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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2021

PRONOUNCED ON : 27.07.2021

C O R A M

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

CRIMINAL APPEAL NO.152 OF 2019

Baskaran

...Appellant/Sole Accused

-vs-

The State Rep. By
Inspector of Police,
Panruti Police Station,
(Crime No.560 of 2013)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Cuddalore dated 22.06.2015 in S.C.No.93 of 2014.

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

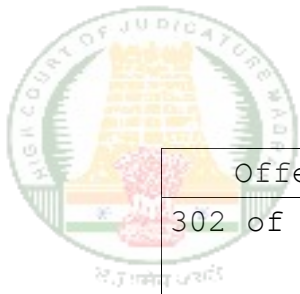
For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor.

J U D G M E N T

R.PONGIAPPAN, J.

The present appeal has been filed challenging the conviction and sentence passed against the appellant in S.C.No.93 of 2014 dated 22.06.2015, on the file of the learned Sessions Judge, Mahila Court, Cuddalore. In the trial Court, the appellant/accused stood charged for the offence under sections 376(1), 302 and 379 IPC. He denied the same and opted for trial.

2. After full pledged trial, the learned Sessions Judge, Mahila Court, Cuddalore, found the accused guilty of the offence under sections 376(1), 302 and 379 IPC, and sentenced as follows:



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Offence	Sentence
302 of IPC	to undergo life imprisonment and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for six months.
376(1) of IPC	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.
379 of IPC	to undergo rigorous imprisonment for two years.

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

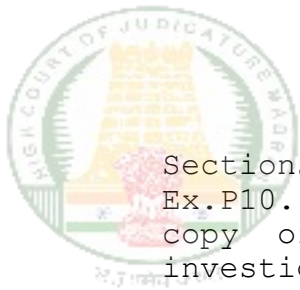
3. The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal.

(i) PW1-Thennarasu, is the son of deceased-Andal. PW4-Elangovan, PW5-Loganayagi, PW7-Chinnaponnu and PW10-Kumari are all residing in the same village in which PW1 was residing. Regularly, on every day, after finishing her lunch, the deceased Andal went to her agricultural lands from her house. On the fateful day, on 26.06.2013, after attending the regular agricultural work, in her field, she did not return to her home as usual. Hence, with the aid of torch light, PW1, PW2-Parthiban and one Kalaiyarasan, searched the deceased in her agricultural field.

(ii) While such time, PW2-Parthiban found the dead body of Andal and her clothes were in disarray. Thereafter, on hearing the hue and cry of the said Parthiban, PW1 rushed to the spot wherein the dead body of his mother-Andal was found and on seeing the dead body, he noticed that the deceased Andal had sustained injuries on her cheek and near to the ear. Also, he found that the gold Kammal [$\frac{1}{2}$ souverign], gold Nose ring [$\frac{1}{4}$ souverign] and gold Thaali [$\frac{1}{2}$ souverign], which were worn by the deceased, were missing. In the said occasion, after seeing the dead body of his mother, he fell unconscious.

(iii) On the other hand, one Ramakrishna and few others, shifted the dead body of Andal to one Cot and brought the same to PW1's house. In turn, on the next day morning at 4.00am, after informing the incident to one Ramalingam, who is his uncle, PW1, went to the Panruti Police Station and lodged a complaint under Ex.P1.

(iv) On receipt of the complaint, PW11-Viruppalingam, the then Special Sub Inspector of Police, Panruti, on 27.06.2013 at about 5.30am, registered a case in Cr.No.560 of 2013 under



Sections 302 and 397 of IPC. The printed FIR is marked as Ex.P10. After the registration of the case, PW11 handed over the copy of the FIR to the Inspector of Police, Panruti for investigation.

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(v) PW12-Sivasubbu, the then Inspector of Police, Panruti, on receipt of the said FIR, took up the same for investigation. He visited the scene of occurrence and in the presence of PW9-Shankar, the Village Administrative Officer and PW3-Kandan, prepared the observation Mahazar under Ex.P2. In the presence of same witnesses, he recovered the rose colour peticoat (M.O.4) under the cover of Mahazar [Ex.P3]. He drew the rough sketch and the same was marked as Ex.P11. After preparing those documents, he went to the residence of PW1 and after seeing the dead body of the deceased Andal, he prepared one another observation mahazar under Ex.P12, in the presence of the same witness. He again drew one another rough sketch under Ex.P13.

(vi) In continuation of the investigation, in the presence of Panchayatar and witnesses, PW12 prepared an inquest report under Ex.P14. Thereafter, through one Constable Punithavathi, he sent a requisition to the hospital authorities, for conducting autopsy over the dead body of deceased. Further, he shifted the dead body of Andal to Government Hospital, Panruti. He examined the witnesses and recorded their statements.

(vii) On receipt of requisition given by the PW12, PW6-Dr.Arvind attached with Government Hospital, Panruti on 27.06.2013, conducted autopsy over the dead body of the deceased and found the following injuries.

1. Bleeding Lt and Rt side of the nose.
2. Contusion chin 10 x 5 cm
3. Contusion Rt neck 5 x 5 cm
4. Contusion neck 5 x 5 cm and Abrasion neck 5 x 5 cm
5. Abrasion over chest 1 x 0.5cm
6. Contusion Rt side chest of 5 x 5 cm

Internal Examination : Thoracic cavity contains blood. Ribs RT side 4,5 & 6th # present. Heart congested chambers filled with blood. Lungs filled with blood. Rt lungs lacerated 5 x 1 cm. Hyoid bone preserved. Contusion inside Rt vaginal wall.

During such time, he collected viscera, hyoid bone, vaginal swab and vaginal smear from the dead body and sent the same for chemical examination.

(viii) In the viscera report [Ex.P5], it was stated that there is no poisonous substance available. The doctor, who conducted examination over the hyoid bone had issued a report



under Ex.P6 stating that there was no fracture in hyoid bone. Similarly, PW6 has received a report in respect to the vaginal smear and found that no semen is detected in the samples collected from the vagina of the deceased.

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(ix) On seeing the report as above, PW6 issued a postmortem certificate under Ex.P8 stating that the deceased would appear to have died of shock and haemorrhage, due to the injuries sustained.

(x) In continuation of the investigation, on 02.07.2013, at about 16.00 hours in presence of PW9-Shankar and one Elumalai, near to Melkumaramangalam burial ground, PW12 arrested the accused and recorded the disclosure statement given by him. In the disclosure statement, the accused herein admitted the offence as alleged by prosecution and was willing to produce the properties which were all stolen from the dead body of Andal.

(xi) Pursuant to the disclosure statement, the accused brought the team which were present at the time of giving confession, to his house and handed over the Gold Thaali, weighing about 4 gms [M.O.1], Gold balls, 2 nos. weighing 1gm each [M.O.2], Gold nose ring weighing about 2 gms [M.O.3], one yellow T-shirt [M.O.7] and one torn lungi [M.O.8]. The said materials were recovered by PW12, in the presence of same witnesses, under the cover of seizure mahazar, Ex.P17.

(xii) Thereafter, on 23.07.2013, after obtaining permission from the learned Magistrate, PW12 produced the accused before the Doctor, and obtained a certificate under Ex.P15, as the accused is a potent man. He then received the report from the Forensic Science Department under Ex.P16 as there was no blood or semen, detected in the dresses, which were worn by the deceased. He examined the doctors, experts and recorded their statements. Ultimately, after completion of the investigation, he came to the positive conclusion that the accused has committed the offence under Section 376(1), 379 and 302 of IPC and filed a final report, accordingly.

4. Based on the materials available, the trial Court framed charges for the offence under sections 376(1), 302 and 379 of IPC. The accused denied the charges and opted for trial. Hence, in order to prove their case, on the side of the prosecution, twelve witnesses have been examined as PW1 to PW12 and seventeen documents were exhibited as Ex.P1 to Ex.P17, besides eight material objects i.e., M.O.1 to M.O.8.

5. Out of the above said witnesses, PW1-Thennarasu, is the son of the deceased. He deposed before the trial Court as during the relevant point of time, his mother was missing and



thereafter, with the help of PW2-Parthiban and one Kalaiyarasan, he went in search of his mother, in the field which belongs to them. He has further stated that in the field he found out the dead body of his mother and thereafter, the dead body was brought to his house by using a cot. In this regard, he lodged a complaint before the police.

(i) PW2-Parthiban, is the resident of same village. The deceased Andal is his Aunt. He speaks about the missing of his aunt. He has further stated that during the time when he was searching his aunt, her dead body was found in the field which belongs to the deceased and thereafter, the same was informed to PW1-Thennarasu. Before the trial Court, he had identified the jewels which were stolen from the deceased.

(ii) PW3-Kandan, is also a resident of the same village, he claims that during the time of preparing the observation mahazar and recovery mahazar in respect to the recovery of peticoat, by the investigation officer, he had signed as a witness. He has further stated that in the observation mahazar prepared in the deceased's house also, he had signed as a witness.

(iii) PW4-Elangovan, is a tender coconut merchant. He has stated that on 26.06.2013, when at the time he attempted to purchase the tender coconut, from the deceased, the accused herein came there and requested to give tender coconut. Further, he had deposed that since he did not consider the request made by the accused, the deceased gave four tender coconuts to the accused. The accused paid Rs.40/- to the deceased, towards the cost of tender coconuts purchased by him. Thereafter, on the next day morning, he came to know about the occurrence.

(iv) PW5-Loganayagi is the neighbour to the deceased. She has stated that on 26.06.2013 when she was rearing the cattle, at about 5.00pm, she found the accused herein sitting on the tank [bjhl;o] situated in the deceased land. At the same time, she saw the deceased entering into the backyard [bfhy;iy] for doing the agricultural work.

(v) PW6- Dr.Arvind attached with Government Hospital, Panruti speaks about the details of postmortem and about the injuries found in the dead body and also about the cause of death.

(vi) PW7-Chinnaponnu, who is also the resident of same village, gave evidence in support of the evidence given by PW5-Loganayagi.

(vii) PW8-Janarthanan, is also the resident of the same



village. He gave evidence as on 26.06.2013, at about 2.00pm, along with four others, the accused came to his house for attending the centering work and on the same day at about 4.00pm, after finishing his work, received Rs.500/- and went away from his house.

(viii) PW-9-Shankar, is the then Village Administrative Officer, Melkumaramangalam Village. He gave evidence in the trial Court as on 02.07.2013 at about 4.00pm, the investigation officer in this case arrested the accused and recorded the confession statement from him. He has further stated that after giving the confession statement, the accused brought the team to his house and produced the stolen properties along with the dresses which belongs to him. According to him, the confession statement and the recovery mahazar pertains to the recovery of stolen properties, are prepared in his presence.

(ix) PW10-Kumari, also claims that she is a resident of the same village, she gave evidence in support of the evidence given by PW5-Loganayagi and PW7-Chinnaponnu, as on the date of occurrence, the accused and the deceased found available in the field which belongs to the deceased.

(x) PW11-Viruppalingam and PW12-Sivasubbu, are the police officers, they speak about the receipt of complaint from PW1, visiting the scene of occurrence, recovery of material objects, examination of witnesses, securing the accused and filing of final report.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any document on his side.

7. Having considered all the above, the learned Sessions Judge, Mahila Court, Cuddalore, found the accused guilty of rape, murder and theft, and accordingly, convicted the accused as stated in paragraph No.2 of this judgment. Aggrieved over the above conviction and sentence, the appellant is before this Court with this Appeal.

8. We have heard Mr.C.S.S.Pillai, learned counsel appearing for the appellant/accused and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the State. We have also perused the records carefully.

9. The learned counsel appearing for the appellant/accused would contend that in respect to the last seen theory projected by the prosecution and in respect to the recovery of stolen properties, the evidence given by the prosecution witnesses are



having lot of contradictions and therefore, the witnesses examined on the side of the prosecution, does not inspire any confidence. He has further submitted that, before the trial Court the accused claimed that the stolen properties alleged to have been recovered from him, as his own and also in respect to the stolen properties, the description narrated by the witnesses are different. According to him, the prosecution fails in its attempt to prove their case.

10. Per contra, Mr.Babu Muthu Meeran, learned Additional Public Prosecutor, would submit that the evidences given by the prosecution witnesses is sufficient to prove the guilt of the accused. According to him, interference, in the findings arrived at by the trial Court, is not necessary. In this way, he prayed to dismiss the appeal.

11. Having considered the submissions made by the learned counsel appearing on either side, before the trial Court, the prosecution has attempted to prove its case through circumstantial evidence. It is a general rule, when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. First, the circumstances from which an inference of guilt is to be drawn must be cogently and firmly established; secondly, those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly the circumstances taken collectively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non else.

12. Here it is a case, on culminating the entire evidence brought in by the prosecution, reveals the fact that during the time when the accused was consuming liquor in the deceased's field, he committed the rape and during such time in order to take away the valuables from the deceased, he committed the offence of murder.

13. Initially, in respect to the offence under Section 376 IPC, it is an admitted fact that while at the time of investigation, the Doctor, who conducted postmortem, has collected the vaginal smear from the dead body of the deceased Andal and sent the same for chemical examination. After examining the same, result has been received by the Doctor under Ex.P7, observing that no semen is detected in the vaginal smear collected from the vagina of the deceased. Therefore, the basic and necessary ingredient which is necessary to prove the offence under Section 376 IPC is ruled out, as above. Merely because



in respect to the presence of the deceased and accused in the occurrence place, the persons who are all examined to prove the last seen theory have given a contradictory evidence and therefore, the evidence given by PW5, PW7 and PW10 does not inspire confidence and accordingly, we are of the opinion that the last seen theory projected by the prosecution that before the occurrence, both the deceased and the accused appeared together, has not been proved.

19. Even assuming that the evidence given by those persons PW5, PW7 and PW10, is true, being the residents of same village, it is for them to report the presence of the accused immediately after hearing the occurrence. But in this case, they have not done so. Until the next day morning, and even after seeing the investigation officer, those witnesses have not stated about the presence of accused in the occurrence place. If really they had seen the accused with the deceased, they might have informed the same to PW1 immediately, after knowing the occurrence. Therefore, for the reason that those witnesses have not stated about the presence of the accused during the time of investigation, we cannot presume that the evidence given by PW5, PW7 and PW10, is a genuine one. Accordingly, their evidence does not inspire the confidence of this Court.

20. As rightly pointed out the circumstances forming evidence must be conclusively established and even when so established they must form such a complete chain that is not only consistent with the guilt but is inconsistent with any reasonable hypothesis of innocence. What is to be considered is only ordinary human possibilities. Existence of a remote possibility consistent with the innocence of the accused is of no value.

21. Therefore, we are of the opinion that the witnesses examined on the side of the prosecution has not proved the fact that the deceased was last seen in the company of the accused and also the contradictions arose in respect to the recovery of stolen properties, gives a strength to the doubt, which has been found in the evidences of PW5, PW7 and PW10. Accordingly, without any hesitation, we hold that the prosecution has not proved its case.

22. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, Mahila Court, Cuddalore, in S.C.No.93 of 2014 dated 22.06.2015, are set aside and he is acquitted of



the charge. Fine amount, if any, paid, shall be refunded to the appellant/accused. Bail bond, if any, executed by the appellant/accused, shall stand cancelled.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Panruti.
2. Do Through The Chief Judicial Magistrate,
Cuddalore.
3. The Principal Sessions Judge,
Cuddalore.
4. Do Through The Sessions Judge,
Mahila Court, Cuddalore.
5. The Inspector of Police,
Panruti Police Station.
6. The District General of Police,
Mylapore, Chennai-4.
7. The District Collector, Cuddalore.
8. The Superintendent,
Central Prison, Cuddalore.
9. The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.C.S.S.Pillai, Advocate, S.R.No.36097

Criminal Appeal No.152 of 2019

NK(CO)
CS/16/08/2021