THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19-12-2019

Pronounced on : 04-06-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No. 282 of 2018

Lakshmanan .. Appellant

Versus

State by the Inspector of Police
Cheyyur Police Station
Kancheepuram District .. Respondent

Criminal Appeal filed under Section 389 (1) of the Criminal Procedure Code against the Judgment dated 02.04.2018 passed in S.C. No. 226 of 2014 on the file of the Mahalir Neethimandram, Sessions Court, Chengalpattu.

For Appellant : Mr. R. Vijaya Kumar
For respondent : Mrs. M. Prabhavatrhi
Additional Public Prosecutor

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JUDGMENT

R. Subbiah, J

The appellant herein is the sole accused in S.C. No. 226 of 2014 on the file of the Mahalir Neethimandram, Sessions Court, Chengalpattu. He stood

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convicted for the offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment with fine of Rs.10,000/- failing which to undergo six months simple imprisonment. Assailing the Judgment of conviction passed by the trial Court, the present Criminal Appeal is filed.

2. The case of the prosecution, as putforth before the trial court, is succinctly narrated hereunder.

3. The deceased in this case is Suseela, who is the wife of PW1. PW2 in this case is the brother of the deceased Suseela and brother-in-law of PW1. On 15.10.2013, at about 15.00 hours, just after finishing her lunch along with PW1 and PW2, the deceased engaged herself in cutting the grass near *Nellikai Well* adjacent to the land of one Kistappa Naicker. It is alleged that at that time, the accused demanded the deceased to have sexual intercourse with him, but it was refused by the deceased. Enraged by such refusal of the deceased, the accused cut the deceased with a knife on her left hand, back, neck and other vital parts of her body, with the result, the deceased fell to the ground in a pool of blood. According to PW1 and PW2, they have witnessed the incident from a distance of about 300 meters where they were taking tender coconut and immediately, they rushed towards the deceased only

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to see that the deceased had succumbed to the injuries. Immediately, PW1 went to the police Station and lodged a complaint, Ex.P1 at about 5.00 pm. The complaint was given by PW1 specifically pointing out that at the time of occurrence, even though he saw the accused causing cut injuries on his wife, he could not proceed towards her immediately since he was handicapped with his disabled legs. It was further stated that even though PW2 rushed towards the deceased, the accused had fled away from the scene of occurrence, by then. On the basis of the complaint, Ex.P1, PW13, Sub-Inspector of Police, Cheyyur Police Station, registered a case in Crime No. 512 of 2013 for the offence punishable under Section 302 of IPC against the appellant/accused. Ex.P17 is the First Information Report, which was forwarded to the Court as well as higher police officials.

4. It is the further case of prosecution that when the complaint was forwarded to PW16, Inspector of Police, he directed PW13, the Sub Inspector of Police, Cheyyur Police Station to proceed to the scene of occurrence. Accordingly, PW13 along with Mahendran, Head Constable, PW14 proceeded to the scene of occurrence and arranged for taking photographs. Thereafter, he handed over the dead body to PW14, Head Constable with a request to keep the dead body in the mortuary of Chengalpet Government Hospital.

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5. PW16 is the investigation officer in this case. He, on receipt of the first information report, proceeded to the scene of occurrence in the early morning of 16.10.2013 at 6.00 am. The scene of occurrence was identified by Premkumar, Sub-Inspector of Police, PW13. After reaching the scene of occurrence, PW16 prepared an observation mahazar, Ex.P20 and rough sketch, Ex.P21 in the presence of witnesses Balaji, PW5 and one Venkatesan. He has also collected blood stained soil and grass and ordinary soil as well as grass in the presence of the same witnesses. PW16 also recovered MO6, Aruval which would be used for cutting grass, from the scene of occurrence and they were sent to the forensic department for examination. Thereafter, PW16 proceeded to the mortuary of Chengalpattu Government Hospital where the dead body of the deceased was kept. He conducted inquest over the dead body in the presence of Panchayatars. Ex.P22 is the inquest report. Thereafter, PW16 had issued a requisition letter to PW14 for conducting post-mortem.

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6. On receipt of requisition letter, PW15, Dr. Parasakthi commenced the post-mortem on the dead body of deceased at about 11.45 am on 16.10.2013. After completion of postmortem, she issued Ex.P19, post-mortem report stating that the deceased died of shock due to cut injury over the neck and the death would have occurred 20 to 22 hours prior to post-mortem.

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7. In continuation of the investigation, PW16 collected the clothes worn by the deceased at the time of her death and forwarded it under Ex.P18. Again, he went to the scene of occurrence where he recorded the statement of Gubendran, Photographer, who photographed the scene of occurrence.

8. During the course of investigation, on the basis of a tip-off, PW16 arrested the accused on 20.10.2013 at about 13.00 hours at Kannanthangal near his house. On such arrest, the accused gave a voluntary statement which was attested by PW6, Kali, Village Administrative Officer and his Assistant Ramesh, PW7. The admissible portion of the confession statement of the accused is Ex.P23. Pursuant to such confession, the clothes which the accused was wearing at the time of commission of offence have been handed over by the accused himself near a heap of haystack adjacent to his house and they were seized under a mahazar, Ex.P24. The accused also handed over the knife used for the commission of offence from a thorny bush near his house and it was recovered under a mahazar, Ex.P26. PW16 also recorded the statement of PW6 and PW7 and handed over the accused for remand through the Court. Subsequently, PW16 recorded the statement of PW15, Dr. Parasakthi, who performed the autopsy on the dead body of the deceased. He also recorded the statement of PW8, Forensic expert, PW13, Sub-Inspector of Police and PW14,

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Head Constable on 16.12.2013. Ultimately, after conclusion of investigation, PW16 has filed the final report against the accused on 19.02.2014.

9. During the course of trial, on behalf of the prosecution, PW1 to 16 were examined and Exs. P1 to 26 were marked. When the accused was questioned under Section 313 of the Code of Criminal Procedure, with respect to the incriminating materials made against him by the prosecution, he denied it as a false case. However, the accused did not examine any witness on his side or marked any document to disprove the case projected against him. The trial court, upon considering the oral and documentary evidence held the appellant guilty of the charges and convicted and sentenced him as mentioned supra.

10. The learned counsel for the appellant would vehemently contend that the prosecution has projected PW1 and 2 as eye witness to the occurrence, however, their evidence is not trustworthy and reliable. It is the vehement contention of the counsel for the appellant that the presence of PW1 and 2 in the scene of occurrence is highly doubtful. PW1 is the husband of the deceased and PW2 is the brother of the deceased and they are interested witnesses to depose against the appellant. In any event, PWs 1 and 2 have

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admitted that they have witnessed the occurrence from a distance of 300 meters from the place of occurrence. If it is so, practically, it is not possible for one to witness the occurrence from such a distance. Therefore, there is every possibility of mistaken identity of the accused/appellant in this case. Further, in the complaint, Ex.P1, it was mentioned that PW1, 2 and the deceased went to the field after taking their lunch. Even in the inquest report, it was mentioned by PW16 that after taking lunch, when the deceased came to the field for cutting the grass, the incident had occurred. But PW15 in the post-mortem report Ex.P22 did not indicate any traces of food particles in the abdomen portion of the deceased. In fact, it was only indicated that the stomach was empty. If really the deceased had lunch just prior to the occurrence, the post-mortem would have indicated the presence of food particles and the absence of food particles would only suggest that the death of the deceased has not occurred in the manner as projected by the prosecution. In order to substantiate this submission, the learned counsel appearing for the appellant relied upon the decision of the Honourable Supreme Court in the case of (**State of Uttar Pradesh vs. Ved Narain)** reported in **1993 Supplemental 2 SCC 705** wherein it was held that the testimony of the mother that the deceased, after taking snacks, went out in company of the respondent in that case is totally unacceptable as it is contrary to the post-mortem report

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which indicates that the stomach of the deceased, during postmortem, was found empty.

11. Proceeding further with his submission, the learned counsel for the appellant has drawn the attention of this Court to the postmortem report, Ex.P22, wherein PW15, Doctor has indicated that there were five cut injuries on the body of the deceased. But PW1 and 2 did not refer to such injuries said to have been inflicted by the accused, but they have only stated that the deceased sustained cut injuries on her back side of the neck, left hand and back of the deceased. This only suggest that the presence of PW1 and 2 in the scene of occurrence is highly doubtful.

12. The learned counsel for the appellant also submitted that PW6 and PW7, who are attesting witness for the arrest and confession statement of the accused have turned hostile. Interestingly, they are also the witness for the seizure of the knife alleged to have been used in the commission of offence. Thus, the recovery of the material objects in this case is not supported by any evidence and this would only suggest that the material objects were not recovered near the house of the accused/appellant or at the instance of the appellant/accused, but from some other place. Further, PW1 and 2 did not

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identify the knife alleged to have been used in the commission of offence. MO8, knife was also not sent for forensic examination to prove that there was human blood contained in it. The investigation officer, PW16, also did not come forward with any explanation as to why MO8 was not sent for chemical examination.

13. The learned counsel for the appellant drew the attention of this Court to the deposition of PW12, Chemical Examiner. According to PW12, he received a piece of the shirt with blood stain. In other words, he deposed that he received a portion of the shirt for chemical analysis and not the full shirt, alleged to have been worn by the deceased at the time of occurrence. There is no explanation forthcoming from the investigation officer as to what prompted him to send only a portion of the shirt piece for chemical examination. This was also admitted by PW10, Officer from the Forensic Sciences Department that what was received for analysis is only a portion of or half of the shirt piece.

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14. The learned counsel for the appellant also submits that when it is the case of the prosecution that the accused inflicted cut injuries on the deceased with lethal weapon, it is the duty of the prosecution to prove it by

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expert evidence that it was likely or atleast possible for the injuries to have been caused with such a weapon. In the present case, during the examination of PW15, Doctor, not even a suggestion was made as to whether the material objects said to have been recovered from the scene of occurrence could have caused the injuries found in the body of the deceased.

15. Lastly, it was contended that there was no strong motive for the accused to commit the alleged offence. Even in the deposition of PW1, he has admitted that there was enmity between accused and his family. There was not even a suggestion put to the prosecution witness about the extra marital relationship, if any, exists between the appellant and the deceased. While so, the allegation that the accused demanded the deceased to have sexual intercourse with him and when it was refused, the accused caused the death of the deceased, is imaginary. These inconsistencies in the case of the prosecution, according to the learned counsel, would affect the very credibility of the case against the appellant and therefore, the learned counsel for the appellant prayed for allowing this appeal.

16. Per contra, the learned Additional Public Prosecutor appearing for the respondent would contend that even though PW1 and 2 are related to the

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deceased, the fact that they have seen the occurrence has been established through their evidence. The deposition of PW1 and 2 are cogent and corroborative with each other. PW1 has clearly stated in Ex.P1, complaint that soon after witnessing the occurrence, he could not swiftly proceed to go over to the place of occurrence due to disability in his legs. He also further stated that PW2, however, rushed towards the deceased but the accused has fled away from the scene of occurrence, by then. Therefore, according to the learned Additional Public Prosecutor, the fact that the occurrence was witnessed by PW1 and 2 has not lost credibility. The trial court, on extensive appreciation of the deposition of PWs 1 and 2, has rightly convicted the appellant for the offence complained of.

17. The learned Additional Public Prosecutor also would contend that the occurrence had taken place at 3.00 pm in the afternoon and within two hours, PW1 has given the complaint to the Seyyur Police Station, which is about 8 kilometers away from the scene of occurrence. Even in the complaint, Ex.P1, the name of the accused was conspicuously indicated by PW1 and therefore, there cannot be no doubt that it was the appellant who has committed the offence. When the first information report was registered without any loss of time and the criminal prosecution was set in motion by

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clearly indicating the name of the appellant in the first information report, there is nothing to disbelieve the manner in which the prosecution came to be launched against the appellant/accused.

18. The learned Public Prosecutor also contend that though PW3 is a hearsay witness, his evidence is significant inasmuch as upon hearing the assault on the deceased, he reached the spot and saw the deceased lying dead with cut injuries on her neck and left forearm. Similar was the deposition of PW4, who proceeded to the scene of occurrence on hearing the death of the deceased by the accused/appellant. PW4 also corroborated the deposition of PW3 with respect to the cut injuries sustained by the deceased on her neck and left forearm. Such cut injuries inflicted on the body of the deceased has been clearly indicated in the post-mortem report, Ex.P19. The trial court also, on extensive appreciation of the oral and documentary evidence, rightly convicted the appellant. She therefore prayed for dismissal of the Criminal Appeal.

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19. We have heard the counsel for both sides and perused the materials placed on record. The foundation on which prosecution castled its case is the eye witnesses to the occurrence namely PW1 and PW2. PW1 is the husband of the deceased, while PW2 is the brother of the deceased. According

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to PW1 and 2, on the fateful day, after finishing their lunch at 2.00 pm, the deceased, PW1 and PW2 went to the field. The deceased was engaged in cutting the grass near the *Nellikai Well*. At that time, PW1 and 2 were having a tender coconut at a distance of 300 meters. According to PW1 and 2, while they were taking tender coconut, the accused demanded the deceased to have sexual intercourse with him and when it was refused by the deceased, he caused cut injuries on her with a knife. It is the definite case of PWs 1 and 2 that they have heard the conversation between the accused and the deceased that the accused demanded the deceased to have sexual intercourse with him. It is not stated by PWs 1 and 2 anywhere in their deposition as to how long the accused and deceased had such a conversation or whether the incident had happened in a jiffy at the blink of an eye. If the conversation between the appellant and deceased lasted for some considerable length of time and PW1 and 2 heard such conversation, as has been alleged by them, we are of the view that they could not to have stood 300 meters away from the scene of occurrence, rather, they might have proceeded swiftly to protect the deceased from the onslaught of the accused. As mentioned above, there is nothing to indicate as to how long the conversation had taken place between the accused and the appellant. Thus, when PWs 1 and 2 were standing at a distance of 300 meters from the place of occurrence, they could not have heard the

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conversation that had taken place between the accused and the deceased as has been deposed by them.

20. Next it has to be seen as to whether PWs 1 and 2, who were admittedly standing at a distance of 300 meters, can hear the conversation between the appellant and the accused. In fact, PWs 1 and 2 were confronted during their examination as to their presence in the scene of occurrence at the time of incident and the possibility of seeing the accused and the deceased at a distance of 300 meters. Both PWs 1 and 2, in unison, have stated that the place of occurrence is an open field, there were no trees or any object that could prevent their visibility and audibility and they have seen the appellant and the deceased, as also the conversation exchanged between them. In our view, the possibility of seeing a person from a distance of 300 meters itself is quite difficult notwithstanding the fact that there are no objects that would hinder the viewing. While so, hearing a conversation between two persons at a distance of 300 meters is not even remotely possible. We also observe that from a distance of 300 meters, even if a person raises an alarm, that too in an open field, the chances of hearing such alarm can neither be audible nor can be heard clearly. We also could visualise that admittedly, at the time of occurrence, the deceased was not unarmed, rather, she was armed with a grass

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cutter or some weapon in her hands. Therefore, she could herself have protested or caused some injury to the accused when the accused caused cut injuries on her. In this case, there is nothing on record to show whether the deceased had resisted the assault made by the accused. Therefore, in all possibilities and probabilities, PWs 1 and 2 could not have been present in the scene of occurrence and their presence is highly doubtful and the trial court has totally lost sight of this aspect while convicting the appellant.

21. Except PWs 1 and 2, there is no other eye witness examined to speak about the occurrence. Admittedly, PWs 3, 4 and 5 are hear-say witness and they have only heard the death of the deceased and thereafter visited the scene of occurrence. PW6 and 7 were projected as witnesses to the confession statement of the accused soon after his arrest and for having recovered the materials used by the accused during the commission of offence. However, PW6 and 7 did not support the case of the prosecution and therefore, they were treated as hostile. PW8 to 16 are official witnesses such as Scientific Officer, Post-mortem Doctor, Head Constables and Sub-Inspector attached to Cheyyur Police Station and the Investigation Officer. Thus, when the presence of PWs 1 and 2 in the scene of occurrence is held to be doubtful, the testimony of other witnesses has no significance in this case.

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22. The learned counsel appearing for the appellant would vehemently contend that in Ex.P19, Post-mortem report, there was no traces of food particles available in the abdomen of the deceased. By placing reliance on Ex.P19, it is contended by the learned counsel for the appellant that the occurrence could not have occurred at 3.00 pm as has been alleged by the prosecution. In this context, we have examined Ex.P19, Post-mortem report, wherein it was clearly indicated that "stomach - empty". In this case, according to PWs 1 and 2, they along with the deceased had lunch at 2.00 p.m. The occurrence had allegedly taken place within an hour at 3.00 p.m. If the version of PWs 1 and 2 are true that they had lunch one hour before the occurrence, the post-mortem report could have indicated traces of food in the abdomen of the deceased. This gives rise to suspicion that the occurrence could not have taken place in the manner and time as projected by the prosecution. In this context, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in *Ved Narain case* wherein, in an identical case, it was held that when it was the case of the prosecution witness that the deceased after taking snacks went out in the company of the respondent and the post-mortem report indicates that stomach of the deceased was found empty during post-mortem, the deposition of PW2 falsifies on that count. The said decision squarely applies to the facts of this case.

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23. We also observe that the motive for the occurrence has not been established by the prosecution. None of the prosecution witnesses, leave alone PWs 1 and 2, have spoken to about the motive. In fact, PWs 1 and 2 have only stated that the family of the accused and their family are not in talking terms. This is grossly insufficient to hold that due to past motive, the occurrence had taken place. We also take notice of the fact that in the first information report, the name of the accused has been clearly mentioned. However, naming the accused in the first information report may not be sufficient to hold the accused guilty of the charges especially when the prosecution failed to establish his guilt during trial. In the instant case, prosecution has made an attempt to prove its case based on the evidence of PWs 1 and 2, however, their evidence is totally unacceptable for the reasons recorded by us supra. Therefore, the case of the prosecution has to fall to ground. In other words, the testimony of PWs 1 and 2 is not free from any doubt. We therefore hold that the prosecution has failed to prove the guilt against the appellant beyond all reasonable doubt.

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24. In the result, we set aside the Judgment dated 02.04.2018 passed in S.C. No. 226 of 2014 on the file of the Mahalir Neethimandram, Sessions Court, Chengalpattu and he is acquitted of the charge under Section 302 of

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IPC. The Criminal Appeal stands allowed. In view of the allowing of this appeal, the bail bond executed by the appellant shall stand revoked and the fine amount, if paid, shall be refunded to him.

(R.P.S.J) **(R.P.A.J.,)**

04.06.2020

Index : Yes

Speaking Order : Yes

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To

1. The Mahalir Neethimandram
   Sessions Court, Chengalpattu.

2. The Inspector of Police
   Cheyyur Police Station
   Kancheepuram District

3. The Public Prosecutor
   High Court, Madras

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R. SUBBIAH, J
and
R. PONGIAPPAN, J

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HIGH COURT OF JUDICATURE MADRAS
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Pre-delivery Judgment in
Crl.A. No. 282 of 2018

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