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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.107 of 2019

1. Sasikumar
 2. Nirmala
- ... Appellants/Accused

Vs.

State by Inspector of Police,
Paradarami Police Station,
Vellore District.
... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire records pertaining to S.C.No.198 of 2018 on the file of the learned Additional District and Sessions Judge (FTC), Vellore and hear the appeal and set aside the judgment passed by the learned Additional District and Sessions Judge (FTC), Vellore in S.C.No.198 of 2018 dated 05.02.2019.

For Appellants : Mr.S.Sudhakar

For Respondent : Mrs.Kritika Kamal.P
Government Advocate
(Crl.Side)

JUDGMENT

The prosecution story is as under:

Sasikumar (A1) is the husband of Nirmala (A2). The couple was living in Selva Perumal Nagar, Pakkam Village, Gudiyatham Taluk, Vellore District. The deceased Velan is a family friend of theirs and was working as a lorry driver under Sasikumar (A1) and was part and parcel of the latter's family. Sasikumar (A1) suspected that the deceased was having illegal intimacy with his wife Nirmala (A2). Therefore, on 31.10.2017, around 22.30 hours, when the deceased was sleeping in the house of Sasikumar (A1), it is alleged that Sasikumar (A1) dropped a grinding stone on the head of the deceased and caused his death. On coming to know of it, Nirmala (A2), who was also in the house, was shocked. Thereafter, the couple decided to cover up the murder by making it look as if Velan had died



in a road accident. Since the deceased was bleeding, the couple called Mohan (PW-3), an auto driver and carried the body of the deceased to the Government Hospital, Gudiyatham, where the deceased was examined by Dr.Jeevitha Priyadarshini (not examined), who issued Accident Register copy (Ex.P-10), wherein, it is stated as follows:

"Brought dead with © Alleged H/O RTA on
31.10.2017 at 10.30 PM near Chittoor Gate,
Selvaperumal Kovil
o/e

pt not conscious
Not oriented.

PR : ? CVS : S1 S2 not heard
BP : ? Rs : Silent Chest

ECG - Flat line
Body kept in Mortuary"

2. On coming to know about the death of Velan, his father Subramani (PW-1) came to the hospital and on seeing the nature of injury, suspected foul play on the part of the accused. Therefore, he lodged a complaint which is marked as Ex.P-1, based on which, Ramamurthy (PW-12), the Special Sub-Inspector of Police registered a case in Crime No.144 of 2017 on 01.11.2017 under Sections 302 and 201 IPC, against Sasikumar (A1) and his wife Nirmala (A2) and the duo was arrested on 02.11.2017. Based on their confession, the grinding stone (M.O.3) was recovered under Ex.P-28 and the bloodstained shirt (M.O.4) belonging to the accused was also seized under Ex.P-29. The Police also seized from the house of the accused bloodstained cement mortar pieces (M.O.1) and the same was sent through the Court to the Tamil Nadu Forensic Sciences Laboratory for examination. Ashok Kumar (PW-9), Forensic Science Assistant examined the cement mortar pieces (M.O.1) and in his evidence as well in his report (Ex.P-21), has stated that human blood Group A was detected in the cement mortar pieces (M.O.1), grinding stone, shirt of Sasikumar (A1), nighty of Nirmala (A2), lungi of the deceased and banian of the deceased and the serology report shows that the blood is of A Group. Inquest was conducted over the body of the deceased and the inquest report was marked as Ex.P-25. The body was sent for postmortem to the Government Hospital, Gudiyatham, where Dr. Babu (PW-8), conducted autopsy and in his evidence as well in the postmortem report (Ex.P-18), has noted a head injury. After obtaining the Viscera report, he gave the final opinion that the deceased would appear to have died of head injury, Hemorrhage and shock. After completing the investigation, the Police filed final report in PRC



No.21/2018 before the Judicial Magistrate, Gudiyatham against Sasikumar (A1) and Nirmala (A2) for the offences under Sections 302 and 201 r/w 34 IPC.

3. The case was committed to the Court of Session in S.C.No.198 of 2018 and was made over to the Additional District and Sessions Court (FTC), Vellore, for trial. The Trial Court framed a charge under Section 302 IPC against Sasikumar (A1) and 201 r/w 34 IPC against Nirmala (A2). When questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 13 witnesses, marked 31 exhibits and 7 material objects. When the accused were questioned under Section 313 Cr.P.C about the incriminating circumstances against them, they denied the same. After considering the evidence on record and hearing the learned counsel on either side, the Trial Court, by judgment and order dated 05.02.2019 in S.C.No.198/2018, has convicted and sentenced Sasikumar (A1) and Nirmala (A2) as under:

Name of the accused	Provision under which convicted	Sentence
Sasikumar (A1)	S.304(I) IPC S.201 r/w 34 IPC	7 years Rigorous Imprisonment and fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for one year. 3 years Rigorous Imprisonment and fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for one year.
Nirmala (A2)	S 201 r/w 34 IPC	3 years Rigorous Imprisonment and fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for one year.

Challenging the conviction and sentence, this appeal has been preferred by Sasikumar (A1) and Nirmala (A2).

4. Heard the learned counsel for the appellants and the learned Government Advocate (Criminal Side) appearing for the respondent - State.





(Ex.P-18) clearly shows that the deceased had suffered crush injuries on his head. The grinding stone (M.O.3) that was used, was also found with the bloodstain of human Group A.

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9. In the light of such overwhelming evidence, it cannot be stated that the prosecution had failed to prove the case beyond doubt. When the evidence on record clearly shows that Sasikumar (A1) had committed an offence under Section 302 IPC, the Trial Court has strangely convicted him under Section 304(I) IPC by holding that Sasikumar (A1) had no intention to commit the murder. Of course, the State has not challenged the acquittal of the accused of the offence under Section 302 IPC and therefore, this Court cannot alter the said finding in the appeal filed by the accused. Similarly, Sasikumar (A1), in order to cover up the offence has admitted the deceased in the hospital along with his wife Nirmala (A2) by stating that the deceased had suffered injuries in a road accident. Therefore, his conviction u/s 201 r/w 34 IPC is confirmed.

10. Coming to the role played by Nirmala (A2), the allegation is that her husband suspected that the deceased was having illicit intimacy with her and that is why he is said to have caused the death of Velan by dropping the grinding stone (M.O.3), when Velan was asleep. The evidence shows that Nirmala (A2) had implicitly accompanied her husband Sasikumar (A1) to carry the injured Velan to the hospital.

11. Taking into consideration the facts and circumstances of the case, this Court is of the view that interests of justice will be served, if the sentence slapped on Nirmala (A2) for the offence under Section 201 read with 34 IPC is reduced to the period already undergone by her.

12. In the result, the appeal is partly allowed. The conviction and sentence imposed on Sasikumar (A1) by the Trial Court stands confirmed. The conviction of Nirmala (A2) for the offence under Section 201 read with Section 34 IPC stands confirmed but the sentence is reduced to the period already undergone by her. Nirmala (A2) is directed to be released from custody if not required in any other case.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar



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1. The Inspector of Police,
Paradarami Police Station,
Vellore District.
 2. The Additional District & Sessions Judge,
Fast Track Court,
Vellore.
 3. The Superintendent, Central Prison, Vellore
 4. The Superintendent, Central Prison, (Woman), Chennai.
 5. The Public Prosecutor,
High Court,
Madras.
- +2ccs to Mr.S.Sudhakar , Advocate SR.No. 68273
CRL.A.No.107 of 2019
A.SK(26/08/2019)