

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM

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

CrI.A.No.671 of 2017

Lecon Antony

..Appellant/accused

Vs.

State by Inspector of Police
Vanur Police Station
Villupuram District.
[Cr.No.155 of 2015]

..Respondent/complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of Court of Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram, Villupuram District made in S.C.No.160 of 2016 deated 18.07.2017 and acquit the appellant herein from the said charges

For Appellant : Mr.V. Gopinath
Senior Counsel for
Mr.L. Mahendran

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

JUDGMENT

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

Originally, the appellant/accused was convicted for the offences u/s.506(ii), 364 and 302 IPC and was sentenced as follows:-

Conviction under section	Sentence Awarded
302 IPC	sentenced to undergo imprisonment for LIFE and a fine of Rs.1,000/-, with a default sentence of one year simple imprisonment.

Conviction under section	Sentence Awarded
364 IPC	sentenced to undergo imprisonment for FIVE YEARS and a fine of Rs.1,000/-, with a default sentence of two months simple imprisonment.
506(ii) IPC	sentenced to undergo imprisonment for THREE YEARS and a fine of Rs.1,000/-, with a default sentence of three months simple imprisonment.

in SC.NO.160 of 2016 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, Villupuram District, under judgment dated 18.07.2017. The Trial Court ordered all the sentences to run concurrently and the detention period already undergone was ordered to be set off u/s 428 Cr.P.C. Aggrieved over the above conviction and sentences the present appeal came to be filed by the appellant.

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

2.(a) The deceased one Lecon Antoinette is the cousin of P.W.1 uncle's daughter. Similarly, the accused is also cousin of P.W.1, another uncle's son. P.Ws.2 and 3 are the brothers of P.W.1. P.W.4 is the nephew of P.W.5. P.W.6 is the relative of deceased mother. P.W.7 and P.W.8 are neighbours of the deceased. P.W.9 is the relative of the deceased P.W.10 is also the relative of both the accused and deceased. P.W.11 is electrician, resident of Pondicherry. P.W.1 was residing with one Lecon Marie Therese, deceased Lecon Antoinette and his aunt. The accused being the cousin, used to visit the house of P.W.1 and developed the intimacy with the p.w.1's cousin namely Lecon Marie Therese which was came to be known to the mother of the deceased. Accordingly, mother of the deceased sent the Lecon Marie Therese to France on 20.05.2015. Thereafter, the accused gave a complaint to the Reddiarpalayam Police Station stating that his wife was missing. Only in the police station P.W.1 and others came to know that the accused married Lecon Marie Therese. When the matter stood thus, the accused on 2.6.2015 at about 6.30 a.m. came to the house of P.W.1 and when the deceased came out from the house to collect milk from the milk vendor, he caught hold of the deceased at knife point and asked her to drive the motor cycle namely Scooty bearing Registration No.PY-01-BA-0301 and abducted her. Thereafter P.W.1 went to the Reddiarpalayam Police Station and gave a complaint.

2.(b) On the same day at about 12.00 midnight P.W.1 received intimation from Vanur Police Station that the dead body of the deceased found lying in the Karasanur Village. Thereafter P.W1 lodged complaint Ex.P.1 before Vanur Police Station. The act of the accused threatening the deceased at 6.00 a.m. at the knife point and made her to drive the Scooty and abducted her were seen by P.W.2 to P.W.9. P.W.10 seen the accused and deceased in the place called Mylam Road while they were travelling in a two wheeler. P.W.11 also seen the accused and deceased. P.W.20 is Sub-Inspector of Police. On 02.06.2015 P.W.1 appeared before him and gave a oral statement that the accused took the deceased at 6.45 a.m. P.W20 immediately informed the same to the Inspector of Police. Thereafter, P.W.20 received the news about a dead body lying within the jurisdiction of Vanur Police range. He informed the same to the higher officials. P.W.21 recorded the General Diary with regard to the complaint given by P.W.1. P.W.22 Special Sub-Inspector of Police, on 2.6.2015 at 13.00 hours registered F.I.R. in Cr.No.155 of 2015 under Section 364 and 302 I.P.C.under Ex.P.12 and forwarded the same to the court and copy to the Inspector of Police.

2.(c) P.W.23 Inspector of Police took up the case for investigation went to the place of occurrence at 13.30 hours and prepared Observation Mahazar in the presence of P.W.13 and P.W.14 and drawn rough sketch Ex.P.13 and conducted Inquest over the dead body from 15.00 hours to 17.00 hours and prepared Inquest Report Ex.P.14, recorded the statement of witnesses and forwarded the dead body to the PIMS Hospital, Kanagachettykulam, Puducherry, for autopsy. P.W.16 Medical Officer conducted autopsy and found the following injuries:-

- "1. Multiple chop injuries in an area of 11 cms x 19 cms to 24 cms x bone depth, extending along the front and both sides of neck. The underlying muscles, vessels, nerves, trachea and neck structures found severed at many places exposing the C4, C5, C6 vertebrae.
2. Multiple chop injuries present in an area of 6 cms x 9 cms x bone depth on the left wrist. The underlying muscles, vessels, nerves, tendons found severed.
3. Two obliquely placed incised injuries measuring 2 x 15 cms. X muscle depth each on the distal phalanx of index and ring finger of right palm.
4. Three contused-abrasions of size 1.5 x 2 cms each on the left side of abdomen."

He issued Post Mortem Certificate Ex.P.6 with opinion that the deceased would appear to have died of Multiple chop injuries

sustaining to neck. The time since death is estimated to be 18 - 24 hours prior to post-mortem.

2.(d) P.W.23 in continuation of his investigation collected the material objects and sent the same to the Court under Ex.P.15 and Ex.P.16. On 2.6.2015 he arrested the accused in the presence of P.W.18 and his menial and recorded his confession and as per the admitted portion of his confession statement Ex.P.17, P.W.23 seized the two wheelers "Scooty" (M.O.8) and "Bajaj CT 100" (M.O.9). He also seized bloodstained half hand shirt, bloodstained full pant and blood stained nighty, underwear and bloodstained Bra (M.Os.10 to 14) under Ex.P.18 and sent the same to Court along with requisition to send the M.Os. to Forensic Lab for examination. After the examination he received Forensic Science Lab Report Ex.P.21. On completion of the investigation he filed final report against the accused under Section 364, 342, 302 and 506 (2) I.P.C.

3. The accused was put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 24 and marked Exs.P.1 to 22 and M.Os.1 to 14. On the side of the appellant/accused no witness was examined. 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. On the side of the defence no witness was examined. But the accused marked Ex.D.1 xerox copy of marriage certificate, Ex.D.2 xerox copy of Family Book of accused, Ex.D.3 xerox copy of Family Card of deceased and Ex.D.4 transfer certificate of accused through P.W.23. The appellant/accused was questioned under section 313 [1][b] Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. The Trial Court, after analyzing the evidence on record, convicted and handed down the sentences on the appellant/accused as stated above. Aggrieved over the same the present appeal has been filed.

4. Mr.V. Gopinath, learned Senior Counsel appearing for the appellant would vehemently contend that the prosecution rest on the circumstantial evidence. The circumstances relied upon by the prosecution are unbelievable. Previous complaint has been deliberately suppressed by the prosecution. The alleged act of abduction spoken by the witnesses is attached with serious infirmities and artificiality. The alleged complaint given by P.Ws.1 to 6 to Reddiarpalayam Police Station is not seen in the light of the day. The F.I.R. of this case allegedly registered at 12.00 noon and it was reached to the Court at 10.30 p.m. The delay has not been explained. The evidence of P.Ws.1 to 9 and their conduct clearly make their evidence unreliable. Hence, the learned Senior Counsel submitted that their evidence for the alleged abduction and last seen theory cannot be reliable.

5. It is the further contention of the learned Senior Counsel for the appellant that the arrest of the accused and recovery of M.Os. on 03.06.2016 by the Investigating Officer P.W.23 in the presence of P.W.18 and his menial is also unreliable. P.Ws.2 and 3 evidence clearly show that when they went to police station to lodge a complaint on 2.6.2016 the accused was very much present in the police station and therefore, the evidence of P.W.23 with regard to the alleged arrest of accused on 3.6.2016 at 6.30 a.m. is highly unbelievable. Such circumstances clearly show that the prosecution has not proved the guilty of the accused beyond all reasonable doubts. The evidence of P.W.20, who was Assistant Sub-Inspector of Police at the relevant point of time, shows that the witnesses though allegedly given oral complaint about the abduction of the deceased by the accused, they never stated before him about the accused taking the deceased forcibly. All these facts clearly create serious doubt about the prosecution case. Hence, he submitted that the prosecution case shrouded in serious infirmities and doubt. Therefore, learned Senior Counsel submitted that the trial Court without proper appreciation of evidence found the accused guilty and hence prayed for acquittal.

6. Learned Additional Public Prosecutor fairly conceded that though there was clear abduction, no complaint was registered. Further the witnesses also clearly admitted in their evidence that they have seen the accused inside the police station on 2.6.2016. Hence, he left the matter for the appreciation by the Court.

7. We have perused the entire materials and evidence on record.

8. In the light of the above submissions, we have to analyse whether the prosecution was able to bring home the guilt of the appellant/accused beyond all reasonable doubt.

9. The motive alleged by the prosecution that the accused has married one Lecon Marie Therese within the prohibited relationship, which was objected by the family members and the said Lecon Marie Therese was sent to France by her mother. But the accused was having impression that only at the instance of the deceased his wife was sent to France on 20.05.2015. Therefore, the accused abducted the deceased on 2.6.2015 from P.W.1's house in a "Scooty" bearing Registration No. PY-01-BA-0301 at knife point and thereafter caused murder. P.W.1 is the cousin of the deceased. According to him, he was residing with the deceased in Uzhavarkarai. The accused had intimacy with his cousin, which was prohibited relationship and hence it was objected by the mother of the deceased. Thereafter, the said Lecon Marie Therese was sent to France on 20.5.2015. The secret marriage of the accused with the said Lecon Marie Therese came to be known only when the accused gave a complaint against them in

Reddiarpalayam Police Station. When the matter stood thus, on 2.6.2015 at about 6.00 a.m. when the deceased came out from her house to get the milk from the milk vendor, the accused came there and caught hold of the deceased with knife point and forced her to drive her Scooty. Before taking her, he told the family members of the deceased that he would take the deceased to his house and asked them to come to his house. Accordingly P.W.1 and others went to the house of the accused but they were not there. Therefore, P.W.1 went to the police station, gave a complaint. Thereafter, after receipt of intimation from the Vanur Police Station about a dead body lying in the land, he gave compliant Ex.P.1 to the Vanur Police Station.

10. P.Ws.2 and 3 are brothers of P.W.1. In their evidence they have stated that that on 2.6.2015 while they went towards P.W.1's house, at that time the accused caught hold of the deceased and threatened the witnesses and took the deceased in a motor cycle. It is the version of P.Ws.2 and 3 that the accused caught hold of the deceased inside the house and dragged her hair at knife point. Whereas the evidence of P.W.1 shows that the accused caught hold of the deceased when the deceased came out to collect the milk in front of her house. The evidence of P.W.1 to P.W.3 are inconsistent to each other. P.W.5 has stated that the accused caught hold of the deceased, however, he did not go inside. He never spoken anything about the accused taken deceased in motor cycle. P.W.6 in his evidence has stated that the occurrence has taken place inside the house. P.W.7 in his evidence has stated that the accused caught hold of the deceased and forced her to sit the scooty and took her on knife point. Whereas P.W.1 in his evidence stated that he only took the vehicle from the house and parked at road. This fact has not been spoken by other witnesses. P.W.7 has stated that the accused dragged the deceased from the house, which is contrary to the evidence of P.Ws.2 and 3. P.W.8 has also stated that the accused brought the deceased from the house by holding her hair. P.W.9 also stated that the accused made the deceased sit on the motor cycle and made her to drive the vehicle at knife point. It is to be noted that all the witnesses are one way or other relatives to the accused. But their conduct remaining silent without making any efforts to save the deceased at the hands of the deceased is unusual and against normal human conduct.

11. It is the evidence of P.Ws.1 and 2 that P.W.1 has given complaint to the Reddiarpalayam Police Station. However, the above complaint has not been seen the light of the day. Further the evidence of P.W.20 also shows that P.W.6 while giving information about the morning incident he never stated about any forcible abduction by the accused. Even assuming that such statement of P.W.6 before P.W.20 is true, the evidence of P.W.20 makes serious doubt about the evidence of P.Ws.1 to 6 about the lodging of complaint and narrating forcible abduction by the accused. It is further to be noted

that the mother of the deceased and Lecon Marie Therese were not examined by the prosecution. Though it is the contention of the prosecution that they all left to France. No materials produced in this regard. So from the evidence of P.Ws 1 to 9 with regard to the alleged act of forcible abduction by the accused is highly inconsistent to each other and their conduct is against the normal human conduct. Therefore it cannot be given much importance.

12. Further, the earlier version of the witnesses said to have been given the complaint to the Reddiarpalayam Police Station has been deliberately suppressed by the prosecution. If really such incident has taken place, the normal human conduct of the witnesses would be to lodge complaint and search for the deceased. But their evidence is otherwise. They went to the house of accused and thereafter they came back. The Investigating officer evidence also discloses that the family members of the accused have also not examined. All these facts create serious doubt about the witnesses version about the abduction of the accused.

13. Another circumstance relied upon by the prosecution with regard to arrest and seizure of the accused, it is the evidence of the Investigating Officer that he arrested the accused on 3.6.2015 at about 6.30 a.m. and seized the material objects from the accused. P.W.18 one of the witnesses of arrest and recovery has not stated anything about the recovery. Further except one Joseph other neighbours have not been examined. P.W.1 in his cross examination admitted at the time of giving complaint, the accused was already in police station and he was made to sit in the police station and he has also seen the knife in the police station along with the bloodstained shirt. P.W.2 also admitted that he has seen the accused at Vanur Police Station at the time of lodging complaint. P.W.3 also stated in his evidence that he has seen the accused at 2.30 p.m. on the same day. P.W.4 also seen the knife in the police station. Therefore, the version of the prosecution that the accused was arrested on 3.6.2015 at the early morning and effected seizure of knife and bloodstained shirt cannot be given much importance when the witnesses has already seen the accused in the police station in the previous day, the recovery projected by the prosecution is also highly doubtful in this case. FIR was registered at 1.00 p.m. on 2.6.2015 and the same was reached to Court at 10.45 p.m. on the same day and the delay in sending F.I.R. to Court remain unexplained.

14. All these facts create serious doubt about the prosecution case. When the circumstances relied upon by the prosecution are doubtful and the entire case is based on the circumstances, it is difficult to rely upon the entire prosecution version. Ex.P.1 complaint also came to be filed by P.W.1 only after police visiting the place where the dead body was lying. All these facts clearly shows that Ex.P.1 is

not first information, it is the result of deliberation. Further, in the F.I.R. there is no mention about the accused dragging the deceased from the house and caught hold of her tuft. Whereas the only mention is made with regard to the accused, that by threatening the deceased at knife point and took her in her scooty. From these inconsistencies in the evidence, we are of the opinion that the circumstances relied upon by the prosecution is not fully established. The prosecution has not brought home the guilt of the accused beyond all reasonable doubt.

15. Therefore, in view of the series of improbabilities, infirmities and discrepancies coupled with the factum of delay in lodging the FIR and also the unusual conduct of the relatives and neighbours we are of the view that it is highly unsafe to convict the appellant/accused with the grave crime. The point is answered accordingly.

16. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide impugned Judgment in S.C.No.160 of 2016 dated 18.07.2017 are set aside and he is acquitted of all charges levelled against him.

17. It is reported that the appellant/accused is in jail. Hence, he is directed to be released forthwith unless his presence / custody is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ggs

To

1. The Judicial Magistrate Vanur.
2. -do- Through The Chief Judicial Magistrate, Villupuram.
3. The Sessions Judge Magalir Neethi Mandram.
4. -do- Principal Sessions Judge, Villupuram.
5. The Inspector of Police
Vanur Police Station, Villupuram District.
6. The Superintendent of Prison
Central Prison, Cuddalore.

7. The District Collector, Villupuram.

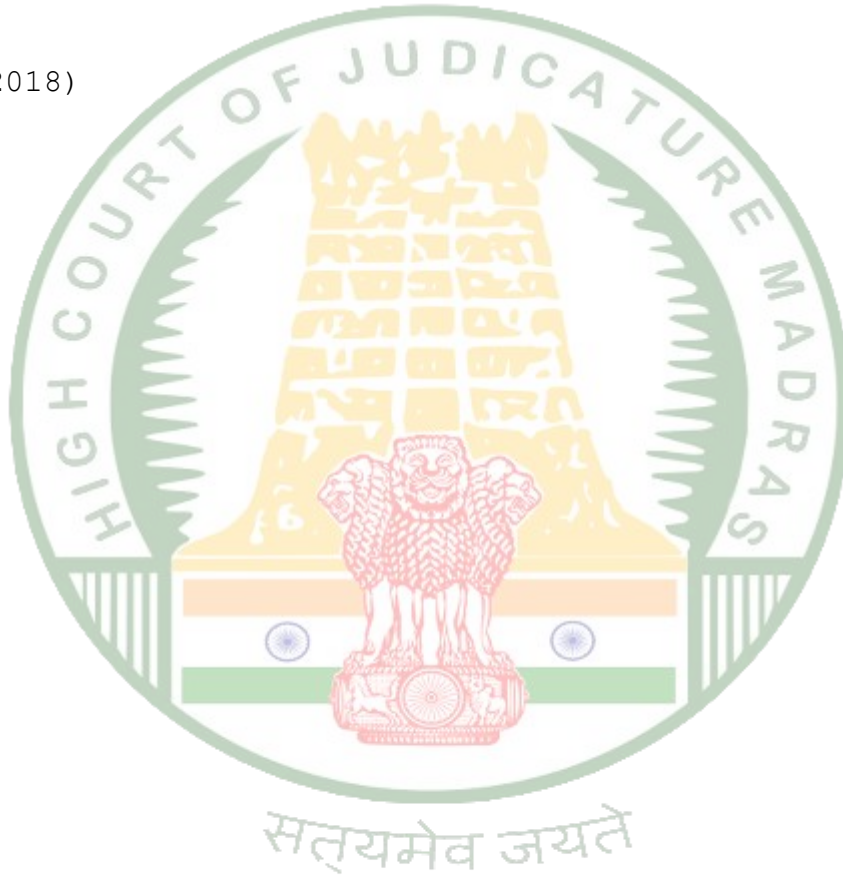
8. The Director General Police Mylapore Chennai.

9. The Public Prosecutor, High Court, Madras.

Copy to: The Section Officer, Crl.Section,
High Court, Madras.

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RSY(CO)
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