

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 29.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.297 of 2015

Dhanalakshmi ... Appellant

vs.

State, by

The Inspector of Police,
Ramanaththam Police Station,
Cuddalore District.
(Crime No.647 of 2011)

... Respondent

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 29.04.2015 passed by the
learned III Additional District and Sessions Judge, Cuddalore
at Vridhachalam, in S.C.No.38 of 2015.

For Appellant : Mr.C.Prasanna Venkatesh

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the first accused in Sessions Case No.38 of 2015, on the file of the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam. She along with another accused stood charged for offences punishable under Sections 302 and 302 r/w 201 of IPC. The Trial Court by judgement dated 29.04.2015, convicted the appellant/first accused for the offence under Section 302

IPC and sentenced her to undergo life imprisonment and to pay

a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for two years and also convicted the appellant/first accused for the offence under Section 302 r/w 201 IPC, and sentenced her to undergo rigorous imprisonment for two years and also to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for three months. The trial Court directed that the sentences shall run concurrently. The trial Court acquitted the second accused. Challenging the above said conviction and sentence, the appellant/first accused is before this Court with this appeal.

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

(i) The deceased, in this case, one Ramasamay, is the husband of the appellant/first accused. The appellant had a illicit intimacy with the 2nd accused, one Kodi in this case. The deceased gone abroad for employment. At that time, the 2nd accused used to stay in the house of the appellant/first accused. After coming back to India, the deceased came to know about the illicit intimacy and warning his wife/first accused. In the above circumstances, both the accused decided to murder the deceased. On 11.12.2011, at about 11.30 p.m., when the deceased went to the kitchen, the second accused pushed him down and the first accused strangled him with hands and caused his death. Thereafter, both the accused cleaned the blood in the scene of occurrence and thereby screened the evidence. On 12.12.2011 at about 2.00 p.m., the appellant herself went to the Police Station and gave a complaint (Ex.P10) stating that after having dinner, at about 6.30 pm., the deceased went to bed and at about 10.30 pm., he complained of vomiting and on the next day i.e., 12.12.2011 at about 4.30 am., she found the deceased dead in the kitchen and blood oozing from his mouth and immediately informed the others.

(ii) P.W.10, Sub Inspector of Police, working in Ramanaththam Police Station, on receipt of the complaint, registered a case in Crime No.647 of 2011 under Section 174 Cr.P.C. and prepared FIR (Ex.P11) and sent the same to the Judicial Magistrate Court and also to higher officials.

(iii) P.W.13, Inspector of Police, working in respondent police station, on receipt of the first information report, commenced the investigation and proceeded to the scene of occurrence, prepared an Observation Mahazar, Ex.P1, drew a Rough Sketch, Ex.P14 and recovered bloodstained soil and sample soil in the presence of witnesses. On the same day, he seized M.O.1, Black and red colour shirt, M.O.2, Polyester Lungi, M.O.3 a pair of Black colour chappal, under Ex.P2 Seizure Mahazar. Then, he conducted inquest over the dead body in the presence of panchayatdars and prepared an Inquest

Report [Ex.P15] and sent the dead body to the Government Hospital, Villupuram, for Postmortem, through Head Constable, namely, Mariappan. P.W.13 examined some witnesses and recorded their statements. Then, he handed over the investigation to P.W.11, Deputy Superintendent of Police.

(iv) P.W.12, Doctor, working in the Government Hospital, Villupuram, conducted postmortem on the dead body of the deceased and found following external and internal injuries:-

Face Swollen and congested both eyes bulging, closed, Puffiness of eyelids seen. Scleral haemorrhages and multiple petechial haemorrhages seen in the conjunctiva of both eyes. Tip of tongue of length 1.5 cm seen protruding out between the teeth. Multiple small vesicles and blisters, flaccid, filled with serosanguinous fluid seen all around the neck area right shoulder and right arm, Marbling of the skin seen over right shoulder. Upper part of right arm and over the left shoulder.

Reddish brown contusions seen over the following area; (a) Right side of face below the nose above the upper lip of size 3cm x 1cm x 0.5 cm. (b) Near the angle of the mandible & over right lower jaw - irregular contusion of size 7 cm x 3 cm x 0.5 cm. (c) Contusion of size 1.5 cm x 1 cm x 0.5 cm above injury. (d) Left side of lower part of face below the angle of the mouth 4 contusions of size 1cm x 0.75 cm x 0.75 cm x 0.5 cm x 0.5 cm. (e) Right neck upper part 3 contusions one below the other (1) 1 cm x 0.5 cm x 0.5 cm (2) 1.5 cm x 0.5 cm x 0.5 cm (3) 5 cm x 0.5 cm x 0.5 cm (f) Left clavicular area 3 cm x 1.5 cm x 0.5 cm (g) outer aspect of right wrist 1cm x 0.5 cm x 0.5 cm. (h) Just below right knee - in the anterior aspect 4 cm x 1 cm x 0.5 cm below injury. (i) 3 contusion of size 1 cm x 0.5 cm x 0.5 cm (one). 1.5 cm x 0.5 cm x 0.5 cm (two in number). (j) Anterior aspect of left knee - 1 cm x 0.5 cm x 0.5 cm. (k) Outer aspect of Left knee - 1cm x 0.5 cm x 0.5 cm. (l) Contusions of upper lips - Right side 2 cm x 0.5 cm x 0.5 cm. (m) Lower lip contusions - Right side - 0.5 cm x 0.5 cm x 0.5 cm left side - 1.5 cm x 0.5 cm x 0.5 cm. (n) 2 curvilinear abrasion (Nail marks) seen. (a) Just below the angle of the mouth right side of length 1 cm. (b) Below the lower lip on the left side of length 1.5 cm.

On opening of the skull subcutaneous tissues a contusion of size 6 cm x 3 cm x 1 cm seen over the lower half of right side Sternocleidomastoid muscle. Left side muscle upper part contusion of size 4 cm x 2 cm x 1cm, Lower part; 6cm x 1 cm x 1 cm. Ribbon muscles of the right side contused 5 cm x 4 cm x cm; Hyoid bone: Fracture on Right side (great horn) Thyroid cartilage: Fracture of suprior horn on the right side. Fracture of crucoid cartilage seen, Mucosa of the larynx and trachea congested and blood stained.

He was of the opinion that the deceased would appear to have died of asphyxia due to smothering and strangulation. He issued Postmortem Certificate Ex.P13.

(v) P.W.11, Deputy Superintendent of Police, continued the investigation. On receipt of Postmortem certificate and also based on the statements of witnesses, P.W.11 altered the FIR into Section 302 IPC and prepared alteration report [Ex.P12]. He made a request to the learned Judicial Magistrate, Vridhachalam, for recording the statements of P.Ws.1 and 2 under Section 164(1) Cr.P.C. Thereafter, P.W.11 sent the case records to P.W.13 for further investigation.

(vi) Then, P.W.13, continued the investigation and on 05.04.2012, he arrested the appellant and on such arrest, she voluntarily gave confession and based on the disclosure statement, P.W.13 recovered M.O.4 Bed sheet and M.O.5 Inskirt under Ex.P8 Seizure Mahazar in the presence of witnesses and sent the appellant/first accused for judicial custody. Subsequently, on 19.04.2012, the second accused appeared before P.W.6, Village Administrative Officer, and gave an extra judicial confession admitting the guilt and after recording the said confession, P.W.6 produced the second accused before the Investigating Officer P.W.13. P.W.13 arrested the second accused and on such arrest, he voluntarily gave a confession, based on the disclosure statement, he recovered a broom stick M.O.6 in the presence of witnesses and sent the second accused for judicial custody. P.W.13 examined some witnesses and recorded their statements. After completing investigation, P.W.13 laid charge sheet.

3. Based on the above materials, the Trial Court framed charges against both the accused as detailed above, and they denied the same as false. In order to prove its case, the prosecution examined, as many as 13 witnesses, exhibited 16 documents and marked 6 material objects.

4. Out of the above, 13 witnesses examined, P.W.1 is

the sole witness in-law of the deceased. She is living in the next

portion of the same house, where, the occurrence took place. She has spoken about the illicit intimacy between A-1 and A-2 and it is her further evidence is that on the date of occurrence at about 5.30 a.m., the first accused/appellant informed P.W.2 that her husband died and asked him to help her to clean the body, but, P.W.2 refused. P.W.2 is an agriculturist, who used to sleep in P.W.1's house. According to him, on the date of occurrence, at about 5.30 a.m., the first accused/appellant told him that her husband died and requested him to help her to wash the body, but he refused. P.W.3, President of the Village has stated that on hearing the news he went to the house of the deceased and he, along with A-1 and others, washed the body of the deceased. P.W.4 is the mahazar witness for recovery of M.Os.1 to 3. P.W.5, Village Administrative Officer, is witness to the arrest of the first accused and recovery of M.Os.4 and 5. P.W.6 is the Village Administrative Officer of Venkam Village, before whom, A-2 was said to have appeared and gave extra judicial confession admitting his guilty. P.W.7, Junior Scientific Officer, Forensic Laboratory at Villupuram, has examined the blood stained material objects and given report Ex.P9. P.W.8, Special Sub Inspector of Police, who accompanied P.W.11 during the investigation. P.W.9, the Head Constable, working in the respondent police, accompanied the dead body to the Hospital and identified the dead body for postmortem. P.W.10 is the Special Sub Inspector of Police, who, on receipt of the complaint from the appellant, has registered a case in Crime No.647 of 2011 under Section 174 Cr.P.C. P.W.11 is the Deputy Superintendent of Police, who conducted investigation and altered the first information report into Section 302 of IPC, and prepared alteration report Ex.P12 and handed over the case diary to P.W.13, Inspector of Police for further investigation. P.W.12 is the the Doctor, who conducted post mortem on the dead body of the deceased and issued Postmortem certificate Ex.P13. P.W.13 is the Inspector of Police, working in the respondent police, who, on receipt of the first information report, has commenced the investigation, examined the witnesses and recorded their statements, arrested the accused, recovered materials objects and after completion of investigation, laid the charge sheet.

5. When the above incriminating materials were put to the appellant under Section 313 Cr.P.C., they denied the same as false. The appellant did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted the appellant/first accused for the offences as stated in the first paragraph of this judgement and acquitted the

second accused from the charges framed against him. Challenging the above conviction and sentence, the appellant filed the present appeal.

7. We have heard Mr.C.Prasanna Venkatesh, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. It is a case of circumstantial evidence. It is settled principle of law that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond any reasonable doubt and such proved circumstances should form a complete chain, without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principles in mind, let us now analyse the present case. The prosecution mainly relied upon the extra judicial confession said to have been given by the second accused before P.W.6, the Village Administrative Officer. But, the trial Court has disbelieved the said extra judicial confession given by the second accused and acquitted him for the charges, but convicted the appellant/first accused holding that the prosecution has proved the motive, and since the death of the deceased is unnatural and is on the appellant to prove her evidence, but she failed to discharge it and apart from that, she had also screened the evidence by washing the dead body. Considering the conduct of the first accused, the trial Court convicted her.

9. Regarding motive, P.W.1 has spoken about the illicit intimacy between the first accused and the second accused. Even though, according to her, on the date of occurrence at about 8.30 pm., both the accused were talking together, she does not know about the nature of conversation between them. Hence based on her evidence we cannot hold that the appellant/first accused had any motive to murder the accused.

10. The next circumstance relied upon by the prosecution is the conduct of the appellant/first accused. According to the prosecution, on the date of occurrence at about 5.30 am., the first accused/appellant called P.W.2 and informed him that her husband died and blood was oozing from his mouth, and requested him to help her to wash the body. Thereafter, P.W.3 and others came and washed the body and immediately, the first accused went to the police station and

registered under Section 174 Cr.P.C. Thereafter, based on the postmortem report and statements of witnesses, first information report was altered into Section 302 IPC. Considering the entire materials, we find no incriminating circumstance against the appellant. Her conduct was quite normal. After seeing the dead body, she has called P.W.2 to help her and when he refused, other villagers have come and cleaned the body and she alone was lodged the complaint to the police and there is no other material available to connect the death of the deceased with the appellant. According to the prosecution, both A-1 and A-2 have committed the murder. But, the trial Court had acquitted the second accused. In the above circumstances, we are of the considered opinion that the prosecution has failed to prove its case beyond any reasonable doubt, and the appellant is entitled for acquittal.

11. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, dated 29.04.2015 in Sessions Case No.38 of 2015 is set aside and the appellant/accused is acquitted of the charges levelled against her. Bail bond executed by her shall stand cancelled. Fine amount, if any, paid by her is ordered to be refunded forthwith.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.

2.The Inspector of Police,
Ramanaththam Police Station, Cuddalore District

3.The Public Prosecutor, High Court, Madras.

4 Thro the Chief Judicial Magistrar, Cuddalore.

5 The Superintendent, Central Prison, Cuddalore.

6 The District Collector, Cuddalore.

7 The Director Criminal of Police, Mylapore, Chennai-04.

+1cc to M/s.C.Prasanna Venkatesh, Advocae SR.No.36430

Cr1.A.No.297 of 2015

SDR 30.12.2016