

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal No.152 of 2008

J.Muthukumar

... Appellant/Accused

Vs

State rep. By
Inspector of Police,
Pennadam Police Station,
Tittakudi, Cuddalore District. ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in S.C.No.315 of 2007 dated 11.01.2008 on the file of the Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.V.Santhanamari

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

The sole accused, in S.C.No.315 of 2007 on the file of the learned Sessions Judge, Mahila Court, Cudalore is the appellant herein. He stood charged for the offences under Sections 450, 380, 342 and 302 IPC. By a judgment dated 11.01.2008, the trial court convicted the accused under Sections 451, 380, 342 and 304(ii) IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- with defaulting sentence for rigorous imprisonment of three months under section 451 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- with defaulting sentence for rigorous imprisonment of three months under section 380 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- with defaulting sentence for rigorous imprisonment of three months under section 342 IPC and sentenced him to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.1000/- with defaulting sentence for rigorous imprisonment of three months under section 304(ii) IPC and the sentences are to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. Based on the materials filed by the prosecution, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 18 witnesses were examined and 3 documents were exhibited.

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

The deceased Sakunthala is the mother-in-law of the sister of the accused. P.W.1 is the son of the deceased. P.W.2 is the daughter of P.W.1. The sister of the accused was married to P.W.1. On 27.04.2007 at 04.00 p.m., the accused quarrelled with the deceased and demanded his sister's jewels from her. At that time, P.W.3 interfered and told that the matter will be settled after arrival of P.W.1. P.W.4 has also seen the accused in front of the house of the deceased and saw the accused taking P.W.1's child from the house. When P.W.4 questioned the same, the accused locked the house of P.W.1 and took the child with him. After seeing the neighbours, the accused left the child there itself and left the place. Thereafter, P.W.4 saw P.W.2 crying in front of his house and immediately P.W.1 also came to the scene of occurrence and found his mother in a pool of blood inside the house with head injuries. He also saw M.Os.1 and 2 chapathi kattai broken into pieces with blood stains and saw M.O.3 cloth pieces inside the mouth of the deceased and saw blood stains in M.O.4 saree and M.O.5 blouse of the deceased and also noted that the chain weighing about 19.200 grms was found missing from the neck of the deceased. P.W.5 also came to the place of occurrence. Thereafter, P.W.1 gave complaint Ex.P.1 to P.W.17.

4. P.W.17, Sub Inspector of Police, on the basis of the complaint given by P.W.1 registered a crime in Ex.P.23. P.W.18, Inspector of Police took up the case for investigation and went to the place of occurrence and prepared Observation Mahazar Ex.P.24 in the presence of P.W.6 and has drawn rough sketch Ex.P.25 and also took photograph of the place of occurrence with the help of P.W.7 and also seized blood stained cement slab and ordinary cement slap M.Os.7 and 8 under Ex.P.26 Mahazar in the presence of P.W.6. Thereafter, he sent the body for postmortem.

5. P.W.12, Medical Officer attached to the Government Hospital conducted autopsy and issued Ex.P.14 postmortem certificate. After receiving Ex.P.15 visra report and Ex.P.16 report, P.W.12 opined that the deceased has died due to shock and hemorrhage and head injuries and due to asphyxia due to insertion of cloth inside her mouth.

6. P.W.18, in continuation of the investigation arrested the accused on 28.04.2016 at 2.00 p.m. in the presence of

P.W.8 and Rajendran and recorded the confession voluntarily given by the accused. The admissible portion of the confession is Ex.P.28 and based on the same M.O.10 and M.O.11 cash of Rs.5,900/-, M.O.12 rose colour shirt, M.O.13 blue colour shirt and M.O.14 lungi were recovered by P.W.18 under Ex.P.29 Mahazar in the presence of P.W.8. Thereafter, he also recovered chain from P.W.10 under Ex.P.13 in the presence of P.W.7 and also recovered Rs.1000/- from the shop of P.W.9 under Ex.P.31 in the presence of P.W.8. Thereafter, the accused was remanded to judicial custody. He also seized the material objects from the place of occurrence under Ex.P.32 in the presence of P.W.6. He has also sent the case properties to the court and gave a requisition to the Judicial Magistrate for recording the confession of the accused. He also examined P.W.5 who identified the accused and properties seized. P.W.11 Judicial Magistrate recorded the confession statement of the accused Ex.P.19 and also recorded the statement of the witnesses. P.W.16 also found human blood in the material objects, except M.O.1 and M.O.13 and issued serological report Ex.P.22. P.W.18 in continuation of investigation examined the other witnesses and laid charge sheet as against the accused under sections 450, 380, 341 and 302 IPC.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the defence, the accused has neither examined any witnesses nor marked any documents.

8. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment and against which, the present appeal came to be filed.

9. Heard the learned counsel for the appellant and the learned Additional Public prosecutor for the respondent.

10. The main contention of the learned counsel appearing for the appellant is that the chain of circumstances relied upon by the prosecution has not been established. However, it is the contention of the learned counsel that the appellant has completed his sentence and hence submitted that the appeal may be disposed on merits.

11. The learned Additional Public Prosecutor submitted that in fact, the three circumstances relied on by the prosecution has clearly been established and soon after the death of the deceased, the chain of the deceased and the blood stained clothes were recovered at the instance of the accused and also at the time of quarrel, the accused was seen with the deceased. Hence, the prosecution has clearly established its case and prayed for dismissal.

12. In the light of the above submissions, now the point arises for consideration is

Whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?

13. The prosecution has mainly relied on the circumstantial evidence. As the only eye witness P.W.2 could not narrate anything before the court, the trial court has come to the conclusion that the minor is not fit enough to be testified before the Court of Law. Therefore, P.W.2 evidence has not been recorded. P.W.3 in his evidence has clearly stated that at 4.00.p.m. on the date of occurrence, the accused was in front of P.W.1's house and also quarelled with the deceased and demanded jewels from the deceased. P.W.4 has also seen the accused in front of the house of the accused and stated that on seeing the other neighbours, left the minor child and thereafter, he went away. P.W.4 has also seen the accused coming out of P.W.1's house. There is no reason, whatsoever, to disbelieve the evidence of P.W.4, who is his neighbour and there is no motive, whatsoever, attributed to him.

14. P.W.1 also immediately rushed to the scene and found his mother inside the house in a pool of blood and immediately he also lodged the complaint Ex.P.1 with P.W.17. Though the complaint registered at 7.30 p.m., the evidence of P.W.1 clearly indicate that only after the neighbour informed, he immediately rushed the place of occurrence at 6.30 p.m. and thereafter, he immediately rushed to the police station and lodged the complaint. The complaint also reached the court in the night hours without any delay.

15. The evidence of P.W.3 also clearly show that till the arrival of P.W.1, they have never entered the house. It is also natural that any neighbour would wait till the arrival of the house owner to enter the house. The investigation officer has recovered the gold chain of the deceased at the instance of the accused and cash and blood stained clothes were also recovered in the presence of the witnesses. P.W.10 also supported the version of the prosecution and identified the blood stained clothes recovered from the accused. Merely because the grouping test was negatived, that itself cannot be a ground to discard the entire case of the prosecution, since, soon after the occurrence, the accused, in fact, was found in possession of the gold chain of the deceased, which has been pledged by him with P.W.10. P.W.10 also identified the chain and on the same day of occurrence, the accused has pledged the chain and on the next day, the police has also seized the chain from P.W.10. There is no motive whatsoever for P.W.10 to falsely implicate the accused. Though the accused originally agreed to give confession before the Judicial Magistrate, subsequently, he did not give any confession. Therefore, the evidence of Judicial Magistrate is of no help to the prosecution in any manner.

16. The fact remains that soon after the occurrence, the accused was found in possession of the jewels, which has

not been properly explained by the accused. Therefore presumption under section 114 of the Indian Evidence Act is squarely applicable to the facts of the case. It is further strengthened by the evidence of P.Ws.3, 4 and 5 that they have seen the accused quarrelling with the mother of P.W.1 demanding jewels. P.Ws.4 and 5 have also seen the accused leaving the house of the deceased at the relevant point of time. The medical officer has also clearly stated that not only the deceased died due to head injuries but also due to asphyxia. The same clearly establish the homicidal violence of the accused. The motive is also established by the prosecution to show that in view of the death of the sister of the accused in a suspicious manner, the accused demanded the jewels of his sister back, which lead to the quarrel.

17. Admittedly, the evidence of witnesses clearly show that on the date of occurrence, at the relevant point of time, the accused was in fact seen quarrelling with the deceased and he has also come to the place and he has left the place immediately. He has not explained as to how and when he parted the company of the deceased. In fact no explanation whatsoever was forthcoming from the accused. The trial Court taking into consideration of the fact that the accused has no intention to cause the death of the death of the deceased and only on a sudden provocation, the occurrence took place, convicted the accused under section 304(ii) IPC and sentenced rigorous imprisonment of 8 years and this appeal has been preferred as against the said finding of the trial Court. In view of the well considered judgment of the trial Court, this Court is of the view that the judgment of the trial Court does not require any interference and this appeal is liable to be dismissed.

18. It is brought to the notice of the Court by the learned Additional Public Prosecutor that the appellant has already undergone the sentence and released from the prison on 26.09.2014.

19. Accordingly, this Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant in S.C.No.315 of 2007 on the file of the learned Sessions Judge, Mahila Court, Cudalore is confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrc

To

1.The Sessions Judge,
Mahila Court,
Cuddalore.

2.Do Through the Principal Sessions Judge,
Cuddalore.

3.The District Munsif Cum Judicial
Magistrate,
Tittakudy.

4.Do Through the Chief Judicial Magistrate,
Cuddalore.

5.The Superintendent,
Central Prison,
Cuddalore.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.J.Ayyappan, Advocate, S.R.No.43551

Crl.A.No.152 of 2008

SAI (CO)
CA(11/07/2017)



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