



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.07.2021

Pronounced on : 23.07.2021

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.125 of 2019

Ramar,
S/o.Pazhani

... Appellant /
accused

versus

State Represented by
The Inspector of Police,
Kattumannarkoil Police Station.
(Crime No.379 of 2017)

... Respondent /
Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 26.10.2018 passed in S.C.No.432 of 2017 by the learned Sessions Judge (Mahila Court), Cuddalore.

For Appellant : Mr.C.S.S.Pillai

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

J U D G M E N T

The present appeal is directed against the judgment dated 26.10.2018 made in S.C.No.432 of 2017, on the file of the learned Sessions Judge (Mahila Court), Cuddalore.

2. The appellant herein is the sole accused in the above said case. He stood charged for the alleged offence under Section 302 of IPC. The accused denied the charge and opted for



trial. After full-fledged trial, the learned Sessions Judge (Mahila Court), Cuddalore, found the appellant / accused guilty of the offence under Section 302 of IPC. Accordingly, the appellant was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.10.000/-, in default, to undergo Rigorous Imprisonment for a period of two years.

3. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

4. The relevant facts of the case, which gave rise to the filing of this appeal, are recaptured for the disposal of this appeal.

5. The appellant / accused is the estranged husband of the deceased-Anjalatchi. They were blessed with three children. The deceased and her sister Ramathilagam were part-time sanitary workers in Imam Gazzali Matriculation School at Lalpet. Prior to the occurrence, the accused after harassing and torturing Anjalatchi, had deserted her and was living separately for nearly 6 years and on account of the same, the deceased was living separately with her children near the School.

6. On the fateful day, i.e. on 02.08.2017, at about 1.30 p.m., during lunch hours of the School, the deceased and her sister P.W.1-Ramathilagam started from the School to their house. The accused intervened and said that, he wanted to speak to his wife. Thus, Anjalatchi went near to the Generator room. At that time, P.W.1-Ramathilagam stood nearby. The accused had a conversation with the deceased. After exchanging heated arguments, suddenly, the accused took an Aruval, which was concealed in his hip and started hacking her indiscriminately. He cut her on the neck, jaw, on the shoulder and on the back and due to the same, she had sustained defensive injuries on the left forearm and wrist.

7. The brutal attack was witnessed by several staff in the School. After the occurrence, the injured was taken to the Hospital by the witnesses, but she died immediately after arrival at Kattumannarkoil Hospital at about 2.15 p.m. Thereafter, P.W.1-Ramathilagam lodged a complaint in the police station, under Ex.P1.

8. P.W.18-Thiru.Ragumaran, the then Special Sub Inspector of Police, Kattumannarkoil, on 02.08.2017, at about 15.30 hours, received the complaint given by P.W.1, and registered a case in Crime No.379 of 2017 under Section 302 IPC. The printed F.I.R. was marked as Ex.P.19. Immediately after the registration of the case, he forwarded the original to the Magistrate Court and



also, he forwarded a copy of the F.I.R. to his superior officers.

9. P.W.19-Thiru.Shyam Sundar, the then Inspector of Police, Kattumannarkoil, on receipt of a copy of the F.I.R., on the same day, at about 16.00 hours, visited the scene of occurrence and in the presence of P.W.8-Raja and one Savukath Ali, prepared Observation Mahazar under Ex.P.20. He drew the rough sketch and the same was marked as Ex.P.21. In the presence of same witnesses, he recovered the bloodstained soil (M.O.4), ordinary soil (M.O.5) and one pair of footwear (M.O.3) under the cover of Seizure Mahazar [Ex.P.22].

10. On the next day, i.e. on 03.08.2017, in the Government Hospital, Chidambaram, in the presence of witnesses and panchayathar, P.W.19 prepared an inquest report, under Ex.P.23 and made arrangements for conducting autopsy over the dead body of the deceased Anjalatchi. In this regard, he sent a requisition to the hospital authority through P.W.16-Roopa, Gr.II Constable.

11. P.W.9-Dr.Aswini, attached with the Government Hospital, Chidambaram, on the request made by P.W.19, conducted autopsy over the dead body of the deceased Anjalatchi and found the following external injuries;

External injuries;

"(1) Injury from the right angle of mandible to right corner of mouth with fracture of maxilla and mandible 14 x3 x mandible exposed.

(2) cut injury behind right ear 8 x 1.5 x 0.5 c.m.

(3) laceration of right pinna at the middle.

(4)cut injury at right side of back 15 x 6 x 1 c.m.

(5)cut injury at right shoulder 5 x 1 x 0.5 c.m.

(6)cut injury at left left forearm 12 x 3x 1 c.m.

(7) cut injury at left wrist fracture with exposing bones and muscles

(8) cut wound on right side of back 4 x 1 x 0.5 c.m."

She collected ovary, viscera and hyiod bone from the dead body of the deceased and sent the same for chemical examination.

12. On receipt of the same, P.W.12-Dr.Gayathri attached with the Government Medical Hospital, Villupuram, examined the



ovary and issued a Report, under Ex.P.8, as the ovary collected from the dead body, was normal. Similarly, P.W.13-Dr.Arun, attached with the Government Medical Hospital, Villupuram, examined the hyoid bone, issued a Report, under Ex.P.9, as there was no fracture in the hyoid bone.

13. Similarly, P.W.14-R.Kumaravel, Scientific Assistant, Trichy Forensic Science Department, examined the viscera and issued Report, under Ex.P.10, as there was no poisonous materials available.

14. In turn, after receipt of the said Reports, P.W.9, the Doctor, who conducted the postmortem, issued a postmortem certificate, under Ex.P.4 stating that the deceased would appear to have died due to haemorrhage and polytrauma lead to hypovolemic shock, due to the injuries sustained by her.

15. In the meanwhile, P.W.16-Roopa, Grade-II Constable, collected the dress materials, which were found in the dead body of the deceased and handed over the same to the Investigating Officer.

16. In continuation of investigation, P.W.19, on the same day, i.e. on 03.08.2017, at about 15.30 hours, near Vadavaru bridge, arrested the accused, and in the presence of P.W.11-Ravi and one Palaniappan, recorded the confession statement given by him.

17. Pursuance to the confession statement given, the accused, brought the Investigating Officer and the witness, to one bush, which is situated near Vadavaru bridge and identified one Aruval (M.O.1) stating that, the same was used for the commission of offence. The said Aruval was recovered in the presence of the same witnesses, under the cover of Seizure Mahazar (Ex.P.6). The admitted portion of the confession statement was marked as Ex.P.5.

18. Subsequently, after recovering as above, the accused was brought to the police station, wherein the bloodstained full sleeve shirt (M.O.2), worn by him was also recovered, under the cover of Seizure Mahazar (Ex.P.7), in the presence of the same witnesses. In turn, the collected material objects, were handed over to the learned Judicial Magistrate Court through Form-95. Further, the accused was remanded to judicial custody.

19. After completing the above formalities, on the same day, P.W.19 examined the witnesses, who were all present during the relevant point of time and recorded their statements. On 28.08.2017, he submitted an application before the Judicial Magistrate No.I, Chidambaram, for recording 164 Cr.P.C.



statement from the witnesses, who were all present during the time of occurrence. Further, he made arrangements for collecting the footprints of the accused.

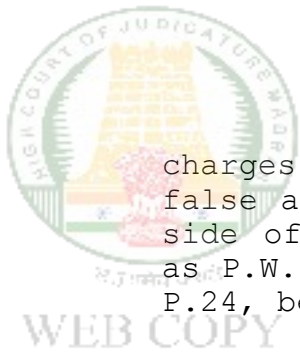
20. In continuation of investigation, P.W.19 submitted an application before the learned Magistrate for forwarding the collected materials for chemical examination. In turn, P.W.15-V.Baskar, Scientific Assistant, Forensic Department, Chennai, received the following material objects;

- "(i) Earth mixed with small stones and vegetative matter, on which were dark brown stains
- (ii) Earth mixed with small stones and vegetative matter, on which were dark brown stains
- (iii) A torn blue saree with white floral designs, on which were profuse dark brown stains
- (iv) A torn - blue blouse, on which were profuse dark brown stains
- (v) A torn red inskirt, on which were dark brown stains
- (vi) A pair of rose colour rubber chappals with blue strap, on which were dark brown stains
- (vii) A rusty iron billhook with a metal band having a wooden handle totally measuring 42cm in length, on which were dark brown stains"

21. On examination, P.W.15 found all the above materials, have the blood. In this regard, he issued a Biological Report, under Ex.P.12. He has also examined the material objects, which were collected from the accused and issued a Biological Report, under Ex.P.13, as the same is having bloodstains. In the Serology Report, it was found out that the blood stains found in item nos.1 to 7, are human blood, wherein the blood found in item nos.3 to 5 and 7, belong to B-group. In this regard, he issued Serology Reports, under Ex.P.14 and Ex.P.15 respectively. He examined the blood collected from the accused and issued a certificate, under Ex.P.16, as the blood group of accused is 'A' positive. He also issued a certificate stating that the blood found in the materials collected from the deceased is B-group. The said certificate was marked as Ex.P.17.

22. In the meantime, P.W.19, examined P.W.9, the Doctor, who declared the death of the deceased and received the Accident Register copy under Ex.P.24. Further, he forwarded the footprints collected from the accused for chemical examination. After collecting the chemical examination reports and after perusing the statements given by the witnesses, he came to the positive conclusion that the accused had committed the offence punishable under Section 302 of IPC.

23. Based on the above materials, the trial Court framed



charges under Section 302 of IPC. The accused denied the same as false and opted for trial. In order to prove their case, on the side of the prosecution, as many as 19 witnesses were examined as P.W.1 to P.W.19 and 24 documents were exhibited as Exs.P.1 to P.24, besides, 5 Material Objects [M.O.1 to M.O.5].

24. Out of the said witnesses, P.W.1-Ramathilagam, is the sister of the deceased Anjalatchi. She speaks about the occurrence as at the relevant point of time, the accused came to the School and after developing a wordy quarrel, took an Aruval, which was concealed in his hip and started hacking the deceased.

25. P.W.2-Rajeswari and P.W.3-Vadivel, are the sister and brother respectively, of the deceased. They also claimed to have seen the incident. P.W.2 identified the Aruval, as M.O.1.

26. P.W.4-Narayasamy, who is a Physical Educational Trainer in the Imam Gazzali Matriculation School, states that on 02.08.2017, at about 1.30 p.m., he came out and saw a rush near the generator. He vaguely said that the people who gathered there told him that someone had hacked Anjalatchi.

27. P.W.5-Ismail and P.W.6-Wasim Akram are the other eye witnesses like P.W.4. They state that upon hearing the shouts at about 1.30 or 1.35 p.m., on 02.08.2017, they came out of the administrative block of the School along with P.W.4 and people who gathered there had told them that the accused hacked his wife Anjalatchi. According to the prosecution, they are the witnesses to the occurrence, but due to the reason that they have not supported the case of prosecution, both of them were declared as hostile witnesses. Even during the time of cross examination by the learned Special Public Prosecutor, they did not admit that they saw the occurrence.

28. P.W.7-Chandru is the son of the accused. He spoke about the harassment and torture meted out to his mother at the hands of the accused when they lived together. He said that one day, the accused broke the hands of his mother and ran away from the house. He further stated that the accused deserted them thereafter. According to him, his father had converted to Islam and pressurized them also to convert to Islam, but they refused.

29. P.W.8-Raja vouched for the preparation of rough sketch and seizure Mahazar.

30. P.W.9-Dr.Aswini, had conducted post mortem and issued a certificate.

31. P.W.10-D.Shanmugham, was the Deputy Director of Mobile



Forensic Lab, Cuddalore. In view of an order passed by the learned Judicial Magistrate, Kattumannarkoil, he had obtained the footprints of the accused by following necessary procedures at the Central Prison, Cuddalore, for comparison of the same with the footprints found in the footwear which were already seized from the scene of crime.

32. P.W.11-Ravi, is the Village Administrative Officer, who had vouched that the accused on 03.08.2017 at about 3.45 p.m., voluntarily gave confession statement to the Investigating Officer and disclosed the whereabouts of the weapon used for the commission of offence.

33. P.W.12-Dr.Gayathri, P.W.13-Dr.Arun, P.W.14-R.Kumaravel, P.W.15-V.Baskar and P.W.17-Uma, are the Scientific Officers, who all speak about the examination of material objects collected during the time of investigation.

34. P.W.16-Roopa, is the Police Constable who identified the dead body to the Doctor for post mortem.

35. P.W.18-Ragumaran and P.W.19-Shyam Sundar, are the Police Officers, who have stated about the receipt of the complaint, registration of the case, details of investigation, arrest of the accused, recovery of material objects and about the filing of the final report.

36. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the accused, one M.Sumathy, Headmaster of the Imam Gazzali Matriculation School, Lalpet, was examined as D.W.1.

37. Before the trial Court, D.W.1 has stated that P.W.1-Ramathilagam, is a temporary staff in her school, but in this regard, in order to prove the same, no attendance register was maintained in this school. According to her, PW1 was paid with salary vide Ex.D.1 (series), which substantiate that the said Ramathilagam received salary from the School.

38. Having considered all the above, the learned Sessions Judge (Mahila Court), Cuddalore, found the accused guilty of murder and convicted him, as stated in para 2 of this judgment. Aggrieved over the said conviction and sentence, the appellant / accused, is before this Court, with the present appeal.

39. We have heard Mr.C.S.S.Pillai, learned counsel appearing for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.



40. Initially, the earliest document for the alleged occurrence, i.e., the complaint lodged by P.W.1 before the Police Officer was marked as Ex.P.1. The said complaint had been lodged before the police officers within 2 hours, from the time of occurrence. Thereafter, immediately after receipt of the complaint, a case vide FIR in Cr.No.379 of 2017 was registered by the respondent police and thereafter, the said F.I.R. was received by the Magistrate at 7.00 p.m. on the same day. Therefore, in this case, the question of delay in sending the F.I.R. to the Court, does not arise.

41. Before the trial Court, the respondent police attempted to prove their case by examining the eye witnesses. In the final report, they have signed 6 witnesses, as witnesses to the occurrence. But among them, except P.W.1 to P.W.3, others have not supported the case of the prosecution and therefore, they were all treated as hostile witnesses. After declaring them as hostile witnesses, the learned Special Public Prosecutor, after getting leave from the Court, cross-examined those witnesses. During that time also, in their cross-examination, they did not support the case of the prosecution, as they saw the occurrence.

42. On the other hand, P.W.1, who is the sister of the deceased Anjalatchi, has narrated the occurrence in support of the averments found in the complaint (Ex.P.1). The said evidence given by P.W.1 has also been corroborated through the evidence of P.W.2 and 3.

43. In this connection, the learned counsel appearing for the appellant would submit that, the eye witnesses, who all supported the case of the prosecution, are related to the deceased Anjalatchi and therefore, in the absence of any independent witnesses, it cannot be looked into for accepting the guilt of the accused.

44. In this regard, the learned Additional Public Prosecutor appearing for the State would submit that, only because of the reason that the witnesses, who all supported the case of the prosecution, are related to the deceased, we cannot throw their evidences, in entirety.

45. Considering the said submissions, it is settled law that the close relationship with the victim is not for disbelieving the witness. Ordinarily, a close relative intends not to screen the real offender. Close relationship with the victim far from being a foundation for criticism of the evidence is often a sure guarantee of truth. Accordingly, we are of the opinion that the said submission made by the learned counsel for the accused is not in aid of the accused.



46. Now, on going through the factual aspects of this case, it is an admitted fact that, the alleged occurrence had happened in broad daylight, particularly, in the School premises. Therefore, naturally, more number of people have to be present during such time. Further, the evidences of P.W.1 to P.W.3 and P.W.7 reveal the fact that prior to the occurrence, the deceased being the wife of the accused, left the matrimonial home and resided separately. Therefore, in the said circumstances, it is natural that the accused herein developed enmity over the deceased. Therefore, we are of the opinion that the evidence given by P.W.1 is natural and inspires the confidence of this Court. Though, in respect of the occurrence place, she had improved her version, since the same was corroborated through the evidences of P.W.3 and P.W.4, we cannot come to the conclusion that PW1 has not seen the occurrence.

47. It is true the evidence given by D.W.1, creates a suspicion over the presence of P.W.1 in the School premises, but on the other hand, the documents exhibited on the side of the prosecution will prove the fact that P.W.1 also was working along with the deceased at the relevant point of time. Therefore, the evidence given by the defence witness, cannot assail the genuineness of the prosecution case.

48. Secondly, the learned counsel appearing for the appellant would contend that, on going through the evidence by P.W.4 and P.W.5, it appears that at any point of time, they did not say about the presence of P.W.1 in the occurrence place. In fact, P.W.4 and P.W.5 are sanitary workers in the same School and therefore, they are the competent persons to say about the presence of P.W.1. He added further that since the evidence given by P.W.4 and P.W.5 differs, in respect of the presence of P.W.1., we cannot come to the positive conclusion that P.W.1 is an eyewitness to the occurrence. Accordingly, he prayed to allow this appeal.

49. Now, on considering the said submission with the relevant records as already observed, the exhibits marked on the side of the defence itself, are substantial documents to show that P.W.1 also was working in the School. Therefore, in the said circumstances against the contents of the documents accepting the oral evidence, is inadmissible under Section 91 of the Indian Evidence Act. Therefore, we are of the opinion that though P.W.4 and P.W.5 did not say about the presence of P.W.1 in the occurrence place, the same would not affect the case of the prosecution.

50. Thirdly, in respect of the injury sustained by the deceased, P.W.9, the Doctor, who conducted autopsy has clearly stated in her evidence, as the deceased sustained 8 cut injuries



on head and upper parts of her body. It is natural, if the accused attacked the deceased in a standing position, only the injuries now stated by the Doctor would occur. To corroborate further, the evidence given by P.W.1 and P.W.2 appear to be natural and inspires confidence over their evidence.

51. Further, during the time of occurrence, the accused came to the occurrence place with Aruval (M.O.1), which shows that only with an intention to kill the deceased, he came to the School and committed the offence. Therefore, the circumstances found in and around the family of the deceased will lead to the fact that only with a motive to kill the deceased, the appellant / accused came to the School premises and committed the offence.

52. Moreover, the evidence given by P.W.10-D.Shanmugham, who examined the footprints of the accused, with the footprints collected from the footwear, and the evidence given by P.W.15, who identified the blood stains found in the material objects, are all in support of the prosecution.

53. In general, so far as criminal cases are concerned, as observed by the Supreme Court, the evidence of an ocular witness, if accepted, is sufficient to warrant conviction, though in appropriate cases, the court may, as a measure a caution, seek some confirming circumstances from other sources. But ordinarily, the evidence of a truthful eyewitness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons, etc. at the instance of the accused by the police.

54. Here, it is a case, the evidence given by the ocular witness, is confirmed and corroborated through the evidence of experts. Further, only at the instance of the disclosure statement given by the accused, the weapon alleged to be used by the accused has been recovered and marked as M.O.1 in this case. The Serology Report (Ex.P.14) also confirms the fact that the bloodstains in the billhook, which was used for the commission of offence and the blood found in the saree, blouse, inskirt, are all having the same B-group. Therefore, in this aspect also, since the weapon used for the commission of offence, was recovered at the instance of the accused, we are of the opinion that the accused alone committed this offence. Even assuming that there are some minor contradictions available in the prosecution witnesses, the same would not affect the root of the prosecution case.

55. In administration of justice, one cannot push these frailties to a point where every witness should be discarded as untrustworthy merely because there are discrepancies or taint.



56. Therefore, in the light of the above discussions, this Criminal Appeal is dismissed and the conviction and sentence awarded by the learned Sessions Judge (Mahila Court), Cuddalore, in S.C.No.432 of 2017 dated 26.10.2018, are confirmed.

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Sd/-
Assistant Registrar(CO-III)

//True Copy//

Sub Assistant Registrar

sri/ars

To

1. The Sessions Judge (Mahila Court),
Cuddalore.
2. The Inspector of Police,
Kattumannarkoil Police Station.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.S.S.Pillai, Advocate, S.R.No.35401

Criminal Appeal No.125 of 2019

SRA(CO)
CT(23/08/2021)