



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Crl.A.(MD) No.211 of 2015

Sundaralingam @ Karuppasamy ... Appellant / Accused No.1

-vs-

State, rep.by the
The Inspector of Police
Kulasekarapattinam Police Station
Thoothukudi District
Crime No.27 of 2008 ... Respondent / Complainant

Appeal filed under Section 374(2) Cr.P.C., to call for the records in S.C.No.226 of 2013, on the file of the Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi and set aside the Judgment, dated 15.05.2015 in S.C.No.226 of 2013, passed by the learned Sessions Judge, Mahalir Neethimandram Fast Track Mahila Court, Thoothukudi.

For Appellant : Mr.Antony S.Prabagar

For Respondent : Mr.C.Mayilvahana Rajendran
Addl. Public Prosecutor

J U D G M E N T

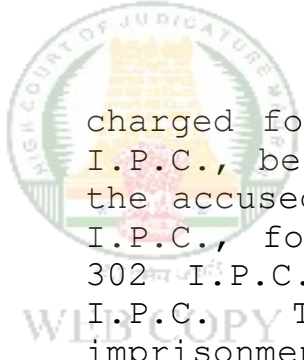
[Judgment of the Court by M.GOVINDARAJ, J.]

This criminal appeal has been preferred by the first accused, namely, Sundaralingam @ Karuppasamy, against the Judgment, dated 15.05.2015, passed in S.C.No.226 of 2013, by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi.

2. Originally, there were five accused in this case. During the pendency of trial, the fourth accused, namely, Murugesan died and the charges framed against him thus stand abated.

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3. All the accused were charged for the offences under Sections 498(A) and 120(B) I.P.C., and the first accused was



charged for the offences under Sections 304(A) @ 302 and 506(ii) I.P.C., besides the other two charges. The Trial Court had found the accused 2, 3 and 5 not guilty under Sections 498(A) and 120(B) I.P.C., found the first accused guilty under Sections 498(A) and 302 I.P.C., and not guilty under Sections 120(B) and 506(ii) I.P.C. The first accused was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default, simple imprisonment for six months for the offence under Section 498(A) I.P.C., and to undergo life imprisonment and to pay a fine of Rs.3,000/- in default, rigorous imprisonment for six months for the offence under Section 302 I.P.C.

4. Case of the prosecution:

The appellant / first accused, namely, Sundaralingam @ Karuppasamy and the deceased, namely, Kartheeswari, were married on 05.12.2007 and at the time of marriage, 10 Sovereigns of Gold, Rs.15,000/- cash and household articles worth about Rs.10,000/- were given as dowry to the deceased. The accused 2 and 3 are parents of the appellant / first accused and the fifth accused is his aunt. The deceased and the appellant / first accused were living with his parents as a joint family.

5. During pongal festival, when P.Ws.1 and 2 had been to the deceased's house for giving pongal gift, they found the deceased upset and on enquiry, she informed them that she was subjected to dowry harassment by A1 to A5. The deceased informed them that there was a demand of 10 Sovereigns of gold and Rs.10,000/- in cash as further dowry. On 28.01.2008, the deceased had lodged a complaint of dowry harassment with All Women Police Station, Tiruchendur. On 30.01.2008, both sides were called for enquiry by the Police. After compromise talks, the first accused had given a statement to the effect that he would arrange for living separately from his parents and deposited the jewels in a locker opened at Udankudi Primary Agricultural Co-operative Society and went back home with the deceased. P.Ws.1 and 2 along with their wives sent them off.

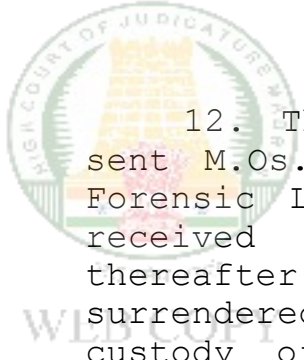
6. Thereafter, at about 06.15 p.m., P.Ws.1 and 2 along with their wives went to see the deceased at her matrimonial home. At that time, they heard noise and when they rushed into the house, they found the appellant / first accused attacking his wife / deceased with Aruval indiscriminately on her head, neck, shoulders, hands and palm. The deceased's left hand was severed and she had suffered serious injuries. When P.Ws.1 and 2 tried to intervene, the appellant / first accused threatened them with dire consequences. Thereafter, the appellant / first accused left the house, which was witnessed by P.Ws.4 and 5.

P.W.15 ff
31 01 20

"A cut injury 7 cm x 1 cm x 1 cm over back of head, A cut injury 15 x 3 x 3 cm over left cheek extending from angle of mouth to left ear with fracture of mandible and maxilla, A cut injury 3 cm x 1/2cm x 1/2 cm over left chin, A cut injury 7 cm x 2 cm x 3 cm over left shoulder, A cut injury 5 x 1 x 1 cm over right shoulder, Left forearm is amputated at the level joint below left elbow with fracture of left radius and ulna. Not decomposed, tongue : inside the mouth. Thorax : No fracture. Ribs, Heart : pale, empty 250 gm. Lungs : Pale right 450 gm, left 400 gm. Hyoid : intact. Stomach : Pale, empty. Liver : Pale 1300 gm. Pelvis : No fracture. Brain : Pale, empty. Liver : Pale 1300 gm. Pelvis : No fracture. Brain : Pale, 1200 gm. A haematoma 5 x 3 cm over occipital region.

10. P.W.9 has opined that the deceased would appear to have died of haemorrhage and shock due to multiple injuries at about 18 to 24 hours prior to autopsy.

<https://hcservices.hcourts.gov/hcservices/>



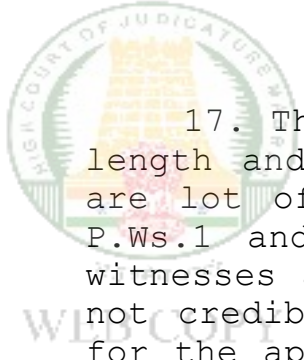
12. Thereafter, P.W.17 had continued the investigation and sent M.Os.11 to 13 / blood stained cloths of the deceased to Forensic Lab for examination along with Ex.P20 requisition and received Serology Report under Ex.P22. The investigation thereafter continued by P.W.18. The appellant / first accused had surrendered himself before the Court. P.W.18 had taken police custody of the appellant / first accused and on 02.04.2011 recovered M.O.1 in the presence of P.W.10 and recorded their statements and statements of other witnesses and altered the charges again to Sections 302, 498-A, 506(ii), 120-B r/w Section 4 (A) of T.N.P.H.W.Act and produced M.Os.15 to 17 before the Court.

13. Based on the above materials, the Trial Court framed charges as stated in the first page of the Judgment. In order to prove the charges, the prosecution had examined 18 witnesses as P.Ws.1 to 18 and marked Exs.P1 to P23 and material objects M.Os.1 to 17.

14. P.Ws.1 and 2, who are brothers-in-law of the deceased and eye-witnesses to the occurrence, have spoken about the antecedents and the attack caused by the first accused on the deceased. P.W.3, who is the sister of the deceased, has spoken about the dowry harassment. P.W.4, who is the house owner of the house where the first accused and the deceased lived together, has spoken about the conduct of the first accused, while he was leaving the scene of occurrence with Aruval and the presence of P.Ws.1 and 2 with their wives. P.W.5, who is a neighbour of the first accused, has spoken about the presence of the first accused, P.Ws.1 and 2 and others at the scene of occurrence and the conduct of the first accused. P.W.6, who is the Village Assistant, has spoken about the preparation of Observation Mahazar and recovery of M.Os.6 to 10. P.W.7, who had witnessed the statement signed by the first accused recorded at All Women Police Station, Tiruchender, has spoken about dowry harassment. P.W.8, who is the Manager of Primary Agricultural Co-operative Bank, Udankudi, has spoken about the opening of a locker account and depositing of money for the same by the first accused and deceased. P.W.9, who is the Postmortem Doctor, has spoken about the postmortem. P.W.10, who is the Village Administrative Officer, has spoken about the confession statement of the first accused and recovery of M.O.1 Aruval. P.Ws.11 to 18 are Police officials, who have spoken about the procedures followed during the investigation.

15. On the basis of the evidence available and after hearing the arguments of the prosecution as well as the defence side, the Trial Court by Judgment, dated 15.05.2015, found the first accused guilty and convicted and sentenced him as stated above.

16. On the basis of the Judgment of the Court below, the first accused has come up with the present criminal appeal.



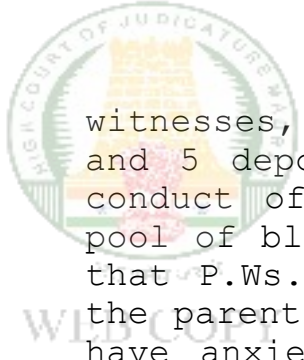
17. The learned counsel for the appellant has taken us to the length and breadth of the evidence and would contend that there are lot of discrepancies with regard to the eye-witnesses viz., P.Ws.1 and 2. He would contend that they are the interested witnesses and their presence at the scene of occurrence itself is not credible. It is also the contention of the learned counsel for the appellant that the documents relating to dowry harassment were all cooked up for the purpose of corroborating the case foisted under Section 302 I.P.C., by the respondent Police and non-examination of the key witnesses also creates doubt and hence, the appellant / first accused is entitled to benefit of doubt.

18. We have considered the contentions of the respective learned counsels. The admitted facts are as follows:

The marriage between the first accused and the deceased Kartheeswari had taken place on 05.12.2007 and a dowry of 10 Soverigns of gold, Rs.15,000/- in cash and household articles worth about Rs.10,000/- were given at the time of marriage. It is also not disputed that there was a complaint of dowry harassment. There are material evidence to show that consequent on the compromise arrived at the All Women Police Station, Tiruchendur, on 30.01.2008, a bank locker was opened and money was deposited towards the same on 30.01.2008. The jewels were kept in safe custody in the locker by the first accused and the deceased. Thereafter, they had been sent to their house by P.Ws.1 and 2 and their respective wives, who are the own-sisters of the deceased. Therefore, the un-rebutted evidence goes to show that the first accused and the deceased had been to their house and there is no contra evidence to any other probability.

19. Now, the learned counsel for the appellant disputes the presence of the eye-witnesses at the scene of occurrence. As seen from the evidence, it is seen that the deceased had lost her parents and was taken care of by her sisters. P.Ws.1 and 2 are the husbands of the deceased's elder sisters, in other words they were brothers-in-law. They have solemnized the marriage of the deceased to the first accused. During pongal festival, when they went to give pongal gift, the deceased informed them about the further demand of 10 soverigns of gold and Rs.10,000/- in cash. To which, P.Ws.1 and 2 deposed that they informed the accused that they were not in a position to give any further dowry. Thereafter, there was a police complaint lodged by the deceased, on 28.01.2008, before All Women Police Station, Tiruchendur. Therefore, the sequence of events within a short span of time appears to be possible and there is no evidence on the defence side to discredit the same.

<https://hcservices.courts.gov.in/hcservices/> remains to account for the presence of the eye-witnesses and the credibility of the evidence of the interested witnesses. From the background of the evidence adduced by the



witnesses, it could be seen that the independent witnesses P.Ws.4 and 5 deposed about the presence of P.Ws.1 and 2, their wives, conduct of the first accused and the body of the deceased in a pool of blood. From the evidence of P.Ws.4 and 5, we could infer that P.Ws.1 and 2 were the chance witnesses. It is natural for the parents or somebody in the position of parents or guardian to have anxiety of the well being of their beloved ones. In this case, the deceased was the youngest daughter in the family taken care of by the elder sisters and P.Ws.1 and 2 were in the position of father. Therefore, their anxiety to visit her and to find the situation at her house is natural and their presence happened by chance, in other words, they were the chance witnesses.

21. Further, the presence of P.Ws.1 and 2 was spoken by the independent witnesses. Not only their presence and also of the presence of the sisters of the deceased. Furthermore, their statement that the first accused threatened everyone that he will cut everyone, who would come near him and witnessed him leaving from the scene of occurrence would categorically prove the presence of the first accused and the eye-witnesses. Therefore, it can easily be inferred that the presence of the eye-witnesses stood proved by the prosecution and also the presence of the first accused with M.O.1 Aruval substantiate the statements of P.Ws.1 and 2. Therefore, we have no hesitation to hold that P.W.1 and P.W.2 eye-witnesses to the incident and their evidence are credible. In view of the above finding, we come to a conclusion that the first accused alone had inflicted the injuries on the deceased as he had every reason to do the heinous crime.

22. From the words of the eyewitnesses that the first accused had been abusing the deceased in filthy language would she dare to go to Police against him, while inflicting indiscriminate cut injuries with a deadly weapon. The reason for such anger was due to lodging of Police complaint for dowry harassment has been well established by the evidence of P.Ws.7, 8 and 14 and Exs.P7, P8 and P14. We have no hesitation to hold that the deceased had intentionally inflicted the injuries on the deceased to cause her death.

23. A perusal of Ex.P9 / postmortem certificate and the evidence of P.W.9 would show that the deceased would appear to have died of haemorrhage and shock due to multiple injuries. From the evidence available on the prosecution side, we have come to a conclusion that the prosecution has proved the case beyond reasonable doubt that the first accused was very much present in the scene of occurrence and inflicted injuries on the deceased with an intention to do away with her life and he had caused the death of his wife Kartheeswari.

24. For the foregoing discussions, we are not inclined to interfere with the conviction and sentence imposed by the Trial



Court and therefore, the criminal appeal is dismissed and the Judgment, dated 15.05.2015, passed in S.C.No.226 of 2013, by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, is confirmed.

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Sd/-

Assistant Registrar(writs)

/TRUE COPY/

Sub Assistant Registrar

To:

- 1.The Sessions Judge,
Fast Track Mahila Court,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Inspector of Police,
Kulasekarapattinam Police Station,
Thoothukudi District.
- 4.The Superintendent,
Central Jail,
Palayamkottai.

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