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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.04.2016

CORAM

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

Crl.A.(MD)No.210 of 2014

Kuppusamy : Appellant/Accused

Vs.

State by
The Inspector of Police,
Thirukokarnam Police Station
Pudukkottai District,
(Crime No.331/2009)

:Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 18.12.2013. passed in Sessions Case in S.C.No.116 of 2010 by the Mahila Court, Pudukkottai.

For Appellant : Mr.N.Rahamathullah
for Mr.K.Gokul

For Respondent : Mr.A.Ramar
Additional Public Prosecutor

JUDGEMENT RESERVED DT: 01.04.2016

JUDGEMENT DELIVERED DT: 22 .04.2016

JUDGMENT

(Judgment of the Court was made by G.CHOCKALINGAM, J.)

The present appeal is directed against the conviction and sentence passed in Sessions Case No.116 of 2010 by the Mahila Court, Pudukkottai holding that the appellant/accused guilty of the offences under Section 302 of Indian Penal Code and awarding sentence of life imprisonment and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for 6 months and under Section 394 r/w 397 of the Indian Penal Code, awarding sentence of 10 years rigorous imprisonment and also to pay a fine of Rs.1,000/- in default to undergo six months of rigorous imprisonment.



2. Brief case of the prosecution is that on 20.06.2009 the deceased Karuppayi went to Puthampur for getting Old Age Pension and thereafter, she did not return back home and on search, she was found unconscious and after treatment in the hospital, on 22.06.2009 she had expired and thereafter, it came to light that the deceased was attacked by the accused with an intention to murder her.

3. On receipt of complaint Ex.P1 from Thiru.Thangaraj (PW1), who is the son-in-law of the deceased, Thiru.Sampath, (PW12), Special Sub Inspector of Police, has registered a FIR in Crime No.331 of 2009 under Section 307 IPC and sent the copy of the FIR to the concerned Judicial Magistrate and his higher officials and thereafter, the deceased had expired in the hospital, he altered Section into 302 IPC.

4. PW2, PW3, PW4, PW6 are the relatives of the deceased Karuppayi and they have stated about the occurrence.

5. PW5 Thiru.Rengasamy has stated that on 20.06.2009 when he along with the relatives of the deceased made a search, the deceased was found with blood injuries and thereafter, she was taken to hospital, where she has died on the next day.

6. PW7 Thiru.Abdul Kadhira has stated that he is running a grocery shop in Puthampur and on 20.06.2009, the deceased came to his shop for purchasing grocery items and at that time, the accused had been watching the deceased and thereafter, he came to know that the deceased Karuppayi was found to be murdered and during the time of identification parade, he identified the accused in the Central Prison, Trichy and also identified the TVS-50 vehicle bearing registration No.TN-55-T-5934, which was used by the accused for the commission of the offence.

7. PW8 and PW9 are the Government officials and they have identified the accused in the Central Prison at Trichy. PW13 Thiru.Baskar, the Special Sub Inspector of Police has stated that when he was working as Head Constable at Thirukokarnam Police station, he has handed over the dead body of the deceased to the Trichy Visvanathan Hospital for inquest. PW14 Dr.Sundararajan, Assistant Professor of Thanjavur Medical College Hospital has conducted postmortem on the body of the deceased.

8. PW15 Thiru.Velusamy, Inspector of Police, on the basis of the FIR registered by PW12, took up the case for investigation, proceeded to the scene of crime and prepared Observation Mahazar and Rough Sketch in the presence of witnesses and recorded their statements and prepared Observation mahazar and Rough Sketch and after completing the investigation and following all the legal formalities, he has laid a final report on the file of the Judicial Magistrate, Pudukkottai and the same has been taken on file in PRC No.9 of 2010 under Sections 302 and 394 r/w 397 IPC.



9.The learned Judicial Magistrate, Pudukkottai, after considering the fact that the offences alleged to have been committed by the accused are triable by the Sessions Court, has committed the case to the Mahila Court, Pudukkottai and the same has been taken on file in Sessions Case No.116 of 2010.

10.The trial court, after hearing both sides and upon perusing relevant records, has framed charges against the accused for the offences under Sections 302 and 394 r/w 397 of the Indian Penal Code and the same had been read over and explained to him. The accused denied the charges and claimed to be tried.

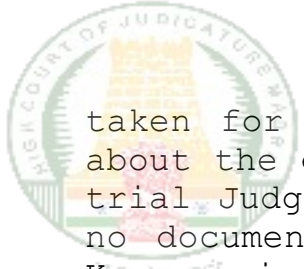
11.To prove the charges against the accused, on the side of the prosecution, PWs.1 to 16 have been examined and Exs.P1 to P12 and M.O.1 has been marked. After examining the prosecution witnesses, the accused had been questioned under Section 313 of the Code of Criminal Procedure, 1973 in respect of the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

12.The trial Court after perpending the available evidence on record has found that the accused found guilty and awarded sentence of life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment under Section 302 of IPC and to undergo 10 years of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months of rigorous imprisonment under Section 394 r/w 397 of IPC.

13.The specific case put forth on the side of the prosecution is that on 20.06.2009 the deceased Karuppayi went to Puthampur for getting Old Age Pension and thereafter, she did not return back home and on search, she was found unconscious and after treatment in the hospital, on 22.06.2009 she had expired and thereafter, it came to light that the deceased was attacked by the accused with an intention to murder her.

14.Heard learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State/respondent and also perused the materials available on record.

15.The learned counsel appearing for the appellant/accused has contended that the trial court has failed to see that the appellant/accused not only convicted in this case, but he has also been convicted in four other cases, which looks the history of the case that all the cases of similar and hence, it is a put up case on the appellant/accused and that the past history of the appellant/accused has been taken into consideration, which is not appropriate in the eye of law and that the trial court has not properly analysed the evidence of PW10 Rajendran, who is the owner of jewellery shop at Ponnamaravathy and his evidence has not been



taken for neither consideration nor appreciation, who has stated about the ears stud, which itself not legally taken by the learned trial Judge and that the trial Judge has also failed to see that no document has been marked to prove the fact that the deceased Karuppayi was receiving Old Age Pension and for that purpose only, she came only Puthampur and the trial court has also failed to appreciate the evidence of PW1, who has stated that the deceased was found unconscious at foot steps pathway near R.S.Pathy Garden, which belongs to one Murugesan and that when he was cross examined, he has stated that foot steps pathway used by the public in Puthampur from 6 a.m. to 6 p.m. and the said pathway is always busy and that the learned trial Judge has failed to appreciate the evidence of cross examination of PW5 Elangovan, who has stated regarding Old Age Pension, concerned document is in PW8 Office, who is working in Post Office and the same has not been asked by the respondent police officials and that if the deceased Karuppayi really receiving Old Age Pension, then the said document should be ceased by the police, which has not been done so and that the trial court had also failed to see that PW15 is the Inspector of Police has stated in the cross examination that in the complaint, it has been stated that the deceased went to get Old Age Pension and regarding the same as a Police Officer, he had not investigated.

16.The learned counsel for the appellant/accused has further contended that the trial court has failed to appreciate the fact that the prosecution has not brought out any legally admissible evidence as against the appellant/accused and come to a wrong conclusion in convicting the appellant/accused. Hence, he prayed that the conviction and sentence passed by the trial court has to be set aside and the appeal has to be allowed.

17.Per contra, the learned Additional Public Prosecutor has contended that the prosecuting agency has brought home the guilt of the appellant/accused beyond all reasonable doubts with unassailable evidence and that the trial court had also, after analysing the evidences, both oral and documentary, found the appellant/accused guilty and the appellant/accused was also rightly and fairly convicted and sentenced in proportionate to intense of the offences committed by him, which do not require any disturbance and therefore, he has prayed to confirm the judgement of the trial court.

18.It is an admitted fact that the accused is tried in this case and also in other similar kind of offences with regard to the child, aged woman and the trial was conducted and after trial in all the cases, the accused was convicted and sentenced to undergo life imprisonment under Section 302 of IPC and the ~~appellant/accused~~ had preferred appeals before this court respectively and the appeals were heard by this court simultaneously.



19. It is alleged on the side of the prosecution that the accused was in the habit of committing robbery of jewels and also committing murder of the ladies, after committing rape.

20. The learned counsel appearing for the appellant has mainly contended that except this case, four other similar cases were registered against the accused and hence, the court has to presume that they are all put up cases against the appellant.

21. On the side of the appellant, it is contended that all the cases are put up against the accused. But in all the cases, Material Objects were recovered and identification parade has been conducted and the witnesses were identified the accused and the confession statement of the accused was recorded by the police and the learned Judicial Magistrate has also recorded the confession statement given by the accused following the procedures contemplated under law and after due warning. Hence, the contention of the learned counsel for the appellant/accused that since all the cases are similar, they are all put up cases against the accused and the court has to presume all the cases as put up cases against the accused, has no merit.

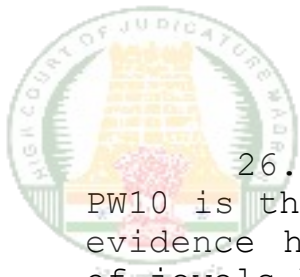
22. In this case, according to PW1 Thangaraj, who is the son in law of the deceased Karuppayi, he has specifically stated that the deceased Karuppayi had gone to receive the old age pension, but she has not returned home and after thorough search, they found Karuppayi in an unconscious stage and there were scars around the neck and she was immediately taken to Pudukottai Government Hospital and subsequently, she was taken to Thanjavur Medical College hospital, where she was reported dead at 9.30 p.m.

23. Further, PW1 has stated in his cross examination that:-

...புத்தாம்பூர் பொது மக்கள் அந்த பாதையை காலை 6 மணி முதல் மாலை 6 வரை பயன்படுத்துவார்கள். அந்த பாதை பொதுமக்கள் நடமாடும் பகுதி.

24. Further, PW1 has also identified M01 series, which belongs to the deceased. Hence, this court is of the considered view that the prosecution has proved the fact that the deceased is an aged lady and she has gone to Puthampur to receive Old Age Pension on a particular day and she was found by PW1 in an unconscious stage and his relatives and thereafter, she was taken to Government Hospital, Pudukottai and thereafter, taken to Thanjavur Medical College hospital, where she was reported dead.

25. Hence, the contention of the appellant that the receipt of Old Age Pension by the deceased is not proved by the prosecution and that the investigation done by the prosecution is fatal, has no merit and the said contention of the appellant is liable to be rejected and accordingly, rejected.



26. The further contention raised by the appellant is that PW10 is the owner of jewellery shop at Ponnamaravathi and that his evidence has not taken for consideration and hence, the recovery of jewels has not been proved by the prosecution.

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27. In this case, PW10 Thiru. Rajendran, owner of the jewellery shop has admitted that he is the owner of Meenakshi jewellers of Poonamaravathy and the jewels of the deceased were recovered from PW10, which was identified by the accused.

28. Hence, this court is of the considered view that since, PW10 is the owner of the jewellery shop, had purchased the jewels not supported the prosecution, the case of the prosecution cannot be thrown out.

29. Further, PW11 Thiru. Mariappan, is the Village Administrative Officer has specifically stated that Kuppusamy had given confession before the Inspector of Police by stating that he sold the jewels and identified the shop, in which the jewels were sold and subsequently, the jewels were recovered from the owner of the shop and the police were recovered the jewels by Mazahar, in which he has signed as witness.

30. Further, PW11 evidence has corroborated the evidence of the Investigating Officer, who recovered the jewels from PW10. Hence, the argument of the learned counsel for the appellant that PW10 evidence was not considered and the prosecution has not proved the case, has no merit.

31. Except the above points raised in the appeal grounds, no other points were raised on the side of the appellant.

32. Further, in this case, PW1 who is the son-in-law of the deceased has clearly stated the prosecution version on the same line and the doctor, who conducted postmortem on the body of the deceased given a reporting stating that the deceased would have been died due to effects and complications of attempted strangulation.

33. In view of the above facts, chain of circumstances regarding the crime and recovery of jewels, which belongs to the deceased on the basis of the confession given by the accused, which led to recovery of jewels from PW10 were proved by the prosecution and the same was also attested by PW1.

34. Further, the learned counsel appearing for the appellant has not disputed in the grounds of appeal regarding the recovery of jewels before the witnesses and the confession statement given by the accused.

35. Hence, this court is of the considered view that there is proper identification by the witnesses in the identification parade and admitted portion of the confession given by the accused, led to recovery of MO1. Hence, this court finds, that the



finding recorded by the trial court, based upon the proper appreciation of evidence, is clearly proved the guilt of the accused.

36. Keeping in view of the above facts, this court is of the considered view that the charges against the accused are proved beyond all reasonable doubts and this court finds no reason to interfere with the conviction and sentence passed by the trial court.

37. In the result, the criminal appeal is dismissed and the conviction and sentence passed by the trial court are confirmed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The District Sessions Judge, Mahila Court, Pudukkottai
2. The Superintendent, Central Jail, Trichy
3. The Judicial Magistrate, Pudukkottai
4. The Inspector of Police, Thirukokarnam Police Station
Pudukkottai District,
5. The Chief Judicial Magistrate, Pudukkottai
6. The District Collector, Pudukkottai
7. The Director General of Police, Mylapore, Chennai-5
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai

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RL/10C/7P/KBM/SARI/1/6/2016

Judgment
made in CrI.A (MD) No.210 of 2014