



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.82 of 2018

Arokiyasamy

... Appellant/P.W.2

versus

1. John Peter
2. Stella Mary
3. John Bosco

... Respondents 1 to 3/Accused

4. State by
Inspector of Police,
Keeranur Police Station,
Pudukottai District.
Cr.No.94 of 2008

... 4th respondent/Complainant

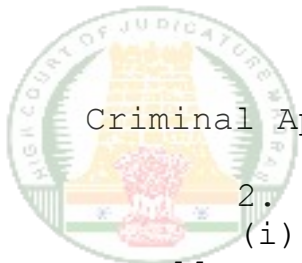
Appeal filed against the Judgment dated 19.05.2010 passed in S.C.No.84 of 2009 by the Additional District and Sessions Judge (FTC), Pudukottai.

For Appellant : Mr. K.Manickaraj,
appointed as a legal aid counsel
by this Court on 14.02.2020
For R1 to R3 : Mr.T.Lajapathi Roy
For R4 : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by B.PUGALENDHI, J.]

Arockiasamy, the husband of the deceased, in Cr.No.94/2008 on the file of the Keeranur Police Station, Pudukottai District, who was also examined as P.W.2 in SC No.84 of 2009, before the learned Additional Sessions Judge (FTC), Pudukottai, filed a Criminal Revision Petition as against the Judgment passed by the trial Court in S.C.No.84 of 2009 dated 19.05.2010. Pursuant to the amendment to Section 372 Cr.P.C., which gives right of appeal to the victim, this Criminal Revision Petition has been numbered as Criminal Appeal based on the orders of this Court dated 11.09.2017, as this Criminal Revision Petition is filed as against the order of acquittal passed under Section 302 IPC and the



Criminal Appeal is also listed before this Division Bench.

2. The case of the prosecution is as follows:

(i) The deceased Annamary in this case was the wife of the appellant herein, who was examined as P.W.2. He is residing in Ravusapatti Village, Kulathur Taluk, adjacent to Keeranur Village, where the first accused John Peter is residing with his wife accused No.2. The accused No.1 is also the native of Ravusapatti village and had an illegal affair with the deceased. The deceased often visited the house of the accused No.1 and the accused No.1, pursuant to the illegal relationship, gave a flat in the name of the deceased adjacent to his house at Ponni Nagar, Keeranur. After some time, for certain needs, the accused No.1 insisted the deceased to give back his flat, which was purchased by the accused No.1 in the name of the deceased. But, the deceased refused to do so.

(ii) While so, on 07.04.2008, the deceased went to Trichy with her daughter Belsia Mary (PW5) to send her to Chennai and she also informed her husband (PW2) that she is going to stay in the accused No.1's house in night. But, she did not return thereafter. On 08.04.2008, at about 9.00 a.m., the Village Administrative Officer of Keeranur received an information about a dead body of a woman lying near the land of K.V.Krishnamurthy, near to a railway track from Trichy to Pudukottai. After verifying the same, Anbazhagan, the Village Administrative Officer, Keeranur, lodged a complaint before the Sub Inspector of Police, Keeranur Police Station at about 9.45hrs.

(iii) P.W.16 V.Gowri-Sub Inspector of Police, Keeranur, on receipt of the complaint, registered a case in Keeranur Police Station Cr.No.94/2008 under Section 302 IPC. The body was also buried at Keeranur on 08.04.2008 at 5.00 p.m. The news was published on 08.04.2008 in Malai Murasu Newspaper and on seeing that, some of the villagers informed P.W.2 that it appears to be his wife and therefore, P.W.2 went to the Keeranur Police Station and identified the dead body as that of his wife through the photos and videos, which were shown to him. On his request, the body was also exhumed in the presence of the Tahsildhar and was handed over to P.W.2.

(iv) P.W.18 - Inspector of Police, Keeranur Police Station, on receipt of the FIR in Cr.No.94 of 2008, went to the place of occurrence near K.V.Krishnamurthy's land and prepared an observation mahazar (P.W.6) and a rough sketch Ex.P13 in the presence of P.W.9 and another. He also recovered a 350 ml brandy bottle named as Kardinal Brandy - MO1, a bag - MO2, three plastic tumblers - MO3, black colour footwear - MO4, an empty packet of Gold Flake Cigarette - MO5, a King Fisher Yellow Colour Bottle's



cover - MO6, a bloodstained sari - MO7, a soil stained skirt - MO8, a green colour jacket - MO9, a bloodstained shirt MO10, a bloodstained dhoti - MO11, a white colour banian - MO12 and a black colour plastic bag - MO13 under a cover of Mahazar Ex.P14 in the presence of said witnesses. He also availed the services of dog squad and the dog squad came to the place of occurrence, but, nothing has been elicited. He also conducted an inquest in the presence of Panchayatdars on 08.04.2008 from 11.15 p.m. to 1.15 p.m. and the inquest report was also marked as Ex.P15 and he also made a request for conducting postmortem and sent the body for postmortem through a Constable P.W.12-Murugesan.

(v) P.W.17-Dr.Karthikeyan, a Professor and Head of the Department of Forensic Medicine, K.A.P.V.G.M.C., Tiruchirappalli, conducted autopsy on 08.04.2008 at 4.15 p.m. and noted down the following injuries in Ex.P10- post-mortem certificate:

Genital Examination:- Labia - oedematous. Hemorrhagic areas present. Hymen - absent, grayish white cheesy fluid with seminal fluid smell - discharge present.

Wounds:

1. Dark brown colour abrasions, multiple, of varying dimensions, at varying distances around the nostrils, both lip, both side of face, front and sides of neck, left shoulder, back of right side of chest. O/D Bruising of soft tissues underneath the abrasions - Dark red.
2. Blood clots adherent at the gums and not washable.
3. Linear lacerations on the inner aspect of nostrils and both lip present.
4. Bruising of left side of frontal, left parietal and left temporal region of the scalp and left temporalis muscle - Dark red.
5. Sub dural haemorrhage and Sub arachnoid haemorrhage on both parietal lobe of cerebrum.

On blood less dissection of the neck

6. Fracture of lamina of thyroid cartilage vertically present. Bruising of soft tissues of neck present - Dark red. Diffusion of blood in to the soft tissues of neck. Bruising of the Oesophagus wall present - Dark red. Hemorrhagic spots in the mucous membrane of the wind pipe and Oesophagus present.

The above mentioned wounds are ante-mortem in nature. No other external, internal or bony wound present.



Other findings: On opening the Abdomen - Emanates alcohol smell, Peritoneum - intact, cavity - empty; Opening of Thorax - Emanates alcohol smell; Pleura - intact pin head sized - Hemorrhagic spots present, cavity - empty, Pericardium - intact, cavity - straw colour fluid; Heart - normal in size; Myocardium - normal, Chambers - right - clotted blood, left - fluid blood; Valves - normal, Coronary vessels - patent, Great vessels - normal; Lungs - c/s congested, hemorrhagic areas, multiple in numbers in the inter lobar surfaces of both lung; Larynx, Trachea and mucosa - vide wound column; Hyoid Bone - intact; Stomach - full sized cooked rice particles, alcohol smell present, mucosa - congested; Oesophagus - vide wound column; Pancreas - pale; Gall bladder - full, no stones; Liver, Spleen and Kidneys - c/s congested; Omentum and Mesentery - intact, normal; Small intestine - Yellowish chyme, no specific smell, mucosa - congested; Appendix - intact, normal; Large intestine - filled with gas; Urinary bladder - intact, empty; Uterus - missing; Opening of the Head - Emanates alcohol smell; Pelvis - intact; Skull Bones - intact; Scalp, Membranes, Sinuses, Brain vessels and Brain - vide wound column; CSF - blood stained; vertebral column - intact, cord - normal; All other internal organs on c/s pale;

DURING AUTOPSY

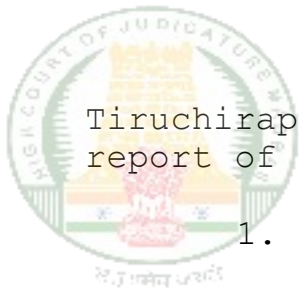
1. VAGINAL SMEAR TAKEN FOR DETECTION OF SPERMATOCYTES - SPERMATOCYTES DETECTED - WET FILM.
2. THE CLOTHES WORN BY THE DECEASED EMANATES URINE AND SEMINAL FLUID SMELL.

Opinion as to the cause of death:-

"DIED OF CUMULATIVE EFFECTS OF SMOTHERING AND COMPRESSION OF NECK"

1. DURING AUTOPSY, VISCERA PRESERVED AND SENT FOR CHEMICAL ANALYSIS TO FIND OUT THE PERCENTAGE OF ALCOHOL.
 2. RIGHT THIGH BONE - FOR DNA PROFILE, PRESERVED AND SENT.
 3. GAUZE PIECE SOAKED IN BLOOD, PRESERVED, AIR DRIED AND SENT FOR BLOOD GROUPING.
- CONTROL SAMPLE RETAINED."

He also preserved stomach, brain, liver and kidney and sent the same for further examination to the Forensic Science Laboratory, based on which, the Scientist in the Forensic Science Department,



Tiruchirappalli, on examination of those materials, issued the report of viscera in Ex.P11, which reads as follows:

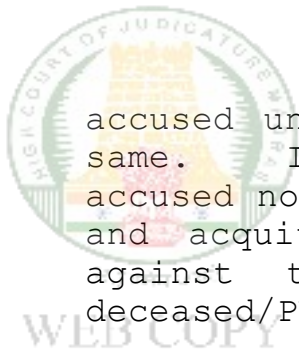
1. Stomach : Detected 506 (Five hundred and six) milli grams of Ethyl alcohol but not other poison.
2. Liver and Kidney: Detected 460 (Four hundred and sixty) milli grams of Ethyl alcohol but not other poison.
3. Brain : Detected 368 (Three hundred and sixty eight) milli grams of Ethyl alcohol but not other poison.
4. Blood :Detected 115 (One hundred and fifteen) milli grams percentage w/v of Ethyl alcohol but not other poison.
5. Preservative :Did not detect Ethyl alcohol or other poison.

(vi) On 15.04.2008 at about 8 p.m., the Inspector of Police (P.W.18) arrested the accused and the accused No.1 gave a voluntary confession statement in the presence of P.W.1 - Anbazhagan, Village Administrative Officer and another and pursuant to his confession statement, a bloodstained shirt M.O.10, a bloodstained dhoti M.O.11, a white colour banian M.O.12 and a black colour plastic bag MO13 were recovered under a cover of mahazar Ex.P17. He also made a request to send the recovery materials for chemical analysis. He also made arrangements for potency test on accused No.1 and recorded the statement of the witnesses and filed a final report as against the respondents/accused for the offence under Sections 302 read with 201 IPC on 10.02.2009.

(vii) During trial, 18 witnesses were examined as P.W.1 to P.W.18, 18 Exhibits and 13 material objects were also marked.

(viii) P.W.1, the Village Administrative Officer, Keeranur, who lodged a complaint-Ex.P1 and who stood as a witness for the arrest and recovery, was treated as hostile. Similarly P.W.9-Muthu, who was examined for preparation of observation mahazar and for recovery of materials objects from the place of occurrence, was also treated as hostile and P.W.7-Selvam, a neighbour of the accused, who is said to have lastly seen the deceased in the company of the accused No.1, was also treated as hostile.

(ix) With the evidence available on the side of the prosecution witnesses, the incriminating materials were put to the



accused under Section 313 Cr.P.C and the accused had denied the same. In conclusion of the trial, the trial Court found the accused not guilty for the offence on which they have been charged and acquitted the accused by Judgment dated 19.05.2010. As against the Judgment of acquittal, the husband of the deceased/PW2 is before this Court.

3. When the matter was taken up for hearing, Mr.A.Arun Prasad, learned counsel for the appellant reported no instructions and also filed a memo for withdrawal of appearance in SR.No.308/20 dated 21.01.2020. Even thereafter, when the appeal was listed on various other dates, there was no representation for the appellant and therefore, this Court appointed Mr.R.Manickaraj, who is having 20 years of experience in the criminal side, as a counsel for the appellant, who presented the case on behalf of the appellant.

4. Mr.Manickiaraj, learned counsel for the appellant, would submit that the deceased was last seen in the company of the accused, which was proved through the evidence of P.W.2, P.W.4, P.W.5 and P.W.6. P.W.2 was informed by his wife/ deceased that after sending her daughter, she intended to stay in the house of the accused No.1. P.W.5, the daughter of the deceased and P.W.2 also gave the evidence in this regard. P.W.4 saw the accused near the place of occurrence and P.W.6 saw the accused No.1 along with the deceased on 07.04.2008 at 8.00 p.m. The evidence of the Doctor - P.W.17 would disclose that the deceased would have died of cumulative effects of smothering and compression of neck. Therefore, the deceased was killed by strangulation. It is enough to convict the accused.

5. Heard the learned Additional Public Prosecutor and Mr.Lajapathi Roy, learned counsel for the respondents/accused. Mr.Lajapathi Roy pointed out the discrepancies in the prosecution case and this Court paid its anxious consideration to the rival submissions and materials placed on record.

6. The body of the deceased was found by the Village Administrative Officer and the complaint was lodged on 08.04.2008 at 9.45 a.m. The dead body was recovered and the same was also sent for post-mortem. The scientific examination on the dead body discloses that the deceased consumed alcohol prior to the occurrence and she also had a sexual relationship with a person prior to the occurrence. Semen found on the clothes of the deceased was also collected and sent for scientific examination. The accused was arrested after seven days and he was also subjected for potency test. However, the prosecution has failed to establish through the scientific evidence that semen collected from the deceased clothes matched with the same collected from the



7. Further, the accused was arrested on 15.04.2008, from whom, the confession statement was also recorded, pursuant to which, Mos.10, 11 and 12-bloodstained clothes were also recovered. But those bloodstained clothes were not sent for biological examination to find out the blood group found on the clothes and to match with blood group of materials recovered from the place of occurrence.

8. The case of the prosecution lies on the circumstantial evidence and the motive is a necessary once in a case of circumstantial evidence. The case of the prosecution is that the accused No.1 was having illegal intimacy with the deceased and pursuant to the illegal intimacy, the accused No.1 purchased a flat in the name of the deceased and gave the same to the deceased and after some time, when the accused insisted the deceased to give back the same, but, the deceased refused to do so. Therefore, the accused is said to have committed the offence and attempted to destroy the evidence with the help of the other accused. To substantiate this case of the prosecution, no material is placed before the Court that any flat has been purchased in the name of the deceased. According to P.W.2 and P.W.5, the deceased had informed them that she would stay over night in the house of the accused No.1, but, even on the next day, till 7.00 p.m. there was no attempt made by P.W.2 and P.W.3 to trace out the deceased. Further, there was no explanation on the side of P.W.2, whether he enquired the accused No.1 on the next day morning why the deceased did not return home. P.W.2 admits in his evidence that the accused No.1 had accompanied him for postmortem and for other ceremonies. Further, from the place of occurrence, three tumblers and two liquor bottles have been recovered. Moreover, the postmortem report reveals that the deceased consumed alcohol and also had sexual intercourse prior to the occurrence. However, the prosecution has failed to find out the third person, who might have accompanied the deceased at the time of occurrence.

9. P.W.6, a relative of the deceased, states that he lastly seen the deceased in the company of the accused No.1. But, he did not inform the same to P.W.2 immediately. Further, his statement was also recorded belatedly and reached the Court belatedly. Except these flimsy evidence, there are no materials on the side of the prosecution to substantiate the case of the prosecution and any motive on the part of the accused No.1.

10. Insofar as accused Nos.2 and 3 are concerned, there are no materials on the side of the prosecution as to how they have participated in the commission of offence and destroying the evidence. Therefore, this Court is not inclined to interfere with



the findings given by the trial Court.

11. In view of the above, we find it difficult to set aside the order of acquittal, more so, when the Supreme Court has time and again cautioned that an appellate court must be slow in interfering with a judgment of acquittal and that it should keep in mind that acquittal only strengthens the innocence of the accused and weakens the prosecution case. It is also settled principle of law that if two views are possible, one view in favour of the accused and another view in favour of the prosecution, and when the trial court takes the view in favour of the appellant, the appellate court should not interfere with the judgment of acquittal of the trial court on the only ground that the trial court could have taken the other view in favour of the prosecution.

12. In view of the above facts and in view of the law laid down by the Supreme Court, the appeal deserves to be dismissed and accordingly it is dismissed.

13. Mr.K.Manickaraj, learned counsel is entitled to get remuneration of Rs.10,000/- from the High Court Legal Services Committee, as he has argued the appeal as legal aid counsel on behalf of the appellant.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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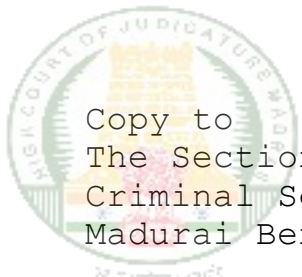
To

1. The learned Additional District
and Sessions Judge (FTC),
Pudukottai.

2.The Officer Incharge,
High Court Legal Services Committee,
Madurai Bench of Madras High Court, Madurai.

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

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Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-7910[F] dated
24/02/2020)

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21.02.2020

KM (10.06.2020) 9P 7C