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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2021

DELIVERED ON : 29.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.76 of 2021
and
CrI. M.P. No.1934 of 2021

Siva ...Appellant/single Accused
Vs.

The State of Tamilnadu
Represented by
The Inspector of Police,
Vellore Taluk Police,
Crime No.490 of 2009 ...Respondent/Complainant

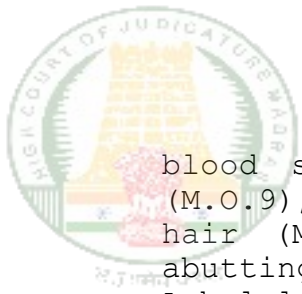
PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 to set aside the conviction and the sentence imposed upon the appellant by the learned Additional District and Sessions Judge (FTC), Vellore, vide Judgment dated 23.04.2019 in S.C. No.129 of 2010.

For Appellant : Mr.M.R. Thangavel

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

J U D G M E N T

Being aggrieved by the conviction and sentence passed by the learned Additional District and Sessions Judge, Vellore, in S.C. No.129 of 2010, the present appeal is filed. The appellant Siva, son of Sankaraiya, was convicted under Section 302 of IPC and sentenced to undergo life imprisonment and a fine of Rs,1,000/- and in default, to undergo Rigorous imprisonment for one year. The accused was also convicted for the offence punishable under Section 201 of IPC and sentenced to undergo Rigorous imprisonment for 7 years and to pay a fine of



blood stained stone (M.O.4), blood stained vegetative matter (M.O.9), blood stained soil (M.O.5), hairpin (M.O.7), shreds of hair (M.O.8) and blade piece (M.O.10) near a water channel abutting the water tank on the house site belonging to one Ambalal under a mahazar Ex.P28 in the presence of witnesses Mannarsamy (P.W.9) and Anandan (P.W.11). He also took the soil without blood stains (M.O.6).

h) Thereafter, P.W.17 arrested the accused on 15.10.2009 at about 3 p.m. near Vellore New Bus stand round-tana and recorded his confession statement, based on which P.W.17 recovered 12 feet long coir rope (M.O.12) and a stone (M.O.11) after draining water from the well from where the victim's body was retrieved. He also recovered a small quantity of ash (M.O.13), which was the burnt remains of the dresses of Anupriya, the victim, and the lungi of Siva, the accused, under a mahazar Ex.P.31 in the presence of the same witnesses. All these material objects were shown by the accused. The admissible portion of the confession statement of the accused was marked as Ex.P30.

i) Tmt. Dauvuth Ammal, Judicial Magistrate No.III, Vellore, recorded the statements of the witnesses Loganathan (P.W.18), Mannarsamy (P.W.9). Jayapal (P.W.19) and Anandan (P.W.11) under Section 164 of Code of Criminal Procedure after following necessary procedures. The said statements were marked as Ex.P.17 to Ex.P20.

j) Dr. Selvakumar conducted autopsy (Ex.P21) on the body of the deceased and found various injuries on the body of the deceased. In the opinion of the doctor, the deceased appeared to have died due to head injuries sustained.

3. It was the case of the prosecution that the aforesaid accused had committed the offence of murder by inflicting serious injuries on the victim when he attempted to force himself upon her and found resistance. It was also the case of the prosecution that the accused caused disappearance of the evidence of the offence by throwing the body of the deceased into the well.

4. This is a case based on the circumstantial evidence as nobody has seen the commission of the offence. It was, however, found in the evidence that immediately after the arrest of the accused on 15.10.2009, one stone (M.O.11) and 12 meter long coir rope out of which 2 meters sample was taken (M.O.12) and small quantity of ash (M.O.13), which was the remains of the burnt clothes worn by the victim and the accused, were all recovered based on the confession of the accused. The trial court has considered all the material facts and on the basis of the evidence recorded, found the accused to be guilty of having



committed the offences punishable under Sections 302 and 201 of IPC. According to the trial court, the chain of circumstance had been complete and that was adequate to establish the guilt of the accused.

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5. Mr. M.R.Thangavel, learned counsel appearing for the appellant would contend that the prosecution did not substantiate its contention that the accused was employed with one Ambalal Real Estate and that he was also a resident of Nelvoyal Village. It was also his contention that the last seen theory does not apply to the instant case as the only witness Meenatchi (P.W.7), who claimed to have seen the victim and the accused at about 5.30 p.m, turned hostile to the prosecution. He would therefore contend that there are several missing links in the prosecution case and therefore, the accused cannot be convicted for the offences punishable under Sections 302 and 201 of IPC. It was also contended by the learned counsel for the appellant that the ash (M.O.13) recovered by the Investigating Officer was not investigated further from the forensic angle as to whether it is the burnt remains of a fabric.

6. In any criminal case, the witnesses are the eyes and ears of justice. But the testimony of the witnesses is not always credible and therefore the facts are provable not only by witnesses but also by circumstances. Circumstantial evidence, though an indirect evidence, is in no way inferior to direct evidence and there must be a complete chain of evidence which would lead to a conclusion that the accused was the only person who committed the offence and none else.

7. In this regard, it is pertinent to highlight the deposition of the victim's mother (P.W.5). P.W.5 has stated that while she was frantically going around the village on search of the deceased in the evening of 10.10.2009 and at that time she saw the accused near the well of Murugan. When she asked the accused as to whether he had seen her daughter, the appellant is said to have dissuaded her from going anywhere near the well by saying that her daughter never came that side. This is corroborative with the deposition of Meenatchi (P.W.7) who had seen the accused at about 6 p.m. at 10.10.2009 on the main gate of the housing site where the accused was employed. The accused was also missing from the village since the next day arousing suspicion of the investigating officer. But in the instant case, the Investigating Officer had acted swiftly and discovered the important material objects M.O.4 to M.O.10 pertaining to the crime on 12.10.2009 itself. In the blood stained stone, the blood group was found to be 'O', matching with the blood sample of the victim. It was also suggested to P.W.17 that since the accused was working as a watchman in the nearby area he was booked by the police, thereby admitting that



he was employed nearby. Therefore, the contention of the learned counsel appearing for the appellant that the prosecution did not examine the employer of the accused regarding his employment, does not hold water. Another important circumstance that emanates from the evidence of P.W.5 is that she was prevented from going near the place of occurrence when she was searching for her daughter. This circumstance appearing in evidence was put to the accused under Section 313 of the Criminal Procedure Code by the trial court, for which his answer was a simple denial and nothing more. It is not the case of the accused that he was not employed in the Ambalal Real Estate and that he was not residing in the Nelvoyal Village during the period when the murder took place. Though P.W.7 turned hostile on other aspects she has stated that she had last seen the appellant on the evening of 10.10.2009 at the main gate of the housing site where the appellant was working. It is settled that the testimony of a hostile witness need not be discarded completely. Therefore, on the date of crime the accused was present and from the next day onwards, he absconded. The Investigating Officer (P.W.17) had deposed that based on the secret information and strong suspicion on the accused as he was absconding, he arrested the accused. Loganathan (P.W.18) and Jeyapal (P.W.19) who are the witnesses of the confession statement of the accused and the consequent recovery of M.O.11 to M.O.13 had given cogent evidence and also withstood the cross examination by the defence. Moreover, the trial court has also observed in its judgment that the accused jumped bail and could not be secured for 9 years. In fact all the witnesses had deposed before the trial court 10 years after the occurrence. The delay was purely because of the fact that the police could not secure him after he had jumped bail. In fact during the interregnum the defacto complainant had died and that is why the complaint was proved through other witnesses. If an accused absconds during investigation in a given case, one may infer that he wanted to avoid police torture and false implication. No accused can possibly offer an explanation that he feared physical violence at the hands of the trial judge and so he ran away. The long abscondence of the accused after his release on bail and during trial has obliterated the evidence substantially which fact should be borne in mind while appreciating the evidence of the prosecution witnesses.

8. The unbreakable chain of evidence of circumstance leading to the crime are listed below for better understanding.

a) The victim girl was missing from the evening of 10.10.2009.

b) The P.W.7 had categorically deposed in her chief examination that she saw the accused Siva at about 6 p.m. near



the main gate of the housing site where he was working and according to her he was found smoking.

c) The proximity of housing site belonging to Ambalal Real Estate and the house of the accused is clearly seen in the rough sketches prepared by the Investigating Officer (Ex.P.24 and Ex.P25). Both the places were in secluded and lonely area.

d) P.W.5's deposition clarifies that when she returned home from work, she found her daughter missing and she was misguided by the accused when she tried to search for her daughter near the scene of offence.

e) P.W.17, Intestigating Officer, recovered M.O.4 to M.O.10 on the next day, i.e. 12.10.2009, in the area where the residence of the accused is situate after the body of the victim was found in the well.

f) The blood group in the stone was 'O', which matches with the blood group of the victim. The P.W.17 after arresting the accused on 15.10.2009 recovered M.O.11 to M.O.13 based on the confession of the accused and on his identifying the same. In fact, M.O.11 used to tie the body of the victim to throw in the well was retrieved on 15.10.2009 after the water was drained out of the well using a motor for which two witnesses (P.W.18 and P.W.19) were there. They had clearly deposed about the confession statement of the accused and consequent recovery of the material objects M.O.11 to M.O.13 and they have also withstood the testimony of cross examination.

g) The panchayatdhars of the inquest report Ex.P38 were categorical in stating that they suspected the accused as the perpetrator of the crime. This comes at the first instance itself, on 12.10.2009, when the inquest was conducted at the mortuary of the Government Hospital. Merely because Meenatchi (P.W.7) turned hostile to the prosecution, it cannot be said that there is a missing link in the chain of events. The trial court had analysed the evidence on record and had come to the conclusion that the prosecution had established the guilt of the accused beyond reasonable doubts. We find no reason to interfere with the findings of the trial court.

h) The doctor who deposed on behalf of the doctor who did the autopsy had clearly replied to the court's query that the injuries on the body could have occurred due to the struggle of the victim to escape.

9. At the risk of repetition, it is also pertinent to mention at this juncture that the trial had come to a stand still for about a decade as the accused had jumped bail and was



absconding that long. It can be easily seen from the deposition of all the prosecution witnesses that they deposed before the trial court only in 2019. This is also one of the important factors taken into account by the trial court while convicting the accused. The trial court had the benefit of observing the demeanour of the witnesses as well as the accused at the time of trial.

10. In the result,

(i) The Criminal Appeal is dismissed. Consequently connected Criminal Miscellaneous Petition is closed.

(ii) The conviction and sentence passed by the learned Additional District and Sessions Judge (FTC), Vellore, dated 23.04.2019, in S.C. No.129 of 2010, is confirmed.

Sd/-
Assistant Registrar (CS VII)

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Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge (FTC),
Vellore.
2. The Inspector of Police,
Vellore Taluk Police.
3. The Public Prosecutor,
High Court, Madras -104.

Cr1.A.No.76 of 2021

RLD(CO)
RGA(12/11/2021)