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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08.07.2021
JUDGMENT DELIVERED ON : 14.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.353 of 2018

Thambi @ Thambidurai
S/o.Krishnan

...Appellant

Vs.

State represented by
Inspector of Police,
Kangayam Police Station,
Tirupur District.
Crime No.1836 of 2011

...Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order passed in S.C.No.20 of 2013 on the file of III Additional District and Sessions Court, Tiruppur at Dharapuram, passed in S.C.No.20 of 2013 dated 14.07.2017.

For Appellant : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J

This criminal appeal is directed against the judgment of conviction and sentence dated 14.07.2017 passed by the III Additional District and Sessions Court, Tiruppur at Dharapuram, in S.C.No.20 of 2013.

2. It is the case of prosecution that the appellant, who was already married, had an affair with the deceased Shanthi and when Shanthi insisted upon him to marry her, he is said to have taken her to a desolate reserve forest area around 06.30 p.m. on



17.07.2011 and had caused her death by banging her head on a rock and also by dropping a heavy stone on her. Thereafter, it is alleged that the appellant had purloined with her ornaments.

3. The body of Shanthi was found on 18.07.2011 around 09.00 a.m. by one Balaji (PW-2) while he was grazing his sheep. Balaji (PW-2) informed this to one Sivakumar (PW-3), who was running a tea shop in the foothills of the reserve forest. Sivakumar (PW-3), in turn alerted Palanisamy (PW-1), the Village Administrative Officer, who came to the place where the body was found, along with an assistant. After seeing the dead body, Palanisamy (PW-1) gave a complaint (Ex.P1) to Rajendran (PW-11), Sub-Inspector of Police, who registered a case in Kangeyam Police Station Crime No.1836 of 2011 on 18.07.2011 at 19.45 hours and prepared the printed First Information Report (Ex.P8) which was received by the jurisdictional Magistrate on the same day at 09.00 p.m.

3.1. Jaya (PW-14), Inspector of Police took over investigation of the case, went to the place of occurrence and prepared observation mahazar (Ex.P2) and rough sketch (Ex.P9), in the presence of witnesses Palanisamy (PW-1) and Thangamuthu (not examined).

3.2. From the place where the body was recovered, Jaya (PW-14) recovered the following items under the cover of a mahazar (Ex.P3):

M.O.1	Chudithar Shaal
M.O.2	Ladies watch
M.O.3	Chudithar Top
M.O.4	Chudithar Backside top
M.O.5	Chudithar Pant
M.O.6	Chappals
M.O.7	Jatti
M.O.8	Shaal
M.O.9	7 up Bottle
M.O.10	Carry bag
M.O.11	Comb
M.O.12	Tap rope
M.O.13	Hair clip
M.O.14	Hook
M.O.15	Broken sim card



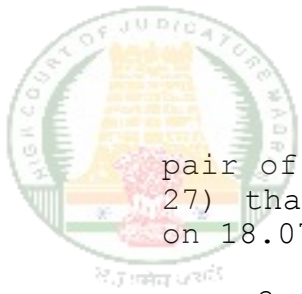
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M.O.16	Bus ticket
M.O.17	Blood stained stone 5½ kg
M.O.18	Small stone
M.O.19	Blood stained rock stone
M.O.20	Small blood stained stone
M.O.21	Stone
M.O.22	Blood stained mud
M.O.23	Mud

3.3. Jaya (PW-14) conducted inquest over the body of Shanthi in the presence of local villagers, but was not able to identify the name of the deceased. The inquest report was marked as Ex.P10. After the inquest, the body was sent to Government Hospital for postmortem where Dr.Nalina, (PW-10), conducted autopsy and issued the postmortem certificate (Ex.P7) in which she has stated that the death would have occurred between 24 hours and 48 hours preceding the postmortem. She has opined that death would have occurred on account of the injuries to the head and other vital parts of the body. The local newspapers published photographs about the finding of the dead body in the forest area, on seeing which, Sankar (PW-4), brother of the deceased Shanthi and Ambika (PW-5), mother of the deceased Shanthi went to police station and with the help of the police, identified the body as that of Shanthi.

3.4. On return of Soundararajan (PW-17), the regular Inspector of Police, in charge of Kangeyam Police Station, from special duty, the investigation of the case was handed over to him by Jaya (PW-14). Soundararajan (PW-17), with the help of the mobile number of Shanthi, located her mobile phone and recovered it on 21.07.2011 from one Ravi @ Ravichandran (PW-7), who is said to have purchased the mobile phone from the appellant on 17.07.2011 in a wine shop for Rs.350/-. Based on source information, Soundararajan (PW-17) arrested the appellant on 25.07.2011 and from his possession, he seized a pair of gold earrings (MO-24) under the cover of a mahazar (Ex.P4) in the presence of Babu (not examined) and Mani (PW-8).

3.5. Based on the information provided by the appellant in his confession statement, Soundararajan (PW-17) went to the place of occurrence and seized a granite stone (black stone) (MO-29) from the place of occurrence under a mahazar (Ex.P5) in the presence of witnesses Babu (not examined) and Mani (PW-8). Thereafter, on the information provided by the appellant, Soundararajan (PW-17) went to Pallavan Village Bank, Dharmapuri and examined Ramesh (PW-6), Branch Manager, who handed over a



pair of ear drops (MO-25), gold chain (MO-26) and gold ring (MO-27) that were allegedly pledged with the bank by the appellant on 18.07.2011.

3.6. A Test Identification Parade was arranged for identification of the appellant by Balaji (PW-2), Ravi @ Ravichandran (PW-7) and one Saravanan (not examined), which was conducted by Shanmugavel (PW-15), Judicial Magistrate, Dharapuram, on 19.08.2011. In the Test Identification Parade, Balaji (PW-2) was not able to identify the appellant in all the three rounds whereas Ravi @ Ravichandran (PW-7), who is said to have purchased the mobile phone from the appellant in the wine shop, identified the appellant.

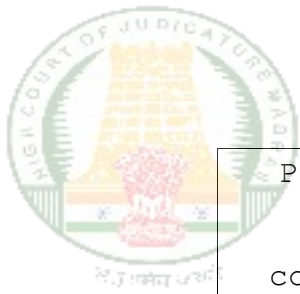
3.7. After the transfer of Soundararajan (PW-17), investigation was pursued by Palaniappan (PW-16), who completed the investigation and filed a final report in PRC No.4/12 before the Judicial Magistrate, Kangeyam, against the appellant for the offences u/s.302 and 404 IPC.

4. On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.20/2013 and was made over to the III Additional District and Sessions Court, Tirupur at Dharapuram, for trial. The trial Court framed charges u/s.302 and 404 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

5. To prove the case, the prosecution examined 17 witnesses and marked 14 exhibits and 29 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 14.07.2017 in S.C.No.20 of 2013, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 302 IPC	Life imprisonment and fine of Rs.1,000/-, in default, to undergo four months simple imprisonment.



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Provision under which convicted	Sentence
Section 404 IPC	One year rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.

Challenging the conviction and sentences, the appellant is before this Court in this appeal.

7. Heard Mr.Philip Ravindran Jesudoss, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

8. It is the specific case of the prosecution that Balaji (PW-2), who was grazing his flock of sheep in the reserve forest area on 17.07.2011 around 06.30 p.m., had seen the appellant with Shanthi. Thus, the prosecution case rests on last seen theory. Unfortunately, Balaji (PW-2) was not able to identify the appellant in the Test Identification Parade that was conducted by Shanmugavel (PW-15) on 19.08.2011, which is hardly a month after the incident. Strangely, Balaji (PW-2) identified the sole accused, who was standing in the dock, during trial, 4 years later, as the person whom he had seen with Shanthi on the date of occurrence. That apart, Balaji (PW-2), in his evidence, has admitted that he saw Shanthi with two men which he conveyed to Sivakumar (PW-3) as well to the police. Sivakumar (PW-3) has corroborated Balaji (PW-2) on this aspect and has stated in his evidence that Balaji (PW-2) told him that he saw the deceased with two men in the forest area. Palanisamy (PW-1), Village Administrative Officer, who went to the place of occurrence on getting information from Sivakumar (PW-3), has also stated in the cross-examination that Balaji (PW-2) told him that he had seen Shanthi with two men. These contradictions or omissions go a long way to discredit the prosecution theory that it was the appellant, who had caused the death of Shanthi. The motive for the murder is that Shanthi was insisting the appellant to marry her. There is absolutely no shred of evidence on this aspect. Even Sankar (PW-4), brother of the deceased and Ambika (PW-5), mother of the deceased, have not stated a word about Shanthi's alleged affair with the appellant.

9. Finally, we only have the recovery of the mobile phone and the ornaments allegedly belonging to Shanthi.



10. Ravi @ Ravichandran (PW-7) has sated that while he was in the TASMAC wine shop with his friend Saravanan, the appellant came there and offered to sell a mobile phone for Rs.500/-. He bargained with him and agreed to buy it for Rs.350/- At that time, the appellant removed the sim card and handed over the instrument to Ravi @ Ravichandran (PW-7) and left with Rs.350/-. However, it is seen that a sim card was found in the place of occurrence even as per the seizure mahazar (Ex.P3), which has been marked as MO-15. It is not the case of Ravi @ Ravichandran (PW-7) that he was acquainted with the appellant. Therefore, we are not able to give any weightage to the evidence of Ravi @ Ravichandran (PW-7) with regard to the purchase of the mobile phone (MO-28) from the appellant.

11. Now, coming to the alleged recovery of the stud (MO-24) from the possession of appellant at the time of his arrest, Mani (PW-8), witness to the seizure, has stated in the chief-examination that the appellant handed over a stud and the same was seized by the police. However, in the cross-examination, which was conducted on the very same day, Mani (PW-8) has stated that the appellant handed over a chain from his pocket. Therefore, the alleged recovery of the stud from the appellant at the time of his arrest has not been satisfactorily established.

12. Coming to the recovery of gold ornaments allegedly belonging to Shanthi from the Pallavan Village Bank, the prosecution has not filed any exhibit whatsoever to show that the appellant had pledged them with the bank especially when Ramesh (PW-6) had stated that he handed over the documents relating to the pledging of ornaments to the police. Though the ornaments were identified by Shankar (PW-4) and Ambika (PW-5) as if belonging to Shanthi, they had not told the police a word about the missing of the ornaments during investigation. Soundararajan (PW-17) has admitted in the cross-examination that Shankar (PW-4) did not specifically say which item belongs to his sister. Except the ipse dixit of Ramesh (PW-6), there is no other evidence to show that the appellant had pledged the ornaments of Shanthi with Pallavan Village Bank. It is not known why the prosecution did not choose to mark the documents relating to pledging of ornaments that is said to have been given by Ramesh (PW-6) to the police.

13. In fine, the prosecution has failed to prove the charges beyond a peradventure, which entails acquittal of the appellant.



In the result, the Criminal Appeal is allowed and the appellant is acquitted of all the charges. The conviction and sentence passed in S.C.No.20 of 2013 on the file of III Additional District and Sessions Court, Tirupur at Dharapuram, vide judgment and order dated 14.07.2017, are set aside. The appellant is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

- 1.The III Additional District and Sessions Court,
Tirupur, Dharapuram.
- 2.The Inspector of Police,
Kangeyam Police Station,
Tirupur District.
- 3.The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

Pre-delivery judgment
in
Criminal Appeal No.353 of 2018

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NSK 03/08/2021