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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2019

Delivered on : 06.11.2019

CORAM

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

AND

THE HON'BLE MR.JUSTICE RMT. TEEKAA RAMAN

Criminal Appeal No.489 of 2017

Sakthivel, Male aged 47 years
S/o Manickam,
Sukkaal Uttai Village, Naripalli Post,
Harur Taluk, Dharmapuri-636 906. ... Appellant/sole Accused

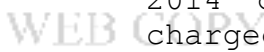
Vs.

The State, represented by
The Deputy Superintendent of Police,
(Prohibition Enforcement Wing)
Kottappatti Police Station,
Crime No.474 of 2012,
Dharmapuri District. .. Respondent/complainant

Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code as against the judgment passed in S.C.No.246 of 2014 dated 09.06.2017 on the file of Principal Sessions Judge, Dharmapuri, convicting the appellant for the offences (i) under Section 302 IPC and sentencing him to life imprisonment and imposed a fine of Rs.1000/- with a default sentence of three years rigorous imprisonment; (ii) under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and sentencing him to life imprisonment and imposed a fine of Rs.1000/- with a default sentence of three years R.I., and (iii) under Section 3(1)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and sentencing him to one year R.I., and imposed a fine of Rs,500 with a default sentence of one month R.I.

For Appellant : Mr.R.John Sathyan for
Mr.R.Thirumoorthy for Pradeep,J.

For respondent : Mr.K.Prabhakar,
Additional Public Prosecutor



M.M.SUNDRESH, J.

2. Prosecution case in brief:-

2.2. A complaint was given by P.W.3 along with the appellant. The appellant informed P.W.3 that the deceased ran away in the midway. Thereafter, a confession statement has been given by the appellant before P.W.1, who is the Village Administrative Officer. Since, the appellant was arrested and remanded to judicial custody, the case was altered including the one punishable under the provisions of Scheduled Case and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The investigation in Crime No.474 of 2012 of Kottapatty Police



Station, Harur Taluk, Dharmapuri District, registered under Sections 302 and 201 IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was taken up by PW.25-Sampath, Deputy Superintendent of Police. Thereafter, the investigation was transferred to P.W.26-Parameshwaran, Deputy Superintendent of Police (Prohibition Enforcement Wing), Dharmapuri, who altered the case by including the offence under Section 376 IPC under Ex.P19- Report dated 04.01.2013. In pursuant to the confession statement given by the accused, recoveries have been made, including the body of the deceased-Menaka. After completion of the investigation, P.W.26 has filed the charge sheet before the Judicial Magistrate, Arur.

2.3. The prosecution produced 26 witnesses to substantiate their case while marking Exs.P1 to P23. M.Os.1 to 46 were also marked on the side of the prosecution. On behalf of the appellant, no document has been marked. Ex.C1 is the Inquest Report dated 09.01.2013. The appellant was placed with all incriminating materials, including the evidence adduced by the witnesses. Though the appellant admitted that he did take the deceased in his two wheeler, which have also been marked Ex.P29, he maintained that she ran away while returning back from the railway station.

2.4. The trial Court, while acquitting the appellant for the offences punishable under Sections 376 and 201 read with 302 IPC for lack of evidence, has found him guilty for the other offences charged under Sections 302 IPC and 3(2)(v) and 3(1)(ix) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The trial Court discussed the evidence of P.Ws.1 to 26 and the documents marked for coming to its conclusion. Challenging the same, the present criminal appeal has been filed.

3. P.W.1-Rayakannu is the Village Administrative Officer, who gave the complaint on 21.12.2012 under Ex.P1, which has been registered in Crime No.474 of 2012. Though he has stated in Exs.P1-complaint and P12-First Information Report differently, in his evidence he had stated that he got the information from P.W.18-Tahsildar. When he reached the scene of occurrence, P.W.18-Tahsildar and Revenue Inspector were present. He found the accused in the custody of the police. Thereafter, Ex.P1 has been obtained. It is his further evidence that Ex.P1 has been written by him.

4. P.W.2-Raji, who is the Village Assistant, has turned hostile.

5. P.W.3 -Vediyappan is the Brother-in-Law of the



appellant. In fact, he deposed that he called the appellant to convince her and thereafter, pick up the deceased from Morappur Railway Station as she was disparate to rejoin him on the belief that the end of the world was to happen shortly. It is his further evidence that as the deceased refused to go along with the appellant to Naripalli village, he informed her to go to the residence. But, next day, when he came to Naripalli village, the appellant informed that on the mid way, she ran away. He along with the appellant gave the complaint. Initially, he made an attempt to search the deceased along with the appellant and P.W.5-Dhanapal. It is also his evidence that though all the others left from the Police Station, the appellant was kept for enquiry.

6. P.W.4-Vijaya is the mother of the deceased. She deposed that she was informed by the others including the appellant that the deceased was sent along with one Arjunan. However, the said Arjunan informed her that it is the appellant, who took her. The appellant has told P.W.4, as stated by him to P.W.3.

7. P.W.5 -Dhanapal, who accompanied P.W.3 and the appellant while giving the first complaint. He had stated that it is he, who brought the appellant to the Police Station.

8. P.W.6-Velmurugan is the another witness, who speaks about the presence of the deceased and the appellant together at the railway station. The appellant also enquired him about the nearness of the petrol bunk.

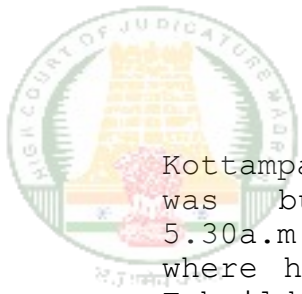
9. P.W.7-Palani is the witness, who seen the appellant alone carrying petrol on 21.12.2012 during night time.

10. P.W.8-Sivasakthi and P.W.9-Veerabathiran are the Salesmen in the Petrol bunk, in which, the appellant bought Petrol for a sum of Rs.150/- at about 11.00a.m., on 21.12.2012. Ex.P2 is the Recovery Mahazar and M.O.1 is the Bill book.

11. P.W.10-Murugan is the Ambulance Driver, who dug the pit for removing the body of the deceased in the presence of police officials and Tahsildar on 28.12.2012.

12. P.W.11-Jalendran is the Village Assistant, who deposed that the appellant gave the confession for the second time on 27.12.2012 in the presence of the Village Administrative Officer-P.W.13.

13. P.W.12-Jayaprakash is the Village Administrative Officer, who deposed that after receiving the information from



Kottampatty Police Station that near Muniappan Temple, body was buried, he went to the scene of occurrence at about 5.30a.m., on 28.12.2012. The appellant identified the place, where he buried the body of the deceased, in the presence of Tahsildar and Deputy Superintendent of Police. After removing the body, Ex.P3- Observation Mahazar was prepared. M.Os.2 to 24 were recovered from the body of the deceased. M.O.25 is the stone, which was used for murdering the deceased. Exs.4 to 7 are the Recovery Mahazars.

14. P.W.13-Kumaran is also the Village Administrative Officer. He deposed that on receipt of the information from the Deputy Superintendent of Police, he went to police station and in his presence the appellant/accused gave a confession statement and also informed about Yamaha Bike bearing No.TN-29-AY-6112, which was used for committing the offence.

15. P.W.14-Selvaraj is the Doctor, who conducted post mortem and issued Ex.P9-Post Mortem Certificate. He has deposed that the deceased might have died due to strangulation and neck bone also found broken.

16. P.W.16-Amirthalingam is the father-in-law of the appellant. In his evidence, he deposed that the appellant surrendered on his own and he identified the body of the deceased.

17. P.W.17-Saroja is the wife of P.W.16. She turned hostile. P.W.18-Gunasekaran is the Tahsildar. He has deposed that on 27.12.2012, a requisition was given by the investigating officer and the body was recovered in his presence.

18. P.W.23-Sampathkumar is the Sub Inspector of Police, who registered the case in Crime No.474/2012 under Section 302 IPC and 201 read with 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P12 is the First Information Report. He has also acknowledged the fact that earlier complaint was given before the police station coming within the jurisdiction of Arur Town.

19. P.W.24-Pushparani is the Scientific Expert, who did the super imposition and gave a Report that the skeleton of the body found was that of the deceased.

20. P.W.25-Sampath is the Investigating Officer, who took up the investigation from 27.12.2012 onwards. He speaks about preparation of Observation Mahazar and sketch, recovery mahazar and the investigation done thereafter.

21. P.W.26-Parameshwaran took up the further



investigation from 04.01.2013. On the same day, he included the offence punishable under Section 376 IPC. He also speaks about the recoveries made in pursuant to the confession made on 08.01.2013. Ex.P20 is the admitted portion of the confession statement given by the appellant, in which he stated about the Spade used for the purpose of burying the deceased. He deposed that he recovered Yamaha bike under M.O.38 from the appellant on 09.01.2013. It is his further evidence that he made further enquiries and recorded the statements of witnesses under Section 161 Cr.P.C. On 16.01.2013, a requisition letter was given to the Tahsildar for examining the inner organs of the body to the Forensic Science Laboratory. Thereafter, on 21.01.2013 further requisition was given to examine the skull and the hair of the deceased. After duly completing the investigation, he filed the Final Report on 19.10.2013 before the Judicial Magistrate, Arur. He has also admitted that the earlier complaint registered in Crime No.1147/2012 has not been marked.

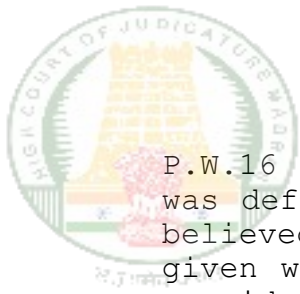
22. Ex.P1 is the complaint give by P.W.1 Exs.P2 to P7 are the Observation Mahazar and Recovery Mahazars. Ex.P23 is the report of the Serologist. Ex.P10 is the copy of the Accident Register and Ex.P9 is the Post Mortem Certificate. Ex.C1 is the Inquest Report.

23. The trial Court framed the charges and placed them before the accused. He accordingly denied the charges. During the trial, the prosecution produced 26 witnesses to substantiate their case while marking Exs.P1 to P23 along with M.Os.1 to 46. On the part of the defence, neither any document was marked nor any witness was examined. Ex.C1 is the Inquest Report dated 09.01.2013. After framing charges, the appellant was placed with the incriminating materials and questioned under Section 313-A of the Criminal Procedure Code. There was a denial by the appellant.

24. With the above evidence, both oral and documentary, the trial Court rendered conviction and sentence against the appellant.

25. Submissions of the learned counsel for the Appellant :

The learned Counsel appearing for the appellant would submit that as the case of the prosecution is based upon circumstantial evidence, chain of events have not been linked properly. The earlier complaint has not been marked and its progress was not known. The evidence of P.W.1 cannot be believed since even as per the statement, it was given in the presence of the others and when the appellant was in the police custody. The appellant was in the custody as per evidence of P.W.s 1 and 3. P.W.5 has given different version that he was the one, who brought the appellant to the Police Station.



P.W.16 speaks about the body found. The entire investigation was defective. The evidence given by P.Ws.6 to 9 cannot be believed. There is a material discrepancy in the complaint given with respect to the two wheeler. The trial Court has not considered these discrepancies and therefore, the appellant is entitled to the benefit of doubt.

26.Submissions of the learned Additional Public Prosecutor:

The learned Additional Public Prosecutor appearing for the State has submitted that there are two vehicles involved and both the vehicles were used at different point of time. One vehicle was used at the time of committing the offence and the other one is used for screening the body of the deceased. Both the vehicles have been recovered and marked as M.Os.29 and 38. A mere defective investigation per se cannot be a ground to render acquittal. Even according to the appellant he was seen with the deceased. There is nothing to discredit the evidence of P.Ws.6 to 9. The witnesses also speak about the recovery made. But for the fact that the recovery was made in pursuant to the confession statement made by the appellant, the body would not have been recovered from the place. Therefore, on the ground of having seen together, seen without the deceased thereafter and coupled with recovery, which is discovery of a new fact, the trial Court rightly convicted the appellant. Thus, the appeal will have to be dismissed.

27. As rightly submitted by the learned counsel appearing for the appellant, the mere fact that the appellant was seen lastly with the deceased by itself cannot be a ground to render conviction. However, the fact that the appellant was seen with the deceased has been proved without any doubt. It is not only the evidence of P.Ws.3 and 6 but also that of the appellant in his statement given under Section 313-A of the Criminal Procedure Code. It is the further evidence of P.W.3 that he along with the appellant and P.W.5 gave the complaint after making search. Therefore, as mandated under Section 106 of the Indian Evidence Act, 1872, it is for the appellant to dispel the doubt regarding the circumstance under which the deceased was found missing. In this connection, we may note that P.W.6 has stated about the presence of the deceased and the appellant at the Railway Station. P.W.7 has deposed about seeing the appellant alone thereafter. P.Ws.8 and 9 are the witnesses, who were working in the Petrol Bunk. Though there is no evidence to suggest that the appellant poured Kerosene, these two witnesses viz., P.Ws.8 and 9 clearly stated that they saw the appellant alone at about 11.00p.m., on 21.12.2012. Thus, the aforesaid evidence would clinchingly show that the appellant was very much seen alone after the occurrence.



28. The learned counsel appearing for the appellant submitted that the evidence of P.W.1 coupled with the evidence of P.W.3 and others about the presence of the appellant in the police station before the Ex.P1-complaint would show that the case of prosecution is not proved. We are not accepting the abovesaid contention. There was already a complaint. Therefore, the fact that the complaint was subsequently given under Ex.P1 would not enure to the benefit of the appellant. After all, a complaint is a mere initiation of process, which was already there. Conviction has been rendered by the trial Court on the appreciation of evidence, such as, the presence of the appellant and the deceased seen together and the appellant having been seen alone subsequently on the same day. We do not find any evidence to discredit the statement made by P.Ws.6 to 9. The statement given that the appellant was kept for enquiry brought by P.W.5 would not affect the case of the prosecution. The appellant must have been kept for enquiry on the earlier occasion also. Similarly the evidence given about the appellant being brought before the Police Station cannot be a factor to discredit the prosecution version. In the case on hand, substantial recoveries have been made, including the body of the deceased.

29. What has to be seen is the evidence given by the prosecution both oral and documentary coupled with recoveries. But for the information given by the appellant available only within his sole knowledge leading to discovery of facts, including the body of the deceased, such recoveries would not have been made. The witnesses, who deposed in tune with the observation and recovery mahazars would add strength to the case of the prosecution. The fact that no petrol was found from the sample of sand recovery also cannot be a factor. After all, it is only a version of the appellant. The question is as to whether the appellant has committed a culpable homicide amounting to murder or not. Therefore, the manner of offence committed takes a back seat. The evidence of scientific expert would show that the body found was that of the deceased, which was also accordingly deposed by the other witnesses.

30. It is the further case of the prosecution that after giving the first complaint, the appellant took the body and thereafter, buried it in a different place. The appellant used two vehicles on both occasions. The first vehicle was used to carry the deceased when she was alive and the second vehicle was for the purpose of hiding the body and among other material objects. Therefore, the contentions raised in this regard cannot be countenanced. However, we find that the trial Court was not correct in convicting the appellant for the offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The offence was committed



by the appellant, not for the reason that the deceased belongs to the Scheduled Caste community. Thus, the conviction rendered by the trial Court for the offences committed by the appellant under Sections 3(2)(v) and 3(1)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be sustained. Accordingly, while confirming the conviction and sentence imposed by the trial Court for the offences punishable under Section 302 IPC, the conviction and sentence rendered against the appellant for the offences punishable under Sections 3(2)(v) and 3(1)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, shall stand set aside. The above criminal appeal stands allowed in part as aforesaid.

(M.M.S., J)

(TK.R., J)

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Deputy Superintendent of Police,
(Prohibition Enforcement Wing)
Kottappatti Police Station,
Crime No.474 of 2012,
Dharmapuri District.

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

3.The Superintendent,
Central Prison, Vellore.

4.The Principal Sessions Judge,
Dharmapuri.

+1cc to Mr.J.Pradeep, Advocate, S.R.No. 92745

+1cc to Mr.R.John Sathyan, Advocate, S.R.No. 91839

Criminal Appeal No.489 of 2017

GP(CO)
GN(20/12/2019)