



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

And

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)No.320 of 2016

and

CRL M.P. (MD)No.61 of 2016

Guruputhiran

... Appellant/Accused No.1

Vs.

The State Rep. by
The Inspector of Police,
Sivagiri Police Station,
Sivagiri,
Tirunelveli District.

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the order of conviction and sentence imposed on the appellant by the learned IV Additional District and Sessions Judge, Tirunelveli by judgment dated 04.04.2016 in S.C.No.634 of 2015.

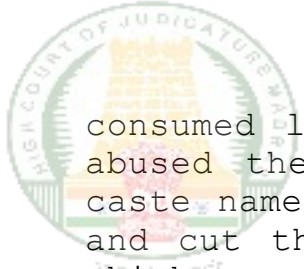
For Appellant : Mr.V.Kathirvelu, Senior Counsel for
Mr.K.Prabhu
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

JUDGMENT

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

The appellant / A1 has filed this Criminal Appeal, challenging the judgment, dated 04.04.2016, in S.C.No.634 of 2015 on the file of the IV Additional District and Sessions Judge, Tirunelveli, in and by which, he was convicted for offence under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.1,000/-, in default, six months rigorous imprisonment.

2.The case of the prosecution is that the deceased namely, Meenakshi, belonged to Puliparaipatti, Alangulam, Virudhunagar District. The husband of the deceased passed away 6 months prior to the date of occurrence. She used to visit her mother's house at Devipattinam. The first accused namely, Guruputhiran also belonged to Devipattinam. Illicit relationship developed between the first accused and deceased. At about 11.00 p.m. on 07.03.2015, the accused took the deceased to his brother's house and they



consumed liquor. A quarrel arose between them and the deceased abused the appellant in filthy language also touching upon his caste name. Aggrieved, A1 took an "Aruvamanai" (vegetable cutter) and cut the private part of the deceased to a length of 17 cm, which resulted in her death. On the next day, ie., on 08.03.2015 at about 4.30 a.m. the accused along with his mother namely, Vanakkaali / A2 put the dead body in on gunny bag and placed it at the street, cleaned the blood stains and concealed the material objects.

3.P.W.1, brother of the deceased, preferred a complaint before Sub Inspector of Police at Sivagiri Police Station on 08.03.2015. P.W.11, Sub-Inspector of Police registered the complaint in Crime No.52 of 2015 under Section 302 IPC and prepared Ex.P.16 FIR. P.W.12, Inspector of Police, went to the scene of occurrence and prepared observation mahazar as also rough sketch. He conducted inquest over the body of deceased in the presence of Panchayatars and prepared Ex.P18, Inquest Report and sent the body to Government Hospital, Sivagiri through PW-8 Head Constable for post-mortem. The Post-mortem Report is Ex.P9. He examined PWs.1 to 12 and recorded their statements and marked M.Os.1 to 8. He arrested the first accused namely, Guruputhiran near Kaliyamman Temple at Devipattinam and recorded his confession statement in the presence of P.W.5, VAO and another, who also attested the confession statement of the accused. He sent the accused to judicial custody on 08.03.2015. He arrested the second accused namely, Vanakkali at 1.45 p.m. on 08.03.2015 and recorded her statement. He sent a requisition to conduct chemical analysis of Material Objects. On 17.06.2015 he obtained postmortem report, examined P.W.7 - Assistant Surgeon and recorded his statement. Upon completion of investigation, he filed a charge sheet informing commission of offence under Section 302 IPC.

4.The case was tried in S.C.No.634 of 2015 by learned IV Additional District and Sessions Judge, Tirunelveli. The prosecution examined 12 witnesses and marked 22 exhibits and M.Os.8. No oral or documentary evidence was adduced on the side of accused.

5.1. P.W.1 - Thangaraj, the brother of the deceased, deposed that on 08.03.2015 at about 06.00 a.m., on obtaining information, over phone, from P.W.2 - Pitchai that the dead body of his sister Meenakshi was lying in front of the house of 1st accused, went to the scene, saw the body and preferred Ex.P1, complaint.

5.2. P.W.2 - Pitchai, a resident at Devipattinam, deposed to knowing accused, P.W.1 and deceased, seeing appellant/A1 along with deceased on 07.03.2015 at about 09.00 p.m., seeing the dead body of deceased in front of the house of A1 and of informing the

5.3. P.W.3 - Singaravel spoke to having last seen the deceased

in the company of A1.

5.4. P.W.4 - Esakkiammal wife of P.W.1 spoke to seeing the dead body in front of the house of A1.

5.5. P.W.5 - Chinnasamy, Village Administrative Officer spoke to arrest, confession and recovery.

5.6. P.W.6 - Kaliraj spoke to attesting observation mahazar and recovery of material objects.

5.7. P.W.7 - Dr.Velraj is the Doctor, who conducted post-mortem on the body of deceased, opined that the deceased would appear to have died of hemorrhagic shock due to heavy cut injury to the region of lower abdomen.

5.8. P.W.8 - Esakkiramesh, a Grade - I Police Constable, spoke to receiving First Information Report and of handing over the same to Judicial Magistrate, Sivagiri.

5.9. P.W.9 - Pandiyan, a Grade - I 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.

5.10. P.W.10 - Muthukrishnan, Court Clerk, spoke to sending material objects for chemical examination.

5.11. P.W.11 - Samprakash Sub Inspector of Police, spoke to registration of case in Crime No.52 of 2015 u/s.302 I.P.C., and forwarding Ex.P.16, Original First Information Report to Judicial Magistrate, Sivagiri and copies thereof to higher officials.

5.12. P.W.12 - Kannan, Inspector of Police at Sivagiri, who conducted investigation in the case and spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports and on completion of investigation, filing charge sheet informing commission of offences under Sections 302 and 201 IPC.

6. When the accused were examined under Section 313 Cr.P.C. on the incriminating materials against them, they denied their involvement in the crime and stated that they had been falsely implicated in the case. They have filed a written statement to such effect.

7. The trial Court, on an analysis of the oral and documentary evidence, convicted the first accused and sentenced him, as above stated and acquitted A2. Challenging the said conviction and sentence, this Criminal Appeal is filed by the first accused.

8. The prime contention of learned counsel for accused is that although there were a number of residences near alleged scene of occurrence, no witness therefrom has been examined to prove the case of prosecution. He further submitted that owner of the house, where the occurrence allegedly took place, was not examined. The present was a case of false implication. It would suffice if the accused put-forth a probable defence, which the prosecution failed to do in the present case. The degree of proof required of the prosecution was much higher and the prosecution has failed



to establish the case against the accused. Learned counsel therefore prayed for acquittal of the accused.

9. We have heard learned Additional Public Prosecutor on the above submissions.

Ex.P-8 Postmortem report informs that the body of the deceased revealed injury as under -

"1) A heavy cut injury of size 17 x 4 x Pelvic cavity depth noted on perineal region. It extends from the vagina to anus. It cuts underlying soft tissue organs, blood vessels & nerves.

On dissection of abdomen:

Peritoneal cavity contains about 200 ml of blood stained fluid. Bladder found cut and empty.

On dissection of right upperlimb:

Right shoulder joint found dislocated.

Other findings:

Pleural cavities are normal.

Heart : Appear normal.

Hyoid bone : Intact

Stomach : Contains about 300 ml of brown colour fluid with fruity odour & mucosa pale.

S.I. : Contains about 100 ml of brown colour fluid with fruity odour and mucosa pale.

Lungs, Liver, Spleen & Kidneys appear normal on C/S congested

Brain appear normal on C/S congested."

If one consider the nature of injury suffered by the deceased, the irresistible conclusion is that there would have been much weeping and wailing which necessarily would have aroused neighbours, none of whom have been examined.

The genesis of the occurrence is unclear, the investigating agency, as also the witnesses are found to be untrue and therefore, it follows that the benefit of doubt is to be given to the accused. Holding that the prosecution has not proved the guilt of the accused beyond reasonable doubt, we allow this appeal.

10. Accordingly, the 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. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (writs)

/True Copy/



To

1. The Judicial Magistrate,
Sivagiri, Tirunelveli District.
2. The Chief Judicial Magistrate,
Tirunelveli
3. The IVth Additional District and Session Judge,
Tirunelveli
4. -Do- Thro' the Principal District Judge,
Tirunelveli
5. The District Collector,
Tirunelveli
6. The Director General of Police,
Mylapore, Chennai
7. The Superintendent,
Central Prison, Palayamkottai.
(in duplicate for communication to the detenu)
8. The Inspector of Police,
Sivagiri Police Station, Sivagiri,
Tirunelveli District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Prabhu, Advocate SR.No.60275
Sj/mpk
MK/RP/SAR 1/10.09.2018/5P/12C

**Order made in
CRL A(MD)No.320 of 2016
06.04.2018**