



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 7.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

AND

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

Criminal Appeal (MD) No.246 of 2014

Queen Mary

... Appellant/P.W4

Vs.

1.The State

Inspector of Police,
Puliampatti Police Station,
Thoothukudi District.

.. Respondent/Complainant

2.Shanmugaraj

...Respondent/sole accused

PRAYER: This Criminal Appeal is filed under Section 372 of Cr.P.C to call for entire records and set aside the judgment acquitting the respondent No.2 herein from the charges framed against the accused in S.C.No.42 of 2012 dated 03.07.2012 on the file of the I Additional District and Sessions Judge, Thoothukudi and convict the respondent No.2.

For Appellant : Mr.T.Indrachithu for
Mr.K.Karmegam

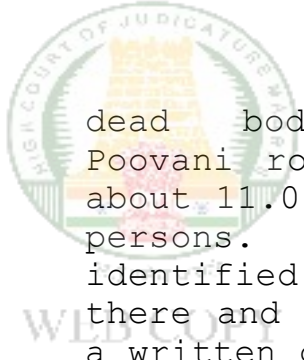
For Respondents : Mr.K.S.Duraipandian
Assistant Public Prosecutor for R.1
: Mr.A.Thiruvadikumar for R.2 (Accused)

JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J)

Heard Mr.T.Indrachithu, learned counsel appearing for the appellant and Mr.K.S.Duraipandian, learned Additional Public Prosecutor appearing for the first respondent as well as Mr.A.Thiruvadikumar, learned counsel appearing for the second respondent.

2. The case of the prosecution is that P.W.1 Vijaya Ananth, was employed as a Village Administrative Officer at Sawyerpuram, and while he was working as such, on 10.06.2011 at 10 a.m, the Village Assistant informed him through Telephone that he found a



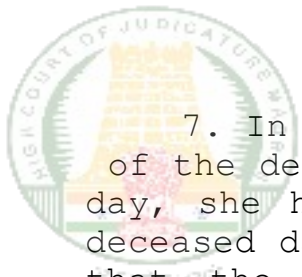
dead body of a lady aged at 45 lying near Singathakurichi-Poovani road. Therefore, the Village Administrative Officer at about 11.00 a.m went to the scene of occurrence along with 4 or 5 persons. Thereafter, he enquired nearby people, but no one has identified the dead body. Hence, he directed the Village Assistant there and thereafter, went to Puliampatti Police Station and gave a written complaint Ex.P.1 in respect of the above death.

3. On receipt of the above written complaint Ex.P1 from the Village Administrative Officer, the Inspector of Police, attached to the first respondent Police Station went along with the Village Administrative Officer to the scene of occurrence and conducted enquiry and later on, the Inspector of Police and others were found through newspapers that the dead body belongs to Thoothukudi.

4. Thereafter, on 03.07.2011, the Inspector of Police went to Poovani village and enquired about the Old Age Pension Petition. At that time, he enquired the second respondent/accused, who in turn gave a voluntarily confession and he handed over 3 sovereign of Gobi chain, which was marked as M.O.1, and the same was seized by the Inspector of Police under an Athatchi, Ex.P.2.

5. During the course of investigation, the Inspector of Police took the second respondent/accused to Jeba Jewellers, where he gave the old chain and purchased a new chain and obtained receipt, which was seized by the Inspector of Police under Ex.P.3 Athatchi and the said old jewel was found in a jewel box in the Jeba Jewellers, which is marked as M.O.2. The jewel box was kept in a cloth bag, which is marked M.O.3.

6. During the course of investigation, the Inspector of Police has enquired P.W.2 Pavulraj, who is residing at Shanmugapuram 2nd street and in the enquiry, P.W.2 gave statement that the deceased Athisayakani is his second wife and on 09.06.2011 at 9.30 p.m. she went to the Jeba place, but she had not returned. P.W.2 further states that about the non-return of the deceased Athisayakani, he informed to his mother-in-law and thereafter, on 10.06.2011, he has given a complaint to the Thoothukudi South Police Station. But on the said date evening, P.W.2 came to know through the newspaper that a dead body of a lady was lying near Poovani and therefore, he went to the scene of occurrence and found that the dead body was his wife. P.W.2 further states that thereafter, he came to know that his wife was murdered by the second respondent/accused and also informed that 3 sovereign of gold chain and a pair of ear studs were missing from the body of his wife. The Inspector of Police enquired with P.W.3 Nickolas Anthonimuthu, who deposed that the deceased Athisayakani is the



7. In this case, the appellant Queen Mary/P.W4 is the mother of the deceased Athisayakani and she deposed that on a particular day, she had seen the second respondent/accused talking with her deceased daughter Athisayakani and her daughter was informed P.W.4 that the second respondent/accused used to attend the prayer meeting, whenever the prayer was conducted.

8. The Inspector of Police enquired the other witnesses and recorded the statements and after completion of the investigation, he has filed a Charge Sheet for the offences under Sections 379 and 302 IPC before the Judicial Magistrate No.I, Kovilpatti. Thereafter, the case was committed to I Additional District and Sessions Judge, Thoothukudi.

9. In this case, on the side of the prosecution, 18 witness were examined as P.W.1 to P.W.18 and 19 documents were marked as Ex.P.1 to Ex.P.19 and material objects were marked as M.O.Nos.1 to 3.

10. Considering the case of the prosecution, the learned I Additional District and Sessions Judge, Thoothukudi, acquitted the second respondent/accused on the ground that in this case, nobody has witnessed the occurrence and there was no direct evidence for the occurrence. The learned Judge further stated that according to the prosecution, P.W.1 Village Administrative Officer has given a complaint Ex.P.1 and he was a witness for the arrest of the accused and recovery of M.O.1 Chain under Ex.P.2 Athatchi. The P.W.1 Village Administrative Officer was also a witness for the seizure of purchase bill from the Jeba Jewellers and from the second respondent/accused, the chain and ear stud of the deceased was not recovered. But the prosecution has seized the new chain purchased by the second respondent/accused only not from the Jeba Jewellers. The learned Judge has also stated that there is no direct evidence to show that the Gobi Chain is in connection with the deceased Athisayakani. Hence, the charge under Section 379 IPC is not clearly proved by the prosecution.

11. The learned Judge has also stated that to prove the chain of circumstances, P.W.5 and P.W.13 were examined on the side of the prosecution, but both of them did not support the prosecution case and turned hostile. But the prosecution only brought the evidence of P.W.4, the mother of the deceased who had seen the accused taking with the deceased daughter Athisayakani on a particular day. But her deceased daughter Athisayakani told that the accused used to attend the prayer meeting. Except that, no other evidence or witness available to substantiate the prosecution case. Hence, the learned Judge has acquitted the accused and passed the Judgment on 03.07.2011. Challenging the order of acquittal in S.C.No.42 of 2012 dated 03.07.2011, P.W4, who is the mother of the deceased, has preferred the present criminal appeal.



12. Though the appeal has been filed on various grounds, the appellant has not raised any valid ground to interfere with the judgment of the trial Court by this Court.

13. It is the case of the prosecution that as per the complaint (Ex.P.1) given by the Village Administrative Officer (P.W.1), the investigation was taken up by the Inspector of Police attached to the Puliyampatti Police Station, but the prosecution has miserably failed to do so the chain of circumstances to implead the accused in this case. Except the evidence P.W.4, the mother of the deceased, who had seen the accused on the particular day and the information given by the deceased P.W.4 that the accused person had used to attend the prayer meeting along with her, no other evidence is available on record to prove the case of the prosecution. Though P.W.2 Doctor has given evidence stating that due to head injury, the deceased Athisayakani died. But the prosecution has failed to prove the fact that who caused the head injury and there was no medical evidence to prove the prosecution case.

14. The learned Judge also quoted two judgments, namely, **2012 (2) MLJ (Cri) 289** (S.Thirupathi vs. State) and **A.I.R 2011 S.C 72** (Varun Chaudhar vs. State of Rajasthan) and acquitted the accused. Therefore, we have firm acceptance of the findings of the learned trial Judge that the prosecution has not proved the case beyond all reasonable doubt. This is a case where the prosecution has failed in all aspects that either to bring the witness or evidences to prove the prosecution case. But except the evidence of P.W.4, there is no other material produced by the prosecution to prove the case, even the statement of P.W.9 Soundar, who is working in the Jeba Jewellers, who gave evidence that he has known the accused and that the accused came to the jewelry shop on 12.02.2011 at 3.30 p.m and given a Thali Chain and a pair of ear studs, which are worth about Rs.54,000/- and on receipt of the same, he purchased a new Gobi chain with Kasu Daller, has also not strengthened the prosecution case. Except that there is no evidence produced by the prosecution to prove their case. The appellant has also not made out the case for the interference of this Court in the above Judgment.

15. Accordingly, this Criminal Appeal fails and the same is dismissed.

Sd/-
Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar



To

1.The Additional District and Sessions Judge, Thoothukudi.

2.-do thro' The Chief Judicial Magistrate, Thoothukudi

3.The Judicial Magistrate, Kovilpatti

4.The Inspector of Police,
Puliampatti Police Station, Thoothukudi District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer / Records
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate, SR No.50885

**Criminal Appeal (MD) No.246 of 2014
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SH/SK-SKN:04.10.2016:5P/8C