

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 08.03.2017

CORAM:

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

Crl.A.No.91 of 2017

Devi @ Ammasai

... Appellant/Accused

Vs.

State, rep.by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District

... Respondent/Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 23.02.2016 passed by the 3rd Additional District & Sessions Judge, Gobichettipalayam, Erode District, in S.C.No.129 of 2014.

For Appellant : Ms.K.Kokila for
Mr.P.Kalimuthu

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

JUDGMENT

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

The appellant is the first accused in Sessions Case No.129 of 2014, on the file of the III Additional District and Sessions Judge, Gobichettipalayam. The second accused is one Mr.Murugan. They stood charged for offence under Section 120(b) and 302 read with Section 34 and 201 of the Indian Penal Code. By judgement dated 23.2.2016, the trial Court convicted both the accused under all the charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months for offence under Section 302 read with Section 120(b) IPC and to undergo imprisonment for life; to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months for offence under Section 302 read with Section 34 IPC and to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for six months for offence under Section 201 IPC. Challenging the said conviction and sentences, the appellant/first accused has come up with this appeal. The second accused has not preferred any appeal.

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

(a) The deceased in this case was one Mr. Murugesan. The first accused Mrs. Amasai @ Devi, aged about 30 years and the deceased were in live-in relationship for about eight years before the occurrence. Twelve months before the occurrence, the first accused developed intimacy with the second accused. This came to the knowledge of the deceased. The deceased questioned the first accused as to how she was justified in having sexual relationship with the second accused. The first accused thereafter informed the same to the second accused. Both of them felt that the deceased would be a hindrance for them to continue their relationship. Therefore, they conspired to do away with the deceased. In pursuance of the said conspiracy, it is alleged that on 8.6.2014, the first accused spoke to the second accused through Cell Phone and asked him to come to a particular place, near the sugarcane mill. There, they conspired again to commit the murder of the deceased. In pursuance of the same, the accused 1 and 2 carried the deceased to the graveyard at Karadur. The first accused took kerosene with her. In the graveyard, the accused poured kerosene and set fire. The deceased died. Then, they concealed the dead body under a bush in the graveyard and fled away from the scene of occurrence. The dead body was not witnessed by any one.

(b) The dead body of the deceased was found on 9.6.2014 early in the morning by P.W.1. Having seen the dead body in a half burnt condition, he went to the Gobichettipalayam Police Station and made a complaint, at 8.00 a.m. on 9.6.2014. The Sub Inspector of Police registered a case in Crime No.256 of 2014, under Sections 302 and 201 IPC. Ex.P1 is the complaint and Ex.P12 is the FIR. In the complaint itself, it was mentioned that the deceased was killed only by these accused.

(c) The case was taken up for investigation, during which, P.W.19, the Inspector of Police, went to the place of occurrence, prepared an observation mahazar and a rough sketch and recovered certain material objects from the place of occurrence. Then, he forwarded the body for post-mortem. P.W.14-Dr. Ilavarani conducted autopsy on the body of the deceased, on 9.6.2014 at 2.00 p.m. He found that the body was burnt by 80%. He further opined that the death of the deceased was due to burn injuries. Ex.P.9 is the post-mortem certificate. P.W.14, thereafter, arrested the accused, recovered the material objects. He also collected the call details of the Cell Phone numbers of both the accused. On completing the investigation, he laid charge-sheet against both 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 20 witnesses were

examined, 20 documents and 6 material objects were marked. Out of the said witnesses, P.W.1 is the father of the deceased. He has stated about the live-in relationship between the first accused and the deceased for about eight years. He has further stated that at around 7.00 a.m., on 9.6.2014 he heard that the dead body of the deceased was lying in a graveyard in a half burnt condition. He visited the place of occurrence and thereafter, made a complaint, he has stated. P.W.2 is the mother of the deceased. She has also spoken about the same facts as spoken by P.W.1. P.W.3 was a resident of Karatur Village. She was working in the Sugarmill run by one Mr.Krishnan, in the same Village. The said mill is situated near Pachaimalai. The accused 1 and 2 were also working there. She has further stated that, 1 1/2 years before her giving evidence in the Court, at around 9.00 p.m., there was quarrel between the first accused and the deceased. She has further stated that one day at around 12.00 mid-night, the first accused rushed to her house and informed that the deceased had set fire to himself. This witness has been treated as hostile, as she has spoken against the prosecution case. P.W.4 has also spoken about the frequent quarrels between the accused and the deceased. P.W.5 has also spoken about the frequent quarrels. He has stated that on the day of occurrence at about 12.00 mid-night, the first accused informed him that her husband set fire to himself. He has turned hostile. P.W.6 has not stated anything incriminating, except stating about the relationship between the first accused and the deceased. P.W.8, a neighbour, has also stated about the relationship between the first accused and the deceased. He has further stated that at around 12.30 a.m. on the day of occurrence, the first accused was shouting and peeping that the deceased had self-immolated himself. P.W.9 has stated that he found the dead body at the place of occurrence. He has further stated about the preparation of observation mahazar and a rough sketch and the recovery of material objects. P.W.10 has spoken about the investigation done. P.W.11 has stated that he took the dead body from the place of occurrence and handed over the same to the Doctor of post-mortem. P.W.12 has spoken about the photographs taken at the place of occurrence. P.W.13, the Head Clerk of the Judicial Magistrate Court, has stated that he forwarded the material objects to the Regional Forensic Laboratory for chemical examination. According to the report, there were traces of kerosene in the dead body. P.W.14 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.15, a Zonal Officer of Aircel Company, has stated about the call details between the Cell Ph. Nos.8760524945 and 9976116685. P.W.16, the Sub-Inspector of Police, has spoken about the registration of the Case. P.W.17 has also spoken about the ownership of the Sim-card bearing No.9176156675. According to him, he handed over the same to the second accused, as requested by him. P.W.18, an expert of Regional Forensic Science and Laboratory has stated that he examined the material objects and found that there was

no combustible materials on the same. P.W.19 has spoken about the investigation done and P.W.20 has spoken about the further investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. Their defence was total denial.

5. Having considered all the above, the trial Court convicted both the accused. That is how the appellant/first accused alone is before this Court with this appeal.

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

7. This is a case based on circumstantial evidence. The learned counsel for the appellant would submit that absolutely there is no evidence that the death of the deceased was a homicide. We find force in the said argument. The Doctor, who conducted autopsy, has stated that the body was burnt to 80%. But the Doctor cannot and in fact has not offered any opinion as to whether the death of the deceased was due to self-immolation or due to setting fire by someone else. In a case based on circumstantial evidence, more particularly of this nature, it is absolutely necessary for the prosecution to prove that the death of the deceased was a homicide. The alternate theory that the death would have been due to suicide should be ruled out. In this case, the prosecution has filed to do so. Apart from that, the prosecution relies on the call details of the calls spoken between the Cell Phone numbers of the first accused and the second accused. These call details, as rightly contended by the learned counsel for the appellant, are not admissible in evidence for want of compliance of Section 65-B of the Indian Evidence Act. If these electronic records are eschewed from consideration, absolutely there is no evidence to prove the telephonic conversations allegedly made between the first accused and the second accused.

8. From the evidence of P.Ws.1 and 2 it is clear that the deceased was living with the first accused in a relationship. But there was no marriage between them. From their evidence, it has also been established that later on these two accused, who were working in the sugarmill, have developed sexual relationship. Assuming that the same is proved, there is no evidence to clinchingly prove that these two accused have caused the death of the deceased. At this juncture, the evidences of some of the prosecution witnesses, who have stated that during mid-night, the first accused shouted that her husband had set fire to himself, cannot be simply ignored. If that statement is true, it is not known as to why the same was not informed to the police immediately. It is also surprising to note that in Ex.P1, P.W.1 has narrated that

these two accused had taken the deceased to the graveyard, set fire and killed. It is not explained to the Court as to how P.W.1 came to know about all these facts, when he has not witnessed the occurrence. He had been duly contradicted with Ex.P1. The mere fact that all the details are mentioned in Ex.P1 would go to show that an attempt has been made to develop a story to array these two accused in the case.

9. At this juncture, we need to mention that in a case based on circumstantial evidence, the prosecution is expected to prove all the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which would be inconsistent with the guilt of the accused. Here, in this case, the alternate theory that the deceased would have committed suicide by self-immolation, has not been ruled out. The other circumstance also would not clingingly go to prove the alleged guilt of the accused. At the most, the relationship between the first accused and the deceased and the later relationship between the first accused and the second accused may only create a suspicion. Such suspicion, however, strong it may be, shall not take the place of proof. In the absence of proof beyond reasonable doubts, we cannot afford to convict the accused on mere surmises, as it would be violative of Article 21 of the Constitution of India. In such view of the matter, we find that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant/first accused is entitled for acquittal.

10. In the result, this criminal appeal is allowed; the conviction and sentences imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Fine amount, if any paid by her is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msh

To

1.The III Additional District & Sessions Judge,
Gobichettipalayam, Erode District.

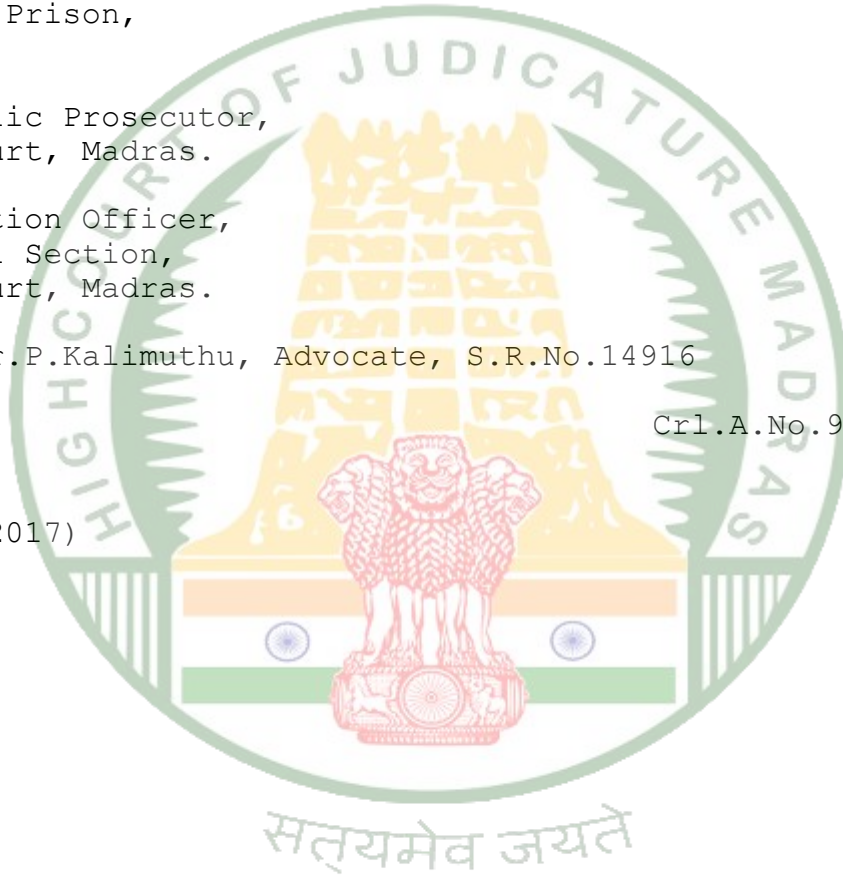
2.Through Chief Judicial Magistrate,
Gobichettipalayam, Erode District.

- 3.The Judicial Magistrate No.I,
Gobichettipalayam.
- 4.The Director General of Police,
Chennai.
- 5.The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
- 6.The Superintendent,
Central Prison,
Erode.
- 7.The Public Prosecutor,
High Court, Madras.
- 8.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Kalimuthu, Advocate, S.R.No.14916

Cr1.A.No.91 of 2017

SVI (CO)
CA(07/04/2017)



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