

BAIL SLIP

The Appellants/Accused Nos.1 & 2 Viz., i) V.Kamraj, ii) C.Chinnakannu @ Chinnakannan, were directed to be released on bail as per Order dated 10.02.2016 made in Crl.M.P.No.326 of 2016 in Crl.A.No.24 of 2016.

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.24 of 2016

1.V.Kamaraj

2.C.Chinnakannu @ Chinnakannan ... Appellants/Accused 1 & 2

Vs

State represented by

The Inspector of Police

Krishnagiri Taluk Police Station.

... Respondent/Complainant
(Crime No.556 of 2011)

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Krishnagiri, in S.C.No.105 of 2012 on 15.12.2015.

For Appellants : Mr.V.Rajamohan

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused 1 and 2 in S.C.No.105 of 2012 on the file of the learned Sessions Judge, Mahila Court, Krishnagiri. The 1st accused stood charged for offences under Sections 364, 376 and 302 IPC and the 2nd accused stood charged for offences under Sections 364, 376 and 302 r/w. 109 IPC. By judgment dated 15.12.2015, the trial court acquitted both A1 and

A2 for the offence under Section 376 IPC and convicted both the accused and sentenced them as detailed below :

Accused	Conviction	sentence
A1	Under Section 364 IPC	Sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.25,000/-.
	Under Section 302 IPC	Sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/-.
A2	Under Section 364 IPC	Sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.25,000/-.
	Under Section 302 r/w.109 IPC	Sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/-.

In default of payment of fine, the trial Court also imposed six months simple imprisonment. All the sentences are ordered to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

(i) The deceased in this case was one Lakshmi. The accused and the deceased were working in a sweet stall at Palayapettai for nearly three years prior to the occurrence. A1 has illicit intimacy with the deceased. PW.8 and PW.10, the sisters of the deceased, condemned the deceased and they were arranging for the marriage of the deceased. Due to the same, there was a quarrel between the deceased and A1. In the said circumstances, A1 approached A2 and gave him Rs.5,000/- to stop the marriage and if it is not possible to murder the deceased. On 03.10.2011, A2 called the deceased under the guise of conducting a mediation between A1 and the deceased and took her to one Kottupallam Parai near Moramadugu Village. There, A1 and A2 raped the deceased. Thereafter, A1 strangled the deceased and caused her death and then both the accused left the body there and returned back to Krishnagiri.

(ii) On 04.10.2011, PW.1- Village Administrative Officer of Balapuri Village received an information that a dead body was found near Kottupallam Parai and after seeing the dead body, he lodged a complaint (Ex.P1) before the respondent police at about 8.30 p.m.

(iii) On receipt of the complaint, PW.19 - then Inspector of Police working in the respondent police, registered a case in Crime No.556 of 2011, under Section 302 IPC and prepared Express First Information Report (Ex.P11) and proceeded to the scene of occurrence at about 9.30 p.m, and the

photographer took photographs of the deceased, then PW.19 sent the dead body to the Government Hospital, Krishnagiri. On the next day, viz., on 05.10.2011, PW.19 once again proceeded to the scene of occurrence, prepared Observation Mahazar and rough sketch (Ex.P12) in the presence of witnesses, engaged sniffer dogs and finger print expert, recovered bloodstained soil (M.O.2), sample soil (M.O.3), a pair of ladies chappels (M.O.4), panties (M.O.5) and empty cigarette pocket (M.O.6), and then proceeded to the Government Hospital and conducted inquest in the presence of panchayatdars between 10.30 a.m and 1.30 p.m and prepared inquest report (Ex.P13) and then sent a requisition for postmortem of the dead body.

(iv) PW.16 - Assistant Surgeon in the Government Hospital, Krishnagiri, conducted postmortem on the dead body and found the following injuries:-

External injuries:

The body was partially decomposed.
Blood seen most of the area of the body.

1. Contusion over (R) maxillary and cheek area measuring 3 x 2 cm.
2. Contusion over front (L) side of neck.
3. Abrasion over (L) thigh.

Internal examination:

On opening thoracic cavity : Thorax contains 500 ml of fluid blood. Ribs intact. Heart 250 gm c/s. Pale and empty. Lungs (R) 300 gm, (L) 250 gm - c/s pale. Hyoid bone - there is a fracture of (R) side of hyoid bone.

On opening of Abdomen : Liver - 1200 gm c/s. Pale. Spleen - 110 gm, c/s. Pale. Kidneys (R) - 110 gm, (L) - 100 gm, c/s. Pale. Bladder empty. Uterus - normal in size. c/s . empty.

On opening of head : Skull - intact,
Brain - 1300 gm, Membranes - intact."

Ex.P7 is the postmortem report. After obtaining hyoid bone report (Ex.P8), PW.16 has given final opinion that the deceased appeared to have died of asphyxia due to throttling.

(v) On 11.10.2011, A2 appeared before PW.1 - Village Administrative Officer and voluntarily gave confession saying that he along with A1 took the deceased to Kottupallam Parai and after raping her, A1 strangulated the deceased and caused her death and left the body there. PW.1 recorded the confession of A2 and produced A2 before PW.19 along with a special report. PW.19 arrested A2 and on such arrest, A2 voluntarily gave

confession and identified A1 and based on the disclosure statement, PW.19 arrested A1 and on such arrest, A1 also gave confession and based on his disclosure statement, PW.19 recovered ladies hand bag (M.O.10) and other materials belonged to the deceased and also seized bloodstained shirt of A1 (M.O.8). Based on the disclosure statement of A2, PW.19 recovered saree of the deceased and thereafter, he altered the Section 302 IPC in the First Information Report to Sections 376 and 302 IPC and sent the altered report (Ex.P16) to the Court and also remanded the accused to judicial custody. After recording the statements of postmortem Doctor and other witnesses, PW.19 completed the investigation and filed the charge sheet.

3. Considering the above materials, the trial Court has framed charges against the appellants/accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined as many as 19 witnesses and exhibited 17 documents and marked 26 material objects.

4. Out of the witnesses examined, PW.1 is the Village Administrative Officer and the author of First Information Report and recorded the voluntary confession of A2. PW.1 is also a witness to the Observation Mahazar and recovery of material objects M.Os.1 to 9 under the cover of Ex.P3 - Mahazar. PW.2 is a village menial, who along with PW.1 are witnesses to the Observation Mahazar and also recovery of material objects. P.Ws.3, 4 and 5 are the villagers. Their evidences have not supported the prosecution case. PW.6 is also a villager, who identified the body of the deceased at the time of postmortem. PW.7, another villager, also identified the body of the deceased before the respondent police. PW.8 is the sister of deceased. She has spoken about the illicit intimacy between A1 and the deceased and also the marriage arrangement between the deceased and one Palani. PW.9 is a villager, related to the deceased. According to him, on 06.10.2011, PW.8 enquired about the deceased and police took him for enquiry and he was in the police station from 07.10.2011 to 11.10.2011. According to PW.9, on 07.10.2011, A2 was also in the police custody along with him. Subsequently, A1 was also confined in the police station. PW.10 is another sister of the deceased. She has also spoken about the illicit intimacy between the deceased and A1. PW.11 is related to the deceased, his evidence has also not supported the case of prosecution. P.Ws.12 and 13 have turned hostile. PW.14 is a Scientific Officer in the Regional Forensic Lab, Villupuram and he examined the material objects and filed his report Ex.P6. PW.15 - Head Constable submitted express First Information Report before the Judicial Magistrate Court. PW.16 - Doctor conducted postmortem on the dead body and gave

opinion about the cause of death of the deceased. PW.17 - Doctor examined hyoid bone of the deceased and gave opinion that the hyoid bone found fractured. PW.18 - Doctor examined the potentiality of A2. PW.19 - Inspector of Police registered the First Information Report, conducted investigation, arrested the accused, recovered material objects and recorded the statement of witnesses and after completion of investigation, filed charge sheet.

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 witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced them as stated in paragraph-1 of the judgment. As against the said conviction and sentence, the present appeal has been filed by the accused before this Court.

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 a 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. In the instant case, the prosecution mainly relied upon the extra-judicial confession given by A2 before Village Administrative Officer - PW.1. According to PW.1, on 11.10.2011, at about 11.00 a.m, A2 appeared before him and voluntarily gave confession stating that he along with A1 took the deceased to Kottupallam Parai, where A1 and A2 raped the deceased, and subsequently, A1 strangled the deceased and caused her death and left the body there and then, they came back to the village.

10. It is settled principle of law that the extra-judicial confession is a weak piece of evidence and if it is surrounded by suspicious circumstances, its reliability is doubtful and it loses its importance and it requires independent reliable corroboration.

11. The Hon'ble Apex Court in the judgment report in 2008 (14) SCC 667 (Chattar Singh and another ..vs.. State of Haryana) followed the dictum laid down in (2008 (13) SCC 257 (Kusuma Ankama Rao ..vs.. State of A.P.) and held as follows:-

"20. '18. Confessions may be divided into two classes i.e., judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a Court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate, who is not especially empowered to record confessions under Section 164 of the Code of Criminal Procedure, 1973 (for short 'the Code') or a Magistrate so empowered but receiving the confession at a stage when Section 164 of the Code does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? and (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person; or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the

proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 [of the Evidence Act, 1872 (in short 'the Evidence Act)]. The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible, in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed."

12. In the instant case, we have to see whether the extra-judicial confession given by A2 is voluntary and not by any threat or coercion.

13. According to PW.9 - a relative of the deceased, he was taken by the police for interrogation on 07.10.2011 and he was kept in the police station till 11.10.2011; along with him, A2 was also in the police custody; subsequently A1 was also doubted by the police and A1 was also in the police custody. From the evidence of PW.9, it is clear that A2 was already taken by the police and he was in the police custody. Hence, the alleged extra-judicial confession given by A2 before PW.1 - Village Administrative Officer, on 11.10.2011, cannot be voluntary as he was in the police custody on that day. Hence, the extra-judicial confession given by A2 cannot be relied upon.

14. Apart from that, the confession of A1 is not a substantial evidence against A2 {1952 AIR 159 (Kashmira Singh .. vs.. State of Madhya Pradesh)}. The above dictum was also followed by the Hon'ble Division Bench of this Court in (2016 (3) MLJ CrL. 1).

15. Except the above extra-judicial confession, there is no material available to connect A1 with the murder. In the above circumstances, we are of the considered view that the prosecution failed to prove the circumstances beyond any reasonable doubt unerringly pointing the guilt of the accused. Hence, the appellants are entitled for acquittal.

16. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants on 15.12.2015 in S.C.No.105 of 2012 on the file of the learned Sessions Judge, Mahila Court, Krishnagiri, are set aside. Both the appellants are acquitted and fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mra

To

1. The Sessions Judge,
Mahila Court,
Krishnagiri.
2. Do Through the Chief Judicial Magistrate,
Krishnagiri.
3. The Judicial Magistrate No.II,
Krishnagiri.
4. The District Collector,
Krishnagiri.
5. The Deputy Collector of Police,
Chennai 04.
6. The Inspector of Police
Krishnagiri Taluk Police Station.

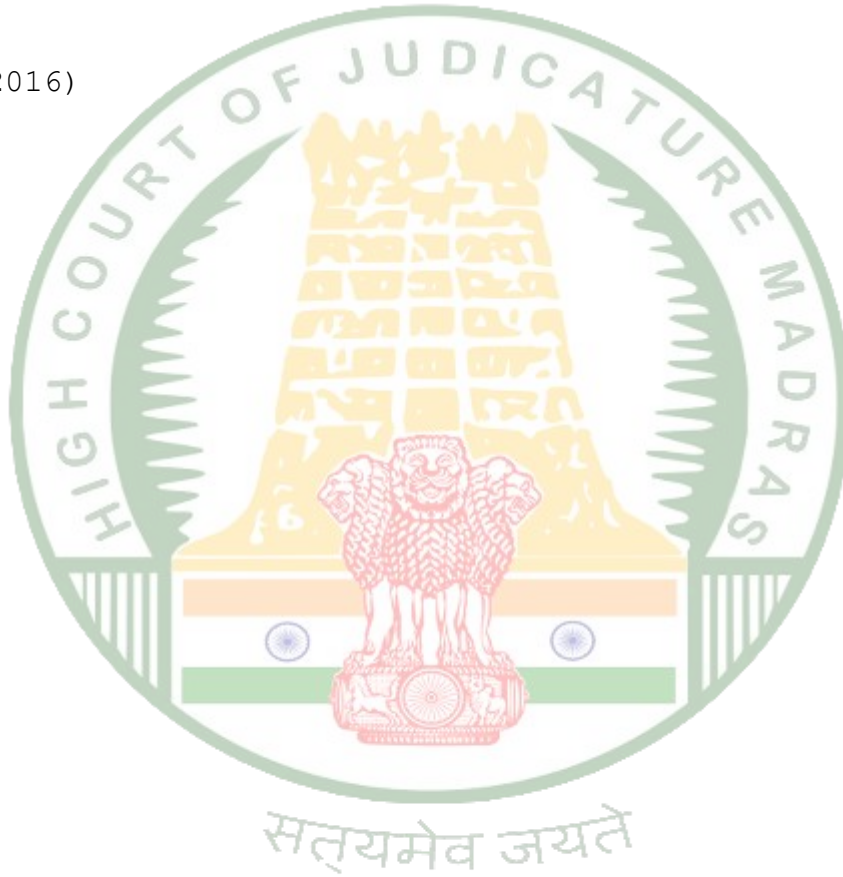
7. The Superintendent,
Central Prison,
Vellore.

8. The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.N.Mohideen Basha, Advocate, S.R.No.43525

Crl.A.No.24 of 2016

VGI(CO)
CA(28/12/2016)



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