



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) No.269 of 2017

and CrI.M.P.(MD) No.6503 of 2017

Andichamy

.. Appellant/Accused No.2

vs.

State Represented by
Inspector of Police,
Chinthamanipatty Police Station,
Karur District.
(Crime No.62 of 2012)

.. Respondent/Complainant

Criminal appeal is filed under Section 374 of Criminal Procedure Code against the judgment and conviction dated 05.08.2015, by the learned Sessions Judge, (Mahila Fast Track Court), Karur in S.C.No.43 of 2013.

For Appellant
For respondent

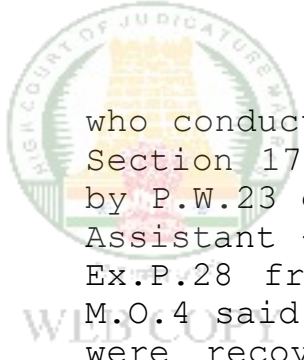
: Mr.T.Senthil Kumar
: Mr.R.Ramachandran
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by
M.M.SUNDRESH, J)

The appellant herein, who was accused No.2 in S.C.No.43 of 2013 on the file of Sessions Judge, Mahila Fast Track Court, Karur, was convicted for the offence under Section 302 and 392 I.P.C. along with A1, A3 and A4. Challenging the same, the present appeal has been filed.

2.The case of the prosecution is that accused Nos.1 to 3 were working under the deceased, being a lady residing alone in her farm house, from 28.03.2012 onwards. On 29.03.2012 at about 10.00 p.m. they smothered her and took the jewels M.Os.1 to 5. On the next day, P.W.1, her son visited the deceased - farm house and found her dead. Ex.P.1 is the complaint lodged by him before P.W.22, Sub-Inspector of Police. The case was registered under Section 174 Cr.P.C. Thereafter, investigation was handed over to P.W.23, the investigation officer. P.W.23 sent the body for autopsy to Government Hospital, Karur. Thereafter, statements were recorded from the witnesses under Section 161(3) Cr.P.C. ~~Close report given by Mahazhar and Sketch was prepared on 31.03.2012. The inquest was conducted under Ex.P.24 on the same day. M.Os.8 to 10 were recovered and forwarded to the Court. P.W.19 is the Doctor,~~



who conducted postmortem. On 05.04.2012, the case was altered from Section 174 Cr.P.C. to 302 and 392 I.P.C. A1 to A3 were arrested by P.W.23 on 06.04.2012 in the presence of V.A.O. - P.W.11 and his Assistant - P.W.12. Confession Statements have been recorded under Ex.P.28 from A1 in the presence of P.W.11 and P.W.12. M.O.3 and M.O.4 said to have been pledged through A4 with the help of P.W.14 were recovered through P.W.15, being the Manager of a Finance Company. A2, namely, the appellant gave a confession statement under Ex.P.29, pursuant to which M.O.1 was recovered. Under Ex.P.30, confession statement was recorded from A3 and M.Os.2 and 13 were recovered. Similarly M.O.5 was recovered from A.4. Finally, on completing the investigation, P.W.24 laid the charge sheet against the accused under Section 302 and 392 I.P.C.

3. Based on the above materials, the Trial Court framed charges as mentioned above. During the trial, on the side of the prosecution, as many as 24 witnesses were examined and 33 documents were exhibited, besides 13 Material Objects. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false.

4. The trial Court convicted the accused by placing reliance upon Section 114 of the Indian Evidence Act by drawing adverse inference, primarily relying upon the substantial recovery made. Thus, the present appeal has been filed as against the same by the appellant.

5. As against the conviction rendered by the trial Court, A3 and A4 filed appeals before this Court in CrI.A.(MD) Nos.149/2016 and 206/2015 respectively. By the judgment dated 21.10.2016, both the appeals were allowed, holding that the prosecution has failed to prove the case beyond reasonable doubt.

Submissions:

6. The learned counsel appearing for the appellant would submit that the petitioner is similarly placed as that of the appellant in CrI.A.(MD) No.149 of 2016. Therefore, the decision rendered will have to be made applicable to the appellant also. P.W.1 has not made mention about missing jewels in Ex.P.1. P.W.2 has stated that the deceased was not wearing nose stud. He has also given a statement to the investigation officer that the deceased was not wearing any nose stud. The medical evidence available does not support the case of the prosecution as there was no definite opinion given for the cause of death under Ex.P.19. The witnesses for arrest, confession and recovery, namely, P.Ws.11 and 12 turned hostile. P.W.11 states that recovery Mahazar was prepared only in the police station. P.W.1 himself has admitted that accused was kept in the police station, much prior to the autopsy. The accused was kept in the police station, for nearly a week. There is serious doubt as to whether the deceased was wearing M.Os.1 and 2, which is not being proved. The parameters required for circumstantial evidence



with reference to link, chain and pointing to the accused alone are not satisfied. Therefore, the appeal will have to be allowed.

7. The learned Additional Public Prosecutor appearing for the State would submit that in as much as recovery has been proved, the conviction will have to be confirmed, though accepted that the appellant stands in the same footing as that of A3.

8. We have considered the rival submissions and perused the evidence available on record.

Discussion:

9. It is the specific case of the prosecution that A1 to A3 while working under the deceased committed the offence by smothering. Thereafter, took the jewels and cellphone M.Os.1 to 5. Thus the appellant stands on the same footing as that of A3. P.W.3 has turned hostile and therefore, the last seen theory itself has not been proved by the prosecution. P.W.4 is only a hearsay witness.

10. This Court while dealing with the case of A3 and A4 was pleased to hold that the prosecution has not proved that the death was not natural as there was no external injury available and the opinion given in Ex.P.19 is general in nature. P.W.19, who conducted autopsy did not give any definite opinion as to the cause of death. Insofar as recovery is concerned, it was held that there was no evidence to show that M.Os.1 to 4 recovered from the accused, namely, the jewels worn by the deceased. Similarly, the Division Bench found that there was no evidence as against A4 also, while not believing the statement of P.W.14.

11. The following paragraphs of the said judgment would be apposite:

"6. The first query was as to whether the death of the deceased would have occurred by closure of mouth and nose, for which, PW-19 has answered that there was possibility. But, during cross-examination, he has stated that the definite cause for the death cannot be stated, because the body was in a highly decomposed condition. It is common knowledge that if mouth and nose are closed, due to smothering, death would quite naturally occur. This is the general opinion given by PW-19 also. However, in the instant case, whether the death of the deceased was due to closure of mouth and nose has not been established at all. Thus, the prosecution has failed to prove that the deceased had died due to homicidal violence. The very fact that there was no external injury or any internal injury on the dead body of the deceased would go to show that the death of the deceased was due to some natural cause cannot be ruled out. Nowhere it has been elicited by the doctor that the death, in this case, would not have occurred due to some natural cause.



7. In a case of this nature, since there was no external injury or internal injury on the dead body of the deceased, it is, absolutely, necessary for the prosecution to rule out the possibility of the natural death. In this case, there is a positive evidence of PW-19, who conducted autopsy on the dead body of the deceased, that no definite opinion as to the cause of death could be given, because of the fact that the dead body was found in a decomposed condition. Thus, in our considered view, the doctor had found that the injury was only to the hyoid bone and there is no evidence that the said injury was antimortem. Thus, absolutely, there is no evidence that the death of the deceased was on account of homicide.

...

9. So far as the third accused is concerned, it is alleged that on the disclosure statement made by him, a nose screw and a sum of Rs.150/- were recovered. It is the case of the prosecution that the said nose screw allegedly recovered from the possession of the third accused was lastly worn by the deceased. But, unfortunately, in EX-P1, there is no mention about the missing of the nose screw at all. There is only a mention about the missing of a covering chain, an ear stud and a Mottal. Had it been true that a nose screw was also found missing, certainly, PW-1 would have mentioned the same in EX-P1. PW-1 has got no explanation as to why he did not mention about the missing of the nose screw in EX-P1. Thus, it is difficult for us to believe that there was missing of nose screw also from the dead body of the deceased. If the same is disbelieved, we find no other evidence against the third accused.

10. So far as the fourth accused is concerned, it is the case of the prosecution that the first accused gave a Cellphone, a pair of gold ear studs and gold mottal to the fourth accused. It is the further case of the prosecution that the fourth accused gave the same to one Mr.Muthusamy, [PW-14], who, in turn, pledged the same with Manappuram Finance Company Limited. But, absolutely, there is no evidence to prove that the said jewel was handed over by the first accused to the fourth accused. Though PW-14 has stated that on 30.03.2012, the fourth accused gave these two jewels [MO-3 and MO-4] and wanted to pledge the same and thereafter, he pledged the same with Manappuram Finance Company Limited, during cross-examination, he has stated that the fourth accused was not known to him previously. When that be so, it is difficult to believe that the fourth accused would have chosen PW-14 and handed over the jewels and pledged the same. Thus, we are unable to make any reliance on the evidence of PW-14. If once the evidence of PW-14 is



disbelieved, then, there is no other evidence to prove that these jewels were in the possession of the fourth accused. If once this part of the case of the prosecution is rejected, then, we cannot give any credence to the further case of the prosecution that the Cellphone [MO-5] was recovered from the fourth accused. Assuming that the said Cellphone was recovered from the possession of the fourth accused, there is no other evidence to prove that the said Cellphone belonged to the deceased. With reference to IMEI No.359041045329019, there was no test conducted to prove that the said Cellphone belonged to the deceased.

11. In a case of this nature, the prosecution is required to prove the circumstances projected by it beyond reasonable doubt and all such proved circumstances should establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused.

12. Here, in this case, the prosecution has failed to prove any of the incriminating circumstances, more particularly, the prosecution has failed to prove that the death of the deceased was a homicide. Thus, in our considered view, the prosecution has failed to prove the case beyond reasonable doubts. However, the Trial Court has convicted the appellants/the accused Nos.3 and 4 on mere surmise, which is not permissible in law. Thus, in our considered view, the appellants/the accused Nos.3 and 4 are entitled for acquittal."

12. In the light of the above, we are of the considered view that the reasoning adopted by the Division Bench in the judgment referred supra will have to be made applicable to the case of the appellant as well.

13. We do find that even in Ex.P.1, as stated above, no mention about the jewels. The recovery was similar between the appellant and A3. There is material contradiction in the evidence adduced on behalf of the prosecution. Cause of death is also not proved. So is the case of recovery. Being a case build on circumstantial evidence, the necessary link between the events creating a chain unerringly pointing to the accused is missing. Therefore, we are of the view that the judgment rendered by the trial Court regarding the appellant deserves to be set aside.

14. In the result, the Criminal Appeal is allowed and the order of conviction and sentence passed by the learned Sessions Judge, (Mahila Court), Karur made in S.C.No.43 of 2013 dated 05.08.2015, is set aside in respect of the appellant/A2. The appellant is acquitted of all the charges. The appellant is now undergoing sentence in the Central Prison, Trichy. In view of this judgement



acquitting him, the jail authorities are directed to set him at liberty forthwith, if he is not required in connection with any other case or proceedings. Fine amount, if any, paid shall be refunded to the appellant. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Fast Track Court, Karur.
2. The Director General of Police,
Mylapore, Chennai.
3. The District Collector,
Karur District.
4. The Superintendent of Prison,
Central Prison,
Tiruchirapalli.
(In duplicate to serve a copy to the Accused)
5. Inspector of Police,
Chinthamanipatty Police Station,
Karur District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer,
Record Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.T.Senthil Kumar, Advocate SR.No. 72072

Criminal Appeal (MD) No.269 of 2017
and CrI.M.P. (MD) No.6503 of 2017
10.08.2017

sj

JM/SV MMS/SAR 4/29.08.2017/6P/9C