

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.168 of 2017

Sivanandam

...Appellant

Vs

The State Represented by
The Inspector of Police,
Adhiyamankottai Police Station,
Dharmapuri District.
Cr.No.508 of 2012.

...Respondent

Prayer:- Criminal Appeal filed under Section 302 I.P.C.,
against the judgment passed in S.C.No.50 of 2014 on the file of
Fast Track Mahila Sessions Court, Dharmapuri District dated
15.03.2017.

For Appellants : M/s V.Rajamohan

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.50 of 2014, on the file of Fast Track Mahila Sessions Court, Dharmapuri District. He stood charged for offence under Section 302 I.P.C. By judgment dated 15.03.2017, the trial Court convicted him for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default

to undergo rigorous imprisonment for two months. Challenging the 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.Poongodi. The accused is her husband. The marriage between them was celebrated in the year 2000. Out of the said wedlock, they have got three children. They were residing together at their house at AVS Nagar in Dharmapuri District. Since, the third child of the deceased was hardly 2 ½ months old, P.W.1, the mother of the deceased was staying at the house of the deceased, to help her. The other two children were also living with them.

3.It is alleged that the accused had developed illicit intimacy with one women at Thipatti Village. When this came to the knowledge of the deceased, she questioned and quarreled with the accused. Thereafter, when they were residing at AVS Nagar, one Ms.Shanthi was a maid servant. It is alleged that the accused had developed intimacy with her also. This resulted in further quarrel between the accused and the deceased. Finally, the deceased employed one Ms.Peruma as maid and few days before the occurrence, the accused was found laughing with the said maid servant. The deceased suspected that the accused had developed intimacy with her also. She questioned the accused. This resulted again a quarrel between them. Thus, there was a frequent quarrel between the accused and the deceased, on account of the above suspicion on the part of the deceased over the fidelity of the accused.

4.The accused as well as the deceased, were then, working as Teachers. On account of the birth of the third child, the deceased was on medical leave. The accused was working in a different school. He used to go to the said School in his motor cycle. The other two children were studying in a local school. The children after the school hours, used to visit the house of their Aunt, Mrs.Chandra, situated in the next street, in the same Village. On 16.10.2012, around 4.00 pm, P.W.1, mother of the deceased left the house of the accused, to the house of her daughter Mrs.Chandra, who was residing in the next street. On reaching the house of Mrs.Chandra, she sent her husband with three empty bottles to the house of the accused to take water. Accordingly, he went to the house of the accused and returned around 4.35 pm. At that time, the deceased was found in the house.

5.Thereafter, around 5.15 pm on the same day, the children returned from school to the house of Mrs.Chandra, as usual.

Within a short while, the accused came in a motor cycle to the house of Mrs.Chandra. He took both the children in his motorcycle to his house. On reaching the house, the children went into the house and found the deceased in a pool of blood. She was dead. They cried. P.W.1 and others rushed to the house and found the deceased lying dead.

6. Thereafter, P.W.1. went to Adiyaman Kottai Police Station, situated at a distance of 2.5 km and made a complaint at 10.30 pm on 16.10.2012. Ex.P.1 is the complaint and Ex.P.8 is the F.I.R. Both the documents were forwarded to the Court which were received by the learned Magistrate at 1:00 am on 17.03.2012.

7. The case was taken up for investigation by P.W.11, the then Inspector of Police. He went to the place of occurrence; prepared an observation mahazar; rough sketch; recovered the blood stained earth and sample earth from the place of occurrence. With the help of Photographer, he took photographs of the deceased on the place of occurrence at various angles. Then, he conducted inquest on the body of the deceased and forwarded the same to the Doctor for postmortem.

8. P.W.7 - Dr.K.Thunder Chief, conducted autopsy on the body of the deceased on 17.10.2012 around 11:20 am and he found the following injuries:-

1) 1.4 X 0.1 cm reddish brown linear abrasion on the left cheek.

2) 0.2 X 0.2 cm reddish brown abrasion on left side of neck, 4.5cm from anterior midline.

3) 0.5 X 0.1 cm curved reddish brown abrasion on front of neck along the midline.

4) 0.8 X 0.3 cm reddish brown abrasion on left side of neck, 3cm from anterior midline."

Ex.P.7 is the Post mortem certificate. He opined that the death of the deceased was due to manual strangulation on the neck.

9. P.W.11 during the course of investigation examined many more witnesses and recorded their statements. On 19.10.2012, at 11:00 am, he arrested the accused, in the presence of witnesses and forwarded him to Court for Judicial remand. On completing the investigation, he laid the charge sheet against the accused.

10. Based on the above materials, the trial Court framed a lone charge against the accused for offence under Section 302 IPC. In order to prove the case, on the side of the prosecution, as many as 11 witnesses were examined, 12 documents and 4 material objects were marked.

11. Out of the said witnesses, P.W.1, the mother of the deceased has stated about the frequent quarrel between the accused and the deceased, on account of the suspicion, on the part of the deceased over the fidelity of the accused. She has further stated that at 4.00 pm on 16.10.2012, the deceased was found lastly alone at her house and at 5.15 pm on the same day, the deceased was found dead. She has further stated that the children returned from the school, to the house of Mrs.Chandra, from where the accused took them around 5.15 pm and on reaching the house of the deceased, the children cried and she went to the house of the deceased and found the deceased dead. She has also spoken about the complaint made by her to the Police. In the complaint, she did not mention anything about the accused. The assailant was not known, when the complaint was made. Therefore, the case was registered against an unknown assailant.

12. P.W.2 is the brother of the deceased. He has also spoken about the same facts. P.W.3 - Mrs.Chandra is the sister of the deceased. She has stated about the frequent quarrel between the accused and the deceased. She has further stated that on the day of occurrence, she heard about the occurrence and went to the place of occurrence. P.W.4 has spoken about the preparation of observation mahazar and rough sketch. P.W.5. has spoken about the arrest of the accused and the confession statement made by him. P.W.6 has turned hostile and he has not supported the case prosecution in any manner. P.W.7 has spoken about the Postmortem conducted and his final opinion regarding the cause of death. P.W.8 has spoken about the photographs taken by him at the place of occurrence. P.W.9, the Constable has stated that he handed over the dead body to the Doctor for post mortem. P.W.10 is the daughter of the deceased. At the time of her examination, she was hardly aged about 12 years. She has further stated that on the day of occurrence, after returning from the school to the house of Mrs.Chandra, she went to her house. At that time, there was no light burning. When she entered into the house, her mother was lying dead. She has further stated that she was told later by her grandmother that her father had killed her mother. P.W.11 had spoken about the registration of the case and investigation done.

13. When the above incriminating materials were put to the accused, he denied the same as false. On his side, three witnesses have been examined as D.Ws.1 to 3 and five documents

have been marked as Exs.D.1 to D.5. D.W.1, the then Superintendent of Central Prison, Salem has stated that on 19.10.2012, he lodged the accused in the Central Prison, Salem, in pursuance of the remand order issued by the learned Jurisdictional Magistrate. At that time, there were lot of contusions on the body of the accused. He made entries of the same in Ex.D.1 register. D.W.2 was a Doctor in the Central Prison, Salem. He has stated about the treatment given to the accused and the same could be found in the remand prisoners register. But, he could not depose anything about the treatment given to the deceased because, he did not treat the accused. D.W.3 was also a Doctor in the Salem Central Prison, Salem during the relevant period. According to him, he was unable to speak about any fact regarding the treatment given to the accused since, the registers were not available from the Superintendent of Sub Jail, Dharmapuri. D.W.4 has stated that when the accused was lodged in the Central Prison, Salem, on 28.10.2012, there were injuries on the body of the accused. From these evidences, the accused was attempted to prove that there were injuries on his body when he was produced for remand.

14.Having considered all the above, the trial Court convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life. That is how the accused is before this Court with this Criminal Appeal.

15.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.

16.The learned counsel for the appellant would submit that this is a case of no evidence against the accused. But, the trial Court has convicted the accused only on mere surmise.

17.We have gone through the entire judgment of the trial Court and the evidence available on record. This is a case based on circumstantial evidence. The deceased was lastly seen alive by P.W.1 at 4.00 pm on 16.10.2012 at her house and she was found dead around 5.15 pm on the same day. According to the medical evidence, the death of the deceased was due to manual strangulation. From these evidences, the prosecution has clearly established that the death of the deceased was a homicide and the same would be occurred some time between 4.00 pm and 5.15 pm on 16.10.2012.

18.Now the question is "Who is the perpetrator of the Crime?". In order to prove that it was this accused who killed the deceased, absolutely, there is no evidence. Ofcourse it is true that there is sufficient evidence to hold that there were

frequent quarrel between the accused and the deceased on account of the fact that the deceased had suspicion over the fidelity of the accused. But, only acting on the said motive, we cannot rush to the conclusion that the deceased was killed only by the accused. But, the trial Court had convicted the accused relying on the confession made by the accused to the Police as though, it was admissible in evidence. Thus, absolutely, there is no evidence against the accused. Even according to P.Ws.1 to 3, on the date of occurrence, the accused had gone to school and returned to the house of Mrs.Chandra, where his children were staying and after taking his children in his motorcycle he went to his house in a usual course. According to P.W.10, the child of the accused, when she entered into the house along with her father, the house was in dark and they saw the deceased lying dead. This would probablize the fact that the accused was an innocent. The very fact that until the complaint was made, the assailant was not known would also further strengthen the case of the prosecution. Thus, the prosecution has not even established a very strong suspicion against the accused. But, the trial Court has convicted the accused acting on the confession made by the accused to the Police and on mere surmise.

19. 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.

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20. 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, Dharmapuri in S.C.No.50 of 2014, dated 15.03.2017, 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

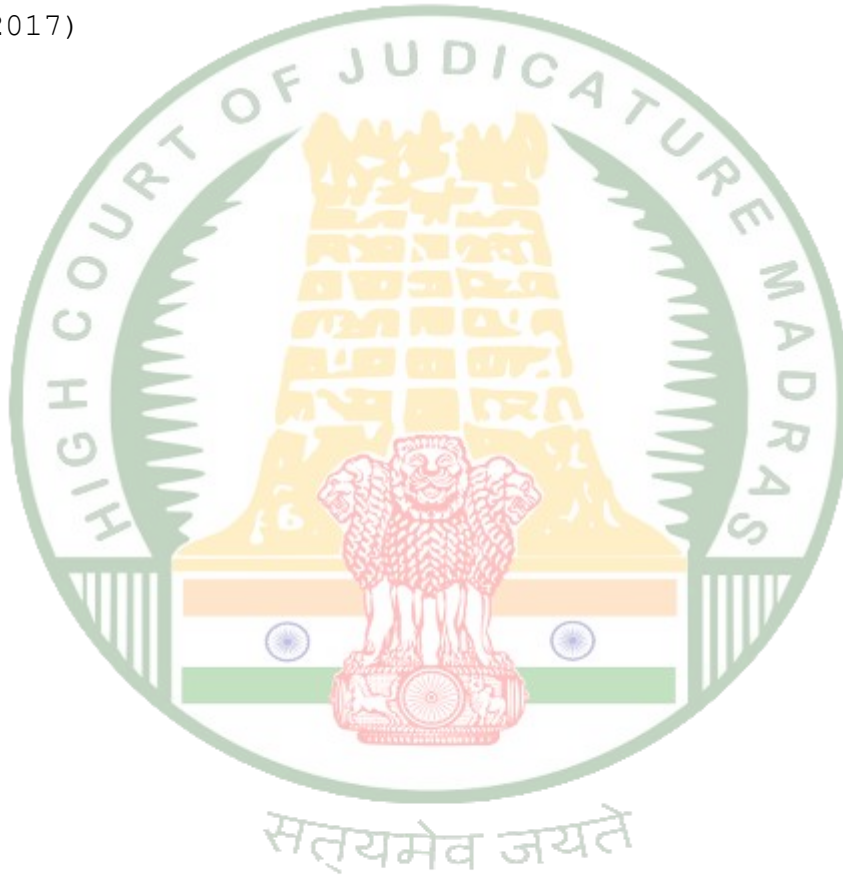
1. The Sessions Judge Mahila,
Fast Track Court,
Dharmapuri.
2. The Judicial Magistrate-II,
Dharmapuri.
3. Thro'The Chief Judicial Magistrate,
Dharmapuri.
4. The Superintendent,
Central Prison, Vellore.
5. The Inspector of Police,
Adhiyamankottai Police Station,
Dharmapuri District.
6. The District Collector,
Dharmapuri.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Public Prosecutor,
High Court, Madras.

9. The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.V.Raja Mohan, Advocate, S.R.No.22656

Crl.A.No.168 of 2017

MP (CO)
RS (01/06/2017)



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