

Bail Slip

The Appellant/Accused was directed to be released on bail in and by the order dated 30.04.2014 made in MP 1/2014 in CrI.A.211/2014 on the file of the High Court of Madras.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02..06..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.211 of 2014

Saranya Appellant /Accused

-Versus-

State Rep. by
The Inspector of Police,
Pudhupet Police Station,
Cuddalore District.
[Crime No.216 of 2012] Respondent/Complainant

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned Principal Sessions Judge, Cuddalore Division, Cuddalore, in S.C.No.201 of 2013 dated 02.04.2014.

For Appellant : Mr.A.M.Rahamath Ali

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant, the sole accused in S.C.No.201 of 2013 on the file of the learned Sessions Judge, Cuddalore Division, Cuddalore District, stood charged for offence under Section 302 of IPC. He stands convicted for offence under Section 302 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three years. Challenging the said conviction and sentence,

the sole accused is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Sri.Dakshinamurthy. The accused was residing at Kotlambakkam village along with her husband and children. On 11.06.2012 at 09.30 p.m., the accused, an young woman aged about 24 years, was alone at her house. At that time, the deceased went to her house and knocked at the doors of the house of the deceased. The accused opened the same. On entering into the same, the deceased advanced sexual overtures towards the accused. The accused resisted the same and she did not consent for sex with him. The deceased told her that he knew the fact that she had illicit intimacy with one Sri.Arivuchudar. He further threatened the accused that he would disclose the same to others so as to bring shame and disrepute to the accused. This, according to the prosecution case, infuriated the accused and she, immediately, pushed the deceased down and strangulated him with a belt and caused his death. Then with a view to erase the evidence of murder, she carried the dead body to the house of one Sri.Jegannathan, which was under construction, and abandoned the same there. Then, the accused fled away from the scene of occurrence.

3. The occurrence was not witnessed by any one. P.W.1, the mother of the deceased heard about the lying of the dead body of the deceased at the new house under construction belonging to one Sri.Jegannathan. Immediately, she went to the place of occurrence and confirmed the same. Thereafter, she went to Pudhupet Police Station and made a complaint under Ex.P.1. P.W.14, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.216 of 2012 under Section 174(1) of Cr.P.C. Ex.P.13 is the FIR. He forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.13) to the court. Then, P.W.14 took up the case for investigation. He proceeded to the place of occurrence at 09.45 a.m. on 12.06.2012, prepared an observation mahazar and a rough sketch in the presence of P.W.7 and another witness. He also recovered a ladies bicycle from the place of occurrence under a mahazar (Ex.P.4) in the presence of the same witnesses. Then, P.W.14 conducted inquest on the body of the deceased and forwarded the dead body to the Government Hospital, Panruti, Cuddalore District, for postmortem.

4. P.W.12, Dr.S.Selvaraj, conducted autopsy on the body of the deceased on 12.06.2012 at 04.45 p.m. He found the following injuries on the body of the deceased:-

"External Injuries:

(1) Ligature mark starting from right side of neck, running obliquely, in front of neck,

above the thyroid cartilage and ends below left ear 17 x 2 cm. On dissection, extravasation of blood present. Underlying tissues pale and parchment like.

(2) Abrasion 1 x 1 cm below right tissues.

(3) Multiple abrasion present on the right lower back and right side of buttock.

External appearance: Scalp hairs black. Eyes closed. No discharge from ears and nose. Pink frothy discharge present in the mouth. Tongue inside. Teeth present. Throat well formed. Generative organs normal. Scrotum intact.

Internal Examination:

Ribs - No fracture. Heart congested. Blood and blood clots present. Lungs, Liver, Spleen, Kidneys congested. Stomach empty. Intestines distended with gas. Bladder empty. Skull - No fracture. Membranes intact. Brain pale. Spinal cord intact."

Ex.P.11 is the postmortem certificate. He preserved the visceral organs of the deceased and forwarded the same for chemical examination. After having received the chemical analysis report, P.W.12 Doctor opined that the death was due to manual strangulation. Ex.P.12 is the final opinion of the doctor regarding the cause of death.

5. After the postmortem was over, in the course of investigation, P.W.14, the investigating officer, collected the dress materials from the body of the deceased and forwarded the same to court. Thereafter, he examined few more witnesses and recorded their statements. Though the police sniffer dog was also brought to the place of occurrence, it did not bring out any clue.

6. It is further alleged that when the investigation was in progress, the accused, on her own volition, appeared before P.W.8, who was the then Village Administrative Officer of Pandarakottai Kottalam Village. On such appearance, it is alleged that the accused gave a voluntary confession which P.W.8 reduced into writing. Then, he prepared a special report and took the accused along with the extra judicial confession (Ex.P.5) to the police station and produced her before P.W.14, the investigating officer.

7. P.W.14, on such production of the accused by P.W.8, arrested her in the presence of P.W.7 and another. On such arrest, she gave a voluntary confession to P.W.14 also. In pursuance of the same, she took P.W.14 and the witnesses to her

house and produced some broken glass bangle pieces (M.O.1), electric switch pieces-2 Nos. (M.O.2) and a charred debris (M.O.3). P.W.14 recovered the same under a mahazar (Ex.P.3) in the presence of the same witnesses. P.W.14 altered the case into one under Section 302 of IPC and forwarded the alteration report to court. P.W.14, thereafter, forwarded the accused to court for judicial remand. He also forwarded the material objects to the court along with a request to send the charred debris to the Forensic Lab for expert opinion. On transfer, P.W.14 handed over the case diary to P.W.15 for further investigation. P.W.15 took up the case for further investigation and examined the chemical analyst, recorded his statement and collected the report. In the report no positive opinion was given by the expert. On completing the investigation, P.W.15 laid charge sheet against the accused.

8. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 20 documents and 7 material objects were marked.

9. Out of the said witness, P.W.1, the mother of the deceased has stated that she found the dead body of her son on 12.06.2012 and made a complaint to the police on the same day at 09.00 a.m. P.W.2 has also stated that he found the dead body at the place of occurrence. P.W.3, the brother of the deceased has spoken about the illicit relationship between the accused and the deceased. P.Ws.4 and 6 have stated that they saw the deceased entering into the house of the accused lastly. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of material objects from the place of occurrence. P.W.8 has spoken about the extra judicial confession given by the accused. P.W.9 is the Scientific Analyst. He has stated that in the internal organs of the deceased, he found ethyl alcohol. P.W.10, the Director of Forensic Sciences Laboratory, Chennai, was not able to give any opinion regarding the material objects recovered at the instance of the accused. P.W.11 has stated that he examined the hyoid bone of the deceased which, according to him, was found intact. P.W.12 has spoken about the cause of death based on the autopsy conducted by him. P.W.13 is the owner of the cycle which was allegedly used by the accused. P.W.14 has spoken about the registration of the case based on the complaint of P.W.1 under Ex.P.1 and the substantial investigation done by him in this case. On transfer of P.W.14, P.W.15 took up the case for further investigation. P.W.15 has spoken about the further investigation

done by him and the filing of charge sheet against the accused.

10. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. she denied the same as false. However, she did not choose to examine any witness nor did she mark any document on her side. Her defence was a total denial.

11. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

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

13. The learned counsel for the appellant would submit that the conviction of the appellant is not sustainable inasmuch as the extra judicial confession said to have been given by the accused to P.W.8 cannot be believed. He would further submit that it does not draw corroboration from any other independent sources and that there is absolutely no other evidence incriminating against the accused. The learned counsel would further submit that the trial court has convicted the accused based merely on surmise.

14. The learned Additional Public Prosecutor would vehemently oppose this criminal appeal. He would submit that though Ex.P.5 is the sole evidence available against the accused that by itself is sufficient to convict the accused. He would pray for dismissal of the criminal appeal.

15. We have considered the above rival submissions carefully.

16. As we have already narrated, in this case, the only incriminating evidence available against the accused is the extra judicial confession said to have been given by the accused to P.W.8 on 14.06.2012 whereas, the occurrence was on 11.06.2012. It is not in evidence that the accused had any acquaintance with P.W.8. In our considered view, there is no reason for the accused to repose confidence in P.W.8 to go over to him and to make an extra judicial confession, that too, after three days of the occurrence. In our considered view, the extra judicial confession is doubtful. In such a situation, prudence requires that the said extra judicial confession should draw corroboration from any other independent sources. Here, in the instant case, absolutely there is no such evidence to

corroborate the extra judicial confession [Ex.P.5] said to have been given by the accused to P.W.8. It is the settled law that the retracted extra judicial confession shrouded with suspicion, by its very nature, is a very weak piece of evidence and unless it draws corroboration from any other independent sources, it is not safe to act upon the same. In the instant case, we find that Ex.P.5-Extra judicial confession is a very weak piece of evidence, that is, shrouded with suspicion and the same also does not draw any corroboration from any other independent sources. In such view of the matter, we are unable to sustain the conviction of the accused solely based on the uncorroborated extra judicial confession said to have been made by the accused.

17. In view of the foregoing discussions, we hold that the prosecution has miserably failed to prove the case beyond all reasonable doubts and therefore, the appellant/accused is entitled for acquittal.

18. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused by the trial court are set aside and she is acquitted of the charge under Section 302 of IPC. Fine amount already paid, if any, shall be refunded to her. Her bail bond shall stand terminated.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The Principal Sessions Judge, Cuddalore Division, Cuddalore.
- 2.The Inspector of Police, Pudhupet P.S., Cuddalore District.
- 3.The Public Prosecutor, High Court, Chennai.
- 4.The Judicial Magistrate No.2, Panruti.
- 5.Do-Thro-The Chief Judicial Magistrate, Cuddalore.
- 6.The Superintendent, Special Prison for Women, Vellore.
- 7.Copy to:
The Section Officer,
Criminal Section, High Court,
Madras.
- 8.The District Collector, Vellore.
- 9.The Director General of Police, Chennai.
- 1 cc to M/s.A.M.Rahamath Ali, Advocate, sr.29535

Cr1.A.No.211 of 2014

ak co, kra 11.07.2016