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Court : Chennai

Decided On : Feb-29-2012

Judge : N.Paul Vasanthakumar; P.Devadass, Jj.

Appeal No. : Criminal Appeal (MD) No.432 of 2010

Appellant : Chellathurai

Respondent : State

Advocate for Def. : Mr.K.S.Duraipandian, Adv.

Advocate for Pet/Ap. : Mr.A.Thiruvadi Kumar, Adv.

Judgement :

Appeal filed under Section 374 (2) Cr.P.C., against the conviction and sentence imposed upon the appellant by the learned Additional District Judge/Fast Track Court, Virudhunagar, Virudhunagar District in S.C.No.28 of 2010 by judgment dated 8.10.2010, wherein he was convicted under Section 302 IPC to undergo life imprisonment and to pay Rs.1,000/- as fine, in default to undergo six months rigorous imprisonment.

JUDGMENT

P.DEVADASS,J

1. This appeal raises question of 'plea of insanity', how and under what circumstances, it could be raised and by what standard of proof it has to be established and who has to establish it and the crucial time of state of the mind of the accused are some of the crucial questions involved in this appeal.

2. The appellant, in the Court of Additional Sessions Judge (Fast Track Court), Virudhunagar was accused of having attempted to ravish one Karupayee and while attempting such dastardly act, killed her.

3. Charges under Section 376 r/w. 511 and 302 IPC have been framed against him. On 8.10.2010, in S.C.No.28 of 2010, he was found not guilty under Section 376 r/w. 511 IPC, but found guilty under Section 302 IPC and was sentenced to life imprisonment and was also fined Rs.1,000/- with default sentence.

4. The skeletal picture of the prosecution version narrated in the trial Court may be recounted in brief as under:-

(i). Karupayee, after the death of her husband Pattaiya, returned as a widow to her native Achampatti in Kariyapatti in Virudhunagar District.

(ii). She lived lonely near her brother's house in Achampatti. She has no issues. She eke out her living by rearing sheep and gathering fire-wood in the nearby forest like area.

(iii). As usual, on 26.3.2007, at about 9 a.m., she left the village with her herd of sheep. P.W.13 Nagammal also a Shepherd woman accompanied her. Around 5 p.m., Karupayee told her to take her herd also to the Village and she will come after gathering fire-wood. That was the time Karupayee was lastly seen alive by anybody.

(iv). At about 6 p.m., on the Achampatti-Thoppur cart-track, near P.W.4 Vadamaliyan's land, P.W.21 Alaghu, saw the accused, came showing some strange behaviour. At about that time, P.Ws.7 and 8 Muthupandi and Kannan have also seen him.

(v). Till 7 p.m., Karupayee did not return home. P.W.13 told P.W.1 Muthumari, Karupayee's brother's son, what Karypayee had told her. P.W.1 her brother, P.W.2 Murugan, P.W.3 Karupaiah, husband of P.W.13, P.Ws.19 and 20 Ganesan and Alaghumalai, went in search of the missing woman.

(vi). Near the Thoppur cart-track, they have seen Karupayee's bill-hook, chappals, a bundle of fire-wood, Polythene bag with betel leaves and a small bucket. At a little distance, in a secluded place, they have seen the dead body of Karupayee. At about 9.30 p.m., they told this to the Villagers. Since on that day, temple festival was celebrated in the village, they have decided to take further course of action in the morning.

(vii). On the next day, namely, on 23.7.2007 morning, the villagers saw the dead body. They have decided to make police complaint. At about 10 a.m., at the Kariapatti Police Station, P.W.1 gave Ex.P.1 complaint to P.W.23 Sornappan, Sub-Inspector. It was attested to by P.W.2. P.W.23 registered a case in crime No.32 of 2007 under Section 302 IPC. He sent Ex.P.12 express FIR to the Court through P.W.12 Constable Abdul Kadhar Basha.

(viii). On receipt of a copy of the FIR, P.W.24 Pathamuthu, Inspector, Kariapatti took up investigation. At the scene place, in the presence of P.W.5, Harikesavan, V.A.O., Vakkanangundu and his Assistant, prepared Ex.P.2 observation mahazar and drew Ex.P.13 rough sketch. In their presence, recovered saree pieces (M.O.7) under Ex.P.3 mahazar, at a little distance, near the Thoppur cart-track, under Ex.P.4 mahazar, seized a small-bucket (M.O.1), bill- hook (M.O.2), plastic water can (M.O.3), a pair of chappals (M.O.4), Polythene bag with dried betel leaves (M.O.5), fire-wood pieces (M.O.6). In the presence of Panchayatdhars, P.W.24 held inquest over the dead body (Ex.P.14 inquest report). On his request, P.W.17 Vijayasekar photographed the dead body. P.W.24 sent the dead body with his requisition through P.W.18 Head Constable Isac Rajkumar to Government Hospital, Aruppukottai to perform autopsy. P.W.24 examined material witnesses and recorded their statements.

(ix). On 28.3.2007, at about 11.30 a.m., P.Ws.10 and 11 Dr.Jeganathen and Dr. Vani conducted autopsy on the dead body of Karupayee and noticed the following:

Eye balls protruding with post mortem blisters all over the body more over the clevaz wall anteriorly, abdominal wall anteriorly and both the anterior thighs. There were peeling of skin all over the body especially in the neck, anterior chest wall, abdominal wall and in the limbs. Beneath the peeled skin marked pattern of veins seen. Tongue protruding with frothy secrchons getting out . Scalp hair black 10 cm long and curly and cm x plunked and easily Armpits 0.5 cm long black hair.

Injuries: An 1 cm x 0.5 cm abrasion inside the upper lip on the left side just opposite to (vertical) to canine tooth. Intestine filled with foul smelly gas with putrefied the Iliac Toma empty. Uterus empty and atrophied (nc) pelvis. No fracture in the skull, spinal column. No external injury, made out on the nostril, outlet vegina and medial upper thighs.

(x). On analysis, no poison in her viscera, others semen were found in her vaginal smear. The Doctors opined that she would have died 36 to 48 hours prior to autopsy (Ex.P.6 post-mortem certificate).

(xi). After post-mortem, P.W.18 recovered Saree (M.O.8), Jacket (M.O.9), covering-chain (M.O.11), petty-coat (M.O.10) from the dead body and handed over them to P.W.24 and handed over the dead body to the relatives to perform last rites.

(xii). On 2.4.2007, at about 5 a.m., at the Kariyapatti-Tiruchuli road, near Kariapatti, in the presence of P.Ws.14 and 15 viz., Dhinakaran and Thirupathi, P.W.24 arrested the accused. He gave him Ex.P.15 confessional statement. In pursuance of that, he shown them the scene place and from a bush behind his house, in NGO Colony, Kariapatti produced Pant (M.O.2), jatty (M.O.13), banian (M.O.14) and a polythene bag (M.O.5). P.W.24 seized them under Ex.P.16 mahazar. At the Government Hospital, Virudhunagar, P.W.9 Dr.Durairaj conducted potential test for the accused and opined that he is capable of performing sexual act (Ex.P.5 report). P.W.24 produced the accused to the Court for judicial custody. Sent the case-properties through Court to the Lab for analysis and report. Later, P.W.24 received Ex.P.17 chemical report. Concluding his examination, he filed the Final Report for offences under Section 376 r/w. 511 and 302 IPC.

5. To sustain the said charges, prosecution examined P.Ws.1 to 24, marked Exs.P.1 to P.17 and exhibited M.Os.1 to 15.

6. When the accused was examined on the incriminating aspects in the prosecution evidence, he denied his complicity in this case.

7. In support of his plea of insanity, the accused examined D.W.1 Uthayakumar, a resident of Kariapatti, who stated that the accused is a person of unsound mind from his childhood, when he was 5 years old, he was treated as an in-patient in an hospital in Madurai, he used to roam mindlessly and he has been affected with mental illness.

8. Appreciating the above evidence, the learned Additional Sessions Judge, rejected the plea of insanity. Relying on the evidence of P.Ws.14 and 15 the recovery witnesses and the blood stains in the clothes of the deceased and the accused are same and considered it an incriminating circumstance, convicted the accused for an offence under Section 302 IPC and sentenced him as already stated.

9. According to Mr.A.Thiruvadi Kumar, learned counsel for the appellant, prosecution has not established the charge against the accused beyond all reasonable doubts.

10. Elaborating his submissions, the learned counsel submitted as under:-

(i). This case is based on circumstantial evidence. None of the circumstances has been established. Further, they were not having link with each other.

(ii). P.Ws.7, 8 and 21 did not say that they have seen the accused with the deceased. They are closely related to the deceased.

(iii). The recovery witnesses P.Ws.14 and 15 have turned hostile. Further, the evidence of P.W.1 shows that much before his arrest, the accused was in the custody of Police. So, the recovery evidence introduced in this case is farce.

(iv). The medical evidence of P.Ws.10 and 11 is not positive as to the cause of her death. A case of natural death has been shown as a homicidal death.

(v). The accused is a person of unsound mind from his childhood. The evidence of D.W.1 and also some of the prosecution witnesses establish this. In such circumstances, the plea of insanity as provided in Section 84 IPC comes to the rescue of the accused.

11. In support of his submissions, the learned counsel cited the following rulings.

(i). RAMREDDY RAJESH KHANNA REDDY AND ANOTHER Vs. STATE OF A.P {2006 (3) SCC (Cri) 512

(ii). BABU AND OTHERS Vs. STATE OF ORISSA (2003 Cri.L.J - 1011).

12. On the other hand, Mr.K.S.Duraipandian, learned Additional Public Prosecutor would submit that the witnesses have spoken to about they having seen the accused near the scene of crime at about the occurrence time in an unusual manner. Besides that, there is Section 27 Evidence Act Recovery. The plea of insanity has not been established by the accused.

13. We have perused the evidence on record, considered the rival submissions and perused the decisions cited.

14. Karupayee, a widow, then about 55 years old was residing lonely in Achampatti, near Kariapatti, in Virudhunagar District. She lived by shepherding and cutting fire-wood. She used to graze her cattle in the nearby forest like area.

15. On 26.3.2007, at about 6 p.m., she was lastly seen alive near P.W.4 Vadamaliyan's land, near Achampatti, by P.W.13 Nagammal. Thereafter, around 8 p.m., near a bush near Thoppur cart track, she was found dead. At a little distance, her personal belongings namely, a small bucket (M.O.1), bill hook (M.O.2), water can (M.O.3), pair of chappals (M.O.4), polythene bag with dried betel leaves (M.O.5) and also few fire-wood pieces (M.O.6) were found strewn.

16. According to prosecution, on that day, at about that time, in that place, the accused tried to ravish her. Since she resisted, he silenced her by pressing her nose with her saree-piece (M.O.7).

17. There is no eye witness to the occurrence. The case is based on circumstantial evidence.

18. In Padala Veera Reddy v. State of A.P. (AIR 1990 SC - 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

19. In SK.YUSUF Vs. STATE OF WEST BENGAL reported in (2011) 3 SCC (Cri) 620, on the aspect of circumstantial evidence, Hon'ble Apex Court observed as under:-

32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the Court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any

reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that the act must have been done by the accused.

20. To nail the accused, prosecution relies on the following circumstances:-

(i). Last seen theory

(ii). Section 27 Evidence Act Recovery

(iii). Medical Evidence.

21. According to prosecution, they form a complete chain, unerringly proceeding towards the accused as the killer of Karupayee.

22. However, according to the accused, none of the circumstances has been proved and have missing links.

23. The accused also raised the plea that he is a person of unsound mind, he did not know what he did, why he did, he lacks requisite mental faculty to know the nature, effect and consequences of an act. Thus, according to the learned counsel for the appellant, in terms of general exception provided in Section 84 IPC, no criminal liability shall be imposed upon the appellant.

24. Section 84 IPC states that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law.

25. It is obvious from a bare reading of this provision that what may be generally an offence would not be so if the ingredients of Section 84 IPC are satisfied. It is an exception to the general rule that a person who is proved to have committed an offence, would not be deemed guilty.

26. To commit a criminal offence, 'mens rea' is generally taken to be an essential element of crime. It is said furiosus nulla voluntus est. It means, a person who is suffering from a mental disorder cannot be said to have committed a crime as he

does not know what he is doing. For committing a crime, the intention and act both are taken to be

the constituents of the crime, actus non facit reum nisi mens sit rea.

27. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behavior.

28. In SURENDRA MISHRA Vs. STATE OF JHARKHAND {2011 (3) SCC (Cri), the Honourable Apex Court observed as under:-

The expression unsoundness of mind has not been defined in the Indian Penal Code. It has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behavior or the behavior is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

29. The defence of insanity has been well known in the English Legal System for many centuries. In the earlier times, it was usually advanced as a justification for seeking pardon. Over a period of time, it was used as a complete defence to criminal liability in offences involving 'mens rea' (guilty mind). It is also accepted that insanity in medical terms is distinguishable from legal insanity. In most cases, in India, the defence of insanity seems to be pleaded where the offender is said to be suffering from the disease of 'Schizophrenia'.

30. Section 84 IPC gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords

rendered in the case of R. Vs. Daniel Mc Naughten ([1843 RR 59: 8ER 718(HL)]).

In this case, the accused Mc Naughten was changed with the murder by shooting of Edward Drummond, who was the Private Secretary of the then Prime Minister of England Sir Robert Peel. The accused Mc Naughten produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an 'insane delusion' that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the 'insane delusion', he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and Mc Naughten was found not guilty, on the ground of insanity.

31. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the Hon'ble Law Lords on the law governing such cases. Five questions were subsequently put to the Law Lords. Lord Justice Tindal, C.J, answered the questions as under:-

(i). Every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to the satisfaction of a jury.

(ii). To establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.

(iii). As to his knowledge of the wrongfulness of the act, the judges said: 'If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable:

(iv). Where a person under an insane delusion as to existing facts commits an offence in consequence thereof, the judges indicated that the answer must depend on the nature of the delusion; but making the assumption that he labours under partial delusion only, and is not in other respects insane he must be considered in

the same situation as to responsibility as if the facts with respect to which the delusion exists were real.

32. The said replies became the famous Mc Naughten Rules. Even now that is the law through out the common Law Countries.

33. A comparison of answers to question Nos.2 and 3 and the provision contained in Section 84 IPC would clearly indicate that Lord Macaulay, the Draftsman of the Penal Code of India modelled Section 84 in the Indian Penal Code on the aforesaid answers.

34. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1872 and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (See Dahyabhai v. State of Gujarat AIR 1964 SC 1563).

35. Section 84 IPC itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied.

36. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of: exemption from criminal responsibility.

37. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite

mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by s.84 of the Indian Penal Code : the accused may rebut it by placing before the court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

38. Now, keeping the above principles governing law relating to plea of insanity in our mind, let us assess the tenability of the plea raised by the accused in this case.

39. P.W.7 Muthupandi is residing in Achampatti. In his cross- examination, he had stated that the accused was affected with mental illness from his childhood and he used to roam. P.W.8 Kannan is related to P.W.7. In his cross-examination, P.W.8 would say that because accused appear to be a person of unsound mind, nobody will tell anything to him and nobody will talk to him also. D.W.1 Uthayakumar belongs to Kariapatti. He knows the accused. According to him, the accused used to roam in the streets as a mental person. D.W.1 admitted that he had no connection with him for the past four years. He had seen him only when the Police took him to the Police Station. Evidence of P.Ws.7, 8 and D.W.1 would not show that the accused was a person of unsound mind at the occurrence time.

40. P.W.9 Dr.Durairaj had conducted potential test for the accused. In his cross-examination, he had stated that the accused appeared to be a person of unsound mind. But, he did not mention about his mental condition in his Ex.P.5 certificate. P.W.9 is not a psychiatrist.

41. There is no independent medical evidence, medical record as to the past, present medical history of the accused. It is not medically shown that during the occurrence time, during the subsequent period, the accused was a psychiatric patient.

42. D.W.1 admits that the father of the accused is available. But, he did not came to the Court to depose in support of his sons's plea of insanity. There is no evidence of family history of the accused, whether any one in his family was afflicted with psychiatric problem. The accused was present throughout the trial in the Court. He has fully participated in the trial proceedings. The trial Judge had seen him through out. He did not notice any abnormal behaviour on the part of the accused. During his examination, under Section 313 Cr.P.C., the accused had answered like a normal person.

43. Thus, the accused has not discharged his burden. Thus, the plea of insanity raised by the accused is not acceptable to us.

44. Now, we shall proceed to see whether the circumstances projected as against the accused have been proved by the prosecution.

45. As regards last seen theory, in STATE OF U.P Vs. SATISH (2005 SCC (Cri) 642), Hon'ble Supreme Court observed as under:-

The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses P.Ws.3 and 5, in addition to the evidence of P.W.2.

46. Again, in RAMREDDY RAJESH KHANNA REDDY Vs. STATE OF A.P. (2006) 3 SCC (Cri) 512, Hon'ble Supreme Court observed as under:-

The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the Courts should look for some corroboration.

47. In SK.YUSUF Vs. STATE OF WEST BENGAL reported in {(2011) 3 SCC (Cri) 620}, Hon'ble Apex Court observed as under:-

The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

48. P.Ws.7, 8 and 21 Muthupandi, Kannan and Alaghu have been examined in support of last seen theory.

49. It is the evidence of P.W.7 that on that day, at about 5.30 p.m., when he and his Uncle P.W.8 came walking on the Thoppur cart-track, the accused came walking from the opposite side. When questioned, he told them that he just came out and on the next day, P.W.7 heard that Karupayee is dead. P.W.7 is not specific about the date on which he had so seen him. P.W.8 also spoke similarly. Though they remember so seeing the accused at that place after a lapse of a considerable period, they gave different versions as to the dress then worn by him. As per the prosecution version, P.Ws.7 and 8 came together and have seen the accused. However, in his police statement, P.W.8 did not tell that they have so seen him. It is significant to note that P.Ws.7 and 8 are close relatives of the deceased. Neither P.W.7 nor P.W.8 would say that they have seen the accused and the deceased together.

50. It is the evidence of P.W.21 Alaghu that about three years ago, on a day, at about 6 p.m., when he was cutting trees in his land, situate near Thoppur car-

track, he heard sheirk. When he came walking, he had seen the accused coming before him. P.W.21 noticed unusual behaviour in him. P.W.21 stated that he thought that the sheirk might be of shepherd children. In his cross-examination, P.W.21 admits that prior to that, he had never seen the accused. Using P.W.21 as an identifying witness, no Test Identification Parade was conducted. Even as per the evidence of P.W.21, he had seen the accused in a split of second at a lonely place, when darkness started setting in. After about three years, P.W.21's 'dock identification' of the accused for the first time is highly doubtful. P.W.21 is also a close relative of the deceased. It is not his evidence that he had seen the accused in the company of the deceased. Thus, for the foregoing reasons, the last seen theory built by the prosecution through the evidence of P.Ws.7, 8 and 21 did not lend credence. So, in the chain of circumstances, there is one missing link.

51. The next circumstance is recovery of certain material objects based on the disclosure statement of the accused. For this purpose, P.Ws.14, 15 and 24 namely, Dinakaran Tirupathi and Pathamuthu have been examined by the prosecution.

52. No amount of confession made to police is admissible to prove an offence. However, to some extent, a relaxation to this Rule has been made in Section 27 of the Indian Evidence Act,1872. Under Section 27 of the Act, so much of information leading to the recovery of a material fact alone is admissible. Non-culpatory portion in the confession of an accused alone is admissible.

53. The scope and ambit of Section 27 were stated long ago by the Judicial Committee of the Privy Council in PULUKURI KOTAYYA V. KING EMPEROR (AIR 1947 PC 67). It runs as under:-.. It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced, the fact discovered within the Section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and knowledge of the accused as to this, and the informations given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that I will produce a knife concealed in the house of the informant to his

knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant

54. In MUSTKEEM ALIAS SIRAJUDDEN vs. STATE OF RAJASTHAN [(2011) 3 SCC (Cri) 473], with reference to Section 27 of the Indian Evidence Act, Hon'ble Apex Court observed as under:-

25. With regard to Section 27 of the Act, what is important is discovery of the materials object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the materials object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

55. It is the evidence of P.W.24 Inspector Pathamuthu that on 2.4.2007, at about 5 a.m., near a place in the Kariapatti-Tiruchuli road, in the presence of P.Ws.14 and 15, Dinakaran and Tirupathi, he had arrested the accused, recorded his confession Ex.P.15 and in pursuance of that, accused had produced him M.Os.12 to 14 and 15 dresses and a polythene bag from a bush behind his house situate in the N.G.O. Colony in Kariapatti, he had seized them under Ex.P.16 mahazar in the presence of P.Ws. 14 and 15. P.W.14 turned hostile. However, during his cross-examination by the prosecution, P.W.14 had confirmed the said seizure. P.W.15 Tirupathi did not confirm the arrest, recording of confession and the recovery of material objects. Thus, P.W.15 had not corroborated the evidence of P.Ws.14 and 24.

56. As per the evidence of P.Ws.14, 15 and 24, the accused was arrested on 2.4.2007 at about 5 a.m. However, the cross examination of P.W.1 Muthumari reveals that the accused was picked up by the Police on 27.3.2007 itself and he was kept in the police Station for one week. So, the arrest, confessional statement, recovery and recovery mahazar are all created to suit the prosecution version of the case. So, this circumstance also has not been established. So, the second link

is also disconnected.

57. On 26.3.2007, at about 8 p.m., Karupayee was found dead. P.Ws.10 and 11 Dr.Jeganathan and Vani conducted autopsy. Karupayee is dead, no doubt about it. Why she is dead. What is the reasons for her death. These are to be known only from the medical evidence. But, P.Ws.10 and 11 is unable to fix the cause of her death.

58. In a murder case, primarily the deceased suffered a homicidal death, must be proved. The line of cross-examination of the defence of the witnesses examined in the Court, who are related to the deceased as well as to the cross- examination of the Doctors is that the deceased was suffering from heart ailment and she suffered a natural death in a lonely place. The Doctors also did not completely rule out the possibility of her such death.

59. It is relevant to note a decision of the Orissa High Court made in BABU AND OTHERS Vs. STATE OF ORISSA (2003 Cri.L.J 1011), which runs as under:-

Where a doctor conducting post-mortem examination would not be certain with regard to the cause of death and there have been no other connecting link placed by the circumstances, it would be hazardous to convict the appellants for causing death of the victim. Furthermore, there were six accused charged under S. 302/34, IPC out of whom one is already dead and two of them have been acquitted. It is, therefore, difficult to come to a definite conclusion as to who was/were responsible for the death of Bhagabati.

60. In Mohd. Zahid v. State of Tamil Nadu {1993 Cri.L.R (SC) 627}, the Hon'ble Supreme Court held :

We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has conducted the post-mortem, as compared to the statements found in the text books, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. This is one such case where we find that there is a reasonable doubt in regard to the cause of death of Jabeena and we find

it not safe to rely upon the evidence of P.W. 8, solely, for the purpose of coming to the conclusion that Jabeena's death is proved by the prosecution to be homicidal.

61. In these circumstances, in view of such medical evidence tendered by the autopsy Doctors P.Ws.10 and 11, we cannot hold that Karupayee died of homicidal violence.

62. There was no presence of blood in M.Os.1, 2 to 14 which are stated to be dresses of the accused. P.W.24 Investigation Officer also stated this. In the circumstances, the learned Additional Sessions Judge, in paragraph 20 of his judgment, stated that since Ex.P.17 shows the blood stains in the clothes of the deceased and blood stains in the clothes of the accused are one and the same, relied on the same, besides relying on the evidence of P.Ws.14 and 15 about whom we have already discussed, convicted the accused. This finding is not based on any evidence, much less legal evidence.

63. Thus, none of the circumstances projected by the prosecution has been established. They were found broken. They do not form a complete chain unerringly proceeding towards the accused, that he killed Karupayee.

64. It is appropriate here to note the following observations of Hon'ble Supreme Court made in Ashish Batham vs. State of M.P {(2002) 7 SCC 317}. 8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touchstone of a dispassionate judicial

scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.

65. Recently, the Hon'ble Supreme Court reiterated the above observations in RATHINAM Vs. STATE OF T.N {(2011) 11 SCC 140} also.

66. No doubt, very serious charges have been made as against the appellant. We are very serious of they being proved by valid and legal evidence.

67. Suspicion and surmises cannot be substituted for the same. None of the circumstances projected by prosecution has been proved. Everywhere the chain of circumstances woven by the prosecution is found broken. There is no connecting link. They do not form a complete chain unerringly implicating the accused with the charges framed against the appellant.

68. In view of the foregoings, the findings recorded by the learned Additional Sessions Judge, (Fast Track Court), Virudhunagar, cannot be sustained. Appellant is not guilty of the charge framed under section 302 IPC. He is entitled to be acquitted.

69. In the result, the Criminal Appeal is allowed. The conviction recorded and the sentence awarded to the appellant in S.C. No. 28 of 2010 on 8.10.2010 by the learned Additional Sessions Judge, (Fast Track Court), Virudhunagar, are set aside. The appellant shall be released immediately, if he is no longer required for any other case/ proceedings/ order. Fine amount, if already paid shall be refunded to him.

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