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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRIMINAL APPEAL (MD).No. 221 of 2018

Palaniappan

: Appellant

Vs.

State rep. by
the Inspector of Police,
Kulithalai Police station
Karur District
In Crime No.231/2014

: Respondent

PRAYER: Appeal is filed under Section 378 (4) of the Code of Criminal Procedure against the judgment dated 15.11.2016 in S.C.No.47 of 2016 by the Fast Track Mahila Court, Karur.

For Appellant

: Mr.N.Sivakumar

For Respondent

: Mr.K.K.Ramakrishnan

Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by B.PUGALENDHI, J.)

This criminal appeal is filed by the sole accused, who was found guilty by the Fast Track Mahila Court, Karur in S.C.No.47/2016. This appellant was tried for the offence under Section 302 IPC and the trial Court, by order dated 15.11.2016, found the appellant guilty for the offence under Section 302 IPC, and convicted and sentenced him to life imprisonment with a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. As against the conviction and sentence imposed on the appellant, the present appeal is filed.

2. The brief facts of the case in nutshell are as follows:

This appellant/accused is the husband of the deceased. The deceased Arasayee was married to the appellant fifteen years prior to the occurrence and out of the wedlock, they are having one daughter Maheswari (P.W.-5) and one son Sakthivel. During the occurrence, the daughter of the deceased (P.W.-5) was studying 11th standard and her brother Sakthivel was studying 4th standard. The deceased Arasayee was having illegal intimacy with her uncle's son Malaiyalan (P.W.-6). This was witnessed by P.W.-5 and her father/the appellant. The appellant condemned his wife, even then, she continued her relationship with P.W.-6 and therefore, the issue was taken to Manickam, (P.W.-7) the Panchayat President of Thimmampatti Panchayat. A Panchayat was also held in the presence of P.W.-7, P.W.-8, P.W.-9 and P.W.-1 and Pursuant to the decision



taken in the Panchayat, the paramour of the deceased (P.W.-6) had also promised before the Deity Kidariamman that he would sever his relationship from the deceased. This panchayat was held one year prior to the occurrence. But, even thereafter, P.W.-6 and the deceased continued their illicit relationship, which was witnessed by the appellant/accused and when the appellant/accused condemned his wife/the deceased, the deceased insulted him, as he is an impotent and out of anger, the appellant attacked the deceased on 21.05.2014 at 3.30 a.m., as a result, the deceased died.

2.1. P.W.-3, the maternal aunt of the deceased was also residing adjacent to the house of the deceased and on 21.05.2014, at about 3.30 a.m., she heard some noise from the house of the deceased and she ran to her house and found the deceased in a pool of blood and the accused also ran away from the place of occurrence with an aruval. She informed the brother of the deceased (P.W.-1), who was residing in another village. He also came to the place of occurrence along with his brother (P.W.-2) and even at that time, they also said to have witnessed the accused passing through with an aruval.

2.2. On the complaint of P.W.-1, one Ms.Balakarthiga, the Sub Inspector of Police of Kulithalai Police Station, registered the complaint (Ex.P-1) in Kulithalai Police Station Crime No.231/2014 under Section 302 IPC on 21.05.2014 at 10.00 a.m. The printed FIR is marked as Ex.P.-10 and this printed FIR (Ex.P-10) was forwarded to the Court through the Constable (P.W.-13) at about 10.30 a.m. and handed over to the Judicial Magistrate, No.II, Kulithalai at 4.45 p.m.

2.3. On receipt of the intimation, P.W.-17, the then Inspector of Police, Kulithalai Police Station, proceeded to the place of occurrence and prepared the Observation Mahazar (Ex.P-2) and a rough sketch (Ex.P-11) in the presence of P.W.-10 and another witness. He also conducted the inquest on the dead body in the presence of Panchayatdars and the inquest report is marked as Ex.P-12. He made a request for conducting postmortem through the Head Constable (P.W.-14). He also examined the witnesses P.W.-1 to P.W.-5 and others, who were present in the place of occurrence and recorded their statements under Section 161(3) of the Code of Criminal Procedure.

2.4. Dr.Senthilkumar (P.W.-12) conducted the postmortem on 21.05.2014 at about 3.40 p.m. and noted down the following external injuries:

"1.15 x 5 x 2 cm cut injury over the right side of the neck from the midline of the occipital region to 2 cm lateral to the right angle of the mouth. Occipital bone exposed.

2. 13 x 5 x 5 cm cut injury just below the 1st wound cervical spine - exposed.

3. 5 x 3 x 1 cm cut injury just right lateral to the mouth.



4. 10 x 3 x 2 cm cut injury over the right shoulder.

5. 15 x 3 x 1 cm cut injury just below the 4th wound from scapula to the right arm.

6. 7 x 3 x 1 cm cut injury over the right clavicle.

7. 7 x 2 x 1 cm cut injury over the left face just below the left eye.

8. 10 x 3 x 2 cm cut injury over the medial aspect of the left arm.

9. 8 x 3 x 2 cm cut injury over the left forearm.

10. 6 x 3 cm abrasion over the left wrist."

He also preserved the hyoid bone, liver, stomach, intestines and kidneys for chemical analysis and on receipt of chemical analysis report gave his final opinion as to the cause of the death that the deceased would appear to have died of shock and hemorrhage due to injuries to the neck and head. The postmortem certificate issued by Dr.Senthilkumar is marked as Ex.P-6.

2.5. The accused surrendered before the Judicial Magistrate No.II on 21.05.2014 at 10.30 a.m. and on knowing that information, the Inspector of Police, Pitchai Pandian (P.W.-17) filed an application for police custody in Cr.M.P.No.1236/2014 on 23.05.2014 and obtained police custody of the accused for one day and when the accused was examined in the police station at Kulithalai, the accused voluntarily gave a confession statement to P.W.-17 on 24.05.2014 in the presence of the Village Administrative Officer Kumarapandian (P.W.-16) and his Assistant Mani. Pursuant to the confession statement, a bloodstained shirt of the accused (M.O.-8) and an aruval (M.O.-9) was recovered on 24.05.2014 under a cover of mahazar (Ex.P-8). He also forwarded the materials recovered from the deceased and the accused for chemical analysis to the concerned Judicial Magistrate Court.

2.6. Gurunathan, Inspector of Police (P.W.-18) has taken over further investigation from 10.05.2015 and recorded the statement from the scientific experts and filed a final report as against the appellant/accused before the Judicial Magistrate, No.II, Kulithalai on 12.08.2015 in P.R.C.No.12/2015.

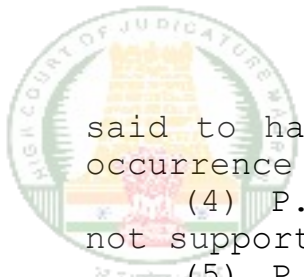
2.7. The case was committed to the Fast Track Mahila Court, Karur, in S.C.No.47/2016 and during the trial, on the side of the prosecution, 19 witnesses were examined and 16 exhibits were marked, 9 material objects were also produced.

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

(1) P.W.-1 - brother of the deceased, who went to the place of occurrence on 21.05.2014 and lodged the complaint (Ex.P.-1);

(2) P.W.-2 is another brother of the deceased, who accompanied his brother (P.W.-1) to the place of occurrence;

(3) P.W.-3 is the maternal aunt of the deceased Arasayee, who first saw the deadbody and informed P.W.-1 and P.W.-2. She also



said to have witnessed the accused running away from the place of occurrence with aruval;

(4) P.W.-4 is a neighbour to the deceased house, but she did not support the case of the prosecution;

(5) P.W.-5 is the daughter of the deceased, who was studying B.B.A., second year during the trial, stated about the illegal intimacy between her mother/deceased with Malaiyalan (P.W.-6) and about the panchayat held prior to the occurrence and the conduct of her mother in continuing the intimacy even after the panchayat and on account of which, the accused left their home.

(6) P.W.-6 is the paramour of the deceased, who admitted that the deceased is his aunt's daughter and they have been closely knowing together and about the panchayat held on account of the illicit intimacy and his promise made before the Kidariamman;

(7) P.W.-7 is the Panchayat President of Thimmampatti Village, who is also the Nattamai, who conducted the panchayat held between the accused and P.W.-6.

(8) Saravanan (P.W.-8) is another Panchayat President of Sivayam Panchayat, who attempted to convene a subsequent panchayat, which was not fructified and he was treated as hostile witness by the prosecution.

(9) P.W.-9 is the brother of P.W.-6, who admits the illegal relationship between P.W.-6 and the deceased and he also warned his brother and about the panchayat held between the parties in the presence of P.W.-7 and P.W.-8;

(10) P.W.-10 is the mahazar witness for the recovery of the bloodstained tiles and tiles without bloodstains from the place of occurrence and for the preparation of observation mahazar and rough sketch;

(11) P.W.-11 is the Scientific Expert, who submitted the serological report (Ex.P-4). According to him, no poisonous substance was detected in the internal organs collected from the deceased;

(12) P.W.-12 is Dr.Senthilkumar, who conducted the postmortem and gave his final opinion on the cause of death.

(13) P.W.-13 is the Constable, who handed over the printed FIR (Ex.P-10) before the concerned Judicial Magistrate Court;

(14) P.W.-14 is the Constable, who identified the deadbody to (P.W.-12) Doctor;

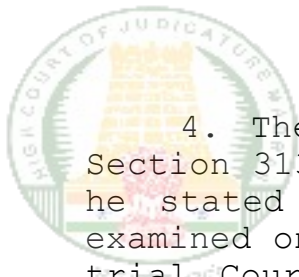
(15) P.W.-15 is another Inspector of Police, who recorded the statement of Balakarthiga, Sub Inspector of Police of Kulithalai Police Station, who registered the FIR in Crime No.231/2014;

(16) P.W.-16 is the Village Administrative Officer of Vaigainallur North, in whose presence, the confession statement of the accused was recorded on 24.05.2014;

(17) P.W.-17 is the Inspector of Police, who conducted the preliminary investigation;

(18) P.W.-18 is the Inspector of Police, who filed the final report; and

(19) P.W.-19 is the Scientific Expert, who submitted his biological report (Ex.P-14) with regard to the presence of blood and its group on the material objects referred for examination.



4. The incriminating materials were put to the accused under Section 313 Cr.P.C. and the accused denied the same as false. Though he stated that there are witnesses on his side, no witness was examined on the side of the accused. In conclusion of the trial, the trial Court found this appellant/ accused guilty for the offence under Section 302 IPC and convicted and sentenced him as stated supra. As against the said conviction and sentence, the present appeal is filed.

5. Heard Mr.N.Sivakumar, learned counsel for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the State.

6. Learned counsel for the appellant submits that it is a case of circumstantial evidence and P.W.-3 could not have witnessed the occurrence as alleged by the prosecution, since the complaint was lodged only at 10.00 a.m. and has also reached the Court belatedly at 4.45 p.m. He further submits that the appellant was not present in the house, since due to the misunderstanding, he left the house four months prior to the occurrence and it was some unknown persons, with whom the deceased was having illicit intimacy, has committed the offence. But the appellant accused was made as a scapegoat. Relying upon the evidence of P.W.-5 submits that even the daughter of the deceased (P.W.-5) has stated that her mother was having illicit intimacy with P.W.-6 and several other unknown persons used to visit her house often. The arrest and recovery are also false that a bloodstained shirt (M.O.-8) and an aruval (M.O.-9) were recovered, pursuant to the confession statement of the accused. But, according to the biological report, the bloodgroup found in M.O.-8 and M.O.-9 not tallied with the bloodgroup of the deceased, which were found on the clothes of the deceased. P.Ws.-1 to 3 could not have witnessed the accused running away in the midnight, when the source of light has not been established in this case and the witnesses have admitted in their evidence that there is no source of light in the place of occurrence.

7. Per contra, the learned Additional Public Prosecutor submits that P.W.-3 was a neighbour of the deceased and she went to the place of occurrence immediately on hearing the noise and also witnessed the accused running away from the place of occurrence with an aruval and on her information only P.W.-1 and P.W.-2 have reached the occurrence place. Though P.W.-1 and P.W.-2 have also stated that they have witnessed the accused running away with aruval, even their evidences were disbelieved. On this score, the evidence of P.W.-3, who is a neighbour, can be believed in this regard that immediate to the occurrence, she went to the place of occurrence. The dead body was found from the house of the accused and therefore, the presumption under Section 106 of the Indian Evidence Act, is against the accused. He also relied upon the evidence of P.W.-1, P.W.-2, P.W.-6, P.W.-7 and P.W.-9 and submits that the prosecution has established the motive for the occurrence that the deceased and P.W.-6 were having illicit intimacy and out of that motive, the



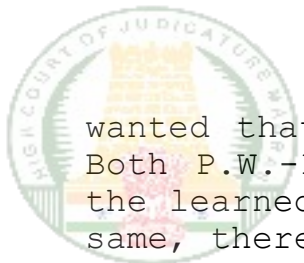
appellant/accused/husband of the deceased has committed the offence. He also referred the recovery of M.O.-8 and M.O.-9, pursuant to the confession of the accused made in the presence of Village Administrative Officer (P.W.-16).

8. This Court paid its anxious consideration to the rival submissions made and also perused the available records.

9. Evidences of P.W.-1 to P.Ws.-3, 5 to 9 make it clear that the deceased was having an illegal intimacy with P.W.-6. In addition thereto, the appellant/accused was informed by his own daughter about this illegal affair between the deceased and P.W.-6. When it was reported, he was too soft in accepting the issue considering the future of the family and children. Even one year prior to the occurrence, when the illegal relationship was brought to the knowledge of the appellant/accused, he warned his wife to behave in a proper way for the sake of the family. But, even then, when she continued her relationship with P.W.-6, he only took the matter to the Panchayat before P.W.-7 and P.W.-8. P.W.-7 the Panchayat President also admits that P.W.-6 took an oath before the Deity that he would sever his relationship with the deceased. But, according to P.W.-2 and P.W.-5, even after this promise made before the Deity, P.W.-6 and the deceased continued their illegal relationship and due to that the appellant/accused got frustrated and left the matrimonial home and was residing separately in another village for more than four or five months.

10. While so, the occurrence was taken place in the early morning on 21.05.2014, ie., 3.30 a.m. P.W.-13, who is residing in the same village, went to the place of occurrence on hearing the alarm, said to have witnessed the accused running away with an aruval. But, according to P.W.-1 to P.W.-3, it was dark and there was no source of light. The prosecution also has not elicited through any other evidence, whether there was any source of light in the place of occurrence during the early morning hours. P.W.-3 said to have visited the place of occurrence immediate to the occurrence and thereafter intimated the brother of the deceased (P.W.-1) and P.W.-1 informed his another brother P.W.-2 and P.W.-1 along with P.W.-2 went to the place of occurrence and even as per the evidence of P.W.-1, they also said to have witnessed the accused running away with an aruval from the place of occurrence. If the version of P.W.-3 is true that when she visited the place of occurrence, the accused was running away with an aruval, then, P.W.-1 and P.W.-2, who visited the place of occurrence after sometime on the information of P.W.-3, would not have witnessed the accused running away with aruval. However, all the three witnesses P.W.-1 to P.W.-3 as a parrot like evidence deposed that when they visited the place of occurrence, the accused was running away with an aruval.

11. On a careful reading of the evidence of P.W.-1 and P.W.-2, it discloses that there was enmity between P.W.-1 and the appellant. The appellant purchased a piece of land from P.W.-1 and P.W.-1



wanted that land back and requested him to give that land to him. Both P.W.-1 and P.W.-2 admit this fact and by referring the same, the learned counsel for the appellant submits that on account of the same, there was an enmity prevailing between the appellant and P.W.-1 and to wreck vengeance, he was falsely implicated.

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12. The occurrence took place at 3.30 a.m. Though P.W.-1 to P.W.-3 have reached the place of occurrence immediate to the occurrence, the complaint was preferred only at 10.00 a.m., after 6½ hours and this FIR (Ex.P.-10), which was registered at 10.00 a.m. also reached the Court only at 4.45 p.m. and no good explanation was offered by the prosecution for this inordinate delay in registering the case as well in the FIR reaching the Court.

13. The daughter of the deceased (P.W.-5) as well as the brother of the paramour (P.W.-9) have stated that even after the Panchayat was held one year prior to the occurrence, the deceased continued her illicit relationship with P.W.-6. P.W.-5 daughter of the deceased and P.W.-2 brother of the deceased admit that since the deceased continued her illicit relationship, the appellant accused got frustrated and left the matrimonial home and stayed away in another village four to five months prior to the occurrence. According to the daughter of the deceased (P.W.-5), her mother/deceased was having contacts with several people. This evidence of the prosecution coupled with the fact that the occurrence having taken place in the early morning hours and even as per the evidence of the prosecution witnesses, there was no source of light and the fact that the report was made with a considerable delay without any explanation, it is not safe to convict this appellant for the murder of the deceased and therefore, from the available evidence, this Court is of the view that the prosecution has not established its case beyond any reasonable doubts and by extending the benefit of doubt in favour of the accused, the conviction and sentence imposed upon the appellant is liable to be set aside.

14. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant vide S.C.No.47/2016 by the Fast Track Mahila Court, Karur is set aside and the appellant is acquitted of the charge under Section 302 IPC. Fine amount, if any paid, shall be refunded to the accused. Bail bond executed shall stand cancelled.

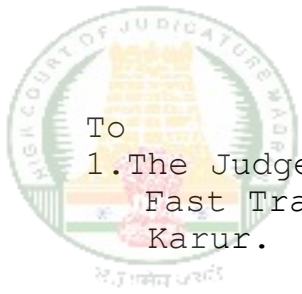
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Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)



To

1.The Judge,
Fast Track Mahila Court,
Karur.

2.The Judicial Magistrate No. II
Kulithalai.

3.The Chief Judicial Magistrate,
Karur District

4.The Inspector of Police,
Kulithalai Police station
Karur District

5.The Superindendent,
Central Prison, Trichy

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

7.The Section Officer(Records)
Criminal Section
Madurai Bench Of Madras High Court
Madurai.

+1 CC to M/s.N.SIVAKUMAR, Advocate (SR-4380[F] dated 03/02/2020)

JUDGMENT MADE
CRIMINAL APPEAL No. (MD).No.221 of 2018
30.01.2020

AP(19/05/2020) 8P 9C