

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.537 of 2015

Murugan

..Appellant/Sole
Accused

Vs

State rep. By
Inspector of Police, (Law and order)
Bhavani Police Station,
Bhavani, Erode District.
(In crime No.60 of 2011)

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed by the learned Additional District Sessions Judge, Fast Track Court No.IV, Bhavani, Erode District, in S.C.No.149 of 2010 dated 15.03.2012.

For Appellant : Mr.Swamy Subramanian,
Legal Aid counsel.

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGMENT

The sole accused, in S.C.No.149 of 2010, on the file of the Fast Track Court No.IV, Bhavani, is the appellant herein. He stood charged for the offences under Sections 506 (ii) and 302 I.P.C. By judgment dated 15.03.2012, the trial Court convicted the accused for offences under Sections 506 (ii) and 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one year for the offence under Section 302 IPC and to undergo rigorous imprisonment for one

year for the offence under Section 506(ii) IPC and the trial Court ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Perumaiyammal, aged about 77 years, is the mother of P.W.1. The accused is the neighbour of the deceased. There were frequent quarrels between the accused and the deceased in respect of stagnation of water, coming from the house of the deceased, which was stagnating in front of the house of the accused. On 21.12.2009, at about 10.00 a.m., the accused quarreled with the deceased. Hence, the deceased lodged a complaint against the accused before Bhavani Police Station and on enquiry, the matter was settled. Thereafter, on 01.01.2010, at about 1.00 p.m., the accused attacked the deceased with wooden log on the head of the deceased and caused severe injuries and thereby caused her death. P.W.1, son of the deceased, who was working in a flower shop, on receipt of the information that her mother was found dead in their house, rushed to the house, at about 6.00 p.m., and he lodged a complaint, Ex.P.1, before the respondent police at about 11.00 p.m.

3. P.W.11, Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.3 of 2010 for an offence under Section 302 IPC. He sent the First Information Report, Ex.P.6, to the Judicial Magistrate Court and copies to the higher officials.

4. P.W.13, Inspector of Police, on receipt of First Information Report, commenced investigation and proceeded to the scene of occurrence and on 02.01.2010, in the morning, at about 00.30 hours, prepared Observation Mahazar and Rough Sketch in the presence of P.W.6 and others and he also recovered bloodstains found in the wall. Then, P.W.13 conducted inquest on the dead body of the deceased between 2.00 a.m. and 3.30 a.m in the presence of panchayathars. Then, he sent the dead body of the deceased to Government Hospital, Bhavani, for postmortem, through P.W.12, Head Constable.

5. P.W.9, Doctor, working in the Government Hospital, Bhavani, conducted autopsy on the dead body of the deceased on 02.01.2010, at 7.50 a.m., and found the following injuries :-

- " 1. large laceration 10 x 3 cm-right temple scalp.
2. Large laceration 15 x 3 cm occipital region of scalp.
3. A Small laceration 0.5 x 0.5 cm left side of forehead. "

P.W.9 has given Postmortem certificate.

6. On 02.01.2010, at about 4.00 p.m., the accused appeared before P.W.7, Village Administrative Officer, Bhavani Village and voluntarily gave a confession admitting his guilt. P.W.7 recorded the statement of the accused and obtained his signature and produced him, before P.W.13.

7. P.W.13 arrested the accused and on such arrest, he voluntarily gave a confession and based on the disclosure statement of the accused, P.W.13 recovered blood stained wooden log(M.O.1) in the presence of witnesses. Then, he recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and the other witnesses. After completing investigation, P.W.13 laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined and 7 documents were exhibited, besides 5 Material Objects.

9. Out of the witnesses examined, P.W.1 is the son of the deceased. He spoke about the earlier quarrel between the accused and the deceased. On the date of occurrence, at about 6.00 p.m., he received information that his mother was dead and rushed to the house. Thereafter, he lodged a complaint before the respondent police at about 11.00 p.m. P.W.2 is another son of the deceased. After receiving information that his mother was found dead, he went to her house. He also spoke about the quarrel between the accused and the deceased. P.W.3 is a grand son of the deceased. He spoke about the motive and also earlier complaint given by the deceased against the accused. P.W.4 is a neighbour and hearsay witness. P.W.5 is a neighbour. He also spoke about the earlier complaint given by the deceased against the accused and the compromise held in the police Station.

10. P.W.6 is a witness to the Observation Mahazar. P.W.7 is a Village Administrative Officer, before whom, the accused gave a voluntary confession. P.W.8 is a photographer. He took photograph of the deceased at the place of occurrence. P.W.9 is a doctor, who conducted postmortem on the dead body of the deceased. P.W.10 is a Head Constable, who submitted the First Information Report to the Judicial Magistrate and also copy of the First Information Report to the higher officials. P.W.11 is the Sub-Inspector of Police, who registered the complaint. P.W.12 is the Head Constable, who accompanied the dead body of the deceased to Government Hospital, Bhavani and also identified the dead body for postmortem. P.W.13, Inspector of Police, conducted investigation, recorded the statement of the witnesses, arrested the accused. On completion of investigation, P.W.13 laid charge sheet against the accused.

11. 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 choose to examine any witness or mark any documents on his side.

12. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant/accused is before this Court with this appeal.

13. We have heard Mr. Swamy Subramanian, learned Legal Aid Counsel appearing for the appellant/accused and Mr. E.Raja, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. There is no eye-witness to the occurrence and it is only a case of circumstantial evidence. The prosecution mainly relied on the extra judicial confession given by the accused before P.W.7, Village Administrative Officer. According to the prosecution, the occurrence took place on 01.01.2010, at about 1.30 p.m. On the next day, i.e. , on 02.01.2010, at 4.00 p.m, the accused appeared before P.W.7 and voluntarily gave an extra judicial confession. P.W.7 recorded the confession and after obtaining the signature of the accused, he produced the accused before the respondent police. But, the extra judicial confession said to have given by the accused before P.W.7 has not been marked in the court. Hence, the alleged extra judicial confession cannot be relied on.

15. According to P.W.1 after the occurrence, at about 11.00 p.m., he went to the police station and lodged a complaint. At that time, P.W.1 saw the accused in the police custody and one Ravi, Sub-Inspector of Police, attached to the respondent police, informed P.W.1 that the accused was arrested for committing murder of mother of P.W.1. Hence, from the evidence of P.W.1, it is clear that on 01.01.2010, at 7.00 p.m., itself the accused was in the custody of the police. Therefore, the alleged extra judicial confession given before P.W.7, on 02.01.2010, cannot be believed and it cannot be relied upon. Hence, the alleged extra judicial confession given by the accused is also not believable. Apart from that there is no other circumstance available to connect the accused with the murder.

16. In the case of circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts 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 the above principle in mind, we carefully

analyze the facts of the present case and we are of the considered view that the prosecution has failed to prove the circumstances beyond any reasonable doubt. Hence, the appellant is entitled for acquittal.

17. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned District Sessions Judge, Fast Track Court, No. IV, Bhavani, in S.C.No.149 of 2010 by the judgment dated 15.03.2012 are hereby set aside. The appellant/accused is acquitted of the charges levelled against him and he is directed to be set at liberty, forthwith, unless her presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to her.

18. While parting with the case, we appreciate the services rendered by Mr. Swamy Subramanian, learned counsel, who appeared on behalf of the appellant/accused, as legal aid counsel. The legal services authority is directed to pay his remuneration.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar

To

1. The learned District Sessions Judge,
Fast Track Court, No-IV,
Bhavani, Erode.

2. The Chief Judicial Magistrate,
Erode.

3. The Judicial Magistrate,
Bhavani.

4. The Director General of Police,
Mylapore, Chennai.

5. The District Collector,
Erode.

6. The Superintendent, Central Prison,
Coimbatore.

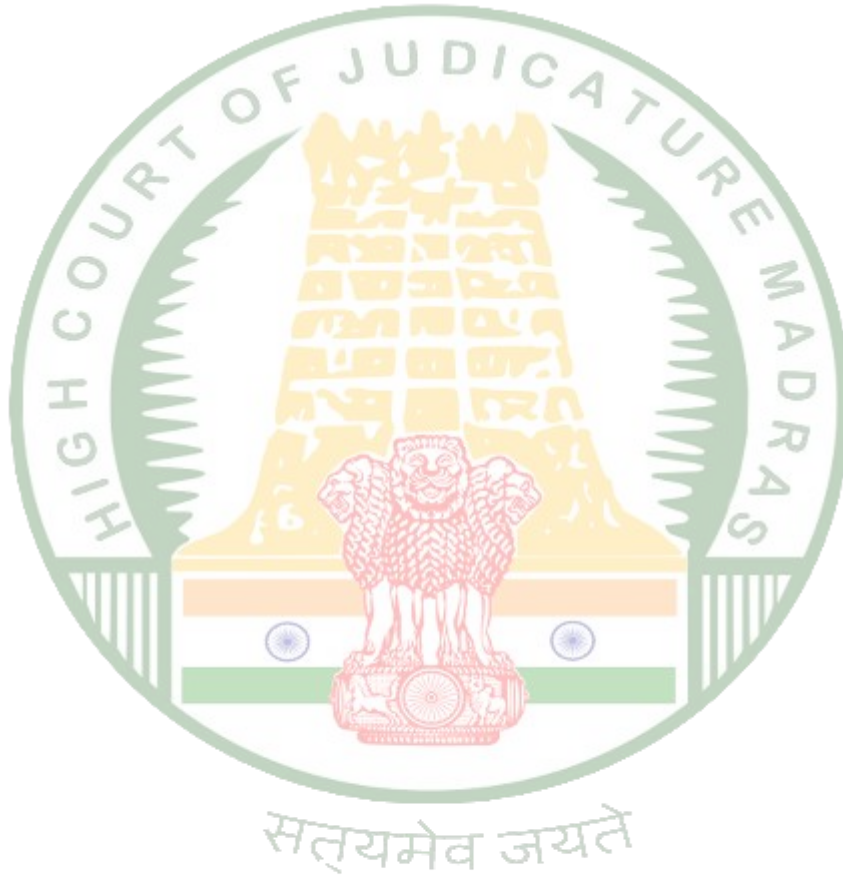
7. Inspector of Police, (Law and order)
Bhavani Police Station,
Bhavani, Erode District.

8.The Public Prosecutor,
High Court, Madras.

+lcc to Mr. Swami Subramanian, Advocate SR. 47480

Cr1.A.No.537 of 2015

KJ(CO)
VR(27/02/2017)



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