



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2017
Pronounced on : 21.12.2017

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CORAM:

THE HONOURABLE MR .JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.A.[MD].No.422 of 2016

Sappan @ Shanmugaiah

.. Appellant/Sole accused

Vs .

State rep. by the
Inspector of Police,
Maniyachi Police Station,
Maniyachi,
Thoothukudi District.
Crime No.13 of 2013

.. Respondent/Complaint

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 16.02.2016, made in S.C.No.98 of 2015, by the learned II-Additional District and Sessions Judge, Thoothukudi District.

For appellant : Mr.R.Anand
for Mr.Jude Ponniah

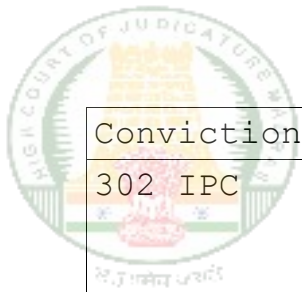
For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 16.02.2016, made in S.C.No.98 of 2015, by the learned II-Additional District and Sessions Judge, Thoothukudi District.

2. The appellant was convicted and sentenced to undergo imprisonment as detailed hereunder:



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Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one year.
392 IPC	To undergo rigorous imprisonment for seven years.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months.

(Both the sentences were ordered to run concurrently)

3.The case of the prosecution is consciously narrated below:

(a) On 07.04.2013, PW1 - Village Administrative Officer of Melapandiyapuram Village got an information that a female dead body (later identified as Vembu Thangam) in a decomposed stage was found lying near a thorny bush area at Melapandiyapuram Village. Based on the said information, PW1 along with the Village Assistant one Velusamy went to the place where the dead body was stated to be lying and found the dead body in a highly decomposed stage and saree was lying away from the dead body. Hence, he went to Maniyachi Police Station and lodged a complaint (Ex.P1) along with the Village Assistant. On receipt of the said complaint, PW22 registered the same in Crime No.13 of 2013 under Section 174 Cr.P.C. Then, he forwarded Ex.P1 - Complaint and Ex.P18 to the Judicial Magistrate Court No.I, Kovilpatti and also to the Inspector of Police - PW25.

(b) PW25 took up the investigation, on the same day, at 12.45 p.m. and rushed to the spot and prepared an observation mahazar and rough sketch in the presence of PW1. He found the dead body, aged about 30 years in a decomposed stage and due to high decomposition, hair of the deceased was found separated from the head. He recorded the statements of PW1, PW2, PW3 and others. He conducted inquest on the body of the deceased in the presence of panchayatars. PW25 recovered a saree (MO.1), a pair of sleeper (MO.2) under the mahazar. Then, he sent a request to the Medical Officer at Ottapidaram Government Hospital to conduct postmortem on the dead body.

(c) On receipt of the said letter, on 08.04.2013 at 3.15 p.m., PW18 - Dr.C.Manoharan conducted postmortem on the dead body of the deceased. He found the following injury:

"On dissection of necks:

Muscles in the neck dark brown in colour. Right stemomastoid muscle found torn. Dark brown coloured blood clots seen underneath the skin and in the places of muscles. Thyroid catilage-broken with surrounding Bruise. Hyoid bode-normal.



Larynx and trachea-dark brown in colour."

PW18 gave opinion that the deceased would appear to have died of violent compression over the neck. Death would have occurred 3-5 days prior to the autopsy. No poison was detected in the viscera report. Ex.P8 is the postmortem certificate. Ex.P9 is the viscera report.

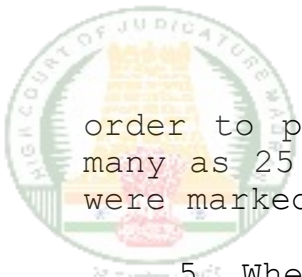
(d) PW25, after completion of postmortem, recovered a pair of brass bangle - MO.7, a jacket - MO.3, Petticoat - MO.8 and a broken hair clip - MO.9, which were in the body of the deceased. Thereafter, PW25 recorded the statement of PW5, PW4, PW9 and PW2. On 09.04.2013, PW25 examined PW3, PW18 and others and recorded their statements. Based on the information published in the newspaper that an unidentified dead body is found, the mother of the deceased viz., Vinayagam - PW10 went to the Police station and identified the dead body of the deceased. In order to ascertain the identity of the deceased, PW25 has sent requisition letters to the Forensic Department for superimposition test and DNA test.

(e) Based on the statements given by PW10 and the father of the deceased viz., Paulraj, and medical opinion given by the postmortem doctor - PW18 that the deceased would appear to have died of violent compression over the neck, PW25 altered the FIR into one under Sections 302 and 392 IPC and forwarded the same to the Judicial Magistrate Court.

(f) PW25, during the course of investigation on 10.04.2013 at 6.00 a.m., arrested the accused at Paraikuttam Bus-stop. On such arrest, the accused gave a voluntary confession in the presence of PW1 - VAO, in which he disclosed the place where he had hidden the gold jewels of the deceased. The admissible portion of the confession statement of the accused is marked as Ex.P4. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced a pair of gold ear stud (MO.4), Thali (MO.5) and gold chain (MO.5). PW25 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court. Thereafter, PW25 collected the reports of the Superimposition test and DNA test, wherein it is stated that the skull of the deceased matched with the photograph of Vembuthangam and the biological parents of the deceased are Paulraj and Vinayagam (PW10).

(g) PW25, during the course of investigation, examined PW24 - forensic expert and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court had framed two charges i.e., 302 and 392 IPC, against the accused. When the accused was questioned in respect of the charges, he pleaded innocence. In



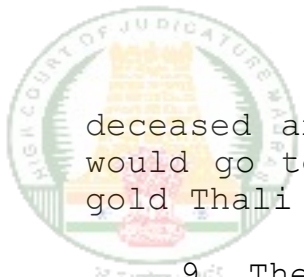
order to prove the charges, on the side of the the prosecution as many as 25 witnesses were examined as PW1 to PW25 and Exs.P1 to P31 were marked, besides five Material Objects (MOs.1 to 9).

5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, on the side of the accused, no one was examined and no document was marked.

6. The trial Court, after considering the oral and documentary evidence, has found the accused guilty of both the charges viz., under Sections 302 and 392 IPC and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant/accused has come up with this appeal.

7. The learned counsel for the appellant mainly contended that it is a case of circumstantial evidence. The prosecution relied upon two theories i.e, (i) last seen theory and the recovery of gold jewels. In order to prove the last seen theory ie., the deceased was lastly seen alive in the company of the accused, PW3 to PW9 were examined. But, they turned hostile and did not support the case of the prosecution. The other evidences relied upon by the prosecution are PW14 and PW15. But, their evidences cannot be believed for the reason that PW14 is a close relative of PW10 - mother of the deceased and PW15 is the tenant of PW10 and their statements were sent to the Court very belatedly ie., after one year and four months, which would go to show that the evidences of PW14 and PW15 have been purposely pressed into service after due deliberation and for fixing the accused in the commission of the offence. The learned counsel for the appellant would further submit that the since the time of duration between the missing date (03.04.2013) and the date on which the body was found (07.04.2013) was too long, the possibility of death having occurred at the instance of others cannot be ruled out and therefore, the theory of last seen alive cannot be relied upon based on the evidences of PW14 and PW15.

8. The learned counsel for the appellant would next submit that the other circumstances relied on by the prosecution is recovery of gold jewels from the custody of the accused. In this regard, the learned counsel appearing for the appellant invited the attention of this Court to the evidence of PW10 - mother of the deceased and submitted that the mother of the deceased had stated in her evidence that she identified MO.4 to MO.6 in the Police Station on 09.04.2013 itself, whereas the investigating officer has stated in his evidence that the accused was arrested only on 10.04.2013, which would falsify the case of the prosecution that the jewels were recovered from the accused based on his confession statement. The learned counsel for the appellant would further submit that PW17 - husband of the deceased has stated in his evidence that since the deceased was infected with HIV virus, he already got divorce from the



deceased and he got back the gold Thali from the deceased, which would go to show that the prosecution has failed to prove that the gold Thali recovered from the accused is that of the deceased.

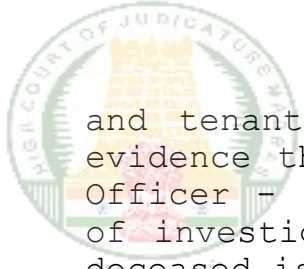
9. The learned counsel for the appellant would further submit that in one place PW10 has stated in her evidence that the deceased left the house stating that she is going to see her husband, whereas in the other place, she has stated that before leaving the house, the deceased did not inform her and that she did not see the deceased before leaving the house. Therefore, the evidence of PW10 cannot be believed. More over, the conduct of PW10 is unnatural as she did not take any efforts to give a complaint about missing of her daughter to the Police Station till 09.04.2013. Further, the prosecution has failed to prove the chain of circumstances and there are missing links in the chain. Thus, the learned counsel for the appellant prayed to set aside the conviction and sentence passed by the trial Court.

10. The learned Additional Public Prosecutor appearing for the respondent submitted that the prosecution has proved the last seen theory through the evidences of PW14 and PW15 and that the mother of the deceased - PW10 has identified the jewels of the deceased and also the body of the deceased. The accused has not given any explanation with regard to the recovery of gold jewels from him in his 313 statements. Thus, the prosecution has categorically proved the guilt of the accused beyond reasonable doubts. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

11. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

12. It is a case of circumstantial evidence. In a case of this nature, it is absolutely necessary for the prosecution to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain so as to unerringly point to the guilt of the accused and there should not be any alternative hypothesis which would be inconsistent with the guilt of the accused. In this case, the prosecution has relied on two circumstances. They are (a) last seen alive theory and (b) recovery of the gold jewels - MOs.4 to 6 of the deceased from the custody of the accused. In order to prove the last seen theory, the prosecution had examined PWs.3 to 9 and 11 to 15. Out of the said witnesses, PWs.3 to 9, 11 to 13 turned hostile for the reasons best known to them and they did not support of the case of the prosecution. Hence, the last seen alive theory rests only upon the evidences of PW14 and PW15.

13. The learned counsel for the appellant would submit that the evidence of PW14 and PW15 cannot be relied upon as they are relative



and tenant respectively of PW10. Though PW14 has stated in his evidence that he is a neighbour of the deceased, the Investigating Officer - PW25 has admitted in his evidence that during the course of investigation, PW14 has stated that PW10 is his sister and the deceased is his sister's daughter. PW15 has stated in her evidence that she is the neighbour of PW10. But, in the cross examination, PW15 has stated that she is residing in the house of PW10. Merely because, PW14 is a relative and PW15 is a tenant of PW10 - mother of the deceased, their evidences cannot be disbelieved. It requires only a close scrutiny. Therefore, the said submission cannot be accepted.

14. It is seen that PW14 and PW15 have stated in their evidences that they have lastly seen alive the deceased with the accused. But, PW14 has admitted in his cross examination that he was examined in the Police Station on 10.04.2013 at 4.00 p.m. before the arrest of the accused, however, his statement was not recorded on that day. PW14 has further stated in his evidence that before coming to the Police station, he did not inform to PW10 about seeing the deceased along with the company of the accused on 03.04.2013. But, according to PW25 - investigating officer and PW1 - Village Administrative Officer, the accused was arrested in the morning hours on 10.04.2013 at 6 a.m. itself, which would go to show that PW14 was examined only after the arrest of the accused and the possibility of giving false evidence fixing the appellant / accused cannot be ruled out as he being related to the deceased.

15. In the cross examination, PW15 has stated that only one week before she came to know about this case and the Police never examined her with regard to this case and that she did not state anything about lastly seeing the deceased to the Police before that. This contradictory statement made by PW15 creates doubt that after due deliberation and discussions, she would have been examined long after the occurrence, in order to strengthen the case of the prosecution.

16. The investigating officer - PW25 has stated in his evidence that he examined PW14 and PW15 and recorded their statements on 11.04.2013. In the cross examination, PW25 has categorically admitted that the 161 statements of PW14 and PW15 were sent to the Court only on 12.08.2014 ie., after one year and four months from the date of recording the statement. The investigating officer - PW25 has also not given any explanation for such delay in sending 161 statements of the witnesses - PW14 and PW15 to the Court. The unexplained delay in sending 161 statements of PW14 and PW15 to the Court would further strengthen the doubt with regard to the creation of evidences of PW14 and PW15 long after the occurrence. Therefore, the evidences of PW14 and PW15 cannot be believed. As stated earlier, in this case, except the evidences of PW14 and PW15, the other witnesses viz., PWs.3 to 9 and 11 to 15 examined to speak about the last seen theory, have already turned hostile. Since the evidences of PW14 and PW15 are also not believable, the last seen

theory projected by the prosecution falls to the ground.

17. More over, it is submitted by the learned counsel for the appellant that in the intermittent period i.e., between the date of missing (03.04.2013) and the date on which the body was found (07.04.2013), the occurrence would have happened at the instance of others and therefore, the last seen theory cannot be acted upon, this Court finds some force in the said submission.

18. The next circumstance relied upon by the prosecution is the recovery of the gold jewels from the accused. According to PW1 and - VAO and PW25- investigating officer, on 10.04.2013 at 10.15 a.m. MOs.4 to 6 were recovered from the accused, based on his confession statement. But, PW10 - the mother of the deceased, has stated in her chief examination that on 09.04.2013 the Police showed MOs.4 to 6 which were stated to be recovered from the house of the accused, in the Police Station and she identified that the said jewels were worn by the deceased while leaving the house. Further, PW10 has stated in her evidence that the accused was arrested three days after her enquiry by the Police. The said evidence of PW10 creates doubt about the arrest of the accused and about the recovery of MOs.4 to 6 from the accused.

19. More over, PW17, who is the husband of the deceased, has stated in his evidence that since the deceased was inflicted with HIV, he left her in the house of PW10 and subsequently, he got divorce from the deceased in the Court and got back the gold Thali which was tied by him at the time of marriage, from the deceased. This evidence of PW17 creates doubt about the recovery of MO.4. Though PW10 has stated in the cross examination that MO.4 was worn by the deceased at their cost, in the cross examination, PW10 was unable to say where it was purchased or where it was made. Thus, the evidence of PW10 does not inspire the confidence of the Court.

20. As rightly stated by the learned counsel for the appellant, though in the chief examination PW10 has stated that after informing her, the deceased went out of the house wearing MOs.1, 3 to 6, in the cross examination, she has admitted that she did not see the deceased leaving the house. However, PW10 has again stated that the deceased went out of the house after informing her. Had it been true that the deceased went out of the house after informing PW10, definitely, within two or three days of leaving of the deceased, PW10 would have given a complaint for non-returning of the deceased, to the Police. But, PW10 has categorically admitted that till 09.04.2013 she did not give any complaint to the Police. It would go to show that PW10 would not have seen the deceased leaving the house. When that be so, she could not have also seen the wearing of the jewels by the deceased while leaving the house. Thus, the conduct of PW10 and contradictory statements of PW10 and PW17 would go to show that the prosecution has not clinchingly proved the recovery of the jewels from the accused and that those jewels were worn by the deceased.



21. According to the prosecution, in order to grab the jewels from the deceased, the accused called the deceased and travelled along with the deceased in the train and at the outskirts of Melapandiyapuram, the accused committed the murder of the deceased and grabbed the jewels. But, none of the witnesses have stated about the motive for the occurrence. Thus, the prosecution has failed to prove the motive.

22. From the above discussions, it is clear that the circumstances projected by the prosecution have not formed a complete chain and there are broken links. Hence, we have no hesitation to hold that the prosecution has abruptly failed to prove the case beyond reasonable doubts and the conviction and sentence imposed by the trial Court on the accused are liable to be set aside.

23. In the result, this Criminal appeal is allowed and the conviction and sentence imposed by the trial Court on the appellant in S.C.No.98 of 2015 are set aside and he is acquitted from the charges. Fine amount, if any, paid shall be refunded to the appellant. It is submitted that the appellant is in prison. Hence, the appellant is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

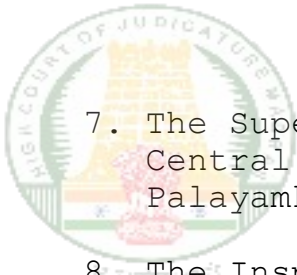
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Sub Assistant Registrar

To

1. The II-Additional District and Sessions Judge,
Thoothukudi District.
2. -do- through The Principal District Judge, Tuticorin.
3. The Judicial Magistrate No.I, Kovilpatti.
4. -do- through The Chief Judicial Magistrate,
Tuticorin.
5. The District Collector, Tuticorin.

6. The Director General of Police,
Mylapore, Chennai



7. The Superintendent,
Central Prison,
Palayamkottai.

8. The Inspector of Police,
Maniyachi Police Station,
Maniyachi,
Thoothukudi District.

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

Copy To:-

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

GCG

TE/SV-MMS/SAR-3 : 11/01/2018 : 9P/12C

Judgment made in
Cr1.A.[MD].No.422 of 2016
Dated: 21.12.2017