

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.1.2017

CORAM:

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

Crl.A.No.671 of 2016
and
Crl.M.P.No.9367 of 2016

Madhu Appellant/Accused

vs.

State, Represented by
Inspector of Police Madhikonpalayam
Police Station,
Dharmapuri
(Crime No.52/2014) Respondent/Complainant

Criminal appeal preferred under Section 374(2) r/w.439 of
Cr.P.C., against the judgement dated 22.07.2016 passed by the
Additional District Sessions Judge, Dharmapuri, in S.C.No.61 of
2015.

For Appellant : Mr.V.Karthic, Sr.counsel for
Mr.I.Abrar Md.Abdullah

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

सत्यमेव जयते

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

The appellant is the sole accused in S.C.No.61 of 2015,
on the file of the Additional Sessions Judge, Dharmapuri. He
stood charged for offences under Sections 302, 379 and 201 read
with Section 302 IPC. By judgement dated 22.7.2016, the trial
Court convicted the accused under all the charges and sentenced
him to undergo imprisonment for life and to pay a fine of
Rs.2000/-, in default, to undergo rigorous imprisonment for one
year for the offence under Section 302 IPC; to undergo rigorous
imprisonment for three years and to pay a fine of Rs.1000/-, in
default, to undergo rigorous imprisonment for six months for the

offence under Section 379 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 201 read with Section 302 IPC. Challenging the said conviction and sentences, the appellant 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 Selvi. P.W.3 is her husband. They were residing at Koladasapuram Village in Tiruppur District. The accused was not previously known to P.W.3. On 12.2.2014, the deceased had gone to Kaveripattinam Village to participate in a function in one of her relatives house. She left the house at 5.00 a.m. At that time, she was wearing a gold chain with a dollar, weighing 3 & 3/4 sovereigns. She was also wearing a covering ring and a metti. But she did not return thereafter. When P.W.3 enquired his relatives in Kaveripattinam Village, he was told that the deceased did not come at all for the function. P.W.3 went in search of the deceased. But he was not able to find her anywhere. P.W.6, the mother of the deceased made a complaint on 18.2.2014, at 2.00 p.m. The Special Sub-Inspector of Police (P.W.21), Perigai Police Station, on receipt of the said complaint, registered a case in Crime No.18 of 2014 for 'woman missing'. He made efforts to locate the deceased. But he was not able to make any progress in the investigation.

(b) While so, a dead body of a female was found in a gunny bag near a bridge on Dharmapuri Kootroad Highways Road. P.W.2, a person residing in that locality, found the same and informed P.W.1. P.W.1, the Village Administrative Officer, after having verified the said fact, went to Madhikonpalayam Police Station and made a complaint under Ex.P1. P.W.24, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.52 of 2014, under Section 302 of IPC. Ex.P.20 is the FIR. He forwarded both the documents to Court and handed over the case diary to the Inspector of Police for investigation.

(c) P.W.25, the Inspector of Police, took up the case for investigation. He proceeded to the place where the dead body was lying. During the course of investigation, he came to know that in respect of missing of a woman, a case had already been registered on the file of Perigai Police Station, in Crime No.18 of 2014. At 2.30 p.m. on 26.2.2014, P.W.25 visited the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of some witnesses. The dead body was identified by the family members of the deceased as that of the deceased. He conducted inquest on the body of the deceased and forwarded the body for post-mortem. P.W.19-Dr.Satheesh Kumar,

conducted autopsy on the body of the deceased on 28.2.2014 at 10.15 a.m. He found the following injuries:

"External Injuries: No external injuries
Dissection of Thorax and Abdomen:
Rib cage: Right side 3rd, 4th, 5th ribs were fractured mid clavicle line with surrounding tissue contusion.
Heart was shrunken, flabby and decomposing, chambers empty. Valves were normal.
Lungs were normal in size, flabby and decomposing, cut section: decomposing.
Stomach was empty, mucosa was decomposing.
Liver: Spleen and Kidneys were normal in size. flabby, decomposing cut section: decomposing
Urinary bladder was empty.
Uterus was measuring 4.0 x 3.0 x 1.0 cm cut section: Cavity empty
Pelvic bone was intact.
Dissection of head and neck:
Scalp Vault and were intact.
Duramater and Brain was completely decomposing.
Base was intact.
Hyoid bone was intact.
Spinal column was intact.
Viscera preserved for chemical analysis."

Ex.P14 is the postmortem certificate. He collected the visceral organs of the deceased and forwarded the same for chemical examination. The result revealed that there was 'Phorate' (a poisonous Organophosphorus type insecticide) found in the internal organs. Thus, he opined that the death of the deceased was due to poisoning.

(d) P.W.25, during the course of investigation, came to know that the deceased was using a Cell Phone with mobile No.9943339119. He collected the call details of the said Cell Phone number, during the relevant period. It came to light that there were frequent calls from the said cell phone to the mobile No.994445494. P.W.25 collected the said details, including ownership of the SIM Cards.

(e) When the investigation was in progress, on 28.2.2014, it is alleged that the accused appeared before P.W.10, at 1.30

p.m. on his own. On such appearance, he volunteered to make a confession to P.W.10. Having ascertained that the accused was in a voluntary mood to make a confession, he allowed the accused to confess orally. P.W.10 reduced the same into writing. Then along with the said confession, P.W.10 took the accused to the police station and produced him before P.W.25. On such production, P.W.25, arrested the accused at 3.00 p.m. On such arrest, the accused, while in custody, made a disclosure statement, in which, he disclosed the place where he had hidden the TATA A/c Van, bearing Registration No.TN-K-83. In pursuance of the same, he took the police and the witnesses to the said place and produced the said Van. During the course of investigation, it came to light that one Amudha (P.W.15) is the second wife of the accused. In the disclosure statement, he further disclosed that the gold chain with dollar was pledged in Muthoot Finance, in the name of Amudha (P.W.15). In pursuance of the same, he took the police and the witnesses to the house of P.W.15 and from P.W.15, a receipt for pledging of the chain with dollar was recovered. With that, he took the police to Muthoot Finance and P.W.14, the Manager of Muthood Finance, produced the gold chain (M.O.4). P.W.25 recovered the same. Then, he forwarded the accused to the Court for judicial remand.

(f) On 12.3.2014, P.W.25 took police custody of the accused, on the orders of the Magistrate. While in custody, he made yet another disclosure statement, in which, he produced one Cell Phone with IMEI No.354192041270 (M.O.18). He recovered the same. He also recovered two SIM Cards (M.O.20 series). Then he returned the accused to the Court for judicial remand. On completing the investigation, he laid the charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 25 witnesses were examined, 29 documents and 21 material objects were marked. Out of the said witnesses, P.W.2 has stated that he found the dead body of the deceased on 26.2.2014 around 1.00 p.m. and he informed the same to P.W.1. P.W.1, the Village Administrative Officer, has stated that he found the dead body in a gunny bag in a decomposed condition and then, he made a complaint to the police. P.W.3, the husband of the deceased, has stated that the deceased left his house at 5.00 a.m. on 12.2.2014 to go to Kaveripattinam Village, to participate in a function. At that time, according to him, she was wearing M.O.4-gold chain with dollar. Then, according to him, the deceased did not return. When he enquired, he came to know that the deceased did not come to Kaveripattinam at all. He has further stated about the complaint made by him to the

Police on 18.2.2014, upon which, a case was registered. He has identified the M.O.4. He has further stated that later on, he came to know that the dead body was lying within the jurisdiction of the respondent police. He identified the dead body. He has identified the dollar chain (M.O.4) as that of the deceased. P.W.4 is the brother-in-law of the deceased. P.W.5 is the daughter of the deceased and P.W.6 is the mother of the deceased. P.W.5 the daughter of the deceased has stated that on the day of occurrence, at 5.00 a.m. she went along with the deceased up to the bus-stop, where, the deceased left for Kaveripattinam in a bus. All these three have stated about the missing of the deceased thereafter. P.W.7 has spoken about the Photographs taken on the dead body of the deceased, as requested by P.W.25. P.W.8, a sniffer dog trainer of the Armed Force, has stated that he went to the scene of occurrence along with his dog and saw the gunny bag and since the dead body was in a decomposed state, the dog could not identify anything. P.W.9, a Police Constable, has stated that he took the dead body and handed over the same to the Doctor for postmortem. P.W.10, the then Village Administrative Officer, has spoken about the alleged extra judicial confession made by the accused on 28.2.2014 to him at 1.30 p.m.. He has further spoken about the disclosure statement made by the accused to the investigating officer and the consequential recoveries of the M.Os. P.Ws.11 to 13 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.14, the Manager of the Muthoot Finance, has stated that the accused along with P.W.15 came to Muthoot Finance and pledged M.O.4. Later on, the police recovered the same from him. P.W.15, Amudha, has stated that M.O.4 belongs to her. She pledged the same with the Muthoot Finance for a sum of Rs.61,000/- and odd and after adjusting the said amount as against the amount due in respect of the earlier pledging of another jewel, she received the balance of Rs.3000/- and odd. According to her, M.O.4 belongs to her (this witness was not treated as hostile and this evidence of P.W.15 has not been disputed by the prosecution). P.W.16 has turned hostile and he has not stated anything incriminating. P.W.17 has spoken about the recovery of Cell Phone and SIM cards from the accused, after he was taken to police custody on 12.3.2014. P.W.18, the Forensic Expert has stated that she examined the viscera organs of the deceased and found that there were 'Organophosphorus type insecticide' in internal organs. P.W.19 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.20, a Constable, has stated that he took the dead body and handed over the same to the Doctor for post-mortem and then handed over the dead body to P.W.3. He assisted the investigating officer. P.W.21 has spoken about the registration of the 'woman missing' case on the complaint of P.W.6, on the file of the Perigai Police Station. P.W.22 has stated that he handed over the FIR in the present case to the learned

Magistrate. P.W.23 has stated that he helped the investigating officer in the matter of investigation. P.W.24, the then Sub-Inspector of Police, has spoken about the registration of the case on the complaint of P.W.1. PW.25 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side nor mark any document. His defence was a total denial. He further claimed that M.O.4, the gold jewel with dollar, belongs to Amudha (P.W.15). Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement. That is how he is before this Court.

5. Before proceeding further, we need to mention that P.W.3 was recalled and examined before this Court, by way of receiving additional evidence, during which, he identified M.O.4 as that of the deceased, which the deceased was lastly wearing when she left the house. He was cross-examined by the learned counsel before this Court. Similarly, P.W.25 was recalled and he was further examined and also cross-examined. The fresh evidence spoken by P.W.3 and P.W.25 were put to the accused under Section 313 of Cr.P.C. He denied the same.

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

7. It is a case on circumstantial evidence. The foremost circumstance is that the deceased was lastly seen alive around 5.00 a.m. on 12.2.2014, when she left for Kaveripattinam Village. P.W.5, the daughter of the deceased has stated that she went up to the bus-stop, where, the deceased left for Kaveripattinam in a bus. Thus, the prosecution has established that the deceased was lastly seen alive at 5.00 a.m. on 12.2.2014. Thereafter, the fact remains that she did not go to Kaveripattinam at all. The dead body of the deceased was later on found lying near a bridge on the Dharmapuri Kootroad Highways Road in a gunny bag. The dead body had been identified as that of the deceased. There was no controversy over that. According to the Doctor, there were no external injuries found on the body. But on the examination of the internal organs, it came to light that the deceased had consumed 'Organophosphorus type insecticide'. From these evidences, the prosecution has clearly established that the deceased had died sometime between 5.00 a.m. on 12.2.2014 and 1.30 p.m. on 26.2.2014.

8. It is the case of the prosecution that the accused

forced the deceased to consume poison and accordingly, she died of poison. In order to prove that the deceased was forced by the accused to consume poison and the death of the deceased was a homicide, the prosecution relies only on the extra judicial confession said to have been given by the accused to P.W.10, the Village Administrative Officer, on 28.2.2014 at 1.30 p.m.

9. The learned Senior counsel for the appellant would submit that the said extra judicial confession would not have been really made by the accused at all. In order to substantiate the said contention, the learned Senior counsel has taken us through the evidence of P.W.3 and has stated that on the day when the dead body was found, the accused was very much in the custody of the police and he was identified by them.

10. From the said evidence of P.W.3, it becomes doubtful as to whether the accused would have really gone to P.W.10 to make a voluntary confession, on 28.2.2014. Above all, it is not in evidence that the accused had any acquiescence with P.W.10. It is highly unbelievable that the accused would have chosen a total stranger to make such a confession. For these reasons, we are unable to believe the evidence of P.W.10. Thus, the prosecution has failed to prove that it was this accused, who forced the deceased to consume poison and committed homicide.

11. It is in the evidence of P.W.3 and others that lastly when the deceased left, she was wearing a gold chain with dollar, weighing 3 3/4 sovereigns. It was found missing from the dead body. Thus, the prosecution has established that the removal of the gold chain with dollar had occurred in the very same occurrence, in which, the deceased died by consuming poison. It is only very remote inference which we could have. Assuming that the death of the deceased was homicide and the removal of the gold chain with dollar had occurred in the same occurrence, the prosecution still has to prove as to who is the purporter of the crime.

12. In order to prove that it was this accused who killed the deceased and removed the gold chain with dollar, the prosecution again relies on the extra judicial confession, said to have been given by the accused to P.W.10. We have already rejected the evidence of P.W.10 and therefore, the prosecution cannot make any reliance on the evidence of P.W.10 to prove the above facts.

13. Apart from that, the prosecution relies on the recovery of M.O.4 from Muthoot Finance. P.W.14, the Manager of the Muthood Finance, has stated that the accused along with

P.W.15 came to Muthood Finance and pledged M.O.4, on 13.2.2014. This fact was not disputed by the accused. It is the positive case of the accused that M.O.4 belongs to Mrs.Amudha (P.W.15). P.W.15, even in chief-examination, has stated that the gold chain with dollar belongs to her. She only pledged the same in her name for a sum of Rs.61,500/-. She had already pledged another jewel in the same institution, for which, a sum of Rs.57,800/- was due. Out of Rs.61,500/-, Rs.57,800/- was adjusted and only the balance was paid to P.W.15. This has been spoken both by P.W.14 and P.W.15. Thus, admittedly, the jewel was pledged only by P.W.15 and the amount was adjusted towards the earlier loan secured by P.W.15. Though P.W.15 has categorically stated even in chief-examination that the said gold chain with dollar belongs to her, the said fact was not at all disputed by the prosecution. She was neither treated as a hostile and cross-examined. Thus, the claim made by P.W.15 that the said jewel belongs to her remains undisputed by the prosecution.

14. Now, to prove that the said jewel belonged to the deceased, the prosecution relies only on the evidence of P.W.3. When P.W.15, who has been examined by the prosecution, has stated that M.O.4 belongs to her and the same has not been disputed to P.W.15, the evidence of P.W.3 that it belonged to the deceased becomes doubtful. When there are two sets of evidences, one favouring the accused and the other against him, fair procedure requires that the benefit should be given only to the accused. Thus, in our considered view, the prosecution has failed to prove that M.O.4, which was pledged by P.W.15 in her name, in the presence of the accused, as spoken by P.W.14, was that of the deceased. If this circumstance also goes, we find no other evidence.

15. Regarding the recovery of Cell Phone, the IMEI Number does not tally and the call details recovered by P.W.25 cannot be admitted in evidence for want of certificate under Section 65-B of the Indian Evidence Act, as held by the Honourable Supreme Court in ANVAR P.V. VS. P.K.BASHEER AND OTHERS reported in [(2014) 10 SCC 473].

16. From the foregoing discussions, we are of the view that the prosecution has not proved any of the incriminating circumstances against the accused. Though the prosecution has succeeded in establishing a strong suspicion against the accused, such suspicion would never take the place of proof. Therefore, the accused is entitled for acquittal.

17. In the result, this criminal appeal is allowed; the conviction and sentences imposed as against the appellant are set aside. The appellant/accused is acquitted. Fine amounts,

if any, paid by him shall be refunded to him forthwith.
Connected miscellaneous petition is closed.

18. Regarding the order for disposal of property, made by the trial Court, we state that we do not want to interfere with the same.

sd/
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District Sessions Judge,
Dharmapuri
- 2.The Principal Sessions Judge, dharmapuri.
- 3.Inspector of Police Madhikonpalayam
Police Station,
Dharmapuri
- 4.The Superintendent, Central Prison, Vellore.
- 5.The Public Prosecutor,
High Court, Madras
- 6.The Section Officer,
Crl Section, High Court, Madras.

+1cc to Mr.I.Abrar Md.Abdullah, Advocate, SR.No.2834

(For sending the material properties to the trial court and forward the additional evidence after rettaining the certified the copied of the same)

Crl.A.No.671 of 2016

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