



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2017

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THE HONOURABLE **MR. JUSTICE A.SELVAM**
and
THE HONOURABLE **MR. JUSTICE P.KALAIYARASAN**

Cr1.A.(MD)No.30 of 2016

Villiaraj .. Appellant/Sole Accused

Vs.

State rep.by
The Inspector of Police,
Jegathapatinam Police Station,
Kottaipattinam Taluk,
Pudukottai.

.. Respondent/Complainant

Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 15.12.2015 passed in Sessions Case No.79 of 2014 by the Mahila Court, Pudukottai.

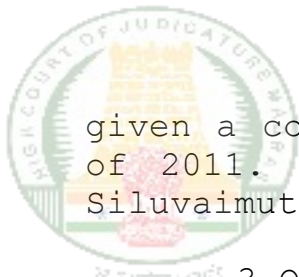
For Appellant : Mr.G.Karuppasamy Pandian
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)

The convictions and sentences dated 15.12.2015 passed in Sessions Case No.79 of 2014 by the Mahila Court, Pudukottai are being challenged in the present Criminal Appeal.

2.The sum and substance of the case of the prosecution is that the accused is the husband of the deceased and prior to six years from the date of occurrence, both of them have got married. Due to advice of brothers of the accused, he used to torture the deceased and prior to four years, the accused has set fire to the house, where the deceased resided and subsequently a compromise has been effected. On 27.09.2011 at about 08.00 am, the deceased has gone to Ambalavanenthal and returned to home. On the same day at about 09.30 am, while the deceased has proceeded on the eastern side of Alinchiyenthal tank, the accused has followed her and with an intention to murder, he attacked her by using an iron rod and she succumbed to his overtacts, she passed away. After occurrence, the father of the deceased by name Siluvaimuthu has



given a complaint and the same has been registered in Crime No.82 of 2011. The complaint alleged to have been given by the said Siluvaimuthu has been marked as Ex.P1.

3. On receipt of Ex.P1, the Investigating Officer viz., PW13 has taken up investigation; examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Kalimuthu (PW7) has conducted post-mortem and he found the following internal and external injuries:

External Injuries:

1. Laceration 12x10x5 cm over temporo parietal region (extending both sides) with brain exposed
2. Laceration 20x10x10 cm straight from left pinna to 4cm behind the right pinna exposing brain.
3. Crush amputation of left thumb at MCP joint.
4. Laceration size about 8x5x3 cm over the left wrist joint.
5. Laceration size about 15x10x6 cm over the posterior aspect of left elbow exposing bone, tendon, muscle.

6. Laceration 4x3x2 cm over the left side back.

Internal Examination:

Abdomen : Bowel - Distended stomach - empty. No hemoperitoneum, liver, spleen, kidney - NAD.

Chest : Ribs NAD, sternum - NAD, Lungs : congested, NAD

Heart - congested, no hemoperitoneum.

Extremities : NAD

Skull : Fracture bilateral temporal, parietal, occipital bone is present.

Blood clot size about 10x8x8 cm present within the cranial cavity.

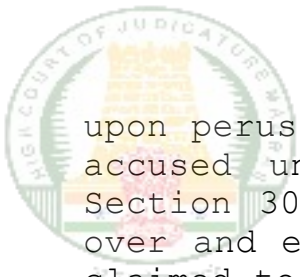
Laceration at brain 10x8x8 cm involving parietal & occipital lobes.

Spinal cord : NA.

4. The post-mortem report has been marked as Ex.P3. After completing investigation, laid a final report on the file of the Judicial Magistrate Court, Aranthangi and the same has been taken on file in PRC No.5 of 2012.

5. The Judicial Magistrate, Aranthangi after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, committed the case to the Court of Sessions, Pudukottai Division and taken on file in Sessions Case No.79 of 2014 and subsequently made over to the

6. The trial Court after hearing arguments of both sides and



upon perusing relevant records has framed first charge against the accused under Section 498(A); second charge against him under Section 302 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

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7. On the side of the prosecution, PWs.1 to 13 have been examined and Exs.P1 to P11 and M.Os.1 to 8 have been marked.

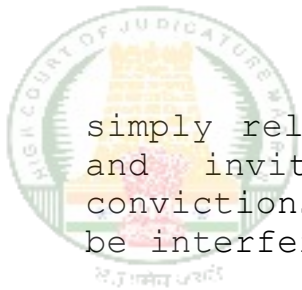
8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. The accused has also been found guilty under Section 498(A) of the Indian Penal Code and sentenced to undergo three years rigorous imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. The crux of the case of the prosecution is that prior to six years from the date of occurrence, the accused has married the deceased. After some time, the accused has used to torture her due to ill-advice given by his brothers and others. Prior to four years from the date of occurrence, the accused has set fire to the house where the deceased has resided. On 27.09.2011 at about 08.00 am, the deceased has gone to Ambalavanenthal and proceeded towards home at about 09.30 pm., Near Alichiyenthal tank, the accused with a intention to murder, has attacked her by using an Aruval and due to his overtacts she passed away.

11. Even though on the side of the prosecution PWs.1 to 13 have been examined, the trial Court has relied upon the evidence given by PWs.3 and 4 and on the basis of their evidence, the accused has been found guilty under Sections 302 and 498(A) of the Indian Penal Code and imposed sentences as mentioned supra.

12. The learned counsel appearing for the appellant/accused has meticulously contended to the effect that on the basis of evidence given by PW3 during the course of cross examination, he cannot be considered as an eye witness and further on the basis of evidence given by PW4, the Court can easily come to a conclusion that the evidence given by PWs.3 and 4 are mutually incongruous and the trial Court without properly analysing their evidence has



simply relied upon the evidence given in their chief examination and invited convictions and sentences and therefore, the convictions and sentences passed by the trial Court are liable to be interfered with.

13. The learned Additional Public Prosecutor appearing for the respondent has argued that during the course of cross examination, PW3 has stated in his evidence that after reaching the place of occurrence, he enquired about the then injured (deceased) as to how she sustained injuries and she stated that her husband has attacked her and apart from the evidence given in chief examination, PW3 has given concrete evidence in cross examination. Likewise, PW4 has also corroborated the evidence given by PW3 and the trial Court after considering the over all evidence available on record has rightly invited convictions and sentences against the appellant/accused and therefore, the convictions and sentences passed by the trial Court are not liable to be interfered with.

14. As indicated above, in the instant case, except the evidence of PWs.3 and 4, no other eye witness is available on the side of the prosecution. Under the said circumstances, the evidence given by PWs.3 and 4 should be scrutinised very carefully.

15. In the chief examination, PW3 has clearly admitted to the effect that he and PW4 are doing sheep buying and vending business. On the date of occurrence, both of them have taken tea in a tea shop and at that time heard a queer noise and both of them have gone there and found the accused. But during the course of cross examination, he has stated to the effect that the tea shop where they have taken tea is situate one kilometre away from the place of occurrence. Therefore, the entire evidence given by PW3 is not at all sufficient so as to connect the accused with the crime.

16. Now the Court has to look into the evidence given by PW4. The specific evidence given by PW4 is that after taking tea, he and PW3 have gone to an isolated place for attending call of nature, from there, both of them have heard queer noise and rushed to the place of occurrence, where he found the accused. Therefore, the evidence given by PW4 is totally contra to the evidence given by PW3.

17. It is true that during the course of cross examination, PW3 would say that after reaching the place of occurrence, he enquired about the then injured (deceased) and she stated that her husband has attacked her. But the said aspect is not found either in the statement recorded from her or in the statement recorded from him under Section 161(3) of the Code of Criminal Procedure, 1973. Therefore, viewing from any angle, the evidence given by PWs.3 and 4 are not



at all sufficient for coming to a conclusion that in the place of occurrence the accused has attacked the deceased by using an aruval. Since the evidence given by PW3 is mutually contradictory and also incongruous to the evidence given by PW4, this Court is of the considered view that both PWs.3 and 4 are not reliable witnesses. Since PWs.3 and 4 are not reliable witnesses and their evidence are mutually contradictory in nature, absolutely there is no evidence on the side of the prosecution for the purpose of connecting the accused with the crime.

18.The trial Court without considering the fragile and rickety type of evidence given by PWs.3 and 4 has erroneously invited convictions and sentences against the appellant/accused. In view of the discussion made earlier, this Court is of the view that the argument advanced on the side of the appellant/accused is really having merit, whereas, the argument advanced on the side of the respondent cannot be accepted and altogether, the present Criminal Appeal deserves to be allowed.

19.In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellant/accused in Sessions Case No.79 of 2014 by the trial Court are set aside. The appellant/accused is acquitted. Fine amounts if any paid by him are ordered to be refunded forthwith.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Sessions Judge, Mahila Court, Pudukottai

2.The Inspector of Police,
Jegathapatinam Police Station,
Kottaipattinam Taluk, Pudukottai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4 The Judicial Magistrate, Aranthangi

5 The Chief Judicial Magistrate, Pudukottai

6 The District Collector, Pudukottai District

7 The Director General of Police, Chennai

8 The Superintendent, Central Prison, Trichy.

Crl.A.(MD)No.30 of 2016

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