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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2021

DELIVERED ON : 28.01.2022

CORAM :

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

Crl.A.No.710 of 2019
and
Crl.M.P.No.9462 of 2021

Senthilkumar

...Appellant/Accused

vs.

The State by
Assistant Commissioner of Police,
Flower Bazaar Range,
Chennai.
C-3, Seven Hills Police Station,
Chennai.
(Crime No.1015 of 2015)

...Respondent/Complainant

PRAYER:

Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 praying to set aside the conviction and sentence passed in S.C.No.121 of 2016 dated 09.09.2019 on the file of the Mahila Court / Special Court for cases under POCSO Act / Children's Court, Chennai.

For Appellant : Mr.M.Vijayan
for Mrs.S.Premakumari

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor.



J U D G M E N T
(R.HEMALATHA, J.)

The present appeal is against the judgment and order of the Mahila Court / Special Court for cases under POCSO Act / Children's Court, Chennai in S.C.No.121 of 2016, on 09.09.2019, in which the present appellant was convicted and sentenced as detailed hereunder :

S.No.	Conviction	Sentence
1.	U/s.302 of IPC	Life imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for six months.

2. The case of the prosecution in a condensed form is as follows :

- i. The accused / appellant Senthilkumar, a Fireman with Tamil Nadu Fire Service Department and the victim Muthulakshmi @ Saranya were husband and wife and were residing in Kondithoppu Fire Service Quarters in Chennai. Their marriage was solemnized on 23.12.2012 and they had a female child aged 2½ years by name Shivani. It is alleged that the appellant was continuing to be in touch with one Muthulakshmi @ Rani (A2) with whom he was allegedly in relationship even before marriage. This continuing relationship had irked the deceased victim to that extent leading to frequent quarrels between the two. It also appears that the appellant was not heeding to the advice of any one of his relatives though there was an informal reconciliation made possible by elders belonging to both the families. It is also stated that the appellant had given a written assurance that he would no more be in touch with A2 and would sever his relationship with her. In such circumstances, on 21.11.2015 at about 11.00 a.m. the victim was found dead in her house (Kondithoppu Fire Service Quarters, Chennai) with froth exuding from her nose. The door of the house was locked from outside.
- ii. Sampathkumar (P.W.7), the fireman attached to Washermanpet Fire-Station and who was also the colleague of the appellant finding that the appellant who had left for dinner the previous night i.e. 20.11.2015 at 09.00 p.m. neither returned for duty that night nor turned up for roll-call the next day morning. He informed the appellant's brother Sakthivel (P.W.6) who was a Grade-I Constable of



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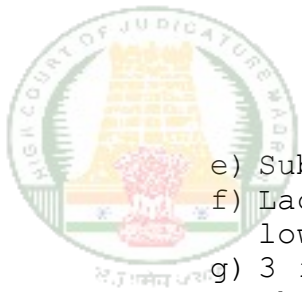
Kothavalchavadi Police Station. P.W.6 and P.W.7 went to the house of the appellant and found the house locked from outside. Since P.W.6 was not able to contact his brother (appellant) he was forced to break open the lock and found his sister-in-law, the victim, lying dead with no signs of either the child or the appellant. In such circumstances, P.W.6 informed the police. Arumuga Sudharsan (P.W.1), who is the cousin of the victim on receipt of information from his father rushed to the victim's residence only to find the victim already dead in her house. He, then made a written complaint (Ex.P1) to the police.

iii. Thiru. Adhimoolam (P.W.18), the Inspector of Police, C3 Seven Wells Police Station received Ex.P1 from P.W.1 and registered FIR (Ex.P14) in Crime No.1015/2015 under Section 174 (iii) Cr.P.C. Since it was a suspicious death within seven years of marriage he submitted the entire records to Assistant Commissioner of Police, Flower Bazaar, Chennai, for further investigation.

iv. Thiru. Arokiyam (P.W.20), the Assistant Commissioner of Police, took up investigation, went to the scene of offence on 21.11.2015, prepared an observation mahazar (Ex.P4) in the presence of Sampathkumar (P.W.7) and Backiyaraj (P.W.5) and a rough sketch (Ex.P16). He also recovered a pillow with brown coloured pillow cover (M.O.8) a broken lock (M.O.9) from the scene of offence under the cover of a mahazar (Ex.P17) in the presence of the same witnesses. He sent a requisition to the Revenue Divisional Officer (RDO) for enquiry after sending the body to the mortuary of Stanley Medical College Hospital, Chennai. Thiru. Baskaran (P.W.16), Special Sub-Collector in Chennai Collectorate went to the mortuary, Stanley Hospital on 22.11.2015 and conducted inquest (Ex.P10) on the body of the deceased. He also examined the relatives of the deceased and concluded that there was no dowry harassment. His report was marked as Ex.P11.

v. Dr. Kavitha Devi (P.W.17), Tutor, attached to Stanley Hospital, conducted autopsy on the body of the deceased and found the following injuries :

- a) Reddish brown abrasion 1 x 0.2 cm on the front of left side of the neck.
- b) Reddish brown abrasion 1 x 0.5 cm on the front of left side of the neck, 2 cms lateral to the previous injury.
- c) Reddish brown abrasion 0.2 x 0.2 cm on the front of left side of the neck, 1 cm lateral to the previous injury.
- d) Reddish brown abrasion 0.5 x 0.1 cm on the lower part of the left side of the neck, 3 cms below the previous injury.



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- e) Sub conjunctival haemorrhages seen in right eye.
- f) Laceration 0.5 cm x 0.5 cm over the mucosal aspect of left lower lip.
- g) 3 x 2 x 1 cm dark red contusion seen over the left side of the chin.

Tongue protruding out inbetween the teeth with mild blackish discolouration.

- h) Reddish brown abrasion 1 x 0.5 cm on the right side of the clavicle.

On dissection of the Neck : 4 x 3 - 2 x 1 cm dark red contusion seen over the left side of the neck. 2 x 1 - 0.5 x 0.5 cm red contusion seen over the right clavicular region. On further dissection extensive reddish bruising of the para tracheal and pretracheal region of the neck. On further dissection reddish bruising over the para vertebral and behind the tracheal region.

She sent the visceral organs to Forensic Science Lab, Chennai, for further analysis. No poison / alcohol was detected in any of the visceral organs. P.W.17 opined that the deceased would appear to have died of asphyxia due to throttling.

vi.P.W.20, after examining the witnesses altered the Section of law to 302 and 302 r.w. 109 of IPC (alteration report Ex.P18) and arrested both the accused at Chennai Central Railway Station. The 2½ year old child of the deceased was found with them. Their confessional statements were individually recorded based on which the following items were seized from the appellant under the cover of a mahazar (Ex.P7) in the presence of Ramasubramanian (P.W.11) and Sudalaimani (not examined)

- 1.1 no. of gold chain (MO1)
- 2.1 Micromax cellphone (MO2)
- 3.Finger rings 2 nos. (MO3)
- 4.Cash of Rs.26,000/- (MO4)
- 5.House key (MO5)

These were allegedly purchased with the sale proceeds of the victim's thali chain. As per A2's confession one gold thali chain weighing 26 gms (M.O.6) and a micromax cellphone (M.O.7) were recovered from her under the cover of a mahazar (Ex.P8) in the presence of the same witnesses. A two-wheeler bearing Registration No. TN 01 AH 6752 (M.O.10) was also seized from the appellant under the cover of a mahazar (Ex.P20).

vii.Thiru. Sankar (P.W.21), the Assistant Commissioner of Police, Flower Bazaar, took up investigation after the transfer of P.W.20, examined the witnesses including Venkatachalam (P.W.19), Sub-Inspector of Police, Cyber Crime to procure call history (Ex.P15) of appellant,



accused-2 and the victim.

viii. According to the prosecution both the accused had planned to eliminate the victim since she was the only stumbling block between the appellant/A1 & A2 and that the disappearance of the present appellant from his work place on 20.11.2015 and the subsequent events clearly point the accusing finger towards the appellant and A2.

ix. After completing investigation P.W.21 laid a final report against both the accused for the offences under Section 302 and 302 r/w. 109 IPC respectively in P.R.C XII/2016 before VIII Metropolitan Magistrate, Geroge Town, Chennai who in turn committed the case to the Court of Sessions.

x. In order to bring home the guilt of the accused the prosecution examined 21 witnesses and marked 20 exhibits and 10 material objects.

xi. When the appellant was questioned under Section 313 of the Code of Criminal Procedure, with regard to the circumstances appearing in evidence against him he denied of having committed any offence. He examined himself as D.W.1. According to him on 20.11.2015 at about 9.00 p.m. he had sought permission to go home as he had performed duty for three consecutive days and when he reached home, he found his child crying and as it was a rainy day with power cuts he had requested his wife (deceased) to take their child to his sister's place. As she refused to do so, there was a quarrel and he left his wife alone and took the child to his sister's house. According to him, the next day when he returned home he came to know about the death of his wife and that though he was arrested on 23.11.2015 itself, was remanded to judicial custody only on 12.12.2015.

3. Mr.M.Vijayan for Mrs.S.Premakumari, the learned counsel for the appellant contended that the entire case vested on circumstantial evidence filled with conjectures and surmises to arrive at the desired result of the prosecution of proving the guilt of the appellant. According to him, when there's no direct eye witness, there ought to be a solid chain of events which cannot lead to any other inference other than the guilt of the accused. It is also his further contention that the prosecution has miserably failed in this aspect and that the trial court also did not take a pragmatic approach while analyzing the prosecution side witnesses and documentary evidence. It is also his contention that even as per the evidence of the appellant he had consumed ganja on the night of 21.11.2015 and woke up the next day only at about 3.00 p.m. His another contention is that the appellant never went into hiding and was very much available



in the station and the Revenue Divisional Officer (R.D.O) who enquired into the allegation of the dowry harassment had categorically stated that he enquired the appellant on 22.11.2015.

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4. Per contra, Mr.M.Babu Muthumeeran the learned Additional Public Prosecutor argued that the prosecution has successfully made a clear case which proved beyond doubt the involvement of the appellant in murdering his wife for the sake of a happier life with his girl friend.

5. One striking aspect in this case is that the victim girl was not aware of her husband's past relationship before the marriage. As per the deposition of Kokila (P.W.4) and Sankaran (P.W.3) both parents of the deceased, it was an arranged marriage and it was only after the lapse of about one month all of them came to know about the past of the appellant. The appellant, despite all his denials of any affair with A2, cannot refute the statement of his own mother before the Revenue Divisional Officer (P.W.16) in which she had categorically stated that the reason for the marital discord between her son and daughter-in-law was the illicit relationship her son had with A2 for which she not only reprimanded her son but also pacified her daughter-in-law and tried to patch up to ensure cordial marital life. This statement of the appellant's mother assumes significance because it focuses on the immoral relationship the appellant continued to have with A2 even after his marriage causing avoidable tension to all around him.

6. The appellant had in his deposition as D.W.1 stated that he had taken permission to leave the office on the night of 20.11.2015 since he had continuously worked for the previous 3 days. It is also understood that the period during third week of November 2015 was that of heavy monsoon and the Fire Services Department personnel were actively involved in rescue operations. Backiyaraj (P.W.5), Sampathkumar (P.W.7), Ekambaram (P.W.9) and Ramakrishnan (P.W.10) were all the colleagues of the appellant, out of which P.W.5, P.W.7 and P.W.9 had clearly deposed that the appellant had told them that he would go home for dinner but did not return even the next day. According to P.W.10, the residence of the appellant was just behind the office of the appellant and that all the fire service personnel were on 24 hour duty due to the exigency caused by the cyclone. Another important revelation in the deposition of P.W.10 is that the appellant had called him up on 30.11.2015 asking as to why his salary was not credited to his account. He also added that he was in Bangalore and would surrender before the police at the appropriate time. In sharp contrast, the appellant as D.W.1 had deposed that he was arrested on 23.11.2015 itself and was illegally detained by the police till 12.12.2015 which is not



only a blatant lie but also an attempt to divert the issue. The contention of Mr.Vijayan, learned counsel for the appellant is that the appellant was in station as per the deposition of Revenue Divisional Officer (P.W.16) who enquired him on 22.11.2015. A stray statement of Revenue Divisional Officer (P.W.16) during the course of cross examination that he enquired the appellant on 22.11.2015 is not sufficient to disbelieve the case of the prosecution especially when P.W.16 did not mention the date of examination of the appellant in his report Ex.P11. He had also signed the said report (Ex.P11) only on 02.07.2016.

7. Sakthivel (P.W.6) is the elder brother of the appellant and who was the first one to reach the scene of occurrence also deposed that he was not able to contact the appellant despite repeated calls to his mobile phone. Thereafter he broke open the lock and found the dead body of his deceased sister-in-law. He had further deposed that he informed all his relatives about the incident. Nowhere he stated that his sister told him that the appellant had come over to her house and left his daughter with her on the night of 20.11.2015.

8. The brother of the deceased (P.W.11) had deposed that there was a simmering dispute between his sister (deceased) and his brother-in-law (appellant) on the latter cheating on the former. He has also added that in the reconciliation meeting attended by the relatives the appellant had given an undertaking that he would not indulge in such activities in future but did not keep up his promise and continued to roam around with A2 and also converse with her for long hours over his mobile phone without heeding to the advice of his relatives. The deposition of Kokila (P.W.4), mother of the deceased was in a better position to throw more light. In her deposition she had elaborately discussed on how her victim daughter was subjected to harassment by the appellant who never relented on her demand to sever his relationship with A2. It is also pertinent to point out that P.W.3, P.W.4 and P.W.11 have all mentioned that there was a demand of Rs.5 lakhs from the deceased on the day of her death which was informed to P.W.4 through phone by the deceased. However, the Revenue Divisional Officer who made a special enquiry into the dowry death angle was not convinced with this theory and had concluded in his report (Ex.P11) that there was no demand for dowry. As regards the marital life of the victim with the appellant, it is clear from a careful perusal and analysis of all the depositions of the close relatives of the victim that the marital discord caused due to the extra marital affair of the appellant with A2 never came to an end. The valiant victim had only one resort that of confronting her husband on his misdeeds and there was every reason to believe that the appellant was waiting for an opportunity to eliminate her. In fact A-2 was living in a hostel in the same city. Ex.P9



is the admission form filled by A2 as a proof of getting admitted in a ladies hostel in Chennai. This was supported by the deposition of Devi (P.W.13), the owner of the ladies hostel. As per this 'Admission Form' (Ex.P9) A2 had vacated the hostel on 20.11.2015 at about 09.30 p.m.

9. The appellant's contention is that he left his house with his daughter and stayed in his friend's house after leaving his daughter at his sister's house at Medavakkam. The appellant is thus pleading Alibi. Alibi, a latin word, which means elsewhere, is not an exception envisaged in the Indian Penal Code or any other law. It is a rule of evidence recognized by Section 11 of the Indian Evidence Act that facts inconsistent with fact in issue are relevant. When the accused has taken the plea of 'alibi', the burden of proof lies on him under Section 103 of the Indian Evidence Act. Moreover the plea of alibi has to be taken at the earliest opportunity and it has to be proved by the accused to the satisfaction of the Court. In the instant case, the appellant had not even mentioned the name of his sister and her address. He has not also given his friend's name and his address though he stated that he consumed ganja on the night of 20.11.2015 in the house of his friend and slept till 03.00 p.m. the next day.

10. It is true that this is a case based on circumstantial evidence and to evaluate the strength of the chain of events let us quickly go through the sequence once.

- i. The appellant as per the deposition of his colleagues P.W.5, P.W.7 P.W.9 & P.W.10 and his own deposition was very much on duty till 9.00 p.m. on 20.11.2015. Though the appellant claims that he had taken permission to leave for the day, the deposition of the other colleagues do not corroborate with his statement.
- ii. Subsequently, the appellant visited his home and even as per his statement, expressed his desire to take their daughter to his sister's place which was vehemently opposed by his wife. According to him he had gone to his sister's house in Medavakkam with his daughter for which no effort was taken by him to substantiate. He has not examined his own sister for this alibi nor named or examined the friend in whose house he is said to have smoked ganja.
- iii. P.W.6 the brother of the appellant has categorically deposed that the house of the appellant was locked from outside. P.W.6 would have mentioned in his deposition about the appellant's visit to his sister's place on the night of 20.11.2015 when P.W.6 had informed all his relatives including his sister regarding the death of the victim. There is no such mention by him and therefore the version of the appellant that he had gone to his sister's house at



Medavakkam is not credible.

- iv. If the appellant had gone over to the house of his sister with his daughter, P.W.6 would have got the information from his sister.
- v. It is also evident that the appellant was not present in the next day's roll call. There is no explanation forthcoming from the appellant on this.
- vi. There is no denial of the fact on his side that there was a simmering tension between him and his wife.
- vii. As per the deposition of P.W.10, it is also clear that on 30.11.2015 the appellant was reportedly in Bangalore and remained out of bounds till his arrest on 12.12.2015 in the Central Railway Station. His claim that he was illegally detained from 23.11.2015 by the police also falls flat. A stray statement of the Revenue Divisional Officer that he examined the appellant on 22.11.2015 cannot be taken as a conclusive proof that the appellant was in station on 22.11.2015. In fact the appellant has stated before the Revenue Divisional Officer (P.W.16) that he committed the murder of his wife and fled to Bangalore.
- viii. The location of the fire service quarters just behind the fire service office also would suggest that the appellant could have returned back to duty the same night and also the place was that much secure that any other intruder would have come to adverse notice.

11. In this case the circumstantial evidence satisfies all the five golden principles as settled in Sharad Birdhichand Sarda Vs. State of Maharashtra reported in AIR 1984 SC 1622 which is extracted hereunder :

- "1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- 2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except the accused is guilty.
- 3. The circumstances should be of a conclusive nature and tendency.
- 4. They should exclude every possible hypothesis except the one should be proved, and
- 5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusive consistent with the innocence of the accused and must show that in human probability, the act must have been done by the accused."



12. In view of the same we do not find any reason to interfere with the conviction and sentence passed by the trial court against the appellant.

13. In the result

- i. The appeal is dismissed. Consequently, connected criminal miscellaneous petition is closed.
- ii. The conviction and sentence passed by the Mahila Court / Special Court for cases under POCSO Act / Children's Court, Chennai against the first accused / appellant in S.C.No.121 of 2016 dated 09.09.2019, is hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

- 1 The Sessions Judge,
Mahila Court / Special Court for cases under POCSO Act /
Children's Court, Chennai.
- 2 The Chief Metropolitan Magistrate,
Chennai.
- 3 The VIII Metropolitan Magistrate,
Chennai.
- 4 The District Collector,
Chennai.
- 5 The Director General of Police,
Mylapore, Chennai.
- 6 The Assistant Commissioner of Police,
Flower Bazaar Range,
Chennai.
C-3, Seven Hills Police Station,
Chennai.



7. The Superintendent,
Central Prison, Puzhal, Chennai.

8. The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to M/s.S.Prema Kumari, Advocate, SR.NO.5488(09/03/2022)

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and
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SSI (CO)
PM/08/02/2022