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Crl.A.No.224 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.224 of 2019

Radha

... Appellant/Sole Accused

v.

State through

The Inspector of Police,

Uddanapalli Police Station,

Krishnagiri District.

(Crime No.73/2017)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.96 of 2017 dated 28.03.2019, on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, and set aside the conviction and sentence imposed in judgment dated 28.03.2019 and acquit the appellant.

For Appellant : Mr.S.Mohamed Ansar

For Respondent : Mr.E.Raj Thilak

Additional Public Prosecutor



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JUDGMENT

(Order of the Court was made by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused challenging the conviction and sentence imposed upon her vide judgment dated 28.03.2019 in S.C.No.96 of 2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

2. For the sake of convenience, the accused is hereinafter referred to as the 'appellant'.

3(i). It is the case of the prosecution that the deceased was the daughter of appellant, aged about 1 year and 3 months and one of the two children born to appellant and PW1; that the appellant was the 2nd wife of PW1; that the appellant developed illicit intimacy with one Srinivasan and started living with him; that on 15.03.2017, PW1 brought the appellant along with the children to his house after a compromise; that on 17.03.2017, the appellant caused the death of the deceased, by strangulating her neck,



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with a black-coloured cloth stating that the deceased was the cause for all her troubles and that she would be happy only if the deceased is done to death.

(ii) It is the further case of the prosecution that PW1 after returning to work found a large gathering in his house; that when he enquired them, he came to know that his wife had caused the death of his child; and that he lodged a complaint [Ex.P8] to PW13, the Sub-Inspector of Police, who in turn registered the FIR [Ex.P9] in Cr.No.73 of 2017 against the appellant, for the offence under Section 302 of the IPC.

(iii) PW15, the Inspector of Police took up the investigation, went to the scene of the occurrence and prepared the Observation Mahazar [Ex.P12] and the Rough Sketch [Ex.P13]; he conducted an inquest and prepared the inquest report [Ex.P14] in presence of the witnesses and made a requisition for postmortem, which was conducted by the doctor-PW14, who had issued the postmortem certificate [Ex.P11]; he arrested the appellant at about 12.45 p.m., on 18.03.2017 and on her confession, recovered a nylon blouse



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which was used by her to strangle the neck of the deceased; thereafter, he seized the dress materials of the deceased and sent it under Form-95 to the Court and thereafter, handed over the investigation to PW16.

(iv) PW16, examined the other witnesses, obtained the report from the forensic sciences laboratory and filed the final report on 08.05.2017 against the appellant, for the offence under Section 302 of the IPC, before the learned Judicial Magistrate No.II, Hosur.

(v) On the 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.96 of 2017 and was made over to the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, for trial. The trial Court framed charges under Section 302 of the IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 16 witnesses as P.W.1 to P.W.16, marked 18 exhibits as Ex.P1 to Ex.P18, and marked 5



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Material Objects as M.O.1 and M.O.5. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against her, she denied the same. The appellant did not examine any witnesses or mark any documents on her side.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant guilty of the charge levelled against her. Accordingly, the appellant was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two years. Hence, she has preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.S.Mohamed Ansar, learned counsel appearing for the appellant/accused, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. Mr.S.Mohamed Ansar, the learned counsel for the appellant



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submitted that it is a case of no evidence and all the witnesses, including PW1 did not support the prosecution case. Recovery of the blouse, which is the dress material of the appellant, does not lead to any inference pointing out the guilt of the appellant and hence, he prayed for acquittal of the appellant.

6. The learned Additional Public Prosecutor *per contra* submitted that the prosecution has established its case beyond reasonable doubt; that the judgment of the trial Court is in accordance with the law; and that there is no reason to interfere with the finding of the trial Court. Therefore, he prayed for dismissal of the appeal.

7. We have carefully considered the rival submissions and perused all the relevant materials available on record.

8. As stated earlier, the prosecution examined 16 witnesses. PW1 is the father of the deceased and the husband of the appellant, who is said to have lodged the complaint. PW2 is the brother-in-law of PW1 and is a



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hearsay witness. PW3 is known to both the deceased and the appellant and he speaks about participating in the mediation between PW1 and the appellant, as regards the disputes between them. PW3 was treated hostile, as according to the prosecution, he has stated before the police that he came to know through one Lachumamma-PW4 that the appellant had caused the death of the deceased, and did not support the prosecution case in that regard. PW4 who had allegedly seen the appellant strangulating the neck of the deceased, turned hostile. PW5, who is the father of PW1, turned hostile; PW6 and PW7, who are witnesses to the observation mahazar and rough sketch, turned hostile. PW8, who is a hearsay witness, turned hostile. PW9, who had allegedly translated the Section 161 Cr.P.C., statement of one Srinivasan to the police and spoke about his relationship with the appellant, turned hostile.

9. PW10 and PW12 are the Constables who had assisted the investigating officer. PW11 is the Village Administrative Officer and a witness to the arrest, confession and recovery from the appellant. PW13 is the Sub-Inspector of Police, who had registered the FIR. PW14 is the



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postmortem doctor, who issued the postmortem certificate-Ex.P11. PW15 is the investigating officer, who commenced the investigation and PW16 is the investigating officer, who filed the final report.



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10. From the above narrative, it could be seen that the prosecution sought to establish the involvement of the appellant, through the evidence of PW4, who had allegedly seen the appellant strangulating the neck of the deceased and through the evidence of PW3 and PW5, to whom, PW4 had informed about the occurrence. PW3 to PW9 turned hostile and nothing has been elicited in the cross examination that would render any part of their deposition reliable. The witnesses have been discredited by the prosecution by suggesting to them that they have been won over. Therefore, the evidence of PW3 to PW9 is of no avail to the prosecution.

11. PW1 is the husband of the appellant, who had lodged the complaint. He had stated in his deposition that when he came back home in the evening, he saw a huge crowd gathered outside his house; that the police were also present; that they had asked him to sign on a paper and he had affixed his thumb impression; and that he did not know what was written in the complaint. In the cross examination, he would state that he had not made any complaint to the police and that it is not correct to say that the appellant/his wife has caused the death of his child. In our view, this



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evidence cannot be relied upon by the prosecution even to prove the fact that a complaint was lodged by PW1. The motive, therefore, which is sought to be established through PW1, has not been proved.

12. PW2, is a hearsay witness and he would admit in his cross examination that he did not know as to how, the child died.

13. In this case, PW14 conducted postmortem and found that the deceased would have died of asphyxia due to strangulation. PW14 has also noted the following external injuries:

“A continuous, reddish brown colour ligature mark, encircling the neck, 23cm in length, 2cm in breadth, in the centre of the neck. 3cm below the chin, 4cm above the supra sternal notch. On c/s. mild congestion seen.”

14. The medical evidence therefore suggests that the deceased suffered a homicidal death. However, as stated earlier, none of the witnesses have supported the prosecution. The recovery of a blouse from the possession of the appellant, which is stated to have been used for strangulation, is hardly of any consequence, firstly, because it is the wearing



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apparel of the appellant and cannot by itself incriminate the appellant.

Secondly, there are no other circumstances connecting the appellant to the crime. Therefore, this is a case of no evidence and we cannot hold the appellant guilty of the offence. Hence, the conviction and sentence imposed on the appellant, are liable to be set aside.

15. In the result, the Criminal Appeal is allowed and the appellant is acquitted of the charge. The conviction and sentence imposed upon the appellant in S.C. No.96 of 2017 dated 28.03.2019, on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
24.06.2024

Index : yes/no
Neutral citation : yes/no
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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To

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

2. The Inspector of Police,
Uddanapalli Police Station,
Krishnagiri District.

3. The Superintendent of Prisons,
Women Special Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras

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