

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2016

CORAM:

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

Criminal Appeal Nos.113 & 138 of 2015

Madhammal .. Appellant/2nd Accused
in CrI.A.No.113/15
Sivakumar .. Appellant/1st Accused
in CrI.A.No.138/15

- Vs -

The State rep. by
The Inspector of Police,
Pochampalli Police Station,
Krishnagiri District,
(Cr.No.40 of 2013) ..Respondent/Complainant
in both appeals

Prayer in both the appeals:- Appeals filed under Section 374
(2) of the Code of Criminal Procedure against the judgment
passed by the learned Principal District and Sessions Judge,
Krishnagiri, Krishnagiri District in S.C.No.123 of 2014 dated
02.02.2015.

For Appellant
in CrI.A.No.113/15 : Mr.E.Kannadasan

For Appellant
in CrI.A.No.138/15 : Mr.S.Senthilvel

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

Prosecutor

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellants are the accused 1 and 2 in S.C.No.123 of
2014 on the file of the learned Principal District and
Sessions Judge, Krishnagiri. The Trial Court framed as many
as five charges against the accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 & A2	120 (B) of IPC
2	A1	449 of IPC
3	A1	302 of IPC
4	A1 & A2	201 of IPC
5	A2	302 r/w 34 of IPC

By judgment dated 02.02.2015, the Trial Court convicted them under all the charges and sentenced them as detailed below:

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A1	449 of IPC	Rigorous Imprisonment for six years and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months.
	302 of IPC	Imprisonment for life and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for one year.
	201 of I.P.C.	Rigorous Imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months.
A2	302 r/w 34 of IPC	Imprisonment for life and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for one year.

Rank of the Accused	Penal provision(s) under which convicted	Sentence
	201 of I.P.C.	Rigorous Imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months.

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 Lingannan. The second accused is his wife. Out of the said wedlock, they have three children. They were all residing at Pochampalli village. Later on, the second accused developed illicit intimacy with the first accused. This came to the notice of the deceased. He warned the second accused to snap all her ties with the first accused. Accused 1 and 2 therefore felt that the deceased was a hindrance for them to continue their illicit relationship. Therefore, according to the prosecution, they conspired to do away with the deceased.

2.2. On 20.02.2013, around 10.00 p.m., after having their dinner, the deceased, the second accused and their children were sleeping in their house. Around 11.00 p.m., the first accused, in pursuance of the above conspiracy, came to the house of the deceased. He broke open the asbestos sheet roof and jumped into the house. Awakened by the noise, the deceased started crying. Immediately, the second accused held him and the first accused stabbed him with a knife on the chest. On noticing the same, the children wept. The second accused persuaded them and made them to sleep again. Then, the accused 1 and 2 dragged the body by means of a rope and buried the same behind the house. This was not noticed by the children. The next day, that was on 21.02.2013, the brother of the deceased (P.W.5) met the children (P.Ws.2 and 3) incidentally. They told P.W.5 about the occurrence. P.W.5 could not take the words of P.Ws.2 and 3 seriously. He enquired the second accused about the whereabouts of the deceased. The second accused told him that the deceased had gone to the hospital. Then, P.W.5 and the other family members went in search of the deceased. But they could not find.

2.3. Because the children had informed about the occurrence to P.W.5, the second accused got frightened. She went to P.W.1, the then Village Administrative Officer of Marandahalli village at 10.00 a.m. on 21.02.2013 and wanted to give a voluntary confession. P.W.1 after having ascertained that she had come to give the confession voluntarily, he

recorded the same as spoken by the second accused. Ex.P1 is the extra judicial confession. Then, P.W.1 prepared a special report under Ex.P2. Thereafter, he took the second accused along with Exs.P1 and P2 and produced her before P.W.18, the then Inspector of Police, Pochampalli Police Station at 12.00 noon.

2.4. On receipt of the above report and extra judicial confession, P.W.18, registered a case in Crime No.40 of 2013 under Sections 302 and 201 I.P.C. Ex.P23 is the F.I.R. Then, he forwarded all the above documents to Court. At 01.00 p.m. the second accused gave a voluntary confession to P.W.18, in which, she disclosed the place where the dead body of the deceased had been buried and also the place where she had hidden the dress materials, the spade with handle and broken asbestos sheets. In pursuance of the same, she took the police and the witnesses to the said place. At 2.30 p.m. P.W.18 prepared an observation mahazar and a rough sketch at the place identified by the second accused. Then, he gave a letter to the Executive Magistrate-cum-Tahsildar to exhume the dead body, if any, from the place identified by the second accused. P.W.14, accordingly came to the said place. In the presence of P.W.14, from the place identified by the second accused, the dead body of the deceased was exhumed. Then, the second accused produced two cell phones. P.W.18 then recovered the bloodstained earth and sample earth from the said place. The second accused produced the jacket, saree, spade with handle and the broken asbestos sheet from the place of hideout. P.W.18 recovered the same in the presence of witness (vide M.O.Nos.9 to 12). Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.16 conducted autopsy on the body of the deceased on 22.02.2013 at 12.25 p.m. He found the following injuries:

"(1) An oblique oval shaped 3.2 x 1.7 cm stab wound on the front of left side of chest, the wound was 3.5 c.m outer to midline and 5 cm medial to the nipple. Margins of the wound were regular, end were acute. On dissection the wound passes through the subcutaneous tissue, muscular layer, causing complete cut fracture of left 4th rib at its costochondral junction and enters the left pleural cavity. The wound was directed backwards and inwards.

(2) A vertical stab wound of 5.5 x 1.8 cm on the front of lower part of left side of the chest. The wound was 8 cm outer to the mid line and 8 cm below the nipple. The margins of the wound were regular and ends were acute. On dissection the wound passes through the sub cutaneous tissue, muscular layer, causing complete cut fracture of 6th rib and incomplete cut fracture of 7th rib,

enters the thoracic cavity, penetrates the pericardium and enters the posterior aspect of apex of left ventricle close to the septum. The wound in the heart measures 4.5 x 0.3 cm x left ventricle chamber deep. The wound was directed backwards, inwards and upwards.

150 ml of fluid and clotted blood in the pericardium. Heart was normal in size, cut section pale. Stomach contained 150 grams of partially digested food material with no specific odour, mucosa and pale. Liver, spleen and kidneys were normal in size, cut section pale. Urinary bladder was empty. Pelvic bone was intact. Scalp vault and duramater were intact. Brain cut section was pale. Skull base was intact. Hyoid bone was intact. Spinal column was intact."

Ex.P21 is the postmortem certificate. He gave opinion that the deceased had died due to shock and haemorrhage due to the stab injury on the chest of the deceased.

2.5. During the course of investigation, on 21.02.2013, P.W.18 arrested the first accused in the presence of P.W.9 and another witness. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden a knife, a wooden log, a shirt and a lungi. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.12-shirt, M.O.13-lungi, the motorcycle bearing registration No.TN 24 Q 4568, a wooden log and a knife.

2.6. P.W.18 recovered all these material objects under a mahazar and then he forwarded the accused to Court for judicial remand and handed over the material objects also to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects except the knife. On completing the investigation, he laid chargesheet against the accused.

2.7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 18 witnesses were examined, 25 documents and 16 material objects were marked.

2.8. Out of the said witnesses, P.W.1 the Village Administrative Officer has spoken about the extra judicial confession given by the second accused and the disclosure statement made to P.W.18 including the recovery of material objects in pursuance of the same. P.Ws.2 and 3 are the

daughter and son respectively of the deceased who have stated that they witnessed the occurrence and thereafter they informed the same to P.W.5. They have further stated that the second accused sent them to school on the next day of the occurrence.

2.9. P.W.4 the learned Magistrate has spoken about the recording of the statement under Section 164 Cr.P.C. from the witnesses. P.W.5 is the brother of the deceased, P.W.6 is the neighbour of the deceased, P.W.7 brother's son of the deceased. They have stated that they have enquired the second accused about the information passed on by P.Ws.2 and 3 and she told that the deceased had gone to the hospital. P.W.8 has spoken only about the hearsay information. P.W.9 has spoken about the arrest of the accused and the consequential recovery of the material objects based on the disclosure statement. P.W.10 turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 has not stated anything incriminating against the accused.

2.10. P.W.12 is the mother-in-law of the deceased and she has also turned hostile. P.W.13 is the constable who has stated that he took the dead body from the place of occurrence to the hospital and handed over the same for postmortem. P.W.14, the Thasildar, has spoken about the exhumation of the body and the inquest held. P.W.15, the Head Clerk of the Court, has stated that he forwarded the material objects for chemical examination as requested by P.W.18 on the orders of the learned Magistrate. P.W.16 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.17 has spoken about the photos taken by him on the request made by P.W.18. P.W.18 has spoken about the registration of the case and the investigation done by him.

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. Having considered all the above, the trial Court convicted the appellants as detailed 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, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

5. The learned counsel for the appellants would submit that neither the evidences of P.Ws.2 and 3 who claim to be the eyewitnesses nor the evidence of P.W.1 who claims to have recorded the extra judicial confession of the second accused is believable. The learned counsel pointed out that P.Ws.2 and 3 are child witnesses and therefore they are prone to tutoring. For that reason, according to the learned counsel,

their evidences should be rejected. But, we are not persuaded by the said argument. Of course, P.Ws.2 and 3 are children, but on that score, their evidence cannot be outright rejected. Prudence requires that their evidence should be closely scrutinised. P.Ws.2 and 3 have stated that after 10.00 p.m., in the house, the deceased, the second accused and P.Ws.2 and 3 were sleeping. Around 11.30 p.m., the first accused entered into the house by breaking open the asbestos roof of the house. As we have already pointed out they have stated that they saw the second accused catching hold of the deceased and the first accused stabbing the deceased on the chest. The learned counsel for the appellants would submit, had it been true, they would have raised alarm. The fact that they did not raise alarm, according to the learned counsel, would go to indicate that they would not have witnessed the occurrence at all. Though attractive, this argument needs only to be rejected because these witnesses have stated that when they wept. The second accused, who is after all their mother, persuaded them and made them to sleep. They have not stated anything of the dragging of the body by the accused and burial made by them. Thus, according to these two witnesses, they did not know that the deceased was no more. At any rate, because P.Ws.2 and 3 were children, they would have been frightened and that is the reason why, they did not raise any alarm and instead they slept. On the next day morning, how P.Ws.2 and 3 conducted themselves is important. They have stated that they went to the house of P.W.5, who is their uncle and informed about the occurrence and that is the reason why, P.Ws.5, 6 and 7 enquired the second accused about the whereabouts of the deceased. Thus, the conduct of P.Ws.2 and 3 in informing P.W.5 about the occurrence promptly would go to prove that they are natural witnesses and they are believable. At the time when P.Ws.5 to 7 enquired the second accused, she made obviously a false statement to them stating that the deceased had gone to the hospital. But, the fact remains that the deceased did not go to any hospital. This false statement made by the second accused to P.Ws.5 to 7 is yet another incriminating circumstance against the second accused.

6. Because the children had told P.W.5 about the occurrence, the second accused got frightened and that is the reason why she had gone to P.W.1 to make a confession. In the confession itself, she has stated that she came to surrender because already their children had informed about the occurrence to P.W.5. Probably, she would have believed that P.W.1 would help her to have smooth surrender to the police. This fact has also been stated in the extra judicial confession.

7. P.W.1 is an independent administrative officer and a public servant. He has no axe to grind against the accused. Therefore, we do not find any reason to reject the evidence of P.W.1 who has recorded the extra judicial confession given by the second accused. The recovery of the material objects on

the disclosure statement made by the second accused would also go to further strengthen the case of the prosecution. Thus, from the evidences of P.Ws.2 and 3 and the extra judicial confession given by P.W.1 coupled with the medical evidence and the recovery of material objects, we have no hesitation to hold that the prosecution has proved the guilt of the second accused.

8. Now, turning to the case against the first accused, P.Ws.2 and 3 have categorically stated that he entered into the house by braking open the asbestos roof. In the observation mahazar, there is mention about the broken asbestos roof. The broken asbestos sheets were also recovered. These two witnesses had further stated that the first accused used to visit their house. P.Ws.5 to 7 have stated about the illicit relationship between the first accused and the second accused. Thus, the prosecution has proved the motive for the first accused and also through the evidences of P.Ws.2 and 3, the prosecution has proved that it was he who stabbed the deceased on the chest of the deceased. The recovery of material objects at his instance would further strengthen the case of the prosecution. From these evidences, we are able to safely come to the conclusion that it was the first accused who caused the death of the deceased by stabbing him on the chest.

9. As held by the Hon'ble Supreme Court in Kashmira Singh Vs. State of Maharashtra reported in 1952 AIR SC 159, the extra judicial confession of a co-accused cannot be a substantive evidence against the other. But it could be used as a last resort to add strength to the conclusion arrived at by the Court against the said accused on marshalling the other evidences. Here, in this case, from the other evidences, we have come to the conclusion that it was the first accused who stabbed the deceased and caused his death. The said conclusion is further strengthened by the extra judicial confession given by the second accused to P.W.1. Above all, the place of burial of the dead body was not known to anybody. It was only on the disclosure statement made by the second accused and on the place identified by the second accused, it came to light that the body had been buried at that particular place and it was only thereafter, from that place the dead body was recovered. This is a very strong circumstance against the second accused. In the extra judicial confession, she has stated that she buried the body along with the first accused. From these circumstances, the prosecution has proved that both the accused have buried the dead body to cause disappearance of evidence and therefore, they are liable for punishment under Section 201 I.P.C.

10. Now, turning to the charge of conspiracy, it is well known that conspiracy is, in general, hatched in secrecy. Therefore, under all circumstances, invariably, the Court cannot look for any direct evidence to prove conspiracy. It

is, many times, a matter of inference. Here, in this case, from out of the motive proved by the prosecution and from the manner of the occurrence and burial of the body, we are able to presume the conspiracy hatched by the accused 1 and 2 to commit the murder of the deceased. Undoubtedly, the intention of the first accused in stabbing the deceased on the chest and causing his death instantaneously would prove his intention that it was only to cause his death. Thus the act of the first accused squarely would fall within the first limb of Section 300 I.P.C. and therefore he is liable for punishment under Section 302 I.P.C. r/w Section 34 I.P.C. and the second accused is also liable to be punished for offence under Section 302 I.P.C. r/w Section 34 I.P.C.

11. Now turning to the quantum of punishment, the trial Court has imposed only a reasonable punishment, which is proportionate to the gravity of the offence and the mitigating circumstances. Thus, the quantum of punishment also does not require any interference at the hands of this Court.

12. In view of the foregoing discussions, we find there is no merit at all in these appeals. The appeals fail and they are accordingly dismissed. The conviction and sentence imposed on the appellants by the learned Principal District and Sessions Judge, Krishnagiri in S.C.No.123 of 2014 dated 02.02.2015, stands confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

svki/kk

To

1. The Principal District and Sessions Judge,
Krishnagiri, Krishnagiri District.
2. The District Munsif-cum- Judicial Magistrate,
Pochampalli.
3. The Chief Judicial Magistrate, Krishnagiri.
4. The Inspector of Police,
Pochampalli Police Station,
Krishnagiri District.
5. The Superintendent of Police, Krishnagiri.
6. The Superintendent Central Prison, Vellore.

7. The Director General of Police, Mylapure, Chennai.

8. The District Collector, Krishnagiri District.

9. The Public Prosecutor, Madras High Court.

+ 1 cc to Mr.E. Kannadasan, Advocate Sr.35835

+ 1 cc to Mr.S. Senthilvel, Advocate SR.35834(27.09.16)

Cr1.A.Nos.113 & 138 of 2015

SCD(CO)
Eu 26.08.16



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