

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Cr1.A.No.120 of 2017
and
Cr1.M.P.No.3390 of 2017

Sathya ... Appellant/Accused-1
vs.

State, rep.by
The Inspector of Police,
Sankarapuram Police Station,
Villupuram District ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 23.09.2014 passed by the III
Additional District and Sessions Judge, Kallakurichi, in
S.C.No.2 of 2012.

For Appellant : Mr.B.Nambiselvan

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu, J.)

The appellant is the first accused in S.C.No.2 of 2012,
on the file of the III Additional District and Sessions Judge,
Kallakurichi. There were two other accused by name, Abu @
Abudhagir and Jeyaraj, who were arrayed as accused 2 and 3.
All the three accused stood charged for offences as detailed
below:

Sl.No	Charges (Section of law)	accused
1.	U/s.302 of the Indian Penal Code	A2
2.	U/s.302 read with Sec.34 IPC	A1 & A3
3.	U/s.302 read with Sec.201 IPC	A1 to A3

By judgement dated 23.09.2014, the trial Court convicted all the three accused and sentenced them as detailed below:

Sl.No	Rank of accused	Conviction	sentence
1.	A2	U/ss.302 IPC	Imprisonment for life, with a fine of Rs.500/-, in default, simple imprisonment for one year.
2.	A2	U/s.201 read with Section 302 IPC	Rigorous imprisonment for three years with a fine of Rs.500/-, in default, simple imprisonment for nine months.
3.	A1 and A3	U/s.302 read with Sec.34 IPC	Imprisonment for life with a fine of Rs.500/-, in default, simple imprisonment for one year
4.	A1 and A3	U/s.201 r/w.Sec.302 IPC	Rigorous Imprisonment for three years, with a fine of Rs.500/-, in default, simple imprisonment for nine months.

Challenging the said conviction and sentences, the accused 2 and 3 filed Crl.A.No.233 of 2015. By judgement dated 4.8.2016, this Court acquitted the accused 2 and 3, as the prosecution had failed to prove the case beyond reasonable doubts. The appellant/first accused, has subsequently filed the present appeal, challenging her conviction and sentence.

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

(a) The deceased in this case Mr.Muneeswaran was the husband of the appellant. P.W.8 is their daughter. All the three were residing together at their house at Paramanatham Village in Villupuram District. It is alleged that the first accused had developed illicit intimacy with the second accused. The third accused is the friend of the second accused. When the said illicit relationship came to the knowledge of the deceased, he reprimanded them. Therefore, the accused 1 and 2 decided to do away with the deceased, since he would be a hindrance for them to continue the illicit intimacy. This is stated to be the motive for the occurrence.

(b) It is alleged that around 9.00 p.m. on 29.6.2010, the deceased was sleeping in his house, on the cot. P.W.8 and the appellant were in the house and sleeping in a room. It is alleged that the first accused wanted to utilise the said opportunity. She spoke to the second accused and wanted him to come immediately along with the third accused to her house. Accordingly, the accused 2 and 3 rushed to the house of the deceased. The deceased was still sleeping. At that time, it is alleged that the first accused smothered by using a cloth against the face and mouth of the deceased. Then, the third accused killed the deceased. The second accused smothered him and with a scissors, stabbed on the penis of the deceased. The deceased died. Then, in order to erase the evidence, they hanged the dead body inside the tea shop belonging to the deceased to make it appear that the deceased had committed suicide.

(c) It is alleged that the accused 2 and 3 fled away from the scene of occurrence. The first accused pretended that the deceased had committed suicide. The other family members of the deceased and the villagers gathered. The Village Administrative Officer also had come. They found that there were blood stains near the penis of the deceased. Suspecting some foul play, P.W.1-the Village Administrative Officer went to Sankarapuram Police Station and made a complaint, upon which, the present case is registered in Crime No.387 of 2010 under Sections 302 and 201 IPC.

(d) During the course of investigation, P.W.18, the Inspector of Police prepared an observation mahazar and a rough sketch; conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.15-Dr.Vijayakumari had conducted autopsy on the body of the deceased and opined that the death of the deceased was due to asphyxia due to strangulation. According to her, it was a homicide.

(e) P.W.18, during the course of investigation arrested the accused, recovered certain material objects and finally laid charge-sheet against the accused.

3. Based on the police report, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. The trial Court proceeded with the trial. During the trial, in order to prove the charges, on the side of the prosecution, as many as 18 witnesses were examined, 23 documents and 8 material objects were marked. Out of the said witnesses, P.W.1 the Village Administrative Officer has stated that on receipt of intimation from the Village Assistant at 06.00 a.m. on 30.06.2010, he went to the house of the deceased and he found the dead body of the deceased covered by a white cloth with bloodstains and the

body was lying in the car. He has further spoken about the complaint made by him. P.W.2 is the Village Assistant who has informed P.W.1 that the dead body of the deceased was lying in a car.

4. P.W.3 is a resident of Murarpalayam village. He said that he knew the first accused and the deceased. The deceased was running a medical shop and a tea shop. He was working in the said tea shop and he used to come for work in the tea shop every day at around 3.30 a.m. and return around 08.00 p.m. He has stated that on 30.06.2010, as usual, he went to the tea shop and when he opened the tea shop, he found the deceased hanging. He believed that he had committed suicide by hanging inside the shop. Then, he informed the father of the first accused. Thereafter, he was not present at the place of occurrence. Thus, he has not stated anything incriminating against the accused. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner.

5.P.W.5 has stated that he heard that the deceased was no more. When he went to the place of occurrence and he found the dead body of the deceased in the car. P.W.6 has stated that on hearing about the death of the deceased, when he went to the place of occurrence, he was told that the deceased had committed suicide, but he found the dead body was in the car. But there were bloodstains in the white cloth covering the dead body. Therefore, the villagers had suspicion regarding the death of the deceased. Therefore, they did not allow the vehicle to be taken. According to him, then the police came on the complaint of P.W.1. P.W.7 has also stated the same facts as spoken by P.W.6.

6.P.W.8 is the daughter of the deceased. At the time of occurrence, she was hardly aged seven years. She has stated that at the time of the demise of her father, she was doing second standard. She has further stated that she did not know the accused 2 and 3. On the day of occurrence, according to her, she was sleeping in a room along with her mother and her father was sleeping on the cot. The fan was running. On the next day morning, she found her father dead. On the day of occurrence she did not saw the accused 2 and 3 at all. Thus, her evidence is of no use for the prosecution.

7.P.W.9 is a villager, he has stated that on hearing about the death of the deceased, he went to the place of occurrence. P.W.10 has spoken about the arrest of the second accused and the disclosure statement made by him and also the recovery of M.O.2 (silver iron pipe). P.W.11 has also spoken about the same facts as spoken by P.W.10.

8.P.W.12 has spoken about the preparation of the observation mahazar and a rough sketch and the recovery of material objects from the place of occurrence. P.W.13 has stated that she handed over the material objects to the

forensic lab as directed by the learned Magistrate. P.W.14 a constable has stated that he handed over the dead body of the deceased to the doctor for postmortem. P.W.15 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.16 the then learned Magistrate has stated that she recorded the statements of P.Ws.6 and 7 and one Poomalai under Section 164 Cr.P.C. as requested by the investigating officer. P.W.17 has spoken about the registration of the case and P.W.18 has spoken about the investigation done and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement and that is how, the appellant/ first accused is before this Court with this appeal.

10. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

11. As we have already narrated, this is a case based on circumstantial evidence. Admittedly, the dead body of the deceased was hanging. The doctor has opined that the death of the deceased was due to strangulation. From out of this evidence, at the most, it could be held that the deceased had died of homicidal death. But, in order to prove that it was this accused, who caused the death of the deceased, absolutely there is no evidence. As we have already pointed out, the accused 2 and 3, who are stated to have killed the deceased, have been acquitted by this Court. The appellant also stands in the same footing. P.W.8, her daughter, has stated that on the day of occurrence, the deceased was sleeping on the cot and she was sleeping along with this accused in the room. The next day morning, she found the body of the deceased hanging. The appellant has also stated so. Absolutely there is no evidence that this accused played any role in the death of the deceased. Her explanation that she was sleeping along with P.W.8 and that she was not aware of the cause of death is probable in view of the evidence of P.W.8. Thus, in our considered view, there is no evidence to prove the charges framed against the accused. In view of the above, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

12. In the result, this criminal appeal is allowed and the conviction and sentence imposed on the appellant/first accused Mrs. Sathya, by the trial Court in Sessions Case No.2

of 2012, are set aside. The appellant/first accused is acquitted. Fine amount, if any, paid by her is ordered to be refunded forthwith. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

msk

To

- 1.The Principal Sessions Judge,Kallakurichi.
 - 2.The Judicial Magistrate,Sankarapuram.
 - 3.The III Additional District and Sessions Judge,
Kallakurichi.
 - 4.The Inspector of Police,
Sankarapuram Police Station,
Villupuram District.
 - 5.The Superintendent,Central Prison,
Vellore(Special Prison for Women)
(In Duplicate for communication to the Detenue)
 - 6.The Public Prosecutor,
High Court, Madras
- +1cc to Mr.B.Nambi Selvan,Advocate sr.18870

Crl.A.No.120 of 2017

sal(co)
ss(20/04/2017)

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