

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2016

CORAM:

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

Criminal Appeal No.656 of 2014

Krishnamoorthy

... Appellant

Vs

The State rep. By
The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
(Crime No.876/2012)

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 16.10.2014 in S.C.No.63 of 2013 on
the file of the learned Sessions Judge (Mahalir Fast Track
Court), Nagapattinam.

For Appellant : Mr.V.Illanchezian

For Respondent : Mr.M.Maharaja,
Additional Public

Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is the sole accused in S.C.No.63 of 2013 on
the file of the learned Sessions Judge (Mahalir Fast Track
Court), Nagapattinam. He stood charged for the offences under
Sections 498(A) & 302 I.P.C. By judgment dated 16.10.2014,
the trial Court convicted the accused/appellant for the
offences under Sections 498(A) & 302 I.P.C., and sentenced him
to undergo rigorous imprisonment for one year and to pay a
fine of Rs.500/- in default to undergo simple imprisonment for
one month for the offence under Section 498(A) I.P.C., and to
undergo imprisonment for life and to pay a fine of Rs.2,000/-,
in default to undergo simple imprisonment for one year. The
trial Court ordered to run the above sentences concurrently.
Challenging the said conviction and sentence, the appellant is
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 Mrs.Sathya. She was the second wife of the accused. The marriage between them was celebrated four years prior to the occurrence. Out of the said wedlock, they have got a female child. In due course of time, the deceased had developed illicit intimacy with one Mr.Raja, who is a resident of the same place. The accused questioned the same. This resulted in frequent quarrels between them. On 25.07.2012, at about 5.30 pm, the accused returned to his house from his medical shop. The deceased was not found in the house. In search of her, he went to the upstairs of the house. Shockingly, he found the deceased in a compromising position with the said Mr.Raja, in the open terrace. On seeing the accused, Mr.Raja ran away from the said place. On the same day, around 8.00 pm the accused made a request to the deceased and tried to persuade her to scrap her ties with Mr.Raja. But, she did not shown any interest over the said words of the accused. When she went to the bathroom on 26.07.2012 at 8.00 am, it is stated that the accused followed her and with a wire, he strangulated and killed her. Leaving the dead body in the house, the accused ran away from the scene of occurrence.

3.It is further alleged that on 26.07.2012, at 10.30 am, the accused went to P.W.1, the then Village Administrative Officer and made a voluntary confession. P.W.1 reduced the same into writing. Ex.P.1 is the said extra judicial confession. Then, he prepared a Special Report under Ex.P.2 and took the accused to Myladuthurai Police Station and produced him before the then Sub Inspector (P.W.6). P.W.6 based on Exs.P.1 & P.2, registered a case in Crime No.876/2012 for offence under Section 302 I.P.C., against the accused. Ex.P.6 is the F.I.R. Then he forwarded Exs.P.1, P.2 and P.6 (F.I.R.,) to Court and which were received by the learned Judicial Magistrate at 1.40 pm on 26.07.2012.

4.The investigation was taken over by P.W.11, the then Inspector of Police. He proceeded to the place of occurrence and prepared an observation mahazar in the presence of P.W.1 and another witness. Then he examined few witnesses, at the place of occurrence and he conducted inquest on the body of the deceased. Thereafter, he forwarded the body for post mortem. On the same day, he arrested the accused and forwarded him for judicial remand.

5.P.W.5 - Dr.Baskaran, conducted autopsy on the body of the deceased on 26.07.2012 at 3.30 pm and he found the following injuries:-

"Eyes closed. Tongue inside the mouth. Hands empty. Blood stained

discharge comes from both noses. Bleeding comes from right ear. Two ligature mark 05cm x 0.5cm breadth present into lower part of neck, almost encircling the neck. Knot mark not seen. An abrasion 2 x 1 cm present on the right shoulder. Another abrasion 2x1cm present on left cheek. Another external injury seen on open to the neck. Hyoid thyroid bones closed intact. Neck muscles contused."

Ex.P.5 is the post mortem certificate. He gave opinion that the deceased would have died due to asphyxia due to ligature strangulation. He further opined that the injury found on the neck of the deceased would have been caused by a wire like M.O.1.

6.P.W.11 examined the Doctor and recorded his statement. Then the case was taken over for further investigation by P.W.12, the then Inspector of Police. On completing investigation, P.W.12 laid charge sheet against the accused under Sections 498(A) & 302 I.P.C.

7. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment against the accused/appellant. The accused/appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 9 documents were exhibited, besides 2 Material Objects.

8. Out of the said witnesses, P.W.1 has spoken about the extra judicial confession made by the accused to him on 26.07.2012 at 10.30 am. P.W.2, the Village Assistant working under P.W.1 has stated that he is present when the accused gave the extra judicial confession to P.W.1. P.W.3, is the brother of the deceased. He has stated about the frequent quarrels between the accused and the deceased. P.W.4 is the mother of the deceased. She has stated about the frequent quarrels between the accused and the deceased. P.W.5 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.6 has spoken about the registration of the case on the complaint of P.W.1. P.W.7 is the neighbour of the deceased. She has stated that on 25.07.2012, the accused questioned the deceased, as to why she was on the terrace with Mr. Raja. P.Ws. 8 & 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.10 has stated that, he took the dead body from the place of occurrence and handed over the same to the Doctor for post mortem. P.Ws. 11 & 12 have spoken about the investigation done and the final report filed.

9. When the above incriminating materials were put to the

accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine witness nor did he mark any documents on his side.

10. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

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

12. In this case, in order to prove the charges, the prosecution relies only on the evidences of P.Ws.1 & 2 who have stated that the accused appeared before P.W.1 at 10.30 am on 26.07.2012 and made a voluntary confession. The learned counsel for the appellant would submit that the said confession cannot be true. The learned counsel would further point out that the accused had no reason to repose confidence in P.W.1, to make such a voluntary confession. The learned counsel would further contend that in the absence of corroboration from any other independent sources, the extra judicial confession made to P.W.1 by the accused should not have been made as a sole foundation to convict the accused/appellant.

13. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, P.Ws.1 & 2 are independent witnesses, before whom, the accused had made voluntary confession. The learned Additional Public Prosecutor would further submit that there are no reasons to reject their evidences.

14. We have considered the above submissions.

15. According to the positive case of the prosecution, the deceased was killed by the accused at 8.00 am on 26.07.2012. It is alleged that the accused appeared, on the same day, before the Village Administrative Officer (P.W.1) at 10.30 am and the case was registered at 11.30 am itself. P.W.4, the mother of the deceased has stated that even before 12.00 noon on 26.07.2012, she was informed by somebody that the deceased had been killed by the accused and the body was found lying in the bathroom. Her further evidence is that she, along with the other family members, rushed to the house of the accused and found the door locked. They broke open the house and entered into the house and found the deceased lying dead in the bathroom. P.W.3 has stated that at 10.30 am on 26.07.2012, she had information that the deceased had been killed by the accused. According to him, immediately, he

rushed to the place of occurrence and found the dead body of the deceased. From these evidences, it is crystal clear that the fact that the dead body was found inside the house was known to the family members of the deceased at about 10.30 am itself. They have further stated that at that time itself, the Police examined them. In the light of these admissions, it is difficult to believe that the accused would have gone to P.W.1 to make an extra judicial confession. Further, it is not as though P.Ws.1 & 2 were previously known to the accused. There is no evidence that the accused had acquaintance with P.W.1 so as to repose confidence on him to confess. For these reasons, we are of the view that the so called extra judicial confession is shrouded with lot of doubts. It is too well settled that if an extra judicial confession is shrouded with doubts, the said extra judicial confession, by itself, is a weak piece of evidence and it would not be safe to act solely upon the said extra judicial confession as it would require corroboration from any other independent sources. Here, in this case, there is no other evidence from any other independent source to corroborate the said extra judicial confession, in material particulars.

16. In view of the same, we are of the view that it would not be safe to act upon the said extra judicial confession alone and to sustain the conviction imposed on the appellant. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts and the appellants are entitled for acquittal.

17. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the accused/appellant by the learned Mahalir Fast Track Judge, Nagapattinam, in S.C.No.63 of 2013, dated 16.10.2014, is set aside and the accused/appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the accused/appellant, shall stand discharged.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Judicial Magistrate No.I,
Mayiladuthurai.

2.-Do- Through the Chief Judicial Magistrate,
Nagapattinam.

3.The Sessions Judge,
Mahila Fast Track Court,
Nagapattinam.

4.The Principal Sessions Judge,
Nagapattinam.

5.The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.

6.The Superintendent of Police,
Nagapattinam.

7.The District Collector,
Nagapattinam District.

8.The Superintendent,
Central Prison,
Trichirapalli.

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Ilanchezian, Advocate, S.R.No.33863

Crl.A.No.656 of 2014

MP(CO)
CA(19/07/2016)



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