

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.559 of 2015

Palanisamy .. Appellant/Petitioner

- Vs -

State rep by Inspector of Police,
Ammamet Police Station.
Erode.

(Cr.No.401 of 2010) ... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned IV Additional District and Sessions Judge, Bhavani, Erode District in S.C.No.18 of 2012 dated 29.10.2012.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the first accused in S.C.No.18 of 2012 on the file of the learned IV Additional District and Sessions Judge, Bhavani at Erode. The second accused was one Mrs.Kunjayal. Both the accused stood charged for offence under Section 302 I.P.C. By judgment dated 19.10.2012, the trial Court convicted both the accused under Section 302 I.P.C. and sentenced them to undergo imprisonment for life and pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for one year. The second accused Mrs.Kunjayal filed a separate appeal in CrI.A.No.220 of 2015 and by judgment dated 20.07.2016, this Court had acquitted her. Challenging the said conviction and sentence, the appellant / first accused alone has come up with this appeal.

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

2.1. The deceased in this case was one Mr. Lakshmanan. The second accused is his wife. They were residing at Sundarampalayam village in Erode district. The first accused, in a friendly manner, used to visit the house of the deceased. In course of time, he developed illicit intimacy with the second accused. The said fact came to the knowledge of the deceased. He reprimanded both the accused. This resulted in frequent quarrels between the deceased and the second accused. The second accused felt that the deceased was a hindrance for her to continue her illicit relationship with the first accused. Therefore, the accused 1 and 2, according to the case of prosecution, decided to do away with the deceased. It is stated to be the motive for the occurrence.

2.2. On 17.12.2010, around 07.00 p.m., the accused 1 and 2 pushed him down, strangled him, manhandled him, beat him, dashed the head of the deceased against a wall in his house and killed him. They abandoned the dead body and they fled away from the scene of occurrence. The occurrence was not noticed by anyone. P.W.1 is the brother of the deceased. He has stated that there were frequent quarrels between the deceased and the accused. P.W.1 went to the place of occurrence and found the deceased died. There were injuries on the dead body. He suspected that the deceased would have been done to death by these two accused, on account of the above motive, arising out of the illicit relationship between the accused 1 and 2. Therefore, P.W.1 went to Ammapet Police Station and made a complaint at 12.00 noon on 18.12.2010. P.W.15, the then Sub Inspector of Police on receipt of the said complaint, registered a case in Crime No.401 of 2010 under Section 302 I.P.C. against both the accused. Ex.P12 is the F.I.R. He forwarded Exs.P1 (Complaint) and P12 (F.I.R.) to the Court, which was received by the learned Magistrate at 03.00 p.m. on 18.12.2010.

2.3. P.W.16 took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. He recovered the bloodstains by using a cotton from the wall of the house. There was a hair attached to the bloodstain and that was also recovered. He conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.13 Dr. Revathi conducted autopsy on the body of the deceased on 19.12.2012 at 06.00 a.m. She found the following injuries.

“External injuries: (1) Bleeding from the nose and mouth present (2) contusion right eye (3) 2 x 2 cm abrasion right side of forehead (4) Abrasion 5 x 5 cms right shoulder.

Internal organs: (1) liver 1000 gms

congested (2) lungs - (rt) 400 gms (lt) 350 gms both congested. (3) Spleen 120 gms (4) Kidney both 150 gms (5) Stomach - contains 50 ml of partially digested food particles (6) Brain - 1000 gms (7) Skull - Base of skull # present (8) Hyoid bone - pierced."

Ex.P11 is the postmortem certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries more particularly due to the head injuries.

2.4. When the investigation was in progress, it is alleged that the second accused went to the Village Administrative Officer (P.W.9) on 19.12.2012 at 08.30 a.m. and she gave a voluntary confession. P.W.9 took her to the police and produced her before P.W.16. P.W.16 arrested her. On such arrest, the second accused gave a voluntary confession. But no discovery of any fact was made out of the same.

2.5. On 20.12.2012, P.W.16 arrested the first accused. On such arrest, the first accused gave a voluntary confession, in which, he disclosed the place where he had hidden a shirt. In pursuance of the same, he recovered the said shirt from the accused. On the disclosure statement made by the second accused, a blue colour cloth was recovered. The investigation was continued thereafter by P.W.17 his successor. On completing the investigation, he laid chargesheet against the accused.

2.6. 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 17 witnesses were examined, 12 documents and 1 material object were marked.

2.7. Out of the said witnesses, P.W.1 is the brother of the deceased. He has stated that he had no acquaintance with the first accused. He had not even seen him once. He has stated about the complaint made to the police. P.W.2 is the yet another brother of the deceased. He has also stated about the illicit relationship between these two accused and the death of the deceased. P.W.3 is the other brother of the deceased. He has also stated only about the illicit relationship between them. He has not stated anything incriminating. He has stated that ten days prior to the occurrence, because of the illicit relationship, the deceased has consumed poison, but survived fortunately. P.W.4 has also stated about the same facts.

2.8. P.W.5 has stated that on hearing about the occurrence, he went to the place of occurrence and found the dead body. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of the

material objects from the place of occurrence. P.W.7 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.8 also has not stated anything incriminating against the accused.

2.9. P.W.9 is an important witness for the prosecution. According to her, on 18.12.2012 the second accused appeared before her and made a voluntary confession. She has further stated that on such production, P.W.16 arrested her and while in custody, she made a voluntary disclosure statement, out of which, a cloth was recovered. She has also stated about the arrest of the first accused and the disclosure statement made by him and the consequential recovery made.

2.10. P.W.10 is a constable, who has stated that he handed over the F.I.R to the learned Magistrate. P.W.11 has stated that he took the dead body from the place of occurrence and handed over the same to the doctor for postmortem. P.W.12 has spoken about the photographs taken at the place of occurrence. P.W.13 has spoken about the postmortem conducted on the body of the deceased and her final opinion regarding the cause of death. P.W.14 has stated about the fact that on 07.12.2012, the deceased had taken poison, for which he was treated at the Government Hospital at Bhavani. P.W.15 has stated about the registration of the case on the complaint made by P.W.1. P.Ws.16 and 17 have spoken about the investigation done and the filing of the final report.

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 both the accused as detailed in the first paragraph of this judgment and that is how, the first accused / appellant alone is before this Court with this appeal.

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

5. P.Ws.2 to 4 have spoken about the illicit relationship between these two accused. It is also in evidence that on account of the same, there were frequent quarrels between the second accused and the deceased. It is also in evidence that ten days prior to the occurrence, the deceased had consumed poison on account of the above quarrel, but fortunately he survived. From these facts, in our considered view, the prosecution has proved that there was strained relationship between the second accused and the deceased.

6. The medical evidence has clearly established that the death was due to shock and hemorrhage due to the injuries found on the body of the deceased.

7. But the question is who are the perpetrators of the crime. In order to prove that these accused had caused the death of the deceased, the prosecution relies only on the extra judicial confession said to have been made by the second accused to P.W.9. As we have already pointed out, P.W.9 has stated that on 19.12.2010 at 08.30 a.m. the second accused appeared and gave a voluntary confession. That has been marked as Ex.P6. The learned counsel for the appellant would submit that the said confession contains the crime number and the penal provisions of the case. As rightly pointed out by the learned counsel for the appellant, it is not explained to the Court as to how P.W.9 came to know about the crime number and the penal provisions and other details of the case, regarding which, the second accused appeared before her for making confession. A comparison of the said confession along with the confession statement said to have been given to the police by the second accused on the same day would go to show that they are verbatim one and the same. As a matter of fact, the trial Court has marked the entire confession of the second accused made to P.W.16 as Ex.P7, ignoring the fact that the said confession is hit by Section 25 of the Indian Evidence Act and therefore the same is inadmissible except to the extent of the portion of the confession which led to the discovery of a relevant fact.

8. It is the law that the confession of co-accused cannot be the foundation for the conviction of the other accused as per Section 30 of the Indian Evidence Act. The proper approach towards an extra judicial confession of a co-accused is to keep the extra judicial confession of the co-accused aside, marshal all the other evidences against the accused and in the event the Court comes to the conclusion from the other evidences that the accused is guilty, in order to add strength to the said conclusion, the Court may look into the extra judicial confession of the co-accused (vide *Kashmira Singh Vs. State of Maharashtra* reported in 1952 AIR SC 159).

9. In the instant case, if the extra judicial confession made by the second accused is kept aside, there is no other evidence against this accused so as to hold him guilty. Further, in Crl.A.No.220 of 2015, this Court has disbelieved even the extra judicial confession said to have been made by the second accused. In such view of the matter, we find no evidence at all against this appellant to sustain the conviction. The trial Court has convicted the appellant on mere surmise, which cannot be allowed to sustain. In such view of the matter, we

hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore the appellant is entitled for acquittal.

10. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant / first accused by the learned IV Additional District and Sessions Judge, Bhavani, Erode in S.C.No.18 of 2012 dated 29.10.2012 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) Since the appellant / first accused is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Svki/kk
To

- 1 The Principal District & Sessions Judge, Erode
- 2 The IV Additional District and Sessions Court, Bhavani, Erode
- 3 The Chief Judicial Magistrate, Erode for information
- 4 Judl. Magistrate, Bhavani
- 5 The Director General of Police, Mylapore Chennai
- 6 The District Collector, Erode
- 7 The Superintendent, Central Prison, Coimbatore

8 The Inspector of Police,
Ammamet Police Station.
Erode.

9. The Public Prosecutor,
Madras High Court.

+1 CC to Mr. T. Murugananthan, Advocate Sr.No.46405

Crl.A.No.559 of 2015

SR (CO)
MD : 22/10/2016



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