

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.792 of 2016

and

Crl.M.P.No.12909 of 2016

Kannamal @ Kannamani

... Appellant

- Vs -

State rep by the Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
(Cr.No.368 of 2013)

... Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Magalir Fast Track Court, Erode in S.C.No.157 of 2015 dated 25.10.2016.

For Appellant : Mr.P.Saravana Sowmiyan

For Respondent : Mr.P.Govindaraj
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.157 of 2015 on the file of the learned Sessions Judge, Magalir Fast Track Court, Erode. She stood convicted for offence under Section 307 (Part ii) I.P.C and sentenced to undergo imprisonment for life and pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one year. Challenging the said conviction and sentence she is before this Court with this appeal.

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

2.1. P.W.2 Mrs.Subbulakshmi is a native of Bommanayakan Palayam village. P.W.1 was residing alone in her farmhouse at

Sankaran Thottam in the same village. In order to help P.W.2 and to do domestic works, P.W.1 engaged the accused as maid servant. Accordingly, the accused was working in the farmhouse of P.W.2 where she was living. The accused was also staying along with P.W.2 in the same house. During the period of ten days of work in P.W.2's house, P.W.2 found fault with the working style of the accused and scolded her. The accused was not happy with the same as she had a feeling that she was unduly scolded by P.W.2. This is stated to be the motive for the occurrence.

2.2. It is alleged that on 28.12.2014, in the evening, the accused as well as P.W.2 had their dinner. Thereafter, P.W.2 went to her room and slept on the cot. The accused started sleeping in the next room. Around 03.00 a.m. on 29.12.2014, P.W.2 was awakened by some murmur. She found the accused standing on her side near the cot with a grinding stone in her hand. The accused shouted at P.W.2 as to why she was blaming her unnecessarily though she was sincere to her work. So saying, she suddenly attacked P.W.2 with the grinding stone on her forehead, nose and mouth. P.W.2 fell down and fainted. The occurrence was not witnessed by anyone else.

2.3. P.W.1, the son of P.W.2, who had employed the accused, was in Tirupur on 28.12.2014. Around 04.00 a.m. on 29.12.2014, one Mr.Nagaraj, the neighbour of P.W.2 informed him that the accused had attacked P.W.2 with a grinding stone in an attempt to murder her. He further told that P.W.2 was unconscious. Mr.Nagaraj himself took P.W.2 in 108 ambulance and admitted her at S.K.Hospital at Gobichettipalayam, which is a private hospital. P.W.1 immediately rushed from Tirupur to the place of occurrence and found that there were blood stains on the pillow, bedsheets and also on the wall of the farm house. The grinding stone with bloodstain was also lying by the side of the cot. He rushed to the hospital and found P.W.2 still in an unconscious state. Therefore, P.W.1 went to Gobichettipalayam police station and made a complaint against the accused at 07.45 a.m. on 29.12.2014.

2.4. P.W.10 the then Special Sub-Inspector of Police of Gobichettipalayam police station registered a case in Crime No.775 of 2014 under Section 307 I.P.C. against the accused. He forwarded both the documents to Court, which was received by the learned Magistrate at 02.00 p.m. on 29.12.2014.

2.5. P.W.12 took up the case for investigation. He went to the place of occurrence on the same day at 09.15 a.m. He prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered bloodstained bedsheets two numbers, bloodstained pillow cover and bloodstained grinding

stone from the place of occurrence under a mahazar. He examined many more witnesses. But still P.W.2 was unconscious and therefore she could not be examined. On the same day at 05.00 p.m. he arrested the accused near the bus stand at Meevani village. While in custody, she made a voluntary confession but no fact whatsoever was discovered from out of the said confession. Then, P.W.12 forwarded her to Court for judicial remand.

2.6. On 29.01.2015 after P.W.2 had regained conscious, he examined her. On his request, the material objects were sent for chemical examination which revealed that there were human bloodstains. On completing the investigation, P.W.12 laid chargesheet against the accused under Section 307 I.P.C.

2.7. Based on the above materials, the trial Court framed a lone charge under Section 307 I.P.C. against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 12 documents and 4 material objects were marked.

2.8. Out of the said witnesses, P.W.1 the son of P.W.2 has stated about the appointment of the accused at the farm house of P.W.2. He has further spoken about the information passed on by Mr.Nagaraj and the complaint made by him to the police. P.W.2 Mrs.Subbulakshmi in her evidence has stated that on the day of occurrence, while she was sleeping, she was awakened by a noise. At that time, she found the accused standing by her side with grinding stone in her hands. The accused shouted at her and then hit her with the grinding stone on her forehead, cheek, nose and mouth. She identified M.O.1 as the grinding stone which was used by the accused.

2.9. P.W.3 Mrs.Thilagavathy is the wife of Mr.Nagaraj the neighbour of P.W.2. She has stated that on 29.12.2014, around 03.00 a.m. she heard a distress call made by P.W.2 from her house. Immediately, along with her husband Nagaraj and her son Manikandan and daughter Malathy rushed to the house of P.W.2. At that time, according to them, the accused was found coming out of the house of P.W.2. She has further stated that when she enquired the accused, she told her that she had attacked P.W.2 with a grinding stone. Then P.W.3, her husband, son and daughter entered into the house of P.W.2 and found P.W.2 lying unconscious with injuries. A grinding stone was right by her side. When they came out, the accused had already disappeared from the said house. Thereafter, according to her, her husband Mr.Nagaraj informed P.W.1 about the occurrence over phone.

2.10. P.W.4 has stated that on hearing about the occurrence, he went to the place of occurrence and found P.W.2 with injuries. He has further told that she was taken to the

hospital. He has further stated that from him police obtained signature for the recovery of material objects from the place of occurrence. Since, he was being examined to support the case of the prosecution, he was treated hostile and was cross examined by the learned public prosecutor. P.W.5 has stated that on 28.12.2014, along with P.W.1 in his car he had gone to Tirupur. On 29.12.2014, he drove the vehicle from Tirupur to the place of occurrence, in which, P.W.1 travelled. He has further stated about the arrest of the accused.

2.11. P.W.6 has not stated anything incriminating as he has spoken only on hearsay information about the occurrence. P.W.7 a Junior Scientific Officer in the Forensic Lab, Coimbatore has stated that he examined the material objects and found human blood on all the material objects including the grinding stone.

2.12. P.W.8 Dr.Thambiraj working in the Trauma Ward of S.K.Hospital has stated that on 29.12.2014 around 02.00 a.m. P.W.2 was brought to the said hospital for treatment. At that time, she was unconscious. One Mr.Easwaran who brought her to the hospital told that some unknown person had attacked P.W.2. He found the following injuries on P.W.2 viz., (1) abrasion measuring 4x2 cm on the forehead. (2) Three depression injuries measuring 4x4 cm with bloodstains on the left side of the cheek. (3) eyebrows above the eyes were found contused. (4) abrasions measuring 2x1 cm on the nose (5) abrasion measuring 1x1 cm on the upper lip (6) three teeth on the upper jaw and two teeth on the lower jaw found missing. (7) there was blood oozing from the nose. On further examination, he found that there was fracture of the sygoma nasal orbital bone and nasal bone. According to him the injury Nos.2, 4, 6 and 7 were all grievous in nature. Ex.P5 is the accident register. Ex.P6 is the wound certificate.

2.13. P.W.9 the Head Clerk of the learned Judicial Magistrate Court has stated that he forwarded the material objects to the Forensic Lab for examination as directed by the learned Magistrate. P.W.10 has spoken about the registration of the case. P.W.11 has spoken about the chemical examination conducted on the material objects. She opined that bloodstains were found on all the material objects. P.W.12 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. However she did not choose to examine anyone nor mark any documents. Having considered all the above the trial Court convicted the appellant as detailed in the first paragraph of this judgment and that is how the appellant is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

5. In this case, there is no denial of the fact that the accused was employed as a maid servant at the house of P.W.2 and she was staying along with P.W.2 in the farmhouse. In order to prove that during night hours it was this accused who attacked P.W.2 with grinding stone, the prosecution mainly relies on the evidence of P.W.2. P.W.2, though has stated in chief examination that she was awakened by noise, she found the accused standing near her and then she found the accused hitting her with grinding stone on her face, during cross examination, she has given a go bye to the said evidence. During cross examination, she has stated that the occurrence had taken place while she was sleeping. She has further stated that since she was sleeping, she did not know as to what had happened to her. She has further stated that the accused was very much available, she served food to her and the accused had also had food and then both of them were sleeping. P.W.2 has further stated that she did not close the door from inside. Thus, the evidence of P.W.2 that the accused hit her cannot be believed as according to her during cross examination she did not know what had happened to her and how she sustained injuries. According to P.W.1, one Nagaraj, the husband of P.W.3 informed him over phone that the accused had attacked P.W.2 with grinding stone and thereafter he came to the place of occurrence. But, for the reasons best known to the prosecution, Mr.Nagaraj has not been examined. Therefore, the evidence of P.W.1 that Mr.Nagaraj informed him that the accused hit P.W.2 with grinding stone cannot be considered as it is hit by hearsay evidence.

6. Then comes the evidence of P.W.3, the wife of Mr.Nagaraj. According to her, around 03.00 a.m. on hearing the alarm raised by Mrs.Subulakshmi she along with her husband, son and daughter rushed to the house of P.W.2. But P.W.2 has not at all stated that she raised any such alarm at all. When P.W.2 herself has stated that since she was sleeping, she did not know as to what had happened to her and she has not stated that she raised alarm. It is highly unbelievable that P.W.3 rushed to the house of P.W.2 on hearing any such alarm raised by P.W.2.

7. P.W.3 has further stated that when she reached the house of P.W.2, she found the accused coming out of the house of P.W.2. She has further stated that the accused told her that she had already hit P.W.2 with a grinding stone. The learned Additional Public Prosecutor would submit that this statement of the accused is an extra judicial confession, therefore, such a statement is relevant under Section 24 of the Indian Evidence

Act. But the question is whether it is believable that the accused had made such a statement. In our considered view, it is highly unbelievable that the accused had actually hit P.W.2, would have only tried to escape and she would not have informed P.W.3 that she had attacked P.W.2 with a grinding stone. Further, as we have already concluded, P.W.3 would not have gone to the house of P.W.2 at all at the crucial time. Thus, the evidence of P.W.3 cannot be believed.

8. So far as the conduct of the accused is concerned, P.W.3 during cross examination has stated that when the police arrived at the scene of occurrence, the accused continued to be only at the place of occurrence and between 09.00 and 09.30 a.m. the police examined her as well as the accused at the place of occurrence. This would clearly go to show that the accused was very much available at the house and the said conduct of the accused is inconsistent with the alleged guilt of the accused. This conduct of the accused, in our considered view, is consistent with the innocence pleaded by the accused.

9. Above all, when P.W.2 was taken to the hospital by P.W.6 Mr.Easwaran, the sister's son of P.W.2, on 29.12.2014, according to him, around 03.00 to 03.30 a.m. one Mr.Raghu the President of Bommanayakan Palayam village informed him over phone that P.W.2 had been attacked by somebody and he wanted P.W.6 to rush to the place of occurrence. P.W.6, accordingly rushed to the place of occurrence and found P.W.2 lying in the pool of blood with injuries. At that time, Mr.Nagaraj, P.W.3 Thilagavathy, their son Mr.Manikandan and their daughter Miss.Thilika were all present. He has further stated that he enquired Mr.Nagaraj, P.W.3 and their children about the occurrence. He has further stated that he was informed by them that the accused had hit P.W.2 with grinding stone and ran away from the scene of occurrence. But P.W.6 while admitting P.W.2 at the hospital had told the doctor that P.W.2 was attacked by unknown person. Had it been true that P.W.3, her husband and her children had seen the accused fleeing away from the scene of occurrence, had it been true that they told P.W.6 that the deceased was attacked by the accused, certainly, he would have told P.W.10 Doctor that P.W.2 was attacked by a known person. The very fact that P.W.6 had told the doctor that P.W.2 was attacked by an unknown person, which is the earliest information in this case, would go to falsify the case of the prosecution that it was this accused who hit P.W.2.

10. Yet another fact which needs to be considered is that P.W.1 himself is an Advocate by profession. According to him, the complaint was made at 07.45 a.m. on 29.12.2014. It is contended by the learned counsel for the appellant that there

was inordinate delay of more than 4½ hours in making the complaint. Assuming that it would have taken sometime for P.W.1 to reach the place of occurrence from Tirupur and therefore he could have given the complaint only at 07.45 a.m. One would expect the F.I.R. to reach the hands of the learned Magistrate within a reasonable time. But the F.I.R. had reached the learned Magistrate only at 02.00 p.m. on 29.12.2014, for which absolutely there is no explanation. This inordinate delay would create doubt as to whether the complaint would have been made at 07.45 a.m. on 29.12.2014.

11. From the above discussions, we are of the view that there are lots of doubts in the case of the prosecution. The possibility of somebody else entering into the house and attacked P.W.2 while she was sleeping, cannot be ruled out, because it was not locked. The continued presence of the accused at the place of occurrence until the arrival of the police is only consistent with the innocence pleaded by the accused. For these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore the appellant is entitled for acquittal.

12. In the result,

(i) The appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Magalir Fast Tract Court, Erode in S.C.No.157 of 2015 dated 25.10.2016 is set aside and the appellant is acquitted. Consequently, the connected miscellaneous petition is closed.

(ii) The fine amount, if any paid, shall be refunded to her.

(iii) Since the appellant is in jail, she is directed to be set at liberty forthwith, unless her detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

To

1. The Sessions Judge,
Magalir Fast Tract Court, Erode.
2. The Judicial Magistrate I,
Gobichettipalayam.
3. Through The Chief Judicial Magistrate,
Erode.
4. The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
5. The Superintendent of Police,
Erode District.
6. The Superintendent,
Central Prison (Women Cell),
Coimbatore.
7. The Director General of Police,
Mylapore Chennai-4.
8. The District Collector,
Erode.
9. The Public Prosecutor,
Madras High Court.

+lcc to Mr.Saravana Sowmiyan, Advocate, S.R.No.4785

CrI.A.No.No.792 of 2016 and
CrI.M.P.No.12909 of 2016

GMI (CO)
RS (26/04/2017)

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