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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.12.2018

PRONOUNCED ON : 08.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.A.(MD) No.172 of 2017
and
Crl.M.P.(MD) No.7886 of 2017

Seenidurai ... Appellant/Sole Accused
Vs.

State through
The Inspector of Police,
Gangaikondan Police Station,
Gangaikondan,
Tirunelveli District.
Crime No.153 of 2013 ... Respondent/Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.443 of 2015 on the file of the IV Additional Sessions Court, Tirunelveli, dated 25.10.2016 and set aside the conviction imposed against the appellant.

For Appellant : Mr.J.Sathiyaraj for
Mr.N.Srinivasan

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in Crime No.153 of 2013 on the file of the Gangaikondan Police Station, Gangaikondan, Tirunelveli District. He was charged for the offences punishable under Sections 448 and 302 IPC. The learned IV Additional Sessions Judge, Tirunelveli, by his order dated 25.10.2016 in S.C.No.443 of 2015, on conclusion of trial, found the appellant guilty and sentenced him as follows:

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo rigorous imprisonment for six months.
448 IPC	To undergo imprisonment for three months.	-NA-

The sentences were ordered to run concurrently. As against this conviction and sentence, the present appeal came to be filed.

2. The background facts, as projected by the prosecution, in a nutshell, are as follows:

2.1. P.W1, namely, Petchi, is working as Loadman and the deceased in this case is his wife, Guruvalakshmi. They are having two children namely, one Banumathy [PW4] and a son, Udayakumar, who are school going children. PW1's brother, one Sankaravel, is living with his family at Anaithalaiyur, Marakudi. His son, Seenidurai / the appellant herein used to visit PW1's house often and used to chat with his wife. PW1 did not suspect the said relationship as their relationship is mother and son. The brother of the deceased, Laxmanan [PW3], about one year prior to the date of occurrence, had witnessed the deceased and the appellant in a compromising position and scolded them and also informed PW1 not to permit the appellant into his house. The complainant had also warned him not to visit his house. But, the appellant used to visit his house without his knowledge.

2.2. On 28.07.2013, around 04.45 p.m., PW1 went to job and on 29.07.2013 returned home along with PW2 at about 00.45 hours, found that the gate was unusually locked. Hence, he shook the gate forcibly and on hearing the noise, the appellant came out of the house with bloodstains in his Lungi and Banian, jumped the compound wall on the western side and ran away. PW1 went inside the house and noticed his wife / the deceased, with two stab injuries, one on the right neck and another one adjacent to that injury. On hearing the noise, his children also woke up and they noticed the incident.

2.3. PW1 lodged a complaint before the Gangaikondan Police Station at about 02.30 a.m., on 29.07.2013 before the Sub Inspector of Police [PW12] and the same was registered by PW12 in Crime No.153 of 2013 as against the appellant for the offences punishable under Sections 450 and 302 IPC. The complaint of PW1 was marked as Ex.P1 and the printed FIR was marked as Ex.P11. Ex.P11 was sent to the Court through the Head Constable [PW9]. A copy of the printed FIR was also marked to the Inspector of Police [PW13]. The Inspector of Police [PW13] received the FIR report on 29.07.2013 at about 03.30 a.m. and he went to the place of occurrence, prepared the observation mahazar [Ex.P4] and a sketch [Ex.P12] about 04.15 a.m., in the presence of PW6 and another witness. He also



recovered the bloodstains from the place of occurrence and conducted the inquest. The inquest report was prepared in Ex.P14.

2.4. During the inquest, PW13 examined PWs 1, 3 and 5 and two others. He made a request for postmortem. He also arrested the accused at 03.00 p.m., on the western side of the Gangaikondan Railway Station and thereafter, recorded his confession statement in the presence of PW5 and another witness. Pursuant to the confession, the MO1 / bloodstained knife was recovered from a bush near Sudalai Madan Kovil at Sitratrukkarai. His bloodstained cloths / MOs 2 to 4 were also recovered from the same place.

2.5. The admissible portion of the confession was marked as Ex.P2. PW13 made arrangements for chemical analysis of the material objects. After concluding the investigation, he filed the final report as against the appellant on 12.09.2014 for the offences punishable under Sections 450 and 302 IPC.

3. In support of the prosecution, 13 witnesses have been examined, 18 documents have been marked and 8 material objects were also produced.

4. The available evidence from the prosecution witnesses are as follows:

i) PW1 is the complainant and the husband of the deceased. He speaks about the occurrence that the appellant absconded from the place of occurrence on 29.07.2013 about 12.45 am with bloodstained cloths and also with regard to the illegal intimacy between the appellant and the deceased, which was witnessed and informed by PW3.

ii) PW2 is a friend of PW1, working along with him. He also speaks about the occurrence that the appellant absconded from the place of occurrence with bloodstained cloths.

iii) PW3 is the brother of the deceased, who witnessed the intimacy between the appellant and the deceased and informed the same to PW1, about one year prior to the date of occurrence in the present case.

iv) PW4 is the daughter of PW1 and the deceased, who was studying 10th standard during the relevant point of time. She also stated about the intimacy between her mother and the appellant. According to her, the appellant used to visit their house during night hours. On 28.07.2013, she took dinner and went to bed around 09.00 p.m., and at the early hours on 29.07.2013, she and her brother woke up due to noise of the moving compound gate and found the accused running from the kitchen with a knife and also noticed bloodstains on the appellant's dress. PW4 would further state that she has written the complaint / Ex.P1 as stated by P.W1.

v) PW5 is the mahazar witness who witnessed the arrest of the accused and recovery of MOs 1 to 4.

vi) PW6 is the witness to the observation mahazar and for the recovery of MO8 [blood swab] from the place of occurrence. But he did not support the prosecution case and was treated as hostile

witness.

vii) PW7, an official from the Tamil Nadu Electricity Board, would state that on 28.07.2013 there was undisturbed power supply at Nethaji Nagar, Gangaikondan and that the street lights near the place of occurrence were in useful condition.

viii) PW8 is a Grade II Constable, who handed over the inquest report to the Court.

ix) PW9 is the Head Constable, who received the printed FIR / Ex.P11 on 29.07.2013 at about 03.00 a.m., and handed it over to the learned Judicial Magistrate No.III, Tirunelveli at 10.15 a.m, on 29.07.2013.

x) PW10 is the Sub Inspector of Police, who accompanied for the postmortem and for the recovery of material objects from the body of the deceased.

xi) PW11 is the Doctor at Tirunelveli Medical College Hospital, who conducted the postmortem on the body of the deceased on 29.07.2013 at about 12.10 pm. He noticed the following injuries:

- 1.5 cm x 0.5 cm x bone deep (1 cm) oblique stab injury over lower part of left cheek;
- 3 cm x 0.5 cm x muscle deep Horizontal stab injury over front of middle of neck; and
- 3 cm x 1 cm x pleural cavity deep Vertical stab over right side of front of lower part of neck.

He gave an opinion that the deceased appears to have died due to the stab injuries as well as Shock and Haemorrhage.

xii) PW12 is the Sub Inspector of Police, who registered the complaint / Ex.P1 on 29.07.2013 at 02.30 a.m.

xiii) PW13 is the Inspector of Police, who conducted the investigation, arrested the accused and also filed the final report.

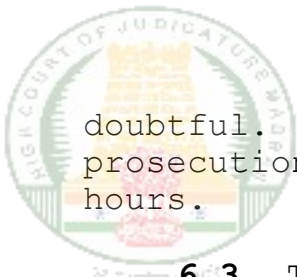
4.1. The incriminating materials from the prosecution case were put on to the accused under Section 313 Cr.P.C., and the accused had denied the same. Though the accused had stated that there are witnesses on his side, he did not examine anybody. Being satisfied with the evidence adduced on behalf of the prosecution, the trial Court found the appellant / accused guilty and convicted him, as stated supra. As against the conviction and sentence, this present Appeal is filed.

5. Heard the learned Counsel appearing on either side and perused the documents placed on record.

6. The learned counsel for the appellant has raised the following points for consideration:

6.1. The occurrence was taken place in the odd hours, inside the house. Admittedly, there is no eye witness to the occurrence and the circumstances relied upon by the prosecution contradict with each other, so as to establish the guilt of the accused.

6.2. It is stated that PWs 1 & 2 were working as loadmen and it is quite natural that they would return only in the early morning. Therefore, the presence of PWs 1 & 2 in the place of occurrence is



doubtful. Moreover, there is no reason adduced on behalf of the prosecution as to how PW2 accompanied PW1 to his house in the odd hours.

6.3. The inordinate delay in First Information Report reaching the Court is fatal to the prosecution. Though the First Information Report is said to have been recorded at 03.00 am, it reached the Court at 10.15 am, with a delay of 7.15 hours and there is no palpable or plausible explanation for the same.

6.4. The evidence of the Doctor discloses that there was no rape or any intercourse by the accused during the occurrence and therefore, the entire case of the prosecution is falsified. Moreover, motive aspect has not been proved by the prosecution.

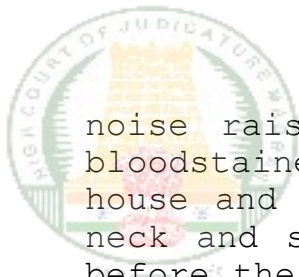
6.5. The trial Court has rightly disbelieved the evidence of PW4. Similarly, it ought to have disbelieved the evidence of PW1 also. There is no reference about the knife [M01] in the complaint [Ex.P1] filed by PW1, but, it has been developed during the trial, which could not be accepted.

7. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor made his submissions based on the prosecution evidence and would submit that the prosecution had clearly established the guilt against the accused. Therefore, according to the learned Additional Public Prosecutor, the conviction and sentence imposed by the Trial Court on the accused does not require any interference.

8. This Court considered the submissions made by the learned Counsel appearing for the appellant / accused as well as learned Additional Public Prosecutor appearing for the respondent / State and perused the materials available on record.

9. This case is partially on circumstantial evidence and partially on direct evidence. In a case based on circumstantial evidence, the prosecution is required to prove the circumstances projected by it beyond reasonable doubt and the proved circumstances should establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused. Keeping this broad principles in mind, we have scrutinized the evidence carefully.

10. PW1 is a loadman, working in the market, used to off-load the vegetables in the market in the evening and on that day also, he went to the market at 05.45 pm and returned home after finishing his work along with his friend / PW2, at about 12.45 am. PW2, who ails from the same village, is also working as a loadman along with PW1. They found the gate of PW1's house was locked unusually and therefore, PW1 shook the gate forcibly. On hearing that noise, the accused came out of the house with bloodstained cloths, jumped over the compound wall and fled away from the place. PW4, the daughter of the deceased, who was sleeping inside the house, also woke up in the



noise raised in shaking the gate and witnessed the accused with bloodstained cloths fleeing away from the place. PW1 went inside the house and found his wife, Guruvalakshmi, with stab injuries on her neck and she was found dead. Immediately, he lodged the complaint before the Sub Inspector of Police [PW12] on 29.07.2013 at 02.30 am and the same was recorded by PW12 in Crime No.153 of 2013 for the offence punishable under Sections 450 & 302 IPC as against this appellant. The printed FIR [Ex.P11] was handed over to the Head Constable [PW9] at 03.00 am and it reached the Judicial Magistrate No.III, Tirunelveli, at about 10.15 am.

11. The dead body of Guruvalakshmi was taken to the Government Medical College Hospital, Tirunelveli and request for postmortem was made on 29.07.2013 at 11.40 am. The Doctor [PW11] has conducted the autopsy at about 12.10 pm and noted down the the following injuries on the deceased:

- 1.5 cm x 0.5 cm x bone deep (1 cm) oblique stab injury over lower part of left cheek;
- 3 cm x 0.5 cm x muscle deep Horizontal stab injury over front of middle of neck; and
- 3 cm x 1 cm x pleural cavity deep Vertical stab over right side of front of lower part of neck.

He also gave his final opinion that the deceased appears to have died of Shock and Haemorrhage, due to the stab injuries in the region of neck and the deceased might have died 6 to 24 hours prior to the postmortem.

12. As pointed out by the learned Counsel for the appellant, the motive for the occurrence has not been established by the prosecution. No doubt, the motive is a crucial evidence in a case on circumstantial evidence. But, this is not a case on circumstances alone. PWs 1, 2 & 4 have witnessed the accused in the place of occurrence with bloodstained cloths. In fact, the evidence of PW4 was disbelieved by the trial Court that she could not have witnessed the occurrence, as it is mentioned in the complaint [Ex.P1] that she woke up after PW1 entered into the house and after raising hue and cry on seeing the dead body.

13. We do not agree with the findings of the trial Court in this regard. PW4 is the daughter of the deceased and PW1. The occurrence was taken place inside the house of the deceased. PW4, who is a natural witness in this case, was aged about 15 years old at the time of occurrence and the case of the prosecution is that the gate was unusually locked and on noticing the same, PW1 shook the gate forcibly. While so, a 15 year old grown up girl can wake up on the sound of shaking of the gate. But, this was not mentioned in the complaint [Ex.P1]. The occurrence was at 12.45 am in the early hours and the complaint was lodged immediately at 02.30 am. While so, we cannot expect that each and every minute details must be available in the complaint [Ex.P1] and on that ground alone, the evidence of PW4 cannot be disbelieved.

14. PW4 had categorically stated that the appellant used to



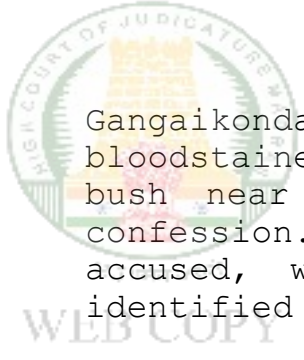
visit their house often during the night hours and she objected to it, but her mother / the deceased scolded her and therefore, she and her brother will go and sleep in the hall. This evidence of PW4 is corroborated by the evidence of PWs 1 & 3. PW3, none other than the brother of the deceased, had stated specifically that one year prior to the occurrence, when he went to his sister's house, he found his sister in a compromising situation with the appellant. The disturbing factor is the appellant and the deceased are related as son and mother. Having noticed the same, he warned PW1 and PW1, in turn, had warned the deceased, which could be elucidated from the evidence of PWs 1 & 4.

15. In fact, the Doctor has not witnessed any symptoms for any rape or intercourse during the occurrence. But that would not be sufficient to disprove the case of the prosecution. The deceased and the accused are related as mother and son. The accused is the son of PW1's brother. They were in illegal relationship, which could be seen from the evidence of PWs 1, 3 & 4. There is no eyewitness to the occurrence, but, the accused was seen with bloodstained cloths inside the house by PWs 1, 2 & 4 and therefore, this case can be treated only as partially on circumstantial evidence and partially on direct evidence.

16. The learned Counsel for the appellant has attacked the evidence of PWs 1 & 2 that their presence in the place and at the time of occurrence is unnatural. According to him, a loadman in the vegetable market would be off-loading the vegetables at 03.00 am and therefore, PWs 1 & 2 could not have returned at 12.45 am, as stated in the complaint. Similarly, he also pointed out that there is no reason for PW2 to accompany PW1 to his house, in the odd hours.

17. We cannot accept this contention of the learned Counsel for the appellant inasmuch as PWs 1 & 2 were working as loadmen in the same market and also residents of the same village. It is their evidence that usually they go to the job around 5 pm and return by 12'o clock in the night. On the date of occurrence, they went to the job at about 05.45 pm and returned at 12.45 am. PW2, on his way to his house, accompanied PW1 to his house and they found the gate of PW1's house was unusually locked and therefore, PW1 shook the gate and on that noise, the accused came out of the house and ran away from the place of occurrence. PW1 went inside the house, noticed the dead body and immediately, lodged the complaint before the police at 02.30 am. The investigation officer [PW13], on receipt of the intimation, has commenced his investigation at about 04.15 am. He prepared the observation mahazar [Ex.P4] and sketch [Ex.P12] in the place of occurrence in the presence of PW6 and also recovered the bloodstains from the place of occurrence. The commencement of investigation at 04.15 am, pursuant to the complaint of PW1, was evident from the available evidence and therefore, the time at which the complaint was lodged cannot be doubted.

18. The investigation officer [PW13] has also arrested the accused on the same day at about 03.00 pm on the western side of the



Gangaikondan Railway Station in the presence of PW5 and recovered bloodstained knife [MO1]; bloodstained cloths [MOs 2 to 4] from a bush near Sudalai Madan Kovil at Sitratrukkarai, based on his confession. MOs 2 to 4 were identified by PW1 that it is of the accused, who wore it at the time of occurrence. He has also identified the knife [MO1].

19. The knife [MO1], bloodstained cloths recovered from the accused [MOs 2 to 4] along with MO5 [Saree], MO6 [Jacket], MO7 [Inskirt] of the deceased which were recovered from the body of the deceased after postmortem and MO8 [blood swab taken from the place of occurrence] were sent for chemical analysis. The chemical analysis report was marked as Ex.P10 and the chemical analyst has given a report that Human Blood group 'O' was present in MOs 4 to 8.

20. Though the First Information Report had reached the Court after seven hours, PW9 has given a convincing reason for the same that the distance between the Court and the Police Station is 20 kms and in the early hours, he was not having any bus service and he could reach the Court only around 08.00 am in the morning. In view of the agitations between the Advocates and Police during the relevant point of time, he could get the entry to the Court only at 10.15 am and handed over the First Information Report to the learned Judicial Magistrate No.III, Tirunelveli, at 10.15 am. It is quite natural that there will not be any bus service in the early morning hours and the distance between the Court and Police Station is also 20 kms. Therefore, this delay in First Information Report reaching the Court cannot be termed as inordinate to disbelieve the prosecution case.

21. It is true that there is no reference about MO1 in the complaint [Ex.P1]. The occurrence was taken place at 12.45 am. The complaint was lodged at 02.30 am by PW1. PW1 is the husband of the deceased and PW4 is the daughter of the deceased. They will be in a state of shock and therefore, they cannot be expected to give each and every minute details while lodging the complaint. In similar circumstances, the Hon'ble Supreme Court, in the decision reported in **(2018) 9 SCC 429**, in **Motiram Padu Joshi and others v. State of Maharashtra**, has held that the First Information Report is not an Encyclopedia, where each and every minute details must be available.

22. In **Padala Veera Reddy vs State of A.P.** reported in **1991 SCC Criminal 407**, the Supreme Court laid out the test which has to be adopted in dealing with cases of circumstantial evidence and the same reads thus:

"15. ...in a case of circumstantial evidence, such evidence must satisfy the following test:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

23. From the available evidence, we found that the prosecution has proved the following circumstances:

- PW1's wife, Guruvalakshmi, died due to homicide on 29.07.2013 at about 12.45 am. The Doctor has noticed the injuries on the body of the deceased and has given the opinion that the deceased died of Shock and Haemorrhage, due to the stab injuries in the neck region;
- PW3 is the own brother of the deceased, who speaks about the immoral relationship between the deceased and the accused [mother and son]. This evidence is also corroborated by PWs 1 & 4;
- The accused was found in the place of occurrence with bloodstained cloths and a knife and on seeing PWs 1 & 2, ran away from the place of occurrence;
- The accused was arrested by the police on the same day at 03.00 pm and the bloodstained cloths [MOs 2 to 4] and MO1 [knife] were recovered from him. This has been elucidated from the evidence of PWs 5 & 13; and
- The blood group found in MO4 [recovered from the accused] and MOs 5 to 8 [recovered from the body of the deceased] are of Human Blood 'O' group.

24. Under these circumstances, we are of the view that the prosecution has established their case and we find no reason, whatsoever, to interfere with the conviction and sentence ordered by the trial Court.

In fine, the conviction and sentence ordered by the learned IV Additional Sessions Judge, Tirunelveli, in S.C.No.443 of 2015 dated 25.10.2016 stands confirmed and this Criminal Appeal is accordingly, dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-)

To

<https://hcservices.ecourts.gov.in/hcservices/>

1. The IV Additional Sessions Judge,
Tirunelveli.



2. The Inspector of Police,
Gangaikondan Police Station,
Gangaikondan,
Tirunelveli District.
3. The Superintendent,
Central Prison, Palayamkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Pre delivery Judgment made in
Cr1.A. (MD) No.172 of 2017
08.03.2019

SP-05.04.2019/10P-7C