

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **09.10.2017**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.A.No.123 of 2017

Arunkumar @ Arun

.... Appellant

Vs.

State by Inspector of Police,
Gudimangalam Police Station,
Tirupur District.

....Respondent

Prayer : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to allow the appeal and set aside the order in S.C.No.125 of 2014, dated 20.01.2017 on the file of the II Additional District Judge, Mahila Court, Tiruppur.

For Appellant : Mr.P.V.Selvarajan
for Mr.C.Deivasigamani

For Respondent : Mr.V.M.R.Rajentran
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court delivered by **P.KALAIYARASAN, J**)

This Criminal Appeal is against the Judgment of the II Additional District Judge, Mahila Court, Tiruppur made in S.C.No.125 of 2014 convicting and sentencing the appellant / accused to undergo 10 years RI and a fine of Rs.5,000/- with usual default clause for the

offence under Section 449 IPC; life imprisonment and a fine of Rs.5,000/- with usual default clause for the offence under Section 376 (A) IPC and life imprisonment with a fine of Rs.5,000/- with usual default clause for the offence under Section 302 IPC.

2. The case of the prosecution is that on 03.11.2013 at about 3 p.m, the accused with intend to rape and murder, the minor girl Pushpalakshmi trespassed into her house. During the absence of her parents raped her and when she raised alarm for help he shut her mouth and nose with her shawl and also pressed her neck and murdered her.

3. The accused used to visit the land of P.W.1 and on the date of occurrence, he came and talked with P.W.1 and P.W.2 and P.W.1's father, P.W.4. Victim's parents P.W.1 and P.W.2 left to hear a condolence nearby. P.W.4 also went to take rest. The victim minor girl went inside the house and at that time the accused entered into the room where the victim girl was. He committed rape on the minor girl. When she started shouting, he closed her mouth and nose with her shawl and he pressed her neck resulting her death. On hearing the sound of grand daughter, P.W.4 came and knocked the door. P.W.3 who came there to hand over the spanner on seeing P.W.4 knocking the door also attempted but in vain. He informed P.W.1 over phone

and he also came within 15 minutes. The accused came out from the room locked inside with sweating. P.W.1 and P.W.2 went inside and saw her daughter lying on the ground semi undressed. She was taken to Dr.Thamaraiselvan, P.W.8. He declared the victim dead. Then they came back home.

4. P.W.1 lodged the complaint, Ex.P.2. On receipt of the complaint, P.W.20, the Sub-Inspector of Police registered the case in Cr.No.225 of 2013. The FIR is marked as Ex.P.19. P.W.22, Mr.Pitchai, the Deputy Superintendent of Police took up the case for investigation. He went to the scene of crime. The people assembled there attempted to attack the accused who was there. The Deputy Superintendent of Police rescued the accused and sent him to the police station. He prepared rough sketch, Ex.P.20 and observation mahazar, Ex.P.3 in the presence of P.W.5 and another witness. He also recovered the shawl of the victim from the scene of crime under mahazar. He sent the body to the Government Hospital mortuary where he conducted inquest in the presence of panchayatdars on the next day and prepared Inquest Report, Ex.P.21. Then he sent a requisition to the Doctor for postmortem.

5. P.W.14, Dr.T.Jeyasingh conducted autopsy and found the following external and internal injuries.

"Reddish contusion 1.5 x 1 cm x skin deep

noted over left side upper lip, 3 x 2 cm x skin deep, 3 x 2 cm x skin deep noted over both side anterior iliac spine and 5 x 3 cm x muscle deep noted over inner aspect of right lower arm and elbow.

Three teeth bite marks noted above upper lip.

Reddish abrasion 2 x 1 cm noted over front of right knee and 1 x 0.25 cm noted over dorsum of right ring finger.

Nail mark abrasion 1 x 0.25 cm noted over left chin.

Pressure reddish abrasion 3 x 1 cm noted over top of left shoulder.

Curved laceration with dried blood clots noted over posterior forchette. Hymen found tear at 6' O Clock and 8' O clock positions.

On dissection of Thorax and Abdomen : -
Reddish contusion 4 x 3 cm noted over upper part of sternum.

On dissection of Neck : Reddish contusion 2 x 1 cm noted over right side just above to right thyroid cartilage 2 x 1 cm noted over right side neck muscle at the level of hyoid bone and 4 x 2 cm noted over upper part of left side neck muscle at the level of thyroid cartilage. Left side greater cornu of hyoid bone found fractured in its lower 1/3rd with surrounding tissue contusion. Left side superior cornu and mid line of thyroid cartilage found fractured with surrounding tissue contused. Reddish contusion 4 x 2 cm noted over posterior aspect

of esophagus."

"Peritoneal and plural cavities - empty.

Heart - all chambers contains about few cc of fluid blood, coronaries patent.

Stomach contains about 250 grams of partially digested food particles, no specific smell, mucosa pale.

Small Intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale.

Spleen, Kidneys, Lungs, Liver and Brain - cut section pale.

Urinary bladder - empty.

Uterus - Normal in size, cut section empty.

Viscera preserved and sent for chemical analysis.

Blood preserved for analysis.

Vaginal swab and uterus swab preserved for analysis."

The Doctor opined that the deceased would appear to have died of Axphysia due to violent compression of neck by throttling and the death would have occurred 24 to 30 hours prior to the postmortem.

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6. The Investigating Officer recorded the confession statement of the accused and recovered the clothes worn by him at the time of alleged occurrence under mahazar. He examined and sent the accused to the Judicial Magistrate for remand. The Investigating Officer examined the witnesses, recorded their statements and

completed investigation by obtaining report from Forensic Science Department and then laid charge sheet.

7. After examination of 22 witnesses and marking of 26 exhibits and 8 Material Objects on the side of the prosecution, the accused was questioned under Section 313 (1) (b) Cr.P.C as to the incriminating evidence appeared against him and he denied the complicity in the crime. Neither any witness nor exhibit has been marked on the side of the accused.

8. The learned Additional District Judge after analysing the evidence, found the accused guilty for the offence under Sections 449, 376 (A) and 302 IPC and convicted and sentenced as aforesaid.

9. The learned counsel appearing for the appellant repletely argued that the trial Court failed to consider the contradiction between P.W.3 and P.W.4 as to the knocking of northern door and not the eastern door and there is no possibility of the presence of P.W.3 at the time of occurrence. It is also contended that recovery of clothes from the accused does not carry any weight. The trial Court has failed to note the report of the Forensic Science Department as to the fact that the swab taken from the vaginal part of the deceased

or hair or blood of the appellant and therefore, the prosecution has not proved its case beyond reasonable doubt.

10. The learned Additional Public Prosecutor per contra contends that the learned trial Judge after evaluating the evidence has rightly found the accused guilty and convicted him and the same does not require any interference by this Court.

11. The appellant / accused is not a stranger. He used to visit the land of P.W.1, where P.W.1 has been living with his wife, daughter and parents. On the date of occurrence, the accused came there and chatted with P.W.1 and his father P.W.4. P.W.1 and P.W.2 left for a condolence nearby. P.W.4 after chatting with the accused for sometime wanted to take rest. On seeing the girl alone in the house, the accused entered into the room where the victim girl was. The accused came out of the room opening the door locked inside with sweat. At that time, the victim girl was seen lying swooned on the floor. The above factum has been spoken to by P.W.1 to P.W.4. This Court does not see any reason to discard the evidence of the above witnesses. The victim girl was immediately taken to the Doctor and she was declared dead. Then she was brought back home. Immediately on receipt of the complaint, the Deputy Superintendent

scene of crime, the accused got red handed was rescued from the people assembled there and sent to the police station. This also strengthens the evidence of P.W.1 to P.W.4.

12. The only contention of the appellant is that as per the evidence of P.W.3 and P.W.4 they knocked the northern door whereas there are three rooms available in the house. P.W.4 has categorically deposed during cross-examination that there are two doors for the house one on the northern side and another on the eastern side. He further says that there are three rooms and his grand daughter was in the northern room. As per the observation mahazar also all the three rooms are facing north. Even if there is any discrepancy as to which door was knocked, it would not affect the case of the prosecution and the above said minor discrepancy even if so will no way lower the credential of the evidence of P.W.1 to P.W.4.

13. There is no dispute that the victim girl is a minor girl aged 16 years. The Birth certificate is marked as Ex.P.1, wherein the Date of Birth is noted as 20.06.1987. The date of occurrence is on 03.11.2013.

14. The Doctor who conducted autopsy has been examined as P.W.14. The postmortem report is marked as Ex.P.10. The Doctor

deposed that he saw the following external injuries :

"Reddish contusion 1.5 x 1 cm x skin deep noted over left side upper lip, 3 x 2 cm x skin deep, 3 x 2 cm x skin deep noted over both side anterior iliac spine and 5 x 3 cm x muscle deep noted over inner aspect of right lower arm and elbow.

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contusion 4 x 2 cm noted over posterior aspect of esophagus."

He specifically says that on examination, he found evidence of forcible sexual act.

15. The above external and internal injuries sustained by the victim prior to her death clearly establish that the victim tried her level best to resist the accused but in vain and succumbed to the injuries due to throttling of the neck.

16. As already pointed out the accused was caught red handed when he came out of the room where the victim girl was lying swooned. The accused caught red handed was sent to the police station by the Investigating Officer and then he was arrested. Immediately after arrest, clothes including jatti were recovered from him. The clothes recovered from him were also sent for chemical examination. Stains of semen detected in M.O.7 Jatti is that of the accused, as per the DNA report Ex.P.18. Detection of semen stain in the jatti is also an additional proof for the complicity of the accused with the crime. Therefore, the prosecution has proved the guilt of the accused beyond reasonable doubt through the above mentioned evidence and the trial Court has rightly convicted the accused and the same does not require any interference by this Court.

In fine, this Criminal Appeal is dismissed, confirming the conviction and sentence imposed in S.C.No.125 of 2014, dated 20.01.2017 on the file of the II Additional District Judge, Mahila Court, Tiruppur.

(A.S., J.) (P.K., J.)

09.10.2017

Index : Yes

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To

1. The II Additional District Judge,
Mahila Court, Tiruppur.
2. The Inspector of Police,
Gudimangalam Police Station,
Tirupur District.
3. The Public Prosecutor
High Court, Madras.

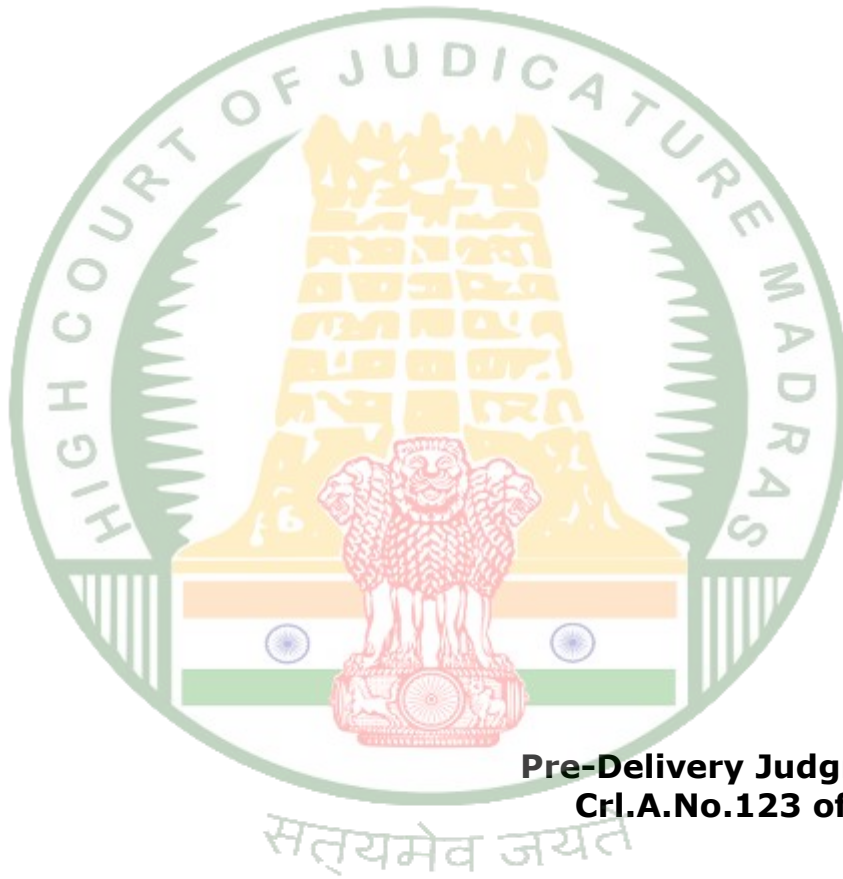
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A.SELVAM, J.

AND

P.KALAIYARASAN, J.

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**Pre-Delivery Judgment in
Crl.A.No.123 of 2017**

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