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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM

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

CRIMINAL APPEAL NO.670 OF 2018  
AND  
CRL.M.P.NO.14419 OF 2018

Shekar @ Anam Somashekar  
S/o.Veeraraju

.. Appellant/Accused

..Vs..

State represented by  
The Inspector of Police,  
R2 Kodambakkam Police Station,  
Kodambakkam, Chennai.

.. Respondent/Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 16.07.2004 passed in S.C.No.256 of 2000 on the file of learned IV Additional Sessions Judge, Chennai (City Sessions Court, Chennai).

For Appellant : Mr.S.Nambirajan

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

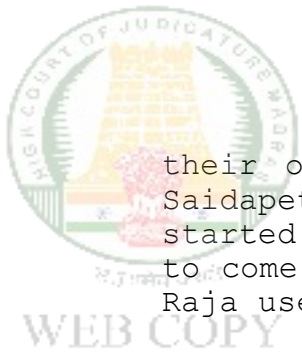
JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]

This criminal appeal is directed against the judgment and order of conviction and sentence dated 16.07.2004 passed by the learned IV Additional Sessions Judge, Chennai (City Sessions Court, Chennai), in S.C.No.256 of 2000.

2. The prosecution story runs thus:

2.1. The deceased Raja and Hemavathi [PW-1] were working as tailors in a garment export company. They fell in love with each other. They resigned from their job to start a tailoring unit of



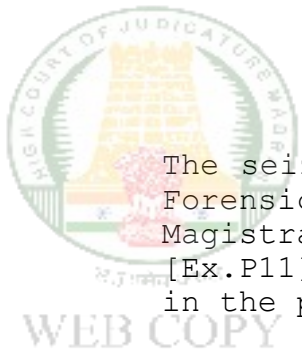
their own. Accordingly, Raja took on rent a shop, door no.35, Saidapet Road, Chennai, belonging to Subramani [PW-3] and started a tailoring shop. In the day time, Hemavathi [PW-1] used to come to help him. Though Raja's parents were living in Avadi, Raja used to stay at night in the shop.

2.2. The appellant hailed from the neighbouring Andhra Pradesh State and had come to Chennai for employment. He joined the tailoring shop of Raja (deceased) as an assistant during the relevant time. It is the specific case of the prosecution that Raja was a very bad master and used to abuse and beat the appellant frequently, on account of which, it is alleged that on the night of 24/25.07.1997, while Raja was sleeping in his shop, the appellant is said to have caused his death by belabouring him with an iron rod and thereafter, purloined a gold ring that was worn by Raja. After day break, the appellant locked the shop from outside and absconded. As usual, Hemavathi [PW-1] came to the shop in the morning of 25.07.1997 and found the shop locked. She went to the house of Raja in Avadi and did not find him there. Since Raja was not reachable, Hemavathi [PW-1] came again to the shop after dusk and finding the door locked, she entertained a suspicion that something was amiss. She borrowed a stool from a neighbouring shop, got over it and peeped through a window over the door. Since it was dark inside, she borrowed a torch light and looked inside in the light of the torch and found Raja lying on the floor. With the help of Subramani [PW-3] and other neighbours, she broke open the lock, entered the shop and was shocked to find Raja dead.

2.3. On a written complaint [Ex.P1] given by Hemavathi [PW-1], Sivasangu [PW-11], Inspector of Police (hereinafter referred to as the 'Investigating Officer'), registered a case in R2 Kodambakkam P.S.Crime No.1332/97 on 25.07.1997 at 20.00 hours u/s.302 and 380 IPC against the appellant and prepared the printed First Information Report Ex.P12, which reached the jurisdictional Magistrate at 02.00 a.m. on 26.07.1997, as could be seen from the endorsement thereon.

2.4. Thereafter, the Investigating Officer [PW-11] went to the place of occurrence and prepared an observation mahazar [Ex.P2] in the presence of witnesses Balu [PW-2] and Koteeswaran (not examined) and a rough sketch [Ex.P13]. The Investigating Officer [PW-11] recovered the following items under the cover of a mahazar [Ex.P3] in the presence of the same witnesses:

- (i) a pair of scissors with bloodstains [MO-1];
- (ii) an iron rod with bloodstains [MO-2];
- (iii) a pillow with bloodstains [MO-4];
- (iv) a sleeping mat with bloodstains [MO-5];
- (v) pieces of cement floor with bloodstains [MO-6]; and
- (vi) pieces of cement floor without bloodstains [MO-7].



The seized articles with bloodstains were sent to the Tamil Nadu Forensic Sciences Department through the jurisdictional Magistrate for examination and report. The biology report [Ex.P11] shows that blood was detected in all the items except in the pieces of cement floor without bloodstains.

2.5. The Investigating Officer [PW-11] conducted inquest over the body of Raja. The inquest report was marked as Ex.P14. Thereafter, the body was sent to the Government Hospital, Royapettah, for postmortem where Dr.R.Baskar [PW-7] performed autopsy on the body of Raja and noted nine injuries. The postmortem certificate was marked as Ex.P10. After obtaining the viscera report, Dr.R.Baskar [PW-7] gave his final opinion as to the cause of death in the postmortem certificate [Ex.P10], which reads as under:

'The deceased would appear to have died of haemorrhage, shock and due to multiple injuries sustained by him. The above injuries are ante-mortem in nature. Death would have occurred 15 to 30 hours prior to autopsy.'

2.6. While the police were on the look out for the appellant, it appears that the appellant was arrested by Beemavaram police in Andhra Pradesh in Seeravasara P.S.Crime No.17/97 for the offences u/s.120-B, 299, 399, 302 r/w 34 IPC on 01.08.1997. During the interrogation of the appellant by the Andhra Pradesh police, he disclosed about his involvement in the present case and accordingly, the Investigating Officer [PW-11], in this case, was intimated about it by the Andhra Pradesh police.

2.7. The Investigating Officer [PW-11] took steps to have the appellant brought to Chennai by approaching the jurisdictional Magistrate for issuance of a prisoner transit warrant and on production of the appellant, the Investigating Officer [PW-11] arrested the appellant in this case and recorded his confession statement.

2.8. Pursuant to the disclosure made by the appellant, the Investigating Officer [PW-11] seized a gold ring [MO-3] from one Sargunamma and a pawn ticket [Ex.P6].

2.9. After examining the witnesses and collecting the various reports of the experts, the Investigating Officer [PW-11] completed the investigation and filed a final report in P.R.C.No.2701 of 1998 in the Court of XVII Metropolitan Magistrate, Saidapet, Chennai, for the offences u/s.380 and 302 IPC, against the appellant.



2.10. 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.256 of 2000 and was made over to the IV Additional District and Sessions Court, for trial. The trial Court framed charges u/s.380 and 302 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

2.11. To prove the case, the prosecution examined 11 witnesses and marked 16 exhibits and 9 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. None was examined from the side of the appellant and no exhibit was marked.

2.12. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 16.07.2004 in S.C.No.256 of 2000, convicted and sentenced him as follows :

| Provision under which convicted | Sentence                       |
|---------------------------------|--------------------------------|
| Section 302 IPC                 | Rigorous life imprisonment     |
| Section 380 IPC                 | 3 years rigorous imprisonment. |

2.13. Challenging the aforesaid conviction and sentences, the accused filed the present appeal with a delay of 5095 days, which was condoned by this Court and this appeal was taken on file.

3. Heard Mr.S.Nambirajan, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

4. The prosecution case hinges on the evidence of Hemavathi [PW-1] and Subramani [PW-3]. Hemavathi [PW-1], in her evidence, has stated that she and Raja were working in an export company and thus, they got acquainted with each other; thereafter, they fell in love, decided to quit the export company and start a tailoring shop; accordingly, Raja took on rent a shop in Door No.35, Saidapet Road, where the appellant was employed as an assistant; on 24.07.1997, around 4.45 in the evening, Raja dropped her [PW-1] in Triplicane bus stand and left for the shop; Raja and the appellant used to stay in the shop; on 25.07.1997, she [PW-1] came to the shop at 10.00 a.m. in the morning and found it locked; she waited in a nearby shop till 02.30 p.m. and thereafter, she went to the house of Raja in



Avadi, where she was told by Raja's father that he had not come there; hence, she came to the shop again in the evening at 5'o clock and found the shop locked; this aroused a suspicion in her mind and at around 07.30 p.m., she borrowed a stool from a nearby shop, climbed over it and peeped through the window of the grill and found Raja lying on the floor; she immediately alerted the neighbours and soon Subramani [PW-3], the owner of the shop came; they all broke open the lock and went inside the shop and found Raja lying on the floor dead; she gave a written complaint [Ex.P1] to the police; she identified the appellant and also the gold ring [MO-3], belonging to Raja.

5. Subramani [PW-3], in his evidence, has stated that he is the owner of the shop and had let out the shop to Raja for running a tailoring shop six months prior to the occurrence; he knows the appellant, who was employed in the shop; on 24.07.1997 at 07.30 p.m., he saw the appellant working in the shop of Raja and again on 25.07.1997 at 7.30 a.m. he saw the appellant locking the shop and going out; on the same day, PW-1 came again looking out for Raja and at 7.30 in the night, they all peeped through a window and in the light of a torch, saw Raja lying on the floor; so they broke open the lock and found the body of Raja.

6. The defence was not able to make any dent in the cross-examination of Hemavathi [PW-1] and Subramani [PW-3]. In fact, in the cross-examination, Subramani [PW-3] has stated that the appellant alone was employed in the shop of Raja and there was no other worker. Subramani [PW-3] has further reiterated in the cross-examination that on 24.07.1997, he had seen Raja and the appellant working in the shop. Subramani [PW-3], who is the landlord, was residing next to the shop and therefore, he knew what was happening there.

7. Learned counsel for the appellant contended that the police have not marked any rental agreement or any document to show that Raja had taken the shop of Subramani [PW-3] on rent.

8. We are unable to appreciate this contention, because, it is not in every case that a landlord would take written agreements from tenants those days. The fact that Raja was running a tailoring unit in door no.35, Saidapet Road, has been spoken to not only by Hemavathi [PW-1] and Subramani [PW-3] but also by Balu [PW-2] and Thiyagarajan [PW-5]. Under such circumstances, we are unable to disbelieve the evidence of Subramani [PW-3] that he is the owner of the shop and that he had let out the shop to Raja.

9. That apart, the conduct of the appellant is, indeed, very important, in that, after the occurrence on 25.07.1997, the



appellant absconded. He was arrested by the Andhra Pradesh police on 01.08.1997 in Seeravasara P.S.Crime No.17/97 and only after the Andhra Pradesh police intimated the Tamil Nadu police, the appellant was brought to Tamil Nadu. The testimonies of Hemavathi [PW-1] and Subramani [PW-3] clearly show that the door of the shop was locked and they had to break open the lock for opening the door of the shop. The evidence of Subramani [PW-3] is that on 25.07.1997 at 07.30 a.m., he saw the appellant locking the shop and going out, after which, the appellant becomes scarce and on the same day evening, after Hemavathi [PW-1] peeped through the window and found Raja lying on the floor, the lock was broke open at 07.30 p.m. These circumstances, which have been proved satisfactorily by the prosecution, cannot be ignored.

10. As regards the recovery of the gold ring [MO-3], the prosecution has failed to examine Sargunamma, from whom the said gold ring [MO-3] is said to have been recovered. Therefore, we are unable to sustain the conviction of the appellant u/s.380 IPC.

In fine, this Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence u/s.380 IPC are set aside and accordingly, the appellant is acquitted of the charge u/s.380 IPC. However, the conviction and sentence for the offence u/s.302 IPC stand confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gm

To

1. The IV Additional Sessions Judge,  
Chennai (City Sessions Court, Chennai).
2. Do Through The Principal District & Sessions Judge,  
Chennai.
3. The Inspector of Police,  
R2 Kodambakkam Police Station,  
Kodambakkam, Chennai.



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4. The Superintendent,  
Central Prison,  
Rajamahendravaram,  
East Godawari District,  
Andhra Pradesh.
5. The XVII Metropolitan Magistrate,  
Saidapet, Chennai-15.
6. The District Collector,  
Chennai.
7. The District Collector,  
East Godawari District,  
Andhra Pradesh.
8. The District General of Police,  
Tamil Nadu, Mylapore,  
Chennai-4.
9. The Public Prosecutor,  
High Court, Madras.

Copy To  
The Section Officer,  
VR Section, High Court,  
Madras-104.

+1cc to Mr.S.Nambirajan, Advocate, S.R.No.50708

Criminal Appeal No.670 of 2018

BR(CO)  
CS/20/10/2021