



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

And

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)No.302 of 2016

R.Arumugam

... Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Karur Town Police Station,
Karur District.
(Crime No.976/2011)

... Respondent/Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, praying to call for the records in S.C.No.69 of 2014 on the file of the Fast Track Mahila Court, Karur for the Trial of Section 449, 394 r/w 397 and 302 of Indian Penal Code, set aside the conviction and sentence imposed on the appellant by the judgment dated 31.08.2015 acquit the appellant.

For Appellant : Mr.S.Kanagarajan

For Respondent : Mr.K.Dinesh Babu
Additional Public Prosecutor

J U D G M E N T

(The Judgment of the Court was delivered by C.T.SELVAM, J.)

Appellant/Accused has filed the Criminal Appeal, challenging the judgment, dated 31.08.2015, in S.C.No.69 of 2014 on the file of learned Sessions Judge, Fast Track Mahila Court, Karur, in and by which, he was convicted for offences under Sections 449 and 394 r/w 397 I.P.C. and sentenced to undergo 10 years R.I. and fine of Rs.1,000/-, in default, 3 months S.I. for each offence and also for offence under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.1,000/-, in default, 3 months simple imprisonment.

2.The prosecution case is that the appellant/accused unlawfully entered the house of deceased on 07.08.2011 at about 7.30 p.m. and caused her death by dealing blows to her head with an iron rod and did away with the jewels worn by her. The deceased was initially



taken to Amaravathy Hospital, Ramanujam Nagar, Karur in unconscious state and thereafter to Kovai Medical Centre Hospital on 08.08.2011 at about 12.15 a.m. and eventually she died at such hospital on 14.10.2012 at about 3.30 a.m.

3. On information, P.W.19, Sub-Inspector of Police, Karur Town Police Station went to Karur Amaravathi Hospital on 07.08.2011 at 9.15 p.m. and recorded the statement of P.W.1, husband of the deceased, registered the complaint in Crime No.976 of 2011 under Section 394 IPC and prepared Ex.P.14 FIR. P.W.20, Inspector of Police took up investigation, went to the scene and prepared observation mahazar Ex.P.2, as also rough sketch Ex.P.15. Thereafter, he was transferred. After the death of the deceased P.W.22 - Inspector of Police altered the F.I.R. from 394 I.P.C. to 302 and 380 I.P.C. under alteration report Ex.P.6. On 14.10.2011 at 9.45 a.m. he conducted inquest over the body of the deceased and prepared Ex.P.17 - Inquest Report and sent the body to Coimbatore Government Medical College Hospital, Coimbatore through PW-15 Grade I Police Constable for post-mortem. The Post-mortem Report is Ex.P.11. P.W.21 - Inspector of Police arrested the accused in connection with Crime No.233 of 2012 on the file of Velliyanai Police Station for offence under Section 394 I.P.C. and recorded his confessional statement regarding this case and recovered M.O.2. Thereafter, he sent intimation to the respondent police regarding arrest of the accused and recovery of M.O.2 and forwarded the accused for judicial custody. Thereafter, P.W.22 sought and obtained police custody and recorded his confession statement in the presence of P.W.7 - V.A.O. Chenguttuvan and another and recovered M.O.1 - Thallikodi and M.O.3 Iron rod. After his transfer and upon completion of investigation, P.W.23 filed a charge sheet informing commission of offences under Sections 394 r/w 397 and 302 I.P.C. on 14.03.2013. On committal, the case was tried in S.C.No.69 of 2014 on the file of learned Sessions Judge, Fast Track Mahila Court, Karur. Before trial Court, prosecution examined 23 witnesses and marked 19 exhibits and 7 material objects. None were examined on behalf of defence nor were any exhibits marked.

4.1. P.W.1 - Ponnusamy is the husband of the deceased. His complaint is marked as Ex.P.1. He deposed that on 07.08.2011 at 8.00 p.m. and on his return to his house, he found his wife in unconscious state with head injury and that her Thalikodi and two bangles were missing. He also spoke to taking his wife to hospital, complaint to police and her death. He informed of accused having worked in a firm run by his son.

4.2. P.W.2 - Shanmugam, a milk vendor spoke to supply of milk to the deceased on the day of occurrence.

4.3. P.W.3 - Nanthakumar, a neighbour of the deceased deposed that on hearing a noise he went to the scene of occurrence and saw the deceased with head injury and of her husband informing that her Thalikodi and bangles were missing.

<https://hcservices.ecourts.gov.in/hcservices/>

4.4. P.W.4 - Chellamuthu, a relative of deceased informed of seeing the deceased while taking treatment in hospital and of her

death on 14.10.2011 and of his presence at the time of inquest.

4.5. P.W.5 - Karuppasamy, an employee of the deceased's son spoke to visit of the police to scene of occurrence and preparation of rough sketch and observation mahazar. On other aspects, he turned hostile.

4.6. P.W.6 - Suresh, son of the deceased spoke to seeing of his mother in a pool of blood, missing of her jewels, taking her to hospital and of her death. He also deposed that after arrest of accused he went to the police station and identified her jewels and to the accused having worked in his shop.

4.7. P.W.7 - Chenkuttuvan spoke to confession of the accused and recovery of Iron rod used to attack the deceased and the Thalikodi worn by the deceased.

4.8. P.W.8 - Periasamy deposed that the accused borrowed Rs.76,000/- from him for redeeming the bangles mortgaged with Muthoot Finance and thereafter effected repayment. He also deposed that he gave the accused Rs.60,000/-, which he had received from one Jeyapaul, for redeeming the Thalikodi mortgaged with a Cooperative bank and thereafter the accused handed over the Thalikodi to him saying that he would receive the same after paying the amount borrowed by him with interest.

4.9. P.W.9 - Jeyapaul spoke to payment of Rs.60,000/- to P.W.8 and receipt thereof.

4.10. P.W.10 - Santhanam spoke to leasing of his house to the accused.

4.11. P.W.11 - Manikrishnan, Police Photographer deposed that on instructions by police officials, he took photographs at the scene of occurrence and the place where the accused is alleged to have thrown the Thali and the recovery of Iron rod.

4.12. P.W.12 - Dr.N.Velusamy spoke to examining of the deceased at his hospital and the injuries sustained by her.

4.13. P.W.13 - Nagarajan, Head Constable, spoke to receiving Alteration Report and of handing over the same to Judicial Magistrate No.1, Karur.

4.14. P.W.14 - K.Marimuthu, Special Sub-Inspector of Police, spoke to informing of the death of the deceased to the Inspector of Police.

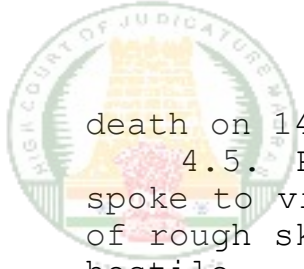
4.15. P.W.15 - Tamilselvan, I Grade Police Constable, spoke to handing over the body of deceased to Doctor for post-mortem and on completion thereof, handing over the body to the relatives.

4.16. P.W.16 - Dr.Keshavamurthy, spoke to the treatment given to deceased at K.M.C.H. Hospital, her death and informing thereof to the respondent police.

4.17. P.W.17 - Dr.Jeyasingh, Doctor, who conducted post-mortem on the body of deceased, opined that the deceased would appear to have died owing to head injury and attendant complications.

4.18. P.W.18 - Ramesh, spoke to arrest of accused, confession and recovery of golden bangles.

4.19. P.W.19 - Jeyarani, Sub-Inspector of Police, spoke to receipt of statement from P.W.1, registration of case in Crime No.976 of 2011 u/s. 394 I.P.C., and of forwarding Ex.P.19, Original



WEB COPY

First Information Report to Judicial Magistrate No.I, Karur.

4.20. P.W.20 - Natesan was the Inspector of Police at Karur Town Police Station, who conducted initial investigation in the case, spoke to visiting the place of occurrence, preparation of mahazars and examination of witnesses.

4.21. P.W.21 - Rajasekar, Inspector of Police, spoke to arrest of accused in connection with Crime No.233/2012 on the file of Velliyanai Police Station, Karur under 394 I.P.C. and confession of accused regards the present case and recovery of M.O.2 - bangles.

4.22. P.W.22 - Mukesh Jeyakumar, Inspector of Police spoke to alteration of F.I.R., taking accused to police custody, recording of confession statement, recovery of material objects and examination of witnesses.

4.23. P.W.23 - Setric Manual - Inspector of Police, spoke to receipt of draft charge sheet and filing of charge sheet informing commission of offences under Sections 394 r/w 397 and 302 r/w 34 IPC.

5. When the accused was examined under Section 313 Cr.P.C. on the incriminating materials against him, he denied his complicity and stated that he had been falsely implicated in the case.

6. On appreciation of materials before it, trial Court, under judgment dated 31.08.2015, convicted appellant/accused for offences u/s. 449, 394 r/w 397 and 302 IPC and sentenced him to 10 years R.I. and fine of Rs.1,000/- in default 3 months S.I. for each of the offences under Sections 449 and 394 r/w 397 I.P.C. and sentenced him to life imprisonment and fine of RS.1,000/- i/d 3 months S.I. for offence u/s.302 IPC. Against such finding, the present appeal has been filed.

7. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent.

8. It is the admitted prosecution case that there absolutely was no progress in the investigation till P.W.21 arrested the appellant and another for their involvement in case in Crime No.233 of 2012 on the file of Velliyanai Police Station for offence under Section 394 I.P.C. on 10.10.2012. It is pursuant to the confession of the appellant/accused in such case that his involvement in the present case came to knowledge. The entire prosecution case would stand or fall on the veracity of the confession of the appellant/accused in Crime No.233 of 2012 on the file of Velliyanai Police Station recorded in Ex.P.12 and the alleged recovery pursuant thereto, and the confession Ex.P.3 and the consequent recovery made in the present case. According to the prosecution, in the present case Thalikodi and bangles worn by the deceased were taken away by the accused after commission of murder. In the confession recorded in Ex.P.12 in connection with Crime No.233 of 2012 on the file of Velliyanai Police Station, it has been mentioned that the bangles of 5 sovereigns were left in the house of one Munis @ Muniyandi the co-



accused in such case. In Ex.P.3, the confession statement in the present case, the appellant/accused is said to have informed that the Thallikodi was pledged with Karur Cooperative Bank. It had been further recorded that using the services of Vyapuri Nagar Periasamy (P.W.8) the bangles pledged with the Muthoot finance was redeemed. The appellant/accused has been arrested on 10.10.2012 in case in Crime No.233 of 2012 on the file of Velliyanai Police Station. On the application of the prosecution, police custody in the present case has been granted and pursuant thereto the confession has been recorded on 22.10.2012. In such circumstance, where after his arrest on 10.10.2012 police custody in this case has been taken 22.10.2012, it is difficult to see how the prosecution seeks to inform that the bangles which had been earlier pledged with the Muthoot Finance had been redeemed using the offices of P.W.8, when in the confession in the other case, it is informed that the bangles were left in the house of the co-accused, in such case. The position projected clearly reveals that the confession of the appellant/accused in Ex.P.3 does not withstand judicial scrutiny. Recovery allegedly made consequential thereto is falsified. When so considered, it follows that in the absence of any other incriminating evidence against the accused, he would be entitled to acquittal.

10. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused by the trial Court, are set aside. He is acquitted of the charges. He is directed to be set at liberty forthwith, unless his custody is required in connection with any other case. The fine amount shall be refunded.

Sd/-

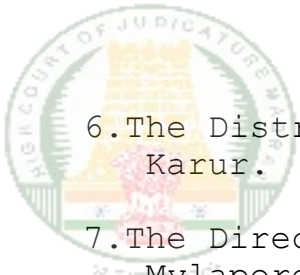
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Fast Track Mahila Court,
Karur.
2. The Judicial Magistrate No.I,
Karur.
3. Do through The Chief Judicial Magistrate,
Karur.
4. The Superintendent of Central Prison,
Trichy.
5. The Superintendent of Police,
Karur District.



6.The District Collector,
Karur.

7.The Director General of Police,
Mylapore, Chennai.

8.The Inspector of Police,
Karur Town Police Station,
Karur District.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to :

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

Judgment made in
CRL A(MD) No.302 of 2016
17.04.2018

sj

RAM/SB/SAR 1/05.07.2018/6P/12C