



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 11.12.2017
Pronounced on : 21 -12-2017

WEB COPY

CORAM:

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

Criminal Appeal (MD) No. 428 of 2016

Arockiasamy

.. Appellant

Versus

State through
The Inspector of Police,
Sanarpatti Police Station,
Dindigul District.

.. Respondent

Appeal filed under Section 374 of Code of Criminal Procedure against the Judgment dated 23.02.2015 passed in Sessions Case No. 87 of 2011 on the file of Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Dindigul and set aside the conviction and sentence imposed against the Appellant.

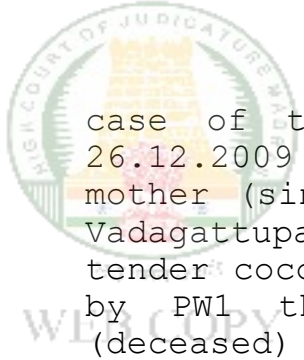
For Appellant : Mr.R.Alagumani
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

R. SUBBIAH, J

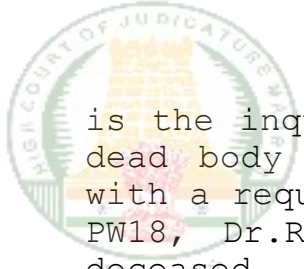
The appellant is the sole accused in S.C. No. 87 of 2011 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Dindigul. He stood charged for the offences punishable under Section 324 and 302 of IPC. After trial, the appellant was convicted for the offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life together with fine of Rs.1,00,000/- failing which to undergo simple imprisonment for three years. The appellant was also convicted for the offence punishable under Section 324 of IPC and sentenced to undergo simple imprisonment for one year with fine of Rs.500/- failing which to undergo simple imprisonment for one month, The sentences were however ordered to run concurrently.

2. The deceased in this case is Grahavari Mary, who is the wife of the accused/appellant herein and mother of PW1 and 2. The



case of the prosecution, as set forth in the complaint dated 26.12.2009 given by PW1 is that he was residing along with his mother (since deceased), father (appellant) and his brother PW2 at Vadagattupatti. The accused in this case is engaged in selling tender coconut and thus, is eking out his livelihood. It was stated by PW1 that there were frequent quarrel between his mother (deceased) and the accused (his father) due to the fact that the accused suspected the fidelity of the deceased. It was further stated that 15 days prior to the occurrence, there was a quarrel between his mother and father owing to which his mother left the matrimonial house and stayed at the house of uncle of PW1. Thereafter, there was a conciliation meeting convened among elders in the Villagers namely Mr. Mariya Arockiyam (PW6), Savarimuthu @ Chinnakalai (PW5) and the Panchayatars convinced the deceased to join the accused in the matrimonial home and accordingly, the deceased came back to the matrimonial home. On 25.12.2009, in the evening, the accused was engaged in fencing the front portion of the house with thorns and it was objected to by PW1. Similarly on 26.12.2009 at about 8.30 am, the accused continued the fencing work in the front portion of the house with thorns and once again, PW1 objected to it and asked his father/accused to remove the fencing. Enraged by this, the accused shouted at PW1 by stating that it is his mother (deceased) who was instrumental for him to object to the fencing of the front side portion and by saying so, he picked up a small stone and hit PW1 on his head. PW1 sustained bleeding injuries on his head and on seeing this, the deceased questioned the accused as to why he is hitting PW1 with the stone. Infuriated by this, the accused went near the Verandah of the house, picked up the sickle used for cutting the tender coconut, abused the deceased with filthy language and cut her in the left side neck, left side shoulder and in the left hand indiscriminately. On receipt of such cut injuries, the deceased fell down. At that time, on seeing Arulraj, PW2, brother of PW1 coming inside the house, the accused ran away from the scene of occurrence. In connection with this occurrence, PW1 has given the complaint to the Sub-Inspector of Police, Shanarpatty Police Station at 09.15 hours requesting to take action against his father who has committed such a brutal act in his presence.

3. On receipt of the complaint dated 26.12.2009, Ex.P10, PW17, Sub Inspector of Police, registered a case in Crime No. 626 of 2009 for the offence punishable under Section 324 and 302 of IPC. Ex. P11 is the First Information Report and it was forwarded to the Court. After registration of the case, PW17 sent PW1 to the hospital for treatment for the injuries sustained by him in his head. Ex.P7 is the Medical Memo issued by PW17 to PW1. Thereafter, PW17 handed over a copy of the First Information Report - Ex.P11 to PW19. On receipt of Ex.P11, PW19, Inspector of Police proceeded to the scene of occurrence and drew a rough sketch in the presence of witnesses Anand (PW10) and Michael. Ex.P13 is the rough sketch. PW19 thereafter conducted inquest over the dead body of the deceased from 11.15 am to 13.15 pm in the presence of Panchayatars. Ex.P14



is the inquest report. After conclusion of inquest, PW19 sent the dead body to the hospital through Head Constable Rajendran, PW15 with a requisition letter. On the basis of such requisition letter, PW18, Dr. Rajendran conducted postmortem on the dead body of the deceased. Ex.P12 is the postmortem report in which PW18 has subscribed his opinion as follows:

"The body was first seen by the undersigned at 03.15 pm on 26.12.2009. Its condition then was Rigor Mortis present in all the four limbs. Post-mortem commenced at 03.15 pm on 26.12.2009.

Appearances found at the Post-mortem:-

A moderately nourished female body lies on its back, Symmetrical, Eyelids - closed, Tongue - inside teeth.

External Injuries:-

- 1) A cut injury of 16 x 16 x 3 cm over the left shoulder exposing bone
- 2) A cut injury of 16 x 5 x 5 cm over the back of neck with spinal cord fracture
- 3) A cut injury of 9 x 10 x 3 cm over the left side of neck
- 4) A lacerated injury of 5 x 4 cm below the neck just left side of hyoid bone
- 5) a cut injury of 10 x 5 x 3 cm over the left wrist exposing fracture wrist joint with fracture three fingers.
- 6) a cut injury of 4 x 3 x 2 cm over the right side of neck.

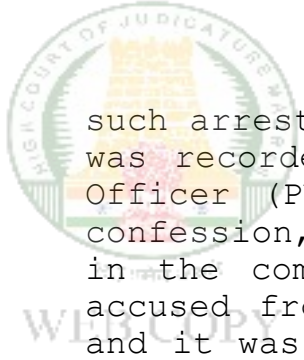
Postmortem Examination:-

Thorax no fracture ribs, Heart chambers - Right full, left empty. Lungs, Liver, Spleen and Kidneys - pale. Hyoid bone - Intact, Stomach - Empty. Uterus - normal in size - Cavity - Empty. Skull - fracture base of skull left side. Membrane - Intact - Brain - Pale.

Opinion as to the cause of death

The deceased would appear to have died of shock and haemorrhage due to multiple cut injuries and death could have occurred 06-08 hours prior to autopsy.

4. In the meantime, in continuation of the investigation carried out by PW19, he collected blood stained cement floor and sample cement floor and prepared a Mahazar for recovering the same from the scene of occurrence namely Mos 4 and 5 in the presence of the same witnesses namely Anand (PW10) and Michael. On the same day at 5 pm, PW19 arrested the accused near Sanarpatti Bus Stand. On



such arrest, the accused gave a voluntary confession statement which was recorded in the presence of Selvaraman, Village Administrative Officer (PW9) and Kamatchi (Village Assistant). Pursuant to such confession, PW19 recovered the sickle which was used by the accused in the commission of offence and the blood stained dress of the accused from Muthusamy Farm in the presence of the same witnesses and it was recovered by PW19 by preparing a Mahazar and sent it to the Court. Thereafter, the accused was sent to judicial custody.

5. On the same day namely 26.12.2009, PW19 recorded the statement of Velankanni (PW1), Arulraj (PW2), Soosai (PW3), Rosali (PW4), Maria Arockiam (PW6), Savarimuthu @ Chinnakalai (PW5), Sivasubramaniam (PW8), Anand (PW10) and one Michael. On 27.12.2009, PW19 examined Sesu (PW7), Mr. Ravi, Head Constable (PW14), Mr. Rajendran, Head Constable (PW15), Ayyavu, Photographer (PW12), Selvaraman, Village Administrative Officer (PW9), Santhanalakshmi, Sub-Inspector of Police (PW17) and recorded their statement. On 07.01.2010, he received the Postmortem Certificate and recorded the statement of Dr. Rajendran (PW18). ON 12.01.2010, PW19 recorded the statement of Dr. Senthil Kumaran (PW11) who treated PW1 for the injuries sustained by him on 26.12.2009 just prior to the occurrence. Thereafter, on 25.01.2010, PW19 recorded the statement of Rajasekar, Head Clerk (PW13) attached to the Court of Judicial Magistrate No.3. Thereafter, PW19 filed the charge sheet against the accused for the offences which are narrated above.

6. The learned counsel for the accused/appellant would contend that the prosecution has failed to prove the guilt against the accused/appellant beyond reasonable doubt. PW1 and 2 are the sons of the deceased and the accused and they were examined to show their presence at the time of occurrence. However, PW1 in his chief-examination has stated that on 26.12.2009, since he was suffering from fever, he went to Viraliipatti for taking treatment and when he returned to home at 9.30 am, he saw the dead body of his mother lying in the Verandah. Therefore, the presence of PW1 at the time of occurrence is very much doubtful. Further, PW1 also stated in his evidence that he was taken for treatment to the hospital by his brother, PW2 in the bicycle on 26.12.2009, hence, the presence of PW2 is also doubtful in the place of occurrence. Further, PW2 in his deposition has stated that the alleged occurrence took place in the evening of 25.12.2009, whereas, according to the prosecution, the occurrence took place in the morning at about 8.30 am on 26.12.2009. Even though it was alleged by the prosecution that prior to the death of the deceased, the accused hit PW1 with a stone and he sustained bleeding injury, the said stone was not recovered by the prosecution. Further, the prosecution witnesses have stated that the occurrence had taken place in the house, but as per the rough sketch drawn by PW19, the occurrence had taken place outside the house. Therefore, the presence of PW1 and 2 in the scene of occurrence is not proved by the prosecution. Similarly, PW3, who is the brother of the deceased, in his deposition has stated that on 26.12.2009, PW2 called him and asked him to come to the scene of

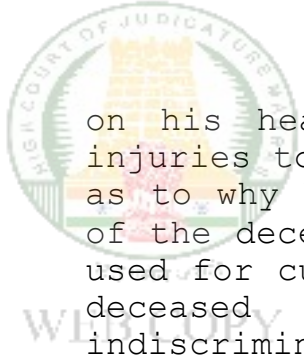


occurrence. Therefore, PW3 Is a hearsay witness who heard the occurrence from PW2 through phone. Therefore, according to the learned counsel for the accused/appellant, there is no eye witness to the incident and therefore it has to be held that the prosecution has miserably failed to prove the guilt of the accused/appellant. Therefore, the learned counsel for the appellant prayed for setting aside the Judgment of the trial court.

7. On the other hand, the learned Additional Public Prosecutor appearing for the respondents would contend that the prosecution has proved the guilt of the accused/appellant beyond all reasonable doubt by examining PW1 and 2, who are none other than sons of the accused/appellant and the deceased. Further, PW3 in his examination has affirmed that he was informed about the brutal act of the deceased by PW2 over phone. Even though PW1 had given a different version during the course of examination by stating that he is not aware of the contents of the complaint, Ex.P10 and that he was not present at the time of occurrence at all, in order to help his father, PW2 stood firm and deposed about the homicidal acts of his father. According to the learned Additional Public Prosecutor the testimony of PW2 coupled with the fact that the case was registered without any loss of time on the basis of the complaint given by PW1 would only point the guilt against the appellant and none else. Therefore, the learned Additional Public Prosecutor prayed for dismissal of this appeal.

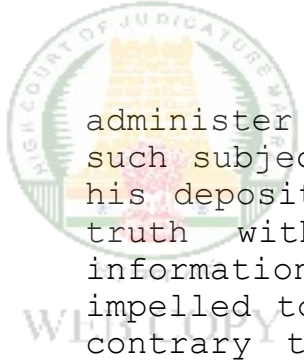
8. We have heard the learned counsel on either side and perused the materials placed on record. It is the case of the prosecution that the deceased died due to a homicidal act perpetrated against her by none other than her husband during a quarrel and such act of the appellant had caused instantaneous death of the deceased.

9. In order to prove the accusations against the accused/appellant, prosecution has examined 19 witnesses among them Pws 1, 2 were projected as the eye witness to the occurrence. Pws 1 and 2 are the sons of the deceased and the accused. PW1 has narrated in the complaint, Ex.P10 about the frequent quarrel between his parents owing to the appellant doubting the fidelity of the deceased. PW1 also gave a detailed account of the deceased leaving the matrimonial company of the accused/appellant and stayed in his uncle's house for 15 days prior to the occurrence and she came back to the matrimonial home at the instance of the elders of the Village who pacified and convinced her to rejoin the matrimonial home. While so, after the deceased came back to the matrimonial home, on 25.12.2009, the accused was engaged in erecting a thorny fence in front of the house and it was objected to by PW1 by stating that it will create problems with the neighbours. Unmindful of the request made by PW1, the accused continued with his work to erect a thorny fence. On 26.12.2009 at 8.30 am the accused continued with the same work to erect a thorny fence and once again PW1 objected to it. Enraged by such objection, the accused picked up a stone and hit PW1



on his head with the stone, which resulted in causing bleeding injuries to PW1. At this stage, the deceased questioned the accused as to why he had hit PW1 with the stone. Irked by the questioning of the deceased, the accused went to the Verandah, took the sickle used for cutting the tender coconuts and caused cut injuries to the deceased on her left neck, left shoulder and left hand indiscriminately causing her instantaneous death. In connection with this incident, PW1 gave the complaint to PW17 based on which a case in Crime No. 626 of 2009 was registered against the accused. Thereafter, PW17 issued a Medical Memo, Ex.P7 to PW1 so as to enable him to take treatment in the hospital.

10. It is pertinent to point out that in Ex.P10, PW1 specifically stated that action should be taken against his father/accused for the inhuman act committed by him which resulted in the death of his mother. However, when PW1 was examined before the trial Court, he thought of shielding the homicidal acts done by his father and deposed as if he was not at all available at the time when the occurrence took place. PW1 also went to the extent of stating as if he was not hit by his father on his head with a stone and he never sustained any injuries on his head. Unfortunately, the prosecution has neither treated PW1 as hostile nor put any question as to whether he received any injuries just prior to the occurrence at the instance of the accused and whether he had taken treatment for such injuries caused to him at Government Hospital. PW1, having witnessed the occurrence and given the complaint, Ex.P10 has chosen to depose as if he was not at all available at the time of occurrence. In any event, the presence of PW1 in the scene of occurrence is proved by the prosecution by marking Ex.P6, Accident Register issued to PW1 to take treatment for the injuries sustained by him at the time of occurrence. In Ex.P6, it is clearly stated that PW1 had sustained injuries on his head, due to assault made by his father. The exact words used in the Accident Register is that "*Alleged hand assault by his father at around 8.30 am on 26.12.2009 hit by fy; (stone) injury to his head*". Further, according to the prosecution, before committing the heinous crime of murder of the deceased, the accused had hit PW1 with a stone on his head and that was origin and basis for the occurrence. In any event, PW1 was not treated as a hostile witness and his evidence can be relied on, if it is corroborated by any other witness. Thus, it is evident that PW1, knowing fully well about the homicidal acts of the accused, has withheld the information known to him and suppressed the material particulars with respect to the overtact attributable on the part of the accused during the course of his examination before the trial court. It is needless to mention that before the trial Court, PW1 deposed on oath as has been contemplated under Section 4 of The Oaths Act, 1969 (Act 44 of 1969) and he is expected to disclose the truth within his knowledge. However, on appreciation of the entire evidence, we are of the view that PW1 has deposed contrary to truth with an intention to shield the offender, who is none other than his father. As per Section 8 of The Oaths Act, 1969, a person giving evidence on any subject before a Court or a person authorised to



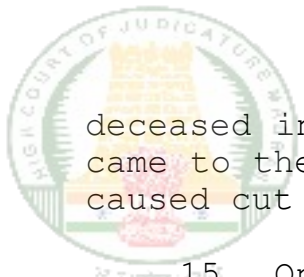
administer such oath and affirmations is bound to state the truth on such subject. We therefore conclude that PW1, during the course of his deposition before the trial Court, ought to have disclosed the truth within his knowledge and the suppression of material information within his knowledge is to be deprecated. We are impelled to hold that such an attempt on the part of PW1 to depose contrary to truth would defeat the efficacious justice delivery system.

11. PW2 is one of the witnesses to the occurrence. PW2 is one of the sons of the deceased and accused/appellant and brother of PW1. PW2 has given a cogent and clear narration of the events that unfolded on 26.12.2009 in his house. According to PW2, he had witnessed his father brutally assaulting his mother and on receipt of injuries, his mother fell down in a pool of blood. In the cross-examination, PW2 clearly stated that he never accompanied his brother PW1 for his treatment on that day, as stated by PW1 and he was very much available in the scene of occurrence and witnessed the occurrence. In the cross-examination of PW2, nothing could be elicited by the defence to disprove the case of the prosecution.

12. It is submitted by the counsel for the appellant that PW2 in his chief examination has deposed that the occurrence took place in the evening on 25.12.2009, on the contrary the occurrence took place only on 26.12.2009 and therefore, his evidence is not reliable. On perusal of the deposition of PW2 in entirety, it is seen that PW2 in his chief examination had made reference to the incident that took place on 25.12.2009 in the evening when PW1 opposed the accused/appellant from putting a fence in front of the house.. Therefore, it is evident that PW2 only referred to the incident that took place on Friday the 25.12.2009 and it was not the date on which the occurrence had taken place. In fact, in the deposition of PW2, he has categorically stated that at about 8.30 am on Saturday the 26th December 2009, his father has committed the brutal act in which his mother died instantaneously. Therefore, we are of the view that the evidence of PW2 is cogent and there is no reason to disbelieve his evidence.

13. PW3 is the brother of the deceased and uncle of Pws 1 and 2. PW3 in his deposition has stated that on 26.12.2009 at about 8.30 am, PW2 has called him over phone and stated that his father had caused cut injuries on his mother and therefore asked him to come to his home immediately. When PW3 reached the house of deceased, he saw her lying in the floor in a pool of blood. PW3 also in his deposition narrated about the frequent quarrel between the accused and the appellant as the appellant suspected the fidelity of the deceased and the fact that the deceased was compelled and constrained to stay in his house 15 days prior to this incident.

14. PW4 is the sister of the deceased and she has also narrated the frequent quarrel which emanated between the accused and the



deceased in connection with the matrimonial rift between them. She came to the occurrence spot on hearing from PW2 that the accused has caused cut injuries to the deceased and she died instantaneously.

15. On a combined reading of the deposition of prosecution witnesses coupled with the fact that the first information report, Ex.P11 in this case was registered swiftly at 09.15 hours for the occurrence that took place at 8.30 am, would further bolster the case of the prosecution that it is the accused who has committed the offences alleged by the prosecution and none else. Therefore, in the light of the clinching testimony of Pws 2 and 3 and the registration of the first information report soon after the occurrence and on consideration of the overall material evidence made available, we are of the view that the prosecution has proved beyond reasonable doubt the guilt of the accused. The trial court also, on appreciation of the evidence made available by the prosecution has come to a correct conclusion to convict the accused for the offences complained of. We therefore see no reason to interfere with the judgment passed by the trial court.

16. In the result, we confirm the Judgment dated 23.02.2015 passed in Sessions Case No. 87 of 2011 on the file of Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Dindigul. The Criminal Appeal is dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Magalir Neethimandram,
(Fast Track Mahila Court)
Dindigul.
2. The Principal District Judge, Dindigul.
3. The Chief Judicial Magistrate, Dindigul.
4. The Judicial Magistrate No.3, Dindigul.
5. The District Collector, Dindigul.
6. The Director General of Police,
Mylapore, Chennai-4
7. The Superintendent, Central Prison,
Madurai.



8. The Inspector of Police,
Sanarpatti Police Station,
Dindigul District.

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

10. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 2 CC TO Mr.R.ALAGUMANI, ADVOCATE IN SR No. 92347 & 94682

RSH

TE/SV-MMS/SAR-4 : 18/01/2018 : 9P/14C

Judgment in
Crl.A.(MD) No. 428 of 2016
21-12-2017