

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.07.2016**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.**40 and 278** of **2014**

Maheswari (A2) .. Appellant in CrI.A.No.40 of 2014

Thirupathi (A1) .. Appellant in CrI.A.No.278 of 2014

- Vs -

State rep. by
The Inspector of Police,
Tharamangalam Police Station,
Tharamangalam, Salem District.
(Cr.No.495 of 2008) .. Respondent in both the appeals

Prayer:- Appeals filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Mahila Judge, Salem in S.C.No.290 of 2012 dated 20.01.2014.

For Appellants : Mr.S.Doraisamy

For Respondent : Mr.M.Maharaja
in both the appeals Additional Public Prosecutor

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COMMON JUDGMENT**(Judgment of the Court was delivered by S.Nagamuthu, J.)**

The appellants are the accused 1 and 2 in S.C.No.290 of 2012 on the file of the learned Mahila Judge, Salem. The trial Court framed as many as four charges against the accused 1 and 2 as follows:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 & A2	120-B of IPC
2	A1 & A2	449 of IPC
3	A1	302 of IPC
4	A2	302 r/w 34 of IPC

By judgment dated 20.01.2014, the trial Court convicted and sentenced both the accused for various offences as detailed below :

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A1	Section 302 of IPC	Imprisonment for life years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.
	Section 449 of IPC	Imprisonment for life
	Section 120-B of I.P.C.	Rigorous Imprisonment for two years
A2	Section 302 r/w 34 of IPC	Imprisonment for life years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.
	Section 449 of IPC	Imprisonment for life

Rank of the Accused	Penal provision(s) under which convicted	Sentence
	Section 120-B of I.P.C.	Rigorous Imprisonment for two years

Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

2. The case of the prosecution in brief is as follows:

2.1. The deceased in this case was one Mrs.Santhi. P.W.4 is her husband. The deceased was running a fancy store near Kailasanathar Temple at Tharamangalam. The first accused was a neighbour of the deceased. He was running a cycle stand near Kailasanathar Temple. In such a way, the first accused had acquaintance with the deceased. In due course, the first accused developed a desire to have sexual intercourse with the deceased. On few occasions, the first accused extended sexual overtures towards the deceased. But the deceased bluntly refused and reprimanded him. Six months prior to 22.09.2008, the deceased closed down her business and stayed away at her home. On one occasion, when the deceased was alone at her house, the first accused scaled down the compound wall of the house, trespassed into the house of the deceased and invited her for having sex with him. The deceased refused. Therefore, the first accused challenged that one day or the other, he would have sex with her or else, both her body and soul would not survive. This is stated to be the motive for the first accused.

2.2. The second accused, almost during the same time, was doing Flowers, fruits and camphor business in front of the same temple. She was doing business just by the side of the fancy store run by the deceased. In such a way, the second accused also had acquaintance with the deceased. The second accused had illicit relationship with one Selvamani of Tharamangalam. Mr.Selvamani used to give money to the second accused to meet her expenses. The second accused used to take Mr.Selvamani to her house and to have sex with him. In due course, Mr.Selvamani started speaking to the deceased when she was in the fancy store. As days passed, Mr.Selvamani stopped visiting the second accused and also paying money to her. The second accused had the feeling that because Mr.Selvamani had started his relationship with the deceased, he had stopped his relationship with the second accused. Thus, the second accused also had a grudge against the deceased.

2.3. The first accused and the second accused had thus become the common enemy of the deceased. Therefore, the first accused and the second accused hatched a conspiracy to commit murder of the deceased. It is further alleged that on 22.09.2008, both the accused, trespassed into the house of the deceased by around 01.30 p.m. The deceased was alone in her house. At that time, the first accused, closed the mouth and nose of the deceased and pushed her

down. Then, the second accused held her and the first accused sat on the chest of the deceased and with a hacksaw blade cut the neck of the deceased and the deceased died due to excessive bleeding. Abandoning the dead body inside the house, it is alleged that both the accused fled away from the scene of occurrence.

2.4. P.W.1 is the brother-in-law of the deceased. He was running a barber shop at Tharamangalam. On 22.09.2008, he had gone to the shop on account of his work. At around 2.30 p.m., his brother and husband of the deceased P.W.2 informed him over phone that the deceased was lying dead and there was a hacksaw blade lying by her side with bloodstains. Immediately, P.W.1 rushed to his house and found the deceased dead. After getting relieved of the shock to some extent, P.W.1 went to Tharamangalam Police Station at 04.00 p.m. and made a complaint. P.W.17, the then Sub Inspector of Police. on receipt of the said complaint, registered a case in Crime No.498 of 2008 under Section 302 I.P.C. Since the assailant was not known, it was so mentioned in the F.I.R. Ex.P9 is the F.I.R. He forwarded both the documents to Court and the same was received by the learned Magistrate at 07.00 p.m. on 22.09.2008.

2.5. P.W.18 took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a

rough sketch in the presence of P.W.4 and another witness. Then, he conducted inquest on the body of the deceased and sent the body for postmortem. P.W.15, conducted autopsy on the body of the deceased on 23.09.2008 at 10.10 a.m. He found the following injuries:

"Injuries: (1) Dark red abrasions seen over (i) left knee 5 x 3 cms (ii) left cheek 1x0.5 cms (iii) left nostril 2 x 1 cms (2) An oblique cut injury seen on the front of neck – above the level of thyroid cartilage – 6 cms below right mastoid process, 8 cms above suprasternal notch, 7 cms below left mastoid process – measuring 10x4x3 cms. Thro and Thro cut fracture of trachea made out at the level of T1-T2. All great vessels of neck and nerves cut. Strap muscles of neck found thro and thro out. Hyoid bone intact. (3) A cut injury of right ear lobe 4 x 0.2x0.2 cms cartilage exposed (4) Contusion on midchin 6 x 5 cms (dark red) (5) Dark red contusion on right shoulder 6x5 cms, left breast 7 x 5 cms (dark red) (6) Teeth bite mark seen on lower lip (self bite marks) (7) Dark red contusion over occipital region of scalp 4x2x0.5 cms, right temporal region 8x5x0.5 cms, left temporal region 7x6x0.5 cms with both temporals muscle contused (8) Intra cerebral hemorrhage both cerebral hemispheres (ante mortem injuries)

Other findings:- (1) o/d head: vide injury column; skull- intact; brain c/s pale. (2) o/d neck: vide injury column; (3) o/d Thorax : heart –

normal in size; cavities empty, chambers and valves normal, coronaries and great vessels patent; lungs – c/s pale. (4) Abdomen: stomach – 250 gms of partly digested cooked rice food with no specific smell. Mucosa pale; liver, spleen and both kidneys – c/s pale, bladder empty, genitalia – no fresh injuries made out, uterus – normal in size, cavity empty, pelvis – intact. (5) o/d spinal column - intact.”

Ex.P6 is the postmortem certificate. He gave opinion that the deceased had died due to shock and hemorrhage due to injuries on the body of the deceased. He further opined that the injury found on the neck could have been caused by a weapon like M.O.2 hacksaw blade.

2.6. When the investigation was in progress, on 07.10.2008, the first accused, on his own, appeared before P.W.16 the then V.A.O. of Tharamangalam at 09.00 a.m. On such appearance, he wanted to voluntarily confess about the death of the deceased in this case. Having ascertained that he was voluntarily giving confession, P.W.16 allowed him to confess before him, which P.W.16 reduced into writing. Then, he prepared a special report regarding the same. Ex.P7 is the confession. Then, he took the first accused to the police station and produced him before P.W.18. On such production, P.W.18 arrested the accused in the presence of the same witnesses.

On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the bloodstained shirt and a blood stained lungi to P.W.18. In pursuance of the said disclosure statement, he took the police and witnesses to the place of hideout and produced the said material objects. P.W.18 recovered the same under a mahazar.

2.7. On the same day at 12.30 p.m. he arrested the second accused. On such arrest, in the presence of the same witnesses, the second accused also gave a voluntary confession, in which, she disclosed the place where she had hidden the bloodstained polyester saree. In pursuance of the same, he took the police and the witness to the place of hideout and produced the said bloodstained polyester saree (M.O.13). P.W.18 recovered the same under a mahazar. When he returned to the police station, he forwarded both the accused to the Court for judicial remand and also handed over the material objects to the Court. On his request, the material objects were sent for chemical examination, which revealed that there was human blood on all the material objects including the material objects recovered viz., the dress materials recovered from the respective accused on their confession. On completing the investigation, he laid chargesheet against the accused 1 and 2.

2.8. Based on the above materials the trial Court framed appropriate charges against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 18 witnesses were examined, 19 documents and 13 material objects were marked.

2.9. Out of the said witnesses, P.W.1, is the brother-in-law of the deceased and he has stated that on information from his brother P.W.2, he went to the place of occurrence and found the dead body of the deceased. P.W.2 has also stated about the same facts. He was doing decoration work and he was also not in the house. When he came to the house from Salem at 03.30 p.m. he found the dead body of the deceased.

2.10. P.W.3 is the son of P.W.2 and the deceased. According to him, between 02.45 to 03.00 p.m. on 22.09.2008, he received a phone call and was informed about the occurrence. Immediately, he went to the place of occurrence and found the dead body of the deceased. P.W.4 is the Village Administrative Officer. He has stated 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.5 is the police photographer and he has spoken about the photographs taken at the place of occurrence.

2.11. P.W.6 is the son of the deceased and P.W.2. He has stated that during the relevant period, he was doing 8th standard and he was hardly aged 14 years at that time. According to him, on 22.09.2008, his brother P.W.3 had gone for the college. P.W.2 had gone to Salem. According to him, by about 12.00 p.m. he went to Kailasanathar temple. When he came out of the temple, the second accused called him and enquired as to where he was going and P.W.6 stated that he was going to his house. The second accused wanted him to come and inform her as to what his mother was doing. P.W.6 went to his house and after giving prasadam to his mother, he came out of his house and at that time, he found the accused 1 and 2 engaged in conversation near the temple. P.W.6 told the second accused that his mother was cooking. Then, P.W.6 went to the temple again. When he returned from the temple, he found the deceased lying with injuries inside her house.

2.12. P.W.7 is a resident of Sannathi street near Kailasanathar temple. She has stated that she saw the dead body of the deceased. P.W.8 has spoken only about the hearsay information. P.W.9 has stated that P.W.6, on seeing the dead body of the deceased, cried for help and when he went to the house of the deceased, he found the deceased lying dead. P.W.10 was running a driving school near

Kailasanathar temple. He has stated that on 22.09.2008, the first accused came to his driving school and wanted his help to obtain the driving licence. He has further stated that on the day of occurrence, he found the accused 1 and 2 engaged in a chat near the shop of the second accused. He has not stated anything incriminating against the accused.

2.13. P.W.11 has stated that the deceased and P.W.2 had borrowed a sum of Rs.20,000/- from him. He has further stated that six months prior to the occurrence, the deceased told him that the first accused trespassed into her house and invited her for sex. P.W.12 has stated that at the relevant time, he was working in a lift company. He has stated that on account of his work, he had hacksaw blade and other instruments. He has not identified the hacksaw blade recovered from the place of occurrence. P.Ws.13 and 14 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.15 has stated about the postmortem conducted and his final opinion regarding the cause of death.

2.14. P.W.16 is an important witness for the prosecution. According to him, on 07.10.2008, at 09.00 a.m. the first accused appeared before him and made a voluntary confession. He has stated that when he produced the first accused before P.W.18.

Before P.W.18, while in custody, the first accused gave a voluntary confession, out of which, bloodstained clothes were recovered. Similarly, on the arrest of the second accused, in pursuance of her disclosure statement, bloodstained clothes were recovered. P.W.17 has spoken about the registration of the case on the complaint of P.W.1. P.W.18 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. Their defence was a total denial. Having considered all the above, the trial Court convicted both the accused as stated in the first paragraph of this judgment and that is how, they are before this Court with these appeals.

4. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. This is a case based on circumstantial evidence. P.W.6, the son of the deceased has stated that on the day of occurrence, at around 12.00 noon, he found his mother at his house cooking. Then, he went to the temple. By about 02.30 p.m., when he returned from

the temple, he found the deceased lying in a pool of blood with a injury on her neck and an Hack-saw blade (M.O.2) was found near the dead body with bloodstains. On hearing the alarm raised by him, the others came to the spot. Thus, the prosecution has established that the deceased had died sometime between 12.00 noon and 02.30 p.m. on 22.09.2008.

6. The evidence of P.W.15, who conducted autopsy on the body of the deceased has stated that the death of the deceased was due to shock and hemorrhage due to the injuries. According to him, the injury to the neck of the deceased could have been caused by M.O.2 (hacksaw blade). The hacksaw blade was found stained with human blood and it was lying by the side of the dead body. From these facts, the prosecution has clearly established that the deceased died due to homicidal violence sometime between 12.00 noon and 02.30 p.m. on 22.09.2008.

7. Now the question is who caused the death of the deceased. In order to prove this fact, the prosecution relies mainly on the extra judicial confession said to have been given by the first accused to P.W.16 on 07.10.2008 at 09.00 a.m. In the said extra judicial confession, he has stated about the motive and also about the fact that he killed the deceased with the assistance of the second accused.

8. The learned counsel for the appellants would submit that the said extra judicial confession cannot be true. According to him, though the occurrence was on 22.09.2008, the extra judicial confession is stated to have been given only on 07.10.2008. The learned counsel would contend that after such a long gap of time, there would have been neither necessity nor occasion for the first accused to choose P.W.16 to confess. He would further submit that the first accused had no acquaintance with P.W.16 and therefore he would not have chosen P.W.16 to confess.

9. Though attractive these arguments are, we find no force at all in these arguments. There is no evidence that the first accused had no acquaintance with P.W.16. Assuming that the first accused had no acquaintance with P.W.16, on that score, we cannot disbelieve P.W.16. In the confession itself, the first accused had given reasons as to why he had chosen P.W.16 to confess. Above all, P.W.16 is a very responsible Village Administrative Officer, who has no axe to grind against the first accused. So far as the delay on the part of the first accused to confess, we are of the view that it would have taken such a long time for the first accused to realise that he was being chased by the police and therefore, he had gone to the V.A.O. to safely surrender and to confess. Therefore, we find no reason to

reject the said extra judicial confession given by the first accused to P.W.16.

10. The learned counsel for the appellants would submit that the first accused was arrested within 10 days after the occurrence, whereas, according to P.W.16, he confessed after 15 days. Thus, according to the learned counsel, the first accused could have been in the custody of the police for about one week prior to 07.10.2008.

11. In this regard, we should say that we cannot attach much importance to this answer elicited from P.W.10 because he has not referred to the date and time at which he saw the first accused being arrested by the police. In a very vague manner, he has stated that one week after the occurrence, the first accused was taken into custody by the police. This cannot be given a literal meaning to say that the accused was arrested on 22.09.2008, therefore, this argument of the learned counsel is rejected.

12. The learned counsel for the appellants would submit that the extra judicial confession said to have been given by the first accused to P.W.16 does not draw adequate corroboration from other sources. Therefore, according to the learned counsel, it would not be safe to sustain the conviction of the first accused. We are of the view that

this argument deserves only a summary rejection because it is the law that if the extra judicial confession inspires the fullest confidence of the Court, even in the absence of corroboration from any independent sources on material particulars, there would not be any hurdle to act upon the said extra judicial confession. It is only in a case where the extra judicial confession is shrouded with some amount of doubt, then as a rule of prudence, the Court shall look for corroboration from independent source on material particulars. Here in this case, as we have already pointed out, there is every reason for us to hold that the said extra judicial confession receives the fullest confidence of this Court and therefore, we are inclined to act upon the same.

13. So far as the motive for the first accused is concerned, it is the case that the first accused made attempt to have sex with the deceased and extended even sexual overtures towards her. This has been spoken by P.W.10, an independent witness, to whom the deceased had told about the attempt made by the first accused. Further, there is a confession of this fact made by the first accused in the extra judicial confession. Thus, the motive also stands proved. From these evidences, we are of the view that the prosecution has clearly established that it was the first accused who caused the death of the deceased by causing injury to the neck with a blade.

14. Now turning to the case of the second accused, as we have already narrated, the only piece of evidence available against her is the extra judicial confession given by the first accused to P.W.16. In our considered view, the confession made by the first accused cannot be used as a substantive evidence against the second accused. The proper approach shall be to keep the extra judicial confession of the co-accused assail to marshal all the other evidences available and in the event the Court is able to come to the conclusion that the accused had committed the offence, in order to lend assurance and add strength to the said conclusion, as a last resort, the Court may consider the extra judicial confession of a co-accused (vide ***Kashmira Singh Vs. State of Maharashtra*** reported in **1952 AIR SC 159**).

15. Applying the said principle to the facts of the case, if we analysis the evidences available against the second accused by keeping assail the extra judicial confession given by the first accused, absolutely there is no evidence against her. The recovery of the clothes from her would not in any manner advance the case of the prosecution. Thus, the extra judicial confession given by the first accused cannot be used for any purpose against the second accused in this case. Therefore, the extra judicial confession cannot be used

against the second accused as a substantive evidence so as to sustain the conviction. Thus, in our considered view, the second accused is entitled for acquittal.

16. In the result,

(i) The Criminal Appeal No.278 of 2014 fails and the same is accordingly dismissed. The conviction and sentence imposed on the first accused Mr.Thirupathi by the learned Mahila Judge, Salem in S.C.No.290 of 2012, dated 20.01.2014, is hereby confirmed and the bail bond shall stands cancelled. The Trial Court shall take steps to secure the first accused and commit him to prison so as to undergo the remaining sentence.

(ii) The Criminal Appeal No.40 of 2014 is allowed and the conviction and sentence imposed on the second accused Mrs.Maheswari by the learned Mahila Judge, Salem in S.C.No.290 of 2012, dated 20.01.2014, is set aside and the she is acquitted. The fine amount, if any paid, shall be refunded to her. The bail bond, if any executed, by the second accused, shall stand discharged.

(S.N.J.) (V.B.D.J.)
11.07.2016

Index : Yes
svki/kk

S.NAGAMUTHU,J.

&

V.BHARATHIDASAN,J.

svki/kk

To

1. The Mahila Judge,
Salem.
2. The Inspector of Police,
Tharamangalam Police Station,
Tharamangalam, Salem District..
3. The Public Prosecutor,
Madras High Court.

Crl.A.Nos.40 and 278 of 2014

11.07.2016