



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.10.2016

CORAM:

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.209 of 2015

Thangaraj ... Appellant/Sole Accused
(Now confined at Central Prison,
Palayamkottai, Tirunelveli District)

Vs.

State rep. by
The Inspector of Police,
Arumanai Police Station,
Kanyakumari District. .. Respondent/Complainant
(Crime No.436 of 2012)

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the judgment dated 23.12.2014 made in S.C.No.40 of 2013, on the file of the Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil and set aside the same.

For Appellant : Mr.M.Karunanithi
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

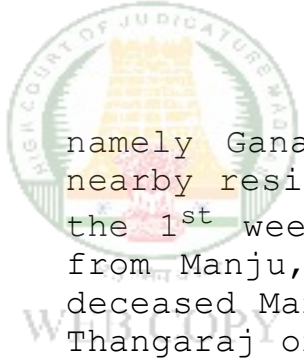
(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

The appellant is the sole accused in S.C.No.40/2013 on the file of the Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil. The trial court framed charges under Section 302, 449 of I.P.C against this Appellant/Accused.

2.The Trial Court by Judgment dated 23.12.2014 convicted the appellant under Section 449 of I.P.C to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default further undergo rigorous imprisonment for one year and under Section 302 of I.P.C to undergo Life Imprisonment and to pay a fine of Rs.20,000/- in default further undergo rigorous imprisonment for two years. The set off was allowed under Section 428 of Cr.P.C. Challenging the said conviction and sentence passed against him, the present appeal has been filed by the appellant/accused.

<https://mcservices.ecourts.gov.in/mcservices/>

3.The case of the prosecution is that the deceased Manju along with her son Prasanth and daughter Asha Lekha are residing in a house bearing Door No.12/18 in Vattavillai Village. Her husband

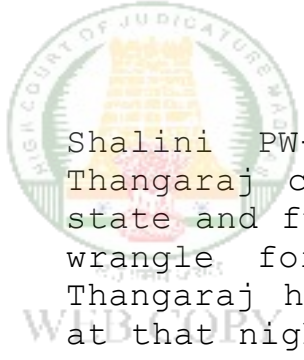


namely Ganapathy is employed abroad. The accused Thangaraj is a nearby resident of the deceased Manju and the accused Thangaraj in the 1st week of September requested a sum of Rs.30,000/- as debt from Manju, so as to purchase a bike for the accused. Since the deceased Manju refused to lend the above demanded debt, the accused Thangaraj on 17.09.2012 at about 09.45 P.M came to deceased Manju's house and stated that he is in a drunken state of mind and further stated that if he goes to his home, his wife will wrangle for it and therefore at the request of the accused Thangaraj, he was given with a Blanket, Matt and a Pillow to sleep at that night. He was permitted to sleep in the kitchen room of the deceased Manju's newly constructed house. On 18.09.2012 at about 05.00 A.M when deceased Manju was about to cook, the accused trespassed with a sickle taken from the kitchen wherein he slept and by disallowing her to make any sound, shutting her mouth with his hands, has laid her on the Matt and cut attacked on her Fore neck and Right neck. Thereafter on 18.09.2012 at about 05.45 A.M, when PW-5 Shaini came to the deceased Manju's house to call PW-8 Baby Shalini, Manju was found dead. Thereafter on her sound, PW-1, PW-2 and PW-8 who slept in the deceased house, came to the place of occurrence.

4. Therefore PW-1 Prasanth, the son of the deceased Manju lodged a complaint before the respondent police in Ex-P1. The PW-3 one Mr. Kamaraj accompanied the PW-1 to the respondent police station. The respondent police hence registered FIR in Crime No: 436/12 and the accused was charged under section 302 and 449 of I.P.C in Ex-P14. Thereafter PW-19 the Inspector of Police came to the place of occurrence and made ready the Mahazar in Ex-P5 and Sketch in Ex-P17. The following material objects M.O.2- the red colour designed Saree, M.O.3- a green coloured Jacket, M.O.4- a white colour Inskirt with a black borders M.O.5- a blood stained white bracers. M.O-6- a piece of blood stained floor, M.O-8, a Flower bordered blood stained Matt and M.O-11, a Britelite Torch light were seized.

5. After filing the charge sheet before the Learned Judicial Magistrate No.1, Kulithurai in P.R.C.No.4 of 2013, the case was committed to the Sessions Judge, Fast Track Mahila Court, Kanyakumari District at Nagercoil and came to be numbered as S.C.No.40/2013. In this case, 19 witnesses were examined as prosecution side witnesses and 18 Exhibits were marked on the side of prosecution and there are 11 material objects produced before the Trial court. There was no witness and exhibits on the side of the accused.

6. In this case, PW-1 Prasanth who is the son of the deceased deposed that his father namely Ganapathi is employed abroad. He lived along with his mother Manju and his sister in the above said address. He is employed in a optical showroom in Pudhukadai and it is routine for him to start to work from his house daily at 7.15 A.M and after finishing his work, he will return by 07.15 P.M. Likewise on 17.09.12 they went to bed at around 08.45 P.M by closing the doors of the house. They were accompanied by one



Shalini PW-8. On 17.09.2012 at about 09.45 P.M, the accused Thangaraj came to their home and stated that he is in a drunken state and further stated that if he goes to his home, his wife will wrangle for it and therefore at the request of the accused Thangaraj he was given with a Blanket, Matt and a Pillow to sleep at that night. He was permitted to sleep in the kitchen room of the deceased Manju's newly constructed house. On 18.09.2012 at about 05.00 A.M when deceased Manju was about to cook, the accused Thangaraj trespassed with a sickle taken from the kitchen wherein he slept and by disallowing her to make any sound, shutting her mouth with his hands, has laid her on the Matt and cut attacked on her Fore neck and Right neck. Thereafter on 18.09.2012 at about 05.45 A.M, when PW-5 Shalini came to the deceased Manju's house to call PW-8 Baby Shalini, Manju was found dead with a cut injury on her neck. Thereafter on her sound, PW-1, PW-2 and PW-8 who slept in the deceased house, rushed to the place of occurrence. Thereafter after PW-1 accompanied by PW-3 went to the respondent police and lodged the complaint Ex-P1, which was attested by PW-3.

7.Hence on 18.09.2012 at 08.00 A.M, the PW-18 the Sub-Inspector of Police registered Ex-P1 in Cr.No.436/2012 under Section 302 of I.P.C and immediately the case was taken for investigation by PW-19 the Inspector of Police. PW-19 on visiting the place of occurrence has made ready the Mahazar in Ex-P5 and Sketch in Ex-P17. The M.O.6 to M.O.8, M.O.11 were seized from the place of occurrence.

8.PW-6 namely Domas a betel shopkeeper deposed that he saw the accused with blood in his leg and when PW-6 asked the accused about the same that it was replied by the accused that he was wounded on slipping down. Further the Police Sniffer Dog while search in the place of occurrence, stood for a while in front of the accused house and thereafter ran upto a place called Punniyam Bus Stop through Kollankulam Karai. Nothing was seized with the aid of the sniffer dog. The PW-15, Abaathukaatha Pillai the police photographer pictured seven photos along with Compact Disc in M.O.10 series. Thereafter at 2.40 P.M, the dead body of Manju was sent to Government Hospital and post mortem was conducted and the corresponding report and the final opinion submitted in Ex-P3 & P4 respectively.

9.Thereafter on 19.09.2012, i.e., the next day at early morning 6 A.M while the accused was standing in Vadacherry Bus Stop, he was arrested by PW-10 in the presence of PW-11 Mr.Stephen and PW-12 Mr.Wilson, wherein the accused gave a confession statement that he committed the crime and produced a light yellow with black flower designed lungi from his hand bag.

10.On the evidence taken by the trial court namely Mahila (Fast Track) Court, Nagercoil came to the conclusion that the charges laid against the accused were proved by the circumstantial evidence led by the prosecution.

11.In the above circumstance that there is no direct eye



witness, the learned Trial Judge convicted the accused for the offences under sections 449 & 302 of I.P.C holding that the prosecution case was proved on circumstantial evidence. Against the said conviction, the present appeal has been filed.

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12. We have heard Mr.M.Karunanidhi, learned counsel for the appellant and Mr.C.Ramesh, learned Additional Public Prosecutor and we have also perused the records carefully.

13. In this case, on going through the evidences and documents produced by the prosecution, it is found that the story of the prosecution in respect of the motive behind the alleged murder by the accused is that the deceased Manju has failed to lend a sum of Rs.30,000/- to the accused herein on his demand to purchase a new bike. It is patent that there is no such allegation or no such reason stated by the P.W-1 in Ex.P1 dated 18.09.2012. Further PW-1 in his cross examination has specifically stated that there was no enmity prevailed between the deceased family and the accused. It is further found from the deposition of PW-1 that weapon was neither detected nor recovered from the place of occurrence. Further it is found that the court below has drawn inference from the version of PW-4 and PW-6 that the prosecution case has been proved. Firstly the version of PW-4 is that on 18.9.2012, he saw the accused at about 5.15 A.M, such that the accused proceeded from the kitchen room of the deceased house, towards his house with a knife and a sickle in his hand. Thus PW-4 stated that accused was found a close nearby the deceased's house. Now taking into the statement of PW-6 it is stated that at the same time i.e., on 18.09.2012 at 5.15 A.M he saw the accused in Kollankulam. Thus the version of PW-4 and PW-6 are discrepant and contrary to each other and hence not trustworthy. The prime factor that remain fatal to the prosecution case is that there is no clear say about the exact place of occurrence, there is a discrepancy as to the place of occurrence one stating as taken place in the kitchen room of Manju's old house and another as taken place in the kitchen room of a new house under construction. Further in Ex-P17 rough sketch also the place of occurrence shown in a different place. Hence the place of occurrence is doubtful and it is a fatal to the case of the prosecution.

14. In respect of the seizure of M.O-1, the prosecution case is that the accused on the event of his arrest made in the presence of PW-11 and PW-12 made a confession and he voluntarily surrendered M.O-1 taking out the same from his house. Whereas PW-1 has stated that nothing incriminating material objects either identified or seized from that of the accused house. It is also found that no incriminating material was identified by the sniffer dog. Totally contrary to the prosecution case, PW-2 has deposed that the investigating officer has taken a knife from the kitchen that was present therein. It is relevant to note here that from Ex.P-6 Athachi, there is no say that a sickle is being recovered from the place of occurrence.



15. The learned Judge has convicted the accused on assumption and presumption by holding the accused guilty that there are possibilities to murder the deceased Manju.

16. In this case the conviction is based on circumstantial evidence, on presumption, surmises and conjectures. The prosecution failed to establish the circumstantial evidence beyond reasonable doubt.

17. As far as circumstantial evidence is concerned, it is well settled law that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving room to any other hypothesis and should be consistent with his guilt and inconsistent with his innocence. Circumstantial evidence should be strong, convicting, unassailable, leading to the only inference and conclusion that the crime should have been committed only by the accused and not give any chance even to doubt about the hands of third parties. In the present case, the prosecution has failed to establish the above said factors. Hence the conviction by the trial court on the basis of the circumstantial evidence must go. Therefore the benefit of doubt is given to accused and the appellant / accused is acquitted from all the charges.

18. In view of the above narration and discussion, we hold that the conviction of the appellant/accused on the basis of circumstantial evidence by the trial court is by presumption and surmises, since the prosecution has not proved the same beyond all reasonable doubts. Therefore the accused is acquitted from all the charges by giving benefit of doubt.

19. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Fine amount paid if any by the appellant shall be refunded to him.

Sd/-

Assistant Registrar(RTI)

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Sub Assistant Registrar

To

1. The Inspector of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
Arumanai Police Station,
Kanyakumari District.



2.The Sessions Judge, Fast Track Mahila Court,
Kanyakumari at Nagercoil.

3.The Judicial Magistrate No:I,
Kuzhithurai.

4.The superintendent, Central prison,
Palayamkottai, Tirunelveli District.

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

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