

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2008

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

AND

THE HONOURABLE MR.JUSTICE S.RAJESWARAN

CRIMINAL APPEAL NO.795 OF 2007

Vaithi @ Vaithiyalingham

.. Appellant

Vs.

State rep. by  
Inspector of Police,  
V.5, Thirumangalam Police Station,  
Thirumangalam,  
Chennai.  
(Crime No.132 of 2006)

.. Respondent

This criminal appeal has been preferred under Section 374(2) of Cr.P.C. against the judgment of the learned Additional District Sessions Judge, Fast Track Court No.III, Chennai made in S.C.No.107 of 2006, dated 28.04.2006.

For Appellant : Mr.S.Swamidoss Manokaran

For Respondent : Mr.R.Balasubramanian, APP

JUDGMENT

(The judgment of the court was delivered by  
M.CHOCKALINGAM, J.)

Challenge is made to the judgment of the Additional District and Sessions Division, Fast Track Court No.3, Chennai made in S.C.No.107 of 2006, whereby the sole accused/appellant stood charged under Sections 302, 380 and 307 IPC, tried, found guilty as per the charges and awarded life imprisonment under Section 302 IPC, five years R.I. under Section 380 IPC and 7 years R.I. under Section 307 IPC and the sentences were ordered to run concurrently.

2.The short facts necessary for the disposal of this appeal can be stated thus:

<https://hcservices.ecourts.gov.in/hcservices/>

a)P.W.1 is the husband of the deceased Renukadevi. P.W.5 is the

daughter and P.W.6 is the son-in-law of P.W.1. P.W.6 is a practising Advocate. Originally, in the year 1991, the accused/appellant was employed in the police service at Pondicherry and on dismissal from service on a departmental enquiry, he filed a writ petition challenging the same. But, it ended in failure. Prior to the occurrence, for a period of 8 months, the accused was staying in their house and was doing some work. At that time, the deceased has abused him and asked him to go for a job.

b) On the date of occurrence, namely on 28.02.2006 at about 2.10 p.m., the accused attacked the deceased with knife and murdered her. At about 2.50 p.m., P.W.1, who went to purchase grocery, returned to house. He found the accused standing with bloodstained knife and immediately, he questioned him. At that time, the accused answered that "I murdered your wife and I would finish you off". So saying, he attacked P.W.1 on different parts of his body. Then, the accused fled away from the place of occurrence.

c) Immediately, P.W.1 entered into the room and found the dead body of his wife. P.W.1 was taken to the hospital. P.W.4, who was on duty at the Government Hospital, Kilpauk, medically treated him at about 4.25 p.m. The statement of P.W.1 was recorded in Ex.P.5, the accident register. P.Ws.5 and 6 came to know about the said incident. P.W.14, the Doctor attached to the Government General Hospital, gave further treatment to P.W.1. The statement of P.W.1 was recorded in Ex.P.15. P.W.15, the Doctor also gave treatment to P.W.1.

d) On receipt of the intimation, P.W.20, the Sub Inspector of Police attached to V.5, Thirumangalam Police Station, went to the K.M.C. Hospital and recorded the statement of P.W.1, which was marked as Ex.P.1. On the strength of the same, a case came to be registered in Crime No.132 of 2006 under Sections 302 and 307 IPC. Ex.P.20, the F.I.R. was despatched to the concerned Court through the Constable.

e) P.W.21, the Inspector of Police, on receipt of the copy of the F.I.R., took up the investigation, proceeded to the spot, made an inspection in the presence of the witnesses and prepared Ex.P.8, the observation mahazar and Exs.P.21 and P.22, the rough sketches. He conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and prepared Ex.P.23, the inquest report. Then the dead body was sent to the hospital for the purpose of autopsy. P.W.21 recovered the material objects from the place of occurrence under a cover of mahazar. Further, on interrogation, he came to know from P.W.5 that certain jewels were also stolen and hence the case was altered to Sections 302, 380 and 307 IPC and Ex.P.27, the amended report was despatched to the Court.

f) P.W.3, the Doctor attached to the Government Hospital, Kilpauk, on receipt of the requisition, has conducted post-mortem on the dead body of the deceased and has issued Ex.P.2, the post-mortem certificate, wherein he has opined that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained.

g) Pending investigation, P.W.21 arrested the accused on 2.3.2006 at Pondicherry bus stand in the presence of the witnesses. The accused voluntarily came forward to give confessional statement, which was recorded in the presence of the witnesses, the admissible part of which was marked as Ex.P.16. Pursuant to the same, he produced M.Os.12 and 13, 2 ladies wristwatches, which were recovered under a cover of mahazar. The accused identified P.W.7, Radhakrishnan, from whose shop, M.Os.4 to 11, jewels were recovered under a cover of mahazar. Ex.P.6 receipt was also recovered. P.W.8, the employee of Krishna Lodge at Pondicherry, was examined. On the request of the accused, a room was allotted and the accused stayed over there on 28.2.2006 at about 8.00 p.m. and vacated the room next day at about 12.15 p.m. Ex.P.7, the receipt, in respect of the stay of the accused in the lodge was also recovered. Then, the accused took the investigating party and produced the bloodstained knife and the bloodstained pant, which were recovered under a cover of mahazar. Then, he was sent for judicial remand. All the material objects recovered from the place of occurrence, from the dead body of the deceased and the M.Os recovered from the accused were sent for chemical analysis by the Forensic Science Department, which resulted in two reports, namely Ex.P.12, the Biological report and Ex.P.13, the Serologist's report. On completion of the investigation, the Investigating Officer has filed the final report.

3. The case was committed to the Court of Sessions and necessary charges were framed. In order to substantiate the charges levelled against the accused, the prosecution marched 21 witnesses and also relied on 31 exhibits and 23 M.Os. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which he flatly denied as false. No defence witness was examined. The trial court, after hearing the arguments advanced and looking into the materials available, took the view that the prosecution has proved the case in respect of all the three charges levelled against him and found him guilty and awarded imprisonment, which is the subject matter of challenge in this appeal before this court.

4. Advancing arguments on behalf of the appellant, the learned counsel would submit that in the instant case, the prosecution has miserably failed to prove its case; that according to the prosecution, there was actually no eyewitness to the occurrence; that the occurrence has taken place, according to the prosecution, at about 2.10 p.m. on 28.02.2006; that it is the case of the prosecution that the accused engaged P.W.6 as his lawyer for his cases before the court, but he failed thereon and thereafter, the accused was seeking employment and an assurance was given by P.W.6 and thereafter, the accused was demanding money, which was also given then and there and on the date of occurrence, it was the accused who attacked the mother-in-law of P.W.6 and caused her death; that even as per the prosecution case, he had no motive against her; that from the evidence of P.W.16, servant maid, it would be quite clear that there were occasions in the past, in which the deceased was going on abusing him in such a way that he felt shy of the same; that it is not the evidence of P.W.1 that he witnessed the



occurrence, but he was coming from outside and the accused attacked him with the knife and P.W.1 sustained injuries; that it is admitted that P.W.1 is the husband of the deceased; and that the evidence of P.W.1, if carefully scrutinized, did not stand the test and hence his evidence should not have been believed.

5.Added further the learned counsel that it is not the evidence of P.W.9, the coconut merchant that the accused was coming from the house with knife, but he was coming out and thus, it can be well stated that the prosecution had no evidence worth mentioning to offer; that all other evidence in no way should be taken as corroborative piece of evidence; that the alleged arrest, confessional statement and the recovery of weapon of crime and the jewels were all nothing, but cooked up in order to suit the case of prosecution; that all the witnesses, who were examined at the time of cross examination, remained shaky; that the lower court should not have believed the evidence at all; and that so long as the prosecution was unable to prove as to how the occurrence has taken place inside the house at about 2.10 p.m. on 28.02.2006 as found in the charge, the prosecution cannot be said to have proved the case beyond reasonable doubt.

6.Added further the learned counsel in the second line of argument that even from the evidence of P.W.16, servant maid, it would be quite clear that for the past eight months when the accused was staying in the house, the deceased was going on abusing him; that it is quite natural that he was provoked by the words uttered that his wife ran away and he was jobless and hence he has acted so; that it cannot be said to be either pre-meditated or intentional; that the act of the accused would not attract the penal provision of murder and hence the legal position, which the trial court failed to consider, has got to be considered by this court.

7.The court heard the learned Additional Public Prosecutor on the above contentions and has paid its anxious attention over the same.

8.The prosecution has proved successfully that in an incident that took place at about 2.10 p.m. on 28.2.2006, one Renukadevi, the wife of P.W.1 was done to death and following the inquest made by P.W.21, the dead body was subjected to post-mortem by P.W.3, the Doctor, who has issued Ex.P.2, the post-mortem certificate and has deposed before the court as a witness that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained. It is pertinent to point out that this fact that she died out of homicidal violence was never the subject matter of dispute before the trial court or before this court. Hence no impediment is felt by the court in recording so and accordingly, it is recorded.

9.In order to substantiate that it was the accused who attacked Renukadevi at the time and place of occurrence, the prosecution had no direct evidence to offer, which would mean that no one has seen the accused attacking her. In the instant case, the prosecution rested much on the evidence of P.W.1, who is the husband of the deceased. It is a well settled proposition of law that in a given case like this where the

witness happened to be the injured witness in the course of the same transaction, his evidence should not be discarded unless or until a strong circumstance is noticed or reason is brought about. In the instant case, this court is unable to see either of them.

10. According to P.W.1, on the date of occurrence at about 2.50 p.m., he has just come from the grocery shop and has entered into the house and at that time, he found the accused with the bloodstained knife and when he questioned him, the accused replied that he has killed his wife and he would also finish him off and so saying, he began to attack P.W.1 with the same knife and caused severe injuries and immediately, the accused fled away from the place of occurrence and P.W.1 entered into the room and found his wife Renukadevi in a pool of blood. Thus, P.W.1 has seen the accused within a few minutes from the time of occurrence and P.W.1 was also attacked by the accused. In the first part of the occurrence, Renukadevi was murdered and in the second part, P.W.1 was attacked and injuries were sustained by him. P.W.1 was immediately taken to the Government Hospital, where he was treated by P.W.4, the Doctor, to whom he has given a statement, which was recorded in Ex.P.5, the accident register, where the time and place of occurrence and the name of the person were all mentioned. It is pertinent to point out that in the instant case, this court is unable to see why the evidence of P.W.1 should be looked into with suspicion. Further, this court is unable to see any doubt shrouded over such an evidence.

11. In the instant case, according to the prosecution, there was motive for such an act. It was the accused who engaged P.W.6 as his Advocate to appear for his cases before the court, but he failed and thereafter, he was demanding money from the Advocate and was getting the same then and there. The accused stayed in the house of P.W.6 and was jobless. It was the deceased who used to abuse him and tell him that he was jobless. The prosecution has further examined P.W.8. From his evidence, it would be quite clear that the accused was staying in Krishna lodge, Pondicherry on 28.02.2006 at 8.00 p.m. and vacated the same at about 12.15 p.m. on the next day. The receipt issued to him for his stay was marked as Ex.P.7. Further, the prosecution has examined P.W.7, the Manager of jewelry shop at Pondicherry. From his evidence, it would be quite clear that when he was in his shop on 1.3.2006, the accused came and pledged the jewels which are marked as M.Os.4 to 11 for a sum of Rs.8,200/-. Those jewels were recovered within a reasonable time from the time of occurrence and the jewels have been identified by P.W.5 that the jewels belonged to her mother. At this juncture, it is a fit case where the court could draw presumption, which is available under Section 114-A of the Indian Evidence Act. It is true, the presumption is rebuttable, but in the instant case, the accused has not brought forth anything to rebut the same. Further the evidence available would clearly indicate that it could be inferred that the jewels belonged to the deceased were actually taken from the place of occurrence by the accused and subsequently, he pledged the same with P.W.7. Further, the jewels have been recovered pursuant to the confessional statement given by the accused, which was recorded in the presence of the witnesses and the weapon of crime was also recovered pursuant to his confessional statement. The recovery of jewels belonged

to the deceased and the recovery of weapon of crime pursuant to the confessional statement of the accused would clearly point out the nexus of the accused with the crime. All would go to show that the prosecution has brought home the guilt of the accused, leaving no doubt in the mind of the Court. Under these circumstances, the first contention put forth by the learned counsel for the appellant that the prosecution has not proved the case beyond reasonable doubt and has miserably failed to prove the same, has got to be rejected and accordingly, it is rejected.

12. So far as the second line of argument is concerned, this court is unable to agree with the learned counsel for the appellant. In the instant case, from the evidence of P.W.16, servant maid, it would be quite clear that the deceased was going on abusing him as jobless. At this juncture, if the evidence of P.W.16 is scrutinized carefully, it would be quite clear that in the past when the accused was actually staying in the house of P.W.1, it was the deceased who told him that he was jobless and he should not be like this, which was only an advise and cannot be said to be anything to provoke him. Even assuming that there was provocation, there is no evidence to show that there was any provocation on the date of occurrence in the morning. This court is unable to infer anything to provoke the accused by such words spoken by her and that too in the past. Under these circumstances, the act of the accused would not attract any one of the exceptions to the definition of murder.

13. Further, in the instant case, the deceased was actually in her house at about 2.00 p.m. on the date of occurrence. At that time, the accused has gone into her house, stabbed her with knife and caused her death. Thus, it would be quite clear that without the intention of murdering her, there was no need for him to get into her house with knife and to stab her. It could be further inferred that the act of the accused was probably for murder for gain. Immediately after causing her death, he has also stolen the jewels, which were marked as M.Os.4 to 11. All would be indicative of the fact that the prosecution has proved the case so far as the murder that has committed by the accused. Apart from that, insofar as P.W.1, he was an injured witness and the prosecution has brought forth sufficient medical evidence, which stood in corroboration with the ocular testimony projected through P.W.1. Thus, the lower court was perfectly correct in finding the accused/appellant guilty as per the charges and in awarding punishments as referred to above, which in no way could be said to be an unreasonable one.

14. Accordingly, this criminal appeal fails and the same is dismissed.

Sd/-  
Asst. Registrar

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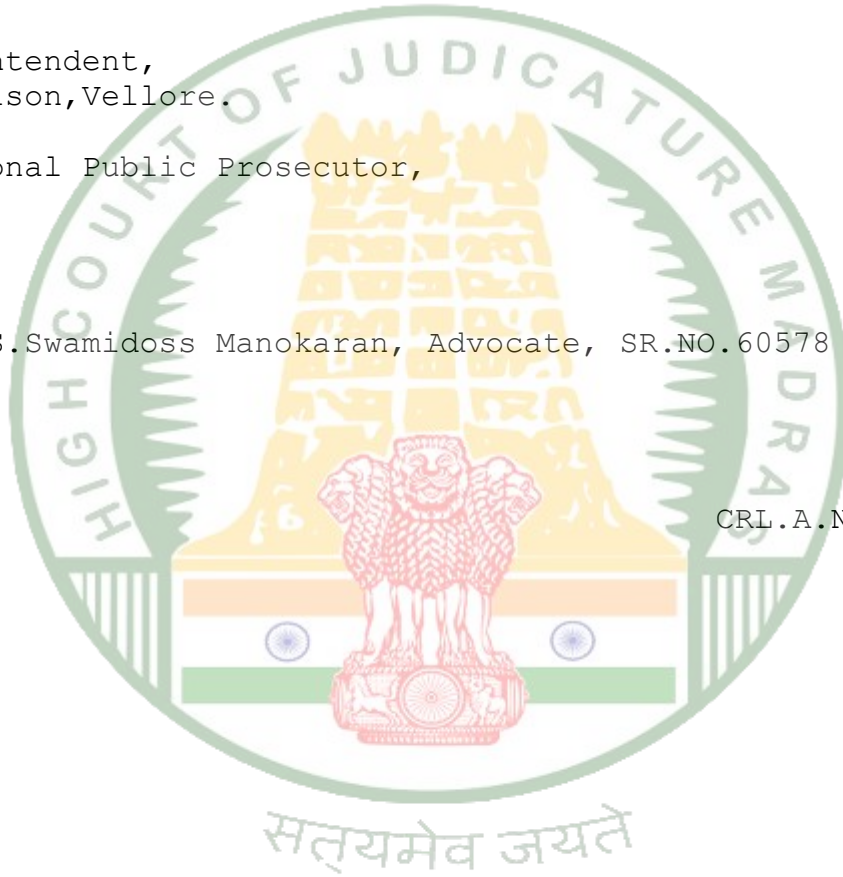
To

- 1.The Additional District and  
Sessions Judge,  
Fast Track Court No.III,  
Chennai.
- 2.The Inspector of Police,  
V.5, Thirumangalam Police Station,  
Thirumangalam,  
Chennai.
- 3.The Superintendent,  
Central Prison,Vellore.
- 4.The Additional Public Prosecutor,  
High Court,  
Madras.

1 cc to Mr.S.Swamidoss Manokaran, Advocate, SR.NO.60578

KA (CO)  
EM/12.11.08

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