



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.07.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL A(MD)No.473 of 2017

and

Cr1 MP(MD)No.296 of 2018

Saravanan

... Appellant / Accused No.1

Vs.

State,
represented by the Inspector of Police,
Samayanallur Police Station,
Crime No.54 of 2012,
Madurai District.

... Respondent / Complainant

Prayer : Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to call for the records from the lower court and to duly set aside the judgment passed by the Principle Sessions Judge, Madurai, Madurai District in S.C No.78 of 2013 dated 18.09.2017 and acquit the appellant.

For Appellant : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

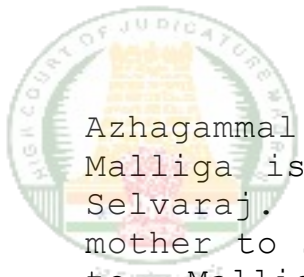
JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This appeal is directed against the judgment dated 18.09.2017 made in S.C No.78 of 2013 on the file of the Principal Sessions Judge, Madurai convicting the appellant under Section 302 r/w 34 IPC on two counts and sentencing him to undergo life imprisonment on each count and levying fine of Rs.10,000/-.

2.The case of the prosecution, in brief, runs as under :

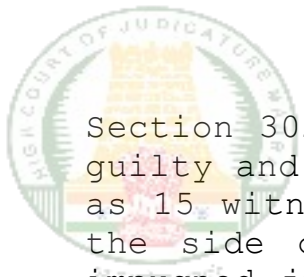
The appellant is a resident of Vaigai Road, Samayanallur. He is the adopted son of Gangadaran and Soura. Soura is the daughter of Vellaiyammal who was the first wife of Nagoor Pitchai. After Vellaiyammal died, Nagoor Pitchai married Azhagammal.



Azhagammal had two daughters, namely, Malliga and Selvarani. Malliga is a spinster. Selvarani was given in marriage to one Selvaraj. But their matrimony did not last. She came back to her mother to stay with her. Nagoor Pitchai bequeathed his properties to Malliga and Selvarani, the daughters of Azhagammal. Therefore, the appellant nurtured inimical intentions against Azhagammal and Selvarani. Selvarani was said to have illicit relationship with another person. This was objected to by the appellant. Selvarani resented the interference of the appellant. While so, on 21.02.2012 at about 07.30 P.M, the appellant conspired with two juvenile accused and went with them to the house of Azhagammal. Azhagammal and Selvarani who were at the house were stabbed by the trio to death.

3.In this regard, Ex.P1 complaint was lodged by the Village Administrative Officer before Samayanallur Police Station on 23.02.2012 at about 09.00 A.M. PW.15 the Investigating Officer went to the scene of occurrence at about 09.45 A.M. He prepared the Observation Mahazar and rough sketch. The bloodstained sand as well as sand without blood and also a Nokia cellphone were collected from the spot. Inquest was conducted on the body of both the women and inquest reports namely Exs.P23 and P24 were prepared in the presence of panchayatdhars. The bodies were sent to the Government Hospital, Madurai for postmortem. The Finger Print Inspector, Photographer and Dog Squad were brought to the place of occurrence. Various witnesses were examined and their statements were recorded.

4.In the meanwhile, the appellant appeared before the Village Administrative Officer on 25.02.2012 and made a confession before him vide Ex.P2. The Village Administrative Officer brought the appellant to Samayanallur Police Station. The Investigating Officer arrested the accused after enquiring him. He also recorded his confession statement. Pursuant to the confession made by the appellant, knife and clothes (MO.5 - 7) were recovered. The appellant identified the two juvenile accused and they were remanded to judicial custody. After receiving the report given by the finger print expert and enquiring the photographer who took photographs of the fingerprints and also the postmortem doctor, the Investigating Officer filed final report against the appellant under Section 302 r/w.34 of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, before the Judicial Magistrate No.IV, Madurai. Cognizance of the offence was taken and since the offences under Section 302 r/w.34 of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act are triable by the court of Sessions, the case was committed to the Principal Sessions Judge, Madurai in PRC No.78 of 2012. The case was taken up on file as S.C No.78 of 2013. Charges were



Section 302 r/w.34 of IPC (two counts). The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 15 witnesses and marked Exs.P1 to P26 and MO.1 to MO.18. On the side of the defence, no evidence was adduced. By the impugned judgment dated 18.09.2017, the learned Trial Judge after a detailed consideration of the evidence on record, found the accused guilty of the charges and convicted and sentenced him to undergo life imprisonment for each count and also levied him with fine of Rs.10,000/- in all. Challenging the same, this appeal came to be filed.

5.We heard the learned Senior Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and carefully went through the evidence on record.

6.The prosecution case rests on circumstantial evidence as there are no eyewitnesses for the occurrence. PW.1 Ramanujam was working as Village Administrative Officer in Paravai II Bit Village in the year 2012. When he was in his office on 23.02.2012, PW.4 Subbulakshmi came to his office and informed him that foul smell was coming from the house of Azhagammal which is situated on the southern side of bye-pass road. Thereupon, PW.1 and his Assistant went to the occurrence spot. The house in question was not locked and they went inside. They found two women lying dead with stab injuries. They came to know that the deceased were Selvarani aged 40 years and Azhagammal aged 80 years. PW.1 instructed his village assistant to secure the place and went to Samayanallur Police Station and lodged Ex.P1 complaint dated 23.02.2012 at about 09.00 A.M. PW.1 would then claim that on 25.02.2012 at about 08.30 A.M, the appellant came to his office and made a voluntary confession which he recorded as Ex.P2. He thereupon took the appellant to the Inspector of Police, Samayanallur. PW.1 would also claim that the appellant made Ex.P7 confession statement based on which the knife used for committing the crime and the clothes were recovered.

7.PW.2 Malliga is the daughter of Azhagammal and sister of Selvarani. She was a resident of Thevaram, Theni District. She stated that the appellant came to her house at about 05.00 P.M. on 20.02.2012. Raghuvaran, the son of the deceased Selvarani was staying with PW.2 Malliga. Malliga deposed that the appellant went to market along with Raghuvaran and purchased two knives. On 22.02.2012 at about 09.00 P.M, she called her mother over phone, but it was not attended. On 23.02.2012 at about 07.00 A.M, she called Rajendran and Subbulakshmi (PW.4) who resided in the vicinity and asked them to go to her mother's house and thereafter to call her. PW.2 would claim that at about 09.00 A.M, she received information about the murder of her mother and sister. The appellant came to the occurrence spot at about 02.00 P.M.



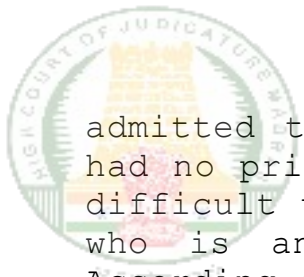
PW.5 Raghuvaran also corroborated the testimony of PW.2.

8.PW.3 Achuthan is a taxi driver. He deposed that on 21.02.2012 in the evening hours when he was returning after taking his bath, he saw the appellant along with two others arguing with his grandmother Azhagammal. He would further claim that when he enquired the appellant, he even revealed the names of the two boys who were with him. He came to know about the murder of Azhagammal and Selvarani on 23.02.2012 at about 11.00 A.M. PW.4 Subbulakshmi resided nearby. She deposed that on 23.02.2012 Malliga contacted her over phone and asked her to go to the house of Azhagammal and inform her. When PW.4 went near the house, foul smell was emanating therefrom and that she and her husband Rajendran thereafter met the Village Administrative Officer and informed him. P.W.6 is the husband of PW.4 Subbulakshmi. He deposed that on 21.02.2012 at about 08.00 P.M when he was going to the river for bath, he saw the appellant and two others standing in front of the house of Azhagammal.

9.PW.11 was working as the Inspector of Police, District Finger Print Record Wing, Madurai in the year 2012. After receiving information from the office of the Deputy Superintendent of Police, he went to the occurrence spot. He found the iron bureau open and the materials scattered. When the inside portion of the doors of the bureau was examined, many fingerprints were found. PW.14 took the photographs of the five fingerprints. On 26.02.2012, PW.11 received the finger impressions of the appellant and two others. When PW.11 compared the fingerprints earlier photographed with the impressions of the accused, he found that the two matched. He sent the comparison report/Ex.P13 to the Investigating Officer. PW.13 Thangadurai, is an officer from the Forensic Science Department who submitted serological report Ex.P21 and Chemical Analysis Report/Ex.P20.

10.The case of the prosecution primarily rests on the report of the Finger Print Expert. According to the respondent, since the fingerprints of the appellant were found in the inside portion of the bureau in Azhagammal's house, his involvement in the crime stood established beyond reasonable doubt. The prosecution had sought to buttress its stand by invoking the last seen theory. According to the learned Additional Public Prosecutor, the appellant had sufficient motive to do away with his grandmother and aunt. The learned Additional Public Prosecutor would contend that the chain of circumstances is complete and that the evidence unerringly points towards the guilt of the accused and the circumstance are not compatible with his innocence.

11.We are not persuaded by the submissions of the learned Additional Public Prosecutor appearing for the State. PW.1



admitted that he had not seen the appellant earlier and that he had no prior acquaintance with him. Therefore, we find it very difficult to believe that the appellant would repose trust in PW.1 who is an utter stranger and make a confession before him. According to PW.1, the appellant came to his office on 25.02.2012 at about 08.30 A.M. But then, PW.5 Raghuvaran admitted in the cross examination that he informed the police on 23.02.2012 at about 07.30 P.M about the purchase of knives by the appellant in Thevaram Market and that the police enquired Saravanan at about 06.00 P.M on 23.02.2012 in the Samayanallur Police Station.

12. There was no re-examination of P.W5 by the prosecution. If the police had already enquired Saravanan on 23.02.2012 at about 06.00 P.M, then the prosecution story that it was the VAO/PW.1 who brought the appellant to the police station in the morning of 25.02.2012 cannot be believed. The last seen theory also does not carry any credibility. The version of PW.3 taxi driver as well as that of PW.6 Rajendran appear too artificial and do not command the confidence of this Court.

13. The prosecution would claim that only when PW.2 Malliga, the daughter of Azhagammal contacted PW.4 Subbulakshmi and asked her to go to the house of Azhagammal, the crime came to light. PW.2 and PW.4 would claim that there was telephonic exchange between them. If that be so, the same could have been very well established by collecting the call data particulars. This was not done.

14. Notwithstanding these lacunae on the part of the prosecution, the culpability of the appellant would stand established beyond reasonable doubt if the fingerprints lifted from the scene of crime, namely, the inside portion of the bureau matched with his finger impressions. PW.14 is the Police Photographer. He received information on 23.02.2012 at about 10.30 A.M to go to the occurrence spot. He deposed that he took photographs of the fingerprints on the iron bureau shown by the finger print expert Thiru.Pratabraj, PW.11. After photographing them, he handed over the photo copies of the fingerprints to the Finger Print Inspector. Negatives were marked as M.O.16 series. His testimony was strongly challenged in the cross examination. He admitted that his duty was to take photographs of the place of occurrence, the position of the bureau, position of the body, etc. But those photographs were not taken by him. According to him, those photocopies were taken even prior to his arrival. He admitted that except finger print photos, he did not take any other photo. The defence specifically suggested that M.O.16 series were created for the sake of the case.



Department. During the relevant time, he was working as the Inspector of Police in District Finger Print Record Wing, Madurai. On 26.02.2012, he received the finger impressions (Ex.P16) from the investigating officer. In the cross examination, it was suggested to PW.11 that no photographs of the fingerprints were taken from the place of occurrence.

16.The stand of PW.11 is that the right middle finger impression of the appellant matched with J1 that was taken from the scene of crime. In other words, there was a match between Ex.P16 and M.O.16 as far as the appellant was concerned, according to PW.11. But then, it is not known as to who took the finger impressions of the appellant and where. In Ex.P16, there is a printed endorsement in the following terms :

"Signature of Magistrate/Gazetted Officer/Officer in verification of the fact that the impression above were taken before him and that they were the impressions of the convict named on the reverse."

It is seen therefrom that the impressions were taken by one PC.1913. He was not examined. Ex.P16 was not marked through him. It is not known as to whether a police constable is authorised to take the finger impressions of the accused. In any event, PW.11 who is a recipient of Ex.P16 cannot depose about the taking of the finger impressions. The Investigation Officer did not depose as to when, where and who took the finger impressions of the appellant. Thus, there is a grave doubt as to the very validity of the comparison report, namely, Ex.P15. We are of the view that the benefit of doubt should go to the appellant. We therefore hold that the prosecution has failed to establish its case beyond reasonable doubt.

17.In this view of the matter, the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Madurai, in S.C.No.78 of 2013, dated 18.09.2017, is set aside and the appellant is acquitted of the charge framed against him and the appeal is allowed. Since the appellant is in jail, he is directed to be set at liberty forthwith, unless his custody is required in connection with any other case. Fine amount, if any paid, shall be refunded to him. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

- 1.The Principal District and Sessions Judge,
Madurai, Madurai District.
- 2.The Judicial Magistrate No.IV, Madurai
- 3.Do Thro' The Chief Judicial Magistrate
Madurai
- 4.The District Collector, Madurai
- 5.The Joint Secretary to Government
Law and Order, Secretariat, Chennai
- 6.The Commissioner of Police, Madurai
- 7.The Superintendent of Central Prison, Madurai
- 8.The Inspector of Police, Samayanallur Police Station,
Crime No.54 of 2012, Madurai District.
- 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer,-2 copies
Criminal Record Section
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-76261[F] dated 19/07/2019)

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and
Cr1 MP(MD)No.296 of 2018
19.07.2019

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