

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CrL.A.No.109 of 2016

Kavitha .. Appellant

Vs

State represented by its
Inspector of Police
Palacode Police Station
Dharmapuri District.

.. Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Fast Track Court, Dharmapuri, in S.C.No.196 of 2014 on 09.12.2015.

For Appellant : Mr.R.Thirugnanam

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by **V.BHARATHIDASAN, J.,**]

A2, in S.C.No.196 of 2014 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Dharmapuri, is the appellant herein. Totally there are two accused. A1 stood charged for offences under Sections 120(b), 302 and 201 IPC and the appellant / A2 stood charged for offences under Sections 120(b), 302 r/w.109 IPC. The trial Court convicted appellant / A2 under Section 120 (b) IPC and sentenced her to undergo life imprisonment with a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment and convicted under Section 302 r/w.109 IPC and sentenced her to undergo life imprisonment with a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. The trial Court directed the sentences to run concurrently. Challenging the above conviction and sentence, the second accused has filed this appeal before this Court.

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

(a) The deceased in this case one Srividhya was the wife of A1. 1½ years prior to the occurrence, A1 developed illicit intimacy with

A2/appellant. Hence, there was a quarrel between A1 and the deceased. As the deceased stood obstacle for their illicit intimacy, both the accused conspired together to murder the deceased. In furtherance of the above conspiracy, on 25.12.2013 at about 7.00 p.m, at the abetment of A2, A1 took the deceased near PW.8's agricultural Well and strangled the deceased and caused her death.

(b) PW.1, father of the deceased, found the deceased missing and searched for her and at about 4.00 p.m, he saw the body of the deceased inside the Well of PW.8. Immediately, he gave complaint (Ex.P1) to the respondent police.

(c) PW.13 - Inspector of Police then working in respondent police, on receipt of the complaint, registered a case in Crime No.410 of 2013 under Section 174 Cr.P.C. and called Fire Service Personnels to retrieve the body.

(d) PW.17 - Officer in the Fire and Rescue Department, along with Fire Service Personnels took out the body from the Well.

(e) PW.16 - Inspector of Police, on receipt of First Information Report commenced investigation and sent the body to Government Hospital, Dharmapuri, for postmortem. On the next day morning, PW.16 prepared Observation Mahazar and also rough sketch and conducted inquest on the dead body in the presence of panchayatdars at Government Hospital, Dharmapuri, and prepared Inquest Report Ex.P16 and then sent a requisition for conducting postmortem through PW.12 Head Constable.

(f) PW.11 - Professor in Medico-Legal Department of the Government Medical College Hospital, Dharmapuri, conducted postmortem and found the following injuries:-

“External injuries:

Reddish scratch abrasions seen on following regions:-

- 1. 1 x 0.2, 1 x 0.2 cm on outer aspect of lower part of right arm.*
- 2. 10 x 0.3 cm on back of right elbow.*

3. *3 x 0.2 cm, 3 x 0.2 cm on outer aspect of right upper forearm.*
4. *Multiple abrasions (9 no's) on inner aspect of right arm, measuring 3.5 x 0.2 cm - 0.2 x 0.2 cm.*
5. *3 x 0.1 cm on outer aspect of upper part of right thigh.*
6. *7 x 0.1 cm, 3 x 0.1 cm, 0.3 x 0.2 cm on outer aspect of right side of abdomen.*
7. *Multiple abrasions (8 no's) on front and outer aspect of right leg measuring 5 x 0.1 cm - 0.5 x 0.5 cm.*
8. *Multiple abrasions (7 no's) on front of left leg, measuring 6 x 0.1 - 0.5 x 0.5 cm.*
9. *Multiple abrasions (8 no's) on front of chest measuring 3.5 x 0.1 cm - 0.2 cm x 0.2 cm.*
10. *5 x 0.5 cm on left shoulder.*
11. *1 x 0.5 cm on right shoulder.*
12. *3 x 0.1 cm, 3 x 0.1 cm abrasion on*

mid forehead.

13. *Multiple abrasions (10 no's) on front of neck measuring 8 x 0.1 cm - 0.5 x 0.5 cm.*
14. *4 x 3 cm x skin deep laceration on left side of face near ear.*
15. *Full thickness avulsion left ear lobe.*
16. *Right central, left central and lateral incisor fractured.*
17. *Aquatics nibbling of skin surrounding eye lids of right eye, inner part of left eye and vulva region.*

DISSECTION OF THORAX AND ABDOMEN:

Rib cage was intact.

Heart was normal in size, chambers contained fluid blood. Valves, great vessels, coronaries normal.

Lungs: Multiple pedicle Hemorrhages in the diaphragmatic surface and inter lobar fissure of both lungs, cut section : Congested.

Stomach contained 300 grams of partially digested food particles with no specific odour, mucosa was congested.

Liver, Spleen and Kidneys were normal in size, Cut Section : congested.

Urinary bladder was empty.

Uterus was measuring 6 x 5.5 x 2.5 cm, cut section : Cavity empty. Pelvic bone was intact.

DISSECTION OF HEAD:

Scalp, vault and Duramater were intact.

Brain was normal in size, scattered thin layer of Sub-Arachnoid Hemorrhage seen over brain Base was intact.

DISSECTION OF NECK:

3 x 2 x 1 cm reddish contusion on the left side of thyroid tissue and adjacent muscle.

1.5 x 1 x 1 cm reddish contusion on the right side of neck muscle adjacent to thyroid tissue.

Hyoid bone was intact. Spinal column was intact.”

Ex.P11 is the postmortem report and the Doctor was of the opinion that the deceased appeared to have died of asphyxia due to manual strangulation (throttling).

(g) On 28.12.2013, A1 appeared before PW.9 - Village Administrative Officer and voluntarily gave confession admitting his guilt stating that since his wife suspecting his fidelity, he took his wife to the Well and strangled her and after removing the dress worn by the deceased, throw the body inside the Well. PW.9 recorded the confession statement (Ex.P4) of A1 and produced A1, along with a special report, before PW.16.

(h) Immediately, PW.16 - Inspector of Police, arrested A1 and on such arrest, A1 voluntarily gave confession and based on the disclosure statement of A1, PW.16 recovered a Nokia Cell Phone (M.O.1) of the accused and arrested A2/appellant at about 11.30 p.m and on such arrest, A2 voluntarily gave confession and based on the disclosure statement of A2, PW.16 recovered saree (M.O.2) worn by the deceased

and then, he altered the case into Sections 120 (b), 302 and 201 IPC and sent the altered First Information Report Ex.P17 to the Judicial Magistrate Court and handed over the investigation to PW.19.

(i) PW.19 - Inspector of Police then working in respondent police, recorded the statement of other witnesses and also collected mobile phone call details between A1 and A2, after the occurrence, and after completion of investigation, he filed charge sheet on 31.03.2014.

3. Considering the above materials, the trial Court has framed charges against the accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 20 witnesses and marked 19 documents and exhibited 3 material objects.

4. Out of the witnesses examined, PW.1 is the father of deceased. He has spoken about the illicit intimacy between A1 and A2, and PW.1 has given the complaint (Ex.P1) that the deceased was found missing. PW.2 is the mother of deceased. She has also spoken about the

illicit intimacy between A1 and A2. PW.3 is the uncle of deceased. He has spoken about the illicit intimacy between A1 and A2 and the quarrel between A1 and the deceased. PW.4 is the witness to Observation Mahazar. PW.5 is also a witness to the Observation Mahazar. PW.6 is the villager and on the date of occurrence, at about 9.00 p.m., he saw both A1 and the deceased going together near the temple. PW.7 is the mother of A1 and mother-in-law of the deceased. Since the deceased found missing, she informed PW.1, and along with PW.1, she also searched for the deceased. PW.8 is the owner of the Well, where the dead body was found. PW.9 is the Village Administrative Officer, before whom A1 said to have given voluntary confession. PW.10 has turned hostile. PW.11 is the Doctor, who had conducted postmortem and given postmortem certificate. PW.12 - Head Constable identified the body for postmortem and handed over the body to the relatives of the deceased. PW.13, Sub-Inspector of Police, registered the case under Section 174 Cr.P.C. PW.14 - Scientific Officer in the Regional Forensic Lab, Salem, examined the visceral parts of the deceased and gave report Ex.P13. PW.15 - Scientific Officer in the Regional Forensic Lab, Chennai, examined the spermatozoa present in the private part of the deceased

and he gave a negative report Ex.P14. PW.16 - Inspector of Police commenced investigation and recorded the statement of witnesses and recovered material objects. PW.17 - Officer in Fire and Rescue Department retrieved the dead body from the Well. PW.18 is the photographer, who had taken photographs of the deceased. PW.19 - Inspector of Police, continued investigation and filed charge sheet. PW.20 - Inspector of Police, collected mobile phone call details (Ex.P18) of the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused neither examined any witness nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced the appellant/A2 as mentioned in paragraph-1 of the judgment. Challenging the conviction and sentence, A2 is before this Court with this Appeal.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. It is the case of circumstantial evidence. It is settled principle of law that in the case of circumstantial evidence, the prosecution should prove all the circumstances beyond any reasonable doubt and the proved circumstances should form a chain unerringly pointing the guilt of the accused.

9. The prosecution mainly relied upon the extra-judicial confession given by A1 before PW.16. It is settled position of law that the extra-judicial confession of the co-accused is not a substantive evidence against another co-accused {1952 AIR 159 (Kashmira Singh ..vs.. State of Madhya Pradesh)}. This principle is also followed by the Division Bench of this Court in a case reported in 2016 (3) MLJ CrI. 1. Hence, the above confession of A1 cannot be used against A2. Except the extra-judicial confession, there is no other evidence available against the appellant / A2. Moreover, PW.6 is said to have seen only A1 and the

deceased together prior to the occurrence. Hence, in the absence of any other evidence, we are of the considered view that the prosecution failed to prove the circumstances against the appellant/A2, beyond all reasonable doubts. Hence, the appellant is entitled for acquittal.

10. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant on 09.12.2015 in S.C.No.196 of 2014 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Dharmapuri, are set aside. The appellant is acquitted and the fine amount already paid, if any, shall be refunded to her. Her bail bonds shall stand terminated.

[S.N.J.] [V.B.D.J.,]
01.08.2016

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To

1. The Sessions Judge,
Mahalir Fast Track Court,
Dharmapuri.
2. The Inspector of Police
Palacode Police Station
Dharmapuri District.

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and
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3.The Public Prosecutor,
High Court, Chennai.

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