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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2016

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM
and
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.A.(MD)No.193 of 2014

Sakthivel ... Appellant/1st Accused

Vs.

State rep.by
The Inspector of Police,
Chinnadharapuram Police Station,
Crime No.368/2010. ... Respondent/Complainant

Prayer : Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 08.02.2012 passed in Sessions Case No.33 of 2011 by the Sessions Court, Karur.

For Appellant : Mr.T.Antony Arul Raj
For Respondent : Mr.A.Ramar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.)

The conviction and sentence dated 08.02.2012 passed in Sessions Case No.33 of 2011 by the District and Sessions Court, Karur are being challenged in the present Criminal Appeal.

2.The case of the case of the prosecution is that the deceased by name Eswari is a close relative of the first accused by name Sakthivel and with regard to leasing of lands of the deceased, a despair has been existence between the accused and deceased and in pursuance of the same, on 13.12.2010 at about 05.30 pm, both the accused have deterred the deceased. The second accused was caught hold of both hands of the deceased and with an intention to murder her, the first accused has attacked her by



using an aruval indiscriminately and thereby caused fatal injuries and due to overtacts of the accused, she passed away. After occurrence, the defacto complainant by name Natarajan has given a complaint to the Special Sub Inspector of Police (PW15) and the same has been registered in Crime No.368 of 2010.

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3. On receipt of complaint, the Investigating Officer viz., PW16 has conducted investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr. Kohila (PW10) has conducted postmortem and she found the following external and internal injuries.

External:

(1) Cut injury of 12 x 3 x bone depth extending from the left eye upto left ear.

(2) Cut injury of 14 x 5 x bone depth over the middle on the left cheek upto ear bone (left) and the same is cut.

(3) Cut injury of 21 x 10 x bone depth extending from the left angle of mouth upto left side of the scalp near the occipital bone.

(4) Cut injury of 6 x 2 x bone depth over the left side of the chin.

(5) Cut injury of 5 x 3 x bone depth over the left shoulder.

(6) Multiple cut injuries of about 10 x 5 cm, 7 x 3 cm, 5 x 2 cm over the left breast.

(7) Left fore arm (middle) is cut.

(8) Multiple cut injuries over the (N.C) of the head left.

(9) Multiple cut injuries over the right hand below the index fingers fractured. O/E. left-ribs 3, 4, 5 fracture seen and blood (about 100 ml) seen in the thoracic cavity. Left lungs punctured right (N.C. & heart) normal. Liver & Other internal organs are pale. Stomach contains dark coloured fluid of about 100 ml. Skull normal. Brain pale.

4. The post-mortem certificate has been marked as Ex.P10. After completing investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate Court, No.II, Karur and the same has been taken on file in PRC No.7 of 2011.

5. The Judicial Magistrate, Karur after considering the fact that the offences alleged to have been committed by the accused <https://hccs.eest.courts.gov.in/hccs/Services> Sessions Court, has committed the case to the Court of Sessions, Karur Division and taken on file in Sessions Case No.33 of 2011.



6. The trial Court after hearing arguments of both sides and upon perusing relevant documents has framed first charge against both the accused under Section 341; second charge against them under Section 302 r/w 34 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution PWs.1 to 16 have been examined and Exs.P1 to P27 and M.Os.1 to 13 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, DW1 has been examined and Ex.D1 has been marked.

9. The trial Court after hearing arguments of both sides and after perpending the available evidence on record has found the first accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. The trial Court has acquitted the second accused from the charges. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the first accused as appellant.

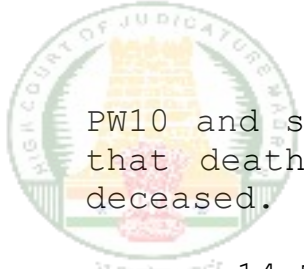
10. The consistent case put forth on the side of the prosecution is that the first accused is a close relative of the deceased Eswari and in connection with leasing out of her lands, a tussle has arisen between the accused and deceased and with an intention to murder her, on 13.12.2010 at about 05.30 pm, both the accused have deterred her in the place of occurrence and the second accused has caught hold of her both hands and the first accused has indiscriminately attacked her by using an aruval and thereby caused fatal injuries and due to their overtacts, she passed away.

11. The prosecution has set the law in motion only on the basis of Ex.P1, complaint, wherein the motive that existed between the accused and deceased has been clearly mentioned. Further, in Ex.P1, it has been clearly stated that in the place of occurrence, the second accused has caught hold of the deceased and first accused has attacked her by using an aruval indiscriminately and thereby caused fatal injuries.

12. The author of Ex.P1 has been examined as PW1 and he narrated the motive for occurrence, details of attack made by both accused on the person of the deceased.

<https://hccourtsonline.in/Hccourtsonline>

13. The doctor who conducted autopsy has been examined as



PW10 and she marked Ex.P10, postmortem certificate and she opined that death would have occurred due to injuries sustained by the deceased.

14.The trial Court after considering the available evidence on record has found the first accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment as mentioned in the Judgment.

15.The learned counsel appearing for the appellant/first accused has raised the following points to set aside the conviction and sentence passed by the trial Court.

(i)The specific evidence given by PW1 is that after occurrence, he and PW2 viz., Saravanan have lifted the head of the deceased and therefore, their clothes would have sustained blood stain and the specific evidence given by PW1 is that his cloths have not sustained the same and further PW16, Investigating Officer has not enquired about the same and therefore, PW1 is not at all an eye witness.

(ii)Recovery of material object has not been proved.

(iii)No independent witnesses have been examined and no motive has been established.

16.The learned Additional Public Prosecutor has contended that the specific evidence given by PWs.1 and 2 is that after occurrence, both of them have lifted the head of the deceased. Under the said circumstances, no possibility has arisen for getting blood stain on their clothes and further, PW1 has specifically stated the motive that existed between the accused and deceased and also details of attack made by them on her person and the trial Court after considering the trustworthy evidence given by PW1 coupled with recovery, has rightly found the first accused guilty under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court against the appellant/first accused are not liable to be set aside.

17.In fact this Court has perused the entire evidence given by PW1 and ultimately found that PW1 is also a closely related to the deceased and his specific evidence is that with regard to leasing out of lands of the deceased, a long standing enmity has been existence between the accused and deceased. Further he deposed that in the place of occurrence the second accused has caught hold of the deceased and the first accused has attacked on her person by using an aruval and thereby caused fatal injuries.

18.It is true that on the side of the prosecution, except PW1, no other eye witness has been examined. Simply because on the side of the prosecution except PW1, no other eye witness has been examined, the Court cannot discard the evidence given by PW1.



Further no motive has been in existence between PW1 and accused and therefore, this Court is of the considered view that PW1 has given a creditworthy evidence with regard to motive as well as occurrence.

19. It is seen from the evidence given by PWs.1 and 2 that after occurrence both of them have lifted the head of the deceased and ultimately found that she passed away. Considering the fact that both PWs.1 and 2 have not lifted the body of the deceased, it is not possible to sustain blood stain on their clothes. Under the said circumstances, the first and foremost contention put forth on the side of the appellant/first accused cannot be accepted.

20. The second contention put forth on the side of the appellant/first accused is that recovery has not been proved. In fact, on the side of the prosecution replete evidence has been adduced for the purpose of proving recovery and the concerned Village Administrative Officer has been examined as PW5 and his specific evidence is that as per confession given by the first accused, Material Objects have been recovered. Even assuming without conceding that recovery has not been proved, the Court cannot come to a conclusion that the case of the prosecution is false and therefore, the second contention put forth on the side of the appellant/first accused is sans merit.

21. The third contention put forth on the side of the appellant/first accused is that no independent witnesses have been examined nor motive has been established.

22. One Poovendran has been examined as PW3 apart from PW1 and his specific evidence is that with regard to leasing out of lands of the deceased, a strong motive has been existence between the accused and deceased. Of course it is true that with regard to occurrence, except PW1, no other independent witness has been examined. But it is not the case of the prosecution that except PW1 some other persons have witnessed the occurrence. Since except PW1, no other persons have witnessed the occurrence, question of examining independent witness does not arise and as stated earlier, motive for occurrence has been abundantly established in the present case. Therefore, viewing from any angle, the third contention put forth on the side of the appellant/first accused also goes out without merit.

23. As adverted to earlier, PW1 has given clinching evidence to the effect that a strong motive has been existence between the accused and deceased. Further he deposed to the effect that in the place of occurrence, second accused has caught hold of the deceased and first accused has attacked her indiscriminately by ~~using force~~ and only due to his overtacts, the deceased has passed away. Therefore, the evidence given by PW1 can be a basis for coming to a conclusion that the appellant/first accused has



committed the offence punishable under Section 302 of the Indian Penal Code.

24. The trial Court after considering the overwhelming evidence available on record has rightly found the appellant/first accused guilty under Section 302 of the Indian Penal Code. In view of the discussion made earlier, this Court has not found any error nor illegality in the conviction and sentence passed by the trial Court and altogether, the present Criminal Appeal deserves to be dismissed.

25. In fine, this Criminal Appeal is dismissed. The conviction and sentence passed in Sessions Case No.33 of 2011 by the District and Sessions Court, Karur are confirmed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The District and Sessions Court, Karur
2. The Inspector of Police,
Chinnadharapuram Police Station,
3. The Addl. Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Judicial Magistrate No.II, Karur.
5. The Inspector of Police,
Velayuthampalayam,
Aravakurichi Circle, Karur.
6. The Chief Judicial Magistrate, Karur.
7. The District Collector, Karur.
8. The Director General of Police,
Mylapore, Chennai.
9. The Superintendent,
Central Prison, Trichy
(with one extra copy to be marked to the accused)



10. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 cc to Mr.T.Antony Arulraj, Advocate, Sr.No.19023

mj

JM/GSV-PM/13.04.2016/7P-13C

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