

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

C O R A M

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

Criminal Appeal No.313 of 2017

Rajenddran
S/o.Mariappan

... Appellant/Accused

-vs-

State: Inspector of Police,
Ayilpatty Police Station,
Namakkal District.
Crime No.304/2013

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahila Fast Track Court, Namakkal, passed in S.C.No.89 of 2015 on 12.04.2017.

For Appellant : Mr.A.Padmanaban

For Respondent : Mr.V.Arul
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by N.SATHISH KUMAR, J.)

This appeal arises against judgment of learned Sessions Judge, Mahila Fast Track Court, Namakkal, passed in S.C.No.89 of 2015 on 12.04.2017, convicting appellant/accused for offences u/s.302 IPC and sentencing him to life imprisonment and fine of Rs.2,000/- i/d 6 months Rigorous Imprisonment.

2. The case of the prosecution is that the deceased Palaniammal is the daughter of PW-1. On 29.09.2013, when PW-1 was assaulted by the appellant/accused, the deceased came and enquired the accused. At that time, the accused got enraged and attacked the deceased with coconut leaf stalk (Thenna Mattai). As a result, she succumbed to the injury.

2.1. At the instance of PW-1, Ex.P1, complaint was given, which resulted in filing FIR-Ex.P12 in Crime No.304 of 2013 on the file of respondent for offence u/s.302 IPC.

2.2. Investigation Officer-PW-13 commenced investigation and prepared Observation Mahazar-Ex.P3, drawn Rough Sketch-PW-17 and also collected blood stains on the place of occurrence and examined witnesses and conducted inquest on the dead body and the inquest report is Ex.P18. On 30.09.2013, he arrested the accused in the presence of witnesses and recorded admitted portion of confession statement-Ex.P20. In pursuant to the same, he has seized M.O.3. Finally he laid final report against the accused.

2.3. Though Criminal law was set in motion on the basis of Ex.P13-statement of PW-1, PW-1 resiled from the above statement while examined before Court. Therefore, factual aspects found place in the Ex.P13, i.e., first information, cannot be read as evidence unless the same is supported or spoken by either by a informant or any other witnesses. Hence, Ex.P13-complaint cannot be read as an evidence.

2.4. Though PW-4 in his evidence, stated that on hearing noise, when he reached the place of occurrence, PW-1 informed him that the accused stabbed the deceased, the evidence is not corroborated by PW-1. Hence, PW-4's evidence cannot be given importance as it is hit by rule of hearsay. Further, his evidence does not show that he has seen the deceased at that time. Hence, his evidence also will not fall under Section 6 of The Indian Evidence Act so as to bring as an exception to hearsay evidence.

3. Though prosecution examined 15 witnesses, except the official witness all are turned hostile, even in cross-examination of those witnesses nothing could be elicited by the prosecution in support of their case. Though the medical officer noted the stab injury on the neck of the deceased and opined that the deceased died out of the homicidal injury, the prosecution has not established the nature of the weapon allegedly used by the appellant/accused causing stab injury. Be that as it may, there is no evidence available on record, except the alleged recovery made by the Investigation Officer. The materials produced by the Investigation Officer also does not show any incriminating materials as against the accused. When there is no substantive evidence available on record, it is highly unsafe to base a conviction merely on the surmise and conjuncture.

4. The learned counsel for appellant would submit that absolutely there is no evidence whatsoever on record. The Trial Court simply relied upon Section 164 Cr.P.C., statement of PW-1,

which is marked as Ex.P23 and came to the conclusion. Hence, he submitted that there is no evidence at all in this case. Hence he prayed for allowing the appeal.

5. The Learned Additional Public Prosecutor darenly conceded that the Trial Court has wrongly relied upon the statement of PW-1 and recorded its finding.

6. Even evidence of Investigation Officer, when carefully perused no incriminating material found as against the accused, no blood group is found out in the Serology report. In the absence of any other evidence, mere arrest and recovery of alleged material objects are not sufficient to prove the charges beyond reasonable doubt.

7. The Trial Court has given undue importance to Ex.P23, statement of PW-1 recorded under Section 164 (3) Cr.P.C. The statement of PW-1 under Section 164(3) Cr.P.C is not a substantive piece of evidence. At the most it can be used only for contradictions and corroboration. Mere statement cannot be used as substantive evidence in the eye of law. Therefore, we are of the view that the reliance placed on Section 164(3) Cr.P.C of PW-1 by the Trial Court is against the law. In view of the same, considering that the prosecution in this case has failed to bring home the guilt of the accused, we have no option except to acquit the accused. As regards the nature of the stab injury on the deceased, it is also the evidence of PW-1 that the deceased fell on the screw driver and got injured herself while she was on inebriated stage. The above evidence of PW-1 also suggests possibility of getting stab injury, same cannot be ruled out. Taking into consideration all these facts, since no substantive evidence available on record. The conviction imposed on the accused for offence under section 302 IPC is unsustainable in law.

8. The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahila Fast Track Court, Namakkal, passed in S.C.No.89 of 2015 on 12.04.2017, are set aside and appellant is acquitted of the charge. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled. Appellant is directed to be released forthwith, if his detention is not required in any other case.

Sd/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To:

1.The Sessions Judge,
Mahila Fast Track Court,
Namakkal.

2.The Principal District and Sessions Judge,
Fast Track Court, Namakkal.

3.The District Magistrate/District Collector,
Namakkal District.

4.The Director General of police,
Mylapore,
Chennai.

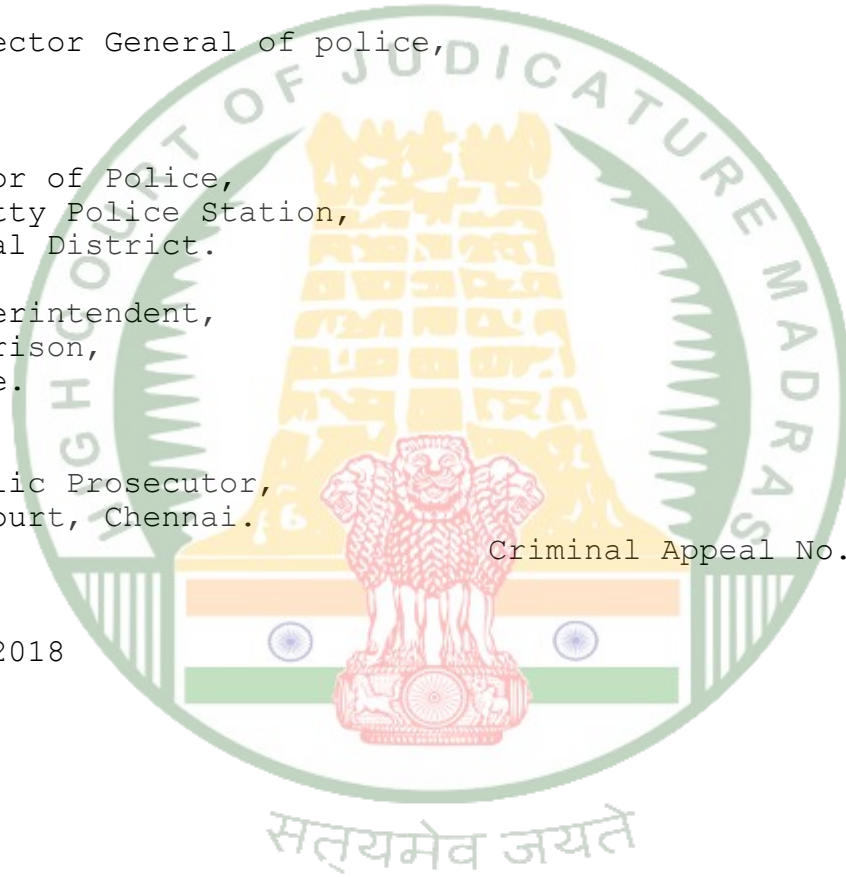
5.Inspector of Police,
Ayilpatty Police Station,
Namakkal District.

6.The Superintendent,
Central Prison,
Coimbatore.

7.The Public Prosecutor,
High Court, Chennai.

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