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Court : Chennai

Decided On : Jun-03-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal No. 311 of 2014

Appellant : Sathiskumar

Respondent : State rep. By Inspector of Police, Kodumudi Police Station, Erode District

Judgement :

S. Nagamuthu. J

1. The appellant is A.2 in S.C.No.107 of 2013 on the file of the learned Sessions Judge, Mahila Court, Erode. A.1 was one Mr.Soundararajan. They stood charged for offences under Sections 302 r/w 34, 392 and 201 I.P.C. By judgment dated 12.05.2014, the trial Court convicted both the accused for offences under Sections 302 r/w 34 I.P.C., 392 and 201 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for one year for the offence under Section 302 r/w.34 IPC and to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year for the offence under Section 392

IPC and to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year for the offence under Section 201 IPC. Challenging the said conviction and sentence, the appellant/A.2 is before this Court with this Criminal Appeal.

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

The deceased in this case was one Ms.Kavitha. She was a sex worker, doing the said business illegally. P.W.7 is a pimp, who used to arrange sex workers for the accused. It is alleged that on 29.05.2012, both the accused asked P.W.7 to arrange the deceased for them to have sex. A sum of Rs.1300/- was fixed as remuneration for the same. Both the accused took the deceased to the place known as Kutlamparai, where both they had repeated sexual intercourse with the deceased. At the end of the affair, they developed a desire to rob things from the deceased. Therefore, they strangled the deceased with her Saree and killed her. Then they removed the chain worn by the deceased. Then, they took the dead body of the deceased to Perumparapu graveyard and threw the dead body into a pond. They fled away from the scene of occurrence. The occurrence was not witnessed by any one.

3. On 01.06.2012, the dead body of the deceased was found floating in the pond. The Village Assistant of the said village informed the same to the Village Administrative Officer (P.W.1). P.W.1, visited the place of occurrence and verified the facts and then, he went to Kodumudi Police Station and made a complaint under Ex.P.1. On receipt of the said complaint, P.W.13, the Head Constable, registered a case in Crime No.197 of 2012, under Section 174 Cr.P.C(drowning). Ex.P.16 is the First Information Report. He forwarded Ex.P1 and Ex.P.16 to the Court, which were received by the learned jurisdictional Magistrate at 1.30 p.m., on 11.12.2012.

4. Thereafter, the case was taken up for investigation by P.W.14. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch after removing the body from the pond. Then, he conducted inquest on the body of the deceased and forwarded the same for Post Mortem.

5. P.W.11 Dr.Deepa, conducted autopsy on the body of the deceased on 01.06.2012 at 12.40 p.m. Since the body was highly decomposed, even the identity of the deceased could not be made out. She found the following injuries:-

" Body of a moderately built female lying ... with the arms by the side of the body and lower limbs extended. Body symmetrical, emitting foul smelling odor.. , body bloated due to accumulation of putrefactive gases in the tissues. Skin peeled out over the entire body. Hair on scalp 1 foot in length, black in colour, could be easily plucked off. Eyelids- swollen eye balls protruding. Nose- Normal. Mouth Open. Tongue greenish black in colour, protruding out of the mouth. Ears external genitalia normal. Breast on both sides -normal.

External injuries No External injuries.

Internal Examination Thorax : Ribs no fracture. Heart soft flabby, chambers empty 120 gms in wt. Lungs bluish black in colour. Left lung 250 gms in wt . Right lung 275 gms. Hyoid Bone intact. Abdomen : distended c Gas on opening foul smelling putrefied gas escaping. Stomach distended c gas contains partially digested food particles 75 gms in weight, mucosa - liquefied. Intestines distended c gas contains partially digested food particles. Liver 100 gms in wt, flabby , dark brownish red in colour, spleen 80 gms in wt flabby, soft dark brownish red in colour, Kidneys- Rt kid 90 gms Lt kid 90 gms dark brownish red in colour. Bladder 150 ml of clear urine, Uterus Normal in size. Head scalp- normal , Vault intact, membranes intact, brain 900 gms in weight , liquefied base of skull intact.

Ex.P.13 is the Post Mortem certificate. He forwarded the vital organs for the chemical examination. The report is Ex.P.12. P.W.11 opined that the possibility of death due to drowning could not be ruled out. P.W.14, collected the clothes from the dead body of the deceased and forwarded the same to the Court. He made wide publicity of the photograph of the dead body in news papers, in an attempt to identify the dead body. But, no clue came forward from any source. On 30.09.2012, since, he was transferred, he handed over the case diary to his successor.

6. P.W.15 continued the investigation from 01.11.2012 onwards. On 10.12.2012, at about 1.00 pm., he was involved in a regular vehicle check up near Noyal check post. P.W.10 the Village Administrative Officer and his Assistant were with him at that time. An Omni Van bearing registration No.TN 33 AJ 4898 was passing through the said Check Post. P.W.15 intercepted the said vehicle. In the said vehicle, A.1 and one Mr.Manikandan were present. During interrogation, A.1 confessed his involvement in the present case. From out of the confession made by A.1 the gold chain (M.O.2) belonging to the deceased was recovered from the shop where A.1 had pledged the same. A.2/appellant was arrested on 24.12.2012, based on the confession made by A.1 to the Police. He also made a confession. Out of the said confession, M.O.11 a ladies hand bag, M.Os.12 to 27 were all recovered out of his disclosure statement. On completing the investigation, he laid charge sheet against both the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 23 documents were exhibited, besides 27 Material Objects.

8. Out of the said witnesses, P.W.1 has stated that he found the dead body of the deceased floating on the pond on 01.06.2012 and made a complaint to the Police. P.W.2 has spoken only on the basis of hearsay information and he has not stated anything incriminating against the accused. P.Ws.3 and 4 have spoken about the Mahazars prepared in the place of occurrence. P.W.5 has stated that on 29.05.2012, at about 8.15 p.m., he found A.1 and A.2 in the occurrence village. P.W.6 has stated that he found both the accused with a woman at 9.00 p.m. in the village. P.W.7 has stated that at the request made by A.1 over phone to send a sex worker, he requested the deceased to go. Accordingly, the deceased went alone, but did not return. P.W.8 is a commercial sexual worker who was working under P.W.7. She identified the photograph of the dead body as that of the deceased. P.W.9, Head Clerk of the Court has spoken about the forwarding of Material Objects for chemical examination. P.W.10 has spoken about the arrest of A.1 on 10.12.2012 and the confession made by him and also recovery of Material

Objects. P.W.12 is the Constable, who carried the dead body to hospital for post mortem. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.14 and 15 have spoken about the investigation done and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witnesses on their side. Their defence was a total denial.

10. Having considered all the above, the trial Court found both the accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, the A2/appellant is before this Court with this appeal.

11. We have heard the learned counsel appearing for the appellant/A2 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. The learned counsel for the appellant would submit that this is a case of no evidence against the appellant/A.2 and the trial Court has convicted him based on mere surmise. He pointed out that this accused/A.2 was arrested on the basis of the confession made by A1. But, from this accused, there was no incriminating material recovered out of the disclosure statement made. The Material Objects recovered out of the disclosure statement made by this accused/A.2 have not been proved that it may have any relevance with the crime or with the deceased. The learned counsel would further submit that even the identity of the dead body has not been established by forwarding or conducting any scientific examination like super imposition or DNA test. The learned counsel would further point out that there was no complaint made about the missing of the woman for such a long time. For all these reasons, according to the learned counsel, the appellant/A2 is entitled for acquittal.

13. The learned Additional Public Prosecutor would vehemently oppose this Criminal Appeal. According to him, the accused and the deceased were seen together lastly and it is also stated that A.1 and A.2 were found moving

somewhere near the place of occurrence during the relevant time. From these circumstances, the prosecution has proved the case against the appellant/A.2 beyond reasonable doubt.

14. We have considered the above submissions.

15. As pointed out by the learned counsel for the appellant, it is not as though this accused/A.2 had taken the deceased from P.W.7. According to P.W.7, it was only A.1 who called him over phone and wanted to send a girl for sex. Accordingly, P.W.7 sent the deceased Ms.Kavitha. She went on her own and not being accompanied by anyone. Thereafter, she did not return. But, no complaint was made to the Police even after missing of Ms.Kavitha though she went on 29.05.2012.

16. It is the case that from 29.05.2012 onwards, the deceased was missing, but, no complaint was made within a reasonable time. The dead body was found floating in the pond on 01.06.2012. Despite the fact that wide publicity was made in the newspapers, no one come forward to identify the dead body. Only on the arrest of A.1 and one Mr.Manikandan, the death of the deceased came to light on 10.12.2012. A.1 made a confession implicating A.2. Since, that confession made by A.1 to Police is inadmissible in evidence, that cannot have any legal force against this accused/A.2. Recovery of a gold chain (M.O.2) at the instance of A.1 cannot be made use of against this accused/A.2, as no connection has been established between this accused/A.2 and the gold chain.

17. So far as this accused/A.2 is concerned, M.O.11 a ladies hand bag and M.Os.12 to 27 were all recovered under Ex.P.2. But, nothing has been elicited and brought on record to connect these Material Objects either with the crime or with the deceased. Apart from that, there is no other evidence against the accused/A.2. As pointed out by the learned counsel for the appellant, though, the identity of the deceased is sought to be established by the evidence of P.W.8, in our considered view, it is not sufficient and the investigation should have been done in a scientific manner viz., by conducting either super imposition or DNA test. It is not explained to the Court as to why such a scientific examination has not been made by the Police in this case. At any rate, as rightly contended by the learned counsel for the

appellant, absolutely, there is no evidence against this accused/A.2.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A.2 by the learned Mahila Sessions (Fast Track Court) Judge, Erode, in S.C.No.107 of 2013 by the judgment dated 24.12.2014 are hereby set aside. The appellant/A.2 is acquitted of the charges levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant/A.2, shall be refunded to him. Bail bond, if any, shall stand discharged.

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