

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.07.2019

Delivered on : 25.07.2019

CORAM

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

AND

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.7 of 2018
and CrI.M.P.No.30 of 2018

Srinivasan, M/31 years,
S/o Kasayya,
No.82, School Street,
Kambada Hosur-I,
Bhadravathi Taluk,
Shimoga District,
Central Prison, Coimbatore. ..Appellant/sole Accused

Vs.

The State, represented by
The Inspector of Police,
Erode North Police Station,
Erode District. .. Respondent/complainant

Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code as against the judgment passed in S.C.No.12 of 2016 dated 31.01.2017 on the file of Sessions Court, Mahalir Neethimandram (FTC) Erode, convicting and sentencing the appellant/accused to undergo life imprisonment for the offence under Section 302 IPC and to pay a fine of Rs.1000/- and in default to undergo further period of two years simple imprisonment, and was also convicted under section 392(Part-I) IPC and sentenced to undergo 10 years R.I., and to pay a fine of Rs.1,000/- , in default to undergo two years simple imprisonment and to set aside the same.

For Appellant : Mr.Philip Ravindran Jesudoss

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

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JUDGMENT

M.M.SUNDRESH, J.

The appellant, who is the sole accused in S.C.No.12 of 2016 on the file of Sessions Court, Mahalir Neethimandram (FTC) Erode, stood charged for the offences punishable under Sections 302, 392(Part-I) and 201(Part-I) IPC, has filed the above appeal. After trial, he was convicted for the offences

punishable under Sections 302 and 392(Part-I) IPC while getting an acquittal under Section 201(iii) IPC and sentenced to undergo life imprisonment for the offence under Section 302 IPC and to pay a fine of Rs.1000/- and in default to undergo further period of two years simple imprisonment, and was also sentenced to undergo 10 years R.I., for the offence under section 392 (Part-I) IPC and to pay a fine of Rs.1,000/-, in default to undergo two years simple imprisonment.

2. Prosecution version:-

2.1. The case of the prosecution is that on 27.07.2011, between 12.30 p.m., and 4.00p.m., when the deceased-Nacharammal was alone in the house, the appellant took her into his house, locked the door inside and hit the head of the deceased over the wall and thereafter strangled her with the telephone wire. After having done so, he stole the gold chain and ear rings worn by the deceased. The body of the deceased was placed inside the water Tank and hidden.

2.2. The appellant was the tenant of the deceased, who was an illiterate lady. He had no sufficient income from his Tailoring business. He was in need of money for the marriage of his sister, conduct of the festival and to pay the chit amount, in which, he was a subscriber.

2.3. It is the further case of the prosecution that P.W.4-Santhoshkumar, who is the grandson of the deceased along with P.W.3-Prabhu being his friend, saw the appellant staring at the deceased when they were leaving home at about 11.00a.m., on 27.08.2011. They saw the deceased sweeping roadside of her residence. P.W.1-Marimuthu, who is the son of the deceased, enquired P.W.4 about the whereabouts of the deceased after knowing that she was missing. A search was made to find her. There were other tenants being four in number, apart from the appellant. They were, in fact, asked to vacate for their improper contact, who is the wife of P.W.1 and mother of P.W.4. P.W.5-Radha is the friend of the deceased, who speaks about the monetary needs of the appellant. P.W.6-Mallika is the additional witness to the Observation Mahazar, which is Ex.P2. P.W.7-Manimegalai, who conducts chits, also speaks about the motive part with specific reference to the financial needs. P.W.8 is the person, who stood as surety for the appellant for purchasing home theatre. P.W.9-Rajendran is the owner of a Garments company, where the accused was working as a tailor. P.W.10-Rajaram is the land broker from whom the accused purchased the land. P.W.11-Dr.Krishnamoorthi is the Doctor, who conducted post mortem. P.W.12-Sivaprahasam, is the Village Administrative Officer, to whom the appellant gave the confession statement on 27.11.2011, which is three months after the occurrence. This was followed by the recovery made. P.W.15-

Venkateshprabhu, who is the Sub Inspector of Police, has received the complaint from P.W.1 and registered the same in Crime No.924/2011 under Sections 380 and 302 IPC and the First Information Report was marked as Ex.P16.

2.4. P.W.16-Thiyagarajan is the Grade-I Police, who arranged for the post mortem on the body of the deceased and thereafter, he handed over the body to the relatives of the deceased and also handed over the Special Report, which is marked as Ex.P15 to the Inspector of Police. P.W.17-Sivakumar is the Inspector of Police who investigated the case after receipt of the FIR connected with Erode North Police Station in Crime No.924/2011 and after completion of the investigation, he filed a charge sheet.

3. Before the trial Court, the prosecution examined 17 witnesses in total as stated above and marked Exs.P1 to P19 and produced M.Os.1 to 6. After framing the charges, the appellant was questioned with the incriminating materials under Section 313 of the Criminal Procedure Code. There was only a mere denial by the appellant.

4. The trial Court, giving importance to recovery under Section 27 of the Indian Evidence Act, 1872, and having found that the motive has been proved, gave its stamp of approval to the evidence of P.W.1 along with the other witnesses. However, in respect of the charge punishable under Section 201(Part 1) of the Indian Penal Code, the appellant was acquitted.

5. Assailing the conviction and sentence to undergo life imprisonment for the offence under Section 302 IPC and to pay a fine of Rs.1000/- and in default to undergo further period of two years simple imprisonment, and to undergo 10 years R.I., for the offence punishable under Section 392(Part-I) IPC and to pay a fine of Rs.1,000/- , in default to undergo two years simple imprisonment, the appellant has filed this appeal.

6. The learned counsel appearing for the appellant submits that absolutely there is no circumstances available pointing out the guilt of the appellant. Chain of events have not been linked with each other. P.W.4 has not stated anything about the presence of the appellant during the statement recorded under Section 161 Cr.P.C. For three months, the investigation was mainly targeted against four other persons, who were tenants. Certainly, it changed the course thereafter. P.W.1 is the author of the complaint under Ex.P1. He has stated that his mother had left home as informed to him by his son-P.W.4. This statement of P.Ws.1, 2 and 4 given under Section 161 Cr.P.C., contradicts the evidence adduced before the Court. No Test Identification Parade had been conducted. P.W.3 is none other

than the friend of P.W.4, the grandson of the deceased. Even his statement has been inserted as if it is obtained on 30.08.2011, whereas, the same has been received only on 08.11.2011 by the Court. This is the case with all the other statements given under Section 161 Cr.P.C including P.W.12, the Village Administrative Officer. The motive has not been proved. Even the Inquest Report, which was marked as Ex.P19, does not identify the correct place of occurrence. The confession statement would not have been given by an unknown person, especially when the appellant is a resident of Karnataka State. Thus, the prosecution having failed to prove the case, clinchingly against the appellant, the judgment rendered by the Court below requires to be set aside.

7. The learned Additional Public Prosecutor appearing for the State would submit that mere discrepancy in the prosecution case by itself cannot be a ground to allow the appeal. Similarly, a defective prosecution cannot enure to the benefit of doubt in all circumstances. The trial Court has rightly considered the recovery made, coupled with the evidence adduced by P.Ws.12 and 1. The motive has been proved by the evidence adduced by P.Ws.5, 7 and 6 and thus, the appeal is liable to be dismissed.

8. As discussed above, P.W.1 is the son of the deceased. Admittedly, he is not an eye witness. He merely speaks about the facts known to him which mainly pertains to the identification of the body of the deceased, which was said to have been taken up to the hall. He further speaks that two complaints have been given by him, one by his wife and another by him. It is his evidence that the doors of the tenants including the appellant, as suspected persons, were found to be locked. Similarly, P.W.2, who is the daughter in law of the deceased and wife of P.W.1, had deposed on the very same lines. Thus, from the evidence of P.Ws.1 and 2 nothing much could be stated against the appellant. The evidence of P.W.1 with respect to the recovery of the chain and M.O.1 also does not inspire confidence, as he has not given the specific particulars of the lost chain and there is no material to show as to what has been recovered is the one worn by the deceased.

9. P.W.3 being the friend of P.W.4, who is the grandson of the deceased, has stated that he saw the appellant staring at the deceased at about 11.00 a.m., before he left along with P.W.4. However, he has not identified the appellant, moreso, when no Test Identification Parade was conducted. On a perusal of the evidence adduced, we could see that the statement recorded under Section 161 Cr.P.C. was given by P.W.3 on 30.08.2011, whereas the same was received by the Court of Judicial Magistrate only on 28.11.2011, which is a day after the

confession statement given by the appellant under Ex.P10 to P.W.12, the Village Administrative Officer. Therefore, we have no hesitation in holding that this statement must have been obtained and included after the arrest of the appellant and thus, no credence could be given to the same.

10. Similarly, P.W.4 has stated that he saw the appellant staring at the deceased-grandmother. He also changed his version in his evidence by stating that he saw the deceased sweeping outside the house, whereas the earlier statement was that she left the home to his knowledge. In fact, the earlier statement given by P.W.4 is also in tune with Ex.P1, the complaint given by P.W1.

11. We have also perused the statement under Section 161 Cr.P.C. given by all the other witnesses. To our surprise, the statements have been obtained after the arrest of the appellant and in some cases they were received after several months. In particular, we may note that the statement of the appellant recorded by P.W.12, the Village Administrative Officer is dated 28.11.2011, but the same has reached the Court only on 03.05.2012. P.W.11, the Doctor, who conducted post mortem on the body of the deceased has issued Ex.P4-Post Mortem Certificate on 28.08.2011, which was also received by the Court only on 03.05.2012. Ex.P5-Final opinion given by P.W.11-Doctor was also received by the Court on 03.05.2012. Similar also is the case of most of the other witnesses including P.Ws.14 and 15. P.W.5-Radha gave statement on 02.09.2011, which was received by the Court only on 28.11.2011. The statement given by P.W.7-Manimegalai was recorded on 03.09.2011 which reached the Court only on 28.11.2011.

12. From the abovesaid, we are not able to hold that the prosecution has proved its case beyond reasonable doubt. To be noted, all these statements have been received by the Court months after the arrest. This creates a serious doubt on the arrest itself, apart from the fact that absolutely there is no explanation for such huge unexplained delay, especially when the initial statement given reached the Court within two days including those done during the inquest. We are also unable to accept the evidence of P.W.12 for the aforesaid reason. It is rather strange that a statement can be given after few months of arrest of the accused by any unknown person, merely because it was recorded by the Village Administrative Officer, followed by recovery. Thus, on the facts of the case, it looks rather unnatural.

13. We have perused Ex.P19-Inquest Report. On a perusal of the same, it would be clear that even there, it has been stated that the deceased left home at about 12.30p.m. We are also

conscious of the fact that we are dealing with the case of circumstantial evidence and therefore, the settled principle of law governing the materials relied upon by the prosecution, shall unerringly point out the guilt of the appellant alone. The evidence of P.W.17-Sub Inspector of Police also would show that the initial suspicion was towards other four persons. No finger print has been lifted nor Test Identification Parade was conducted though we are quite conscious of the fact that they would only form part of the investigation. It is also the evidence of P.W.17 that the statement of P.W.4 was sent to the jurisdictional Magistrate Court only on 28.11.2011, as also the other statements after the arrest of the appellant. He further acknowledged the fact that the evidence of P.W.9 was though recorded on 02.09.2011, the same was sent to the Court only on 09.02.2015. It is his further admission that the statement recorded from P.W.12-Village Administrative Officer was sent only on 03.05.2012. Thus, the entire evidence let in by the prosecution, in our considered view, does not inspire confidence.

14. The trial Court rendered its conviction merely placing reliance upon the evidence of P.Ws.1 and 12 while holding that the motive has been established. For the reasons stated, we are unable to agree with the findings of the trial Court. In such view of the matter, we are inclined to interfere with the conviction and sentence rendered by the trial Court.

15. Accordingly, the conviction and sentence imposed on the appellant-Srinivasan in S.C.No.12 of 2016 dated 31.01.2017 on the file of Sessions Court, Mahalir Neethimandram (FTC) Erode, are set aside and the Criminal Appeal stands allowed. The appellant is acquitted of the charges under Sections 302 and 392 (Part-I) I.P.C., and the fine amounts if any paid by the accused, shall be refunded to him. The bail bond, if any, executed by him during trial, shall stand cancelled. The appellant- Srinivasan 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

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge,
Mahalir Neethi Mandram,
Fast Track Court, Erode.

2.The Chief Judicial Magistrate,
Erode.

3.The District Collector, Erode,

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

5.The Inspector of Police,
Erode North Police Station,
Erode District.

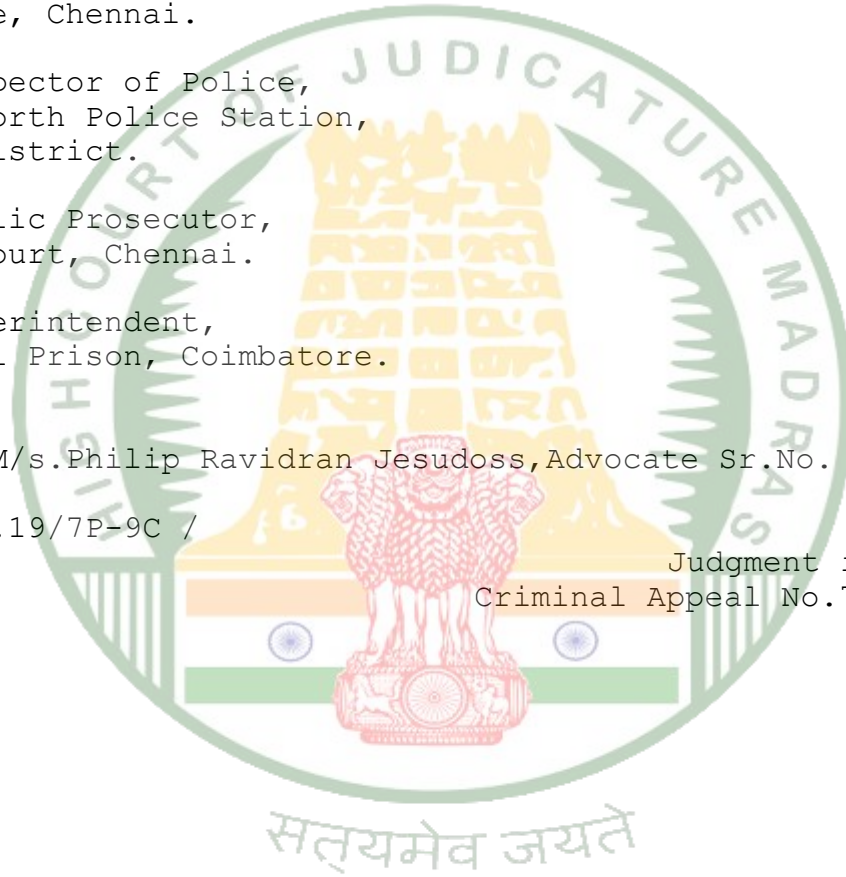
6.The Public Prosecutor,
High Court, Chennai.

7.The Superintendent,
Central Prison, Coimbatore.

+1 cc to M/s.Philip Ravidran Jesudoss,Advocate Sr.No. 63631

AKM/06.09.19/7P-9C /

Judgment in
Criminal Appeal No.7 of 2018



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