



Crl.A.No.542 of 2018

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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

(Order of the Court was made by
SUNDER MOHAN, J.)

After the Judgment was pronounced by us on 24.04.2024, the learned counsel for the appellant sought clarification as to whether the sentence imposed on the appellant for the three offences in which she was convicted were to run concurrently or consecutively.

2.In view of the facts and circumstances of the case, we direct that the sentences shall run concurrently.

3.Further, in paragraph no.17 of the Judgment dated 24.04.2024, 'Section 394' has to be replaced with 'Section 392'.

4.The Judgment of this Court dated 24.04.2024, is clarified as above, and the Registry is directed to issue the corrected copy forthwith.

(M.S.R.,J.) (S.M.,J.)
29.04.2024

Tsg

IN THE HIGH COURT OF JUDICATURE AT MADRAS



Crl.A.No.542 of 2018

Reserved on: 15.04.2024
Pronounced on: 24.04.2024

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.542 of 2018

Sarmila Begum

...Appellant/ Sole Accused

VS.

State through
The Inspector of Police,
Gopichettypalayam Police,
Erode.
(In Crime No.546 of 2009

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., 1973, to call for the records and set aside the judgment and conviction imposed by the Hon'ble Additional Sessions Judge, (Fast Tract-2) Gopichettypalayam, in S.C.No.160 of 2010 dated 18.04.2011 against the appellant/accused.

For Appellant : Mr.R.Sankarasubbu



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For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by **SUNDER MOHAN,J.**)

This Criminal Appeal has been filed by the accused challenging the conviction and sentences imposed upon her vide judgment dated 18.04.2011 in S.C.No.160 of 2010 on the file of the learned Additional Sessions Judge, (Fast Track-2) Gopichettypalayam.

2.(i). It is the case of the prosecution that the appellant was the neighbour of the deceased; that the deceased was deaf and dumb; that her husband deserted her one year after their marriage and she was living with her parents; that the appellant used to give medicines for cold whenever the deceased suffered from cold; that the appellant owed a sum of Rs.8,000/- to PW5 and was unable to pay the same; that in order to repay her debt she decided to commit robbery of jewels of the deceased by administering pesticides to the deceased; that on 30.06.2009 at about 10.30 a.m. she mixed the pesticides in the medicine for cold and gave it to the deceased; who in turn



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vomited and also had diarrhoea and that in order to cause her death, the appellant had pressed the nose and mouth of the deceased, causing her death.

(ii) Thereafter, she took away the gold and silver jewels of the deceased valued at Rs.40,000/-; that in order to screen the offence, the appellant took the body of the deceased and concealed the same in a room; and that on 02.07.2009, when a foul smell emanated, the appellant cut the legs of the deceased, put them in a plastic cover and took them in a big vessel by covering it with a bed sheet and threw them in a canal. Thereafter, at about 8.15 p.m on 02.07.2009, she took the body of the deceased and concealed it in a lane near the house.

(iii) PW1, the father of the deceased, gave a complaint at about 7.00 p.m on 02.07.2009 stating that his younger daughter (deceased) was missing and that a gold chain weighing 4 ½ sovereign was also missing. PW1 gave another report on 03.07.2009 stating that a gunny bag containing the dead body of his daughter was lying in the lane at Jayaram Street, and both legs of the deceased were cut below the knee. Thereafter, the Investigating Officer



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PW20 seized the body of the deceased on 03.07.2009, conducted an inquest in the presence of the Panchayatdars and prepared Inquest Report Ext.P25. The FIR was thereafter altered to Section 302, 201 and 379 IPC.

(iv) On 04.07.2009, the appellant surrendered before the VAO, PW12, and gave an extra-judicial confession narrating the sequence of events and the manner in which she concealed the dead body. The appellant was thereafter produced before the Investigating Officer, PW20. On the confession given by the appellant, a sickle, aruvamanai, the cut leg portions of the deceased, and the clothes of the deceased were seized under Seizure Mahazar, Ext.P6. The appellant was remanded to judicial custody on 05.07.2009.

(v) In the meantime, PW20 went to the scene of the occurrence on 04.07.2009 prepared the Observation Mahazar, Ex.P5, and Rough Sketch, Ex.P27, and seized the blood stained earth, and earth which was not blood stained and other articles from the house of the appellant. He also seized the container of the pesticide and the jewellery taken by the appellant from the



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deceased. He thereafter, on 05.07.2009 at about 6.30 a.m., seized the legs of the deceased, conducted another inquest between 7.30 a.m. and 8.30 a.m. in the presence of the Panchayatdars, and prepared inquest report, Ex.P.29.

(vi) On 10.07.2009, the appellant gave a judicial confession, Ex.P9, which was recorded by the Judicial Magistrate, Sathyamangalam, on the same date. Thereafter, after examination of other witnesses, P.W.20, filed a final report on 21.10.2009 before the Judicial Magistrate No.1, Gobichettipalayam, Erode, for the offences under Sections 302, 201 and 392 IPC.

(vii) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.160 of 2010 and was made over to the learned Additional Sessions Judge, Gobichettipalayam (Fast Track – II), Erode District, for trial. The trial Court framed charges u/s. 302, 392 and 201 of IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty'.



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(viii) To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.20, marked 29 exhibits as Exs.P1 to P29, and marked 33 Material Objects as M.O.1 to M.O.33. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against her, she denied the same. The appellant neither examined any witnesses, nor marked any documents.

(ix) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt, held the appellant guilty of the offence under Section 302 of the IPC, and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/- and in default to undergo six months rigorous imprisonment and of the offence under Section 392 IPC and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.1000/- and in default to undergo rigorous imprisonment for six months and of the offence under Section 201 IPC and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.500/- and in default to undergo rigorous imprisonment for three months and all these sentences were ordered to run



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concurrently.

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(x) Hence, this appeal challenging the said conviction and sentence imposed on him.

3.Heard Mr.R.Sankarasubbu, learned counsel appearing for the appellant, and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4.Mr.R.Sankarasubbu, the learned counsel for the appellant, submitted that Ex.P9, the judicial confession of the appellant, has to be read as a whole, which suggests that she had no intention to cause the death of the deceased and only intended to commit robbery; that the appellant is in custody for nearly 13 years and has served the sentence imposed on her in respect of the offences under Sections 201 and 392 IPC and that she would be liable to be convicted only for the offence of culpable homicide not amounting to murder.



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5.The learned Additional Public Prosecutor per contra, submitted that the prosecution has established the circumstances conclusively, and all the circumstances coupled with the judicial confession Ext.P9 given to PW13 and the extra-judicial confession given to PW12, point out only the guilt of the appellant, and therefore, the trial Court was justified in convicting the appellant for the offences of murder, robbery, and causing disappearance of evidence.

6.We have carefully considered the rival submissions and perused all the relevant materials available on record.

7.PW1 and PW2 are the parents of the deceased. PW1 gave two reports, Ex.P1 and Ex.P2. PW3 is the neighbour and has corroborated the evidence of PW1 and PW2. PW4 last saw the deceased along with the appellant at about 11.00 a.m on 30.06.2009. PW5 had given a loan of Rs.8,000/- to the appellant and had asked the appellant to repay the same. PW6, saw the appellant carrying a vessel that was covered with a bed sheet at 11.00 a.m on 30.06.2009. PW7 also saw the appellant carrying a vessel on the



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head covered with the bed sheet. PW8 went to the house of the deceased to talk to the father of the deceased, and at that time, saw the appellant standing nervously there. PW9 speaks about selling pesticides to the appellant two months before the occurrence. PW10 is the witness to the Observation Mahazar, Ex.P3, and Seizure Mahazar Ex.P4, PW11 is the photographer who took the photographs of the body of the deceased and the legs of the deceased, P.W.12 is the VAO to whom the appellant is said to have given an extra judicial confession and he was also a witness to the arrest, confession, and recovery of the appellant. PW13 is the Judicial Magistrate who recorded the confession of the appellant. PW14 is the Village Assistant who corroborated PW12. PW15 is the Assistant Director in the DNA Division of the forensic science laboratory. PW16 is the post mortem Constable, and PW17 is the Sub-Inspector who registered the FIR. P.W.18 is the Doctor who conducted post mortem and issued certificates Exs.P19 and P20 and the final opinion (Ex.P21). PW19 is the forensic science officer who analysed the VICERA and issued the report Ext.P22. PW20 is the Inspector of Police, who conducted the investigation.



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8. From the above evidence, it is seen that PW18 Doctor gave his final opinion, Ex.P21, in which he stated that the deceased appeared to have died of “*Organo Phosphorous Poisoning and Asphyxia due to forcible closure of external respiratory passages*”

9.The appellant gave a confession to the Judicial Magistrate, PW13. The appellant first appeared before the Judicial Magistrate on 09.07.2009. The Judicial Magistrate had directed the appellant to appear on 10.07.2009, giving time for reflection to the appellant. He had also recorded the fact that he had explained to the appellant that she was not bound to make a confession and that if she did so, it could be used as evidence against her, and he believed that the confession was voluntary. Therefore, the conditions under Section 164(4) Cr.PC have been complied with by PW13.

10.Before adverting to the confession Ex.P9, we find that the prosecution has established the fact that the deceased was last seen with the



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appellant through the evidence of PW4. The motive has been established through the evidence of PW5, who states that the appellant borrowed a sum of Rs.8,000/- from him and he asked the appellant to repay the same, which according to the prosecution, prompted the appellant to commit robbery.

11.The purchase of pesticides has been established through the evidence of PW9. PW6 and PW7 have spoken about the appellant carrying a vessel covered with the bed sheet on her head on 30.06.2009. The above evidence corroborates the judicial confession given by the appellant.

12.Ex.P9, the judicial confession has to be read as a whole. The relevant portions of the confession relating to the occurrence reads as below;

"நான் அவருக்கு கொடுத்த சலி மருந்தில் சிறிதளவு பூச்சி
மருந்தையும்கலந்து கொடுத்து விட்டேன். அந்த
மருந்தை குடித்தவுடன் வனிதா மயக்கமாகிவிடுவார் என்று
நினைத்தேன். ஆனால் நான் நினைத்தபடி நடக்காமல்



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அவருக்கு பேதியும் வாந்தியும்ஏற்பட்டது. அதனால் அவரை என்வீட்டின் பின்புறமுள்ள டாய்லெட்டிற்கு நான் கூட்டிச் சென்றேன். ரொம்ப நேரம் பேதியானதாலும் வாந்தி எடுத்ததாலும் அந்த பொன்னால் எழுந்து நிற்க இயலவில்லை. இருந்தும் அந்த பென் சிரமப்பட்டு எழுந்து நிற்க முயன்றாள். ஆனால் அவர் நிதானம் இழந்து கால்கல் பின்னி சுமார் 4 அடி உயரமேகொண்ட டாய்வெட் சுவற்றில் சாய்ந்து அதனால் அவரது தலை சுவற்றில்மோதி நிதானமில்லாமல் டாய்லெட்டுக்கு செல்லும் கதவை ஓட்டி வெளியே இருந்த கல் மீது விழுந்தார். அவ்வாறு விழுந்த பின்னரும் அந்த பென்னிற்கு வாந்தி அதிகமாக வந்தது. அப்போது வலிப்புமவந்தது. அதிகமாக வாந்தி எடுப்பதால் அதை நிற்கவேண்டும் என நினைத்து எனது கையால் அவரதுவாயைஅழுத்தி முடினேன். அப்போது அந்த பென் மூச்சு திணறி இறந்துவிட்டது. இந்தசம்பவங்கள் அனைத்தும் அன்று காலை 11.45 மனிக்குள் முடிந்துவிட்டது. இருந்த போதும் நான் வனிதாவிற்கு உயிர் இருக்குமோ என்று பயந்து கீழே கிடந்த ஒரு சரடை எடுத்து அவர் கழுத்தில்குற்றி வேசாக இருக்கினேன்."



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13.The above extract would reveal that the appellant did not intend to cause the death of the deceased. She intended to make the deceased unconscious, and then commit robbery. Since she was vomiting excessively, she closed the mouth, as a result of which, the deceased died due to breathlessness. Thereafter, she narrated how she took efforts to cause the disappearance of the evidence and also about her taking the jewels belonging to the deceased. As regards causing the disappearance of the evidence, namely by cutting the legs of the deceased and thereafter throwing the legs in the canal and the body in the lane near the house, the prosecution has established the case beyond reasonable doubt. The robbery has also been established beyond reasonable doubt, as could be seen from the evidence of PW1 and PW2, who speak about of the missing jewels. The recovery also has been proved by the prosecution. Therefore, we are of the view that the Judgment of the trial Court convicting the appellant for the offences under Sections 392 and 201 of the IPC has to be confirmed.

14.The next question is whether the appellant had intended or had requisite knowledge to bring her act within the definition of Section 300 IPC.



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The confession, as stated earlier, reveals that she intended only to make the deceased unconscious. She has also stated that since the deceased was vomiting continuously, she had closed the mouth with her hand in order to prevent further vomiting. She would also admit that thereafter, she took a rope and tied it around the neck of the deceased. Admittedly, no weapon was used in the occurrence. The post mortem report suggests that the deceased died due to organo phosphorous poison and asphyxia. Thus, we find that poisoning was not the sole reason for the death. Therefore, we can infer that poisoning was not intended by the appellant to cause death. If the confession is read as a whole, we can, however, infer that the appellant had knowledge that her act was likely to cause the death to attract the offence of culpable homicide.

15. In a similar case, in ***Shajahan Vs. State rep. by Inspector of Police*** [(2018) 13 SCC 347] the Hon'ble Supreme Court has held as follows;

“11.Placing reliance upon Dinesh V. State of Rajasthan, the High Court took the view that commission of murder in the course of dacoity is to



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be viewed with seriousness. We are also of the view that the offence under Section 396 IPC is to be viewed with seriousness, especially, when the dacoits are armed. But in the case in hand, the accused were not armed. Accused Babu alias Nawab Sahib is alleged to have sat on deceased Muthukrishnan and pressed his nose and mouth and is alleged to have tightened his neck with the rope. The occurrence was of the year 2002. Considering the long lapse of time and the facts and circumstances of the case, the sentence of imprisonment for life is modified as ten years as directed by the trial court.”

16. We are of the view that the appellant did not have the requisite *mens rea* to cause the murder of the deceased. However, as observed by the Hon'ble Supreme Court in the aforesaid case, considering the fact that the appellant did not use any weapon and had committed the acts in panic after her plan to make the deceased unconscious failed, we are of the view that the appellant would be liable to be convicted for the offence of culpable homicide not amounting to murder. Since it has been done with knowledge, she would be liable to be punished for the offences under Section 304(II) IPC. In the facts



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and circumstances of the case, the appellant deserves to be sentenced to the maximum term of imprisonment of 10 years with a fine of Rs.1000/- (Rupees One Thousand Only) and, in default to undergo rigorous imprisonment for six months.

17. Therefore, the conviction and sentence imposed by the trial court for the offences under Sections.394 and 201 IPC are confirmed, and the conviction and sentence for the offence under Section 302 IPC is modified to one under Section 304(II) IPC, and the appellant is sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- (Rupees One Thousand Only) and in default to undergo rigorous imprisonment for six months.

18. Accordingly, the Criminal Appeal is partly allowed in the above terms. If the appellant has already served the sentence, she shall be released forthwith, unless her confinement is required in any other case.



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(M.S.R.,J) (S.M.,J)

24.04.2024

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Index : yes/no

Neutral citation : yes/no

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Copy to:

1. Additional Sessions Judge, (Fast Tract-2),
Gopichettypalayam.
2. The Inspector of Police,
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