

CrI.A(MD)No.340 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 03.03.2025

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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Easkkimuthu @ Muthu

.. Appellant/Accused No.1

Vs.

State through
The Deputy Superintendent of Police,
Ambasamudram Sub Division,
Kallidaikurichi Police Station,
Tirunelveli District.
(Crime No.344 of 2011)

....Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 18.12.2015 in S.C.No.51 of 2013 on the file of the learned II Additional District and Sessions Judge, Tirunelveli.

For Appellant

: Mr.R.Manickaraj
for
M/s.R.Alagumani

For Respondent

: Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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JUDGMENT

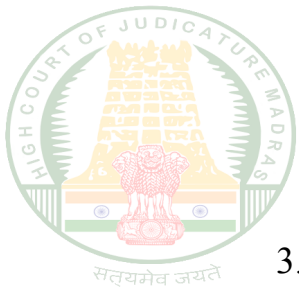
Dr.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

The Criminal Appeal is preferred by the first Accused (A-1) against the judgement of conviction rendered in S.C.No.51 of 2013, on the file of II Additional District and Session Judge, Tirunelveli, dated 18.12.2015.

Facts leading to the appeal:

The Criminal Appeal is filed by the Accused No.1 and he was charged for the offences under sections 449, 302, 363, 342, 366, 386 and 380 of IPC and Section.3(2)(V) of SC/ST (POA) Act. The Accused No.2 was charged for the offences under section 118 and 201 of IPC.

2. After elaborate discussions, the trial Court has found the Appellant/Accused No.1 guilty of offences under sections.449, 302, 363 and 342 of IPC and he was acquitted from the charges under section.366, 386, 380 of IPC and Section 3(2)(V) of SC/ST (PoA) Act. The 2nd Accused was acquitted by the trial Court in both the charges namely Section 118 and 201 of IPC.

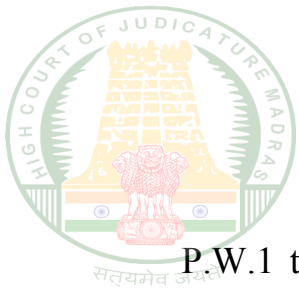


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3. This appeal is filed on the ground that the trial Court has miserably failed to appreciate the evidence of P.W.1 who claims to be the eye witness to the occurrence. The conduct of the witness is totally unnatural and not supported by any corroborative evidence. But substantially the contradictions have not been appreciated by the Court below.

4. The short facts of the case, as spoken by the witnesses for prosecution, are that the deceased Annalakshmi and her daughter Jamuna (P.W.1) were residing near the house of the first accused. Both were belonged to different community and there was a property dispute between them, regarding using a poromboke land near their house.

4.1. On the wee hours of 16.08.2011, the deceased was sleeping in the cot outside the house and P.W.1 was sleeping inside the house. At about 02.00a.m., P.W.1 heard some noise and when she came out saw that the first Accused strangulated her mother's neck with in-skirt tape. She was unable to prevent it out of fear. The first accused took a knife and placed it on her (P.W.1) neck and threatened her not to rise alarm. The first accused instructed P.W.1 to come along with him with her cloths. Fearing death, the



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P.W.1 took all her clothes in a bag and went with the accused to a place called AC parai near their house. From 03.00a.m. to 7.00a.m., the first accused kept P.W.1 in captive. At 5.00a.m., the first accused has taken the cell phone of the deceased and called Accused No.2 by using his sim card. The second accused came to AC Parai at 05.30.a.m. At that time, the first accused asked P.W.1 to give her ear stud and told that he will marry her, so that she will not spill the beans.

4.2. P.W.1 gave her stud to the second accused. By 07.00 Clock, there was human movements in that place. P.W.1 gathered strength and under pretext of attending her naturals call, she escaped from the clutches of the first accused and reached her home. She got the cellphone of Subbu (P.W.11) her relative and called her uncle's son Vasantha Kokilan and Muthukumar and conveyed the message. Thereafter, the relatives came to her house and went to police station and lodged a complaint (Ex.P.1). Based on her complaint (Ex.P.1), the respondent police registered FIR in Crime No. 344 of 2011. The Investigation was taken up by the Deputy Superintendent of Police, since the victim belongs to SC/ST community.



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4.3. Before the trial Court, to prove the charges, prosecution has examined 17 witnesses marked 21 exhibits and 12 material objects. The trial Court found the charges against the Accused No.2 as not proved and acquitted him from both the charges. As far as the offence under section 386 regarding extortion of gold stud from P.W.1 and theft of cellphone of the deceased Annalakshmi, the Court below held that the prosecution has failed to prove the charges and hence acquitted the first accused for the offences under sections 386 and 380 of IPC. Likewise, though the prosecution has projected that the P.W.1 was kidnapped for the purpose of marriage, putting the minor victim under threat, for want of evidence the charge under section 366 of IPC was also found not proved. Believing the testimony of P.W.1 in respect of trespass into the house of P.W.1 and strangulation of Annalakshmi using in-skirt tape (M.O.1). The 1st accused was found guilty for the offence under sections 449 and 302 of IPC. Likewise, the evidence of P.W.1 regarding taking her away from the lawful guardian and confining her held to be proved to attract offence under section 363 and 342 of IPC.

5. The learned Counsel appearing for the appellant would submit that it is quite contrary to any human conduct for a person going along with the



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murderer of her mother carrying her belonging. In this case, the prosecution has miserably failed to establish that P.W.1 was kidnapped with an intention to marry her. The trial Court also rightly acquitted the Accused No.1 for the said charge. Insofar as the offence under section 363 of IPC, even though, the prosecution has not placed any evidence to prove the age of P.W.1, on presumption that she pursuing 9th standard, her age must be only 16 years, the trial court on presumption and assumption held that the first accused guilty for the offence under section 363 of IPC. Regarding criminal trespass and charge under section 302 of IPC, the learned Counsel appearing for the appellant submitted that there is no evidence to show that the first accused resides near the house of the deceased and having any dispute with the deceased Annalakshmi regarding the poromboke land, to substantiate the motive for the murder. The witnesses for prosecution except P.W.1, are not familiar to P.W.1 or the alleged motive.

5.1. Admittedly, the scene of occurrence is full of residences, while so, it is unnatural for a person who has witnessed the murder of mother to go along with the murderer without any protest or resistance. The case of the prosecution that the first Accused called the second accused using the



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cellphone of the deceased and the second Accused came and collected the stud of P.W.1 to buy 'Thali', where all found to be concocted story of the prosecution and rejected by the trial Court. While so, when the substantial portion of the prosecution was disbelieved by the trial Court and demolished, the remaining portion has no legs to stand to convict the first accused.

5.2. The learned Counsel appearing for the appellant further submitted that to believe P.W.1 as reliable witness, her testimony should be un-impeccable, whereas, in this case, her witness to the occurrence itself is highly improbable. Furthermore, her version that she went along with first accused and stayed with him for four hours is beyond any comprehension of a prudent person. A fact, which could be persuaded by a prudent person, in this case, does not point towards the first accused for the death of Annalakshmi.

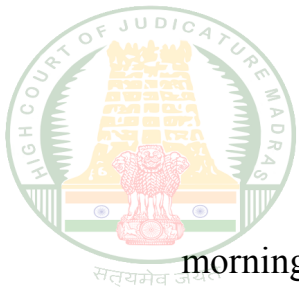
5.3. The learned Counsel for the appellant would also raise doubt about the weapon used to cause the death. He would submit that the inskirt tape length is 176 cm and it is marked as M.O.1. It is alleged that M.O.1 has been removed from the petty coat of the deceased, however, the ligature



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mark found in the postmortem certificate does not correlate with the alleged weapon, namely, the inskirt tape. The rope not found on the body or near the body, but alleged to have been recovered from a place very far off based on the confession given by the first accused. Either, the P.W.1 had not said anything about the rope being carried by the first accused along with him and if she really witnessed the crime, there is no reason for omitting to say about the rope. That apart, even according to P.W.1, her stud was given to second accused to arrange money and buy Thali. The said stud was found in the place hidden under the rock and alleged to have been recovered on the confession statement of 1st accused. The stud given to the Accused No.2 was recovered on the information given by first accused is totally improprialized. The trial court though found the improbability had acquitted only the second accused but not the first accused which it ought to have done.

5.4. The learned Counsel appearing for the Appellant submitted that the material contradiction between the evidence of P.W.1, P.W.2 and P.W.3 regarding the information conveyed by P.W.1 to the witnesses, P.W.2 and 3 about the murder is fatal to the case of prosecution. While P.W.1 had deposed that, she was under captive of first accused till 07.00a.m. in the



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morning, P.W.2 and P.W.3 had categorically deposed that P.W.1 called them over phone and informed about the incident in the early morning at 06.00 clock. This singular fact is sufficient to disbelieve the testimony of P.W.1. However, unfortunately the trial Court had not taken this into consideration stating that memory may fade and witness cannot have a photographic memory to recall in detail as to the incident in verbatim.

6. The learned Additional Public Prosecutor submitted that de hors certain infirmity in the evidence of P.W.1, substantial and vital portion of P.W.1 evidence is corroborated by other witnesses, the fact remains that on the date of occurrence, P.W.1 saw the first accused entering into the house and strangulating her mother. She out of fear, had gone along with the first accused. The knife used to threaten P.W.1 was recovered, based on the information given by the first accused in his confession statement. The cellphone of the deceased recovered from the brother of second accused on the information given by the second accused remains unchallenged and the burden to prove innocence shifts to the first accused to explain how the cellphone of the deceased came to the custody of Selvam (brother of A2).



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6.1. The learned Additional Public Prosecutor further submits that the information received from P.W.1 as a complaint was immediately registered by the respondent police and the FIR was registered at 9.00a.m and forwarded immediately to the Judicial Magistrate at 10.30a.m. There is no delay in registering the FIR and forwarding it to Judicial Magistrate and therefore, the prosecution cannot be faulted. Regarding the contradiction of scribe of the complaint, admittedly the complaint of P.W.1 reduced into writing and attested by P.W.1 and P.W.3. Though there is no specific record as to who has scribed the complaint and some contradiction is there, it does not shake the case of the prosecution in any manner.

7. Heard the submissions made by the counsels on either side and perused the records.

8. It is the case of homicide proved to be death due to strangulation. The instrument alleged to have been used for committing strangulation appears to be M.O.1, which was recovered in the place far off from the place of occurrence. The prosecution relied upon the evidence of P.W.1 who



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claims that she and the deceased were in the house on the fateful day, hearing the noise, she came out from house and saw that the first accused strangulating her mother. In her complaint, she has stated that on seeing the act of violence, she shouted and pleaded with the first accused not to harm her mother. The first accused threatened her and put her in silence. Whereas, in the deposition, this court finds nothing regarding her resistance or pleading with the first accused to stop the violence. Contrarily she had deposed that the first accused placed knife on her neck and threaten her not to rise alarm. This may not be an apparent inconsistency of contradiction, but it would clearly show that the conduct of the P.W.1 was not natural, for any person who witness a murder that too murder of mother.

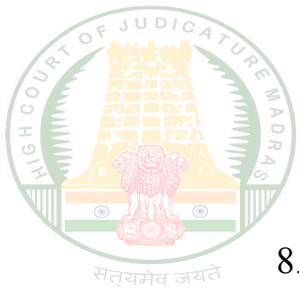
8.1. To add more doubt about her conduct, it is her case that she without any resistance went along with the first accused carrying her clothes. The purpose for which she was asked to carry her clothes and she succumbed to the command of the accused remains unexplained. More so, when the prosecution has failed to recover the bag and clothes which P.W.1 supposed to have carried along with first accused. The witness P.W.1 had not whispered anything about the tape used for strangulation and how it was



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recovered from a place near railway station/bus stand near bush. The P.W.1 testimony conspicuously silent about the knife M.O.3 and whether the first accused was carrying along with him the M.O.3 knife and the M.O.1 inskirt tape, while she was in his company between 3.00a.m. to 7.00a.m.

8.2. The Prosecution has also failed to explain, how P.W.1 was able to call P.W.2 and P.W.3 at 06.00a.m, when her specific case was that she was under captive of first accused till 07.00a.m. In the cross-examination, P.W.1 admits that by 07.00a.m, there was human movements near AC Parai, which gave her confidence to escape from the accused. But, she has not stated about the persons whom she saw and any attempt to apprehend the accused. P.W.1 in Chief-examination had said that the complaint was written by her, whereas in the cross-examination, she admits that it was written by someone else. P.W.2 admits that it was written by him. He also signed as an attesting witness in the complaint. These discrepancies not only shakes the credibility of other witnesses but also shakes the credibility of P.W.1, who is the key witness for the prosecution.



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8.3. The trial Court had observed that the evidence of P.W.1 partly unreliable and acquitted the second accused fully and the first accused for certain charges. The material contradictions and lack of corroboration renders the evidence of P.W.1 wholly unreliable. Except the evidence of P.W.1, there is no other evidence to suspect the first accused. In the said circumstances, conviction of the appellant based on the sole evidence of P.W.1, which is not uncorroborated, and also contradictory and suffers falsehood, required to be interfered with.

9. As a result of the above discussion, the judgement passed by the learned II Additional District and Sessions Judge, Tirunelveli in S.C.No.51 of 2013 dated 18.12.2015 convicted the appellant/first accused is hereby set aside. This Criminal Appeal against the conviction of the appellant/first accused stands allowed. The appellant/first accused is acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond, if any, executed shall stand cancelled.

[G.J.,J] [R.P., J]
03.03.2025

Index : Yes/No
Internet : Yes/No
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DR.G.JAYACHANDRAN, J.

**AND
R.POORNIMA, J.**

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To

1.The II Additional District and Sessions Judge,
Tirunelveli.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

**Judgement made in
Crl.A(MD)No.340 of 2020**

03.03.2025