

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM

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

Crl.A.No.593 of 2017

Mariyadas

.. Appellant/Accused

Vs.

State represented by the
Inspector of Police,
Sathanur Dam Police Station,
Crime No.72 of 2013.

.. Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in S.C.No.57 of 2014 on the file of the learned Mahalir Neethimandram, Fast Track Mahila Court, Tiruvannamalai and set aside the said conviction and sentence.

For Appellant : Mr.R.Sankarasubbu
for Dr.S.Manoharan

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

JUDGMENT

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

Appellant is the sole accused in the case tried in SC.No.57/2014 on the file of the Sessions Judge, Fast Track Mahila Court, Thiruvannamalai for offences under sections 364 and 302 IPC. The trial Court, under impugned Judgment dated 16.04.2015, found the accused guilty of offences u/s.364 and 302 IPC and sentenced him imprisonment for ten years for the offence under section 364 IPC and sentenced him to life imprisonment and a fine of Rs.1,000/- in default, two years rigorous imprisonment for the offence under section 302 IPC and the sentences are to run concurrently . Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

2. The brief facts of the prosecution case, are as follows:-

The deceased Kumari is the daughter of P.W.1 and P.W.3, sister-in-law of P.W.2 and mother of P.W.4 and P.W.5. The deceased Kumari was given in marriage to one Elumalai and the said Elumalai died. After his death, the deceased and the accused developed illegal intimacy. P.W.2, P.W.5 and P.W.8 were aware of the illegal affair of the deceased and the accused. P.W.2, brother-in-law of the deceased, on one occasion, found the deceased and the accused in a compromising position. Despite advice from the family, the deceased and the accused continued their relationship. Besides, the accused used to receive money from the deceased, in respect of which there used to be frequent quarrel between them.

3. When the matter stood thus, on 23.05.2013, while P.W.4, son of the deceased was in the house along with his mother at about 6.15 p.m., the accused called the deceased over phone. P.W.4 attended the same and the accused requested P.W.4 to inform his mother about the phone and also asked her to come behind the church. After some time, again, the accused called the deceased and the deceased picked up the phone and at that time also, the accused asked the deceased to come behind the church in the village. P.W.4 over heard the conversation, as the deceased was speaking with the accused in a loud speaker. Accordingly, the deceased left the house and P.W.4 also followed her for some time. However, the deceased asked him to purchase some items in the shop and asked him to go to the house. Accordingly, P.W.4 went to his house and slept. Thereafter, on seeing the dead body of the deceased behind the church, P.W.1 lodged Ex.P.1 report.

4. P.W.13, Sub Inspector of Police, on receipt of Ex.P.1 report, registered a crime in Crime No.72 of 2013 for the offences under sections 364 and 302 IPC under Ex.P.8 First Information Report.

5. P.W.15, Inspector of Police, took up the case for investigation and proceeded to the place of occurrence and prepared Observation Mahazar Ex.P.2 in the presence of P.W.6 and also another witness and also drawn Ex.P.9 Rough Sketch and conducted inquest over the dead body and prepared Ex.P.10 Inquest Report and forwarded the dead body to the hospital for postmortem along with a requisition.

6. P.W.9, Medical Officer attached to the Chengam Government Hospital, conducted autopsy and found the following injuries :

Contusion 5 x 4 cm left fronto temporal area of scalp - left side.

Contusion 4 x 3 cm below left eye with conjunctival hemorrhage on left side.

Contusion 3 x 2 cm occipital area of scalp - left side

Contusion in front of neck 3 x 2 cm with multiple abrasions ½ x ½ cm and flexor aspect of both knees.

Ribcage intact. No fractures made out.

Internal injuries :

On opening skull bones found intact. Meninges intact. No blood clot or hematoma. Both tissues normal on right side. Left side, brain tissue - contusion seen in fronto temporal area.

On dissecting the neck underlying soft tissues contused. Hematoma seen. Tearing of blood vessels and soft tissue seen.

Hyoid Bone fractured and ? Right horn flexed inwards - doubtful. Hyoid Bone sent for analysis.

and issued Ex.P.7 Postmortem Certificate opining that the deceased died due to asphyxia and head injuries and its complication, 6 to 24 hours prior to autopsy.

7. P.W.15 in continuation of his investigation, arrested the accused on 25.02.2013 at 9.00 a.m. in the presence of P.W.7 and another witness and recorded the confession statement of the accused and pursuant to the admissible portion of the confession statement, Ex.P.3, has seized M.O.2 under Mahazar Ex.P.4. Thereafter, he also seized the cell phone M.O.3 from the accused along with two sim cards and forwarded the properties to the court and sent the accused to judicial custody. After completion of investigation, he filed final report against the accused for the offences under sections 364 and 302 of IPC.

8. The prosecution examined P.Ws.1 to P.W.15 and marked Exs.P.1 to Ex.P.12 and M.O.1 to M.O.3 were marked.

9. The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellant/accused.

10. The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, found the accused guilty for the offences u/s.364 and 302 IPC and sentenced him to ten years rigorous imprisonment for the offence under section 364 IPC and sentenced him to life imprisonment and a fine of Rs.1,000/-, in default, to undergo two years rigorous imprisonment for the offence under section 302 IPC and the sentences are to run concurrently. As against which, the present appeal came to be filed.

11. The learned counsel appearing for the appellant submitted that the entire case of the prosecution is based on the circumstantial evidence and the circumstances relied upon by the prosecution has not been established. The evidence of P.W.4, child witness is not believable as it is a tutored version. The alleged telephonic conversation between the accused and the deceased on 23.05.2013 has not been established. Hence, submitted that there is no evidence to establish the chain of circumstances and prayed for allowing the appeal.

12. The learned Additional Public prosecutor submitted that P.W.4, son of the deceased has clearly spoken about the telephonic conversation between the deceased and the accused. Thereafter, the deceased was found dead. Hence, submitted that the prosecution has established the circumstances.

13. In the light of the above submissions, the point arises for consideration is that whether the prosecution has proved the guilt of the accused beyond all reasonable doubts.

14. The entire prosecution version is based on the circumstantial evidence. It is the case of the prosecution that the accused and the deceased had illegal intimacy. Thereafter, the accused married another woman and the deceased interfered with the married life of the accused. The accused decided to do away with the deceased. Accordingly, on 23.05.2013, the accused contacted the deceased over phone and asked her to come near Antony Church. P.W.1, father of the deceased has not stated anything about the illegal affair of the accused with the deceased. He has only stated that there used to be some money dispute between them.

15. Be that as it may. When the evidence of P.W.2, brother-in-law of the deceased, P.W.3 mother of the deceased and P.W.4 and P.W.5 son and daughter of the deceased, is carefully seen, they have spoken about the illegal affair between the accused and the deceased. From their evidence, we are of the view that the prosecution is able to establish the illegal intimacy between the accused and the deceased. However, there

is no materials available on record to prove the contention of the prosecution that the deceased intervened in the married life of the accused. It is the specific case of the prosecution that on 23.05.2013, the accused called the deceased over phone. But P.W.4 picked up the phone and the accused asked him to inform his mother to come behind Antony Church. Accordingly, the deceased went to the place as requested by the accused. P.W.4 also overheard the conversation, since the deceased had spoken to the accused over speaker. P.W.4 also followed his mother. However, the accused threatened him. Thereafter, his mother asked him to buy something in a shop and on the next day, he came to know that his mother has died.

16. It is to be noted that P.W.4 is the child witness. The child witness evidence cannot be discarded. But at the same time, on scrutiny of the evidence, the Court has to see whether the evidence is believable. It is the version of P.W.4 that when the accused first called, his mother was not there and P.W.4 picked up the phone. Thereafter, when his mother came back the accused spoke to her over phone. P.W.4 heard the conversation, since his mother was speaking in the loudspeaker. This part of his evidence is highly believable. Normally, the persons who are in illegal connection, conversing in the loudspeaker is highly improbable. Therefore, the child witness evidence is unbelievable. It has to be specifically noted that the specific case of the prosecution is that the accused called the deceased prior to the occurrence. Though the prosecution has seized M.O.3, mobile phone from the accused, there is no whisper, in the entire materials available on record as to the phone used by the deceased. Further, there is no reason as to why the prosecution has not even made any attempt to collect the call details from the phone of the accused. These facts creates serious doubt about the entire prosecution version.

17. 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. But the trial Court has not adhered to the rule of evidence and simply imposed the sentence of life imprisonment in two counts

and imposed other convictions on mere inferences. Such approach in deciding the sessions cases is highly deprecated.

18. When it is the specific case of the prosecution that the accused called the deceased over phone and took her to a nearby place, behind Antony Church, it is the duty of the prosecution to establish the fact that the accused accompanied the deceased at the relevant point of time. Besides the telephonic conversation, the prosecution has not made any attempt to prove the alleged conversation between the deceased and the accused at the relevant point of time. Therefore, we are of the view that the circumstances relied upon by the prosecution that the accused took the deceased after calling her over phone has not been established clinchingly. Hence, we have no other option except to hold that the evidences relied upon by the prosecution is not at all sufficient to establish the guilt of the accused. In view of the same, the appeal is liable to be allowed. The point is answered accordingly.

19. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant for offences under Sections 364 and 302 I.P.C. by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.57 of 2014 on 08.08.2017 is set aside and the appellant accused is acquitted of the charges. The fine amount, if any paid, shall be refunded to the accused. The accused shall be released forthwith from the prison, if he is no longer require in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Sessions Judge,
Fast Track Mahila Court,
Thiruvannamalai.
2. The Inspector of Police,
Sathanur Dam Police Station.
3. The Public Prosecutor,
High Court, Madras.

4. The Judicial Magistrate,
Chengam
5. The Chief Judicial Magistrate,
Thiruvannamalai.
6. The Superintendent,
Central Prison,
Vellore.
7. The District Collector,
Thiruvannamalai.

+1cc to Dr.S.Manoharan, Advocate, S.R.No.15433

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