vaginal fluid, vaginal smear and the pubic hair and forwarded the same to the Forensic Lab for examination. P.W.14, a Forensic Expert, at the Regional Forensic Sciences Lab, Thanjavur, has stated that he examined the material objects sent to him for chemical examination. He found that blood stains were found in many of the items, more specifically, in M.O.15 [Panties], he found seminal stains. He collected the seminal stains from the same and forwarded it for DNA examination. He further stated that in the vaginal smear, vaginal fluid and pubic hair, there were no seminal stains. P.W.15, the Sub Inspector of Police of Vadapathimangalam Police Station, has spoken about the registration of the case on the complaint of P.W.1. P.W.16, Nodal officer from AIRCEL Company, has stated that in respect of two mobile numbers, viz., 9095763048 and 7402285156 respectively, the police wanted him to furnish the call details relating to 23.11.2013. Accordingly, he gave the call details pertaining to the mobile number 9095763048 under Ex.P.16. He has also given a certificate as required u/s.65-B of the Indian Evidence Act. The said Certificate is marked as Ex.P.18. As per the said call details, on 23.11.2013, from the cell number 9995372070, there were two calls to the mobile No. 9095763048. P.W.17 is yet another Nodal Officer from Bharthi Airtel Service Provider. He has stated that he gave call details for the Mobile No.9995372070 relating to 23.11.2013. He has also given a Certificate u/s.65-B of the Evidence Act. According to the call details, on 23.11.2013, at 20.08.39 hrs., there was a phone call to the Cell No.9095763048 from the Mobile No.9995372070. The Mobile No.9995372070 belongs to P.W.26 and the Mobile No.9095763048 belongs to P.W.9. P.W.18, the then Special Sub Inspector of Police has stated that he took the dead body and handed over the same for postmortem and after postmortem was over, he collected the Chudidhar pant, tops, slip, bra, panties and a shawl from the dead body and handed over the same to P.W.29 [vide M.Os.11 to 15 and 17]. P.W.19, yet another Special Sub Inspector of Police, has stated that had produced the accused before the learned Judicial Magistrate, Mannargudi on 20.05.2014 and the learned Magistrate has directed P.W.19 to take the accused to the Tiruvarur Medical College Hospital for examination. Accordingly, the accused was examined and blood samples were taken from him and the same was forwarded for DNA examination. P.W.20, yet another Constable has stated that he produced the accused before the Doctor, at the Tiruvarur

Government Medical College Hospital on 05.12.2013 for potency test. P.W.21, a Head Constable, has stated that he handed over the FIR to the Tahsildar, as directed by the Sub Inspector of Police. P.W.22, the learned Judicial Magistrate has stated that he recorded the statements of P.Ws.9,10 and 26 on 11.12.2013 u/s.164 Cr.P.C. P.W.23, the Assistant Director, Forensic Sciences Lab, DNA Division, Chennai, has spoken about the Biological Report in respect of the material objects produced before him for examination. Ex.P.23 is the Biological/Chemical Report, which reveals that there were blood stains on many of the material objects including the material objects recovered from the accused. P.W.24 is the Scientific Officer in the Forensic Sciences Lab at Chennai and she has spoken about the Serology Report [vide Ex.P.24] submitted by her after conducting the Serology Examination on the material objects. According to her, in M.O.15-panties, she found seminal stains. P.W.25, the Assistant Director of Forensic Sciences Lab, DNA Division, Chennai, has stated that she had conducted DNA profile examination on the seminal stains found on M.O.15 [Panties] and the DNA Extract from the blood samples of the accused. According to her, as per the analysis, she found that the seminal stains found on M.O.15 [Panties] were that of the accused. Ex.P.25 is the report. P.W.26 has spoken about the fact that he is the owner of the Cell No.9095763048. He has stated that on 23.11.2013, the accused, around 22.00 hrs., met P.W.26 and through his cellphone, had contacted the cellphone of P.W.9. Thereafter, the accused returned the cellphone to P.W.26. P.W.27, yet another resident of Ramanathapuram Village, has stated that on 23.11.2013, between 20.00 hrs and 21.00 hrs., he found that accused near the place of occurrence, trying to move away. He has further stated that when he enquired him, the accused told him that he had hit the deceased along with her bicycle with his motorcycle and as a result, the deceased along with the cycle, fell into the water. P.W.28, the Tahsildar, Needamangalam, had stated that he received the FIR in this case on 24.11.2013 and thereafter, forwarded the same to the Court of the learned Judicial Magistrate on 26.11.2013 as requested by P.W.29. P.W.29 has spoken about the investigation done by her and P.W.30 has spoken about the further investigation done by him in the matter, after the case was transferred to him and the filing of the charge sheet against the accused.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not chose to examine any witness but marked Ex.D.1-the letter of the Inspector requesting the Tahsildar to send FIR to the Court concerned.

4 Having considered all the above, the Trial Court

convicted and sentenced the accused for the offences as detailed in the second paragraph of this judgment. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

5 We have heard Mr.R.Karthikeyan, learned Legal Aid Counsel appearing for the appellant and Mr.R.Rajaratnam, learned Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 This is a case based on Circumstantial Evidence. From the evidence of P.W.1, it is crystal clear that on 23.11.2013, as usual, the deceased had gone to Vadapathimangalam to work in the Medical Shop run by P.W.7. P.W.7 has stated that on the day of occurrence, the deceased attended her duty and after the shop was closed, around 19.00 hrs., she left for her village in her bicycle. Thus, the deceased was lastly seen alive on 23.11.2013 around 19.00 hrs. Thereafter, according to P.Ws.2, 3 and few others, the dead body of the deceased was found in the channel water tied to the bicycle, around 22.15 hrs. The doctor, who conducted autopsy, had opined that the death of the deceased was due to asphyxia due to smothering. There were also other external injuries. We find no reason to reject the said opinion of P.W.13-Dr.Ashraf Hussain, who conducted the autopsy. From these evidences, the prosecution has clearly established that the death of the deceased had occurred sometime between 19.00 hrs and 22.15 hrs on 23.11.2013 and the death was homicidal.

7 The prosecution alleges that the deceased was raped before she was murdered. As we have already pointed out, there is no eyewitness account to the same. The prosecution relies on the extra-judicial confession of the accused made to P.W.4-Village Administrative Officer on 26.11.2013. The learned counsel for the appellant would submit that the evidence of P.W.4 that the accused surrendered before him on 26.11.2013 and made a voluntary confession, stating that he had raped the deceased and killed her, cannot be believed. In order to substantiate his contention, the learned counsel for the appellant relies on Ex.P.26, the report made by the Tahsildar, viz., P.W.28, to the Court. In the said report, which is dated 26.11.2013, the Tahsildar has stated that the accused had already surrendered to the police. But the fact remains that the Tahsildar was not aware of the factum of the surrender of the accused already. The said statement of the Tahsildar that the accused has already surrendered to the police even on 24.11.2013, is based on hearsay information and therefore, the same is liable to be rejected. But, at the same time, we are unable to reject the evidence of P.W.8 who has stated that on

24.11.2013, the accused was taken into custody and he was continuously kept in the Police Station. This witness has not been treated as hostile, though the evidence of P.W.8 is destructive in nature. Though the statement of the Tahsildar [P.W.28] by itself, would not prove that the accused was in the police custody from 24.11.2013 onwards, it would lend some assurance to the evidence of P.W.8. P.W.8 has categorically stated that the accused was in the police custody from 24.11.2013 onwards. Therefore, we are unable to make any reliance on the evidence of P.W.8. Further, P.W.8 has also not reduced the so-called confession allegedly given by the accused into writing. He has prepared only a report [vide Ex.P.2]. Therefore, from out of the evidence of P.W.4, the prosecution cannot succeed in establishing that the deceased was raped and then killed.

8 The next circumstance available for the prosecution to prove that the deceased was raped, is the scientific evidence relating to DNA. P.W.13, Dr.Ashraf Hussain, conducted autopsy, collected vaginal fluid, vaginal smear and pubic hair. They were sent to the Forensic Lab for examination. But, there was no sperm or spermatozoa in all these material objects. Probably, because the dead body was in the water, the possibility of the semen remaining there, cannot be assured. Thus, the absence of seminal stains in the vaginal fluid, vaginal smear and pubic hair, would not exonerate the accused. It can only go to show that these three pieces of evidence were not in favour of the prosecution.

9 As soon as postmortem was over, the clothes found on the body of the deceased were collected by P.W.18, the then Special Sub Inspector of Police who took the dead body and handed over the same to P.W.29. He has stated that he collected M.O.11 [Chudidhar pant] ; M.O.12 [Tops] ; M.O.13 [Black Colour Slip] ; M.O.14 [Bra] ; M.O.15 [Panties] and M.O.17 [Shawl]. There is no denial of the fact that these clothes were recovered from the body of the deceased. All these material objects were recovered by P.W.29 and they were sent to the Court on 24.11.2013 itself. They were received by the learned Magistrate on 26.11.2013. It was noticed even at the time of the recovery, there were seminal stains of M.O.15 [Panties] of the deceased. After the accused was arrested, a request was made to send the accused for DNA examination. After receiving the letter from the DNA Division of the Forensic Science Lab, the accused was taken to the Government Medical College Hospital at Tiruvarur, where his blood samples were collected and sent to Forensic Lab. P.W.25, the Deputy Director of Forensic Sciences Lab, DNA Division, Chennai, had conducted the DNA profile by examining the DNA extract taken from the seminal stains found M.O.15

[Panties] and the DNA extracted from the accused. The result revealed that the seminal stains found on M.O.15 [Panties] of the deceased was that of the accused. There is no reason to reject this scientific evidence of P.W.25 and the accused has got no explanation as to how his semen stained the panties of the deceased. This would only go to conclusively prove that the accused had sexual nexus to the deceased. From the nature of the injuries found on the body of the deceased, viz., the fact that the dead body was tied to the bicycle and it was found in the water, would all go to show that the accused had sexual intercourse with the deceased by force, caused her death, tied the dead body to the cycle and threw the same into the water.

10 This conclusion is further strengthened by the other circumstances available also. In this regard, we may refer to the evidence of P.W.2 and P.W.27. P.W.27 has stated that on the day of occurrence, around 20.00 hrs to 21.00 hrs., he was passing through the place of occurrence and he found the accused near the place of occurrence and on seeing P.W.2, the accused started to move away. When P.W.2 enquired the accused, the accused had told him that the motorcycle cycle driven by him, hit the bicycle which was being driven by the deceased and the deceased along with the cycle, fell into the water. But for this information given by the accused, P.W.27 would not have had any occasion at all, to look into the channel. On this information, he flashed the torchlight and found that the handle bar of the cycle was above the water. When he rushed into the water to take the cycle out, he found the dead body was tied to the cycle. When he came to the bank of the channel, i.e., to the road, he found the accused already disappeared. Then P.W.27 informed P.W.2 over phone and P.W.2 rushed to the occurrence spot and after verifying the same, he gave information to P.W.1. The evidence of P.W.27 is very important for the prosecution case as it proves two facts, viz., firstly, the disclosure statement made by the accused to P.W.27 that the dead body was in the water along with the cycle. But for this information, as we have already pointed out, P.W.27 would not have flashed the torchlight and noticed the dead body. Secondly, the conduct of the accused as proved by P.W.27. The accused had no explanation as to how he came to know that the dead body along with the bicycle was in the water. His explanation that he hit the cycle with his motorcycle accidentally and as a result, the deceased fell into water, is nothing but a false explanation because the dead body was tied to the bicycle with the dupatta. The accused has got no explanation regarding his conduct, i.e., his disappearance from the place of occurrence immediately. This conduct of the accused and the disclosure statement made by the accused to P.W.27, which is corroborated by the evidences of P.Ws.1 and 2, would further go to prove that it was this accused

who committed the murder of the deceased.

11 There are few more circumstances like the evidence of P.W.8. P.W.8 had seen the accused around 19.00 hrs., on 23.11.2013 near the place of occurrence. The accused was actually sitting on the culvert when P.W.8 enquired him as to why he was sitting. The accused told that he was waiting for a person to come. Though this witness was cross-examined at length, nothing has been elicited from him to disbelieve him. His evidence would further go to prove that the accused was found somewhere near the place of occurrence at or about the time of occurrence.

12 Then comes the evidence of P.Ws.9, 10 and 26. P.W.26 has stated that he is the owner of the cellphone bearing No.9095763048. On the day of occurrence, i.e., 23.11.2013, around 20.00 hrs., the accused requested P.W.26 to lend his cellphone. Accordingly, he gave his cellphone to the accused, through which, the accused wanted to speak to P.W.9. The accused called P.W.10's cellphone bearing No.9995372070 and told P.W.10 to give the cellphone to P.W.9 and P.W.10 handed over the cellphone to P.W.9 and the accused informed P.W.9 that he had raped and killed the deceased. Now the question is whether to believe these three witnesses. The evidences of these witnesses are fortified by the call details of these two cellphones furnished by P.Ws.16 and 17. These call details have been certified as required u/s.65-B of the Evidence Act also. The call details would go to prove that at the time alleged, there were two phone calls from the cellphone of P.W.26 to P.W.10. Thus, we find no reason to reject the evidences of P.Ws.9, 10 and 26. From these evidences, it is crystal clear that after the occurrence was over, the accused had called P.W.9 through P.W.10's cellphone and confessed to him about the occurrence. Though this extra-judicial confession is a very weak piece of evidence, this would lend assurance or this would corroborate the other circumstances, which would clinchingly prove the guilt of the accused.

13 Thus, from the above proved circumstances, in our considered view, the prosecution has proved beyond any reasonable doubt that it was this accused who had waylaid the deceased, raped her, killed her, tied the dead body with her bicycle and threw the same into the water with a view to cause disappearance of the evidence. The act of the accused in killing the deceased would squarely fall within the first limb of Section 300 IPC. Therefore, the Trial Court was right in convicting the accused for the offences u/s.341, 376, 302 and 201 read with 302 IPC.

14 Now, turning to the quantum of punishment, the learned Public Prosecutor would submit that the facts of this case would clearly go to prove that it falls within the "rarest of rare" category of cases and therefore, the Trial Court was right in imposing death penalty for the offence of murder. But, the learned counsel appearing for the appellant would submit that this would not fall within the said parameters.

15 We have considered the above submissions.

16 In our considered view, this case would not fall within the category of "rarest of rare" cases as per the "rarest of rare" doctrine propounded by the Constitution Bench of the Hon'ble Supreme Court of India in BACHAN SINGH Vs STATE OF PUNJAB reported in AIR 1980 SC 898.

17 There are lot of mitigating circumstances in this case. The accused is a young man, aged 23 years at the time of the occurrence. He had no bad antecedents. He is a bachelor. The learned Public Prosecutor submitted that as per the evidence of P.W.5, on an earlier occasion, the accused tried to molest her. In our considered view, the said evidence of P.W.5 cannot be considered at all as it is an inadmissible evidence in view of the bar contained in section 54 of the Evidence Act, which states that in criminal proceedings the fact that the person accused of, has a bad character, is irrelevant unless the evidence has been given that he has a good character, in which case alone, it becomes relevant. In the case on hand, there is no evidence let in by the accused to prove that he has got good character. Therefore, the evidence of P.W.5 which speaks of the bad character of the accused, is irrelevant and therefore, the same cannot be considered by us.

18 If the evidence of P.W.5 is rejected, then there is no other evidence to prove the accused had bad antecedents. From the records it is seen that driven by sexual urge, the accused had committed rape and then, probably, with a view to escape from the clutches of law, has committed the murder and threw the dead body into the water. Having regard to these mitigating circumstances, we are of the view that this is not a fit case to impose death penalty. In our considered view, the facts of this case would not go to prove that this case falls within the category of "rarest of rare" cases as per the judgment of the Hon'ble Apex Court in Bachan's case [cited supra]. Hence, the accused is liable to be punished for imprisonment for life besides fine amount, for the offence u/s.302 IPC. So far as the sentence imposed on the accused by the Trial Court, in respect of the other offences are

concerned, they are proportionate to the gravity of the offences and therefore, they are liable to be confirmed.

19 In the result, Referred Trial in RT.No.2/2016 is disposed of and Crl.A.No.748/2016 is allowed in part, in the following terms:-

- The conviction of the accused / appellant for the offences u/s.341, 376, 302 and 201 read with 302 IPC are confirmed.
- The sentence imposed on the accused / appellant for the offences u/s.341, 376 and 201 read with 302 IPC are hereby confirmed.
- The sentence of death imposed on the appellant / accused for the offence u/s.302 IPC is modified and instead, he is sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default, to undergo rigorous imprisonment for four weeks.
- Having regard to the gravity of the offence and also having regard to the mitigating circumstances, we are of the view that the accused / appellant shall not be considered for any remission by the Government for 20 years from the date of judgment of the Trial Court.
- It is further directed that the sentences shall run concurrently.

Sd/-

Assistant Registrar

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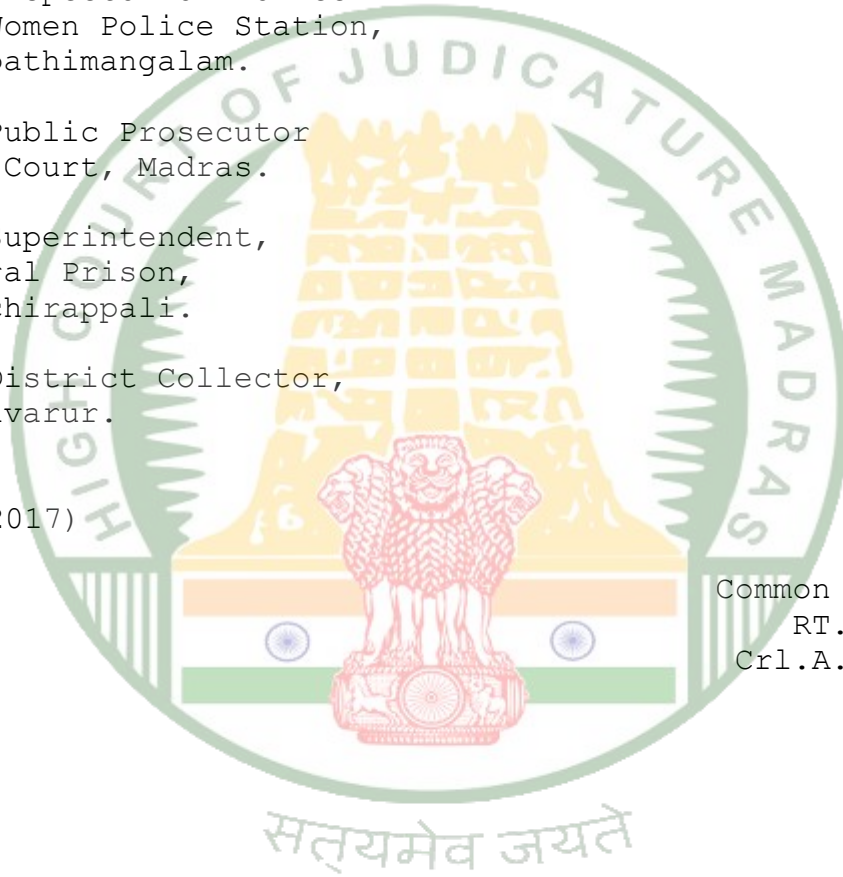
Sub Assistant Registrar

AP
To

- 1 The Sessions Judge, सतयमेव जयते
Magalir Neethimandaram,
[Fast Track Court], Tiruvarur.
- 2 Do 'Through the Principal District and Sessions Judge,
Tiruvarur.
- 3 The Chief Judicial Magistrate
Tiruvarur.
- 4 The Judicial Magistrate No.II,
Mannargudi.

- 5 The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-4.
- 6 The Superintendent of Police,
Tiruvavarur.
- 7 The Deputy Superintendent of Police
CBCID Trichy.
- 8 The Inspector of Police
All Women Police Station,
Vadapathimangalam.
- 9 The Public Prosecutor
High Court, Madras.
- 10 The Superintendent,
Central Prison,
Tiruchirappali.
- 11 The District Collector,
Thiruvavarur.

MV(CO)
RS(02/03/2017)



Common Judgment in
RT.No.2/2016 &
Crl.A.No.748/2016

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