

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
Criminal Appeal No.714 of 2017

1.Devaki
W/o.Late Arumugam

2.Sasi Kumar
S/o.Chidambaranathan

... Appellants

Vs

State by
Inspector of Police,
N.T.Police Station,
Cuddalore. (Crime No.308/2015)

... Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment of learned I Additional District and Sessions Judge, Cuddalore, passed in S.C.No.233 of 2015 on 25.10.2017.

For Appellants : Mr.N.Ramesh

For Respondent : Mr.R.Pratap Kumar,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned I Additional District and Sessions Judge, Cuddalore, passed in S.C.No.233 of 2015 on 25.10.2017.

2. Case of prosecution is that deceased and A1 were husband and wife and had two sons. A2 was their neighbour. A1 and A2 developed illegal intimacy and when the same came to the knowledge of deceased, he warned both of them thereagainst. Subsequently, there were frequent quarrels between A1 and deceased. A1 and A2 planned to do away with the deceased. On 05.06.2015 at about 2.00 p.m., A1 called A2 over phone and informed that she was on leave, she would give sleeping tablets to deceased and call A2. In keeping with the plan, A2 came to

the house of A1 and both of them strangled deceased and caused his death. Upon information from A1 that deceased was not well, PW-1, mother of deceased, went and found her son lying dead. PW-1 suspected that accused would have caused the death of her son and preferred Ex.P1, complaint, to PW-11, Sub-Inspector of Police and a case was registered in Crime No.308 of 2015 on the file of respondent for offences u/s.302 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.302 r/w 120(B) IPC against A1 and u/s.449 and 302 IPC against A2.

3. Before trial Court, prosecution examined 12 witnesses and marked 22 exhibits and 8 material objects. None were examined on the side of defence nor were any exhibits marked.

4. On questioning u/s.313 Cr.P.C., appellants/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 25.10.2017, convicted the accused and sentenced them as follows:

Rank of accused	Offence	Sentence
A1 and A2	302 r/w 120(B) IPC	Life imprisonment and fine of Rs.1,000/- i/d 1 year S.I.
	302 IPC	Life imprisonment and fine of Rs.1,000/- i/d 1 year S.I.
A2	449 IPC	10 years R.I. and fine of Rs.500/- i/d 3 months S.I.

Trial Court directed that sentences run concurrently. Hence, this appeal.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor for State. Perused the materials on record.

6. On appreciation of materials on record, Court below has found as follows:

- (i) It was the evidence of PW-1, mother of deceased, that she used to visit her son's house frequently to see her grand son, that all was not well between her and A1 and of having seen A2 there on several occasions, of not informing the conduct of A1 to her parents since there was no cordial relationship with them. PW-1 deposed that on one occasion, A1 openly declared to her that she would finish her husband.
- (ii) While the accused had taken a stand that PW-2 is a child witness and hence, his evidence was not reliable since there was possibility of the child having been tutored, it was the contention of State that when there was no evidence on record to show that the child has been tutored, then such witnesses evidence was admissible. Placing reliance on the judgment of Apex Court in Rameshwar v. State of Rajasthan [AIR 1952 SC

54], wherein it had been observed every witness is competent to depose unless, the Court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, deceased whether of body or mind or any other cause, Court below has observed that in the instant case, PW-2, in cross, clearly has deposed that her grandmother advised him to depose only what he had seen and what actually had happened and hence, from the above, it was clear that PW-2 has not been tutored. Though there were some minor discrepancies in the evidence of PW-2, such alone would not be reason enough to eschew his evidence in its entirety when there were other incriminating circumstances which corroborate the evidence of PW-2. Further, there was no necessity for PW-2 to depose against his mother. Whether a solitary witness is acceptable or not depends upon the facts and circumstances of the particular case. In the instant case, the evidence of PW-2 was acceptable.

- (iii) Though accused contented that motive to the occurrence has not been established, it was found that prosecution has established the same through the evidence of PWs.1, 2 and 3, mother, son and brother of deceased. Further, the absence of motive is of no consequence when there is cogent and reliable direct evidence as to the guilt of the accused.
- (iv) It was the contention of defence that PW-10, Doctor, who conducted postmortem, has opined that the deceased appeared to have died of asphyxia due to smothering and Diazepam poisoning, there was no ligature mark around the neck and hence, the prosecution suggestion of cause of death due to strangulation becomes totally false. The medical and scientific evidence suggests that the death was due to smothering and Diazepam poisoning and the injuries found on the body of deceased indicate that it was a case of homicidal smothering. Analysing the external injuries with the findings of internal organs would lead to the conclusion that the deceased would have died due to forcible smothering.
- (v) It was the contention of defence that the recovery of material objects at the house of A1 was unreliable since the same has not been mentioned in the observation mahazar and rough sketch. PW-12, Investigation Officer, spoke to seizure of material objects on the basis of Ex.P17, disclosure statement of A1 and the same were recovered under Ex.P18, Seizure Mahazar and were attested by PW-7 and another. The evidence of PW-12 was corroborated by PW-7.
- (vi) The presence of A1 at the scene of crime has been denied by accused contending that A1, in her written statement, has stated that on the alleged date of occurrence as there was a quarrel between her and deceased, she had gone to her parental home. Though A1 plead alibi, she has neither examined her parents nor neighbours to speak thereabout.

7. On the above finding, Court below has reasoned that the evidence of PW-10, Doctor and Ex.P12, Postmortem Report clearly revealed that the deceased was done to death. The plea of alibi has not been proved by A1. Ex.P20, Service Certificate and Ex.P20, Attendance Register, informed that A1 has availed casual leave on 05.06.2015 and was absent from duty on 06.06.2015. While it was the stand of defence that there was no connection between the crime and injuries which the body of A2 revealed, A2 was under obligation to explain how he sustained such injuries, which he had failed to do. The medical evidence in the case strongly supports the case of prosecution. Except some vague suggestions, nothing was elicited in the cross-examination of PWs.1 to 4, to disbelieve their version. Though there were some laches in the investigation, prosecution undoubtedly has established its case through oral and documentary evidence, which leads to an irresistible conclusion that accused alone were responsible for the death of deceased. Accordingly, Court below found the accused guilty, convicted and sentenced them as stated above. We find that Court below rightly has arrived at a finding of conviction. The conviction and sentence calls for no interference by this Court.

In the result, the Criminal Appeal shall stand dismissed. Connected miscellaneous petition is closed.

gm

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District and Sessions Judge,
Cuddalore.
2. The Inspector of Police,
N.T.Police Station, Cuddalore.
3. The Public Prosecutor,
High Court, Madras.
4. The Chief Judicial Magistrate,
Cuddalore.

Cr1.A.No.714/2017

GP(CO)
KAK(08/01/2019)