

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.614 of2016

Manikandan .. Appellant/sole accused

Vs

State rep.by
The Inspector of Police,
Sendurai Police Station,
Sendurai
Ariyalur District (Cr.No.31 of 2015) .. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction
and sentence passed by the learned Sessions Judge, Fast Track Mahila
Court, Ariyalur District in S.C.No.14 of 2016, dated 21.3.2016.

For Appellant : Mr.K.Gandhi Kumar
For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by **S.NAGAMUTHU, J.**]

The appellant is the sole accused in S.C.No.14 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur. He stood charged for offences under Section 302 IPC in the alternative 304-B IPC, Sections 498-A, 201 and 316 IPC. By judgment dated 21.03.2016, the trial court convicted him under sections 498-A, 302, 201 and 316 IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for 3 months for the offence under section 498-A IPC; to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for 1 year for the offence under section 302 IPC; to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for 6 months for the offence under section 201 IPC; and to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for 1 year for the offence under section 316 IPC. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Ponnala. The accused is her husband. The marriage between the accused and the deceased took place in the year 2012. Out of the said wedlock, a male child was born. Thereafter, during the year 2015, the deceased was again pregnant carrying a five months old fetus. It is alleged that there were frequent quarrels between the accused and the deceased. The accused also demanded dowry from the deceased. It is further alleged that on 14.3.2015 around 10.30 p.m., the accused in a quarrel held the head of the deceased, dashed the head against the wall of the house and caused injuries to her head. The deceased fell down and became unconscious. Immediately, the deceased was taken to the hospital. The Doctor declared her dead. Thereafter, the dead body was taken back to the house of the accused. This occurrence was not witnessed by anyone. Thus, according to the case of the prosecution, the accused has committed offences under Section 302 IPC in the alternative 304-B IPC, 498-A, 201, 316 IPC.

(b) P.W.1, the mother of the deceased was informed about the occurrence. She went to the place of occurrence and found the body of the deceased with some contusion. Then she made a complaint to the

police, upon which the present case was registered by P.W.21, the then Inspector of Police, Sendurai Police Station at 6 p.m., on 15.3.2015 under Section 174 Cr.P.C. P.W.21 forwarded a copy of the FIR to P.W.19, the then Revenue Divisional Officer for holding inquest. Accordingly, he held inquest on the body of the deceased and forwarded the body for postmortem.

(c) P.W.13/Dr.Arthi conducted autopsy on the body of the deceased on 16.03.2015 at 12.30 p.m. She found the following injuries on the body of the deceased :

External injuries: Left eye (n.c.) present. Neck: No ligature mark no other external injuries.

Internal examination: Neck. Hyoid bone intact

Thorax: No fracture of ribs on both sides

Lungs: Both lungs congested

Heart: All chambers empty

Stomach: Empty. No specific ordur uterus size (n.c) to 20 weeks size

Liver, spleen, Kidney all are congested

Bladder : Empty

Uterus: On dissection, male fetus corresponding to 20 weeks size present. Weight of 400-450 gms.

Skull : Depressed fracture present in left temporal parietal region size (3x1cm)

Brain: blood clot seen (n.c) the fracture. Size 6x5 cm. size left temporal parietal lobe of brain. Other parts of brain are congested.

She gave opinion that the death was due to shock and hemorrhage due to the injury in the vital organ, namely brain.

d) P.W.21 then handed over the Case Diary to P.W.20, the then Deputy Superintendent of Police for further investigation. He examined many more witnesses and prepared an Observation Mahazar and a Rough Sketch at the place of occurrence in the presence of P.W.6 and P.W.17. During the course of investigation, the accused was arrested on 13.9.2015. While in custody, he made a voluntary confession, in which, he disclosed the place where he had hidden a Saree and a Knife. They have been recovered. On completion of the investigation, charge sheet was laid against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The

accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined and 19 documents and 1 material object, namely Aruval were marked.

4. Out of the said witnesses, P.W.1, the mother of the deceased has stated about the marriage of the accused and the deceased. She has further stated that at the time of death, the deceased was pregnant of 5 months. She also stated that at the time of marriage, a sum of Rs.30,000/- was paid by her to the accused for the purchase of Motor Cycle and Jewels and other articles were also presented. After the marriage, according to her, there were quarrel between the accused and the deceased rarely. It is alleged that on the day of occurrence, the deceased had come to her house and the accused came in the evening and took her. On the next day, the deceased was no more. She has not stated anything against the accused. Therefore, she was treated as hostile witness.

5. P.W.2, the sister of the deceased has also turned hostile and has not supported the case of the prosecution. P.W.3 is yet another sister of the deceased and she also turned hostile and has not stated anything against the accused. P.W.4 has also turned hostile and he

has not stated anything against the accused. P.W.5 has stated that he came to know about the death of the deceased and informed the same to P.W.1. P.Ws.7, 8, 9 and 10 have turned hostile. They have not stated anything against the accused. P.W.11 has stated that he heard about the occurrence. P.W.12, a Head Constable has stated that he took the body and handed over the same for postmortem. P.W.13 Dr.Arthi has spoken about the postmortem and her final opinion regarding the cause of death. P.W.14 Dr.Selvam has stated that on 14.3.2015 at about 11.30 p.m., one woman was brought to his clinic and he examined her and found that she was dead. He further stated that the attender took the body. P.W.15 is the brother of the deceased. He has also turned hostile. Again he has not stated anything against the accused. P.Ws.16, 17 and 18 have also turned hostile. P.W.19, the then Revenue Divisional Officer has spoken about the inquest held by him on the body of the deceased. P.Ws.20 and 21 have spoken about the investigation and the final report filed.

6. 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 on his side nor marked any document in his favour. His defence was a total denial.

According to the accused, on the day of the occurrence, he was very much present in his house. He was sitting in the hall, watching Television. The deceased was in the Kitchen. The deceased fell down and sustained injuries on her head. Immediately, he took her to the hospital. The doctor, on examination, found that she was dead. Therefore, he brought her back to the house. This is the statement made by the accused under section 313 of Cr.P.C. Thus, he pleaded innocence.

7. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant is before this Court with this appeal.

8. 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.

9. As already pointed out, the evidence of P.W.1 and the other family members of the deceased would go to prove the marriage and the further fact that there were frequent quarrels between the accused and the deceased. It has been stated by P.W.1 that on the

day of the occurrence, the deceased had come to her house and in the evening on the same day, the accused came and took her back. There is no evidence that at that time he demanded dowry or harassment. There is no other evidence to prove the guilt of the accused.

10. But, the trial court has unfortunately relied on the statements of these witnesses recorded under section 164 Cr.P.C and concluded from the said statements that the accused is guilty. It is undoubtedly illegal. In respect of the statements of the witnesses recorded under Section 164 Cr.P.C, the trial court has overlooked the legal principle that the said statement cannot be a substantive evidence, as the same, being a former statement, could be used either for corroboration or to contradict the maker of the respective statement. But, unfortunately, the trial court had used these statements as substantive evidence.

11. Apart from that, the trial court has also observed that the burden is on the part of the accused to explain as to how the deceased sustained injury. To that extent, the trial court was right. But, the accused had an explanation to offer. He has also stated that when he was sitting in the hall of the house, watching Television, the deceased

fell down in the Kitchen and sustained injury. This is supported by the medical evidence. P.W.13, Doctor, who conducted autopsy, during cross-examination, has stated that while falling accidentally, by coming into contact with a projected object, the injury found on the body of the deceased could have occurred. Thus, the explanation offered by the accused is fortified by the medical evidence also which is plausible and acceptable.

12. In a case based on circumstantial evidence, if there is any alternative theory, which is inconsistent with the guilt of the accused, then the accused cannot be convicted. It is well settled law that the circumstances projected by the prosecution should be proved beyond reasonable doubts and such proved circumstances should form a complete chain, without any break, unerringly pointing to the guilt of the accused. Here in this case, since all the relevant witnesses have turned hostile, the prosecution has not succeeded in establishing any circumstances much less, circumstances to form a complete chain. Further, the alternative theory pleaded by the accused that the deceased had fallen down and sustained injury, has also not been ruled out. Yet another fact that the accused took the deceased to the hospital with a view to save her, would also be consistent with the

innocence pleaded by the accused. At this juncture, we would like to state that we cannot afford to convict the accused on mere surmises. The conviction can be had only on proof of guilt beyond reasonable doubts by following the fair procedure guaranteed under Article 21 of the Constitution. In this case, since we hold that the prosecution has not proved any of the circumstances projected by it and has also not ruled out the alternative theory propounded by the accused, we are bound to acquit the accused.

14. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant are hereby set aside. The appellant is acquitted and he is directed to be set at liberty forthwith, unless his presence is required in connection with any other case. Fine amount, if any paid by the appellant, shall be refunded to him.

(S.N.J.,) (N.A.N.J.,)
04.01.2017

Index : Yes
ajr

S.NAGAMUTHU,J.
and
N. AUTHINATHAN,J.,
ajr

To

1. The Inspector of Police,
Sendurai Police Station,
Sendurai, Ariyalur District
2. Sessions Judge, Fast Track Mahila Court, Ariyalur District
- 3.The Public Prosecutor,
High Court, Chennai.

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