

**Rajappa Vs. State rep by Inspector of Police, Krishnagiri District**

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**Court :** Chennai

**Decided On :** Jul-22-2016

**Judge :** S. Nagamuthu & V. Bharathidasan

**Appeal No. :** Criminal Appeal No. 580 of 2015

**Appellant :** Rajappa

**Respondent :** State rep by Inspector of Police, Krishnagiri District

**Judgement :**

(Prayer: Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Mahila Court, Krishnagiri in S.C.No.11 of 2015 dated 12.08.2015.)

**S. Nagamuthu, J.**

1. The appellant is the sole accused in S.C.No.11 of 2015 on the file of the learned Sessions Judge, Mahila Court, Krishnagiri. He stood charged for offences under Sections 302 I.P.C. and Section 201 r/w 302 I.P.C. By judgment dated 12.08.2015, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months under Section 302 I.P.C.; to undergo rigorous imprisonment for three years and pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months for offence under Section 201 r/w 302 I.P.C.

2. The case of the prosecution in brief is as follows:

2.1. The deceased, in this case, was one Mrs.Thangammal. She was aged about 50 years. The deceased was residing at Chinarthoti village. She was a widow. The accused also was residing in the same village. He developed illicit intimacy with the deceased and started living with her in 'live-in-relationship'.

2.2. On 25.03.2012, around 07.00 a.m. the accused received a sum of Rs.500/- from the deceased and while returning in the evening, around 09.00 p.m., he came fully drunk. While at home, he developed quarrel with the deceased. In that quarrel, it is stated that the accused took out a stone lying there and pelted the same against the deceased. Then, the accused ran away from the scene of occurrence with the stone.

2.3. P.W.1 is the daughter of the deceased. She was also residing in Chinarthoti village. She has stated that on 26.03.2012, around 07.00 a.m., she heard that the deceased had been done to death by the accused. Immediately, she rushed to the house of the deceased and found the dead body. Then, she went to Denkanikottai Police Station, which is situated at a distance of around 14 kilometers from the place of occurrence and made a complaint against the accused. P.W.13, the Inspector of Police, Denkanikottai Police Station on receipt of the said complaint, registered a case in Crime No.82 of 2012 under Section 302 I.P.C. against the accused. Ex.P1 is the complaint and Ex.P8 is the F.I.R. He forwarded both the documents to Court, which was received by the learned Magistrate at 06.15 p.m. on 26.03.2012.

2.4. P.W.13, took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.10 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.5. P.W.11, Dr.Ranganathan conducted inquest on the body of the deceased on 16.03.2012 around 04.00 p.m. He found the following injures:

External Injuries: (1) contusion left eye (2) contusion occipital region of scalp (3) right nostril nasal bleeding (4) foaming discharge in both nostrils, eyes closed, tongue inside mouth, left ear bleeding.

Internal examination: Hyoid bone intact, no fractures, lungs congested 450 gms (R) 400 gms (L), Heart 150 gms chambers filled with blood; stomach 150 gms of undigested; liver 1500 gms c/s congested; Spleen 90 gms c/s congested; kidney 100 gms each c/s congested; Spleen 90 gms c/s congested; skull fracture occipital region of scalp cut parietal bone fracture; brain membranes intact; uterus - empty.

Ex.P7 is the postmortem certificate. He gave opinion that the death of the deceased was due to the fracture of the skull and the consequential hemorrhage and shock.

2.6. P.W.13, during the course of investigation, recovered bloodstained earth and sample earth from the place of occurrence. When the investigation was in progress, according to P.W.10, the accused appeared before him at his office on 27.03.2012. On such appearance, according to him, the accused gave a voluntary confession. But P.W.10 did not reduced the same into writing. He simply took the accused to the police station and produced him before P.W.13 at 09.15 a.m. on 27.03.2012.

2.7. P.W.13 arrested the accused. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden a stone. In pursuance of the same, he took the police and the witness to the place of hide out and produced the stone (M.O.5). P.W.13 recovered the same. On returning to the police station, he forwarded the accused to the Court for judicial remand. At his request, the material objects were sent for chemical examination. The investigation was thereafter taken over by his successor P.W.14. P.W.14 collected the medical records, examined few more witnesses and on completing the investigation, he laid the chargesheet on 09.10.2012.

2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove

the case, on the side of the prosecution, as many as 14 witnesses were examined, 11 documents and 11 material objects were marked.

2.9. Out of the said witnesses, P.W.1 is the daughter of the deceased. She has stated only about the strained relationship between the accused and the deceased. She has further stated that on 26.03.2012 around 07.00 a.m., she heard that her mother was no more and after verifying the same, she made a complaint to the police. P.W.2 has stated about the live-in-relationship between the accused and the deceased. He has further stated that on 25.03.2012, around 09.00 p.m. the accused had beaten the deceased and then the accused fled away from the scene of occurrence.

2.10. P.W.3 yet another neighbour has stated that she found the deceased lying with injuries on her head inside her house. P.W.4 has stated that he found the deceased dead. P.W.5 has stated that he found that the accused brought the deceased from the house and laid her outside the house. P.W.5 has further stated that he found the deceased dead. P.W.6 has turned hostile and he has not stated anything against the accused. P.W.7 has stated that he accompanied P.W.1 to the police station to make a complaint. P.W.8 has spoken only on hearsay information about the occurrence.

2.11. P.W.9 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.10 has also spoken about the same facts. He has further stated that on 27.03.2012, the accused came to his office and confessed that he attacked the deceased and killed her. He has further stated that he produced him before P.W.13. He has also stated that out of the disclosure statement made by the accused, M.O.5 stone was recovered.

2.12. P.W.11 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.12 has stated that he took the F.I.R. and the complaint to the Court of the learned Magistrate and handed over the same. (the records reveal that the same were received by the learned Magistrate at 06.15 p.m. on 26.03.2012). P.Ws.13 and 14 have spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any document on his side. His defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. As we have already pointed out, P.W.1 is not an eyewitness to the occurrence. She has stated that she heard about the death of her mother only at 07.00 a.m. on the next day. Thus, her evidence is not much useful for the prosecution to prove the alleged guilt of the accused. P.W.2 claims to have witnessed the occurrence at 09.00 p.m. He has stated that the accused had beaten the deceased. He has further stated that he found the deceased lying dead. Thus, there is no consistency in his evidence. During cross examination, he has stated that since the accused was fully drunk, he was tied by the villagers and kept in the house. Thus, his evidence is also not very useful for the prosecution.

6. P.W.3, during cross examination has stated that he did not witness the occurrence directly at all. P.W.4 has stated that around 09.00 p.m. on the day of occurrence, he heard hue and cry from the house of the deceased and when he went to the house of the deceased, she found the deceased lying with injuries. Thus, the evidences of P.Ws.3 and 4 also would not go to advance the case the prosecution in any manner. P.W.5 has stated that around 08.00 p.m. he found the accused carrying the dead body of the deceased from the house and laying the same outside the house, this is not the case of the prosecution at all. Apart from this evidence, absolutely there is no evidence against the accused.

7. However, the learned Additional Public Prosecutor would make reliance on the evidence of P.W.10, the Village Administrative Officer who has stated that on 27.03.2012, the accused appeared before him and made a voluntary confession. According to the learned counsel, this cannot be true, as pointed out by the

learned counsel, P.W.2 has admitted that since the deceased was drunk on the day, he was tied by the villagers. If that be so, it is difficult to believe that the accused would have been free till 27.03.2012, until he appeared before the Village Administrative Officer to make a voluntary confession. Above all, it is not known as to why P.W.10 had not reduced into writing the statement of the accused, if really the accused had made such a statement. This also creates further doubt in the case of the prosecution.

8. Above all, though it is stated that the occurrence had taken place at 09.00 p.m. on 25.03.2012, the F.I.R. in this case came to be registered only at 09.00 a.m. on 26.03.2012. Absolutely there is no explanation for this inordinate delay. Further, though it is claimed that the F.I.R. was registered at 09.00 a.m. on 26.03.2012, it had reached the hands of the learned Magistrate only at 06.15 p.m. on 26.03.2012, for which also, absolutely there is no explanation. This also creates doubt in the case of the prosecution.

9. Thus, from the evidences available on record, we find it unsafe to sustain the conviction. We hold that the prosecution has failed to prove the case beyond reasonable doubts. Therefore, the appellant is entitled for acquittal.

10. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant / accused by the learned Sessions Judge, Mahila Court, Krishnagiri in S.C.No.11 of 2015 dated 12.08.2015 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) The bail bond, if any executed, by the appellant / accused, shall stand discharged.

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