

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 10.12.2019
Pronounced On : 13.01.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.133 of 2018

B.Sathishkumar ...Appellant/Accused

...Vs...

State represented by its;
The Inspector of Police
H-5, New Washermenpet Police Station, (Crime)
Chennai-600 081 ...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the Judgment of conviction and sentence dated 14.02.2018 made in S.C.No.85 of 2014 by the learned Sessions Judge, Mahila Court, Chennai (Mahalir Needhimandram, Chennai).

For Appellant : Dr.G.Krishnamurthy
For Respondents : Ms.M.Prabhavathi (Crl.side)
Additional Public Prosecutor

J U D G M E N T

(Judgment of this Court was delivered by R.PONGIAPPAN,J)
The Appellant herein is the sole accused in S.C.No.85/2014 on the file of the Sessions Judge, Mahila Court, Chennai. He stood charged for the

offences under Sections 449, 302 and 392 I.P.C. By Judgment dated 14.02.2008, the Trial Court convicted the appellant/accused and awarded sentence as follows:

Section of law	Sentence
302 IPC	Life imprisonment and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for 6 months

Section of law	Sentence
449 I.P.C.	Rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for further six months
392 I.P.C.	Rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months.

Challenging the conviction and sentence, the Appellant is before this court with the present Criminal Appeal.

2. The case of the prosecution in brief, is as follows:

2.1. P.W.1-Madanagopal is the father-in-law of the deceased Rekha. He had two daughters, one son and all of them got married. He was residing in the Housing board Quarters at No.15B, Thiruvallur Nagar, New Washermanpet, Chennai. His son Baskaran is an Advocate, also managing the petrol bunk run by his father-in-law. The accused is the son-in-law of P.W.1's younger brother. On 08.10.2013, when P.W.1 was in his house, P.W.8-Arumugam, the person who is doing the business of ironing called the P.W.1 and requested to come to the residence of Baskar. At the time, when P.W.1 was reaching his son's house, he found the crowd in the said house. When he went there, his daughter-in-law found lying in a pool of blood and on enquiry he came to know that while her children came from school, they found that the house was locked from outside, so they went along with P.W.2-Ganapathi to the second floor, got the key and opened the house and found that the deceased Rekha is lying in a pool of blood with cut injuries on her neck. The jewels worn by Rekha was missing. Immediately, P.W.1 went to police station and lodged a complaint under Ex.P1. Thereafter, his son and Rekha's father arrived at the spot. After two days, he came to know that his brother's son-in-law Sathiskumar has committed this offence.

2.2. P.W.19-Mr.Yuvaraj, is now working as a Sub Inspector of Police, Washermanpet Police Station. On 08.10.2013, when he was working as Sub Inspector of Police at H5, New Washerman police station at about 18.00 hours he received a complaint from P.W.1-Madangopal and registered a case in Crime No.1205/2018 under Section 302 I.P.C. The printed copy of the F.I.R. was marked as Ex.P23. After registering the case, he handed over the case records to P.W.18-Mr.Venkatesan for investigation.

2.3. P.W.18-Venkatesan, is now working as Inspector of Police in H7 Police Station, Tondiarpet. On 08.10.2013 when he was working as Inspector of Police in H5, New Washermanpet Police Station, he received case records from P.W.19 and took it

for investigation. He visited the scene of occurrence and prepared observation Mahazar [Ex.P2] and Rough Sketch [Ex.P19] in the presence of witnesses Balaji and Kuppuraj [P.W.6]. He collected the sample blood by using cotton cloth in the scene of occurrence and made arrangement for taking photographs. In order to avoid the law and order problem he handed over the dead body to the Special Sub Inspector of Police, Mr.Gunasekaran, with a direction to hand over the same to the mortuary. He examined and recorded the statements from P.W.5-Sivasankaran and P.W.7-Baskaran.

2.4. In continuation of investigation on the next day, in the presence of witnesses and panchayatars, he conducted inquest in Stanley hospital and prepared inquest report under Ex.P20. Thereafter, he sent a requisition to the Doctor for conducting autopsy, over the dead body of Rekha.

2.5. P.W.13-Dr.Balasubramanian, while he was working as Additional Professor in Stanley Medical College, on 09.10.2013, received requisition given by the Investigation Officer. He conducted the post-mortem and issued Post-mortem certificate [Ex.P10]. During the time of post-mortem, he found the following antimortem injuries:

"1. Incised wound 2.5x1 cm on back of the right hand.

2. Incised wound 2.5x0.5 cm on front of upper part of right side chest 1.5cm below middle of right clavicle.

3. Incised wounds 1x0.5cm, 1x0.5cm on front of upper part of inner aspect of Right side chest 2 cm in between to wound.

4. Oblique incised wound 3x0.25cm on front of upper part of Right side neck.

5. Vertical incised wound 4x0.5cm. on the outer aspect of upper part of Right side neck.

6. Cut throat injury 14x7-6 cm on front of neck 6 cm below to chin, 6 cm above the suprasternal notch exposing the complete cut injury over Trachea and oesophagus. On further dissection, the injuries are below the Thyroid cartilage, conjure severe of right in carotid artery below it bifurcation and complete not on trachea and oesophagus. There is no blood clot in the internal musea. The edges of injuries are irregular and confused.

7. Horizontal incised wound 5x0.5 cm on front of lower part of left side neck 3.5 cm above the mid clavicular region.

8.Horizontal Incised wound 3.5x0.25cm on front of lower part of Left side neck 1 cm below the injury No.7.

9.Horizontal incised wound 2x1 cm. on proximal part of palmar aspect of left index finger.

10. Horizontal incised wound 2.5x0.5cm on proximal part of palmar aspect of left middle finger.

11. Horizontal Incised wound 1.5x0.5 cm one proximal part of palmar aspect of Left ring finger.

12.Horizontal Incised wound 1x0.5 cm on palmer aspect, distal part of Left little finger.

Thyroid bone, Thyroid Cartilage - Intact.

Heart-Four ml of fluid blood present in all chambers, valves -Intact. Corroner-Patent.

Lungs- pale

Stomach- 100 gm of partly digested food particles present mucus-pale

Liver, Spleen, Kidneys-Normal in size C/s pale.

Bladder-Empty

Uterus- Normal in size c/s Empty.

Scalp, scull bones -intact.

Brain-C/s. pale

Pelvis Spinal column- intact.

Viscera preserved for chemical Analysis"

2.6. PW13-preserved the viscera for chemical analysis. After receiving Viscera report, he gave final opinion that the deceased would appear to have died due to shock and haemorrhage and due to cut injury in her throat. The post mortem report and viscera report have been marked as Ex.P10 and Ex.P11, respectively.

2.7. On 09.10.2013, on information, P.W.18 went to Sasikumar Nagar, Perungalathur and arrested the accused at about 9.30 A.M. After arrest, in the presence of witnesses Bharathan-P.W.10 and Narayanasamy, he obtained the confession statement of the accused. In the confession statement, the appellant/accused herein admitted the offence. In the said confession, he was willing to identify the person who received the stolen property. Accordingly, the accused identified PW11-Sunil, who is running a pawn broker shop. Further, based on the confession statement, the accused brought the P.W.18 and witnesses to his house and

identified the hidden blood stained Jeans pant [M.O.3], blood stained full hand shirt [M.O.4], blood stained knife [M.O.5] and the key [M.O.14] pertaining to the house of the deceased and one motor cycle bearing Registration No.TN 04T 6035 [M.O.15]. Further, he has produced a sum of Rs.12,100/- one Thalicharadu [M.O.6] and a spring model chain [M.O.2]. The above mentioned material objects were recovered by P.W.18. He has prepared Ex.P7 & Ex.P8-Recovery mahazar for recovery of cash and jewels produced by the accused. The admitted portion of the confession statement of the accused is Ex.P4.

2.8. P.W.11-Sunil was running a pawn broker shop in 3/5A Gandhi Street, Perungalathur, Chennai. He knew the appellant for the past two years. One day, the appellant has produced the four 1/4 kasu (fhy; fhR), four gnana kuzhai ("hd FHha;), two Kinnipottu (fpz; zpbghl;L), two pavazham (gtsk;), two gundu (Fz;L). weighing about 20 gms of gold and received a sum of Rs.32,000/- During the time of pledging the said articles, the appellant has stated that the said articles belong to his wife. On request made by the police, P.W.11 produced the said articles and the same was recovered by P.W.18. under the cover of Mahazar Ex.P17. Photo of material objects are M.O.6. After recovering the same, the accused was sent to Judicial custody. Further the material objects were also sent to the Court. In the meanwhile, the Head constable who was entrusted with the work relating to the post mortem handed over the nighty, in-skirt, jatti and bra [M.O.10 to M.O.13, respectively], which were removed from the dead body along with special report.

2.9. P.W.12 was working as Security in State Bank of India. On 24.10.2013 when he was on duty, the police and the present appellant came to the said ATM and by using the ATM card [M.O.9], the present appellant drawn a sum of Rs.15,000/- and handed over the same to the investigating officer. The same was recovered by P.W.18 under the Recovery Mahazar.

2.10. P.W.14 is the Scientific Officer who examined viscera and found that there is no poisonous substance in the viscera collected from the dead body. He gave report under Ex.P11. P.W.15-Mr.Srinivasan, P.W.16-Ms.Bavani are working as Assistant Director and Scientific Officer respectively in Forensic department, Chennai. They examined the material objects recovered in this case and gave a report under Ex.P12, Ex.P13 and Ex.P15.

2.11. After recording statements from the persons who attested the confession statement and recovery mahazar P.W.18 handed over the case records to P.W.20 for further investigation.

2.12. In continuation of investigation, P.W.20, the then Inspector of Police H5 Police Station, received the case records from P.W.18 and altered the Sections of law to 392 and 302 IPC [Ex.P21]. He examined the witness who are all already examined by P.W.18. Since the witness have stated about the occurrence, as stated before P.W.18, he has not recorded any statement. He submitted an application before the learned XV Metropolitan Magistrate for the custody of the accused. The application was ordered and he took the accused for police custody. On examination he recorded the confession statement and based on the confession statement given by the appellant he recovered PAN card, ATM card and Bank pass book [M.O.8] on 24.10.2013. Further, the accused has withdrawn a sum of Rs.15,000/- from the ATM and the same was recovered under Ex.P18-cover of Mahazar. He further submitted a requisition letter to the Judicial Magistrate for sending the recovered articles for chemical examination. On completion of investigation on 20.12.2013 he filed a charge sheet as against the appellant under Sections 449, 302 and 392 I.P.C.

2.13. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of the Judgement and the accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as twenty witnesses were examined viz., P.W.1 to P.W.20; 26 documents were marked as Exs.P1 to Ex.P26. Apart from that the material objects recovered in this case were marked as M.Os.1 to M.O.15.

2.14. Out of the said witnesses, PW1 is the complainant. He has spoken about the hearing of the occurrence from PW8 and about the reaching of the scene of occurrence. He has also stated about the lodging of complaint before PW19. PW2, Ganapathy, is the neighbour, who has spoken about the opening of house, in which the alleged occurrence had happened. PW3-Pravallika, is the daughter of the deceased. She has spoken about the scene of occurrence, where her mother was found in the pool of blood. PW4-Ramesh, is also in support of the evidence given by PW2. PW5-Sivasankaran is the auto driver, who saw the appellant on the day of occurrence. He has spoken about the occurrence that on 08.01.2013 at about 12 noon, when he was standing near the auto, appellant came down alongwith one bag from the house in which the occurrence has happened.

2.15. PW6-Kuppuraaj is also a neighbour to the deceased. He has spoken about the preparation of observation mahazar and the recovery of blood samples from the scene of occurrence. PW7-Baskaran is the husband of the deceased. He came to the scene of occurrence only after hearing the news from PW1. He identified the properties in the police station, which was stolen away from his house. PW8-Arumugam, is doing the ironing

work, near the house of PW1. After hearing the news he informed the matter to PW1. PW9-Dhanasekaran, is the constable attached with Egmore Police Head Quarters. He has spoken about the performance of sniffer dog in the occurrence place.

2.16. PW10-Varadhan is also a resident of the same locality, in which the alleged occurrence had happened. He has spoken about recording of the confession statement given by the accused and about recovery of stolen property. He has also attested the recovery mahazar prepared at the time of recovering the stolen property from the pawn broker shop. PW11-Sunil is the pawn broker. He has spoken about the pledging of stolen property by the appellant / accused and about the recovery made by the investigation officer. PW12-Sundar is the watchman in State Bank of India ATM. He has spoken about the recovery of Rs.15,000/- by using the ATM card, which stands in the name of the appellant/accused.

2.17. PW13-Balasubramanian, is the Doctor attached with Stanley Medical College. He has stated about the autopsy conducted over the dead body of the deceased. According to him, deceased would have appeared to have died due to neck injury. PW-14, Mohan, is the expert working in Forensic Science Department, Chennai, who examined the viscera and he has spoken about the issuance of viscera report Ex.P11. PW15-Srinivasan and PW16-C.Bhavani, are also experts working in the Forensic Science Department, Chennai. They have spoken about the examination conducted on the material objects, which were recovered in this case and about the issuance of the report. PW17-Ramesh is the witness to the recovery of Rs.15,000/- made by the investigation officer. PW18-Venkatesan, PW19-Yuvaraj and PW20-Palavesam are the police officers and they have spoken about the registration of the case and laying of charge sheet after completing the investigation.

2.18. The learned Trial Judge with reference to the incriminating materials produced by the prosecution, questioned the accused under Section 313 Cr.P.C. for which the accused denied the same as false. On the side of the accused, none have been examined as a witness and no document have been marked as Exhibit. The learned Trial Judge on perusal of materials and on considering the arguments advanced on either side, convicted the accused as stated supra. Challenging the same, the present Appeal has been filed by the Appellant.

3. We have heard the arguments advanced by Dr.G.Krishnamurthy, the learned counsel appearing for the appellant/accused and Ms.Prabavathi, learned Additional Government Pleader appearing for the State and also perused the records carefully.

4. The learned counsel for the appellant/accused would contend that witnesses who were examined on the side of the prosecution as P.W.1 to P.W.9 in their evidence have not stated about the presence of the accused in the scene of occurrence and therefore their evidence cannot be looked into for deciding the case of the prosecution.

5. It is true that the witnesses examined on the side of the prosecution viz., P.W.1 to 9 have stated that they went to scene of occurrence only after the occurrence. In fact they have stated as somebody told that the appellant/accused has committed offence of murder. The said evidence is nothing but hearsay and u/s 60 of the Indian Evidence Act, hence, it cannot be used to find out the guilt of the accused. However, P.W.'s 1, 7 and 3 are all of them have stated that after the occurrence, some of the jewels worn by the deceased, are missing. In this regard, at any point of time, during the time of cross examination of prosecution witnesses, on the side of accused, there was no suggestion put forth that the property alleged to be stolen away in the occurrence, belongs to the accused. So it concludes that after committing the murder some of the jewels worn by the deceased were stolen away from the dead body of the deceased.

6. Secondly, on going through the evidence given by the Doctor who conducted autopsy, he has specifically stated that the deceased would appear to have died due to shock and haemorrhage and cut throat injury. The evidence given by Doctor has not been disputed on the side of the accused so it concludes that the death of the deceased had happened only due to the cut injury. The scientific experts who examined Material Objects which collected in this case were examined as P.W.'s 15 and 16, respectively and as per their evidence, some of the objects recovered, are having human blood. However, the knife which was alleged to be used for the commission of offence is not having any blood materials. In this regard though the trousers recovered from the accused and the nighty and other materials recovered from the dead body are having stains of human blood, the blood group is not identified from the said Material Objects recovered from the accused and therefore, it cannot be stated that the evidence given by P.W.'s 15 and 16 is sufficient to accept the guilt of the present appellant.

7. Therefore, the only evidence available for connecting the accused with alleged crime is the evidence of P.W.10, who attested the recovery mahazar prepared by P.W.18, the evidence of pawn broker, who received stolen articles from the accused and the evidence of the investigating officer. According to P.W.18, after recording confession, the accused brought the Investigating officer along with the witnesses and identified

the P.W.11, who alleged to receive the stolen properties. In the admitted portion of confession statement, the present appellant has clearly stated about the particulars in regard to the pledging of jewels and only based on the said particulars the investigating officer went to pawn broker shop, run by P.W.11 and on enquiry P.W.11 handed over the stolen properties in the presence of P.W.10. To impeach the evidence of P.W.10, nothing has been available in his cross examination. Though P.W.11 has stated in his cross examination that he signed in the police station before stating as above, he has clearly stated about the pledging of stolen property by the appellant.

8. However, since the accused has not claimed stolen properties as his own, it is his duty to show account for the stolen property. But, on going through the entire cross examination of the witnesses, who are all examined on the side of prosecution, the accused, has not suggested as under what circumstances the stolen property came into his possession and thereafter the same was pledged with P.W.11.

9. Therefore, though the motive and last seen theory has not been established on the side of the prosecution, because of the reason that the accused is not given the account for the stolen property, it shall be presumed that the said property was stolen away from the dead body of the deceased.

10. In this occasion, the learned counsel appearing for the Appellant/accused would contend that on going through the entire evidence given by P.W.10, it would not disclose the factum of recovery as contemplated under Section 27 of The Indian Evidence Act. Though it was stated under Ex.P4 (admitted portion of the confession statement of the accused) that the appellant is willing to identify the materials used in the commission of the crime, the same was not corroborated through an independent witness. Therefore, it cannot be held that the offence committed by the appellant has been proved by way of recovery and he would further contend that in the impugned judgment, the learned Trial Judge without appreciating the same in a proper manner, convicted the accused, which is erroneous in law.

11. On the other hand, the learned Additional Public Prosecutor would contend that even assuming that the prosecution has not proved the factum of Recovery u/s 27 of the Indian Evidence Act, subsequent conduct of the appellant/accused also would attract Section 8 of the Indian Evidence Act and thereby, for the minor lapses found on the side of the prosecution, it cannot be held that the factum of recovery is not proved.

12. Upon considering the arguments advanced by either side, it is true that P.W.10 who is the witness attested in the

confession statement alleged to be given by the appellant/accused has specifically stated that after recording the confession statement, the accused brought the police to his house and produced thalichian, chain and key. Further, he identified pawn broker shop and stated only on that shop he pledged the stolen properties. P.W.11 who is the owner of the pawn broker shop has also admitted the pledging of the stolen properties by the accused. He has specifically identified the accused and stated that he came and pledged the stolen property. In the said circumstances, since the appellant has not claimed the said property as his own property, it is his duty to account the same as under what circumstances the property came to his hands. In this occasion, it is necessary to extract Section 8 of the Indian Evidence Act which reads as follows:

"Section 8 : Any fact is relevant which shows or constitutes a motive for preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1- The word "Conduct" in this Section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2- When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

13. In General, statements made under Section 27 though not admissible, may be admissible under Sections 7, 8 or 9 of the Act. Where a statement made while in custody of the police and recorded in a Panchanama indicated that articles were hidden in a certain place and it led to discovery of the same, it was held that it was admissible under Section 27 and also admissible under Section 8 as it was indicative of the conduct of the accused.

14. On a conjoint and harmonious reading as to Sections 8 and 27, the confession of the accused becomes admissible under the evidence as it leads to disclosure of the fact and not directly incriminating elements. Therefore, we are of the considered opinion that though lapses found in the evidence given by P.W.10, that will not affect the root of the case of prosecution.

15. Yet another aspect necessary for deciding the case in support of the prosecution is that it is not in dispute that after recording the confession statement from the accused, one trouser was recovered from his house in the presence of P.W.10. As per the evidence given by the Assistant Director / Scientific officer of the Forensic Department, the trouser is having human blood. Though the said aspect is a weak piece of evidence, probably it discloses the probability that the accused alone went to the house of the deceased at the relevant point of time.

16. Therefore, though the factors which are necessary for proving the case of murder failed on the basis of circumstantial evidence, like motive and last theory, considering the evidence given by P.W.10, 11, 18 and 20, we are of the opinion that the prosecution has proved its case beyond reasonable doubt.

17. In the light of the above submission, this Criminal Appeal is dismissed confirming the Judgment of conviction and sentence dated 14.02.2018 made in S.C.No.85 of 2014 by the learned Sessions Judge, Mahila Court, Chennai (Mahalir Needhimandram, Chennai).

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

arr / ars

To

1.The Inspector of Police
H-5, New Washermenpet Police Station, (Crime)
Chennai-600 081

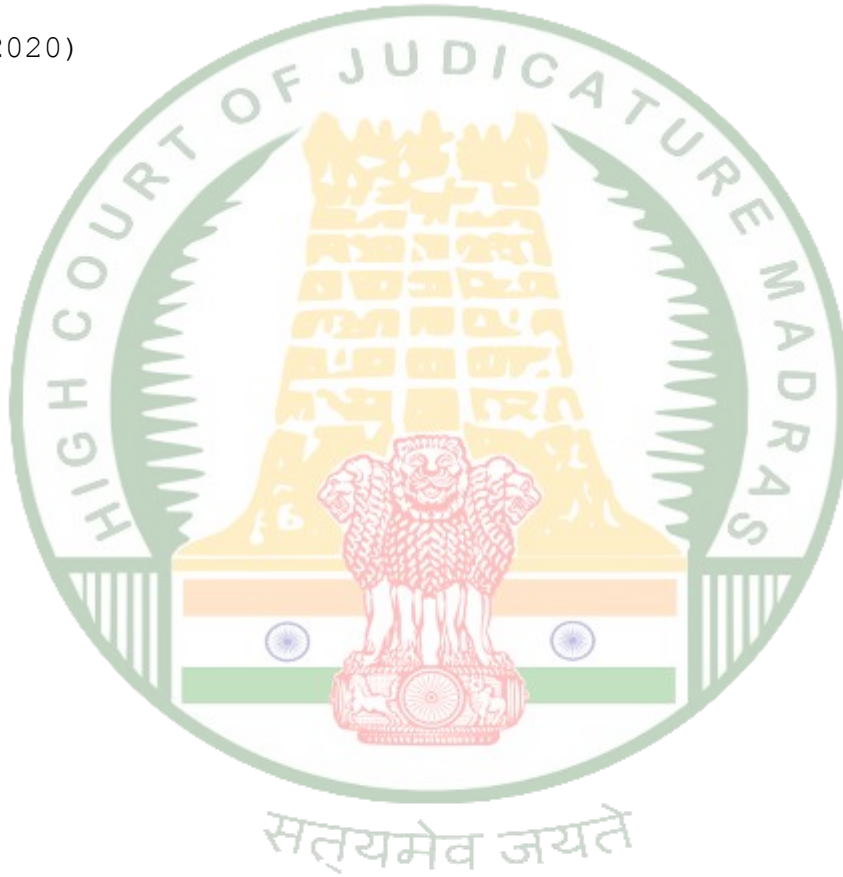
2.The Sessions Judge, Mahila Court, Chennai.

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