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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE S.SRIMATHY

CRL.A.No.63 of 2018

Deva Jawahar ...Appellant/Defacto complainant/P.W.1

Vs.

1.B.Kannadasan ...R1/Sole accused

2.The State rep. by
The Inspector of Police
V-6 Kolathur Police Station
Chennai-82
(Crime No.801/2014)

.. R2/Complainant

Criminal Appeal filed under Section 372 Cr.P.C. to set aside the judgment and order dated 04.10.2017 passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.135 of 2015.

For Appellant : Mr.G.Saravanan

For R1 : Mr.T.Muruganantham
Amicus Curie
Legal Aid Counsel

For R2 : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.

Challenging the judgment and order of acquittal dated 04.10.2017 passed by the Sessions Judge, Mahila Court, Chennai, in S.C.No.135 of 2015, the de facto complainant has preferred this appeal.

2. The prosecution story runs thus :

2.1. Padmavathy (deceased) who was 82 years old at the time of the incident on 17.07.2014, was residing with her son Deva



Jawahar (P.W.1) and husband Devasigamani (P.W.3) in Door No.13/43, 38th Dr.Ambedkar Street, G.K.M. Colony, Chennai. Padmavathy used to do social service in Stanley Hospital.

2.2. While that being so, on 17.07.2014, around 12.30 noon, when Deva Jawahar (P.W.1) came home, he found his mother (Padmavathy) lying still on the bed and on checking her pulse, he found her dead. He did not suspect any foul play and thought that she had a natural death. The relatives of Padmavathy were informed of her death news and she was cremated on 18.07.2014.

2.3. The accused in this case was residing in the same street where Padmavathy resided and was known to her. Similarly, Kannan (P.W.2) was also from the same area and was known to Deva Jawahar (P.W.1).

2.4. On 24.07.2014, Kannan (P.W.2) met Deva Jawahar (P.W.1) and told him that, on 17.07.2014, the accused who is known to him (P.W.2) called him and said that he has some ornaments, by selling which, he would return the loan that was taken from him (P.W.2) and requested him (P.W.2) to help in selling the ornaments; accordingly, he (P.W.2) took the accused to Gautham Jewellers in Villivakkam, where they sold the ornaments for Rs.1,85,000/-, out of which, the accused returned the loan that was taken from him (P.W.2); on the same day, the accused called him (P.W.2) for consuming liquor and together, they had liquor in the afternoon; while consuming liquor, the accused confessed to him (P.W.2) that he went to Padmavathy's house where she was found alone, he strangled and murdered her and took her ornaments.

2.5. After this revelation was made, Deva Jawahar (P.W.1) gave a written complaint (Ex.P1), based on which, K.S.Kandakumar, Inspector of Police (P.W.13) (for short "the I.O.") registered a case in V-6 Kolathur Police Station Crime No.801 of 2014 on 24.07.2014 under Sections 302 and 379 IPC against the accused and arrested him on the same day.

2.6. Based on the police confession of the accused, the I.O. seized a white colour towel (M.O.2), a pawn ticket (Ex.P3) and receipts for payments made to some financial institutions (Ex.P8), under the cover of a mahazar (Ex.P7). On 25.07.2014, the I.O. went to the jewellery shop of one Rajesh (P.W.9), from where he seized two gold chains weighing 17 sovereigns (M.O.1) under the cover of a mahazar (Ex.P9).

2.7. Since the body of Padmavathy was already cremated, the police were not able to conduct postmortem and determine the actual cause of death.



2.8. After completing the investigation, the I.O. filed a final report in P.R.C.No.131 of 2014 in the Court of the V Metropolitan Magistrate, Egmore, Chennai, against the accused for the offences under Sections 450, 302 and 382 IPC.

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2.9. On appearance of the accused, 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.135 of 2015 and was made over to the Mahila Court, for trial. The trial Court framed charges under Sections 450, 302 and 382 IPC.

2.10. When questioned, the accused pleaded "not guilty".

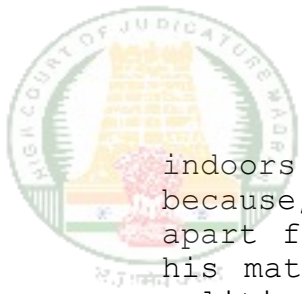
2.11. To prove the case, the prosecution examined 13 witnesses and marked 18 exhibits and 3 material objects. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. From the side of the accused, no witness was examined nor any document marked.

2.12. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 04.10.2017, in S.C.No.135 of 2015, acquitted the accused of all the charges, aggrieved by which, Deva Jawahar (P.W.1), has preferred this appeal under the proviso to Section 372 Cr.P.C.

3. Since notice was not served on the accused, we nominated Mr.T.Muruganantham, Advocate (E.No.418/85), to represent the accused.

4. Heard Mr.G.Saravanan, learned counsel for the appellant; Mr.T.Muruganantham, learned counsel for the accused and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

5. This case is entirely based on circumstantial evidence coupled with the extra-judicial confession, which is alleged to have been given by the accused to Kannan (P.W.2), while they were consuming liquor on 17.07.2014. The trial Court has disbelieved the evidence of Kannan (P.W.2), inasmuch as, even according to Kannan (P.W.2), the accused is said to have confessed on 17.07.2014, but did not narrate as to why, he (P.W.2) told him (P.W.1), what the accused had told him (P.W.2) only on 24.07.2014. For this delay, Kannan (P.W.2) has given an explanation that on 18.07.2014, his maternal uncle had died and therefore, he had gone for his funeral and since he had performed the last rites of his maternal uncle, he had to stay



indoors. The trial Court has rejected this explanation, because, there was no material placed before the trial Court, apart from ipse dixit of Kannan (P.W.2) that he was held up in his maternal uncle's funeral rites. Deva Jawahar (P.W.1) is a politician and was the Councillor at that time. Kannan (P.W.2) knows him well. Had the accused confessed to Kannan (P.W.2) on 17.07.2014 that he has murdered Deva Jawahar's (P.W.1's) mother in the morning, it would not have taken seven days for Kannan (P.W.2) to inform this to Deva Jawahar (P.W.1).

6. Be that as it may, as regards the disposal of the ornaments, Kannan (P.W.2) took the accused to Gautham Jewellers and sold the ornaments there. Whereas, Rajesh (P.W.9) has stated that the ornaments were pledged with him. The most crucial aspect is Ex.P3, which is a pawn ticket, on which it is written as sales bill. It is common knowledge that a pawn ticket is different from a sales bill.

7. According to the prosecution, the pawn ticket (Ex.P3) was seized from the house of the accused, but, for the reasons best known to the I.O., the counterfoil of the pawn ticket/sales bill was not seized from Rajesh (P.W.9).

8. Mr.Saravanan submitted that Devasigamani (P.W.3), in his evidence, has stated that when he returned home around 10.30 a.m. on 17.07.2014, he saw the accused going out of his house. However, Deva Jawahar (P.W.1) and Devasigamani (P.W.3), have also stated in their evidence that they found injuries on Padmavathy and also observed that the ornaments worn by her were missing. Had Devasigamani (P.W.3) seen the accused coming out of his house and thereafter, found his wife Padmavathy with injuries on her body and without ornaments, strong suspicion would have arisen in his mind. Thus, it is limpid that all these are afterthoughts in order to bolster the prosecution version.

9. It is trite that while dealing with an appeal against acquittal, the Court should bear in mind that the accused enjoys a double presumption of innocence, viz., the presumption of innocence during trial and a further presumption of innocence after his acquittal and therefore, the appellate Court should be slow in interfering with it (See V.Sejappa Vs. State [(2016)12 SCC 150]). It is also trite that when two views are possible from the evidence on record, the view that favours the accused merits acceptance (See Arulvelu and another Vs. State [(2009) 10 SCC 206]).



In view of the foregoing discussion, this criminal appeal is dismissed as being devoid of merits. The Tamil Nadu State Legal Services Authority is directed to pay the prescribed fee to Mr.T.Muruganantham, learned counsel for the accused.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Sessions Judge
Mahila Court, Chennai
2. The Member Secretary
Tamil Nadu State Legal Services Authority
High Court Campus, Chennai 104
3. The Inspector of Police
V-6 Kolathur Police Station
Chennai-82
4. The Public Prosecutor
High Court, Madras.

+2ccs to Mr.G.Saravanan, Advocate, S.R.No.55761
+1 cc to Mr.T.Muruganantham, Advocate Sr.No.55509 (05/01/2022)

CRL.A.No.63 of 2018

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NSK 18/11/2021