



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2019

DELIVERED ON : 05.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRIMINAL APPEAL NOS.217 AND 764 OF 2018

& CRL.M.P.NO.15876 OF 2018

Parthiban, 29 years,
Son of Rajendran,
No.46, Manlur Village,
Vellayapuram Post,
Thiruvadri Taluk,
Ramanathapuram District.

... Appellant/Accused No.2
in Crl.A.No.217/2018

Sudhakar, M/A 33 years,
S/i Dharman,
No.414, Colony Street,
Kovil Kalapaal,
Naduvalagaiappai Post,
Mannargudi Taluk,
Thiruvarur District.

... Appellant/Accused No.3
in Crl.A.No.764/2018

Vs.

State represented by
The Inspector of Police,
Red Hills Police Station,
Tiruvallur District.
(Crime No.4105/2013)

.. Respondent/complainant in
both Crl.Appeals.

Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code to set aside the conviction and sentence passed by the Mahalir Neethi Mandram (Fast Track Mahila Court) Tiruvallur, in S.C.No.50 of 2014 dated 23.02.2018

For Appellant in : Mr.V.Paarthiban
Crl.A.No.217/2018



WEB COPY

For Appellant in : Mr.Swami Subramanian
Crl.A.No.764/2018

For respondent in : Mr.R.Prathap Kumar,
both appeals Additional Public Prosecutor

COMMON JUDGMENT

M.M.SUNDRESH, J.

Aggrieved over the conviction and sentence of life imprisonment imposed for the offence under Section 302 IPC and to pay a fine of Rs.2000/- each, in default, to undergo rigorous imprisonment for six months and seven years R.I., for the offence punishable under Section 392 IPC and to pay a fine of Rs.2000/- each in default to undergo R.I for three months and three years R.I., for the offence punishable under Section 201 IPC and to pay a fine of Rs.2000/- each in default to undergo R.I for three months in S.C.No.50 of 2014 on the file of Mahalir Neethi Mandram (Fast Track Mahila Court) Tiruvallur, the appellants, who were arrayed as A2 and A3 have filed these criminal appeals.

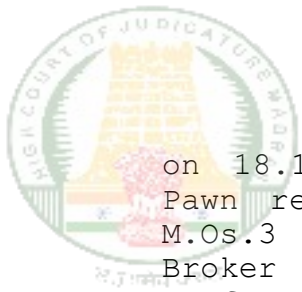
2. The main accused/A1 for the reasons known has not chosen to file his appeal and thus preferring to undergo the sentence.

3. Facts in Brief:

3.1. P.W.1-Thamizhselvi is the sister of the deceased-Malliga. On 03.12.2012 both P.W.1 and the deceased attended a function at Vellore and reached Koyambedu bus terminus. From there, P.W.1 went to her house by bus while the deceased took an Auto to reach her house at Mathur. However, her whereabouts was not known thereafter and her mobile phone was not reachable. On 04.12.2012 an information was received by P.W.2-Sadasivam, who is the husband of the deceased, that a female body was lying in Vadaperumpakkam to Puzhal Union Salai. Immediately, P.Ws.1 to 4 rushed to the scene of occurrence and found that the deceased was murdered by some one and the gold jewels were missing. A complaint was given under Ex.P1 by P.W.1 to P.W.17-Abraham Kroose, who is the Inspector of Police and a case was registered in Crime No.4105 of 2012 under Sections 302, 392 and 201 IPC.

3.2. The first accused/A1 happened to be the driver of the Auto and the appellants being A2 and A3 were also travelling along. P.W.18-Velmurugan, the Investigating Officer, has arrested the accused on 18.12.2012. The accused gave confession statements before P.W.7-Pravinkumar and P.W.8-Baskaran.

3.3. P.W.18 seized the Auto based upon the confession of A1



on 18.12.2012 under Ex.P7 Seizure mahazar. Incidentally, the Pawn receipts were also recovered. On the very same day, M.Os.3 to 6 and 11 to 14 were recovered from P.W.12, the Pawn Broker before P.Ws.7 and 8 under Ex.P5. This was done on the confession statement of A2. M.Os.1 and 2 were also recovered from P.W.13, who is the another Pawn Broker, under mahazar Ex.P6 on 18.12.2012 in pursuant to the confession made by A1. Under Ex.P8, M.Os.7 to 10 were recovered in the presence of P.Ws.7 and 8 on the confession made by A2.

3.4. P.W.16-Dr.Balasubramaniam, on receipt of the requisition from P.W.15-Balamurugan, the Constable on 04.12.2012 conducted post mortem and concluded that the deceased died due to asphyxia. The report was marked as Ex.P19.

4. Before the trial Court, P.Ws.1 to 18 have been examined by the prosecution. P.Ws.3 and 4 are the sons of P.W.2 and the deceased. P.W.9 is the Auto owner, whose auto was recovered under Ex.P7 on the confession of A1. P.Ws.10 and 11 are mahazar witnesses. P.Ws.12 and 13 are the pawn brokers from whom also recoveries have been made. P.Ws.17 and 18 are the Investigating Officers.

5. In total, 18 witnesses have been examined and Exs. P1 to P30 and M.Os.1 to 30 were marked on the side of the prosecution. On behalf of the defence, Ex.D1 was marked, which is mahazar nama.

6. Pursuant to the charges framed, the accused denied the offence committed by them. Similarly incriminating materials were made known to the accused under Section 313 Cr.P.C., which were also denied. The trial Court, placing reliance upon the evidence of P.Ws.1 to 4 along with P.Ws.12 and 13, convicted all the accused. As stated, the first accused has not filed the appeal so far. A2 filed CrI.A.No.217 of 2018 and A3 filed CrI.A.No.764 of 2018.

7. The learned counsel appearing for the appellants would submit that recoveries said to have been made under Section 27 of the Indian Evidence Act, 1872 cannot be believed. The evidence of P.W.1 would show that the accused were in the police station on the previous day i.e., on 17.12.2012. If that is the position, then the very confession statement followed by discovery of a fact leading to recovery cannot be sustained in the eye of law. Admittedly, there is no eye witness and the circumstances are not linked properly from one event to another pointing the guilt towards accused alone. There is an interpolation in Ex.P5 with respect to the name of the second accused. The content of the complaint was that the jewels were missing. There is some discrepancy in the evidence of P.Ws.12



and 13. P.W.7 being a mahazar witnesses, was the son of Police Officer and P.W.2 the husband of the deceased was also a retired Police Officer and therefore, the veracity of the witnesses ought not to have been accepted by the Court. There is absolutely no material against A3, the appellant in CrI.A.No.764 of 2018. There is a delay in reaching the First Information Report to the jurisdictional Court. A mere recovery by itself cannot be a ground to convict the appellants. To buttress his submissions, reliance has been made on the judgment of the Apex Court in B.L.Satish V. State of Karnataka ((2001) 3 Crimes 182).

8. The learned Additional Public Prosecutor appearing for the State submitted that the link has been properly established. Eye witnesses have deposed in tune with the prosecution case. There is no suspicious circumstances surrounding the recoveries made. The evidence of P.Ws.9, 12 and 13 would be sufficient enough to convict the appellants. The discrepancy in the evidence of P.W.1 has to be seen contextually as she has deposed after three years from the date of the occurrence. The trial Court considered the material evidence produced and convicted the appellants. Thus, the appeals have to be dismissed.

9. DISCUSSION:-

9.1. P.W.1, sister of the deceased, has clearly deposed in her evidence that the deceased got into an Auto. She identified the jewels marked as material objects and stated that the deceased was wearing them on the fateful day. Merely because, she has stated that she has seen the accused on the previous day at the police station, her evidence would be discarded as unreliable. She has stated in the cross examination that she has not remembered the past. P.W.2 has also spoken on the same line as that of P.W.1 with respect to their attending of the marriage and return. She has also further deposed about the missing jewels. P.Ws.3 and 4 also spoke on the same line. Therefore, from the abovesaid evidence, it could be clearly seen that the deceased was going along with P.W.1 and thereafter, returned in an Auto while P.W.1 left in a bus.

9.2. P.Ws.7 and 8 are the witnesses, who signed the confessions made. The evidence of P.W.9 assumes greater importance. He owned the Auto in which A1 was employed as a driver. He identified M.O.15, which is the Auto used for committing the offence. Thus, in view of the evidence of P.W.9, who is an independent witness, we are of the view that the prosecution has proved that it is his Auto which is used for committing the offence. P.Ws.1, 10 and 11 are the witnesses, who signed in the observation mahazar. P.Ws.12 and 13 are running pawn shops. P.W.12- Pawarlal, who is the pawn broker has identified A2. Though he identified A2 as A3, he



has clearly stated that he was the one who came along with A1. He also acknowledged Ex.P9 Pawn Broker Receipt. He has further stated that he received the jewels and paid a sum of Rs.1,10,000/-. Similarly, P.W.13 spoke about the presence of A1. Thus, from the evidence of P.Ws.12 and 13, the prosecution has proved that A1 and A2 pledged the jewels and received money after committing offence.

9.3. From the aforesaid evidence, especially the evidence of P.Ws.1 to 4, 9 to 13 and 14, we are quite satisfied that the link has been established insofar as A1 and A2 are concerned, though A1 has not filed an appeal. Merely because P.W.7 is the son of the Police Officer, his evidence cannot be impeached, which would be termed as an interesting witness in that sense. An interesting witness is the one, who is interested in getting the conviction for the accused for the reasons known. P.W.9 has clearly stated that he is the owner of the Auto, which was used and A1 was the driver. Once we accept the evidence of P.W.2 with respect to A1 and A2 coupled with the recoveries made, the case of the prosecution stands proved. It is not as if the trial Court has convicted A1 and A2 merely based upon recoveries alone. The evidence adduced from the witnesses from which recoveries have been made coupled with the acknowledgment of the receipts given by them being independent witnesses would certainly strengthen the case of the prosecution. Similarly, the evidence of P.Ws.1 to 4 with respect to travelling of the deceased in an Auto, who saw her getting into the Auto would go against A1 and A2.

9.4. The contentions raised by the learned counsel appearing for the appellants for the reasons stated above cannot be countenanced. There is no delay in sending the First Information Report to the jurisdictional Magistrate. It was sent on the very same day. As stated, the evidence of P.W.1 has to be read as a whole. Number of years have passed and she has clearly deposed that she has not deposed fully. Merely because the complaint specifically says about the missing jewels, it cannot be stated that the version of the prosecution is not correct. The contention regarding correction or interpolation of name of A2 in Ex.P5 seizure mahazar would not inure to the benefit of A2. A mere re-writing or a

correction will not absolve A2 from the offence committed, particularly, when there are other incriminating materials available, as discussed above. Thus, we find that the link to the chain of events involving relevant facts has been firmly established insofar as A1 and A2 are concerned.

9.5. However, we do find that there is absolutely no material to implicate A3, who is the appellant in CrI.A.No.764



of 2018. Except the confession statement made, that too, after arrest, there is absolutely no material on his alleged involvement. Admittedly, there was no recovery made under Section 27 of the Indian Evidence Act, 1872 and P.Ws.12 and 13 have also not stated anything about him. It is trite, suspicion, however strong may be, cannot be a replacement for proof. As we find practically no evidence as against the appellant in Crl.A.No.764 of 2018 compared to the other appellant, we are inclined to give the benefit of doubt to him. The trial Court placed all the accused in the same pedestrian while rendering conviction. As discussed above, neither the pawn receipts Exs.P9 and P10 nor the statement of P.Ws.12 and 13 implicates the appellant in Crl.A.No.764 of 2018 moreso when no recovery was admittedly made on his statement. Thus, we do not find any material to implicate him.

10. In such view of the matter, while confirming the conviction and sentence rendered against the appellant/A2 in Crl.A.No.217 of 2018, the same stands set aside as against the appellant/A3 in Crl.A.No.764 of 2018. Accordingly, Crl.A.No.217 of 2018 filed by appellant/A2-Parthiban stands dismissed.

11. The conviction and sentence imposed on the appellant/A3-Sudhakar in S.C.No.50 of 2014 on the file of Mahalir Neethi Mandram (Fast Track Mahila Court) Tiruvallur, are set aside and the Criminal Appeal No.764 of 2018 stands allowed. The appellant/accused No.3 is acquitted of the charges under Sections 302, 392 and 201 I.P.C., and the fine amount if any paid, shall be refunded to him. The appellant/A3-Sudhakar is directed to be released forthwith, unless his custody is required in connection with any other case. Consequently. Connected criminal miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raa

To

1. The Judicial Magistrate-II,
Ponneri.
2. The Chief Judicial Magistrate, Thiruvallur District.
3. The District Sessions Judge, Thiruvallur.



4. The Judge, Magalir Needhi Mandram,
Fast Track Mahila Court, Thiruvallur,
Thiruvallur District.

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

6. The Superintendent of Police,
Thiruvallur.

7. The Inspector of Police,
Red Hills Police Station,
Tiruvallur District.
(Crime No.4105/2013)

8. The Superintendent,
Central Prison, Puzhal, Chennai.

9. The District Collector,
Thiruvallur.

10. The Additional Public Prosecutor,
High Court, Chennai.

+lcc to Mr.Swami Subramanian, Advocate, S.R.No.56615

+lcc to Mr.V.Paarthiban, Advocate, S.R.No.54585

Criminal Appeal Nos.217 and 764
of 2018

CA(CO)
CS/11/10/2019