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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :04.10.2021

Pronounced on :22.10.2021

C O R A M

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal (MD) No.540 of 2019

Santhakumar, S/o.Meenakshi Sundaram ... Appellant/Sole Accused

-vs-

State Rep. By its
The Inspector of Police,
Devaram Police Station,
Devaram,
Theni District.
(Crime No.18 of 2014)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to call for records pertaining to conviction and sentence, dated 20.09.2019, passed in S.C.No.10 of 2015, by the learned Sessions Judge, Fast Track Mahila Court, Theni.

For Appellant : Mr.M.Jegadeesh Pandian
For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

J U D G M E N T

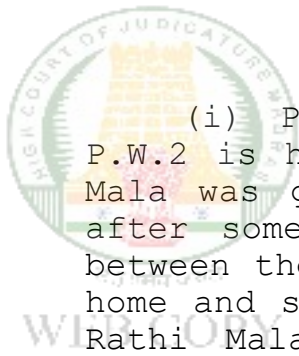
R.PONGIAPPAN, J.

The present appeal is directed against the conviction and sentence dated 20.09.2019, passed in S.C.No.10 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Theni.

2.The appellant is the sole accused. Before the trial Court, the accused stood charged for the offence under Section 302 IPC. After full-fledged trial, the learned Sessions Judge, Fast Track Mahila Court, Theni, found the accused guilty for the offence under Section 302 IPC and accordingly, he has been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for two years.

3.Now, challenging the said conviction and sentence, the accused is before this Court with the present Criminal Appeal.

4.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-Vijayan is the father of the deceased Rathi Mala. P.W.2 is her mother. Prior to the occurrence, the deceased Rathi Mala was given in marriage with one Sasipandian at Thiruppur and after sometime, from the date of marriage, due to dispute arose between the husband and wife, the deceased returned to her parental home and stayed there. Since P.W.1 runs a Tea Stall, the deceased Rathi Mala was working along with him. While such time, the accused, who was working in the Petrol Bunk, which is situated opposite to P.W.1's Tea Stall, came there and got acquaintance with P.W.1. In view of the above, both the deceased and the accused developed intimacy and on such time, on 04.02.2014 around 10.00 p.m., the accused called the deceased Rathi Mala over cellphone. The said phone call was attended by P.W.2. When P.W.2 questioned the accused about the phone call made by him, he replied that there was a missed call from the deceased Rathi Mala at 04.00 p.m. on the same day to his cell phone. On the next day itself, the deceased Rathi Mala was found missing and therefore, on 08.02.2014 P.W.1 lodged a complaint before the respondent Police under Ex.P.1. On receipt of the complaint, P.W.19 - Ravichandran, the then Special Sub-Inspector of Police, Devaram Police Station, registered a case in Crime No.18 of 2014 under 'Woman Missing'. The printed F.I.R. was marked as Ex.P.9. After registration of the case, he forwarded a copy of the F.I.R. to P.W.20, for investigation.

(ii) P.W.20 - Balamurugan, the then Inspector of Police, Devaram Police Station, on receipt of the copy of the F.I.R., visited the scene of occurrence, examined the witnesses and recorded the statements. On 17.02.2014 he received an information as there was a dead body found in the Well, which belongs to P.W.12 - Vasanthakumar. He recovered the dead body of Rathi Mala with the help of the Fire Service Staff and during such time, P.W.1 and P.W.2 identified the dead body as she is their daughter.

(iii) In continuation of investigation, P.W.20 held inquest over the dead body and prepared an Inquest Report under Ex.P.11. Further, on 17.02.2014 he altered the Section of law from Woman missing to Section 174 Cr.P.C. The Alteration Report has been marked as Ex.P.10. After preparing the Inquest Report, he sent a requisition to the Government Hospital, Theni, through P.W.18 - Chakrapani, Head Constable, for conducting autopsy over the dead body.

(iv) In turn, after receipt of the requisition, P.W.15 - Dr.Priya attached to the Government Medical College Hospital, Theni, on 17.02.2014, conducted autopsy and found the following injuries:-

'1.Contusion of size 5 cms x 4 cms noted over right side forehead.



- thigh.
- 2.Contusion of size 4 cms x 3 cms noted on left lower
- joint.
- 3.Contusion of size 6 cms x 5 cms noted on right wrist
- joint.''
- 4.Contusion of size 5 cms x 4 cms noted on left wrist
- joint.''

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She collected visceral particles and sent the same for chemical examination. Thereafter, she received a Toxicology Report under Ex.P.15, wherein it has been stated that there was no poisonous substance found on the body of the deceased. On receipt of the said report, she issued a Postmortem Certificate [Ex.P.7] and Final Opinion [Ex.P.8], wherein, she has stated that the deceased would appear to have died of Mechanical Asphyxia due to compression of neck by hands (Throttling).

(v) In continuation of investigation, P.W.20 visited the scene of occurrence and in the presence of P.W.10 - Jeyakanthan and one Suresh, he prepared an Observation Mahazar under Ex.P.2. He drew the Rough Sketch and the same has been marked as Ex.P.12. He collected the Certificates from the Doctor, who conducted Postmortem and afterwards, on 23.02.2014, he altered the Section of law from 174 Cr.P.C. to 302 I.P.C. and the said Alteration Report has been marked as Ex.P.13.

(vi) In the meantime, he received an information as the accused Santhakumar has surrendered before the learned Judicial Magistrate No.I, Madurai. On receipt of the said information, on 10.03.2014, he submitted an application before the learned Judicial Magistrate, Bodinayakanur, for taking the accused to police custody and the same was ordered in his favour. On 13.03.2014 in the presence of P.W.14 - Deivendran and one Kannan, he examined the accused and recorded his disclosure statement. In the disclosure statement, he has admitted the commission of offence and willing to produce the material objects, which were hidden by him. Pursuant to the confession statement, on the same day around 11.00 a.m., he brought the investigation team to the Well, wherein the dead body was found and identified the Mother Board of the Cell Phone, which has been used by the accused. Further, he identified the Hero Honda Splendor Motorcycle bearing Registration No.TN-60-E-4258, which was found in the Workshop. The admitted portion of the confession given by the accused was marked as Ex.P.3 and the Mahazar, which has been prepared by P.W.20 for recovery of Mother Board of the Samsung Cell Phone and Hero Honda Motorcycle were marked as Exs.P.4 and P.5 respectively. He identified a half slack white shirt [M.O.3] and a brown colour pant [M.O.4], which were worn by the accused at the time of occurrence and the same were recovered under the cover of Mahazar Ex.P.6.



(vii) After made recovery as above, P.W.20 examined the witnesses, who are all stand as witnesses and recorded their statements. He concluded the investigation and came to the conclusion that the accused is liable to be convicted under Section 302 I.P.C. He filed a final report accordingly.

5. Based on the above materials, the trial Court framed charge under Section 302 IPC. The accused denied the same as false and opted for trial. Hence, he was put on trial. In order to prove their case, on the side of prosecution, 20 witnesses have been examined as P.W.1 to P.W.20 and 15 documents were marked as Ex.P.1 to Ex.P.15, besides four material objects (M.O.1 to M.O.4).

(i) Out of the said witnesses, P.W.1 - Vijayan, who is the father of the deceased, has spoken about the affair of his daughter with the accused and about the lodging of Ex.P.1 complaint before the respondent Police.

(ii) P.W.2 - Kalpana, who is the mother of the deceased and wife of P.W.1, gave similar evidence as that of the evidence given by P.W.1.

(iii) P.W.3 - M.Thennammal, who is the sister of the deceased, gave evidence as on 03.02.2014 in the night hours, after the cell phone call made by the accused, the deceased was missing.

(iv) P.W.4 - Ratheesh, who is the brother of the deceased, gave similar evidence as that of the evidence given by P.W.1.

(v) P.W.5 - Poovitha, who is the wife of P.W.4, gave evidence as on 04.02.2014 around 10.30 p.m., the deceased went away from her house and thereafter, she did not return to her house.

(vi) P.W.6 - Kumar, who is the neighbour of the deceased, has spoken about the quarrel between the accused and the deceased. Further, he signed as a witness at the time of taking the dead body from the Well.

(vii) P.W.7 - Prakash, who was working along with the accused in the Petrol Bunk for six months, gave evidence as he knew the accused and the deceased. He did not give any evidence in support of the case of prosecution.

(viii) P.W.8 - Palanisamy, who was working in the Petrol Bunk, in which, the accused was working and P.W.9 - Murali, who is the owner of the said Petrol Bunk, have spoken about the information received by them as to the relationship having by the accused with the deceased. They have further stated that after knowing the affair of the accused, they warned the accused and subsequently, P.W.9 not permitted him to work in the Petrol Bunk.

(ix) P.W.10 - Jeyakanthan has signed as a witness in the Observation Mahazar [Ex.P.2].



(x) P.W.11 - Paranthaman, P.W.12 - Vasanthakumar and P.W.13 - Udhayakumar, who are the residents of the same Village, have spoken about the information received by them as to the death of the deceased.

(xi) P.W.14 -Deivendran, the then Village Administrative Officer, has spoken about the confession statement given by the accused and as to the recovery of M.O.1 to M.O.4.

(xii) P.W.15 - Dr.Priya, who was working as Assistant Professor in Theni Medical College Hospital, has spoken about the details of injury sustained by the deceased and about the cause of death.

(xiii) P.W.16 - Jeyaram, who was working as Station Officer in the Fire Service Department, has spoken about the recovery of dead body from the Well.

(xiv) P.W.17 - Vanaraj, who is the neighbour of P.W.1, gave evidence as he lastly seen the accused along with the deceased, except the same, he did not give any evidence in support of the case of the prosecution.

(xv) P.W.18 - Chakrapani, the then Head Constable, has spoken about the identification of dead body to the Doctor.

(xvi) P.W.19 - Ravichandran and P.W.20 - Balamurugan, who are the Police Officers, gave evidence with respect to the receipt of complaint, registration of the case and about the 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 choose to examine any witness on his side or mark any document.

7.Having considered all the above, the trial Court convicted and sentenced the accused as stated in paragraph No.2 of this judgment. Challenging the same, the accused is before this Court with this Appeal.

8.We heard Mr.M.Jegadeesh Pandian, learned counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, appearing for the State.

9.The learned counsel appearing for the appellant would contend that the witnesses examined on the side of the prosecution have not spoken about the nexus between the crime and the accused. He would further contend that mere tattooing the name of the accused in her hand by the deceased is not at all sufficient to hold that the accused alone committed the alleged offence.



10.Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would contend that the evidences put forth by the prosecution are sufficient to accept the case of the prosecution and therefore, interference of this Court in the findings arrived at by the trial Court does not require.

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11.We have considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record carefully.

12.Now, on going through the judgment rendered by the trial Court, it appears that the learned trial Judge observed that the evidence put forth by the prosecution proved the fact that previous to the occurrence, both the deceased and the accused were seen together and also the relationship between the accused and the deceased was proved through the evidence of P.W.1 to P.W.4, and therefore, it should be necessary to hold that only the accused alone had committed the offence. In otherwise, after holding that the investigation conducted by the Investigation Officer is defective in nature, the same cannot be a ground for acquitting the accused from the charge.

13.It is a case based on circumstantial evidence. So, the Court is expected to be more careful while analysing the evidence and convicting the accused. In this regard, it would be relevant to see the judgment of our Hon'ble Apex Court in the case of **Dev Kanya Tiwari vs. State of Uttar Pradesh** reported in **2018 (5) SCC 734**, wherein it has been held as follows:-

'10. Apparently, there is no eyewitness to the incident and the case is entirely based upon circumstantial evidence. In such a case, the court is expected to be more careful while analysing the evidence and convicting the accused. In other words, in all probabilities, the chain of circumstances should lead to the irresistible conclusion that the accused participated in the commission of crime and committed the offence. This Court has long back set the mode of evaluating circumstantial evidence in Hanumant Govind Nargundkar v. State of M.P. [Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343 : 1953 Cri LJ 129] in the following terms: (AIR pp. 345-46, para 10)

'10. ... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive



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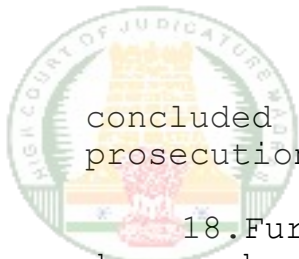
nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.' ' '

14. Here it is a case admitted on either side that the complaint pertains to this case has been lodged by P.W.1 before the respondent Police with the delay of 4 days. However, in respect of the delay, P.W.1 gave evidence as immediately after knowing the fact that her daughter was missing, he made search on various places and then only, he lodged a complaint.

15. Now, on considering the said evidence with the factual aspects, being a Village man, running a Tea Stall in road side, it is natural on his part to search his daughter during the time of alleged occurrence as narrated by the prosecution and therefore, because of the reason that the present case has been lodged with the delay, the same cannot be taken into account as fatal to the prosecution.

16. The another circumstance, which narrated in this case is that, P.W.1 to P.W.4, who are the inmates of the deceased, stated in their evidence as on the day of occurrence, the accused made a cell phone call to the deceased, but the same was attended by P.W.2. In respect of the same, the stand taken by the accused is that no call has been made by the accused to the deceased. Hence, it is for the prosecution to collect the cell phone call details of both the accused and P.W.2. But, here, it is a case, even after stating about the receipt of cellphone call from the accused, the Investigation Officer did not collect any call details and therefore, the said circumstance narrated by the prosecution was not fully established by producing relevant evidence.

17. The one another circumstance, which is narrated by the prosecution is that P.W.6 has stated in his evidence as during the relevant point of time, he seen the occurrence as the accused and the deceased fought with each other near to the Well, wherein the dead body was found. The said evidence is sufficient to prove the last seen theory. However, in this regard, though P.W.6 had narrated the incident as above, in his cross-examination, he has stated that during the time of investigation, the public, who are all residing in the Village, have spoken about the missing of deceased as she ran away with any one. In the said situation, if really, he had seen the accused along with the deceased, it is for him to report the same before P.W.1 immediately after knowing the fact that the deceased was missing. Therefore, the credibility of the evidence given by him in his cross-examination would dilute the evidence given by him in the chief-examination and therefore, it cannot be



concluded that the theory of last seen has been proved by the prosecution.

18. Further, the another witness, who alleged to be seen the deceased along with the accused was examined as P.W.7, has also not supported the case of prosecution, hence, he was treated as a hostile witness. Thus, in all, the theory of last seen has not been proved by the prosecution.

19. It is the contention raised by the learned Additional Public Prosecutor that while the accused was in police custody, gave confession statement, wherein, he admitted the commission of offence and in view of the same, the material objects, which are necessary to connect the accused with the nexus of crime have been recovered and therefore, the same are sufficient to hold that the accused alone committed the offence.

20. Now, on considering the said submissions with the relevant records, it seems that pursuant to the disclosure statement, the following Material Objects were recovered by the Investigation Officer.

M.O.1	Samsung Cell Phone Mother Board bearing SAMSUNG-GTE108IT, SSNE 108IT SMHIME 1357165/04/550215/0
M.O.2	A Hero Honda Super Splendor Motorcycle, bearing Registration No.TN-60-E-4258, Chasis No.NOMBLJA05EE99, A08957, Engine No.05EA99A08931
M.O.3	A White colour half slack Shirt containing seven white buttons with City Men PH 272220 CUMBUM Tailor Label.
M.O.4	A Brown Colour Pant.

21. Now, on going through all the material objects, which were recovered during the time of investigation, no doubt the above referred material objects are not related to the deceased. The recovery of Mother Board alone cannot prove that the same belongs to the accused, further, the recovery of Motorcycle, which belongs to the accused as well as the recovery of dresses worn by the accused are no way connected with the crime. Therefore, the said recovery stated by P.W.20 is not at all sufficient to prove the guilt of the accused. Even assuming that the material objects now stated by the Investigation Officer are relevant to this case, it is settled law that mere recovery is not sufficient to hold that the accused alone committed the alleged offence.

22. At this juncture, in the judgment reported in **AIR 2011 SC 2769 [Mustkeem alias Sirajudeen Vs. State of Rajasthan]**, wherein our Hon'ble Apex Court has held as follows:-

'27. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion



that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.''

Therefore, here it is a case, the prosecution has not proved the link between discovery of material objects and its use in the commission of offence. Though the relationship between the deceased and the accused has been proved through the evidence of P.W.1 to P.W.4, the same is not sufficient to hold that the accused alone committed the offence of murder by causing homicidal death to Rathi Mala. It is well settled that before a Court can act on circumstantial evidence, the circumstances proved must be complete and of a conclusive nature, so as to be fully inconsistent with the innocence of the accused and are not explainable on any other hypothesis except the guilt the of the accused.

23. Accordingly, the evidence given by the prosecution witnesses exist reasonable doubt in this case as the case of prosecution is unsupported by independent witnesses, ridden with the contradictions, good motive for false prosecution and filled with suspicious circumstances. Further, there is not only insufficiency of evidence, but also lack of credibility on the trustworthiness of P.W.6 and P.W.7, which culminated into disproving the prosecution case and alleged guilt of the accused. The prosecution has, therefore, failed to establish the guilt of the appellant/accused beyond reasonable doubt by adducing cogent evidence. The learned trial Judge completely misdirected herself and the conviction imposed upon the accused by the trial Court suffers from patent error of law and perversity of approach and deserves to be set aside.

24. In the result, this Criminal Appeal is allowed and the conviction and sentence dated 20.09.2019, imposed in S.C.No.10 of 2015, by the learned Sessions Judge, Fast Track Mahila Court, Theni, is set aside and the appellant is acquitted from the charge. The fine amount, if any, paid by him shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CRL)

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Sub Assistant Registrar (CS)



- 1.The Sessions Judge,
Fast Track Mahila Court, Theni.
- 2.The Inspector of Police,
Devaram Police Station,
Devaram,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison,
Madurai.
- 5.The Section Officer, (2C)
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal (MD) No.540 of 2019
22.10.2021

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