



Crl.A.(MD).No.217 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.04.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

Crl.A.(MD).No.217 of 2020

S.Anbarasan

.. Appellant/Sole accused

Vs.

State through
The Inspector of Police,
Vangal Police Station,
Karur District.
(Crime No.276 of 2018)

.. Respondent/Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment dated 21.02.2020 made in S.C.No.9 of 2019 on the file of the Additional Sessions Judge/Fast Track (Mahila) Court, Karur and set aside the same.

For Appellant : Mr.T.Antony Arul Raj
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



Crl.A.(MD).No.217 of 2020

JUDGMENT

(Judgment of the Court was made by A.D.JAGADISH CHANDIRA,J.)

This Criminal Appeal is filed against the judgment dated 21.02.2020 passed in S.C.No.9 of 2019, by the learned Additional Sessions Judge, Fast Track (Mahila) Court, Karur.

2. The Trial Court framed a charge against the appellant, as detailed below:

Charge	Penal Provision
1	302 IPC

3. By judgment dated 21.02.2020, the Trial Court convicted the appellant and sentenced him, as detailed below:

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo life imprisonment	Rs.1000/- in default to undergo three months simple imprisonment

The period of detention already undergone by the appellant was directed to be set off under Section 428 of Cr.P.C.



Crl.A.(MD).No.217 of 2020

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4. The case of the prosecution is as under:

4.1. The deceased Baby and her brother Bharathiyar were living with her parents at Sangarampalayam, Minnampalli Post, Manmangalam Taluk, Karur District. She was working in a petrol bunk at Thanneerpanthalpalayam and thereafter, in a bakery named Annapoorna Bakery at Mohanur in Namakkal District. The appellant was working as Conductor in a private Bus SPLS plying between Karur and Vangal. The deceased Baby used to travel in the said bus. During that time, the appellant and the deceased got acquainted with each other and the appellant on the assurance of marrying her developed intimacy with her.

4.2. While so, the deceased had compelled the appellant to marry her. But the appellant refused to marry the deceased and also threatened her that he would end her life, if she compels to marry her. The deceased has narrated the same to her parents. While so the appellant who was not inclined to marry the deceased, decided to end her life and on 12.09.2018, in the morning, the appellant called the deceased to go somewhere for outing and the deceased told her bakery owner that she felt stomach ache



Crl.A.(MD).No.217 of 2020

and took leave and the appellant brought the deceased to Valayapatti bypass road, where they had conversation for an hour. At that time, since the deceased had compelled the appellant to marry her, and the appellant who wanted to avoid marrying her decided to end her life and told her to come at 5.00 PM near the river side of Vangal to discuss about the marriage.

4.3. Believing the words of the appellant, the deceased on 12.09.2018 at 6.30 PM, went to the place called as Popular Mudhaliar Vaikkal at Keelachakkarapalayam Road and they discussed about the marriage, During the course of discussion they had wordy altercation and the appellant took a stone and violently hit on the deceased on her forehead due to which she fainted and fell down. Thereafter the appellant dragged the deceased to the water flowing in the Popular Mudhaliar Vaikkal and immersed her by pressing her neck and thereby she got suffocated and lost her breath. The VAO who found the dead body in a suspicious circumstances gave a complaint to the respondent police based on which a case was registered in Crime No.276 of 2018 under Section 174 Cr.P.C. However, during the course of investigation, the respondent finding that the appellant had committed the offence altered the case to one under Section 302 IPC.



Crl.A.(MD).No.217 of 2020

4.4. After examining various witnesses and collecting reports from the experts, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.31 of 2018 on the file of the learned Judicial Magistrate No.II, Karur, under Section 302 IPC against the appellant.

5. On appearance of the appellant, and after compliance of the provisions of Section 207 of CrPC the case was committed to the Principal Sessions Judge, Karur and taken in S.C.No.9 of 2019 and was made over to the Additional Sessions Court, Fast Track Mahila Court, Karur, for trial. The Trial Court framed the charge against the appellant, as detailed in Paragraph No.2 supra.

6. When questioned, the appellant pleaded “not guilty” and sought to be tried. To prove the case, the prosecution examined 19 witnesses and marked 17 exhibits and one material object. When the appellant was questioned under Section 313 Cr.P.C in respect of the incriminating circumstances against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined on the side of the appellant nor any document marked.



Crl.A.(MD).No.217 of 2020

7. The Trial Court, after considering the evidence on record and hearing either side, by judgment dated 21.02.2020, found the appellant guilty and convicted and sentenced him, as detailed in Paragraph No.3 supra. Challenging the above said conviction and sentence, the present Criminal Appeal is filed.

8. Mr.T.Antony Arul Raj, learned counsel for the appellant would submit that it is a case of circumstantial evidence based on last seen theory. In this case, the prosecution has failed to prove the chain of circumstances to infer that the appellant is the person, who has committed the offence. . P.W.2 a lorry driver who is known to the deceased and P.W.3 who is a close friend of PW2 are stated to be chance witnesses who are said to have last seen the appellant and the deceased together prior to the occurrence. Their evidence cannot be believed for the reason that they had not immediately after the death informed about having seen the deceased in the company of the appellant either to the relatives of the deceased or to the police and they are said to have informed the police only after 4 days of the occurrence, thereby their evidence is highly suspicious and doubtful. The learned counsel further submitted that it is the admission of P.W.2 that his wife had



Crl.A.(MD).No.217 of 2020

gone to the house of the deceased and quarrelled with her and her family members suspecting that he was having illicit affair with the deceased and in such circumstances, P.W.2 is an interested person in the prosecution and thereby his evidence against the appellant cannot be relied upon. The trial court also had failed to take into consideration the material contradictions in the evidence of PW2 and PW3. He would further submit that the medical evidence does not conclusively prove the case as projected by the prosecution. As per the case of the prosecution, there was a wordy altercation and that the appellant is alleged to have taken a stone and violently hit on the forehead of the deceased due to which she had fainted and the appellant is alleged to have dragged her to the water channel and immersed her by pressing her neck due to which the deceased is said to have died of suffocation. However, the medical evidence and the opinion of the expert does not support the case as projected by the prosecution. The learned counsel would also submit that though the call record details (CDR) have been filed and the Nodal Officers have been examined to prove that there were telephonic conversations between the appellant and the deceased, it alone would not suffice to prove the guilt of the appellant when it is admitted by the prosecution that the deceased had also spoken to several



Crl.A.(MD).No.217 of 2020

other persons for long duration during the relevant time inferring that the deceased had relationship with several other persons and no investigation had been done in that regard. Further the electronic evidence is not clinching to the effect that the appellant and the deceased were present at a particular location during the relevant time. He would further submit that if the death would have caused by the appellant in the manner as suggested by the prosecution there could have been marks of violence either on the body of the deceased or on the appellant, whereas as per the medical evidence no such injuries were found on the body of the deceased. He would further contend that the prosecution has miserably failed to prove its case beyond all reasonable doubts and thereby, the appellant is entitled for acquittal.

9. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor would submit that though it is a case of circumstantial evidence the prosecution has proved its case beyond all reasonable doubts. P.W.2 and P.W.3 have last seen the appellant going along with the deceased on 12.09.2018 at 5.00 PM and they have seen the appellant returning alone. Further the appellant after the occurrence absconded and he was arrested on



Crl.A.(MD).No.217 of 2020

16.09.2018 in the presence of P.W.5 and he had given a confession, based on which, the stone used for hitting the deceased was recovered. P.W.8, the bakery owner and employer of the deceased had also seen the appellant along with the deceased on the date of the occurrence. He would further submit that no proper explanation has been given by the appellant when questioned under Section 313 of Cr.P.C. He would further submit that the prosecution has proved its case beyond reasonable doubts and the Trial Court had rightly found the appellant guilty and convicted him and there is no infirmity in the judgment and thereby seek for dismissal of the appeal.

10. In reply, the learned counsel for the appellant would submit that as per the evidence of P.W.8, though he is stated to have seen the deceased with a boy chatting under a tamarind tree near Valayapatti Sub Road after leaving the Bakery taking leave from duty complaining of stomach ache, his conduct of not questioning her creates doubt and further he had also not identified the appellant in the court during trial as the person found chatting with the deceased.



11. Heard the learned counsels on both sides and perused the materials available on record. Now what is to be seen is whether the prosecution has proved its case beyond reasonable doubts and whether trial Court is right in finding the appellant guilty and convicting him.

12. Undoubtedly, the case of the prosecution rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of the Apex Court in the case of *Sharad Birdhichand Sardav. State of Maharashtra*, wherein it has been held:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmiv. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]:

“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 appellant. Again, the



circumstances should be of a conclusive 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 appellant and it must be such as to show that within all human probability the act must have been done by the appellant.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an appellant can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabao Bobade v. State of Maharashtra [(1973) 2 SCC 793; 1973 SCC (Cri) 1033; 1973 Cri LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the appellant must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the appellant, that is to say, they should not be explainable on any other hypothesis except that the appellant is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and must show that in all human probability the act must have been done by the appellant.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

9. It can thus clearly be seen that it is necessary for the prosecution



WEB COPY



Crl.A.(MD).No.217 of 2020

that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court held that it is a primary principle that the appellant 'must be' and not merely 'may be' proved guilty before a court can convict the appellant. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the appellant, that is to say, they should not be explainable on any other hypothesis except that the appellant is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and must show that in all human probabilities the act must have been done by the appellant.

10.It is settled law that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An appellant cannot be convicted on the ground of suspicion, no matter how strong it is. An appellant is presumed to be innocent unless proved guilty beyond a reasonable doubt.

13. In the light of the principles laid in the above judgments while analyzing the evidence on record, the case of the prosecution as culled out from the witnesses is as under:

P.W.1 Malayappasamy is the Village Administrative Officer of Keelachakkarapalayam Village at the time of occurrence who has given the first information. He has stated in his evidence that on 13.09.2018 at about 10.30 A.M he received information that a dead body of a woman aged about 22 years was found lying in the canal of Keelachakkarapalayam and



Crl.A.(MD).No.217 of 2020

thereby he rushed to the spot and saw the body floating on the water facing down. He has further stated that the deceased wore black colour Dupatta and black colour Tops with Red Colour border and Black Colour Pant and when he had turned over the body in the presence of the public he was not able to identify the person, and therefore he lodged a written complaint Ex.P.1 in Vangal Police Station. Thereafter, on the next day at about 8.00 P.M. on enquiry in the locality he came to know that the deceased was one Baby, daughter of Paramanandam of Sangarampalayam and he informed the same to the Inspector of Police Vangal Police Station.

14. PW.2 Sudhakar who is a lorry driver had deposed that he is a resident of Kattamedu, at Vangal and that he knows the appellant who was working as conductor in SPLS bus. Before eight months he and his friend Chandran/ PW3 had gone to their owner's house to get the salary and at that time they had seen the appellant and the deceased walking near Vaangal Chakkarapalayam Popular canal . While returning from Nerur they saw the appellant standing alone near Vangal chakkarapalayam canal bus stop. Later PW.2 went on his trip and after four days he came to know that Baby working in Vallalar kottam HP Petrol Bunk was found lying dead in the



Crl.A.(MD).No.217 of 2020

canal and that he went to the police station informed the police about having seen the deceased and the appellant near the canal four days ago.

15. PW.3 Chandran has stated in his evidence that he is a driver and PW.2 is his friend and that he knows the appellant. Nearly 8 months ago, he saw the deceased and the appellant around 5.30 PM walking near Popular Mudaliar Vaikkal while he was going to Nerur to receive his salary along with his friend PW.2 Sudhakar and that while they were returning from Nerur at 6.15 PM on the same day, they saw the appellant alone standing near the Vangal Chakkarapalayam canal bus stop. After four days when he came back to his village he heard from the Villagers that Baby was dead and that he along with PW.2 went to the police station and informed the Inspector of police that they saw the deceased Baby along with the appellant.

16. PW.4 Valarmathi, the mother of the deceased has deposed that she is residing at Sankarampalayam along with her husband who was working in a hollow block Company. They have one son by name Bharathiyar and one daughter the deceased named Baby who was working in a petrol bunk



CrI.A.(MD).No.217 of 2020

at Sankarampalayam after finishing her plus-two studies. Her daughter used to go to the petrol bunk at 9.00 AM and return home at 6.00 PM.

Subsequently her daughter went to work in a bakery and that she was not in good mood for few days before the occurrence and when she had enquired her daughter about this she had her told that she was in love with one Anbarasan and that he had refused to marry her and thereby she was depressed. Before eight months Baby has not returned home from work and on enquiry with the workers in the said bakery, they have informed that she had left home from the bakery taking leave complaining of stomach pain and that on the next day she saw the body of her daughter at Government Medical College Hospital, Karur. Further she has stated that she saw injuries on the forehead, right hand and neck of the body of her daughter. She had suspicion on the appellant having murdered her daughter.

17. PW.5 Vijayanandan who is the VAO of Vangal at the time of occurrence has stated that when he was in his office on 16.09.2018 at 1.00 P.M the Inspector of Police Vangal had informed him that he had arrested the appellant in Cr.No 276/2018 and had asked him to come along with his assistant Arumugam to Agraharam Pirivu Vangal to be witnesses to the



Crl.A.(MD).No.217 of 2020

confession and they were there at about 1,30 PM and at that time the Inspector of Police Vangal, the appellant and one woman Police Constable were already present there. Further he has deposed that the Inspector of Police informed him about the appellant. At the time the appellant has given confession voluntarily stating that he belongs to Namakkal District and his father's name is Selvaraj and that he fell in love with one Baby of Sankarampalayam and they used to go far away places for enjoyment. Since the said Baby compelled him to marry her, he thought that if the love affairs is known to his family it would affect him and he refused to marry her and on the evening of 12.09.2018 as per his request Baby had come to Popular canal at Keelachakkarapalayam, Vangal for enjoyment and they were chatting. At the time since Baby had compelled him to marry her there was a wordy altercation and thereby the appellant took a stone which was lying nearby and hit Baby on her forehead and she got fainted and then the appellant immersed her head in the canal by pressing her neck and caused her death and left the body there itself, and later he broke the mobile phone used by the deceased and threw it in the canal and concealed the stone which was used to hit the deceased under a bush near the canal. Based on confession the police recovered M.O.1, black colour stone under seizure



Crl.A.(MD).No.217 of 2020

mahazhar/Ex.P.3. Admitted portion of the confession statement is Ex.P.2.

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18. PW.6 Thiagarajan is the witness to the observation mahazar. He has deposed that he is running a Saloon and residing in Kanakkupillai Street at Vangal and that about 9 months ago one day while he was walking along the Keelachakkarapalayam at about 12.30 PM alongwith Muniyappan, he heard that a body of a woman was lying in the Popular Mudhaliar Vaikkal. They went there. At that time, the police were taking the body from the canal and keeping at edge of the canal. Then the police prepared observation mahazar Ex P4 and rough sketch Ex P 14 in their presence and they attested the same.

19. PW.7 Muniyappan has corroborated the evidence of P.W.6.

20. PW.8 Karthikeyan who is the owner of the bakery where the deceased was working at the time of the occurrence. He had deposed that he is residing at Mohanoor at Namakkal District and running a Bakery by name Annappoorna Bakery and the deceased Baby joined in his bakery 10 days before the occurrence and was working in his Bakery and that one day



Crl.A.(MD).No.217 of 2020

Baby complained of stomach pain and she took leave and left the bakery.

After an hour later when he had gone to the godown to take bread he saw the deceased and a boy standing under a tamarind tree near Valayapatti bye road. After 2 days he came to know from Vangal Police that the said Baby died in a suspicious circumstance.

21. PW.9 Sivaramakrishnan is working as a Manager in the SPLS Bus Company. According to his evidence, the appellant was working in their bus company as conductor about one year ago and after 10.9.2018, he did not turn up to duty and later the police enquired him and he came to know that the appellant was involved in a murder.

22. PW.10 Silambarasan is the driver of the SPLS bus. He has stated in his evidence that the appellant was working in his bus for a few days and that he heard that the appellant had murdered a girl.

23. PW.11 Gokulnath who is the Nodal Officer of Vodafone mobile service limited. He has stated in his evidence that he received a requisition letter from the Superintendent of police, Karur to furnish the call details of



Crl.A.(MD).No.217 of 2020

Mobile Number 90929 19372 and 97893 72193. According to his evidence on 11.09.2018 incoming calls have been received by the mobile phone No. 90929 19372 for 12 times from mobile number No.97893 72193 and for 5 times on 12.9.2018. He issued Ex.P5 call details certified under Section 65(B) of Indian Evidence Act and the certificate in this regard is Ex.P6.

24. PW.12 Dr.Saravanakumar, Assistant Professor, Karur Government Medical College Hospital. He has spoken about the Autopsy conducted on the body of the deceased on 15.09.2018 on the requisition of the Inspector of Police Vangal Police Station under Ex.P.7. He has started the Postmortem on the body of the deceased at 12.10 PM on 15.09.2018 along with Dr.Rajeswari PW.13 and they found the following injuries :-

EXTERNAL INJURIES :-

1. Laceration of 2 x 1 cm over the forehead
2. Bluish discolouration of face, Neck and Chest
3. Abdomen bloated

INTERNAL EXAMINATION:

1. Scalp, bone, membranes intact. On dissection brain was pale. Base of skull intact.
2. Hyoid intact.
3. Loosely adherent fine, granular muddy particulars over the mucosa



of larynx and trachea. Froth present in the tracheal bifurcation and in the main bronchus with fine, granular muddy particulars. Heart normal in size, pale and chambers empty. Lungs pale in cross section on lungs frothy white discharge from all lung lobes. Stomach contains 50 ml of white coloured fluid. Intestine distended with gas. Liver, Spleen, Kidneys - Normal in size and pale cross section. Bladder empty. No injuries in cross section of External genitalia; Hymen not intact; Vagina admits two fingers; freely vaginal swab taken; uterus normal size; cavity empty; tubes and ovaries normal; Pelvis and spinal column - intact viscera, uterus, neck skin, sternum preserved for chemical analysis and diatom test. PW.12 had given an opinion that the deceased would appear to have died of asphyxia due to drowning and he had issued Ex.P8 Postmortem report. The viscera report is EX P 9 and he had further deposed that as per Ex P10 the Biological report of the thoracic bones and the liquid collected from the place there was no microorganism. He had further deposed that injury number 1 could have been inflicted by M.O 1 stone.

25. PW.13 Dr . Rajeswari is the Doctor who had conducted Autopsy along with PW12. She had corroborated the evidence of PW12.

26. PW.14. Dr.Balakrishnan is the Professor and Head of the Department of Pathology, K.A.P.Viswanatham College Hospital, Tiruchirappalli. According to his evidence, on 24.09.2018, he received a



Crl.A.(MD).No.217 of 2020

piece of skin taken from neck and uterus for examination. On his examination, he found no change in the skin and that the uterus was in the decomposed state, hence he was not able to give any opinion and he issued the histopathology report Ex.P.11.

27. PW.15 Jayakumar, Nodal Officer Bharti Airtel Limited Chennai, he has furnished the call details for 97893 72193 and 90929 19372. According to his evidence Mobile Number 97893 72193 stands in the name of Baby D/o.Paramandam, No.5/96 Minnampalli, Sangarampalayam, Karur 639 116 and he issued the call details of the Mobile Number 97893 72193 from 01.08.2018 to 12.09.2018 and issued certificate U/s.65(B) Indian Evidence Act, the CDR Report Ex.P.12. On 12.09.2019 from the Mobile Number 97893 72193, 16 calls were received by the Mobile Number 90929 19372 and 6 times on 12.09.2018.

28. PW.16 Sangeetha is the Gr.I Police, Vangal Police Station. She has stated that on 15.09.2018 at 11.20 AM she was present during inquest and she took the body of Baby to the Government Hospital, Karur with a requisition letter for postmortem and handed over the body to the doctor and



Crl.A.(MD).No.217 of 2020

after completing postmortem, she handed over the body to the relatives. She has further stated that she collected the viscera and handed over the same to the Regional Forensic Science Laboratory at Trichy.

29. PW.17 Punitha is the Grade I constable, Vengamedu Police Station. According to her evidence, when she was working as computer police in the police station, on 13.09.2018 she assisted the investigation officer during investigation with regard to the case in Crime No.276/2018 of Vangal police station. She has further stated that she recorded the statements and documents in the computer and took printouts and handed over the same to the Inspector of police.

30. P.W.18 Rajeswari was then Sub-Inspector of Police at Vangal Police station. She has stated in her evidence that when she was on duty on 13.9.2018, Malayappasamy, Village Administrative Officer of Kuppuchipalayam appeared before the police station at 12.00 noon and lodged a Ex.P1 written complaint and the same was registered in Crime No. 276/2018 under Section 174 of Cr.P.C. and prepared Ex.P13, F.I.R. and that she sent the FIR. and a copy of complaint to the Tahsildar and copies to the



Crl.A.(MD).No.217 of 2020

higher officials. On the day at 12.30 hours she went to the occurrence place and prepared observation mahazar Ex.P4 and rough sketch Ex P14 in the presence of Thiagarajan and Muniyappan and recovered the body and since it could not be identified she sent the body to the Government Hospital, Karur to be kept in the mortuary. She examined Thiagarajan and Muniyappan and recorded their statements. On 14.09.2018 at about 8.00 A.M. the said Village Administrative Officer came to the police station and informed her that body was identified as Baby, daughter of Paramanandam of Kuditheru at Sankarampalayam. Immediately, she informed the same to her parents and then on 15.9.2018 in the morning she conducted inquest on the body of the deceased in the presence of panchayatars and prepared Ex.P15 inquest report and on the same day at 9.05 a.m., she sent the body to the Government Hospital, Karur for postmortem with a requisition letter through Sangeetha, a woman constable. Since it was revealed during investigation that the deceased was murdered, he altered the section of law from Sec.174 Cr.P.C. to Section 302 of IPC. and sent an alteration report Ex.P16 and then requisition letters to RDO Karur and Judicial Magistrate No.II, Karur and handed over the file to the Inspector of Police for further investigation.



CrI.A.(MD).No.217 of 2020

WEB COPY

31. PW.19 Senthilkumar, the Inspector of Police, Vangal Police Station had deposed that he received the FIR in Cr.No.276/2018 on 16.09.2018 and took the case for investigation. He went to the occurrence place and inspected the same. Thereafter he examined PW.4 mother of the deceased and witness Paramandam father of the deceased and witness Bharathiyar brother of the deceased and the witnesses Arunagiri and Subramanian and recorded their further statements. He was on the search of the appellant and on the same day at about 12.30 PM he arrested the appellant near Vangal Agraharam bus stop in the presence of PW.5 Vijay Anand VAO of Vangal Village and his assistant witness Arumugam. At the time the appellant gave a voluntary confession statement and the same was recorded in the presence of PW.5 and his assistant. The admitted portion of confession statement of the appellant is marked as Ex.P2. Based on the confession statement of the appellant, he seized M.O 1 a black stone in irregular shape weighing about 700 grams under seizure mahazar Ex.P.3. On the same day he sent the black stone MO.1 through Form 91 under Ex.P.17 to court. Further he examined PW.2 Sudhakar, PW.3 Chandran, PW.8 Karthikeyan witness Devika, PW.9 Sivaramakrishnan, PW.10 Silambarasan



Crl.A.(MD).No.217 of 2020

and recorded their statements U/s.161(3) Cr.P.C. On 2.10.2018 in continuation of his investigation he examined the witness PW.11 Gokulnath Nodal Officer of Vodafone, Chennai and PW.15 Jayakumar Bharti Airtel Limited Chemmai. On 29.10.2018 PW.14 Dr.Balakrishnan who examined the skin portion in the neck of the deceased and uterus of the deceased and examined Dr.Saravanakumar PW.12 who conducted Postmortem on the body deceased and Sub Inspector of Police PW.18 Rejeswari on 11.12.2018 and recorded their statement and received the Postmortem report. Thereafter he recorded the statements of the witness Valli Deputy Director and Assistant Chemical Examiner of Government Forensic Sciences Laboratory, Trichy , S.S.Rajendran Scientific Officer, Trichy and other witnesses and recorded their statements and filed the final report.

32.When questioned under Sec 313 Cr.P.C with regard to the incriminating materials against him, the appellant had denied the same and the trial court after hearing the arguments had convicted the appellant.



Crl.A.(MD).No.217 of 2020

33.Now what is to be seen is that whether the prosecution has proved its case beyond reasonable doubts and whether the trial court is right in finding the appellant guilty of the offences.

34.As stated above it is a case of circumstantial evidence. In this case P.W.2, P.W.3 and P.W.8 Bakery owner are stated to be witnesses who have last seen the deceased along with the appellant prior to the occurrence. P.W.2 claims to be person known to the family of the deceased and he along with PW3 are stated to have seen the appellant and the deceased lastly on 12.09.2018. Though they claim to have seen the appellant along with deceased their conduct in not informing anybody about the same immediately after coming to know of the death seems to be highly un natural. In fact as per the prosecution, PW2 and PW3 are said to have gone to the police station and informed the police after four days after the arrest of the appellant. Inquest was conducted on 15.09.2018 between 7.00 -9.00 a.m., and in Col.IV of the inquest report Ex P15 it is P.W.4, Valarmathi and her Son Bharathiyar who are mother and brother of the deceased are stated have lastly seen her. Till such time there was no information either from PW2 or PW3. Only after the arrest on 16 .09.2018



Crl.A.(MD).No.217 of 2020

and confession the respondent came to know that the appellant is said to have committed the offence and only after the arrest, statements of PW2 and PW3 are said to be recorded. But strangely in Column IX of EX P15 Inquest report prepared on 15.09.2018 the appellant is said to be the person who had committed the murder. Further the deceased is said to have gone missing from 12.09.2018 and found dead by VAO PW1 on 13-09-2018 and no complaint had been given by the family members with regard to the missing of the deceased till such time. In this regard, it is also to be noted that it is the admission of P.W.2 that his wife suspected that he was having affair with the deceased and that his wife had gone to the house of the deceased and quarrelled with the deceased and her family members earlier. This aspect shows that P.W.2 has some interest in this case and thereby his evidence cannot be believed to be true. Whereas PW4 mother of the deceased has denied about that incident, thereby her evidence is also doubtful. This aspect also creates some doubt. Now coming to the evidence of PW8 the employer of the deceased who has deposed about having seen the deceased and a boy on 12.09.2018 chatting under a tamarind tree near Valayappatti bye road, he has not identified the appellant in the court during trial as the person who was seen along with the deceased on the day of



Crl.A.(MD).No.217 of 2020

occurrence. Further when the deceased being his employee had taken leave on that day complaining of stomach ache it is unnatural that he had not enquired her at that time.

35. Now coming to the medical evidence P.W.12/Dr. Saravanakumar and P.W.13/Dr. Rajeswari who had conducted post mortem on 15.09.2018 at 12.00 noon and issued post mortem certificate/Ex.P.8. As per the opinion given by the doctors it is stated that the deceased would appeared to be died due to asphyxia due to drowning. However, P.W.12 in his evidence before the Court stated that the death would not have been caused due to drowning. (இறந்த நபர் தண்ணீரில் மூழ்கடிக்கப்பட்டு இறந்திருப்பார் என்று கூறுவதற்கு வாய்ப்பில்லையென்றால் சரிதான். ஒரு நபர் நீரில் முகத்தை அழுத்தி மூச்சு திணறல் ஏற்படுத்த முயச்சிக்கும் போது அந்த நபர் அதிலிருந்து வெளியேறுவதற்காக மிகத்தீவிரமான முயற்சியில் ஈடுபடும் போது அவரது விரல் நகங்களிலும், முன்னங்கை மற்றும் புறங்கைகளிலும் , பாதத்தின் முன் கால்களிலும், விரல்களிலும் சிராய்ப்பு காயம் ஏற்படும் என்றால் சரிதான்).

36.The hyoid bone was found to be intact and there were also no



Crl.A.(MD).No.217 of 2020

marks of violence found on the body of the deceased thereby belying the case of the prosecution that the appellant had caused the death of the victim by strangulation and immersing the head into water and causing the death. The medical opinion is also not conclusive and it also does not corroborate the case as projected by the prosecution.

37. Coming to evidence regarding the Mobile Phone conversations between the appellant and the deceased, as per the evidence of the nodal officer of the service provider Vodofone PW11 the deceased apart from speaking to the appellant over phone on several occasions had also spoken to several other persons for long hours and no investigation has been done by the respondent with regard to the same. Further no evidence had been let in to the effect that both the phone numbers were said to be available in the particular locality/place of occurrence during the relevant time. Further in this case the arrest and the confession based on which M.O 1 is said to have been recovered is also doubtful.

38. As discussed above the last seen theory is marred with suspicion and the cause of death is also not conclusive. It is to be noted that the case



Crl.A.(MD).No.217 of 2020

is based on circumstantial evidence, motive places an important role.

Motive stated is that the deceased compelled the appellant marry her and the appellant who was not inclined to marry her had committed murder, whereas it is the admitted evidence of P.W.2 that his wife had suspected that he was having illicit affair with the deceased and that his wife had gone to the house of the deceased quarrelled with her and created ruckus, whereas the mother of the deceased had denied the same and this aspect also creates a doubt and no investigation has been done in this regard by the respondent.

39. In this case the most of the documents including the statement of the witnesses, inquest report, alteration report though said to have been prepared prior to the arrest of the appellant have been sent to the court only after the arrest of the appellant. Further, as stated above, this case is based on circumstantial evidence, non explanation under Section 313 Cr.P.C cannot be set forth against the appellant when the foundation of the prosecution case itself is doubtful.

40. As discussed above the prosecution has utterly failed to prove its case beyond all reasonable doubts and in such circumstances the appellant



Crl.A.(MD).No.217 of 2020

cannot be convicted on the basis of suspicion and he is presumed to be innocent unless proved guilty beyond reasonable doubt and thereby, he is entitled to be acquitted.

41. In fine, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant, by judgment dated 21.02.2020, passed in S.C.No.9 of 2019, on the file of the learned Additional Sessions Judge, Fast Track (Mahila) Court, Karur, is set aside and the appellant is acquitted of the charge. Bail bonds, if any executed by the appellant, shall stand cancelled. Fine amount, if any paid by the appellant, shall be refunded to him.

(A.D.J.C.,J.) (K.R.S.,J.)
23.04.2024

NCC : Yes / No
Index : Yes / No
Lm



Crl.A.(MD).No.217 of 2020

To

1.The Additional Sessions Judge/
Fast Track (Mahila) Court, Karur.

2.The Inspector of Police,
Vangal Police Station,
Karur District.

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

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD).No.217 of 2020

A.D.JAGADISH CHANDIRA,J.
and
K.RAJASEKAR,J.

Lm

Crl.A.(MD).No.217 of 2020

23.04.2024