

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.866 of 2016

Rajan @ Mayilsamy ... Appellant/Single Accused

- Vs -

State rep by Inspector of Police,
Annur Police Station,
Coimbatore District.
(Cr.No.755 of 2011) ... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Magalir Neethi Mandram (Mahila Court), Coimbatore in S.C.No.207 of 2013 dated 03.12.2016.

For Appellant : Mr.N.Manokaran

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.207 of 2013 on the file of the learned Sessions Judge, Magalir Neethi Mandram, Coimbatore. He stood charged for offence under Section 302 I.P.C. By judgment 03.12.2016, the trial Court convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The deceased in this case was one Mrs.Mani @ Palaniyammal. She was the wife of one Mr.Rajendran. In the

year 2002 there arise misunderstanding between the deceased and her husband Mr.Rajendran and thereafter he deserted her. Mr.Rajendran left to Kerala and stayed there permanently. The deceased who was staying in her native place at Kuppanur village, she developed illicit intimacy with the accused and thus they were in live-in-relationship.

2.2. Four months prior to the occurrence, it is alleged that the deceased started living with her husband. This was not to the liking of the accused. He felt deceived by the deceased. Therefore, he decided to do away with the deceased. This is stated to be the motive for the occurrence.

2.3. It is further alleged that on 12.05.2011, around 07.00 a.m. the deceased was at her house at Kuppanur village. The accused went to the house of the deceased quarreled with her and trashed her. Then the accused took out an aruval which he had already kept ready in his motorcycle and cut her indiscriminately and killed her. Then the accused fled away from the scene of occurrence in his motorcycle bearing Registration No.TN-04-W-0608.

2.4. P.W.1 a neighbour witnessed the occurrence. On the complaint of P.W.1 a case was registered in Crime No.755 of 2011 at 11.00 a.m. on 12.05.2011. Ex.P3 is the complaint and Ex.P4 is the F.I.R. The investigation was done by P.W.13 the then Inspector of Police. On completing the investigation, he laid chargesheet against the accused.

2.5. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 26 documents and 11 material objects were marked.

2.6. Out of the said witnesses, P.W.1 who was examined to speak about the occurrence, has turned hostile and she has not supported the case of the prosecution in any manner. P.Ws.2, 3, 4, 5, 6, 7 and 8 have turned hostile and they have not stated anything incriminating against the accused. P.W.9 the then Special Sub Inspector of Police has spoken about the registration of the case on the complaint of P.W.1. P.W.10 has spoken about the arrest of the accused on 23.05.2011. He has further stated that in his presence, the accused gave a voluntary confession, in which he disclosed the place where he had hidden an aruval and bloodstained clothes. In pursuance of the same, the accused took the police and the witnesses to the place of hideout and produced M.Os.1 to 4, which were all recovered. P.W.11 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence.

P.W.12 Dr.Kulanthaivelu has spoken about the autopsy conducted by him on 13.05.2011. He has stated that he found as many as 10 cut injuries on the body of the deceased and corresponding internal injuries. According to his final opinion, the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased. He further opined that the injuries could have been caused by a weapon like M.O.1 aruval. P.W.13 has spoken about the investigation done and final report filed.

3. 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 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. As we have already pointed out, in this case P.Ws.1 to 8 has turned hostile and they have not supported the case of the prosecution in any manner. Neither there is any eyewitness account nor circumstantial evidence to prove the guilt of the accused. But the trial Court has convicted the accused only relying upon the disclosure statement made by the accused on his arrest and the consequential recoveries of M.O.1 (aruval), M.O.2 (wooden log), M.O.3 (shirt), M.O.4 (lungi) and M.O.5 motorcycle from his possession. The trial Court, in our considered view, has fallen in grave error in relying on the said evidence and concludes that it was this accused who committed the murder of the deceased.

6. First of all, the statement made by the accused to the police, which led to the recoveries of M.Os.1 to 5 is not at all admissible in evidence as the relationship of these properties to the crime has not been established. To be precise, the law is that it is not the disclosure statement, which is made to the police officer leading to the discovery of a fact that makes the statement admissible. It is only that information which leads to the discovery of a relevant fact that alone is admissible. The relevance between the discovery of fact and the crime is to be established by other evidences. In this case, as we have already pointed out the relationship between the material objects M.Os.1 to 5 to the crime has not been established. Therefore, the alleged statement of the accused to P.W.13 which led to the recovery of M.Os.1 to 5 is not admissible in evidence. Further, the recovery of M.Os.1 to 5 would not in any

way conclusively prove that it was this accused who committed the murder of the deceased. A perusal of the judgment of the trial Court would go to show that the trial Court has given undue weightage to irrelevant materials placed on record by the police, instead of appreciating the same by applying the legal norms. Thus, in our considered view, the conviction of the accused, in this case is illegal as there is no incriminating evidence against the accused at all. Therefore, the appellant is entitled for acquittal.

7. In the result,

(i) the appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Magalir Neethi Mandram (Mahila Court), Coimbatore in S.C.No.207 of 2013 dated 03.12.2016 is set aside and the appellant is acquitted.

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

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

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, सतयमेव जयते
Magalir Neethi Mandram (Mahila Court),
Coimbatore.
2. Thro The Principal District & Sessions Judge,
Coimbatore District.
3. The Judicial Magistrate,
Mettupalayam, Coimbatore.
4. -Do- Thro The Chief Judicial Magistrate,
Coimbatore.

5. The Superintendent,
Central Prison, Coimbatore (In Duplicate).

6. The Director General of Police,
Mylapore, Chennai.1

7. The Inspector of Police,
Annur Police Station,
Coimbatore District.

8. The District Collector,
Coimbatore District.

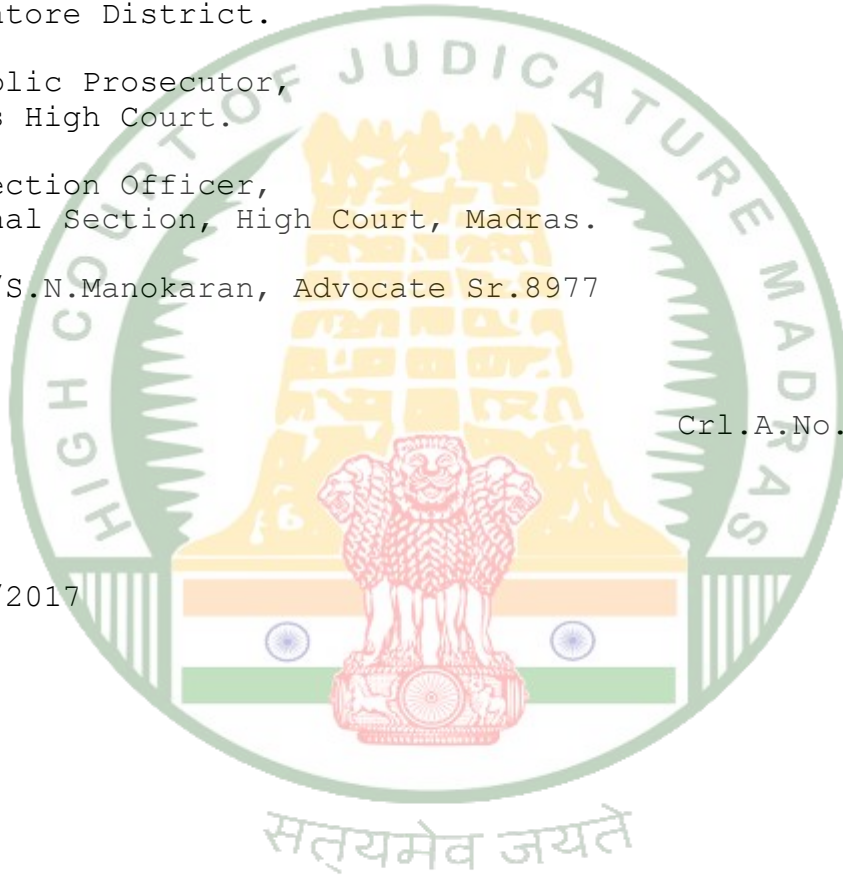
9. The Public Prosecutor,
Madras High Court.

10. The Section Officer,
Criminal Section, High Court, Madras.

+1cc to M/S.N.Manokaran, Advocate Sr.8977

Crl.A.No.866 of 2016

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