

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.156 of 2017

Venkatesan

... Appellant

Vs

The Rep by
Inspector of Police
Gurubarapalli Police Station,
Krishnagiri Taluk & District.
Crime No. 19/2014

... Respondent

Prayer:- Criminal Appeal filed under Section 302 and 506(ii)I.P.C., against the judgment dated 07.04.2017 made in S.C.No.116 of 2016 on the file of the learned Sessions Judge, passed Mahila Court, Krishnagiri.

For Appellant : Mr. Mukund R.Pandiyan

For Respondent : Mr.P.Govindarajan,
(Additional Public Prosecutor)

JUDGEMENT

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

The appellant is the sole accused in S.C.No.11 of 2016, on the file on the learned Sessions Judge, Mahila Court, Krishnagiri. He stood charged for offences under Sections 302 & 506 (ii) I.P.C. By judgment dated 14.02.2017, the trial Court, convicted the accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for six months for the offence under Section 302 I.P.C, and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months, offence under Section 506(ii) I.P.C. Challenging said conviction and sentence, the appellant is before this court with this appeal.

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

The deceased in this case was one Mrs.Usha. She was the wife of the accused. The marriage between them was celebrated in the year 1988. After the marriage, the accused had gone to Sarjapoor, Karnataka State, in connection with his service in the Armed Forces in Indian Army. The accused had returned to the Village. The deceased did not corporate with the accused to lead the matrimonial life. This

resulted in frequent quarrel between the appellant and the deceased. Mrs.Nagammal, is the mother of the deceased. She was also in support of the deceased. The conduct of the deceased is stated to be the motive for the occurrence.

3.On 25.01.2014 at 9.30 am, when the deceased and his mother Mrs.Nagammal were in the field, it is alleged that the accused came there shouted the deceased, developed quarrel and stabbed the deceased on her neck, chest and other parts of the body. The deceased died on the spot. Thereafter, Mrs.Nagammal, went to Gurubarapalli Police Station and made a complaint at 11.30 am on 25.01.2014. On the said complaint, the present case was registered in Crime No.19/2014 for offences under Sections 302 & 506(ii) I.P.C. Ex.P.1 is the complaint and Ex.P.16 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 2.10 pm on 25.01.2014.

4.The case was investigated by P.W.14, the then Deputy Superintendent of Police. He went to the place of occurrence, prepared an observation mahazar; rough sketch; blood stained earth and the sample earth. He conducted inquest on the body of the deceased and forwarded the same to Doctor for post mortem.

5.P.W.12 – Dr.Raja, conducted autopsy on the body of the deceased and found the following injuries:-

“External Injuries

1. Cut injury M/3 of neck measuring 12 x 5 x 6 cm exposing cut 5cm & infrahyoid sharp muscles, great vessels of neck (ICA, UV), oesophagus & trachea exposing cervical vertebral.
2. Penetrating injury in the epigastric region 6 x 3 x 8 cm extending to pericardial cavity & Abdomen.
3. Cut injury in umbilical region 3 x 1 x 2 cm.
4. Cut injury in (L) 1# web space 3 x 2 cm”

He opined that the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased.

6.During the course of investigation, P.W.14 arrested the accused on 25.01.2014 at 5.00 pm in the presence of witnesses. While in custody, it is alleged that the accused gave voluntary confession in which, he disclosed the place where he had hidden a

knife, shirt and pant. In pursuance of the same, he took out the Police and witnesses to the place of hide out and produced the blood stained knife; blood stained shirt and blood stained pant, M.Os.1 to 3 respectively. P.W.14 recovered the said material objects under a mahazar and forwarded the same to Court. On returning to the Police Station, he forwarded the accused to Court for judicial remand.

7.During the course of investigation, P.W.14 examined many more witnesses. He collected the medical records pertaining to the deceased. Thereafter, the investigation was continued by P.W.15, the then Inspector of Police. P.W.15 sent the material objects for chemical examination. The report revealed that there were human blood stains on all the material objects. On completing investigation, he laid charge sheet against the accused.

8.Based on the above materials, the trial Court framed charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 13 documents were exhibited, besides 9 Material Objects were marked.

9.Out of the said witnesses, P.Ws.1 to 9 have turned hostile and they have not supported the case of the prosecution in any manner.

P.W.10, the then Village Administrative Officer has spoken about the preparation of observation mahazar; rough sketch; arrest of the accused and the consequential recoveries of M.Os.1 to 3. P.W.11, the Photographer has stated that he took photographs of the dead body of the deceased at the place of occurrence. P.W.12 – the Doctor has spoken about the post mortem conducted and his final opinion regarding the cause of death of the deceased. P.W.13, the then Sub Inspector of Police has spoken about the registration of the case. P.Ws.14 & 15 have spoken about the investigation done and the final report filed in this case.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

11. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant is before this Court with this Criminal Appeal.

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

13.As we have already narrated, this is a case of no evidence against the accused. But, the trial Court has convicted the accused only on mere surmise. Though, it is stated that Mrs.Nagammal, witnessed the entire occurrence, she has not been examined as witness by the Investigating Officer for the reasons best known to him. Hence, according to the prosecution, there is neither eye witness nor circumstantial evidence against the accused so as to found him guilty under the charges framed against him by the trial Court.

14.We find force in the said argument of the learned counsel for the appellant. A perusal of the judgment of the trial Court would go to show that it has convicted the accused solely based on the evidence of P.W.10, the then Village Administrative Officer and that of P.W.15- the then Investigating Officer who have spoken about the arrest of the accused and the consequential recoveries of M.Os.1 to 3 from his possession.

15.In our considered view, the recovery of M.Os.1 to 3 is not incriminating because, the connection between the said material objects and the crime has not been proved by the prosecution. It needs to be stated that it is not every fact that is discovered out of the disclosure statement of the accused that makes the statement

admissible in evidence, as provided under Section 27 of the Indian Evidence Act. In law, it is only the discovery of a relevant fact which makes disclosure statement admissible. The said relevance is to be therefore, proved by the prosecution. In this case, the nexus between M.Os.1 to 3 and the crime has not been established and therefore, recovery of these material objects from the possession of the accused is of no consequence.

16. Apart from that, there is no other evidence against the accused. But, the trial Court has convicted the accused only on mere surmise. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. 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 this case, the prosecution has not even able to succeed in creating a very strong suspicion against the accused/appellant. For these reasons, we hold that the conviction and sentence imposed on the appellant are not sustainable and hence, the same are liable to be set aside.

17.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.11 of 2016, dated 14.02.2017, are set aside and the appellant/accused is acquitted from the charges framed against him. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/accused, shall stand discharged.

(S.N.J) & (A.S.M.J.,)
07.04.2017

jbm

Index:Yes/No

To

1.Inspector of Police
Gurubarapalli Police Station,
Krishnagiri Taluk & District.

2.The Public Prosecutor,
High Court, Madras.

**S.NAGAMUTHU,J
and
ANITA SUMANTH.J.,**

jbm

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