

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2018

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRL.A.No.111/2018

K.Pechimuthu .. Appellant / Defacto
Complainant-P.W.1

Versus

1.The State rep by
The Inspector of Police
Kamanaickenpalayam Police Station
Tiruppur District. .. 1st Respondent /
Complainant

2.P.Sathyiyamoorthy .. 2nd Respondent
/ Sole Accused

Appeal filed under section 372 Cr.P.C., to set aside the judgment of acquittal dated 14.12.2017 made in SC.No.49/2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur.

For Appellants : Mr.N.Manokaran
For R1 : Ms.M.Prabhavathi, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J]

The sole accused / 2nd respondent herein, in SC.NO.49/2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Erode, stood charged and tried for the offence u/s.302 IPC and the Trial Court, under judgment dated 14.12.2017, based on the evidence and materials, acquitted the accused on the ground that the circumstances relied upon by the prosecution, has not been established. Aggrieved over the said acquittal, the present appeal came to be filed by the defacto complainant-P.W.1 [father of the deceased].

2 Be that as it may, the facts leading to the filing of this appeal, briefly narrated and are necessary for the disposal of this criminal appeal, are as follows:-

[a] The deceased Sribharathi, aged about 19 years, is the daughter of P.W.1 - Pechimuthu, appellant herein. She was doing her final year B.Com at Kamban Arts and Science College. She used to go to the College at 8.45 a.m., and return back home at 4.30 p.m. On 11.10.2012, as usual, the deceased left her house. However, she did not return in the evening and despite the search made by the family members, she has not come back. Later on, when enquired, P.W.1 came to know that it was this accused who took her in his motorcycle. When P.W.1 enquired the accused, he told him that he dropped her in the College. Though P.W.1 continued the search, the same went on vain. Four days thereafter, P.W.1 went to the Kamanaickenpalayam Police Station and lodged a complaint under Ex.P.1.

[b] When the matter stood thus, on 24.10.2012 at about 2.00 p.m., P.W.1 was informed about a dead body of a girl was found floating in a well near the cave temple at Senjerimalai. P.W.1 went to the spot along with his wife. P.W.1, on the basis of the material objects, viz., M.Os.1 to 7, identified the dead body as that of his daughter.

[c] P.W.5-Dhandapani, land broker and a resident of Kamanaickenpalayam village had seen both the accused and the deceased together on 11.10.2012 at about 09.30 a.m. So also P.W.6-Ganesan, son of Kandasamy and he had seen them together at 09.45 a.m. on 11.10.2012. P.W.7-Ganesan, son of Ramasamy, had seen the accused alone coming in the motorcycle at 10.30 a.m. on 11.10.2012. P.W.8-Malligarjunan, has also seen the accused at 11.00 a.m. on 11.10.2012.

[d] P.W.17-Radhakrishnan, Inspector of Police at the relevant time, on receipt of the written complaint from P.W.1 on 1.10.2012, registered the crime in Cr.No.452/2012 under "Woman Missing". He forwarded the originals of Ex.P.1 and FIR to the jurisdictional Court and copies to the higher officials.

[c] P.W.17, the Investigating Officer, while he was duty on 24.10.2012, on the basis of the telephonic information, went to Senjerimalai Cave Temple and found a dead body of a woman floating in the nearby well. With the help of Palladam Fire Services Rescue officials, recovered the dead body from the well and took up the case for investigation. He came to police station at 3.00 p.m. on 24.10.2012 and altered the crime to one u/s.174 Cr.P.C. [suspicious death] from that of "Woman Missing" and despatched the Alteration Report - Ex.P.14 to the jurisdictional Court. Thereafter, at about 6.00 p.m., he again went to the scene of crime ; prepared the Observation Mahazar [Ex.P.7] and also drawn a Rough Sketch [Ex.P.15] in the presence of P.W.12 and one Sundaramoorthy. He also conducted inquest over the dead body of the deceased on 25.10.2012 between 10.30

a.m. and 12.30 p.m. in the presence of Panchayatdars and villagers and prepared Ex.P.16-Inquest Report. P.W.17, examined the witnesses and recorded their statements. He also recovered the material objects, viz., M.Os.1 to 7, under Mahazars and forwarded the dead body to the hospital for autopsy through a Constable along with a requisition.

[d] P.W.16-Dr.Jeyasingh, District Police Surgeon and Associate Professor in the Head of the Department of Forensic Medicine attached to Coimbatore Medical College Hospital, conducted autopsy on the dead body of the deceased on 25.10.2012 at about 1.15 p.m. after receipt of the requisition from the Inspector of Police. He noted the following injury:-

“இடது கீழ் தாடை எலும்பின் வளைவு, பகுதியில் சுற்று கீழ் இடது ப.ற
கழுத்தில் 6க்கு 4க்கு தோள் ஆழத்திற்கு ஒரு கன்றிய காயம்
காணப்பட்டது. ஏனைய உடல் உள்நுறுப்புகள் சீராகவும் அழகிய
நிலையிலும் காணப்பட்டது.”

Ex.P.16 is the Postmortem Certificate and Ex.P.13 is the Final Opinion wherein he had opined, after receipt of the Chemical Analysis Reports - Exs.P.10 and 11, that the deceased appeared to have due to drowning.

[e] In the meanwhile, P.W.4-Ramachandran, a resident of the said village had stated that on 06.03.2013, when he was at his residence, mother of the accused came to him and informed P.W.4 that his son has confessed about the crime of committing the murder of the deceased Sribharathi and sought help of P.W.4 to surrender his son before the police. Sometime thereafter, she brought her son, the accused herein P.W.4 produced the accused and his mother before the respondent police along with the Statement given by the accused and the Special Report under Ex.P.6.

[f] P.W.17, the Investigating Officer, effected the arrest of the accused and recorded the voluntary confession statement of the accused, admissible portion of which is marked as Ex.P.4, pursuant to which the Investigating Officer seized M.O.8-Motorcycle bearing Registration No.TN-41-AE-0295 under Mahazar. He altered the offence to one u/s.302 and 201 IPC and despatched the Charge Alteration Report-Ex.P.17 to the Court. He sent the accused for judicial remand. After the receipt of Lab Reports, examination of witnesses and recording of their statements, the Investigating Officer laid Final Report against the accused for offences u/s.302 IPC before the learned Judicial Magistrate, Palladam, who took it on file in PRC.No.25/2013 and issued summons to the accused and on their appearance, furnished them the copies of the documents u/s.207 Cr.P.C. and having

found that the case is exclusively tried by the Sessions Court, committed the same to the Court of Principal District and Sessions Judge at Tiruppur, who in turn, had made over the case to the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, who took it on file in SC.No.49/2014 and on appearance of the accused, had framed the charge u/s.302 IPC and questioned him. The accused pleaded not guilty to the charge framed against him.

[g] The prosecution in order to sustain their case, examined P.Ws.1 to 17 ; marked Exs.P.1 to 5117 besides marking M.Os.1 to 9.

[h] The accused was questioned under section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false. No oral or documentary evidence was let in on the side of the defence.

[i] The Trial Court, on consideration and appreciation of the oral and documentary evidences had acquitted the accused, by observing that the circumstances relied on by the prosecution, has not been clinchingly proved. Aggrieved over the same, the present appeal came to be filed by P.W.1 - father of the deceased Sribharathi.

3 The only contention of the learned counsel for the appellant is that the Trial Court has disbelieved the extra-judicial confession said to have been given by the accused to P.W.4 and the evidence of the witnesses who have seen the accused and deceased together lastly. It is his further contention that the said extra-judicial confession and the evidence of the last seen theory witnesses are believable and does not suffer from any infirmities and hence, prayed for allowing of the appeal, by reversing the judgment of the Trial Court.

4 Heard the submissions of Ms.M.Prababhvathi, learned Additional Public Prosecutor appearing for the State on the submissions made by the learned counsel for the appellant and perused the typed set of documents furnished by the learned counsel for the appellant.

5 In the light of the above submissions, it has to be analysed whether the Trial Court is correct in acquitting the accused or not?

6 We are aware of the fact that unless that the findings of the Trial Court is perverse, the order of acquittal recorded by the Trial Court, cannot be interfered with. In the

above background, we deem it to re-appreciate the entire evidence on record to find out whether the judgment of Trial Court is liable to be reversed or not.

7 The prosecution has mainly relied upon the following circumstances:-

- [i] Last Seen theory ;
- [ii] Motive ; and
- [iii] Extra Judicial Confession

LAST SEEN THEORY PROJECTED BY THE PROSECUTION:-

8 Though in this case, the prosecution has relied upon the circumstantial evidence, it is seen from the perusal of the evidence that the deceased and the accused are close relatives and it appears that there is also a love affair. It is the evidence of P.W.1 that his daughter used to leave the house for College everyday at 8.45 a.m. and return back at 4.30 p.m. However, on 11.10.2012, having gone to the College, she has not returned back to home and only her dead body was found floating on 24.10.2012 in a decomposed state and the body was identified by P.W.1 on the basis of the clothes worn by her. Though the prosecution has relied upon the evidence of P.Ws.5 to 8 to prove the last seen theory, the Trial Court has properly appreciated their evidence and found that their evidence is unbelievable and if really had they seen both the accused and deceased lastly together on 11.10.2012, they would have disclosed the same to the police when they were examined on 14.10.2012 itself. But, they have stated nothing about their seeing of both accused and deceased together on the occurrence date. Hence, the Trial Court disbelieved their evidence. Further, the Trial Court also disbelieved the evidence of P.W.7 on the ground that he has not informed about his seeing of the accused coming alone in motorcycle on 11.10.2012 at about 10.30 a.m., to the police immediately. He remained silent and having participated in the agitation to take action in this case, his conduct in not disclosing the factum of seeing the accused coming alone in the motorcycle at the relevant point of time to the police, made his evidence unreliable. Similarly, the evidence of P.Ws.5 and 6 and other witnesses, projected by the prosecution for the last seen theory also cannot be given much importance since those witnesses were examined only on 16.03.2013, i.e, nearly after five months, after the alleged occurrence of "woman missing" . If really the accused was seen along with the deceased on the date of occurrence on which date, the deceased was said to have been missing, the witnesses, being the residents of the same village, would not have been kept quiet. All these facts weighed the mind of the Trial Court to disbelieve their evidence.

EXTRA-JUDICIAL CONFESSION:-

9 Yet another circumstance relied upon by the prosecution is the extra-judicial confession said to have been given by

the accused to his mother, who in turn, had informed P.W.4. It is to be noted that P.W.4 is said to have recorded the extra-judicial confession from the accused in the presence of the mother of the accused. A perusal of the evidence of P.W.4 indicate that he is no way connected with the family of the accused, i.e., either with the accused or with his mother and he is totally a stranger and his evidence in the cross-examination shows that he has never interacted with the accused family prior to the recording of the extra-judicial confession. Therefore, the mother of the accused seeking the help of P.W.4, who is a stranger to their family, for surrendering of her son before police, is nothing but make belief story of the prosecution. It is also to be seen that the mother of the accused, who accompanied her son to P.W.4 and who was present at the time of recording the extra-judicial confession by P.W.4, has not even been enquired by the police nor cited as a witness by the prosecution. As already discussed, the very theory of the prosecution that the mother of the accused all along took her son to P.W.4, a stranger, requiring his help to surrender before the police is also unreliable and improbable.

MOTIVE:-

10 The last circumstance relied on by the prosecution is the motive aspect. The motive as projected by the prosecution is that there was a love affair between the deceased and the accused and since the deceased was found talking with somebody over cellphone, the same infuriated the accused to commit the crime and as a result, he pushed the deceased into the well. The above motive aspect has also been not established by the prosecution. No call details or SIM Particulars of the cellphone of the deceased was made available by the Investigating Agency in this case to show that the deceased has received phone call at the relevant time which was the reason for her death.

11 In view of the aforesaid discussion and reasonings, this Court is of the considered view that there are missing links in the chain of circumstances projected by the prosecution and the prosecution has failed to prove its case beyond all reasonable doubt, as correctly observed by the Trial Court. Hence, this Court has come to the irresistible conclusion that the findings of the learned Sessions Judge, Mahalir Needhimandram, Fast Track Mahila Court, Tiruppur, under

judgment 14.12.2017 warrants no interference at the hands of this Court and it is a fit case where the appeal deserves to be dismissed in the admission stage itself.

12 In the result, the criminal appeal is dismissed and the judgment of Acquittal rendered by the learned Sessions Judge, Mahalir Needhimandram, Fast Track Mahila Court, Tiruppur, in SC.No.49/2014 dated 14.12.2017 is hereby confirmed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

AP
To

- 1.The Principal District and Sessions Judge
Tiruppur.
- 2.The Sessions Judge
Mahalir Needhimandram,
Mahila Fast Track Court, Tiruppur.
- 3.The Judicial Magistrate,
Palladam.
- 4.The Chief Judicial Magistrate
Tiruppur District.
- 5.The Inspector of Police
Kamanaickenpalayam Police Station
Tiruppur District.
- 6.The District Collector
Tiruppur.
- 7.The Director General of Police
Mylapore.
- 8.The Public Prosecutor
High Court, Chennai.

+1 CC to Mr.N. Manokaran, Advocate sr 17196.

Cr1.A.No.111/2018

BR(CO)
SP(22/03/2018)