



CRL.A(MD)No.80 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 06.02.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**CRL.A.(MD)No.80 of 2021
and
CrI.M.P(MD)No.1358 of 2021**

Prabhu

.. Appellant/Sole Accused

Vs.

State rep. by

The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.

(Crime No.312 of 2016)

.. Respondent/ Complainant

PRAYER: Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records and set aside the order and judgment of conviction dated 16.12.2020 passed in S.C.No.41/2017 by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram, and to acquit the appellant/accused from all charges levelled against him.



WEB COPY



CRL.A(MD)No.80 of 2021

For Appellant : Mr.N.Anantha Padmanaban
Senior Counsel
for Mr.R.Alagumani

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

This appeal is filed by the sole accused, who was found guilty and convicted for the offence under Sections 380, 302 and 449 of IPC and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo one year Simple Imprisonment for the offence under Section 380 IPC, to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo two years Simple Imprisonment for the offence under Section 449 IPC and to undergo Life Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo two years Simple Imprisonment for the offence under Section 302 IPC, vide order dated 16.12.2020 in S.C.No.41/2017



CRL.A(MD)No.80 of 2021

by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram,

WEB COPY

2. The case of the prosecution is that the accused, on 29.04.2016 at about 10.00 hours went to the house of the deceased Umapathy under the pretext of getting drinking water and he has followed her to the kitchen and demanded money from her to meet his legal expenses. When she refuses, he requested her to give jewels so that he can pledge the jewels and raise money. For that also, she refused. So got infuriated to that he has slit her throat. In struggle, Umapathy has also got some of the hairs in her hand, but she died due to hemorrhage. Unfortunate to the accused, the entire incident been witnessed by the 8 years old daughter of the deceased, who was watching TV at that time. Therefore, when the matter came to notice of the police, case was registered in Crime No.312/2016. Soon after inquest, fearing arrest, the accused has surrendered before the Judicial Magistrate No.II, Madurai. On 04.05.2016, he was taken into police custody and statements recorded. Based on his confession, some of the material objects been recovered. From the scene of occurrence, bloodstains with foot prints were recovered. The slippers of the accused was found near the scene of



CRL.A(MD)No.80 of 2021

occurrence. 50 meters away from the scene of occurrence, a purse containing Aadhar card, PAN card and Debit card, Driving license were all recovered. In support of the prosecution 24 witnesses examined, 17 Exhibits marked and 20 material objects marked.

3. Primarily relying upon the evidence of P.W-2, the eyewitness minor daughter of the deceased and P.W-6, the grandfather of the deceased, by chance saw the accused running while P.W-6 was about to visit his grand daughter's house. As far as the scientific evidence is concerned, the prosecution case of the DNA test of hair found in the hands of the deceased and hair samples taken from the accused being tallied as per the forensic report Ex.P.9 and the bloodstained footprint taken from the scene of occurrence and the accused each tallies as per Ex.P14. Believing the ocular evidence of the minor child, who has narrated the sequence of event, the trial Court has held the accused guilty.

4. The learned counsel appearing for the appellant would submit that the case of the prosecution bristles with infirmity. The presence of P.W-6 as



CRL.A(MD)No.80 of 2021

it is spoken is highly doubtful. The case of the prosecution is that based on Ex.P1 the criminal law is set into motion. This is unbelievable since evidence of P.W-1, P.W-2 and P.W-3 would clearly show that even before the registration of FIR, police were present and aware of the incident.

5. The learned counsel for the appellant primarily argued two crucial points namely, the prudence of trial Court relying upon Ex.P9-DNA report and Ex.P14-Serological Report which fails to clear the test of relevancy. It is contended that there is no evidence to show that the hair of the accused was collected to be compared with the hair found in the hands of the deceased through DNA mapping. Similarly, there is no evidence to show the footprints with bloodstains was collected from the scene of crime or the alleged slipper found near the scene of crime belongs to the accused and there were bloodstains present in the slipper. The learned counsel for the appellant would also highlight the failure of the prosecution to connect the purse with Aadhar card, Debit card, PAN Card and Driving license to that of the accused. In addition, the delay in forwarding the Section 161 statements of the witnesses and the absence of reference to P.W-2 in the inquest report



CRL.A(MD)No.80 of 2021

to indicate her presence cumulatively show the prosecution has not established their case that only the accused is the murderer.

6. Further, the learned counsel for the appellant would also submit that the prosecution claimed that they have recovered four mobile phones from the scene of crime but their investigation does not indicate anything to connect the accused to that of the phones recovered except a stray entry in one of the report given by the service provider indicating the name of the accused and his phone number. The learned counsel submitted that the trial Court strongly relied upon the stray entry in Ex.P13 which does not link the accused to that of the mobile phones or to the crime.

7. Per contra, the learned Additional Public Prosecutor would submit that it is a clear case of direct evidence as spoken by P.W-2, minor daughter of the deceased. Her present in the house cannot be suspected or the genuineness of the testimony to be doubted. The prosecution as early as possible has also recorded Section 161 statements of this witness and also P.W-6, grandfather of the deceased. During the day time, the accused has



gone to the house of the deceased, demanded money and when she refused, her throat was slit and Thali chain of the deceased was taken away by the accused. Three days after the occurrence, the accused surrendered and he was taken into police custody and pursuant to the information disclosed by him on 05.05.2016, the stolen articles were recovered under mahazar (Ex.P11) in the presence of the witnesses. The accused conduct and recovery of the missing article based on his confession leads to a presumption under Section 114 of the Evidence Act coupled with the direct ocular evidence of P.W-2 clearly fix the guilt only on the accused.

8. Heard the rival submissions made by both side. Records perused.

9. Ex.P1 is the complaint given by one Muniasamy, who is the brother of the deceased's husband. The reading of Ex.P1 indicates that on receiving telephonic information from his father-in-law Subramanian (P.W-5), he came to know about the incident and therefore suspecting that Umapathy, the deceased might have been murdered for gain. The complaint has been given to the respondent police at about 12.45 hours. Subsequently, the



CRL.A(MD)No.80 of 2021

Investigation Officer has gone to the spot and has conducted inquest which is reduced into writing and marked as Ex.P17. In the inquest report, a substantial part of the prosecution case been capsulized in Column.9. Though the learned counsel for the appellant would submit that the presence of P.W-2 is not found in the inquest report nor P.W-23 has said about the presence of P.W-2 in his deposition, the omission to mention the presence of P.W-2 in inquest report as well as in the deposition does not rule out that P.W-2 was not present in the house. Presence of a minor girl child in her house needs no explanation. It is quite natural a 8 years old girl being in the house. Her testimony both before the trial and in the course of the trial does not show any trace of embellishment or falsity. It is a wholly reliable evidence. She has clearly identified the accused, as the person who came to the house on the day of occurrence and slit the throat of her mother. She has immediately rushed to the neighbouring house, where P.W-15 was there and informed about the incident. P.W-15 corroborates the evidence of P.W-2. Her evidence is not been impeached in any manner during the cross examination.



CRL.A(MD)No.80 of 2021

10. The learned counsel for the appellant while referring the testimony of P.W-2 would submit that she nowhere mentioned the name of the accused nor there was an identification parade conducted by the Investigating Officer during the course of investigation. The identification parade, which is conducted as per Section 9 of the Evidence Act is only an indication for the police to confirm themselves whether they are proceeding in the right direction of the investigation. In this case, the accused himself has surrendered before the Court on 02.05.2016 and taken into police custody for police interrogation. Much water flows between these three days and it would have been a superfluous exercise for conducting the identification parade.

11. A doubt been created regarding the failure of the prosecution to connect or link the accused with the purse alleged to have been recovered 50 meters away from the scene of crime. This Court find that since the content of the purse was not marked as material object before us to comment upon that, we ignore the said portion of the prosecution. Likewise, the presence of P.W-6 is also doubted. Even if the contention of the learned



CRL.A(MD)No.80 of 2021

counsel for the appellant is accepted and P.W-6 evidence is ignored as false, the evidence of P.W-2 which is corroborated by evidence of P.W-15 is so natural, true and reliable which does not make any dent in the case of the prosecution to hold that the case against the accused not proved beyond doubt.

12. Ocular evidence of P.W-2 corroborated by evidence of P.W-15, the presence of hair in the hands of the deceased which found to be tallied with the hair of the accused, which has been collected in the hospital pursuant to the request made by the Investigating Officer to the Magistrate. Though these communications were not marked as exhibits, they are the internal communication between the Court and the Hospital. Therefore, the failure of the Investigating Officer to explain the sequence cannot be taken as advantage of the accused when the records clearly indicates about the manner in which the samples were drawn. Since it was done on the order of the Magistrate, this Court takes judicial notes of the communication between the Magistrate and the Hospital authority, which is found in the CD file and pursuant to the request made by the Investigating Officer, the



CRL.A(MD)No.80 of 2021

samples have been drawn on the instruction of the Judicial Magistrate and same has been forwarded for the test in the Forensic Lab. Ex.P9 indicates that two items were received at the Laboratory on 18.07.2016 and they were subjected to DNA test.

13. The comparative analysis of the test resulted in arriving at a conclusion that item No.1 hair pieces belongs to a male individual and or that of the alleged accused Prabu ie. Item No.2 hair pieces. The learned counsel for the appellant would submit that the accused ought to have been given an opportunity to disprove the case of the prosecution that the hair collected from the accused was sent to lab for comparison since Mahendran the police constable, who has submitted the samples to the laboratory not been examined. Hence, a valuable opportunity to the accused to cross-examine and disprove the case of the prosecution has last.

14. This Court find no merit in the said argument. The P.W-14, the forensic expert, who conducted the DNA test has mounted the witness box and has referred about the request from Judicial Magistrate No.II,



CRL.A(MD)No.80 of 2021

Ramanathapuram and her letter No.901/16 dated 15.07.2016 in respect of Crime No.312/2016 and same was received through police Constable No. 404 Mahendran. In the cross examination, there is no suggestion to the witness to doubt that item No.2 was not the sample drawn from the accused. Therefore, it is incorrect to say that no opportunity was given to the accused to disprove or discredit the evidence of P.W-14 and his report Ex.P9. For the said reasons, this Court finds no infirmity in the conclusion of the trial Court to interfere in the appeal.

15. In the result, this Criminal Appeal stands dismissed and the order and judgment dated 16.12.2020 passed in S.C.No.41/2017 by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram, is hereby confirmed. Consequently, connected miscellaneous Petition is closed.

[G.J.,J.] & [S.M.,J.]
06.02.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
PJJ



WEB COPY



CRL.A(MD)No.80 of 2021

To

1.The Sessions Judge,
Fast Track Mahila Court,
Ramanathapuram.

2.The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL.A(MD)No.80 of 2021

**DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.**

PJL

CRL.A.(MD)No.80 of 2021

06.02.2023