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Court : Chennai

Decided On : Jun-07-2016

Judge : S. Nagamuthu &Amp; V. Bharathidasan

Appeal No. : Crl.A.No. 160 of 2013

Appellant : Prathiban and Another

Respondent : State by, The Inspector of Police, Chennai

Judgement :

(Prayer: Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned IV Additional District and Sessions Judge, Ponneri made in S.C.No.109 of 2011 dated 31.01.2013.)

S. Nagamuthu, J.

1. The appellants are the accused 1 and 2 in S.C.No.109 of 2011 on the file of the learned IV Additional District and Sessions Judge, Ponneri. They stood charged for offences under Sections 376 read with 511, 302, 201 and 379 of IPC. By judgment dated 31.01.2013, the trial court convicted them under Sections 302, 379 and 201 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to undergo rigorous imprisonment for one year for the offence under Section 302 of IPC and to undergo rigorous imprisonment for one year for the offence under Section 379 of IPC and to

undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- each, in default to undergo rigorous imprisonment for one year for the offence under Section 201 of IPC. They were acquitted from the charge under Section 376 read with 511 of IPC. Challenging the said conviction and sentence, the appellants/accused 1 and 2 are before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Subbani, hardly aged about 26 years. P.W.1 is her husband. They were residing at Door No.15, 6th Street, Ulaganathapuram Village, Ponneri Taluk. P.W.1 was employed in the Tamil Nadu Electricity Board during the relevant point of time. The deceased was doing milk vending business. There was nobodeyelse residing with them. P.W.1 used to go to his office everyday in the morning and to return in the evening. Meanwhile, the deceased was doing the milk vending business at her house.

(b) On 05.02.2010, at about 2.00 p.m., the deceased spoke to P.W.1, who was in his office, through her cell phone and informed him that two persons had come to present an invitation for a function. She further told that those two persons claimed that they were known to P.W.1. P.W.1 wanted her to hand over the cell phone to the persons who had come. One of the persons received the same. He enquired as to whether he was Mr.Panneer who was working in ETPS. P.W.1 informed that he was working in Electricity Board and not in ETPS. Thus, he meant that he was not the one to whom the invitation should be extended. Thereafter, the cell phone talk was disconnected. P.W.1 continued to be in his office.

(c) Around 3.00 p.m., a neighbour of the deceased informed P.W.1 over phone that the deceased was found lying dead inside the house with injuries on her neck. Immediately P.W.1 rushed to his house and found his wife lying in a pool of blood. Immediately, he went to Ennore Police Station and made a complaint under Ex.P.1 at 04.00 p.m. at 05.02.2010.

(d) P.W.15, the then Inspector of Police, registered a case in Crime No.36 of 2010 under Section 302 of IPC. Ex.P.1 is the complaint and Ex.P.7 is the First Information Report. He forwarded both the documents to court which were

received by the learned Magistrate at 07.00 p.m., on 05.02.2010. Taking up the case for investigation, P.W.15 proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem. During inquest also, the assailants were not known.

(e) P.W.11, Doctor Shanthakumar conducted postmortem on the body of the deceased on 06.02.2010 at 11.00 a.m. He found the following injuries:

"Injuries: 1) Vertically oblique reddish brown scratch abrasion 3.8 x 0.1 cm on the lower part of left side of the chest along the mid clavicular plane.

2) An oblique incised wound 2.8x0.1x0.1 cm on the front of upper third of left forearm, 3cm below the left elbow crease line.

3) A vertically oblique, perforating stab wound on the lower third of back of left arm; entry wound was 4.5x0.4cm with blunt upper end and acute lower end; the margins were regular; the exit wound was 3x0.3cm with blunt upper end and acute lower end; the margins were regular; the track of the wound was in the subcutaneous plane and was gradually narrowing from the entry to the exit wound.

4) An oblique cut wound 7.5x0.2x1.3-0.2 cm on the upper part of right palm.

5) An oblique stab wound 4x0.5x7.5 cm on the lower part of left side of the chest; the lower inner end was blunt and was along the plane of the left midclavicular line; the upper outer end was acute, the track of the wound was in the subcutaneous plane, and the direction of the wound was backwards, inwards and horizontal.

6) Horizontally oblique stab wound 3.5x0.4cmxcavity deep on the upper part of the left side of the abdomen; the inner end was acute and 2cm left lateral to the midline of the abdomen; the upper outer end was blunt; On dissection: the wound had entered into the abdominal cavity through the subcutaneous soft tissues and the underlying soft tissues of the anterior abdominal wall; in the abdominal cavity the wound had passed through the lower border of the pyloric part of the stomach,

underlying transverse mesocolon and the mesentry of the small intestine; abdominal cavity contained 90ml of fluid blood; the direction of the wound was backwards, downwards and from the left to the right.

7) An oblique cut wound 13x0.5x3-1cm on the lower part of front and sides of the neck; the upper left end was 5cm below the left angle of the mandible and was 3cm in depth; the right end of the wound was 4cm right lateral to the midline of the neck and 3.5cm above the inner third of right clavicle, and was 1cm in depth; the cut ends of the underlying subcutaneous soft tissues, the lower part of the anterior portion of the left sternocleido mastoid muscle, left digastric muscle, left common carotid artery, left vagus nerve, left jugular vein, lower part of both the lobes of the thyroid gland, trachea at the level of the 4th tracheal ring, oesophagus at the level of the 4th tracheal ring, left and right ribbon muscles of the neck, anterior border of the right sternocleido mastoid muscle were exposed through the cut wound with surrounding extravasated clotted blood.

Heart: Normal in size; C/S: All chambers were empty; Valves: Normal; Coronaries; Patent; Great vessels; Normal.

Lungs: Normal in size; C/S:Pale. Hyoid Bone: Intact.

Stomach: Contained 250ml of thick yellowish brown fluid; No definite smell; Mucosa:Pale.

Liver, SpleenandKidneys:Normal in size, C/S:Pale.

Intestine: Contained yellowish chyme. Bladder:Empty.

Genitalia: Nil injuries. Uterus:Normal in size, C/S:Empty; endometrium was pale. Ovaries:Normal.

Pelvis and Spinal Column: Intact. Brain:Normal in size, C/S:Pale."

Ex.P.5 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the cut injuries on her neck.

(f) During the course of investigation, P.W.15 recovered the blood stained clothes from the body of the deceased. He examined P.Ws.1 and 5 and recorded their statements. He recovered blood stained earth and sample earth as soon as he prepared the Observation Mahazar and the Rough Sketch. On 05.02.2010, he arrested the 1st accused near "Ajaks Bus Stand" in the presence of P.Ws.7 and 8. On such arrest, he produced M.O.7 Shirt, M.O.8 Lungi and M.O.9 knife. He has also stated that he recovered (29 grams weighing) a Gold Thali, two Niyan Tube, one coin with a yellow thread. (These material objects have not been marked in evidence). Thereafter, he arrested the 2nd accused in Meenjur Market in the presence of the same witnesses. He recovered a Black Colour Shirt from the 2nd accused. The 2nd accused produced M.O.11 Knife and M.O.12 Lungi. P.W.15 recovered all these material objects under a Mahazar. On returning to the police station, he forwarded both the accused to court for judicial remand and also handed over the material objects to court. On 07.02.2010, he altered the case into one under Sections 302 and 379 read with 511 of IPC. Ex.P.11 is the Alternation Report. Then, he arranged for searching for the cell phone from Thirumullaivoyal Lake. But the attempt proved futile. Finally, on completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined and 11 documents and 12 material objects were also marked.

4. Out of the said witnesses, P.W.1, who is the husband of the deceased, has stated that when he was at his office around 02.00 p.m., his wife called him over phone and informed him that two persons, claiming to have known him, had come to extend invitation for a function. He asked his wife to give the cell phone to them. One of the persons received the cell phone and spoke to him. He enquired whether he is Panneer working in ETPS. P.W.1 told him that he is not Panneer working in ETPS, but, he is Panneer Selvam, working in TNEB, thereby indicating that the invitation was not meant to him. Thereafter, the telephone talk was discontinued. During work in his office at about 3.00 p.m., he received an intimation from a neighbour that his wife was found dead . He went to his house to

verify the same and then, made a complaint to the police. P.W.2 is a neighbour of the deceased. She has stated that on 05.02.2010 at about 02.00 p.m., two persons were seen in front of the house of the deceased talking to her. She was under the impression that they had come in connection with the milk vending business. Thereafter, at 03.00 p.m., yet another boy, who had come to the house of the deceased to purchase milk, found the deceased lying dead inside the house. He informed P.W.2. P.W.2 went and found the deceased lying dead inside her house and then, he informed the same to P.W.1 and the mother of the deceased over phone. This witness has not identified the accused in court as to the persons she found lastly in the company of the deceased. P.W.3 has stated that at 03.00 p.m. on 05.02.2010, he went to the house of the deceased to purchase milk. Since there was no response from the house, when he opened the door, he found the deceased lying in a pool of blood and he informed the same to P.W.2. P.W.4, who is the mother of the deceased, has stated that the deceased was found lying dead in her house. P.W.5 has stated that on 05.02.2010 (time not mentioned), he was in a tea shop (the location of the tea shop was also not mentioned). At that time, these two accused, who were not previously known to him, had also come to the tea shop. At that time, from the waist of one person, a knife fell down. Thereafter, P.W.5 left the tea shop. In the evening, he came to know that the deceased had been done to death. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch from the place of occurrence. P.Ws.7 and 8 have turned hostile, who were examined to speak about the arrest of the accused and the consequential recoveries made on the disclosure statement. P.W.9 has spoken that as instructed by P.W.15, he dived into Thirumullaivoil Lake in search of a Cell Phone. But he could not trace out. P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.12 is a Scientific Assistant who examined the material objects scientifically. Ex.P.6 is her opinion. According to her, human blood was found on all the material objects including the knife. P.W.13, a Head Constable has stated that he took the dead body from the place of occurrence to the hospital for postmortem. P.W.14 photographer has spoken about the photographs taken by him at the instance of P.W.15 P.W.15 has spoken about the

investigation done and the final report filed by him.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on their side.

6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court.

7. We have heard the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. Though we directed the Investigating Officer P.W.15 Mr.Manoharan to be present before this Court, he has not made appearance. The present Inspector of Police, Ennore Police Station Mr.Jagannathan is present.

9. This is a case, admittedly, based on circumstantial evidence. At any rate, in a case based on circumstantial evidence, the prosecution is expected to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain, without any break so as to unerringly point to the guilt of the accused and there should not be any hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now go into the circumstances projected by the prosecution in this case.

10. The first and foremost circumstance projected by the prosecution is that on 05.02.2010 at her house, the deceased alone was there and there was nobodyelse. P.W.1 had gone to his Office. At around 02.00 p.m., he received a phone call from the deceased informing him that two persons claiming to have known him have come to extend an invitation. When the phone was given to one of the persons who had come, he asked P.W.1, whether he was Mr.Panneer working in ETPS. He, in turn, told that he was Mr.Panneer Selvam working in TNEB thereby informing that he was not the one to whom the invitation had meant to be given. P.W.1 quite naturally could not identify these accused. Therefore,

from the evidence of P.W.1, it cannot be said that one of these two accused was one, who spoke to him over cell phone. Thus, the evidence of P.W.1 would not be in any manner go to advance the case of the prosecution.

11. Then, comes the evidence of P.W.2. She has admittedly a neighbour of the deceased. She has stated that on 05.02.2010 at around 02.00 p.m., she found two persons standing in front of the house of the deceased and talking to her. She was under the impression that they had come there in connection with the milk vending business. Then, thereafter, at about 03.00 p.m., P.W.3 informed her that the deceased lying dead inside her house. This witness was not even called upon in court, while under examination, to identify whether the accused were those two persons who were lastly seen in the company of the deceased. It is not explained as to why it did not strike the legal mind of the learned Public Prosecutor, who conducted the case, that an attempt should be made to call upon this witness to identify as to whether the accused are the ones who were lastly seen in the company of the deceased or not. It did not unfortunately strike the mind of the Investigating Officer P.W.15 also that an identification parade should be conducted calling upon P.W.2 to identify those two persons in the Test Identification Parade. Absolutely, there is no explanation. Thus, P.W.2 has not at all identified these two accused as the ones who were lastly seen in the company of the deceased. She has only stated that two persons, who were unknown to her, were talking to the deceased. Thus, the evidence of P.W.2 also would not be in any manner incriminating the accused with the alleged crime.

12. P.Ws.3 and 4 had seen the deceased lying dead in a pool of blood at 03.00 p.m. on 05.02.2010. Their evidence also would not be in any manner incriminating the accused with the crime.

13. Then, comes the evidence of P.W.5. He has stated that on 05.02.2010, these two accused had come to the tea shop. It is not in evidence as to where was the tea shop as to whether it was anywhere near the place of occurrence or elsewhere. No details about the tea shop have been elicited from this witness. It is again unfortunate that it did not strike the legal mind of the learned Public Prosecutor that it is so relevant to elicit from him as to whether the tea shop,

where these two persons were lastly seen, was situated anywhere near the place of occurrence or not. Further, the movement of the accused at or about the time of occurrence somewhere near the place of occurrence was also not known. Apart from that, in this case, unfortunately, the learned Public Prosecutor did not even elicit from this witness as to what was the time when these two accused were seen in the tea shop. Further, though this witness has stated that when these two accused were in the tea shop, from the waist of one of the persons, a knife fell down, among the two accused, who was the one from whose waist the knife fell down, was also not elicited by the learned Public Prosecutor. The knife so fell down, if it is really available in court, was not even shown to P.W.5 so as to identify the said crime weapon. He has admitted during chief examination itself that these accused were previously not known to him at all. When that be so, it is not known as to why it did not occur to P.W.15, the Investigating Officer that a Test Identification Parade should have been arranged for him to identify those persons. Thus, the evidence of this witness also does not in any manner incriminate the accused.

14. P.W.6 has spoken only about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the material objects. P.Ws.7 and 8 were examined to speak about the arrest of the accused and the consequential recovery of the material objects on the disclosure statement. They have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has stated that he searched for the cell phone in the lake. But he could not trace it out. Thus, the evidence of these witnesses would not be in any manner helpful to the prosecution case. P.W.11 has spoken about the postmortem and his final opinion regrading cause of death. From his evidence, the only circumstance which the prosecution has proved is that the deceased was done to death and it is a homicide.

15. A perusal of the evidence of P.W.15 would go to show that he has stated that on the disclosure statement made by the 1st accused on his arrest, gold jewels were also recovered. But no such jewels were marked in evidence. It is not known as to what had happened to those jewels. If it is a case of murder for gain, recovery of gold jewels would play a vital role in the investigation and also in the

proof of guilt. Though there is a charge under Section 379 of IPC alleging that the Thali Chain and other gold jewels attached to the Thali Chain were found missing and though P.W.1 has admitted that M.O.1 was the one which was stolen away, there is no evidence that M.O.1 was recovered from the 1st accused. Further, P.W.1 in his complaint had not stated that the Thali Chain was also found missing from the body of the deceased. Assuming that the said Thali Chain was missing, from whom M.O.1 was recovered is not known. P.Ws.7 and 8 have turned hostile. P.W.15 the Inspector of Police has not identified M.O.1 as the one which was seized from the 1st accused and even the mahazar for the recovery of Thali Chain has not been marked in evidence. Therefore, we are not in a position to attach any importance to the evidence of P.W.15 wherein he has simply stated that he recovered the jewels from the 1st accused.

16. As we have pointed out, the only circumstance proved by the prosecution in this case is that the deceased died by a homicidal violence. Except that, there is no other circumstance proved against the accused warranting conviction. From these facts, we are of the view that the prosecution has failed to prove the guilt of the accused beyond reasonable doubts and therefore, they are entitled for acquittal.

17. In the result, the conviction and sentence imposed on the appellants/accused 1 and 2 by the trial court are set aside and they are acquitted from all the charges. The bail bonds, if any, executed by them shall stand discharged. The fine amount, if any, paid, shall be refunded to the respective accused.

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