



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 18.05.2016

Pronounced on 06 .09.2016

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
and**THE HONOURABLE MR.JUSTICE B.GOKULDAS**

Criminal Appeal (MD) No.233 of 2015

Nagaraj

.. Appellant/Sole-Accused

..Vs..

State Rep. by the Inspector of Police,
Natham Police Station,
Dindigul District.
(In Crime No.736 of 2011)

.. Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records and set aside the judgment in S.C.No.84 of 2012 on the file of the Additional District and Sessions Judge, Dindigul, dated 24.11.2012 against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.T.Mohan
Additional Public Prosecutor**JUDGMENT**(Judgment of the Court was delivered by M.V.MURALIDARAN,J.)

Heard the submissions of Mr.R.Azhagumani, learned counsel appearing on behalf of the appellant and the submissions of Mr.P.Mohan, learned Additional Public Prosecutor appearing on behalf of the State.

2.This is a case of Uxoricide (killing of one's own wife) and the Additional District and Sessions Judge, Dindigul on 24.11.2012 convicted and sentenced the Accused in S.C.No.84 of 2012 to undergo life imprisonment under Section 302 of the Indian Penal Code and imposed a fine of Rs.1000/- and in the event of default to pay the fine to undergo 6 months rigorous imprisonment. Assailing the conviction and sentence imposed, Criminal Appeal (MD) No.233 of 2015 has been preferred before this Court.

3. The case of the prosecution in brief is as follows:-

The deceased in this case was one Mrs.Revathi, who was married to the sole accused Nagaraj, eight years prior to the



date of occurrence. After the marriage, the accused has taken the deceased to Coimbatore and they have resided there for a few years and out of the wedlock, two children were born one male child aged 7 years and female child aged about 3 years as on the date of the occurrence. The accused was suspicious of the character of the deceased and was constantly torturing and harrasing her. PW1 who is the father of the deceased has brought her to Madukarampatti from Coimbatore to live with him and the accused also occasionally visited the house. On 12.09.2011, PW1 has gone to Natham for purchasing some Electric Products and PW2, the mother of the deceased was in the neighbouring house and PW3 and PW4 are the neighbours of PW1. Around 4.00 p.m. in the evening, there was a loud cry from the house of PW1 and when PW3 and P24 rushed to the spot, the accused threw the rear door, with a knife, sickle and tirupuli, ran away.

4.The deceased suffered serious wounds and cuts in the forehead, left side of the chest and thighs and was in a pool of blood. PW3, PW4 and PW9 have seen the accused running away from the scene. Immediately they have informed PW1 and PW2. PW6 and PW7 who are the sister and brother of the deceased have come to know about the incident. PW1 has preferred a complaint and PW14, the Inspector of Police, Natham Police Station, at 6.00 p.m. On 12.09.2011 while he was in duty received the complaint and registered the F.I.R. in Crime No.736 of 2011 under Section 302 of I.P.C. PW8 who is the Medical Officer in Natham Hospital while he was in duty on the said day, at arond 7.15 p.m., PW1 and PW2 in an ambulance brought the deceased to the hospital where she was declared dead and the body was sent for post mortem. PW14 is the Sub-Inspector. At around 7.00 p.m., on 12.09.2011, PW15, the Inspector who is the Investigating Officer commenced his investigation and inspected the scene of occurrence along with PW10, Poosari and Periyampillai prepared the Observation Mahazar which is marked as Ex.P1 and the sketch Ex.P13 and recovered blood stained soil, M.O.5 and soil without blood stain M.O.6 from the scene of occurrence.

5.The post mortem was conducted in the Natham Government Hospital and the Post Mortem Certificate Ex.P8 was issued by PW12 Dr.Nirmal Kumar and in the Post Mortem Certificate, it was opined:

"The body was first seen by the undersigned at 11.30 AM on 13.09.2011. Its condition then was Rigor Mortis present in all four limbs. Post-mortem commenced at 11.30 AM on 13.09.2011. Appearances found at the Post Mortem body of a female aged about 24 years lying on its back, arms by the side of the body, moderately built, brown skin. Both eyes are closed. Tongue inside mouth not protruded.



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External Examination:-

- 1) 5 x 1 x 2 cm laceration present in the left frontal region.
- 2) 3 x 1 x 6 cm laceration present in the left side of the chest below clavicle
- 3) 2 x 1 x 3 cm laceration present in the left forth close to sternum
- 4) 4 x 5 cm abrasion left side of abdomen.
- 5) 3 x 2 cm abrasion below left knee.

Internal Examination:-

On opening the thorax, heart and lungs are congested. Heart chambers empty.

3 x 1 cm x 1 laceration present in the (torn) of left lung.

Hyoid Bone intact.

On opening of abdomen - stomach is congested, contains undigested food particles of 300 ml.

Internal organs are congested. Uterus - No fetal parts.

Skull:-

Vault fracture present in the left frontal region and base of skull present in the both sides.

3 x 1 x 0.5 cm laceration present in the frontal region of brain with surrounding brain contusion of size 2 x 2 cm.

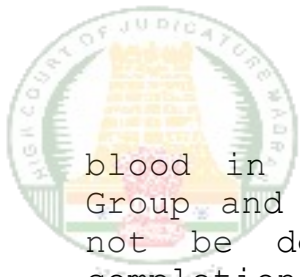
Opinion as to the cause of death:-

The deceased would appear to have died of shock and hemorrhage due to injury to vital organs 18 to 22 hours prior to autopsy.

Station: Natham

Date: 13.09.2011"

6. After the Investigating Officer commenced the investigation, the clothes of the deceased obtained after post mortem, blood stained saree M.O.7, blood stained Petti Coat M.O.8 and Jacket M.O.9 were sent to Court. The accused was arrested on 13.09.2011 at around 12.30 p.m. near the Thirumani Mutharu Bridge in the presence of PW11 and the confession statement of the accused is also recorded. The accused has accepted his guilt and stated that he would produce a sickle and the blood stained clothes and accordingly, the same were recovered along with sickle on 13.09.2011. M.O.2, Pant M.O.3 and Shirt M.O.4 and all these items except M.O.2 and M.O.9 has blood stains in it according to the Chemical Examination report. It has also been revealed that the



blood in the said exhibits is human blood and belongs to "A" Group and the blood stain in the sickle is uncertain and could not be detected as to which group it belongs to. After completion of the investigation, the I.O. laid the charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in paragraph-3 of this judgment. In order to prove the case of the prosecution, as many as 15 witnesses were examined and 14 documents were exhibited besides 9 material objects.

8. Out of the said witnesses, PW1 and PW2 are the father and mother of the deceased respectively. The accused is the sister's son of PW1. PW3 and PW4 are the neighbours of PW1. PW6 is the sister of the deceased and PW7 is the brother of the deceased. Upon examination, PW1 has stated that the accused has visited the house of PW1 on 12.09.2011 and that he left the accused to stay in the house and left to Natham to buy electrical products. He further stated that upon returning to the house at about 4.00 p.m., it was raining and he heard some noise from his house. Upon entering the house, he had witnessed his daughter lying in a pool of blood. PW2 has stated that the accused suspected the character of the deceased and there was constant misunderstanding between the two. She has stated that she was in the house and when she went to the neighbour's house, the accused and the deceased were together in the house and within a few minutes, she heard hues and cries and when she immediately rushed to the spot, she found that the deceased was stabbed and the accused fled away from the spot. PW3 and PW4 have stated that around 4.00 p.m. on the said day, they heard hues and cries and when they rushed to the scene of occurrence, they found the deceased was stabbed in the left chest, right chest and thigh and was in a pool of blood. PW3 tried to catch hold of the accused but the accused fled away. PW5 was present during the post mortem of the deceased. PW6 and PW7 have come to know of the occurrence over phone and rushed to the scene. PW8 is the Assistant Medical Officer who was present in the Hospital when the deceased was brought to the Hospital and confirmed her death. PW9 has stated that upon hearing of the news that the accused has stabbed the deceased, he rushed to the spot and he has stated that he has not directly witnessed the occurrence and also stated that he does not know anything about the misunderstanding or the hostile relationship between the deceased and the accused. PW10 was present along with Investigating Officer during the preparation of the Observation Mahazar and when the I.O. collected the material objects from the scene of occurrence. PW11, the V.A.O., was present during the service of summons of the accused and he has stated that the I.O. has recovered the material objects and the arrest took place in his presence. PW12 is the Doctor who has performed the Post Mortem.



PW13 has performed the Chemical Examination. PW14 is the Sub-Inspector, who has registered the F.I.R. and PW15 is the Inspector and the Investigating Officer who has stated that accused is guilty of commission of the offence since he himself has accepted the guilt and there has also been recovery of material objects used and further has spoken about the investigation done and the final report filed in the case.

9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, there was no examination of any witness nor was there any marking of documents on his side. The defence was a total denial and it was stated that only a fictitious case has been foisted against him and he was never present at the scene of occurrence at all.

10. Having considered the above aspects, the learned trial Judge has come to the finding that the accused is guilty of committing an offence under Section 302 of I.P.C. and sentenced him for life imprisonment and imposed a fine of Rs.1,000/- and in the event of default to pay the fine to undergo 6 months rigorous imprisonment.

11. The learned counsel appearing for the Appellant has raised three important submissions to drive home the point that the entire basis on which the trial Court has convicted the accused is wholly unsustainable in law. The first limb of the Appellant's submission is that the conviction has solely been based on circumstantial evidence and there is no direct eye witness to prove the guilt of the Appellant. Secondly, the witnesses who have deposed against the accused are not independent witnesses but are only interested witnesses and hence, the conviction based on their testimony is impermissible. Thirdly, it has been contended that the Appellant has been falsely implicated in the case and the doctors have also clearly not explained about the cause of the death of the deceased. It has been contended that the trial Court got completely carried away by the fact that the Appellant has himself accepted the guilt and also taking it into account the alleged hostility between the accused and the deceased.

12. It has also been contended that the trial Judge has not properly appreciated the evidences and in fact, has miserably failed to look into crucial aspects that ought to have been necessarily considered. The learned counsel would submit that there is no chain to link the accused to the commission of the crime since there are factual infirmities and material errors in the investigation and also in the order passed by the trial Judge, convicting the Appellant.



13. It cannot be disputed that the safest eye witness to base a conviction upon is a direct eye witness and admittedly, in the instant case, there is no direct eye witness. PW1, PW2, PW6 and PW7 are all relatives of the deceased and they are privy to the fact that the deceased and the Appellant did not enjoy a happy matrimonial relationship. PW2, PW3 and PW4 have deposed that the deceased has been stabbed by the Appellant whereas the post mortem report reveals that there is no stabbing but there are lacerations present in the left frontal region, left side of the chest below clavicle and in the area close sternum. On one hand, it has been stated that the accused has used a sickle but PW3 has deposed that the accused escaped with a knife and the two children were present during the time of occurrence of the crime.

14. Though the prosecution might take recourse to substantiating their case based on last seen theory and also stating that the accused himself has accepted the guilt and identified the sickle used in the commission of the offence, there are two aspects that have to be necessarily mentioned. 1. No Person has clearly seen whether the accused has attacked the deceased or was there actually any other third party who was present at that time. 2. Secondly, as stated earlier, the blood in the sickle that is alleged to have been used by the accused does not match with the blood of the deceased which is present in the other M.O.s.

15. At this juncture, it is absolutely relevant to point out that the prosecution has miserably failed to take into consideration of the fact that in none of the M.O.s has the finger print of the accused found place nor has there been any finger print identification or verification which is absolutely necessary in the instant case.

16. Even in the post mortem report, it is unclear as to whether a sickle was used or a knife was used and the prosecution has also not been able to substantiate that as to which weapon did the accused use to commit the offence. It would not be out of place to point out now that PW3 has stated that the accused has used a tirupuli, sickle and a knife but only a sickle has been recovered and even in the sickle, there is no blood stain of the blood of the deceased.

17. Though the trial Court has relied upon several judgments, we are afraid that the trial Judge has failed to see as to how factually, those judgments would be applicable to the instant case and in fact, the dictum laid down in a few judgments that have been discussed, only come to the rescue of the accused and does not help the case of the prosecution.



18. It is trite in law that the Court's of law cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In the instant case, the two grounds that could possibly have been the basis behind the conviction is circumstantial evidence and last seen theory. It has also been to discredit the submission of the Appellant that the witnesses are interested witnesses and the trial Judge has taken a view that these witnesses though could be classified as interested witnesses are only chance witnesses and hence, their statements deserve credence. It has been reiterated time and again by the Supreme Court and this Court in a long line of decisions that conviction to be based on circumstantial evidence must be based on solid reasons and the chain of events must correlate with each other to ultimately link the accused with the commission of the offence.

19. It is a settled rule of circumstantial evidence that each one of the circumstances have to be established beyond doubt and all the circumstances put together must lead to only one inference and that is of the guilt of the accused. Here, the fact that the accused has come with a motive has not been established, the further fact that the accused carried deadly weapons while coming to the house of the deceased is also not established. Apart from this, whether the accused has attacked the deceased itself is doubtful because there are conflicting statements of the witnesses with regard to the nature of the weapons used by the accused.

20. The trial Judge has found that the accused has accepted the guilt under Section 27 of the Evidence Act, the information that has been received from the accused has led to discovery of facts and hence, the accused is guilty. However, recently the Supreme Court in **Kala vs. State** reported in **2016 SCC Online SC 810** while dealing with a similar situation where the conviction was based on circumstantial evidence and extra-judicial confession has held that unless the case of the prosecution is proved beyond reasonable doubt, the conviction would be unsustainable.

21. In the instant case, it is quite undoubted that the guilt of the Appellant has not been proved beyond reasonable doubt and the investigation has left big loop holes and very importantly, one most important and crucial fact has been ignored comprehensively by both the investigating officer and the trial judge.

22. It has been accepted by the I.O. itself that the minor son of the accused aged about 7 years was present in the scene of occurrence but however, there has not been any investigation done



on the minor son and in fact, PW15 has himself stated that the son was very much there at the scene of occurrence and he has not included him as a witness. It is quite obvious that the young boy aged about 7 years would have had comprehensible understanding and would have definitely identified his father if he had been responsible for the killing of his mother. Perhaps, had this fact alone been proved, it would have been sufficient to sustain the conviction of the Appellant. However, the same has not been done and benefit of doubt will have to naturally be given to the Appellant.

23. In view of the above discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubt. Therefore, the criminal appeal is liable to be allowed and the appellant is entitled for acquittal.

24. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the Accused by the Additional District and Sessions Judge, Dindigul in S.C.No.84 of 2012 dated 24.11.2012 is set aside and the Appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the Appellant shall stand discharged.

Sd/

Assistant Registrar(Records)

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Sub Assistant Registrar

To

1. The Additional District and Sessions Judge, Dindigul.
2. Do-Thro' The Principal District and Sessions Judge, Dindigul.
3. Do-Thro' The Chief Judicial Magistrate, Dindigul.
4. The Judicial Magistrate, Dindigul.
5. The Inspector of Police,
Natham Police Station, Dindigul District.
6. The Superintendent of Central Prison, Madurai.
7. The Commissioner of Police, Dindigul.
8. The District Collector, Dindigul.
9. The Director General of Police, Chennai.
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer(Records), Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Alagumani, Advocate SR.No.50734

Judgment made in
Criminal Appeal(MD) No.233 of 2015
06.09.2016