

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.256 of 2016

Rajendran ..Appellant/A.1
Vs

State by Inspector of Police,
Karumatthampatti Police Station,
Coimbatore District.
(in Crime No.3/2014) ..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 14.03.2016 in S.C.No.53 of 2015 by
the learned I Additional District and Sessions Judge,
Coimbatore.

For Appellant: Mr.N.R.Elango, Senior Counsel
for Mr.N.Ravishankar Vallatharasu

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

JUDGEMENT

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

The appellant is A.1 in S.C.No.53 of 2015 on the file of
the learned I Additional District & Sessions Judge,
Coimbatore. A.2 was one Mrs.Muthulakshmi. A.1 stood charged
for offences under Sections 120(B) r/w 302 & 302 I.P.C., and
A.2 stood charged for offences under Sections 120(B), 109 r/w
302 I.P.C. By judgment dated 14.03.2016, the trial Court
convicted A.1 for offence under Sections 302 & 120(B) I.P.C.,
and A.2 for offence under Section 302 r/w 120(B) I.P.C. For
the said offences, the trial Court sentenced the accused to
undergo imprisonment for life and to pay a fine of Rs.5,000/-
each in default to undergo rigorous imprisonment for six
months. The judgment is silent as to whether the said
punishment has been imposed for the proved offence under
Section 302 I.P.C., or under Section 120(B) I.P.C. The trial
Court has not given any finding in respect of the charge under
Section 302 r/w 109 I.P.C. Challenging the above said
conviction and sentence, the appellant/A.1 has come up with
this Criminal Appeal.

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

The deceased in this case was one Mr.Kanirajan. A.2 is his wife. It is alleged that A.1 and A.2 had developed illicit intimacy. When it came to light, the deceased questioned them. Therefore, both the accused felt that the deceased was a hindrance for their illicit relationship. Therefore, they decided to do away with the deceased. Thus, they hatched a conspiracy to commit murder of the deceased. It is further alleged that on 06.01.2014, both the accused took the deceased by playing deception to Vannathangarai Mud Road near Coimbatore to Tirupur railway road at Kurukapalayam Village where, it is alleged that A.1 dropped a huge stone on the head of the deceased and caused his death. Then abandoning the dead body, both the accused fled away from the scene of occurrence. The occurrence was not witnessed by any one.

3.On 07.01.2014, P.W.1, the Village Assistant of Semandapalayam Village found the dead body, at the place of occurrence. Immediately, he informed the same to Mr.Elango, the then Village Administrative Officer (Mr.Elango is no more and therefore, he could not be examined as a witness). Mr.Elango, went to Karumathampatti Police Station and made a complaint at 4.00 pm on 07.01.2014. The identity of the dead body came to light when the Village Administrative Officer had enquiry with the local people.

4.P.W.13, the then Sub Inspector of Police, on receipt of the said complaint registered a case in Crime No.3/2014 for offence under Section 302 I.P.C. Since, the assailant was not known, it was so mentioned in the F.I.R. Ex.P.1 is the complaint and Ex.P.13 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 8.00 pm on 07.01.2014.

5.P.W.15, the then Inspector of Police took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.5 and another witness. He recovered the blood stained earth and the sample earth from the place of occurrence under a mahazar then, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

6.P.W.11 - Dr.Jayasingh, conducted autopsy on the body of the deceased at 3.55 pm on 08.01.2014 and he found the following injuries:-

"Abrasion 3x1 cm, 2x1cm, 1x1cm two in number noted over posterior aspect of left elbow, 3x1cm noted over dorsum of left foot, 1x1cm noted over back of right upper forearm, 2x1cm, 1x1cm three in number noted over posterior aspect of right elbow. Right side face and fore head found crushed and deformed and multiple abrasions of varying sizes and shapes over

on area of 19x15 cm noted over right temporo parietal region right side forehead, nose right side face.

- Laceration 6x1cm x bone deep noted over right eyebrow and forehead

- Laceration 2x1cm x bone deep noted over chin

- Lower incisor, 1st and 2nd and upper incisors found fractured with surrounding alveoli lacerated.

On dissection of scalp, skull and dura: Both temporalis muscle found contused. Sub scalp contusion 20x10 cm noted over right fronto parieto temporal region and 22x8cm noted over left fronto parieto temporal region. Depressed, comminuted fracture 18x8 cm noted over right fronto temporo parietal bone. Crack fractured 5 cm in length extending from depressed fracture noted over both parietal bone. Left side mandible, maxilla, lateral orbital, zygomatic bone, nasal bone and upper jaw bones found fractured with surrounding tissue contusion. Brain found pasty. Evidence of blood tinges noted over surface of the brain, Skull base fracture noted over both anterior cranial fossa and middle cranial fossa."

Ex.P.9 is the post mortem certificate and Ex.P.10 is the final opinion of the Doctor regarding the cause of death. P.W.11 opined that the injuries found on the body could have been caused by dropping a stone M.O.1. He has further opined that the deceased would have been died due to shock and hemorrhage due to the said injuries. P.W.15 recovered the blood stained clothes from the body of the deceased and forwarded the same to Court.

7. When the investigation was in progress, it is alleged that A.1 appeared before P.W.8. P.W.8 was the then Panchayat Board President of Chellapalayam Village and one Mr. Ramasamy, who was a member of the said panchayat board also present by his side. It is stated that at that time, A.1 confessed his guilt. A.1 told P.W.8 that he had killed the deceased by dropping a stone, on his head, as instigated by A.2, as the deceased was a hindrance for their illicit intimacy. P.W.8, in turn produced the accused before P.W.15.

8. P.W.15 arrested the accused at 8.30 am on 09.01.2014, in the presence of P.W.9 and another witness. On such arrest, A.1 made a voluntary confession in which, he disclosed the place where he had hidden a TVS motorcycle bearing registration No. TN 38 TA 6538. In pursuance of the same, he took the Police and witnesses to the place of hide out and

produced the TVS motorcycle (M.O.6) and also a blood stained shirt (M.O.11). P.W.15 recovered the same under a mahazar. On the same day, he arrested A.2 at 2.00 pm. On such arrest, she also gave a voluntary confession in which, she disclosed the place where she had hidden a cell phone. Then he forwarded the accused to Court for judicial remand and also handed over the material objects to Court. The investigation was thereafter continued by P.W.16, who laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 22 documents were exhibited, besides 11 Material Objects were marked.

10. Out of the said witnesses, P.W.1, is a Village Assistant of Semmandapalayam Village. He has stated that he found the dead body of the deceased at Kurukupalayam and informed the same to Mr. Elango, the then Village Administrative Officer. The Village Administrative Officer made a complaint to the respondent Police on the same day. P.W.2 is a villager. He has stated that he found the dead body of the deceased, at the place of occurrence on 07.01.2014. P.W.3 is a co-employee of the deceased. He has stated that on 07.01.2015, he came to know that the dead body of the deceased was found lying at the place of occurrence. P.W.4 has also stated the same facts that was spoken by P.W.3. P.W.5 has stated about the preparation of observation mahazar and rough sketch and the recovery of material objects at the place of occurrence. P.W.6 has spoken about the strained relationship between A.2 and the deceased. P.W.7 has stated that he found the dead body at the place of occurrence. P.W.8 has stated that on 09.01.2014, A.1 appeared before him and made an extra judicial confession. P.W.9 has spoken about the arrest of both the accused, disclosure statements made by them and the consequential recovery of material objects. P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 has spoken about the post mortem conducted by him and his final opinion regarding the cause of death. P.W.12 is a constable who handed over the dead body to the Doctor for post mortem. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the arrest of the accused and the consequential recoveries made. P.Ws.15 & 16 have spoken about the investigation done and the final report filed in this case.

11. 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 did they mark any document on their side. Their defence was a total denial.

12. Having considered all the above materials, the trial Court convicted the appellants as stated in the first paragraph of this judgment. Challenging the same, the appellant/A.1 is before this Court with this Criminal Appeal.

13. We have heard the learned counsel for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. The deceased was working in a private concern in Kaniyur Village. On 05.01.2014, he took leave from his office. Thereafter, his dead body was found at 10.00 am on 07.01.2014. Near the dead body, M.O.1 stone was found lying with blood stains. P.W.11, the Doctor who conducted post mortem has opined that the injuries found on the deceased would have been caused by dropping a stone like M.O.1 on the head of the deceased. He has further opined that the death was due to shock and hemorrhage due to the head injuries.

15. From these evidences, the prosecution has clearly established that the deceased would have been done to death some time between 05.01.2014 and 10.00 am on 07.01.2014. The prosecution has further proved that the death of the deceased was a homicide.

16. Now, the question is "Who is the perpetrator of the crime?". In order to prove the same, it is stated that A.1 & A.2 conspired to kill the deceased since, the deceased was a hindrance for their illicit relationship. But absolutely, we find no evidence, either direct or circumstantial to prove the factum of conspiracy.

17. The only evidence available against A.1 is the evidence of P.W.8, the then Panchayat Board President. He has stated that at 7.00 am on 09.01.2014, A.1 appeared before him and made a voluntary confession. However, P.W.8 did not record the said confession.

18. The learned counsel for the appellant/A.1 would submit that there was no need or occasion for A.1 to go over to P.W.8, to make such a confession. We find some force in the said argument. It is not as though A.1 had acquaintance with P.W.8. It is difficult to believe that A.1 would have chosen P.W.8, a total stranger, to make such a confession. Further, the words spoken by A.1 to P.W.8 were also not known. At any rate, the said confession is a weak piece of evidence because, it is shrouded with lot of suspicion. When that be so, prudence requires that the Court should look for corroboration for any other independent source. But absolutely, there is no other evidence to corroborate the evidence of P.W.8. Therefore, it is difficult to act solely on the basis of the evidence of P.W.8 and to hold that A.1 had dropped the stone (M.O.1) on the head of the deceased and caused his death.

Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant/A.1 is entitled for acquittal.

19. So far as A.2 is concerned, absolutely there is no evidence against her. The so called confession said to have been given by A.1 to P.W.8 cannot be treated as substantive evidence against A.2, in view of Section 30 of the Indian Evidence Act. Section 30 of the Indian Evidence Act, has been interpreted on many occasions by the Hon'ble Supreme Court in particular, in Kashmira Singh v. State of Madhya Pradesh (1952 AIR 159) wherein, the Hon'ble Supreme Court has held that an extra judicial confession of the co-accused is not a substantive evidence against the other accused and the proper approach to the confession of the co-accused is to keep the same aside first and then, to marshal the other evidences available against the accused excluding the confession altogether from consideration and on such marshaling and on such appreciation, if the court is able to come to the conclusion that the accused has committed the said offence, the court can look into the confession given by the co-accused as a last resort to add strength to the said conclusion. Thus, in the instant case, so far as A.2 Mrs. Muthulakshmi is concerned, as we have already discussed, there is no evidence at all against her to sustain the conviction. But she has not made any appeal.

20. At this juncture, we may refer to the Judgment of the Hon'ble Supreme Court in Dandu Lakshmi Reddy V. State of A.P. Reported in 1999 [7] SCC 69. In paragraph 25, the Hon'ble Supreme Court has held as follows:-

"25. The mother of the appellant Narayanamma is languishing in jail at present pursuant to the conviction and sentence awarded to her in this case. Of course her conviction is not before us as she did not file any special leave petition. But this Court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. On the evaluation of a case, if this Court reaches the conclusion that no conviction of any accused is possible the benefit of that decision must be extended to his co-accused also though he has not challenged the order by means of an appeal petition to this Court. [vide Rajaram V. State of M.P.]"

[b] Similar view has been taken by the Hon'ble Supreme Court in Rajaram V. State of M.P. Reported in 1994 [2] SCC 568, wherein in paragraph No.10, the Hon'ble Supreme Court has held as under:-

"10.Ram Sahai [accused 4] has not filed any appeal against his conviction and sentence. However, we find that his case is identical to the case of the appellants and there is no distinguishing feature. In our opinion, it is therefore appropriate that the benefit of our Judgment should also be made available to Ram Sahai. His conviction is also altered from the one u/s.302/149 IPC to one under section 304 Part II read with section 149 IPC. He is also sentenced to five years' rigorous imprisonment and to pay a fine of Rs.1000. In default to payment of fine, he shall suffer further rigorous imprisonment for one year. The fine when realised from Ram Sahai shall be paid to PW 7 Sahodara Bai."

[c] Similarly in Akhil Ali Jehangir Ali Sayyed V. State of Maharashtra reported in JT 2002 [2] SC 158, the Hon'ble Supreme Court, after having referred to the Harbans Singh case, has held in paragraph No.8 as follows:-

"8.After bestowing our anxious consideration on the fact situation in this case and also the spirit of Article 21 of the Constitution, we hereby order that the conviction passed on the second accused Jabbar shall also stand altered to section 304 part I and a sentence of rigorous imprisonment for ten years be awarded to him. This is done on a parity of reasoning and justice, otherwise glaring injustice would result as for him in a case where his role was by no means more serious than that of the present appellant who was A1 in this case."

21.In view of the said settled position of law, though, in the instant case, A.2 has not made any appeal, the conviction and sentence imposed on her are also liable to be set aside.

22.The trial Court, having found A.1 guilty under Section 302 as well as under Section 120(B) r/w 302 I.P.C., had chosen to impose a single punishment of imprisonment for life and to pay a fine of Rs.5,000/-. As we have already pointed out, the judgment is silent as to whether the said punishment is for offence under Section 302 I.P.C., or for the proved charge under Section 120(B) r/w 302 I.P.C. In this regard, we only express our anguish that the trial Court had not taken any adequate care while dealing with the case.

23.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A.1 by the learned I Additional District & Sessions Judge, Coimbatore in S.C.No.53 of 2015, dated 14.03.2016, are set aside and the appellant/A.1 is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/A.1, shall stand discharged.

24.Though, the second accused - Mrs.Muthulakshmi in S.C.No.53 of 2015, has not filed any appeal as against the judgment dated 14.03.2016, the conviction and sentenced imposed on her by the learned I Additional District & Sessions Judge, Coimbatore, are set aside she is also acquitted from the charge leveled against her. The fine amount, if any paid, shall be refunded to her. The bail bond, if any, executed by A.2, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The I Additional District and Sessions Judge, Coimbatore.
2. The Principal District and Sessions Judge, Coimbatore.
- 3.. The Judge Magistrate Court No.II, Coimbatore.
4. -do- Through The Chief Judicial Magistrate Coimbatore.
5. The Superintendent, Central Prison, Coimbatore.
6. The Director General of Police, Mylapore, Chennai-4.
7. The Collector, Coimbatore.
8. The Inspector of Police, Karumathampatti Police Station, Coimbatore District.
- 9.The Public Prosecutor,High Court, Madras.

Cr1.A.No.256 of 2016

TRM(CO)
EU 07.11.2016