



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM
and

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.A.(MD)No.280 of 2013

Vitti @ Periyakaruppan

.. Appellant/Sole Accused

Vs.

State rep.by
The Inspector of Police,
Namanasamuthiram Police Station,
Pudukottai District,
Crime No.134/2011.

.. Respondent/Complainant

Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 19.12.2012 passed in Sessions Case No.54 of 2012 by the Sessions Court/Mahila Court, Pudukottai.

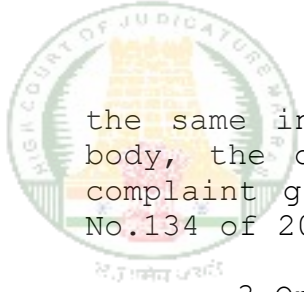
For Appellant : Mr.P.Thirunavukkarasan
For Respondent : Mr.A.Ramar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by **A.SELVAM, J.**)

The convictions and sentences passed in Sessions Case No.54 of 2012 by the District and Sessions Court/Mahila Court, Pudukottai are being challenged in the present Criminal Appeal.

2.The case of the prosecution is that the defacto complainant by name Vellaisamy and the accused by name Vitti @ Periyakaruppan are brothers and both of them are residing in Chettiyapatty Village and prior to occurrence, the accused has demanded partition. But the defacto complainant has refused to concede the demand made by him and due to that a tussle has arisen between the defacto complainant and accused. The deceased viz., Gomathi who is none other than the daughter of the defacto complainant has supported cause of her father by way of hurling invectives against the accused. On 01.10.2011 at about 09.00 am, the deceased has gone to a tank for taking bath and subsequently she has not turned up and on the same day, a complaint has been given by the defacto complainant. Next day, on 02.10.2011 at about 05.50 am, the accused has removed the dead body of the deceased from one thicket and tried to place



the same in another thicket. After seeing the accused along with dead body, the defacto complainant has given another complaint. The initial complaint given by the defacto complainant has been registered in Crime No.134 of 2011.

3. On receipt of the said complaint as well as subsequent complaint, the Investigating Officer viz., PW17, has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr. Raja (PW13) has conducted post-mortem and he found the following external and internal injuries:

Appearance found at the post-mortem:

"Body lies on back, edematous, RM seen L.L. only, skin peeling seen all over the body. Moderately, nourished, eye opened, eye ball protruded, pupil NC, mouth closed. Tongue inside mouth, discharge seen nose and ear. No external injuries. Neck muscle contusion seen both side of neck. Trachea larynx empty. Hyoid sent for examination.

Chest : No injury. Lungs congested, no injuries, distended. No froath seen.

Heart liquid blood, Ribs no fracture.

Abdomen : Distended, peritoneum intact. Stomach contains 50 ml of brown colour fluid. All organ congested. No injuries. Bladder empty. Intestine filled with gas. Uterus normal size. Empty. Vagina no injuries. Smear sent for examination.

CRS : No injury, metron intact, no injuries to throat."

4. The post-mortem report has been marked as Ex.P20. After completing investigation, the Investigating Officer has laid a final report on the file of the District Munsif - cum - Judicial Magistrate, Thirumayam and the same has been taken on file in PRC No.5 of 2012.

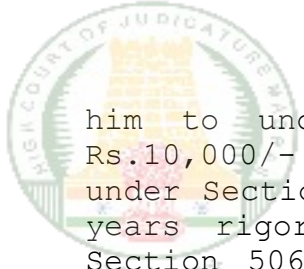
5. The District Munsif - cum - Judicial Magistrate, Thirumayam after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Pudukottai Division and taken on file in Sessions Case No.54 of 2012 and subsequently made over to the trial Court.

6. The trial Court after hearing arguments of both sides and upon perusing relevant records has framed first charge against the accused under Section 302; second charge against him under Section 201 and third charge against him under Section 506(ii) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7. On the side of the prosecution PWs.1 to 17 have been examined and Exs.P1 to P27 and M.Os.1 to 17 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documents have been filed on the side of the accused.

9. The trial Court after hearing the arguments of both sides and upon perusing relevant evidence available on record has found the accused guilty under Section 302 of the Indian Penal Code and sentenced



him to undergo imprisonment for life and also imposed a fine of Rs.10,000/- with usual default clause. He has also been found guilty under Section 201 of the Indian Penal Code and sentenced to undergo three years rigorous imprisonment. Further he has been found guilty under Section 506(ii) of the Indian Penal Code and sentenced to undergo one year rigorous imprisonment. Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10.The consistent case put forth on the side of the prosecution is that both the defacto complainant and accused are brothers and both of them are residing in Chettiyapatty Village. Prior to occurrence, the accused has demanded a partition in respect of family properties from the defacto complainant and due to that, a tussle has arisen and the deceased who is none other than the daughter of the defacto complainant has supported the cause of her father by way of hurling invectives against the accused and on 01.10.2011 at about 09.00 am., the deceased has gone to a nearby tank for taking bath and subsequently not turned up and due to that a complaint has been given and on 02.10.2011, it is found that the accused has removed dead body of the deceased from one place to another and subsequently another complaint has been given and thereafter the Investigating Agency has done investigation and filed final report against the accused.

11.The entire case of the prosecution is based upon circumstantial evidence coupled with the evidence given by Pws.1 and 2. The trial Court after considering the evidence given by PWs.1, 2 and 5 coupled with medical evidence, has found the accused guilty under Sections 302, 201 and 506(ii) of the Indian Penal Code.

12.The learned counsel appearing for the appellant/accused has repeatedly contended that in the instant case, the defacto complainant, the father of the deceased has been examined as PW1. The mother of the defacto complainant, accused and PW5 by name Azhagi has been examined as PW2 and both of them are not reliable witnesses and further lot of contradictions are available in their evidence and the trial Court even without considering the vital contradictions in the evidence of PWs.1 and 2 has erroneously found the accused guilty under Sections 302, 201 and 506(ii) of the Indian Penal Code and further in the instant case, no acceptable evidence is available with regard to arrest of the accused and further no eye witness has been examined so as to prove the alleged culpability of the accused and the trial Court has also failed to look into the same. Under the said circumstances, the convictions and sentences passed by the trial Court are liable to be set aside.

13.In order to sustain the convictions and sentences passed by the trial Court, the learned Additional Public Prosecutor has contended to the effect that for the purpose of proving motive, the defacto complainant has given a clear evidence and further with regard to occurrence alleged to have taken place on 02.10.2011, both defacto complainant and mother of the defacto complainant, accused viz., PW2 have given picturesque evidence and no motive has been existence in between PW2 and accused and further, the case of the prosecution has been clearly established by the medical evidence. The trial Court after considering the overwhelming evidence available on the side of the prosecution, has

rightly found the accused guilty under Sections 302, 201 and 506(ii) of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court do not warrant interference.

14. On the basis of the divergent submissions made on either side, the Court has to look into as to whether a strong motive has been existence in between the family of the defacto complainant and accused?

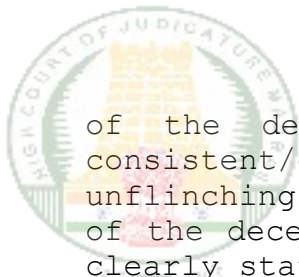
15. As adverted to earlier, the defacto complainant has been examined as PW1 and his specific evidence is that prior to occurrence, the accused has demanded partition in respect of family properties and his demand has not been conceded by him and due to that a miff has arisen and at that time, the deceased has supported his cause by way of hurling invectives against the accused. The evidence given by PW1 with regard to the said aspect has also been clearly corroborated by the evidence given by PWs.2 and 5. PW5 is none other than the another brother of both PW.1 and accused. Therefore, it is very clear that prior to occurrence, a strong motive has been in existence in between PW1 and accused. Further the deceased has hurled invectives against the accused by using filthy words.

16. The specific case of the prosecution is that on 01.10.2011 at about 09.00 am, the deceased has gone to a nearby tank for taking bath and subsequently not turned up and due to previous animosity, the accused has murdered her.

17. At this juncture, the Court has to look into the evidence given by PW5. As pointed out earlier, PW5 is nothing but the another brother of the accused and his specific evidence is that at the time of taking bath in the same tank, both the accused and deceased are also taking bath.

18. The trial Court has invited convictions and sentences only on the basis of evidence given by PWs.1 and 2. As pointed out earlier, the specific case of the prosecution is that on 02.10.2011 the accused has taken the dead body of the deceased from one thicket so as to keep the same in another thicket and at that time, both PWs.1 and 2 have seen him.

19. The initial complaint given by PW1 has been marked as Ex.P1, wherein it has been simply stated that his daughter has been missing. But next day, that is, on 02.10.2011, another complaint has been given and the same has been marked as Ex.P2, wherein it has been clearly mentioned about the occurrence alleged to have taken place on 02.10.2011. For the purpose of proving the materials found in Ex.P2, PWs.1 and 2 have been examined on the side of the prosecution. It is an admitted fact that PW1 is the father of the deceased and his specific evidence is that on 02.10.2011 he and PW2 have seen the accused at the time of removing body of the deceased. Even assuming without conceding that PW1 is not a reliable witness, the Court has to meticulously analyse the evidence given by PW2, who is none other than the mother of PWs.1, 5 and accused. In fact, this Court has closely perused the evidence given by PW2 and her specific evidence is that on 02.10.2011 she and PW1 have seen the accused at the time of removing the dead body from one place to another. Further no motive has been suggested in between PW2 and accused. Since PW2 is the mother of PWs.1, 5 and accused and since no motive has been existence in between PW2 and accused, her evidence cannot be discarded. As stated earlier, her specific evidence is that the accused has removed dead body



of the deceased from one place to another. Since PW2 has given consistent/concrete evidence with regard to that aspect, the Court can unflinchingly come to a conclusion that the accused has committed murder of the deceased. Further, in Ex.P20, post-mortem certificate it has been clearly stated that death would have occurred due to strangulation.

20.The trial Court after considering the evidence given by the witnesses mentioned supra, has rightly found that accused guilty under Sections 302, 201 and 506(ii) of the Indian Penal Code.

21.The first and foremost contention put forth on the side of the appellant/accused is that both PWs.1 and 2 are not reliable witnesses. It has already been pointed out that even assuming without conceding that PW1 is an interested witness, the evidence given by PW2 cannot be eschewed nor discarded and therefore, the first and foremost contention put forth on the side of the appellant/accused is sans merit.

22.The second contention put forth on the side of the appellant/accused is that with regard to arrest, some discrepancies are present in the case of the prosecution and that itself would militate its case.

23.In fact, PW8, concerned Village Administrative Officer has given clear evidence with regard to arrest of the accused and also seizure of some Material Objects. Even assuming without conceding that some discrepancies are found place in the evidence given by PW8, the Court cannot reject the case of the prosecution by way of eschewing the evidence given by PW2. Further the specific evidence given by PW2 is that the alleged occurrence has taken place on 02.10.2011 and the accused has also threatened her and PW1. Therefore, viewing from any angle, this Court has not found any error nor illegality in the convictions and sentences passed by the trial Court and altogether, the present Criminal Appeal deserves to be dismissed.

24.In fine, this Criminal Appeal is dismissed. The convictions and sentences passed in Sessions Case No.54 of 2012 by the Sessions Court/Mahila Court, Pudukottai are confirmed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1.The Sessions Court/Mahila Court, Pudukottai.
 - 2.The District Munsif - cum - Judicial Magistrate, Thirumayam, Pudukottai District.
 - 3.The Superintendent, Central Prison, Tiruchirapalli.
 - 4.The Inspector of Police, Namanasamuthiram Police Station, Pudukottai District.
 - 5.The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- +one cc to Mr.P.Thirunavukkarasan, Advocate in SR.NO.6899

CSL/SKS-RR/SAR-I/15.02.2016/5P/7C

Cr1.A. (MD) No.280 of 2013
04.02.2016