

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

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

Criminal Appeal No.429 of 2017

Anandharaj : Appellant/Accused

Vs.

State: Represented by
Inspector of Police
Karungalpalayam Police Station,
Erode District.
Cr.No.231 of 2015

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure Code, to call for the records and to set aside the judgment and sentence passed in S.C.No.32 of 2015 dated 27.08.2015 on the file of the Mahila Sessions Court, (Mahila Fast Track Court), Erode.

For Appellant : Mr. T. Muruganandam

For Respondent : Mr.V. Arul
Additional Public Prosecutor

JUDGMENT

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

The appeal is preferred against the conviction of the appellant under Section 302 I.P.C. sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo two years simple imprisonment by the learned Sessions Judge, Mahila Fast Track Court, Erode, in S.C.No.32 of 2015 dated 27.08.2015. The detention period already undergone by the appellant was ordered to set off u/s.428 of Cr.P.C.

2. The brief facts of the prosecution is as follows:

2.(a) The deceased Sumathi is the sister-in-law of the accused. The accused married the sister of the deceased namely one Saroja. Deceased Sumathi was residing with one Angamuthu. The accused developed illegal connection with the deceased. The accused used to visit the deceased frequently in her house.

When the matter stood thus, P.W.1 Sudhapriya, Village Administrative Officer on hearing the news that a dead body of a female in naked position is found in the river bed of Cauvery, went to the place and seen the dead body. Immediately, she lodged complaint Ex.P.1 with P.W.13. P.W.13, Special Sub-Inspector of Police of Karungalpalayam received the complaint from P.W.1 and registered F.I.R. Ex.P.25 in Cr.No.231 of 2014 under Section 302 I.P.C. Thereafter, he proceeded to the place of occurrence and prepared Observation Mahazar Ex.P.2 and Rough Sketch Ex.P.26 in the presence of P.W.1 and one Kittan and also seized dresses M.Os.2 to 5 under Seizure Mahazar Ex.P.3 from the place of occurrence. P.W.3 is the sister of the deceased. On 21.5.2014 at about 7.00 p.m. P.W.6 seen the accused came in a bike and picked up the deceased in his bike and went to the Gandhi Statue road. P.W.8 had seen the accused with the deceased proceeding in a motor cycle.

2.(b) On 24.05.2014 when P.W.1 and the Village Assistant were in the office, the accused surrendered before her and gave Extra Judicial Confession. The same was reduced into writing by P.W.1 under Ex.P.4 Extra Judicial Confession and handed over the accused to the police along with Extra Judicial Confession with special report Ex.P.5. Thereafter, police arrested the accused and recorded his confession. In pursuant to the same, they seized M.O.6 motor cycle under Ex.P.6; seized the shirts of the accused M.O.7 under Ex.P.7 and chain and stone under Ex.P.8 Seizure Mahazars. P.W.9 Medical Officer attached to the Government Hospital conducted autopsy over the dead body and found the following injuries:

"External injuries:

1. Cut injury with irregular edges about 4 x 6 x 2 cms in size over the left side forehead.
2. Continuous and deforming about 12 x 8 cms involving both medial sides of forehead, nose, both cheeks medial sides, moth and upper jaw.
3. Both sides black eyes present.
4. Cut injury with irregular edges about 2 x 1 x ½ cms in left lower jaw.
5. Continuous 10 x 6 cm deforming over medial aspectg of left upper arm.
6. Continuous 3 x 2 cm over deforming over the upper part of sternum.
7. Abrasion 3 x 2 cms. over right shoulder.
8. Old Horizontal scar at lower abdomen.
9. White coloured like material on the perineal vaginal swab sent for analysis

Internal Examination:

Ribs: Intact

Heart: 180 gms.pale

Lungs: Rt. 480 gms. Left.400 gms. Partially

decomposed
Hyoid bone: Preserved and sent for analysis
Stomach and its contain: Empty
Liver: 1400 gms pale.
Spleen: 200 gms pale.
Kidney: 100 gms. Both sides pale
Bladder: Empty
Skull : Depressed fracture involving left frontal
bone
and facial bones
including nasal bones both sides and
left maxilla and left orbital bones. Base of
skull fracture both sides present.
Brain: liquified
Uterus: Intact"

He issued Post-Mortem Certificate under Ex.P.9 and also opined that the deceased appear to have died 35 - 55 hours prior to autopsy due to shock and hemorrhage due to head injury.

2.(c) P.W.13 forwarded M.Os. through court orders to forensic science laboratory. P.W.14 in continuation of the investigation, seized material objects as per the admitted portion of the confession of the accused in the presence of witnesses and recorded their evidence and after completion of investigation he filed a final report against the accused under Section 302 I.P.C. before the Court.

3. The accused was put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 14; marked Exs.P.1 to P.30 and M.Os.1 to 10. After the examination of prosecution witnesses the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which he denied the complicity. No witness was examined on the side of accused. He has not marked any document on his side. The Trial Court, after analyzing the evidence on record, convicted and handed down the sentences on the appellant/accused as stated above.

4. The learned counsel for the Appellant has submitted that the entire case rest on the circumstantial evidence relied upon P.W.1, P.W.6 and P.W.8 evidence. There is no material available on record to connect the alleged circumstances as against the accused. The learned counsel further submitted that absolutely no circumstance was established by the prosecution as against the accused and hence prayed for acquittal of the accused.

5. The learned Additional Public Prosecutor has submitted that P.W.6 and P.W.8 have seen the accused when he was going in a motor cycle on 21.5.2014 evening along with the deceased. Thereafter, he surrendered before P.W.1 on 24.5.2014 and gave

Extra Judicial Confession. The Extra Judicial Confession is reliable and the same itself is sufficient to base the conviction of the accused.

6. Point for consideration:

In the light of the above submissions, now the point for consideration in this appeal is, "whether the prosecution has proved all the circumstances to bring home the guilt of the accused beyond all reasonable doubts?"

Point:

7. Though the prosecution examined as many as 14 witnesses and exhibited 30 documents and 7 Material objects, the entire case of the prosecution is rest on the circumstantial evidence. When the prosecution relied upon the circumstantial evidence in support of the conviction, all the circumstances relied upon by the prosecution must be fully established and the chain of evidence furnished by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused. This is the standard of proof required to prove the guilt of the person based on the circumstantial evidence. In this case the specific charge of the prosecution is that the deceased being the sister-in-law of the accused, developed illegal contact with the accused. She had also illegal relationship with P.W.8 Nagaraj. When the accused agitated over the same the deceased told him that if he marry her, she will cut the connection with P.W.8. Annoyed over the same the accused took the deceased under the pretext of marrying her, to the river bed at about 7.30 p.m. on 21.05.2014 and had sexual intercourse with her, thereafter killed her by hitting stone on her head.

8. The first circumstance relied upon by the prosecution is that the accused had illegal connection with the deceased. Though the sister of the deceased was examined as P.W.3, she never stated anything about the said illegal relationship. So she was treated as hostile. However, minor son of the deceased (P.W.4) in his evidence deposed that the accused used to come to the house of the deceased and used to stay in night hours. Though, his evidence shows some relationship between the deceased and accused, it has to be seen whether the accused was the reason for the death of the deceased. The death of the deceased was due to homicidal violence was not in dispute in this case. The very next day, dead body was found with severe injuries on the head. Inquest was conducted by the Investigating Officer and medical evidence i.e., Post Mortem Certificate Ex.P.9 and evidence of P.W.9 has clinchingly established that the deceased died out of homicidal violence. It is the case of the prosecution that before causing injuries, the accused and the deceased had sexual intercourse two times.

However, from the vaginal smear collected from the body of the deceased, no semen was detected as per the evidence of P.W.9 and Ex.P.11.

9. The next circumstance relied upon by the prosecution is the evidence of P.W.6. P.W.6 in his evidence stated that on 21.5.2014, in between 7.00 and 7.30 p.m. he seen the accused and the deceased going in a motor cycle towards Periya Mariamman Temple road. When he asked the deceased by showing sign where they were going, the deceased shown sign that she will go and come back. Whereas, P.W.6 has never stated anything about seeing the deceased and accused immediately to anyone, in fact he has not even voluntarily given such statement to the police station. His cross examination shows, that only police summoned him and he gave statement. This aspect creates serious doubt about his evidence.

10. The Prosecution has also relied upon the evidence of P.W.14. His evidence also creates doubt how he came to know about P.W.6 seen the accused at the relevant point of time, when P.W.6 himself has not given such statement voluntarily. He allegedly given such statement only on summoning him by the police. His evidence is highly artificial. Similarly, the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Admittedly, dead body was found next day morning by P.W.1. Merely P.W.6 allegedly seen the deceased going with the accused in a motor cycle at about 7.30 p.m., we cannot come to the conclusion, that only the accused took the deceased to the river bed.

11. The next evidence relied upon by the prosecution is P.W.8. According to P.W.8, he has also seen the accused and deceased going in a motor cycle near the Gandhi statue road at 7.00 p.m. It is to be noted that P.W.8 evidence indicated that he had a motive against the accused. Admittedly, P.W.8 previously had a connection with the deceased, for which a complaint has also been lodged against P.W.8 and in fact the accused also warned P.W.8 for such connection with the deceased. All these facts clearly makes the evidence of P.W.8 unreliable. Even assuming that P.W.6 and P.W.8 evidences are taken into consideration, merely taking some family members and going in a bike itself cannot be a ground to hold that only the accused did the crime. The evidence of P.W.6, P.W.7 and P.W.8 does not inspire the confidence of this Court to give much credence.

12. Another circumstance relied upon by the prosecution is that the Extra Judicial Confession said to have been given by the accused before P.W.1. P.W.1 in her evidence has stated that

the accused appeared before her on 24.05.2014 at about 9.00 a.m. and gave Extra Judicial Confession which was reduced into writing under Ex.P.4. When the prosecution rely upon extra judicial confession, it must ensure that the same inspires confidence of the Court and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. Though, P.W.1 deposed in her evidence that the accused himself appeared before her and gave extra judicial confession Ex.P.4 on 24.05.2014, the evidence of P.W.3 sister of the deceased when carefully perused, she has categorically admitted in the cross examination that the deceased used to go job with one Velliangiri and the very next day when she went to the hospital to see the dead body, they were all examined by the police and they were taken to Seemati Lodge, where the police detained the accused and P.W.8 in the lodge itself. This very version of P.W.3 that the accused was already in the custody of police from the very next day of the occurrence, was found substantiated by P.W.8. P.W.8 also in his evidence clearly stated that he was also detained in police station for two days immediately after the occurrence, at that time accused was also in the police station. This fact clearly indicates that the very next day when the dead body was found, P.W.8 and accused and others were detained in the police station. Therefore, the evidence of P.W.1 that the accused appeared voluntarily before her on 24.05.2014 at 9.00 a.m. is highly improbable. The manner in which the narration is reduced into writing in a normal paper used by police clearly shows that the same was reduced into writing only at the instance of the police, when the accused was already in the custody of police. When the evidence of a person who is said to have recorded extra judicial confession is itself doubtful, it is unsafe to rely upon such evidence, particularly in a grave offence.

13. Yet another circumstance also creates serious doubt about the prosecution version. The version of the prosecution that the accused strangled the deceased in the river bed thereafter put the M.O.8 stone on her head and killed her. The medical evidence when carefully seen, no such injuries was found on the back side of the body of the deceased. Really if the deceased was strangled as projected by the prosecution, there must be some struggle by the deceased. The Post Mortem Certificate and the evidence of Medical Officer shows that there is no injuries on the back of the deceased and it is also admitted by the doctor that possibility of throwing the body into the river bed after murder also cannot be ruled out. It is further to be noted that the prosecution has not established the ownership of the motor cycle allegedly used by the accused. P.W.5 evidence shows that the bike was in fact stood in his

name. But there is no evidence whatsoever, how the bike came into the hands of the deceased. All these facts create serious doubt about the prosecution version. The deceased is deaf and she was not able to communicate properly. The prosecution version, though she had already developed connection with P.W.8; and P.W.3 deposed that she used to go for job with Velliangiri, there is a possibility of somebody committed the offence also cannot be ruled out.

14. When the prosecution case is entirely based upon the circumstantial evidence, to have a conviction, all the circumstances relied upon by the prosecution must be fully established and the chain of evidence furnished by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused. Only the above ingredients when established by the prosecution, the prosecution case based on the circumstantial evidence would succeed in the court of law. Every chain of circumstances has to be proved without any break. If any link is failed in the chain of circumstances, the prosecution cannot succeed in proving the guilt of the accused. These are all well settled principles as far as the circumstantial evidence is concerned. In this case the circumstances relied upon by the prosecution are not established and the chain of evidence furnished by the prosecution have not proved beyond reasonable doubts. Hence, we have no other option except to hold that the prosecution has failed to bring home the guilt of the accused beyond all reasonable doubts. In view of the same, the appeal is liable to be allowed. The point is answered accordingly.

15. In fine, the Criminal Appeal is allowed acquitting the appellant of the charge framed against him and the appellant is set at liberty forthwith if his custody is no longer required in any other case. The disposal of the material objects shall be in accordance with the directions of the trial Court. The bail bond executed by the appellant shall stand cancelled forthwith. The fine amount, if any, paid by the appellant shall be refunded to him.

s/d-
Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.I, Erode
 2. Do Thro The Chief Judicial Magistrate, Erode.
 3. The Sessions Judge, (Mahila Fast Track Court), Erode.
 4. Do Thro The Princial Sessions Judge, Erode
 5. The Inspector of Police
Karungalapalayam Police Station
Erode District.
 6. The Director General of Police
Mylapore, Chennai.
 7. The District Collector, Erode District.
 8. The Superintendent, Central Prison
Coimbatore.
 9. The Section officer
Criminal Section, High Court, Madras.
 10. The Public Prosecutor
High Court, Madras.
- +1 CC to Mr.B. Kumar, Advocate sr 7657.

Crl. A.No.429 of 2017

NRI (CO)
SP(06/03/2018)

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