



Criminal Appeal No.747 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22.02.2023

JUDGMENT DELIVERED ON : 27.02.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.747 of 2015

Thambithavaselvam
S/o.Ramachandran

... Appellant/Accused

Vs.

State rep.by
The Inspector of Police,
Manalmedu Police Station,
Manalmedu,
Nagapattinam District.
(Crime No.159 of 2012)

...Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment dated 24.11.2015 passed in Sessions Case No.48 of 2013 on the file of Fast Track Mahila Court, Sessions Judge, Nagapattinam.



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Criminal Appeal No.747 of 2015

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.L.Baskaran
Government Advocate [Crl.side]

JUDGMENT

This criminal appeal has been filed against the judgment and order passed by the Sessions Judge (Fast Track Mahila Court), Nagapattinam in S.C.No.48 of 2013, dated 24.11.2015, convicting the appellant for offence under Section 304(i) of I.P.C and sentencing him to undergo ten years rigorous imprisonment and to pay a fine of Rs.5000/- (Rupees Five Thousand only) and in default to undergo one year simple imprisonment.

2. The case of the prosecution is that the deceased Jayalakshmi owned lands and she had leased those lands to the appellant who is said to be a distant relative. The further case of the prosecution is that the appellant was due and payable the lease amount to the deceased. The deceased went to the house of the appellant on 11.03.2012 at about 12:45 p.m. and the appellant



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along with his wife, with an intention to grab the lands and to take away the jewellery of the deceased, assaulted her on the backside of her head with MO-11. Thereafter, they also took away 8 ½ sovereigns of gold jewellery worned by her.

3. P.W.11 is said to have had knowledge about the deceased being attacked and she was directed by the accused persons to take the deceased in an auto rickshaw belonging to P.W.6. Accordingly, P.W.11 accompanied the deceased and went to Balaji Nursing Home. P.W.9 came out of the nursing home and examined the deceased and found that she has been brought dead. Thereafter, the deceased was shifted to an ambulance on the instructions given by the accused persons and the ambulance reached the house of P.W.1 at about 3:00 p.m. on 11.03.2012. The ambulance was followed by the appellant in a two wheeler and he explained P.W.1 that the deceased had fallen down and had sustained injuries and she was in the hospital and he took steps to bring the deceased in the ambulance and she was entrusted to P.W.1.



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4. P.W.1 is the younger brother of the deceased. He informed about the above incident to P.W.2, who is the son of the deceased. P.W.2 immediately rushed to the house of P.W.1 and reached there at 4:00 a.m on 12.03.2012 and he saw the dead body of his mother. He also noticed that some jewellery were missing. Thereafter, P.W.2 accompanied by P.W.1, went to the police station and gave a complaint (Ex.P1) to P.W.13. Based on the same, P.W.13 registered an F.I.R. (Ex.P9) in Crime No.159 of 2012 on 12.03.2012 at 6:00 a.m. The F.I.R. reached the Court on the same day at 12:40 noon.

5. P.W.13 took up investigation and he conducted the inquest before the Panchayatdhars and the inquest report was marked as Ex.P11. He also visited the place of occurrence and prepared the rough sketch and observation mahazar, marked as Exs.P2 and P12. In the course of investigation, he also arrested the accused persons and recovered the jewellery from them under seizure mahazar Ex.P8. The same was forwarded



to Court under Form 95. The dresses worn by the deceased were also seized under Ex.P14 and were forwarded to Court under Form 95. The weapon M.O-11 was also seized under Ex.P.6 and was forwarded to the Court.

6. The dead body of the deceased was sent through P.W.8 for post-mortem and P.W.10 conducted the autopsy. The autopsy report was marked as Ex.P.3. The injuries noted by P.W.10 in the dead body of the deceased are extracted hereunder:

“A moderately nourished body of a female lies back with its arm by its side. Eyes closed. Tongue inside the mouth. Hands empty. Blood stained fluid comes from both nostrils. RM present in all four limbs. External injuries: (1) An abrasion 3 x 2 cm present in front of the right petella. (2) Two lacerated wound present on the left side of the scalp (parietal) i.e., cm 4 x 2 x bone depth x cm 3 x 2 x bone depth. (in AP direction). Opening on the neck -: Hyoid bone intact. Other structures normal. Thorax - No fractured ribs. Both lungs are pale. Heart pale. Contains 100 ml of blood. Abdomen : stomach contains 100 ml of



digestive juice, liver, spleen, kidney are pale. Intestine : distended with gas. Uterus normal. Skull :- Two linear fracture present on the left side of scalp, 3 cm and 2 cm in length and corresponds to the external wound. Contusion of the membrane present below the fracture. 200 ml of blood present in the subdural space. Brain surface normal. Stomach, intestine, liver, kidney preserved in solution. Sent for chemical analysis of viscera.”

7. P.W.13 also recorded the statements of the witnesses and he collected the Special Report marked as Ex.P.17, Viscera Report marked as Ex.P.18, Serological Report marked as Ex.P.19 and Chemical Analysis Report for metal rod marked as Ex.P.20.

8. In the meantime, the accused persons are said to have given an extra-judicial confession before the Village Administrative Officer examined as P.W.12. This officer is said to have informed the Police and based on the same, the accused persons were arrested and the recovery was effected.



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9. Ultimately, the investigation was taken up by P.W.14 and he completed the investigation and filed a final report before the Judicial Magistrate I, Mayiladuthurai. The learned Magistrate served the copies to the accused persons under Section 207 of Cr.P.C and the case was committed and made over to the file of the Court below.

10. The trial Court framed charges against the appellant (A1) for offences under Sections 302 and 404 of I.P.C. As against the wife of the appellant/A2, the trial Court framed charges under Section 302 r/w Section 34 and Section 404 of I.P.C.

11. The prosecution examined P.W.1 to P.W.14 and marked Ex.P.1 to Ex.P.20 and identified and marked M.O.1 to M.O.11. Incriminating evidence that was gathered during the course of evidence against the accused persons was put to them when they were questioned under Section 313 (i) (b) of Cr.P.C. and they denied the same as false.



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12. The trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidences, came to a conclusion that the prosecution has not made out the case beyond reasonable doubt as against A2 and she was acquitted from all charges. Insofar as the appellant (A1), he was found guilty for offence under Section 304 (i) of I.P.C. and he was accordingly sentenced. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.

13. This Court has carefully considered the submissions made on either side and the materials available on record.

14. The prosecution, on the one hand attempted to project its case on the eye witness account of P.W.11. On the other hand, the prosecution also attempted to project its case and prove it through circumstantial evidence.

15. The only witness who can be of some use to consider the case of



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the prosecution based on eye witness account is P.W.11. Banumathi, who was examined as P.W.11, has deposed that she knows the accused persons and she was a resident of Manganallur. She visited the house of the accused persons at Palakudi for talking about some alliance. At that point of time, she speaks about the deceased entering into the house and P.W.11 was asked to remain in the backyard. After some time, P.W.11 heard some noise coming from inside the house. In the chief examination, she states that she saw the appellant assaulting the women with an iron rod and she fell down. Thereafter, the accused persons removed the jewellery from the deceased. However, in the cross examination, she states that she only saw the deceased lying down inside the house when she came from the backyard. The evidence of P.W.11 is not wholly reliable to believe her and proceed with the case on the basis of eye witness account. In view of the same, this Court has to necessarily look for a corroboration and the same is not available. In view of the same, it will be unsafe to appreciate the evidence in this case based on the so called eye witness account of P.W.11.



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16. In the light of the above finding, this Court has to see if the prosecution has made out its case based on circumstantial evidence. The circumstances as pointed out by the prosecution can be listed hereunder:

- (a) The cause of death was due to homicide.
- (b) The motive towards the crime.
- (c) The evidence of P.W.1, P.W.3 to P.W.6 and P.W.11 to speak about the last seen theory.
- (d) The extra-judicial confession given to the Village Administrative Officer examined as P.W.12 and
- (e) The non-explanation of the appellant regarding the incriminating evidence gathered during trial and which was put by way of questions under Section 313 (i) (b) of Cr.P.C, in short, the effect of Section 106 of the Evidence Act.

17. Insofar as the cause of death is concerned, it is clear from the evidence of P.W.10 and the Post-mortem Certificate marked as Ex.P.3 that



homicide was the cause of death of the deceased. The final opinion given by the Doctor shows that the deceased would appear to have died of shock and haemorrhage due to head injury. P.W.10 has also deposed during evidence that the two injuries found in the head of the deceased are capable of being caused by M.O.11. Hence, there is no doubt that homicide was the cause of death of the deceased.

18. The next issue in the chain of evidence is the motive behind the crime. The evidence of P.W.1, P.W.3, P.W.4 and P.W.5 shows that the deceased had started from her house by stating that she is going to the house of the accused persons. The evidence of P.W.5 also shows that she has entered into the house of the accused persons. P.W.5 is running a tea shop which is situated opposite to the house of the accused persons. It is clear from the evidence available on record that the deceased was owning some lands and it was leased to the appellant. There was some dispute on the non-payment of the lease amount and the deceased had gone to the house of the accused persons only to collect the lease amount. The overall evidence of



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P.W.1, P.W.3 and P.W.4 establishes this fact and whether this motive by itself is enough for the accused persons to do away with the deceased, is a matter to be ascertained while appreciating the other chain of circumstances. *Prima facie*, there was some misgiving between the deceased and the accused persons on the payment of the lease amount towards lands leased by the deceased.

19. The next important link in the chain of circumstances is the last seen theory. In order to establish this theory, the witness must speak about last seeing the deceased with the accused persons within a reasonable time after which the incident took place. P.W.1, who speaks about the lands being leased by the deceased, talks about the deceased informing her on 11.13.2012 at about 11:00 a.m. that she is going to the house of the accused persons to receive the lease amount. P.W.1 also states in her evidence that an ambulance came to the house carrying the body of the deceased and it was followed by a two wheeler driven by the appellant who stated that the deceased sustained injuries and died in the hospital. P.W.3 also states in her



evidence about the deceased going to the house of the accused persons to collect the lease amount. She also speaks about receiving a phone call at about 2:00 p.m. from an auto driver who informed about the demise of Jayalakshmi and that the body has been kept in Balaji Hospital. The next important evidence is that of P.W.5 who is a tea shop owner having a shop opposite to the house of the accused persons. He states that on 11.03.2012 when he was in his tea shop, he saw the deceased Jayalakshmi getting down from the bus at about 12:30 p.m. and entering into the house of the accused persons. After 45 minutes, he also saw an auto coming to the house of the accused persons, which was driven by P.W.6 and the deceased being taken in that auto.

20. The next important evidence is that of P.W.6 who is the auto driver. He states that he got a phone call from the appellant and he was informed that a lady sustained injuries and she must be taken to Balaji Nursing Home. Immediately, P.W.6 rushed to the house of the accused persons and the deceased was shifted to the auto and she was accompanied



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by P.W.11. This witness further states that the Doctor who examined the deceased declared her as brought dead and hearing about the same, P.W.11 ran away from the auto. Thereafter, the accused persons came to the place and they arranged for an ambulance and the body of the deceased was shifted to the ambulance.

21. The last important witness in this regard is the evidence of P.W.11, which has already been dealt with supra. This witness clearly speaks about the deceased being available in the house of the accused persons and the accused persons directing her to take the deceased to the hospital in the auto rickshaw belonging to P.W.6.

22. A cumulative reading of all the above witnesses, clearly shows that the deceased was found in the house of the accused persons and she was taken to the hospital from the house of the accused persons and ultimately, the deceased was dropped in the house of P.W.1 in an Ambulance which was accompanied by the appellant in a two wheeler. Thus, the



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prosecution has clearly established the last seen theory in this case. Accordingly, the third limb of the chain of circumstances has also been proved by the prosecution.

23. The prosecution has relied on the extra-judicial confession given by the accused persons to P.W.12. An extra-judicial confession by itself is a very weak type of evidence. The Court must act upon it with caution and the Court will always look for an independent reliable corroboration before placing reliance upon an extra-judicial confession. In the present case, the extra-judicial confession given by the accused persons before P.W.12 can be acted upon since there are other independent reliable corroboration available by means of other evidences. Hence, the extra-judicial confession also can be taken to be one more link in the chain of circumstances.

24. The adverse evidence that was collected in the course of trial, was put to the appellant and the appellant has merely denied the same as false when he was questioned under Section 313 (i) (b) of Cr.P.C. The appellant



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should have necessarily explained as to what actually happened in the house when the deceased came to the house. The material evidence of P.W.11 in this regard has not been properly explained by the appellant. Hence, a matter which was exclusively within the knowledge of the appellant was not explained by the appellant and hence, this will prove to be the last link in the chain of circumstances. The prosecution has discharged the initial burden of establishing the evidence that is available against the appellant under Section 101 of the Evidence Act. Once that is done, the burden shifts to the appellant and he is duty bound to explain facts especially within his knowledge. The Apex Court in no uncertain terms has held that where the accused does not offer any explanation on the incriminating circumstances that are put against him, the same becomes an additional link in the chain of circumstances to make the chain complete. Useful reference can be made to the judgment of the Apex Court in the case of ***State of Tamil Nadu Vs. Rajendran*** reported in ***1999 8 SCC 679*** and in the case of ***Rumi Bora Dutta Vs. State of Assam*** reported in ***2013 7 SCC 417***.



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25. The appellant by not answering or explaining the incriminating circumstances that was put against him based on the evidence gathered during trial, has created an adverse circumstance against himself and thereby Section 106 of the Evidence Act comes into play.

26. In the light of the above discussion, this Court finds that the prosecution has proved the case beyond reasonable doubt against the appellant. The learned counsel for the appellant relied upon the judgment of the Apex Court in the case of *Jabir and others Vs. State of Uttarakhand* reported in *2023 SCC OnLine SC 32* and in the case of *Ram Pratap Vs. The State of Haryana* reported in *2022 LiveLaw (SC) 1025* to emphasise about the proof that is required to sustain the prosecution case on circumstantial evidence. There is no quarrel on the law that has been placed before this Court and this Court finds that the facts that have been established by the prosecution in this case excludes every hypothesis except the guilt of the appellant.



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27. This Court does not find any ground to interfere with the judgment and order of conviction and sentence passed by the Fast Track Mahila Court, Nagapattinam in S.C.No.48 of 2013, dated 24.11.2015 and the same is hereby sustained. The appellant was enlarged on bail during the pendency of this appeal by an order dated 14.03.2016. Since this Criminal Appeal is dismissed, there shall be a direction to the appellant to surrender before the trial Court within a period of two weeks from today to undergo the remaining sentence. If the appellant does not surrender, the trial Court shall take immediate steps to secure the appellant and to make him undergo the remaining sentence.

28. This Criminal Appeal stands dismissed.

27.02.2023

Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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To

1. The Sessions Judge
Fast Track Mahila Court,
Nagapattinam.
2. The Inspector of Police,
Manalmedu Police Station,
Manalmedu,
Nagapattinam District.
(Crime No.159 of 2012)
3. The Public Prosecutor,
High Court of Madras.



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N. ANAND VENKATESH, J

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Pre-Delivery Judgment in
Criminal Appeal No.747 of 2015

27.02.2023