

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.06.2019
Pronounced on : 17.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A.Nos.735 of 2017 & 1 of 2018
and

Crl.M.P.No.14635 of 2017

Crl.A.No.735 of 2017

1.Rajaprakash,
S/o.Gunasekara Gounder

2.Sundhararajan
S/o.Sundharamoorthi ... Appellants/Accused Nos.2 & 3

-Vs-

State of Tamilnadu,
Represented by Inspector of Police,
Villupuram Taluk Police Station
Cr.No.578 of 2015,
Villupuram District. ... Respondent

Crl.A.No.1 of 2018

Dhivakar
S/o.Durairaj Gounder ... Appellant/Accused No.1

-Vs-

STATE:Represented by
Inspector of Police,
Villupuram Taluk Police Station,
Crime No.578 of 2015,
Villupuram District. ... Respondent

COMMON PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the proceedings in S.C.No.217 of 2016 on the file of the Court of Sessions Judge Magalir Neethi Mandram (Fast Track Mahila Court) Villupuram and set aside the order of conviction dated 03.11.2017 and set the appellants at liberty.

For Appellant
in Crl.A.No.735 of 2017 : Mr.M.Devaraj

For Appellant
in Crl.A.No.1 of 2018 : Mr.R.John Sathyan

For Respondent
in both Crl.A : Mr.R.Prathap Kumar
Additional Public Prosecutor

COMMON JUDGMENT

M.NIRMAL KUMAR, J.

Both appeals arise against common judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram, passed in S.C.NO.217 of 2016 on 03.11.2017.

2.For the sake of convenience the appellants are referred as "Accused" and the respondent as "complainant" as found in the Judgment of the Court below.

3.Brief Facts:

3.1.The 1st accused and the younger daughter of the deceased were in love with each other. When the same came to the knowledge of the deceased, the deceased initially supported the love affair but when the attitude of the 1st accused changed, the deceased advised her younger daughter not to move with the accused. Hence, the 1st accused with the help of the 2nd and 3rd accused married the younger daughter of the deceased in the Sub Registrar Office, Cuddalore without the knowledge of their parents. After marriage both the 1st and the younger daughter of the deceased resided in their respective houses. 15 days before the occurrence the younger daughter of the deceased joined MBA course in SRM College and she stayed in the college hostel at the instance of his mother. The 1st accused was frustrated over the joining of MBA by the Krithika. Hence he decided to do away with the deceased, since she was the hindrance for both of them to live together. The 2nd and 3rd accused are the friends of the 1st accused. The 1st accused along with 2nd and 3rd accused conspired to do away with the deceased when she was alone in the house.

3.2.The 1st accused as planned went himself and got admitted in Maragatham Hospital stating that he has cough and chest pain on 30.08.2015. On 31.08.2015 at about 11.00 am., the 2nd and 3rd accused came to the hospital and A1 to A3 conspired to do away with the deceased. On 31.08.2015 at about 11.30 am., the 2nd and 3rd accused went to the house of the deceased in their respective

two wheelers and informed the deceased that they have come to her house to invite her for a wedding. When the deceased took them inside her house both of them asked for water and when the deceased went inside the house to take water, the 3rd accused gagged the mouth of the deceased and the 2nd accused attacked the deceased with the handle of the knife on her head and put cellotape on her mouth and nose and tied her hands with rope and committed murder of the deceased. The 2nd and 3rd accused had also taken the Thali, Thali Kasu, Gundu Nanal worth about 8 sovereigns of gold jewellery worn by the deceased.

3.3.Hence, A1 to A3 are charged under Section 120(b) r/w 302 of IPC (altered charge) and 2nd and 3rd accused are charged under Section 302 IPC, 449, 392 of IPC and 1st accused was charged under Section 449 r/w 109 of IPC, 302 r/w 109 IPC, 392 r/w 109 of IPC.

4.On conclusion of the trial, the lower Court has found that the appellants are guilty of the offence under Section 120(b) r/w 302 IPC, convicted and sentenced them to undergo life imprisonment and to pay a sum of Rs.1,000/- towards fine in default to undergo simple imprisonment for one year. The 1st accused was found guilty under Section 449 r/w 109 of IPC and was convicted and sentenced to undergo three years rigorous imprisonment and to pay a sum of Rs.1,000/- towards fine, in default to undergo simple imprisonment for three months. The 2nd and 3rd accused are also found guilty for the offence under Section 302 of IPC and was convicted and sentenced to undergo life imprisonment and to pay a sum of Rs.1,000/- towards fine in default to undergo simple imprisonment for one year. The 2nd and 3rd are found guilty under Section 449 of IPC was convicted and sentenced to undergo three years rigorous imprisonment and to pay a sum of Rs.1,000/- towards fine, in default to undergo simple imprisonment for three months. The 3rd accused was found guilty under Section 392 of IPC and he was convicted and sentenced to undergo five years rigorous imprisonment and to pay a sum of Rs.1,000/- towards fine, in default to undergo simple imprisonment for six months. The charges framed against the 2nd accused under Section 392 of IPC was not proved beyond all reasonable doubt by the prosecution and the 2nd accused was not found guilty and he was acquitted under Section 235 (1) Cr.P.C. The charge framed against the 1st accused under Section 392 r/w 109 of IPC was not proved beyond all reasonable doubt by the prosecution and the 2nd accused was not found guilty and he was acquitted under Section 235 (1) of Cr.P.C. The charge framed against the 1st accused under Section 392 r/w 109 IPC was not proved beyond all reasonable doubt by the prosecution and the 1st accused was not found guilty and he was acquitted under Section 235(1) Cr.P.C. Since the 1st accused was already found guilty under Section 120(b) r/w 302 of IPC no separate sentence has

been given to the 1st accused for the charge under Section 302 r/w 109 of IPC. All the sentences was ordered to run concurrently.

5.This case is one of circumstantial evidence, wherein it is to be seen that motive and theory of last seen and recovery are proved on the evidence and materials. PW2 the daughter of the deceased stated about the motive of A1 to do away her mother.

6.Before the trial Court, prosecution examined 19 witnesses and marked 37 exhibits and 29 material objects. No witnesses and exhibits were marked on the side of the defence.

7.1.PW1 is the husband of the deceased. PW2 is the daughter of the deceased. PW8 is the friend of PW1, who first saw the body of the deceased along with P.W.1. PW4 is the brother of the deceased, who identified the jewels [MO.1 to MO.7] and cell phone [MO.8] of the deceased along with PW1. PW5 cousin of the deceased stated about the deceased was in the habit of wearing jewels. PW3, PW9, PW17 and PW18 are neighbors, who have seen the 2nd and 3rd accused at the scene of occurrence in and around at that time.

7.2.PW6 and PW7 are the witnesses for conspiracy. PW10 is the witness for preparation of observation mahazar [Ex.P22], seizure of articles found in the scene of occurrence. PW11 the VAO has stated about the arrest of the 1st accused and his confession and recoveries of material objects. PW14 the Doctor has given treatment to A1 from 30.08.2015 to 01.09.2015. PW15 the Doctor conducted Autopsy [Ex.P18] on the body of the deceased. PW12 the Sub-Inspector of Police received complaint [Ex.P1] and registered an F.I.R in Crime No.578 of 2015 [Ex.P16]. PW13 the Head Constable handed over F.I.R to the learned Judicial Magistrate No.I, Villupuram and higher officials.

7.3.PW16 the Investigating officer had conducted major portion of the investigation and on his transfer, PW19 had taken over the investigation and altered the offence and filed alteration report [Ex.P37]. Thereafter, he filed a charge sheet.

7.4.PW16 the Investigating Officer received the complaint [Ex.P1] of PW1 on 31.08.2015 at about 08.30 pm. P.W.12 registered an F.I.R [Ex.P16] in Crime No.578 of 2015 for the offence under Section 302 and 380 of IPC. P.W.16 proceeded to scene of occurrence, prepared observation mahazar [Ex.P22], seized MO.9 to MO.17 through seizure mahazar [Ex.P2] at about 09.00 pm. Thereafter he examined the witnesses and conducted inquest over the body of the deceased on 01.09.2015 at about 07.00 am and sent the body for postmortem. On 11.09.2015, PW11

produced A1 along with his confession [Ex.P4] and special report [Ex.P5]. Based on the confession of A1, cell phone of the deceased [MO.8] was recovered.

8. Thereafter A2 and A3 were arrested. On the confession statement of A2, M.Os.1, 19 and 25 were recovered through Ex.P12 and Ex.P.8 and M.Os.20, 21, and 23 were recovered through Ex.P9. On the confession of A3, M.Os.2 to 7 through Ex.P.10 and M.O.23 and 24 through Ex.P11 were recovered. Thereafter, the accused were remanded. P.W.15 Postmortem Doctor was examined and through whom Exs.P18 to P21 were marked and the Postmortem Doctor had opined that the deceased had died on account of asphyxia due to smothering and head injuries. Thereafter, the investigation was completed. Thereafter on transfer of P.W.16/Mr.Palani, Inspector of Police/Investigation Officer, P.W.19/Mr.Senthilvinayagam, Investigation Officer had taken up the investigation, filed an Alteration Report (Ex.P37) and charge sheet in this case.

9. The contention of the learned counsel for accused A2 and A3 is that the evidence of P.Ws.3, 9, 17 and 18 who were the neighbours of P.W.1 and deceased, were not corroborated with each other on material facts. P.W.3 has stated that A2 and A3 were near the house of deceased at about 10.30 a.m. P.W.9 has stated that they were near the scene of occurrence at about 11.30 a.m. P.W.17 had stated that between 12 and 12.30 noon, they were in the House of the deceased. P.W.18 has stated that they were present at the scene of occurrence at about 11.30 a.m. P.W.6 and 7 are the witnesses for conspiracy. PW.6 in his evidence had stated that the accused were in the hospital along with A1 at 11.00 a.m. Hence there is no certainty that at the same point of time, they were present in the scene of occurrence. Therefore, there has been contradiction among the witnesses, with regard to the time and the presence of A2 and A3 at the scene of occurrence. In the statement of these witnesses they have mentioned the same before the Police. These statements were recorded at a later point of time, though they were available earlier at the scene of occurrence. The statement of witnesses reached the Court with considerable delay and no identification parade was conducted in this case and hence the evidence of these witnesses does not inspire confidence and the same are unbelievable. In the complaint / Ex.P.1 there is mention about missing of 12 sovereigns of jewels but the recovery made in this case is only 8 ½ sovereigns. Further from the material objects recovered in the scene of occurrence, M.O.16 / Cellotape in which hair is found, no DNA test was conducted in this regard to prove the hair recovered at the scene of occurrence is that of the accused. The ownership of mobile phone of A2 marked as M.O.25 and mobile phone of A3 as

M.O.23 were not proved and there was no material to connect these accused with A1 with regard to usage of mobile phone. Further, the witnesses to the conspiracy are unbelievable one.

10. The statement of P.W.6 / brother of P.W.1 is not corroborated with that of other witness namely P.W.7, who has turned hostile. As regards the motive aspect, it is seen that the evidence of P.W.2/ younger daughter of deceased is with contradictions and embellishment. No materials were produced to show that these accused were in the Cuddalore Sub-Registrar office during the registration of marriage between A1 and P.W.2/daughter of deceased on 28.02.2014. Further confession statements of A2 and A3 were verbatim same and in the first paragraph of confession statements namely Ex.P26 and P27, the name of A1 has been mentioned as the person who confesses. It is a vital mistake appears in both the confessions. It only shows that it is nothing but a verbatim reproduction by the respondent Police.

11. P.W.11 Village Administrative Officer before whom, confession and recovery said to have been made is a obliging witness who was compelled to say so. In view of no corroboration between the evidences, evidence of all witnesses are doubtful. As regards accused A2 and A3, with regard to the conspiracy, motive, and recovery, evidences of witnesses are all highly doubtful. The accused could not be held liable based on the conjecture and surmises. The prosecution has not proved their case.

12. The contention of the learned counsel for the accused A1 is that, with regard to motive, P.W.2 is the witness. The evidence of her witness is with contradiction and embellishment, improvement and she had been made to implicate these appellants / accused, since the deceased and P.W.1 were not happy with the relationship between A1 and P.W.2. P.W.2 had admitted that she had love affair with A1 and they were in relationship for quite some time.

13. Further as per evidence of P.W.14, through whom Ex.P17/case sheet of A1 has been marked, shows that A1 was admitted and was taking treatment at Maragadam Hospital, Villupuram and the case sheet would show that from 30.08.2015 to 01.09.2015, A1 was given treatment and he was taking treatment as inpatient. The only other evidence is that of P.W.6 and 7, who are witnesses to the conspiracy of this accused with the other accused. P.W.6 is none other than the brother of the

deceased. Though P.W.6 had gone to the scene of occurrence and attended the funeral of deceased, only on 12.09.2015. He was examined by the Police and he disclosed about the fact of seeing A1, A2 and A3 together at Maragadam Hospital on 31.08.2015 at 11.00 a.m. Further P.W.7 does not corroborate the version of P.W.6. Hence P.W.s 6 and 7 witnesses' statements are highly unbelievable and the prosecution's attempt to connect A1 in this case is feeble and unbelievable. Other circumstances is that mobile phone of the deceased (M.O.8) was handed over by the police to P.W.11. However, in the evidence of P.W.11/VAO, it is stated that the cellphone of the deceased was handed over to him by A1. Therefore the evidence of P.W.11 in this regard is unbelievable one. Accused A1 had no reason to approach P.W.11 and to make confessions Ex.P 4 as well as by the accused A1 to A3, Ex.P.25, 26 and 27. The confession statement said to have been given to P.W.16 are verbatim same. The font size of the exhibits Ex.P4 and 25 are identical. Other than M.O.8 and M.O.18, there is no recovery or seizure from these accused. These recoveries are of no consequence on the facts and circumstances of the case. The deceased / mother of P.W.2 was not in approval of relationship of A1 and P.W.2. Hence, A1 has been falsely implicated in this case.

14. The Investigation Officer P.W.16 admits that he has not seized CCTV camera recording from Maragadham Hospital, since it would go against the case of the prosecution. Hence adverse inference under Section 114(g) of Evidence Act has to be drawn. Specific stand of the appellant in Crl.A.No.1 of 2018 is that the appellant was taking treatment as inpatient between 30.08.2015 to 01.09.2015 and he had not met A2 and A3 on 30.08.2015. With the available evidence and materials, this accused / A1 could not be convicted.

15. The submission of the prosecution is that when PW1 along with PW8 went to the house of the PW1 after the office hours, saw the door was open. When PW1 entered the bedroom calling his wife, he saw his wife lying in the cot with her hands and legs tied with rope and her nose and mouth tightly bound with cello tape which made her suffocate to death. Earlier to this, PW1 and PW2 had contacted the deceased. But the deceased did not respond to their phone call. It could be seen from the complaint [Ex.P1] that there is no mention of any name of the accused and at that point of time it was made to believe that it was a murder for gain by some one. On enquiry, presence of A2 and A3 at the scene of occurrence at the relevant time came to be known. PW2 had categorically stated about the motive and animus of A1 against her mother. The attempt of A1 to create an alibi and further probe on that aspect made A1 to surrender before PW11 VAO to confess. On his confession A2 and A3 were

arrested. Gold Jewels M.O.1 to M.O.7 were recovered. The accused are friends which is not in dispute. The lower Court on analysis of both oral and documentary evidence, applying the principle of proof for circumstantial evidence, convinced on the chain of events, and applying the double test, came to the conclusion that the accused A1 to A3 alone have committed the offence. The Lower Court by a detailed Judgment gave proper reasoning and had convicted the accused. Hence, the Lower Court Judgment has to be sustained.

16. Considering the rival submissions and on materials and records placed before this Court, it is found that on 30.08.2015, during the evening hours, P.W.1 had called his residence to findout anything to be purchased while returning home. However his call was not answered. P.W.2 had also called P.W.1 and informed that her mother is not picking her call. P.W.1 and P.W.8 are the witnesses who had first reached the scene of occurrence and found the door half opened and on entering into the house, P.W.1 saw his wife lying in the bed and her hands and legs tied with rope and her nose and mouth stuck with cello tape. Since she was not responding, P.W.1 took her from bed room to the Hall. PW.8/friend of P.W.1 brought the knife and cut the cello tape and rope found on the body of the deceased. On hearing the cry of P.W.1, neighbours, P.W.3, 9, 17 and 18 had gone to the scene of occurrence and service of Ambulance was called and the body was taken to the Hospital. One of the neighbour P.W.9 gave information to the Police and they reached the scene of occurrence. P.W.1 had gone to the police station and gave a complaint (Ex.P1) on 31.08.2015 at about 08.30 p.m. Thereafter, a case in Cr.No.578 of 2015 was registered for offence under Section 380 and 302 IPC. In the complaint it is specifically stated that the jewels owned by the deceased were found missing. P.W.1 informed P.W.4 / brother of the deceased about the incident and also informed P.W.2/younger daughter, as well another daughter who was in Australia. P.W.2 was brought by P.W.9's father from her Hostel. P.W.1, 2 and 4 identified the jewels of the deceased (M.O.1 to M.O.7). P.W.5 stated that the deceased was in the habit of wearing Mangalsutra and other accomplishments, which has been traditionally owned by a married women as custom.

17. P.W.s 3, 9, 17 and 18, the neighbours had categorically stated that they had seen A2 and A3 near the scene of occurrence on 31.08.2015 at the relevant point of time. P.W.17 states specifically that he saw A2 and A3 entering the house of the deceased.

18. Before P.W.10 observation mahazar has been prepared, through Ex.P2 seizure mahazar. M.O.9 to 17, articles found in the scene of occurrence were seized. The articles seized from

the scene of occurrence namely the cellotape and the rope was recovered. On the basis of the confession of A2 and A3 and from the evidence of P.W.11, it is seen that the accused were arrested and gave confession. Based on the confession, gold articles of the deceased namely M.O.1 to 7 had been recovered and M.O.20 to 22/Knife, Jute rope and cellotape have been recovered, apart from mobile phones used during the commission of offence. P.W.2 is categorical that A2 and A3 are close friends of A1, and A2 was present during the Register marriage held between P.W.2 and A1, which was registered in Sub-Registrar Office, Cuddalore on 28.02.2014 and hence there is close relationship between A2 and A3 with A1. Further A2 and A3 during the questioning under 313 Cr.P.C admitted about their relationship with A1.

19. There is nothing to show that P.W.3, 9, 17 and 18 had any animosity against these accused. The evidence of the neighbours are natural and reliable. Further, through, P.W.11, it is seen that gold articles of the deceased have been recovered from A2 and A3. Motive has been categorically spoken by P.W.2. It is seen that during the questioning under Section 313 Cr.P.C, though A2 and A3 generally denied all the questions, except the question relating to P.W.14, Doctor who treated A1. Thus, the motive, last seen, recovery have been proved.

20. It is an admitted fact that A1 is the friend of A2 and A3. The concealed marriage between P.W.2 and A1 is admitted by A1. Thereafter relationship strained between them. A1 had developed animosity towards the Mother of P.W.2, since she was an obstacle to their relationship and further, joining of P.W.2 in M.B.A course at SRM College had triggered the animus. Thus, A1 with the help of his friends / A2 and A3 decided to do away mother of P.W.2 and to project the same as though the murder is for gain and to create an alibi, he got admitted in the hospital of P.W.14 as inpatient from 30.08.2015 to 01.09.2015. Ex.P17 is the case sheet and on perusal of the same, it was found that Ex.P.17 is a photocopy instead of 'case sheet', it is mentioned as a 'cash sheet'. Further there is no signature of any Doctors in that Report and the medicines prescribed are general in nature and the ailments mentioned does not warrant inpatient treatment in normal course. It is also to be noted at this juncture that A1's mother was working in the General Hospital as Head nurse and P.W.15 is the Assistant Surgeon in the same Hospital.

21. The evidence of P.W.6 is very categorical to the fact that P.W. 6 seeing A1 in the Hospital and other two accused A2 and A3 on 31.08.2015. This fact has been corroborated by P.W.7, who categorically states that he met P.W.6 in the Hospital and

further A1 to A3 were found in an isolated place, talking to each other. Though P.W.7 was turned hostile, this part of evidence was prior to P.W.6 being treated hostile. Hence P.W.6 evidence cannot be discarded in Toto. Further, the accused has not cross examined P.W.6 on these aspects. Though there has been small mistakes and repetitions in Ex.s 4, 25 and 26, for which P.W.16 had given an acceptable explanation. Ex.P.4 is the confession of A1 given to P.W.11 VAO and P.25 is the confession given to the Police. On perusal and comparison of the same, both the statements are not identical and are not of same font. Obviously there will be some similarity in the facts of the case and in narration of the same. Hence that alone would not make Exs.P4 and P25 unbelievable. It is also seen that the signature of A1 is available in Ex.P4 and Ex.P25 as also A2 in Ex.P26 and A3 in Ex.P.27. Further P.W.2 had categorically stated about the motive of A1 against the deceased. The act of A1 getting admitted in the Hospital is a pointer which is against A1.

22. It is to be seen that P.W.1 would be in a state of shock on seeing the brutal murder of his wife and hence it could not be expected that all details would be found in the complaint / Ex.P.1. The injuries sustained and the missing of jewels have all been clearly noted in the Inquest Report / Ex.P.24 and the Doctor's Evidence is also evident that the deceased had died on account of asphyxia due to smothering and head injuries which is corroborated with oral and documentary evidence of P.W.15 / Post mortem Doctor, who conducted autopsy.

23. Further, the Cellphone of the deceased M.O.8 has been recovered from A1. Further it is seen that the complaint and FIR in this case was despatched to the Court without any delay as well as the confession statements, arrest, recovery documents have been despatched to the Court on time. This procedure is designed to keep the Magistrate informed about the investigation then and there and the contemporaneous documents reaching the Court at the relevant time. Hence, there is no delay in the vital documents in reaching the Court. Thus, from the materials available in this case, it is seen that jewels of the deceased have been seized and recovered on the basis of arrest and confession of A2 and A3. A2 and A3 had been identified by A1. Corroborated by witnesses. All the accused are friends, which is an admitted fact. A1 had motive which has been clearly spoken by P.W.2 and sufficient evidence are available to prove that A2 and A3 were in the scene of occurrence at the relevant point of time and each circumstances have been neatly interlinking all the accused with the occurrence of murder.

24. Thus, we are of the view that the prosecution, through the cogent evidence both oral and documentary, had proved the guilt of the accused beyond all reasonable doubt. Hence, we are

of the considered view that the Trial Court has rightly reached the conclusion of convicting the accused and the impugned judgment of the Trial Court, does not require any interference at the hands of this Court.

25. In the result, the criminal appeals are dismissed and the judgment of the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram, vide judgment dated 03.11.2017 in SC.No.217/2016 is hereby confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

sk

Sub Assistant Registrar

To

1. The Sessions Judge, Magalir Neethi Mandram,
(Fast Track Mahila Court), Villupuram.

2. The Chief Judicial Magistrate, Villupuram.

3. The Judicial Magistrate No.I, Villupuram.

4. The Director General of Police, Chennai.

5. The Superintendent of Police, Cuddalore.

6. The Superintendent of Police, Villupuram.

7. The Superintendent of Central Prison,
Cuddalore.

8. The Inspector of Police,
Villupuram Taluk Police Station
Cr.No.578 of 2015,
Villupuram District. सत्यमेव जयते

9. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.R.John Sathyan, Advocate, S.R.No.61411

+1 cc to Mr.M.Devaraj, Advocate, S.R.No.60555

Criminal Appeal Nos.735
of 2017 & 1 of 2018

RGN(CO)
SSM(22/08/2019)