

Podhumani Vs. State, Represented by

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Court : Chennai

Decided On : Nov-05-2014

Judge : A.Selvam

Appellant : Podhumani

Respondent : State, Represented by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 05.11.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.431 of 2008 Podhumani .Appellant/ Sole Accused versus State, represented by The Inspector of Police, Kurangani Police Station, Bodi Taluk, Theni District.

(Crime No.51 of 2005).Respondent/ Complainant Criminal appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the Judgment dated 29.07.2008 passed in Sessions Case No.26 of 2006 by the Additional District and Sessions Court (Fast Track Court).Periyakulam.

!For Appellant : Mr.A.Thiruvadikumar ^For Respondent : Mr.R.Ramachandran, Addl.

Public Prosecutor.

:

JUDGMENT

(Order of the Court was made by A.SELVAM, J.The conviction and sentence dated 29.07.2008 passed in Sessions Case No.26 of 2006 by the Additional District and Sessions Court (Fast Track Court).Periyakulam are being challenged in the present Criminal Appeal.

2.The contraction of the case of the prosecution is that the accused by name Podhumani is the wife of the deceased by name Ganesan.

The accused has used to make strife frequently in sozzle mood with the accused.

Having infuriated at the conduct of the deceased on 31.10.2005 at about 06.30 a.m.with the intention to murder the deceased in their house, the accused has attacked the deceased by using an aruval and due to her overtacts the deceased has had instantaneous death.

After occurrence, the brother of the deceased by name Balraj has given the complaint (Ex.P.1).3.On receipt of Ex.P.1, P.W.11, Investigating Officer has taken up investigation and examined all connected witnesses and subsequently made arrangements for conducting autopsy.

The doctor by name Anbuchejian (P.W.4) has conducted autopsy on the body of the deceased and found the following external and internal injuries: ?
External Examination Neck: A single clean cut bevelled edge incised wound of 8 c.m.length, 3 to 6 c.m.breadth, 3 to 4 c.m.deep at the anterior aspect of neck at the level of Thyroid cartilage; exposing the vocal cords in abduction with collection of effused blood lower down into the wind pipe; medial ends of sterno mastoid and subcutaneous neck veins found ct.

Carotid sheath intact; No other external wounds noted.

Internal Examination: Hyoid intact.

Wind pipe full of blood.

Cervical vertbra, skull, other skeleton found intact.

Brain heart Lungs congested.

Thoracic and abdominal cavity found intact.

Liver Kidney intestines, were congested an intact?.4.The Postmortem Report has been marked as Ex.P.3.

The other Investigating Officer by name Premanandan (P.W.12) has conducted further investigation and after completing the same, laid a final report on the file of the District Munsif cum Judicial Magistrate's Court, Bodinaickanur and the same has been taken on file in P.R.C.No.2 of 2006.

5.The District Munsif cum Judicial Magistrate, Bodinaickanur after considering the relevant documents has found that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.26 of 2006.

6.The trial Court after hearing both sides and upon perusing the relevant records has framed a charge under Section 302 of the Indian Penal Code against the accused and the same has been read over and explained to her.

The accused has denied the charge and claimed to be tried.

7.On the side of the prosecution, P.Ws.1 to 12 have been examined and Exs.P.1 to P.19 and M.Os.1 to 9 have been marked.

8.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against her, she denied her complicity in the crime.

However no oral and documentary evidence have been let in on the side of the accused.

9.The trial Court, after contemplating the evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced her to undergo imprisonment for life and slapped a fine of Rs.5,000/- with usual default clause.

Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10.The consistent case putforth on the side of the prosecution is that the accused is the wife of the deceased.

The deceased has used to make frequent strife in sozzle mood with the accused and due to that on 31.10.2005 in their house at about 06.30 a.m., the accused has attacked the deceased by using an aruval and thereby caused fatal injuries and the deceased has had instantaneous death.

11.On the side of the prosecution, the de facto complainant by name Balraj has been examined as P.W.1.

The alleged eye-witnesses namely Govindaraj and Amutha have been examined as P.Ws.2 and 3 and for the reasons best known to P.W.2 viz., Govindaraj, he has become hostile witness.

Under the said circumstances the Court is having only the evidence of P.Ws.1 and 3 coupled with Ex.P.1, complaint and Ex.P.3, Postmortem Report.

12.The trial Court after considering the evidence given by P.Ws.1 and 3 coupled with Exs.P1 and P.3 has found the accused guilty under Section 302 of the Indian Penal Code and imposed sentence as stated supra.

13.The learned counsel appearing for the appellant/accused has meticulously contended that even though P.Ws.1 to 3 have been examined as eye witnesses, P.W.2 has become a hostile witness and P.W.1 virtually is not an eye witness and P.W.3 has given fragile and rickety type of evidence with regard to occurrence and under the said circumstances the prosecution has not adduced even an iota of evidence so as to point out the alleged guilt of the accused, but the trial Court without analysing the evidence given by P.W.3 has simply invited conviction and sentence against the accused and therefore the conviction and sentence passed by the trial Court against the appellant/ accused are liable to be interfered with.

14.The learned Additional Public Prosecutor has contended that in the instant case, the de facto complainant viz., Balraj is nothing, but brother of the deceased and P.W.3 Amutha is nothing, but the daughter of the deceased and her specific evidence is that in the place of occurrence the accused, her mother, has attacked the deceased, her father and due to that her father has passed away and since P.W.3 is nothing, but daughter of both the accused and deceased, the trial Court has given due importance to her evidence and under the said circumstances the conviction and sentence passed by the trial Court are perfectly correct and the same do not require any interference.

15.As pointed out earlier, except the evidence of P.W.3, the prosecution has not adduced any piece of evidence so as to point out the alleged guilt of the accused.

16.In fact during the couRs.of cross-examination, P.W.1 de facto complainant has stated to the effect that he has not seen the occurrence.

Therefore the remaining portion of evidence given by P.W.1 is of no use.

As pointed out in many places, the prosecution is having only evidence of P.W.3.

During the couRs.of chief examination P.W.3 has stated to the effect that previous night she has stayed in the house of her grandmother and her mother has stayed in the house of a teacher (Vijaya) and further she would say in her evidence that at the time of occurrence, she attempted to ignite in oven and at that time her mother (accused) has attacked her father by using an aruval.

But during the couRs.of cross-examination, she has categorically admitted to the effect that with bleeding injuries her father has come to the house of her grandmother and she enquired about the injuries sustained by him and the house of grandmother is situate 100 metres away from her house and subsequently her father has returned to house.

In fact this Court has closely scrutinized the evidence given by P.W.3 in her cross-examination and ultimately found that P.W.3 would not have seen the occurrence, since she has given evidence as pointed out earlier.

If really at the time of occurrence, P.W.3 has been in the place of occurrence, definitely she would have accompanied with her injured father to the house of her grandmother.

But her evidence is totally otherwise.

Under the said circumstances P.W.3 has given only fragile and rickety type of evidence and the same cannot be a basis for coming to a conclusion that P.W.3 has seen the occurrence.

17. Further the prosecution has not chosen to examine the grandmother of P.W.3.

Since the prosecution has not examined the grandmother of P.W.3, it is needless to say that virtually the prosecution has not adduced any evidence so as to point out the alleged guilt of the accused.

Further it is seen from the records that the deceased has married three wives and further he decided to keep one Muthulakshmi, wife of Ayyappan as his concubine.

Considering the conduct of the deceased and also considering the fact that the prosecution has not adduced even an iota of evidence so as to point out the alleged guilt of the accused, it is needless to say that the accused cannot be mulcted with liability under Section 302 of the Indian Penal Code.

18. The trial Court without considering the fact that P.W.3 has given only fragile and rickety type of evidence, has erroneously found the accused guilty under Section 302 of the Indian Penal Code and in view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/accused and the conviction and sentence passed by the trial Court are liable to be set aside.

19. In fine, this Criminal Appeal is allowed and the conviction and sentence passed in Sessions Case No.26 of 2006 by the Additional District and Sessions Court (Fast Track Court), Periyakulam are set aside.

The appellant/accused is acquitted.

Bail bond if any executed by the appellant/accused shall stand cancelled and fine amount if paid is ordered to be refunded to the appellant/accused forthwith.

To 1.The Additional District and Sessions Court (Fast Track Court).Periyakulam.

2.The Inspector of Police, Kurangani Police Station, Bodi Taluk, Theni District.

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

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