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Crl.A.No.483 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	23.08.2024
<i>Pronounced on</i>	19.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Crl.A.No.483 of 2018

Backyaraj

...Appellant

Vs.

State rep. by,
 Inspector of Police,
 Perur All Women Police Station,
 Coimbatore District.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed in Additional District and Special Court for EC Act Cases, Coimbatore, Sessions Court, Mahalir Neethi Mandram, Coimbatore (Additional Charge) in S.C.No.215 of 2014, dated 12.10.2017.

For Appellant : Mr.M.Rajkumar
 for Mr.T.Muruganantham

For Respondent : Mr.A.Gokulakrishnan,
 Additional Public Prosecutor



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JUDGMENT

WEB CO **M.S.RAMESH, J.**

The appellant herein has been convicted and sentenced to undergo life imprisonment, together with a fine of Rs.2,500/-, in default to undergo rigorous imprisonment for a period of 3 months for the offence under Section 302 of the Indian Penal Code (IPC) and to undergo 7 years rigorous imprisonment, together with a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of 3 months for the offence under Section 201 IPC, through the judgment of the Mahalir Neethi Mandram, Coimbatore, dated 12.10.2017 passed in Sessions Case No.215 of 2014. This judgment is put under challenge in the present appeal.

2. For the sake of convenience, the parties to the appeal are addressed according to their ranks before the trial Court.

3.1. The brief case of the prosecution are as follows:-

3.2. The accused had married the deceased Murugeshwari, who was employed with him at Kathir Mill and lived with her in the mill quarters. The accused was addicted to consuming liquor and was



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frequently quarrelling with his wife for money, apart from suspecting her fidelity. On the day of Diwali festival i.e., on 02.11.2013 at about 8.00 A.M., when the deceased did not wake up in spite of the accused waking her, he got annoyed and went out and returned by 10.00 A.M., after consuming liquor. When he still found the deceased sleeping, he had slapped her twice demanding money and when she refused, he had strangulated her by pressing a wooden plank on her neck and caused the death of the deceased. In order to conceal the act of murder, he had put a saree around her neck and laid her down to create an impression as if she has committed suicide.

3.3. The Police, on conclusion of the investigation, had filed a final report charging him of having committed the offences under Sections 302 and 201 IPC. The Judicial Magistrate, after supplying the copies of the final report and other relevant documents to the accused, as required under Section 207 Cr.P.C., had committed the case to the Sessions Court, wherein charges came to be framed against him for the offences under Sections 302 and 201 IPC. When the charges were read over and explained to the accused, he had denied the charges claiming that he was 'not guilty'. The case then proceeded for trial.



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4. Before the trial Court, the prosecution had examined 18 witnesses P.W.1 to P.W.18 and marked 23 documents Exs.P.1 to P.23, apart from material objects M.O.1 to M.O.3. No witnesses or documents were marked on the side of the accused.

5.1. The evidences let in by the prosecution before the trial Court are as follows:-

5.2. P.W.1, namely, Muthupechi, who is the mother of the deceased, speaks about the second marriage of the accused, as well as his alcohol addiction and his constant physical harassment to the deceased, demanding money. As per her testimony, on the day of Diwali, she received a phone call from the Police around 7.00 P.M., stating that her daughter had committed suicide by hanging. She had then gone to the Pothanur Police Station and gave a written complaint (Ex.P.1) and thereafter went to the mortuary and identified the body of her daughter. The Revenue Divisional Officer (RDO) (P.W.6) had also recorded her statement (Ex.P.2). On enquiry, she informed that the accused had compressed her daughter's neck with a wooden plank and committed murder. The saree of the deceased was marked as M.O.1.

5.3. P.W.2, namely, Arivuselvam, is the brother of the deceased,



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who corroborates the statements of P.W.1 with regard to the alcohol addiction of the accused, the frequent quarrels between the accused and the deceased and the information he received from the Police about his sister's death by suicide. He had also given a statement before the Revenue Divisional Officer (Ex.P.3).

5.4. P.W.3, namely, Karuppiah, is the father of the first wife of the accused, who is a hearsay witness to the incident.

5.5. P.W.4, namely Sivakumar, is a co-worker of the accused and the deceased, who is also residing in the mill quarters, close to that of the deceased's quarters. According to him, he confirms that both the accused and the deceased were living together and that the accused was addicted to alcohol and he was very irregular in attending his duties at the mill. On 02.11.2013, he had seen the deceased sitting outside the house at 10.30 A.M. and thereafter, he had once again seen the deceased at 01.00 P.M. He further speaks about having seen the accused entering his house at 03.03 P.M. At about 04.00 P.M., he had received an information from the Security Guard of the mill that the sister of the accused had informed the Personal Officer about the death of the deceased. He had then gone to the house of the deceased, along with the Security Guard (P.W.10), Storekeeper (P.W.11) and opened the door, which was bolted from



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outside. They found the deceased lying dead on the floor with her saree tied loosely to her neck and that the accused was not at the house.

Dharmalingeshwaran Balaji (P.W.10), who accompanied him, had called the Police, who had arrived to the scene of occurrence on his information and conducted an inquest.

5.6. P.W.5, namely Selvakumar, is the relative of the deceased, who speaks about the marriage of the accused and the deceased and their visit to the relatives marriage, where the accused had started to fight with the deceased demanding money.

5.7. P.W.6 is the RDO, who had conducted the inquiry on the suspicious death of the deceased. The requisition letter for the inquiry was marked as Ex.P.4 and the report was marked as Ex.P.5.

5.8. P.W.17 is a co-employee of the deceased and the accused, who is a hearsay witness.

5.9. P.W.8 is a mill worker, who also resides in the nearby quarters of the deceased and the accused. He speaks about the frequent quarrels, which the accused pick up with the deceased under the influence of alcohol and narrates the incident as heard by him from others.

5.10. P.W.9 is the next door neighbour of the deceased. As per his oral testimony, the accused had called him at about 12.00 P.M. on



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02.11.2013, when he was working in a shop. On the request of the accused, he had come out of the shop when the accused had informed him that his wife had committed suicide. He thereafter borrowed P.W.9's mobile phone and informed his family about the incident. He also speaks about the accused loitering near the shop for about two hours until he was chased away by the shop owner.

5.11. P.W.10 is the Security Officer of the mill, where the deceased and accused were working. He was treated as hostile witness by the prosecution.

5.12. P.W.11 is the Storekeeper of the mill in whose presence the Investigating Officer had prepared the observation mahazar (Ex.P.6) on 03.11.2013 at about 11.00 P.M. He had also witnessed the Police seizing a saree (M.O.1) and in the seizure mahazar (Ex.P.7), he had signed as a witness. Thereafter, on 07.11.2013, on the request of the Police, he, along with Muthazagan, went to the Police Station, where he witnessed the accused giving his voluntary confession, stating that he had compressed the neck of the deceased with a wooden plank and caused her death. The accused had also led the Police team to a bush where the accused had concealed the wooden plank (M.O.2) in a polythene bag (M.O.3). The Police had then seized both these material objects, through a seizure



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mahazar (Ex.P.8). The admitted portion of the confession statement was marked as Ex.P.9.

5.13. P.W.12 and P.W.13 are employees of two finance companies, who speak about the earlier gold loans taken by the accused. The pawn tickets were marked as Ex.P.10 and P.11.

5.14. P.W.14, namely Chandrasekaran, is the Village Assistant. As per his statement, on 07.11.2013 at about 05.00 P.M., when he was in the office of Soundararajan, Village Administrative Officer (VAO) (P.W.16), the accused had come there and gave his voluntary confession (Ex.P.12), narrating the sequence of event and his involvement. He also speaks about the VAO (P.W.16) obtaining the signature of the accused in the confession statement (Ex.P.12) and on the instructions of the Police, they had handed over the accused to the Police, along with Ex.P.12.

5.15. P.W.15 is the Manager of the mill, who confirms the employment of the deceased and the accused in his mill and that they were living together in the mill quarters.

5.16. P.W.16 is the VAO of Peedampalli Village. According to his oral testimony, the accused had come to his office on 07.11.2013 at 05.00 P.M. and gave a voluntary confession statement (Ex.P.12), admitting that he had murdered his wife and hung her to create an impression of



suicide. He had then handed over the accused to the Police, along with Ex.P.12.

5.17. P.W.17 is the Doctor, who had conducted the postmortem on the body of the deceased. The accident register (Ex.P.13), the letter of requisition for conducting postmortem (Ex.P.14) and the postmortem report (Ex.P.15) were marked through him. As per the statement of P.W.17, the following ante mortem injuries were found on the body of the deceased:

“The following ante mortem seen in the body:-

- Sub conjunctival hemorrhage noted over both eyes.*
- Reddish abrasion 4 x 1 to 0.5 cm noted over left elbow.*
- Reddish abrasion 3 x 1 cm noted over inner aspect of left elbow the underlying muscle found contused.*
- Transverse pressure reddish abrasion 5 x 1 cm noted over front of middle of neck.*

On bloodless dissection of neck:- The base of pressure abrasion soft and the underlying muscle found contused. Reddish contusion 4 x 2 cm noted over left side muscles at the level of thyroid cartilage, 3 x 2 cm noted over right neck muscle at



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the level of upper border of thyroid cartilage and 4 x 3 cm noted over posterior aspect of larynx. Mid line fracture noted over thyroid cartilage with surrounding tissue contusion. Hyoid bone – intact.”

In his final opinion, he had stated that “the deceased would appear to have died of Asphyxia due to violent compression of the neck by throttling”. The viscera report (Ex.P.16) and its final opinion (Ex.P.17) were also marked through him, which evidences that the viscera of the deceased, did not contain any poison.

5.18. P.W.18 is the Investigating Officer. According to his oral testimony, after he had received the FIR (Ex.P.18), he had gone to the scene of occurrence on 03.11.2013 at about 10.30 P.M. and prepared the rough sketch (Ex.P.19). The saree, which he had seized from the scene of occurrence, was sent to the Court through Form-95 (Ex.P.20). During the course of investigation, when he had suspected the occurrence to be an offence under Section 302 IPC, he had filed an alteration report (Ex.P.21). He then testifies about P.W.16, bringing the accused to his station, who had voluntarily confessed to his culpability over the crime. Based on his confession, he had seized M.O.2 and M.O.3 and sent to the Court through Form-95 (Ex.P.22). On completion of the investigation, he



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had filed a final report, charging the accused of having committed the offences under Sections 498A and 302 IPC.

6. On conclusion of the trial, when the incriminating circumstances reflected in the oral testimonies of the witnesses were read over and questioned under Section 313(1)(b), the accused claimed it to be as a false case. On the strength of these oral and documentary evidences, the trial Court had found the accused guilty and sentenced him to imprisonment, as stated above.

7. The learned counsel appearing for the accused pointed out to the various discrepancies and contradictions in the statements of the witnesses introduced by the prosecution and submitted that none of the circumstances put forth by the prosecution establishes their case, beyond reasonable doubt. According to him, the motive alleged by the prosecution does not directly link to the occurrence, but only implicates the quarrels and the drinking habit of the accused. He further submitted that P.W.4, who had last seen the accused, as well as the deceased in their house, has testified of having seen the deceased alive at 01.00 P.M. on 02.11.2013, whereas the case of the prosecution is that the occurrence



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had taken place at 10.00 A.M. itself. In the absence of any other witnesses, who had last seen the accused and the deceased together, the oral testimony of P.W.4 does not inspire confidence. Insofar as the extra judicial confession of the accused recorded by P.W.16 is concerned, he would submit that the VAO himself has admitted that the signature of the accused was obtained in the Police Station and P.W.16 did not know as to who had written the oral confession of the accused. By drawing attention of this Court to the evidence of the Doctor (P.W.17), who had conducted the postmortem, he submitted that there was nothing in the medical evidence to indicate that the death was caused with M.O.2, by compression of the neck of the deceased. By referring to the cross examination of P.W.9, who is the neighbour of the accused, he submitted that when P.W.9 had seen the accused in the Police jeep on 03.11.2013 at 01.00 P.M., the claim of the prosecution that he had voluntarily given his confession statement before P.W.16 on 07.11.2013 and thereafter was handed over to the Police by the VAO, creates a suspicion on the recording of the extra judicial confession itself. Since the entire chain of circumstances put forth by the prosecution is not complete, he submitted that the Trial Court had not properly appreciated the evidences and hence sought for a judgment of acquittal.



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8. Per contra, the learned Additional Public Prosecutor submitted that P.W.1 to P.W.5 have clearly spoken about the alcohol addiction of the accused, his physical abuse and constant demand for money from the deceased, which by itself establishes a strong motive for the accused to have committed the crime of murder. This apart, he drew attention of this Court to the evidence of P.W.4 who states that he saw the accused entering his house at 03.30 P.M., where the body of the deceased was found later and since he was also residing close to that of the quarters of the deceased and had seen the deceased in the morning of the fateful day, it directly establishes the culpability of the crime on the accused. By referring to the final opinion of the Doctor (P.W.17), as well as his oral evidence, he would submit that since the deceased had died of Asphyxia due to violent compression of the neck by throttling, an inference requires to be drawn to hold the accused guilty of having committed the offence. Above all, he would also submit that since the deceased was found murdered inside the house of the accused and both of them were last seen together, the burden of proving that fact is upon the accused, as required under Section 106 of the Indian Evidence Act.



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9. We have given our anxious consideration to the submissions made by the respective counsels and have perused the original records.

10. The prosecution claims that this is a case where the accused had committed the offence of murder and attempted to conceal the offence by manipulation, as if the deceased had committed suicide. The postmortem Doctor (P.W.17), in his oral testimony as well as the postmortem report (Ex.P15), had spoken about the antemortem injuries on the body of the deceased and had rendered his final opinion that she would have appeared to have died of Asphyxia due to violent compression of the neck by throttling. The defense had not discredited these statements of P.W.17. These evidences before the trial Court thus clearly establish that this is a case of homicidal death.

11. The consequential issue that arises for consideration is as to whether the prosecution has let in adequate evidences before the trial Court to substantiate that it was the accused who had committed the offence under Section 302 IPC.

12. This is a case based on circumstantial evidence and in order to



establish their case, the prosecution has put forth five circumstances, namely, motive; last seen theory by P.W.4; extra judicial confession to P.W.16; recovery of M.O.2; and medical evidence.

Motive:-

13. According to the prosecution, the accused was addicted to the habit of consuming liquor and had been constantly demanding money from the deceased, apart from physically abusing her. In order to establish the motive, the prosecution had examined the mother of the deceased, (P.W.1), her brother (P.W.2), her father (P.W.3), her co-worker (P.W.4) and a relative (P.W.5). This apart, P.W.12 and P.W.13, who have testified about the gold loans taken by the accused, were also examined by the prosecution to attribute motive on the accused.

14. According to P.W.1, who is the mother of the deceased, she had eloped with the accused in the year 2010 and got married to him. For about six months thereafter, P.W.1 was not in talking terms with the deceased. However, after six months, the deceased had called P.W.1 and complained that the accused had physically assaulted her under the influence of alcohol. She would also state that the accused had strangled the neck of the deceased and threatened to kill her during the assault. In



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her cross examination, P.W.1 states that when she received the information of the death of her daughter, she had directly gone to the Police Station, without making any enquiries with regard to the case of her daughter's death, and gave a complaint (Ex.P1) before the Inspector of Police, All Women Police Station, Perur, alleging that her death was caused by the accused.

15. P.W.2, who is the brother of the deceased, reiterates the information given by the deceased to her mother (P.W.1) about the drinking habit of the accused and his physical assault on her. However, in the cross examination, he had stated that for the past two years, they had no relationship or connection with the deceased. He would further state that since the deceased and the accused were in a cordial relationship thereafter, he and his mother had invited both of them for his marriage.

16. P.W.3, who is the father of the 1st wife of the accused, speaks about the drinking habit of the accused and the physical assault which the accused had caused on his first wife.

17. P.W.4, who is a neighbour, speaks about the drinking habit of



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the accused only and has not spoken anything about the quarrels or the physical assault caused by the accused.

18. P.W.5, who is a relative of the deceased, also speaks about the liquor addiction of the accused and the physical assault he caused on the deceased. In the cross examination, he would state otherwise that the deceased and the accused were in a cordial relationship and hence, they were invited for the marriage of P.W.2.

19. P.W.12 and P.W.13 are the employees of finance companies, who speak about the accused pledging earrings and silver anklet in their firms and nothing more to support the theory of motive adduced by the prosecution.

20. From an overall appreciation of the evidences of P.W.1 to P.W.5, P.W.12 and P.W.13, what could be safely inferred is that the accused was addicted to the habit of consuming liquor and had been picking up quarrels, demanding money and assaulting the deceased during their matrimonial life.



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21. Merely because of his habit and the previous quarrels the accused had picked up with the deceased, we cannot jump into the conclusion that the same could be termed as a motive for the crime. In this regard, the clear case of the prosecution is that on 02.11.2013 at about 08.00 A.M., when it was a day of Diwali festival, when the accused tried to wake up the deceased, she did not respond and hence, he went out of the house. Thereafter, at about 10.00 A.M., he returned back after consuming liquor, when he found the deceased still sleeping. It is claimed by the prosecution that the accused had, at that time, slapped her twice and demanded money and when she refused, he had compressed her neck with a wooden plank (M.O.1) and caused her death. There is absolutely not a single piece of evidence with regard to the incident of physical assault that occurred at 08.00 A.M. and 10.00 A.M. on 02.11.2013. In the absence of such evidences, the motive alleged by the prosecution may not be sufficient enough for the accused to develop such a degree of grudge, so as to cause the heinous crime of murder.

22. Thus, from the evidences on record, we are of the view that the motive attributed to the case by the prosecution is not strong enough to establish that the accused had carried a grave grudge against the



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deceased, which lead him to commit the murder of his wife.

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23. We would hasten to add here that a mere fact that the motive alleged by the prosecution is not strong enough for the accused to develop such a degree of grudge, would not mean that he does not have serious reasons to commit the crime, as held in various decisions of the Hon'ble Supreme Court. With this ratio in mind, it would be necessary to look into the other circumstances put forth by the prosecution to prove their case based on circumstantial evidence.

Last Seen Theory:-

24. The prosecution has examined P.W.4, who is a co-worker and the resident of the mill quarters, which is close to that of the quarters of the deceased. According to his statement, he had seen the deceased entering her house, where the body was later found at 03.30 P.M. Thereafter, he had received information at 04.00 P.M. about the death of the deceased.

25. It is the explicit case of the prosecution that the occurrence had



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taken place on the day of Diwali i.e., on 02.11.2013 at 10.00 A.M.

However, in his chief examination, P.W.4 claims that on the day of Diwali festival i.e., on 02.11.2013, he had seen the deceased sitting outside her house at 10.30 A.M. He further adds that when he had questioned the deceased as to why she was sitting there without purchasing meat, she had replied that her husband had gone out and that she was waiting for him to return. P.W.4 had then left the place and when he returned back at 01.00 P.M. on the same day, he had once again seen the deceased standing outside her house.

26. It would be pertinent to mention that P.W.4 does not testify of having seen both the deceased and the accused together, but had seen them separately when they were alone. The company of the accused and the deceased being together gains significance, since the prosecution claims the occurrence to have taken place at 10.00 A.M. and P.W.4 having seen the deceased at 01.00 P.M. and he had also witnessed the accused walking into his house at 03.30 P.M. Apart from P.W.4, the prosecution had not chosen to examine any other witness, who had seen both the accused and the deceased together in their house.



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27. The only other evidence, who had seen the accused alone on 02.11.2013, is P.W.9, who is the next door neighbour. As per his oral testimony, the accused had called him at about 12.00 P.M. on 02.11.2013, when he was in his workplace, asking him to come out of the shop. At that time, the accused had informed him that his wife had committed suicide and by borrowing P.W.9's mobile phone, he had informed his family about the incident.

28. When P.W.4 and P.W.9 have not spoken about having seen both the accused and the deceased together within a reasonable time before the occurrence, it cannot be said that this is a circumstance of a last seen theory. No other witnesses have been examined to establish that the accused was last seen with the deceased, either immediately before the incident or lately thereafter.

29. From the evidences of P.W.4 and P.W.9, we are unable to come to a definite conclusion that the accused was last seen in the company of the deceased and thereby draw an inference that he may have caused the death of his wife at 10.00 A.M. on the Diwali day, more particularly, when she was seen standing outside her house at 1.00 p.m. on the same



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day. Thus, the last seen theory put forth by the prosecution does not inspire the confidence of this Court and hence, this link of circumstance also has not been clearly proved by the prosecution.

Extra Judicial Confession:-

30. It is a settled proposition of law that an extra judicial confession by itself would be a weak piece of evidence by itself and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily the conviction for the offence of murder should not be made only on the evidence of extra judicial confession, as held in the case of *Chandrapal Vs. State of Chhattisgarh* reported in **2022 SCC OnLine SC 705**. Likewise, in the case of *Kalinga alias Kushal Vs. State of Karnataka*, the Hon'ble Supreme Court held that it is no more *res integra* that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilty. With this ratio in mind, we shall now analyse the evidence of P.W.16, who is the VAO, before whom the prosecution claims that the accused had voluntarily given his confession, when the Village Assistant (P.W.14) was present.



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31. P.W.16, in his chief examination, has stated that when he was in his office on 07.11.2013, the accused had come there at 05.00 P.M. and gave his voluntary confession statement (Ex.P.12), stating that he had beaten up his wife to death and made it look like a case of suicide. He further goes to state that the voluntary statement of the accused was recorded by him. However, he had added that he did not obtain the signature of the accused in the statement, but obtained it at the Police Station after handing him over to the Police at 07.00 P.M. The relevant portion of his evidence reads as follows:-

“அவரிடம் நான் அந்த வாக்குமூலத்தில்
கையெழுத்து வாங்கினேன். நான் ஆஜர்
எதிரியை அன்று இரவு 7.00 மணிக்கு காவல்
நிலையம் அழைத்து சென்று ஒப்படைத்தேன்.”

32. In his cross examination, he has stated that he did not record the voluntary confession statement of the accused himself, but had used the help of a third person, whose identity he was unable to recollect. When he was further confronted during trial, he admitted that the confession of the accused was recorded in the Police Station by the Police, in which he had signed as a witness on the request of the Police.



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These statements made by him read as follows:-

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“அதசா.ஆ 12 கடிதம் என் கைப்பட்
எழுதினேனா என்றால் என் கையெழுத்து
கமராக இருக்கும் என்பதால் நான் கைப்பட
எழுதவில்லை. வேறு ஒருவர் எழுதிகொடுத்தார்.
மேற்படி எழுதி கொடுத்த நபர் யார் என்றால்
அது எனக்கு தெரியாது.....

காவல் நிலையத்தில் வைத்து நான்
காவலர்கள் எதிரி சொல்ல சொல்ல
வாக்குமூலத்தை எழுதினார்கள் என்றால்
ஆமாம். அந்த வாக்குமூலத்தில் எதிரி
கையெழுத்து போட்ட பிறகு போலீசார் அதில்
என்னையும் கையெழுத்து போடச்சொன்னார்.
எதிரியின் வாக்குமூலத்தை பள்ளபாளையம்
கிராம நிர்வாக அலுவலகத்தில் வைத்து
எழுதியதாக சொன்னால் தவறு என்றால்
ஆமாம்.”

(Emphasis supplied)

33. Thus, from the oral testimony of P.W.16, it is clearly established that the VAO (P.W.16) had neither recorded the confession statement of the accused by himself at his office nor had he obtained his signature at his office. On the contrary, he had admitted to have obtained the signature of the accused in Ex.P.12 at the Police Station, after handing him over to the Police. Curiously, he also does not recollect the person



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who had manually recorded the voluntary confession statement of the accused. To worsen this position, the Village Assistant (P.W.14) had given divergent statements by stating that P.W.16 had himself recorded the confession statement of the accused in Ex.P.12 and had also obtained his signature in P.W.16's office itself. He also speaks about handing over the accused to Pothanur Police Officer, at which point of time, they had handed over Ex.P.12 to the Police. In the background of these statements made by P.W.16 and P.W.14, we are of the affirmed view that the extra judicial confession of the accused neither passes the test of credibility nor inspires confidence.

34. This apart, there arises a serious suspicion with regard to the very presence of the accused in the office of P.W.16 on 07.11.2013 between 05.00 P.M. and 07.00 P.M., in view of the following evidences.

35. P.W.1, in her cross examination, has stated that after she received the information about her daughter's death, she had gone to the Police Station at 06.30 P.M. on 03.11.2013 and given a complaint. She also states that on 04.11.2013, she had given a statement before the Revenue Divisional Officer, which statement was marked as Ex.P.2.



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36. We find from the records that Ex.P.2 was recorded by the Revenue Divisional Officer on 04.11.2013. During her cross examination, P.W.1 has explicitly stated that when she had given a statement at the RDO's office, the Police had brought the accused to that place. She further confirms that it was on 04.11.2013 that the Police had brought the accused. This statement of hers, in the cross examination, reads as follows:-

“நான் காவல் நிலையத்தில் புகார் கொடுத்த போது மாலை 6.30 மணியிருக்கும். வருவாய் கோட்டாச்சியர் என்னை அவருடைய அலுவலகத்தில் வைத்து விசாரித்தார். அப்போது போலிசார் எதிரியையும் ஜீப்பில் அழைத்து வந்திருந்தார்கள் என்றால் ஆமாம். முதல் நாள் காவல் நிலையத்தில் நான் புகார் கொடுக்க சென்ற போது எதிரி காவல் நிலையத்தில் இருந்தார் என்றால் அது எனக்கு ஞாபகமில்லை வருவாய் கோட்டாச்சியர் என்னையும், என் மகனையும், எதிரியையும் அவர் தாயாரையும் விசாரித்தார் என்றால் ஆமாம். நாங்கள் ஊரிலிருந்து இரண்டு வேன்களில்வந்தோம். வருவாய் கோட்டாச்சியர் விசாரணை முடிந்த பிறகு அரசு மருத்துவமனைக்கு சென்றோம் என்றால் ஆமாம். அப்போது போலீஸ் ஜீப்பில் எதிரியை



அழைத்துவந்தார்கள் என்றால் ஆமாம் 4ம்
தேதி காலை போலீசார் எதிரியை அழைத்து
வந்தார்கள் என்றால் ஆமாம்.”

37. In line with his mother's statement, P.W.2 also would corroborate in his cross examination that on 04.11.2013, the RDO had obtained his oral statement (Ex.P.3) at the hospital mortuary, at which point of time, the Police had brought the accused to the hospital in their jeep. This portion of his statement reads as follows:-

“போலீசார் என்னை எத்தனை முறை
விசாரித்தார்கள் என்றால் 4ம் தேதி வருவாய்
கோட்டாச்சியர் அலுவலகத்தில் வைத்து
விசாரித்தார்கள். பிறகு அன்றே கோவை அரசு
மருத்துவமனையில் வைத்து என்னை
விசாரித்தார்கள். மருத்துவமனையில் விசாரித்த
போது வருவாய் கோட்டாச்சியர் வந்திருந்தாரா
என்றால் வந்திருந்தார். வருவாய்
கோட்டாச்சியர் என்னை விசாரித்தாரா என்றால்
விசாரித்தார். அந்த சமயத்தில் போலீசார்
எதிரியையும் ஜீப்பில் அரசு மருத்துவமனைக்கு
அழைத்து வந்திருந்தார்கள் என்றால் ஆமாம்.”

38. Contrary to the statements of P.W.1 & P.W.2, P.W.16 and
P.W.14 claim that the accused had appeared before them on 07.11.2013



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at 05.00 P.M. and given his voluntary confession statement and later he was handed over to the Police on the same day at 07.00 P.M. These serious contradictions, touching upon the presence of the accused in the company of the Police on 04.11.2013 itself, as opposed to the claim of the prosecution that they had taken custody of him only on 07.11.2013, raises a serious doubt with regard to the extra judicial confession made by the accused. When this aspect and the evidences of P.W.1 and P.W.2 are conjointly read with the evidences of P.W.14 and P.W.16, the extra judicial confession fails to pass the test of credibility and thus, it would be highly unsafe to place reliance on their oral testimonies, which lacks corroboration. In this background, we are constrained to arrive at the irretrievable conclusion that the prosecution has miserably failed to prove the extra judicial confession made by the accused before P.W.16.

Recovery:-

39. The prosecution has projected recovery of wooden plank (M.O.2), based on the confession of the accused, as one of the links to the chain of circumstances. As we had already discussed, the manner in which the accused had given his extra judicial confession before the VAO (P.W.16) and in the presence of his Assistant (P.W.14), is highly doubtful



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and the evidences of P.W.14 and P.W.16 does not draw any inspiration to render them as credible witnesses. We had seen from the cross examination of P.W.16 that he had admitted that it was only the Police, who had recorded the confession of the accused and that the confession was not taken in the office of the VAO. It is based on this confession of the accused, M.O.2, which the prosecution claims as the weapon used by the accused to compress the neck of the deceased, was recovered.

40. According to the Investigating Officer (P.W.18), when the accused had voluntarily confessed to his crime and offered to disclose the place where he had concealed M.O.2, he had recovered the same from the bridge of Noyyal River at the Bypass Road leading to Neelambur Junction. This M.O.2 was concealed in a polythene bag (M.O.3). The admissible portion of the confession statement was marked as Ex.P.9.

41. When the very foundation of the accused giving his confession statement before the VAO (P.W.6) at his office and later handing him over to the Police has not been proved and more particularly, when P.W.1 and P.W.2 had specifically testified to have seen the accused in the custody of the Police on 04.11.2013 itself, the claim of the prosecution that the



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custody of the accused was handed over to them by P.W.16, casts a serious doubt. When the prosecution had not substantiated their case of the accused appearing before P.W.16 and thereafter being handed over to them on 07.11.2013, on which date, they had recorded his confession, the consequential recovery made, based on the confession, cannot be given any credibility. In this scenario, we are of the affirmed view that the prosecution has once again failed to establish the link of recovery to the chain of circumstances put forth by them.

Medical Evidence:-

42. P.W.17 is the Doctor, who had conducted the postmortem on the body of the deceased. According to his testimony, he had found the ante mortem injury of a mid-line fracture noted over thyroid cartilage with surrounding tissue contusion and the Hyoid bone being intact. He had also rendered his final opinion, through the postmortem report (Ex.P.15), holding that the deceased would appear to have died of Asphyxia due to violent compression of the neck by throttling. The defense has not made any statement to discredit the evidence of the Doctor (P.W.17). Thus, it can be consequently held that the deceased had suffered a homicidal death only.



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43. However, the next consequential and crucial question would be as to whether merely because the prosecution has established the death to be one of a homicidal death through their medical evidence, can an inference to the conclusion of the guilt of the accused be drawn, more particularly, when the prosecution has miserably failed to prove the other four circumstances, namely motive, last seen theory, extra judicial confession and recovery. Apart from the aforesaid five circumstances, the prosecution has not let in any other evidence to even remotely prove the guilt of the accused.

44. In the case of *Sharad Birdhichand Sardas Vs. State of Maharashtra* reported in (1984) 4 SCC 116, the Hon'ble Supreme Court, while dealing with the scope of appreciation of evidence in a case of circumstantial evidence, had referred to several of its own decisions and ultimately held that, the circumstances from which the conclusion of guilt is to be drawn should be fully established and not 'may be' established; the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; the circumstances



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should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved and 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, the act must have been done by the accused. While holding so, it was recorded that these five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence.

45. If and when the aforesaid five principles are applied to the instant case, we have no hesitation to hold that the chain of circumstances put forth by the prosecution to substantiate their case is not complete and the prosecution has failed to prove almost all the circumstances, beyond reasonable doubt.

46. The trial Court, while appreciating the oral and documentary evidences before it, has lost sight of all these lacunae in the case and had come to the conclusion that the accused was guilty of all the charges levelled against him. In the light of our observations, such findings of guilt and the consequential conviction and sentence, cannot be sustained.



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47. The learned Additional Public Prosecutor made a faint attempt to shift the onus of disproving the occurrence on the accused, claiming that since he was last seen entering his house at 03.30 P.M, when his wife was already done to death, there is a duty cast on him to explain the presence of the corpse inside his house, which fact is especially within his knowledge only.

48. We are unable to endorse his submission for the simple reason that the case of the accused was that the deceased had committed suicide by hanging only. Even from the evidence let in by the prosecution, P.W.9 had deposed that on the fateful day, the accused had come to his workplace and informed him that his wife had committed suicide and thereafter, borrowed his mobile phone and contacted his relatives. When the accused had categorically come out with a case that after he had found the body of his wife hanging by saree, this fact, which was exclusively within his knowledge, was revealed by him to P.W.9. Thus, by this act of sharing information to the prosecution witness, he had meted out the requirements of Section 106 of the Indian Evidence Act. Besides, only after the prosecution discharges its duty to prove all the



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circumstances, beyond reasonable doubts, the non-explanation and false explanation to the incriminating circumstances may be used against the accused. Here, we have found that the prosecution has miserably failed to prove all the circumstances and every link in the chain of circumstances are doubtful. Therefore, even otherwise, Section 106 of the Indian Evidence Act cannot be pressed into service. Hence, the final submission of the learned Additional Public Prosecutor does not deserve consideration.

49. For all the foregoing reasons, the judgment of the Mahilar Neethi Mandram, Coimbatore passed in S.C.No.215 of 2014, dated 12.10.2017, is set aside. Consequently, the appellant is acquitted of all the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded and the bail bonds, if any, executed shall stand discharged. This Criminal Appeal thus stands allowed.

[M.S.R., J] [C.K., J]
19.09.2024

Index:Yes
Neutral Citation:Yes
Speaking order



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hvk

Note: Issue order copy on 19.09.2024

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To

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- 1.The Sessions Judge,
Mahalir Neethi Mandram,
Coimbatore.
- 2.The Superintendent of Prisons,
Central Prison, Coimbatore.
- 3.The Inspector of Police,
Perur All Women Police Station,
Coimbatore District.
- 4.The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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Pre-delivery judgment made in
Crl.A.No.483 of 2018

19.09.2024