

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.453 of 2014

Paramasivam

...Appellant

Vs

State represented by
Inspector of Police
Veeraganur Police Station
Salem District.

...Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional Sessions Judge and Special Judge for E.C.Act Cases, Salem, in S.C.No.273 of 2009 on 07.07.2014.

For Appellant : Mr.C.K.M.Appaji

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by V.BHARATHIDASAN,J.,]

The first accused in S.C.No.273 of 2009 on the file of the learned Additional Sessions Judge and Special Judge for E.C.Act Cases, Salem, is the appellant herein. He stood charged for an offence under Section 302 IPC and another accused A2 stood charged for an offence under Section 201 r/w.302 IPC. The trial Court convicted the appellant / A1 for an offence under Section 302 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default to undergo further period of one year simple imprisonment. The trial Court found A2 not guilty of any offence and acquitted him. Challenging the above conviction and sentence, the appellant / A1 is before this Court with this Appeal.

2. The prosecution case in brief is as follows:-

(i) The deceased in this case one Bharathi alias Mahabharathi is the daughter-in-law of the appellant / first accused, and wife of the second accused in this case. The marriage between the deceased and A2 took place six years prior to the occurrence. It was a love marriage and the appellant opposed it. Hence, both the deceased and A2 were living in the deceased's parental house and both the deceased and A2 used to visit the appellant's house occasionally. Some days before the occurrence, the appellant arranged a driver job for A2 in the Government Transport Company, for which the appellant asked the deceased and A2 to pay the amount, and hence, there was a quarrel. Ten days prior to the occurrence, the deceased and A2 went to the house of the appellant. On 06.06.2008, there was a quarrel between the deceased and the appellant and the deceased insulted the appellant. Hence, in the midnight while the deceased was sleeping inside the house, the appellant strangled the deceased with a rope and after she became unconscious, poured some poison into her mouth to make believe that she committed suicide by consuming poison and caused her death. Subsequently, he informed A2 and also advised him to inform the villagers that she committed suicide by consuming pesticide. Thereafter, he informed the same to the deceased family. PW.6, father of the deceased and others reached the house of the deceased and found her dead.

(ii) On 07.06.2008, at about 12 p.m, the appellant appeared before PW.1 - Village Administrative Officer of Veeraganur South Village and gave extra-judicial confession (Ex.P1) admitting his guilt. PW.1 recorded his statement and with a special report (Ex.P2), he produced him before PW.7 and based on the report of PW.1, PW.7 then Sub-Inspector of Police working in respondent police, registered a case in Crime No.283 of 2008 for the offence under Section 302 and 201 IPC and he sent the First Information Report (Ex.P8) to the Judicial Magistrate Court and also to the higher officials.

(iii) PW.10 then Inspector of Police working in respondent police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, there he prepared Observation Mahazar (Ex.P3), and rough sketch (Ex.P10), and conducted inquest on the dead body between 3 to 5 p.m., Ex.P11 is the inquest report and then, he sent the body for postmortem autopsy to the Government Hospital, Attur, through PW.9 - a Head

Constable working in the respondent police. PW.10 then recorded the statement of witnesses and arrested the appellant and on such arrest, the appellant voluntarily gave confession and based on the disclosure statement, he recovered the rope (M.O.1) used to strangle the deceased and pesticide bottle (M.O.2).

(iv) PW.3 - Doctor then working in Government Hospital, Attur, conducted postmortem on the dead body and found the following injuries:-

" Moderately built female body lying on its back with both limbs extended. Mouth partially opened. Tongue inside. Face bloated till neck. Two linear mark about 0.5 cm each found encircling the neck. Abrasion 0.5 x 0.5 cm left side ankle.
Internal Examination:
Thorax & Abdomen : Ribs intact.
Lungs : congested.
Heart : filled with blood, blood samples preserved.
Stomach : contains 50 ml of digested food particles with pungent smelly odour, stomach preserved.
Intestine : Distended with gas. Preserved.
Liver : congested.
Kidney : congested.
Spleen : congested
Uterus : normal in all aspects
Bladder : empty
Hyoid bone : preserved
Pelvis & Spinal cord : intact
Skull : intact
Membrane : intact.
Brain : solid."

Ex.P6 is the postmortem report and she was of the opinion that the deceased appeared to have died of poisoning and asphyxia due to compression of neck. PW.3 also sent the visceral part of the deceased for chemical examination.

(v) Subsequently, PW.10 arrested A2 and on such arrest, A2 voluntarily gave confession and he recorded the statement of postmortem Doctor and other witnesses and after completion of investigation, he filed the charge sheet.

3. Based on the above materials, the trial Court has framed charges as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the same, the prosecution examined 10 witnesses and exhibited 13 documents and 6 material objects.

4. Out of the witnesses examined, PW.1 - then Village Administrative Officer, before whom, the appellant appeared on 07.06.2008 at about 12 p.m and gave extra-judicial confession. He recorded his statement (Ex.P1) and produced the appellant along with special report (Ex.P2) to PW.7. PW.2 is the relative of the deceased. He spoke about the quarrel between the appellant and the deceased. PW.3 is the Doctor, who conducted postmortem autopsy. She conducted postmortem autopsy on the dead body and issued postmortem report Ex.P6. PW.4 is the sister of the deceased. She also spoke about the quarrel between the deceased and the appellant. PW.5 is the grand son of appellant, he turned hostile. PW.6 is the father of the deceased. He also spoke about the motive. PW.7 - then Inspector, who registered the First Information Report. PW.8 - Head Constable then working in the respondent police submitted the First Information Report before the Judicial Magistrate Court. PW.9 - a Head Constable identified the body for postmortem and also handed over the body to the relatives. PW.10 - Investigating Officer conducted investigation and after completion of investigation, filed the final report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused did not examine any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the appellant / A1 and sentenced him as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the appellant before this Court.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. It is a case of circumstantial evidence. The prosecution mainly relies upon the extra-judicial confession given by the appellant before PW.1 - Village

Administrative Officer. As per the extra-judicial confession given by the appellant, after the marriage both the deceased and A2 were living in the deceased's house and he arranged a job for A2, and they failed to repay the amount, A2 also not giving the salary to the appellant, hence there was a quarrel between the appellant and the deceased, the deceased insulted him, therefore, on the date of occurrence, at about 2.30 a.m, when the deceased was sleeping inside the house and his grand-son was sleeping outside, the accused went inside the house and strangled the deceased and caused her death and he specifically informed A2 that the deceased died due to consuming poison. In the above confession of the appellant, he has stated that he has only strangled the deceased with rope. But according to Ex.P7 - Viscera Report, all the visceral parts of the deceased contain lumbada cyclothrin, a type of insecticide and the postmortem Doctor also of the opinion that the deceased appeared to have died of poisoning and also asphyxia due to compression of neck. Hence, the medical evidence is totally contradictory to the extra-judicial confession given by the appellant.

9. It is settled position of law that even though the extra-judicial confession is admissible, it is a weak piece of evidence and it should inspire the confidence of the Court and corroborated by other prosecution witnesses. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and it does not appear to be cogent as per the prosecution version, it may be difficult for the court to convict a person, based on such a confession.

10. In a case reported in 2012 (6) SCC 403 (Sahadevan ..vs.. State of Tamil Nadu), the Hon'ble Apex Court has held as follows:

"12. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the

prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

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22. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

The Principles

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law."

11. In the instant case, the extra-judicial confession is not consistent with the prosecution case and does not inspire the confidence of this Court. Except the extra-judicial confession, there is no other circumstances proved

by the prosecution to prove the guilt of the accused. As the extra-judicial confession suffers from material discrepancies, it is difficult for us to believe the same and convict the appellant based on the extra-judicial confession. In the above circumstances, the appellant is entitled for acquittal.

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant on 07.07.2014 in S.C.No.273 of 2009 on the file of Additional Sessions Judge and Special Judge for E.C.Act Cases, Salem, are set aside. The appellant / A1 is acquitted and fine amount already paid, if any, shall be refunded to him. His bail bonds shall stand terminated.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge and Special Judge for E.C.Act Cases, Salem.
2. -do- Thro, The District Sessions Judge, Selam.
3. The Inspector of Police Veeraganur Police Station Salem District.
4. The Superintendent of Central Prison, Coimbatore.
5. The Judicial Magistrate No. I, Attur, Salem District.
- 6.-do- Thro, The Chief Judicial Magistrate, Salem.
7. The Director General of Police, Mylapore, Chennai-4.

8. The District Collector,
Salem, Salem District.

9. The Superintendent of Police,
Salem, Salem District.

10. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.Appajji, Advocate, S.R.No. 41424

NRJK(CO)
RS(25/01/2017)

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