

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.03.2017

CORAM:

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

Crl.A.No.135 of 2017
and
Crl.M.P.No.3706 of 2017

Srija ... Appellant/Accused NO.2

vs.

State, through
The Inspector of Police,
Baluchettichatram Police Station,
Kancheepuram District ... Respondent /Complainant
(Cr.No.410/11)

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 22.04.2016 passed by the Sessions
Court No.2, Kancheepuram, in S.C.No.11 of 2012.

For Appellant : Mr.S.Mohamed Ansar

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

JUDGMENT

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

The appellant is the second accused in Sessions Case No.11 of 2012, on the file of the Sessions Court No.2, Kancheepuram. The first accused was one Mr.Vidyasekar. They stood charged for offences under Sections 450, 302 read with Section 392 IPC. During the pendency of the trial, the first accused Mr.Vidyasekar died. Thus, the appellant alone faced the trial. The trial Court, by judgement dated 22.4.2016, convicted her under both charges and sentenced her to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months for offence under Section 302 IPC; to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,500/-, in default, to undergo rigorous imprisonment for three months for offence under Section 450 IPC and to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,500/-, in default, to undergo three months rigorous

imprisonment for offence under Section 392 IPC. Challenging the said conviction and sentences, the appellant/second accused has come up with this appeal.

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

(a) The deceased in this case was one Mrs.Chitra. She was residing at Door No.631/3, 4th Street, Anna Nagar, Balichetty Village, Chennai. The accused are husband and wife, respectively. They were residing in a portion of the said house as tenants. In respect of the rental amount, there was some mis-understanding between the deceased and the first accused. It is alleged that on 2.09.2011, at around 10.30 a.m., on account of the above motive, the accused 1 and 2 trespassed into the house of the deceased; gave cool drinks mixed with sleeping tablets to the deceased and after the deceased had fallen asleep, the second accused tied her legs and hands with a nylon rope; the first accused inserted a cloth into the mouth of the deceased and caused her death. After the deceased died, it is alleged that these two accused had stolen a pair of ear stud, Nokia Cell phone and TVS Champ motorcycle, belonging to the deceased and fled away from the scene of occurrence. The occurrence was not witnessed by any one.

(b) P.W.1 is the husband of the deceased. According to him, from 30.08.2011 onwards he has gone to a neighbouring village. At around 4.30 p.m. on 2.9.2011, his daughter-P.W.2 called him over phone and informed him that the house of the deceased was found locked from out side. P.W.2 was waiting outside the house of the deceased, believing that the deceased would have gone elsewhere and she would return soon. P.W.1 returned to his house at around 1.00 a.m. on 3.9.2011. On his arrival, they broke open the lock and went into the house. In the bed room, they found the deceased lying dead. Both her hands and legs were tied by means of nylon ropes and a cloth was found inserted into her mouth. The ear studs, a gold chain and cash were all found missing. Then, he went to the Baluchettychatram Police Station and made a complaint at 2.00 a.m. on 3.9.2011. Ex.P1 is the complaint. Ex.P.15 is the FIR.

(c) The case was taken up for investigation by P.W.18. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. He removed and recovered nylon ropes, with which the hands and legs of the deceased had been tied and also the cloth from the mouth of the deceased. He examined many witnesses. But, no clue could be obtained. He conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.14-Dr.Srikanth conducted autopsy on 3.9.2011 at 10.15 a.m. He found the following injuries:

"Externally: Face is darkened with partially open eyes and wide open mouth, with tongue inside which is bluish black in colour. Teeth 8/7.

1. Abrasion 4 x 1 cm brownish. Lower lip @ side extending to the chin.

2. Pressure abrasion @ cheek above @ side of upper lip or 1 x 1 cm

3. Blackish brown discoloration of entire anterior aspect of neck extending to the @ side with a width of about 7 cm.

4. Both eyes: Corneal haziness/dry, Sub conj: Hemorrhage in both eyes present with sub conjunctival edema/congested.

5. Multiple ligature marks over (L) wrist joint with abrasion ½ x ½ cm

6. Multiple ligature marks over @ wrist joint at same place as that of (L) wrist.

(7) Deformity with dislocation (R) wrist.

8. P. Fannestial incision of length 13 cm score over supra pubic.

Internally: Hyoid bone intact, ha

Ankle: Intact. Ribcage intact.

Heart: 250 gms blood is dark and c/s. congested

Lungs @ 400 gms (L) 350 gms: Sub Pleural petechial haemorrhage present on both sides.

Stomach: 300 ml of yellow color digested food particles present.

Liver: 1250 gms C/s. congested; spleen 110 gms c/s. congested Kidney R. 100 gms, L. 100 gms petechial

Uterus: Empty: Both ovaries & Fallopian tubes intact. Skull bones intact. Brain 2500 gms.

Petechial haemorrhages seen over surface of brain, dislocation (R) joint present."

He opined that the death of the deceased was due to shock and haemorrhage due to hypoxia. Ex.P7 is the post-mortem certificate.

(d) P.W.18, during the course of investigation, arrested both the accused at 6.00 a.m. on 24.09.2011. On such arrest, the first accused gave a voluntary confession, followed by the second accused. The second accused/appellant in her confession disclosed the place where she had hidden the TVS Champ motorcycle, Cell phone and a cash of Rs.400/-. Accordingly she took the police and witnesses to the place of hide-out and produced the above material objects, namely, M.O.10, M.O.7 and M.O.8. Then she produced a gold 'kammal' and a pair of

'maatal' (M.O.1 and M.O.2). They were recovered. From the place of occurrence, chance finger prints were lifted. The finger prints of these two accused were therefore obtained for the purpose of comparison. The comparison revealed that the finger prints of the first accused tallied with the chance finger prints. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 18 witnesses have been examined, 19 documents and 10 material objects were marked. Out of the said witnesses, P.W.1, the husband of the deceased and P.W.2, the daughter of the deceased, have stated that at around 1.00 a.m., on 3.9.2011, the dead body of the deceased was found inside the house. They broke open the door, went into the house and found the dead body in the bed room. The hands and legs of the deceased were found tied with nylon ropes. There was also a cloth inside the mouth. They have spoken about the missing of M.Os.1 and 2 and the cash. They have identified the same during trial. P.W.3 is a neighbour. He has spoken about the arrival of P.W.1 at 1.00 a.m. and the fact that they broke open the lock, entered into the house and found the dead body. He has spoken about the preparation of observation mahazar and a rough sketch also. P.W.4 has also spoken about the preparation of observation mahazar and a rough sketch and the recovery of material objects from the place of occurrence. P.W.5, the Finger Print Expert, has stated that as requested by P.W.18, he visited the scene of occurrence on 3.9.2011 and on thorough search, he found two chance finger prints from the steel bureau in the bed room of the house of the deceased. He has further stated that he handed over the same to the finger print bureau. P.W.6 is the head of the sniffer dog squad, who had stated that the sniffer dog did not bring out any clue regarding the crime. P.W.8 has stated that on 2.9.2011 at around 4.30 p.m., he found both the accused together going in a motorcycle on the Arcot Road. P.W.9 has stated that the deceased worked under him as a coolie for some time. P.W.10 has stated that he heard about the death of the deceased and then went to the place of occurrence. P.W.11 has not stated anything incriminating. P.W.12 has stated that these two accused lived as tenants in the house of the deceased. P.W.13 has also stated about the same facts as spoken by P.W.12. P.W.14 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.15 has spoken about the arrest of the accused, the confessions made and the recoveries of the material objects from their possession. P.W.16, a Finger Print Expert, has stated that he compared the finger prints of the accused with the chance finger prints lifted from the scene of occurrence. According to him, such comparison revealed that the chance prints tallied with the

finger prints of the first accused. P.W.17, a Constable, has stated that he handed over the dead body to the Doctor for post-mortem, as directed by P.W.18. P.W.18 has spoken about the registration of the case, investigation done and the final report filed.

4. When the above materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side nor 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. That is how the second accused/appellant is before this Court.

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

6. As we already pointed out, the first accused died during trial and thus, the charges against him stood abated. The prosecution has made an attempt to prove the charges against the second accused/appellant by circumstantial evidence. The first circumstance is that the deceased was found dead at around 1.00 a.m. on 3.9.2011 at her house. Her legs and hands were tied and a cloth was inserted into her mouth. The doctor, who conducted autopsy, has opined that the death of the deceased was due to smothering. From these evidences, the prosecution has clearly established that the deceased had died a homicidal death some time before 1.00 a.m. on 3.9.2011. According to P.Ws.1 and 2, M.Os.1 and 2, the gold jewels, which were worn by the deceased were found missing. From this, the prosecution has proved that there was also robbery committed in the same transaction.

7. During investigation, chance finger prints were lifted from the steel bureau kept in the room, where the dead body was lying. Those two chance finger prints tallied with the finger prints of the first accused. But, this may go to prove only the guilt of the first accused and the same cannot be used against the second accused.

8. So far as the second accused/appellant is concerned, the only evidence against her is that on her arrest, M.Os.1, 2, 7, 8 and 10 were recovered. The learned counsel for the appellant would submit that these recoveries cannot be proved. Assuming that these material objects were recovered from the house of the appellant, it cannot be conclusively stated that they were in the exclusive possession of the appellant. The first accused is, after all, her husband. The probability that the first accused had committed the crime and kept the material objects in the house cannot be ruled out. But at the same time, the fact

that the appellant had knowledge that these properties were kept in her house, cannot be doubted. From these two facts, it can be presumed, as provided under Section 114 of the Indian Evidence Act, that the accused is either the thief or the one who had received the stolen properties. In order to presume that the accused was the thief, we do not have any other material. But the single fact that the finger prints of the first accused were found on the bureau and that the possibility of the first accused keeping the stolen articles in the house cannot be ruled out, would go to show that the presumption of theft on the part of the appellant cannot be raised. At the same time, the presumption that she would have received the stolen properties from the first accused cannot be ruled out. Thus, in our considered view the prosecution has established that the appellant has committed an offence under Section 411 of the Indian Penal Code. Thus, we hold that the prosecution has failed to prove the charges under Sections 302 read with 392 and 450 IPC.

9. Now turning to the quantum of punishment, the appellant is aged about 30 years and her husband has already died. She has got a child aged one year. The child is also along with her in the prison. She has got no bad antecedents. Having regard to the mitigating as well as aggravating circumstances, we are of the view that reducing the sentence to the period of sentence already undergone, with a fine of Rs.200/-, would meet the ends of justice.

10. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant/second accused for the offence under Sections 450, 302 and 392 IPC are set aside and instead she is convicted under Section 411 of the Indian Penal Code and the period of sentence is reduced to the period of sentence already undergone by her and she is further directed to pay a fine of Rs.200/-, in default, to undergo rigorous imprisonment for one week. Connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.2 Kancheepuram

2.-do- Thro The Chief Judicial Magistrate
kancheepuram

3.The Sessions Court No.2, Kancheepuram

4.-do- Thro The Principal Sessions Judge,
Kancheepuram

5.The Inspector of Police,
Baluchettichatram Police Station,
Kancheepuram District

6. The District Collector Kancheepuram

7.The Director General of Police,
Mylapore Chennai-4

8.The Superintendent Women Special Prison, Vellore

9.The Public Prosecutor,
High Court, Madras

10.The Section Officer
Criminal Section High Court, Madras

+1 cc to Mr.P.Palanikumar Advocate sr 17290

Cr1.A.No.135 of 2017

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