

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.08.2019

Date of Verdict: 07.08.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

CrI.A.No.179 of 2018

Dharmarajan

..Appellant/Accused

Vs.

State rep. by
Inspector of Police,
Karumalaikoodal Police Station,
Salem District.

..Respondent/Complainant

Appeal filed under Section 374 (2) Cr.P.C. against the judgment passed in S.C.No.245 of 2016 dated 10.11.2017 on the file of the III Additional Sessions Court, Salem.

For Appellant ... Mr.T.Muruganantham

For Respondent ... Mr.R.Prathap Kumar,
Addl. Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

Challenging the conviction and sentence rendered by the III Additional Sessions Court, Salem in S.C.No.245 of 2016 for the offence punishable under Section 302 IPC, the appellant has filed this appeal, while seeking to set aside the same.

2.PROSECUTION CASE IN A NUT SHELL:

2.1. The deceased was the wife of the appellant. They had two children by name Sivakumar and Kiruthiga (P.W.6). The appellant was leading a wayward life. Thus the deceased was taking care of the family. The appellant was harassing the deceased for money to be used for his drinking. Pursuant to the prior quarrel that emanated out of drinking on 16.03.2012, the appellant attacked the deceased by slapping on her cheek, hitting her head on the wall and thereafter strangulated her. He

also attempted hanging her but could not do so. Therefore, he took the saree of the deceased, which was said to be used for hanging and left the place of occurrence.

2.2. P.W.1, who is the brother-in-law of the appellant, saw the deceased at 6.00 a.m. on 17.03.2012 in an unconscious stage. On verification, he found injuries. He confirmed the death by checking the breath of the deceased. Thereafter, at about 12 noon, he gave a complaint to P.W.14, the Station Officer. A case was registered in Crime No.117 of 2012 for the offence punishable under Section 302 IPC in Ex.P12. After sending the originals of the complaint and the FIR to the jurisdictional Court, he took up the investigation on the same day. Ex.P2 is the observation mahazar and Ex.P13 is the rough sketch. Inquest was also conducted at the same time under Ex.P14. A requisition was made for post-mortem by sending it through P.W.12 - Head Constable.

2.3. The appellant surrendered before the Court on 19.03.2012. He was taken to police custody on 28.03.2012 and pursuant to the confession statement given by him, recovery has been made under Ex.P8. M.O.1 is the saree recovered. After completion of the scientific investigation and after examining the witnesses, a final report was filed on 30.05.2012.

3. The Trial Court framed charge for the offence punishable under Section 302 IPC against the appellant. The charge was put to him, which was accordingly denied. The prosecution has examined 14 witnesses - P.Ws.1 to 14, marked Exs.P1 to P16 and marked five material objects - M.Os.1 to 5. On the side of the defence, neither any document was marked nor anyone was examined. The Trial Court, considering the evidence available, convicted the appellant.

4. PROSECUTION WITNESSES:

P.W.1 is the brother of the deceased. P.W.2 is the father of the deceased. P.Ws.3 and 4 are the sisters of the deceased. P.W.5 is the mahazar and rough sketch witness. P.W.6 is the sole eye witness being the daughter of both the appellant and the deceased. P.W.7 is the wife of P.W.1. P.W.8 is the doctor who conducted the post-mortem. P.W.9 is the Village Administrative Officer, who speaks about the seizure and recovery. P.W.13 is the Forensic Doctor and P.W.14 is the Investigating Officer, who registered the complaint, investigated and thereafter filed the final report.

5. SUBMISSIONS OF THE APPELLANT:

Learned counsel appearing for the appellant would submit that the very existence of Ex.P1 - complaint registered under

Ex.P12 - First Information Report dated 17.03.2012 is seriously in doubt. The evidence of P.W.6 is not natural as she was not present at the time of occurrence. Nothing prevented her from giving complaint or informing others immediately. There was a huge delay in sending the 161 Cr.P.C. statement of P.W.6. Thus, under those circumstances, the judgment of the Trial Court requires to be reversed.

6.SUBMISSIONS OF THE RESPONDENT:

Learned Additional Public Prosecutor appearing for the State would submit that the Trial Court found the motive for the murder committed by the appellant. P.Ws.1 to 4, 6 and 7 speak about the motive. The evidence of P.W.6 has been rightly taken note of by the Trial Court. P.W.6 not only speaks about the motive but also the occurrence as eyewitness. Thus, coupled with the evidence of P.W.8 and the post-mortem report - Ex.P14, the Trial Court rightly convicted the appellant. Hence the appeal will have to be dismissed.

7.We have heard the learned counsel appearing for the appellant, learned Additional Public Prosecutor appearing for the State and perused the records.

8. DISCUSSION:

8.1. Appellant is the sole accused. P.W.1 is the author of the First Information Report. He gave the complaint under Ex.P1 dated 17.03.2012, which has been registered under Ex.P12 by P.W.14. As we had some doubt on the veracity of Ex.P1 alleged to have been given by P.W.1, we undertook the process of verifying the signature. P.W.1 has stated that he is an illiterate. However, he has signed Ex.P1 and also his deposition. In his deposition, he has put his signature by writing his name in Tamil except his initial. We could see that he was struggling to write his name. It was more like an art form than a signature. We have verified the signature as found in Ex.P1. This has been signed in English in a rather casual way. The font and the style appear to be totally different. Comparison of the signatures is permissible by the Court by invoking Section 73 of the Indian Evidence Act, though not to be invoked as a matter of routine, especially, when scientific method is available. However, we are dealing with a case where an illiterate struggling to put his signature even in the language he speaks, putting his signature, which is totally different and that too in English containing different font. We may note, even in his evidence, P.W.1 has stated that he is an illiterate. It is his further case that the complaint has been written by somebody else. Therefore, we are having very serious doubts on the very complaint itself.

8.2. We do not like to rest content with the abovesaid conclusion arrived. P.W.1 in his complaint has stated that he was the one who saw the deceased lying unconsciously. He found the injuries and he verified that she was no more. Now the prosecution has introduced P.W.6 as eye witness. In his evidence, P.W.1 has stated that P.W.6 has told him about the occurrence involving the appellant at 6 a.m. Thereafter, the complaint was given at 12 noon. This statement made before the Court for the first time is contrary to the inquest report given under Ex.P14. The inquest report clearly states that P.W.6 has seen the deceased lying at 6 a.m. on 17.03.2012, though she has seen the accused along with the deceased on the previous night at 10.30 p.m. P.W.14 - Investigating Officer was also asked about this. In his evidence, he has stated that it is true that P.W.6 has stated that she has last seen the deceased at about 10.30 p.m. on the previous night - 16.03.2012. Therefore, the very case of the prosecution on the presence of P.W.6 raises serious doubt.

8.3. P.W.6 had stated that she did not come out of her house fearing her father. After her father had left, she could have come out of the house thereafter. She has also stated that she was available in the very same place. We once again verified the records with respect to the statement made by P.W.6 under Section 161 Cr.P.C. We are surprised to find that the statement recorded on 17.03.2012 was received by the Court only on 01.06.2012. It cannot be said that it would require 2 ½ months to reach the statement made under Section 161 Cr.P.C. before the jurisdictional Magistrate. Thus, we have no hesitation in holding that the very statement of P.W.6 has been obtained subsequently and before it reached the Court. Though the First Information Report is not a substantive piece of evidence, on the face of it, it is clear that there was no eye witness for the occurrence and therefore, the statement of P.W.6 has been brought forth subsequently.

8.4. Coming to recovery, it is a saree used by the appellant for hanging the deceased, though there was no occasion to do so. P.W.6 in her 161 statement had stated nothing about the saree being taken away by the appellant. On the contrary, she has stated that the appellant has folded the saree and kept it in a place which he saw. A specific question was also put to P.W.14 on this. He did not deny the statement made by P.W.6. According to the prosecution, M.O.1 saree was kept under grinding stone whereas the recovery is alleged to have been made from the roof top of the appellant's house. Therefore, while P.W.9 Village Administrative Officer stated that the recovery was found under the grinding stone, Ex.P7 shows that it has been recovered from the roof top of the appellant's house. We may note that even P.W.6 has not stated anything about it in her evidence. At

least, P.W.6 could have stated as to whether the appellant had taken the saree with him as against the statement made by her under Section 161 Cr.P.C. In any case, it defies logic that any accused would take away the material object, after committing the offence, which was not even used for the aforesaid purpose.

9.The Trial Court has merely accepted the evidence adduced by the prosecution. It merely relied upon the evidence of P.W.6 coupled with scientific evidence. For the reasons stated above, we are unable to concur with the conclusion of the Trial Court. Hence the conviction and sentence rendered by the Trial Court are set aside and the Criminal Appeal stands allowed. The appellant/accused is acquitted of the charge framed against him. The fine amount, if any paid, shall be refunded.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The III Additional Sessions Judge, Salem.
- 2.-Do-Thro' The Principal Sessions Judge, Salem.
- 3.The Judicial Magistrate No.2, Salem.
- 4.-Do-Thro' The Chief Judicial Magistrate, Salem.
- 5.The District Collector, Salem.
- 6.The Superintendent, Central Prison, Coimbatore.
- 7.The Inspector of Police,
Karumalaikoodal Police Station, Salem District.
- 8.The Public Prosecutor, High Court, Madras.

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