

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.666 of 2016

Madhu @ Madhaiyan .. Appellant/sole accused

Vs

State rep. by
The Inspector of Police,
Chithodu Police Station,
Erode District (Cr.No.303 of 2014) .. Respondent

Appeal filed u/s.374(2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Mahila Fast Track Court, Erode in S.C.No.62 of 2015, dated 27.4.2016.

For Appellant : Mr.G.K.Sekar

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.62 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Sessions Court, Erode. He stood charged for an offence under Section 302 IPC. By judgment dated 27.4.2016, the trial court convicted him under section 302 IPC and sentenced him to undergo Imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for two years. 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. Muktha Begum @ Shanthi. The accused is her husband. The marriage between them was celebrated 19 years before her death. Out of wedlock, they have two children by name Nithya and Nanthini, aged 17 and 14 years respectively. The accused was working as a Weaver in a

private loom. The deceased was also working in a loom. In due course, the deceased had developed illicit intimacy with one Shankar/P.W.10. When this came to light, frequent quarrel arose between the accused and the deceased. For quite some time, the deceased had gone to her parental home. Fifteen days before the occurrence, the accused went to the house of the parents of the deceased and took back the deceased. Five days before the occurrence, the accused fixed a rental home at Door No.182/219 at Vinayagar Temple Street at Nadupalayam at Sithode, where the accused and the deceased along with their children started living. Even after arrival to the new house, the accused quarrelled with the deceased, raising doubt about her fidelity.

(b) It is further alleged that on 4.9.2014 at about 10.30 p.m., the accused took the deceased to his loom. Both the accused and the deceased were engaged in weaving. It is alleged that at about 1.30 a.m. on 5.9.2014, driven by the above motive, the accused attacked the deceased with knife, followed by an Iron rod and killed her. The occurrence, according to the prosecution, was witnessed by P.W.1, who rushed to the place of occurrence on hearing the commotion. The occurrence had taken place in the power loom of P.W.1. The distance between the house of P.W.1 and the place of occurrence is only 30 feet. Thus, according to the prosecution, P.W.1 alone witnessed the occurrence. Then he raised alarm, which attracted the deceased. The accused fled away from the scene of occurrence. Thereafter, the accused went to to Sithode Police Station and made a complaint at about 5.00 a.m. on 5.9.2014. A case was registered on the same day in Crime No.303 of 2014 against the accused under Section 302 IPC. Ex.P.1 is the complaint and Ex.P.14 is the FIR. Both the documents were received by the Court at 9.30 a.m on 5.9.2014.

(c) The case was investigated by P.W.17, the Inspector of Police. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of some witnesses. He recovered blood stained samples from the place of occurrence under a Mahazar. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(d) P.W.15 Dr.Kannan conducted autopsy on the body of the deceased on 05.09.2014 at 12.30p.m and found the following injuries:

External Injuries:

1. A lacerated cut wound 1x7 cm., in size seen in the region of the right eye brow

2. A lacerated wound 1x1.5cm in size, just in front of the right ear

3. A lacerated cut wound 2x3cm in size, seen just above the right ear

Internal Injuries:

1. Skull: Fracture seen in the base of skull, Brain on c/s pale, Blood clots seen in the brain. Hyoid bone

intact. Ribs: Intact, Heart-Intact c/s pale, Lungs on c/s pale, Liver c/s pale, Spleen on c/s pale, Kidney's on c/s pale, Bladder - empty, Views - empty, Stomach and contents- empty.

(e) Ex.P.15 is the Postmortem Certificate. He opined that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the body of the deceased.

(f) During the course of investigation, P.W.17 arrested the accused on 5.9.2014 at 2 p.m., in the presence of some witnesses. On such arrest, the accused gave a voluntary confession, in which he disclosed the place, where he had hidden a shirt, a pant and a loom weight (தறி ஷெய்ட்). He took the police to the place in which he had hidden the M.Os 2 to 4 and produced the same. They were all recovered. The recovered Material Objects were sent for chemical examination. On completion of the investigation, charge sheet was levelled against the accused.

3. Based on the above materials, the Trial Court framed a lone charge under Section 302 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 22 documents and 12 material objects were marked.

4. Out of the said witnesses, P.W.1, who was expected to speak about the entire occurrence, has turned hostile. He has stated that on hearing the alarm, when he went to his handloom factory, the accused came out and he told P.W.1 that he had already killed his wife inside the loom.

5. P.Ws.2, 3, 4 and 5 turned hostile and they have not supported the case of the prosecution. P.W.6/Village Administrative Officer has spoken about the arrest of the accused and the confession made and the consequential recoveries of M.Os.2 to 4. P.Ws.7 and 8 have turned hostile. They have not supported the case of the prosecution. P.W.9 has spoken about the photographs of the deceased, as directed by the Investigating Officer. P.W.10 has stated that the deceased came to the loom where he also worked for about 6 months. He further stated that in that process, he was friendly with the deceased. He has not stated anything incriminating the accused. P.W.11, Head Constable has stated that he handed over the FIR to the learned Magistrate on 5.9.2014 at about 9.30 a.m. P.W.12, the staff of the jurisdictional Magistrate has stated that he forwarded the Material Objects to the Forensic Lab for examination.

6. P.W.13, yet another Head Constable has stated that he took the dead body and sent it for postmortem. P.W.14, Special

Sub Inspector has spoken about the registration of the case on the complaint of P.W.1. P.W.15, Dr.Kannan has spoken about the postmortem conducted and her final opinion regarding the cause of death; P.W.16, the Junior Scientific Officer in the Forensic Lab at Regional Office, Coimbatore has stated that he examined Material Objects and found that there were bloodstains. P.Ws.17 and 18 have spoken about the investigation done. P.W.19 has also spoken about the examination conducted in Material Objects.

7. When the accused was questioned under Section 313 Cr.P.C. in respect of the above evidence, he denied the same as false. However, he did not choose to examine any witness nor mark any document on his side. His defence was a total denial.

8. Having considered all the above, the Trial Court convicted the accused under Section 302 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

9. 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.

10. As we have already stated, in this case, all the vital witnesses have turned hostile and they have not supported the case of the prosecution. The trial court has however convicted the accused based on the evidence of P.W.1 and the evidence of P.W.6, the Village Administrative Officer, who have stated about the occurrence, arrest of the accused and the consequential recovery of loom weight, pant and shirt. The learned counsel for the appellant would submit that the evidence of P.W.1, P.W.6 and the Investigating Officer would not conclusively prove the guilt of the accused.

11. We find force in the said argument. P.W.1, who was expected to speak about the entire occurrence has turned hostile and he has not supported the case. What he has stated is that when he rushed to the loom, he found the accused fleeing away from the place of occurrence and at that time, the accused told him that he had killed his wife. But, this part of evidence has been duly contradicted by the defence with reference to his former statement under section 161 Cr.P.C. He had not stated so to the Police when he was examined during the course of investigation. This is obviously an improvement. Therefore, the evidence of P.W.1 cannot be given any weightage and the same deserves to be rejected. Thus, what remains against the accused is the evidence of P.W.6 and the evidence of the Investigating Officer, who have spoken about the the arrest of the accused and that he made a voluntary confession, out of which a loom weight, a pant and shirt were recovered. When they were sent for examination, it was found that there were bloodstains.

12. From out of these circumstances only, we cannot afford to convict the accused. Fair trial requires proof of guilt beyond reasonable doubt. In this case, assuming that the evidence of P.W.6 is true and that blood stained weight, pant and shirt were recovered, that would not conclusively prove the guilt of the accused. The occurrence had not taken place in the house of the accused. The occurrence had taken place in the loom factory. There is no evidence that at that time, the deceased and the accused alone were in the loom.

13. For all these reasons, we find that though the prosecution has succeeded in establishing a mere suspicion against the accused, such suspicion, however strong it may be, cannot take the place of proof. Thus, we hold that the trial Court has convicted the appellant / accused only on mere surmise and therefore the same should not be allowed to sustain. We hold that the prosecution has failed to prove the case against the appellant / accused beyond reasonable doubts and therefore the appellant / accused is entitled for acquittal.

14. In the result, the appeal is allowed, the conviction and sentence imposed on the appellant by the learned Sessions Judge, Maglair Neethi Mandram (Fast Track Mahila Court, Erode in S.C.No.62 of 2015 dated 27.04.2016 is set aside and he is acquitted and he is directed to be set at liberty, unless his presence is required in connection with any other case. The fine amount, if any paid, shall be refunded to him.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ajr

To

1. The Inspector of Police,
Chithodu Police Station, Erode District
2. Sessions Judge, Mahila Court,
Mahila Fast Track Court, Erode
- 3.The Judicial Magistrate III, Erode.
-do thro Chief Judicial Magistrate, Erode.
- 4.The Director General of Police, Mylapore, Chennai-4
- 5.The Superintendent of Police, Erode

6.The District Collector, Erode

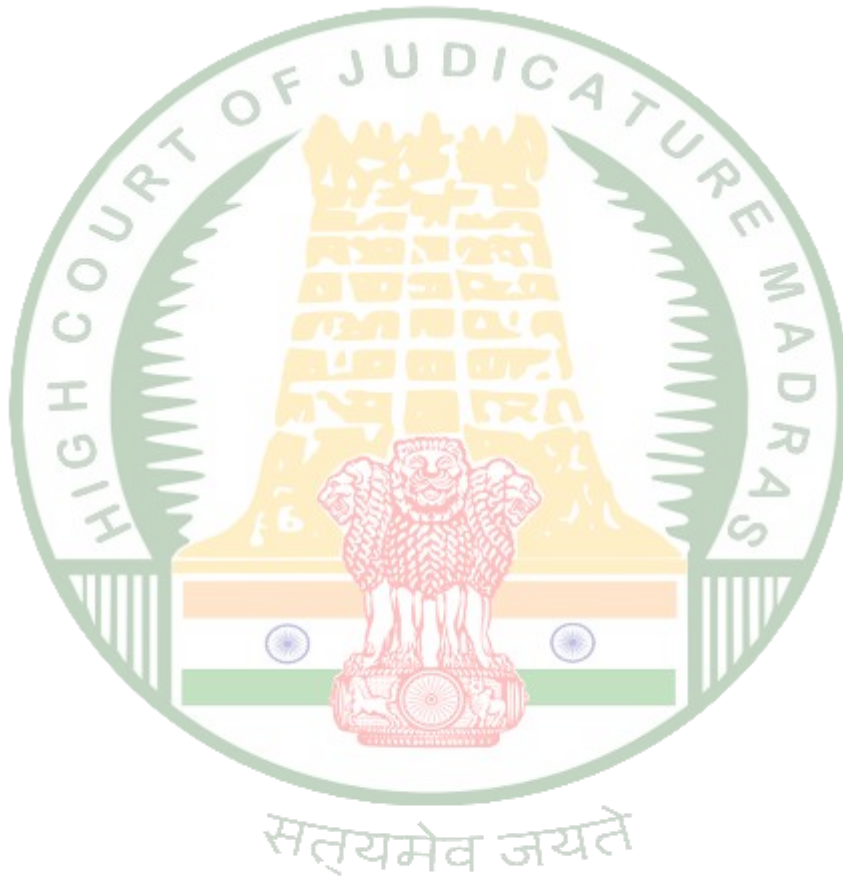
7.The Superintendent, Central Prison, Coimbatore

8.The Public Prosecutor,
High Court, Chennai.

+1cc to M/s.G.K.Sekhar, Advocate sr.620

Judgment in
Crl.A.No.666 of 2016

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