

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.120 of 2013

Ramu ... Appellant/Accused

Vs

State represented by
The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District,
Cr.No.2414/2010 ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
to set aside the judgment of conviction imposed by the learned
VI Additional Sessions Judge, Coimbatore at Tiruppur in
S.C.No.239 of 2010 dated 26.06.2012.

For Appellant : Mr.C.Chellappan,
Legal Aid Counsel

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

JUDGEMENT

Judgment of the Court was delivered by V.Bharathidasan,J.,)

The sole accused in S.C.No.239 of 2010 on the file
of the VI Additional Sessions Court, Coimbatore at Tiruppur,
is the appellant herein. He stood charged for an offence
under Section 302 I.P.C. The trial Court found the appellant
guilty for an offence under Section 302 IPC and sentenced him
to undergo imprisonment for life and to pay a fine of
Rs.2,000/- in default to undergo simple imprisonment for six
months. Challenging the said conviction and sentence, the
appellant 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 Sasikala, is the wife of the accused. They are permanent resident of Sooranatham Village in Dharmapuri district. The accused, deceased and P.Ws.1 and 2, the brother and sister of the deceased, and at the time of occurrence all settled down in Tiruppur and doing some construction cooly work. The accused is a drunkard and used to quarrel with the deceased demanding money. Earlier, he demanded Rs.50,000/- from the parents of the deceased for constructing house. Since they refused, he harassed the deceased. Subsequently, on 03.04.2010, the accused again quarreled with the deceased demanding money for consuming liquor. In the night hours, quarrel took place between the deceased and the accused till 1.30 a.m. P.Ws.1 and 2, brother and sister of the deceased, who were also residing opposite to the house of the accused, saw the quarrel. On the next day morning, they found the house locked outside and they left for the work. At about 5.00 p.m., on 04.04.2010, they came back from the work and saw the house of the deceased and accused still locked outside and on suspicion, they opened the door and found the deceased dead with serious injuries. Immediately, P.W.1, the brother of the deceased lodged a complaint(Ex.P.1) before the respondent police.

3. On receipt of the complaint, P.W.15, the Head Constable, attached to the respondent police, registered a case in Crime No.2414 / 2010, for an offence under Section 302 IPC and sent the copy of the First Information Report(Ex.P.15) to the Judicial Magistrate and also to the higher officials.

4. On receipt of the First Information Report, P.W.17, the Inspector of Police, commenced the investigation and proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P.2) and Rough Sketch(Ex.P.17) and also seized a blood stained shirt (M.O.1) and lungi (M.O.2) in the presence of P.W.8 and another witness under the cover of Mahazar,Ex.P.3. At about 9.45 p.m., P.W.17 conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Inquest Report, Ex.P.18. Then he sent the dead body of the deceased for postmortem to the Government Hospital, Coimbatore through P.W.13.

5. P.W.14, Doctor, conducted postmortem on the dead body of the deceased on 05.04.2010, at 01.10 p.m., and found the following injuries:-

" The following antemortem injuries noted on the body:

1.Lacerations noted on the following regions:

-2x1 cm noted on right forehead

- 3x1 cm noted on inner aspect of right eyebrow.
- 2. Abrasion 3 x 2 cm noted on outer aspect of left eyebrow.
- 3. Contusion 6x4 cm noted on right forehead and upper cheek.
- 4. Curved linear abrasion noted on the following region.
1x0.25 cm on right side chest, 0.75 cm on right side upper chest and 1 x0.25 cm on right side upper neck. 3cm right to midline."

Ex.P.11 is the Postmortem certificate. He was of the opinion that the deceased appears to have died of asphyxia due to violent compression of the neck.

6. On 06.04.2010, the accused appeared before P.W.9, who is a local political leader and gave an extra judicial confession, (Ex.P.4) and P.W.9 produced the accused before the investigating officer along with a Special Report, Ex.P.5. P.W.17 arrested the accused and on such arrest, he voluntarily gave a confession statement and based on the disclosure statement, P.W.17 recovered blood stained inskirt of the deceased (M.O.4) and he recorded the statement of other witnesses and the doctor, who conducted postmortem on the dead body of the deceased and after completion of investigation, P.W.17 laid the charge sheet.

7. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 20 documents were exhibited, besides 4 Material Objects.

8. Out of the witnesses examined, P.W.1 is the brother of the deceased. The deceased, accused, P.W.1 and his sister P.W.2, were residing in a same compound at Tiruppur. According to P.W.1, there were a frequent quarrel between the accused and the deceased. The accused is a drunkard and harassed the deceased demanding money for consuming liquor. On the date of occurrence also, there was a quarrel upto midnight. On the next day, in the evening, P.W.1 and 2 found the deceased dead inside the house and P.W.1 gave a complaint (Ex.P.1) before the respondent police.

9. P.W.2, is the sister of the deceased. She has also spoken about the quarrel between the accused and the deceased. In her cross examination, she told that the accused was arrested on the next day morning at about 5.00 a.m., in his native place. P.W.3 is a close relative of the deceased. He was also working at Tiruppur and he saw the deceased after the occurrence in the house of the accused. P.W.4 is another relative of the deceased. He also spoke about the quarrel

between the accused and the deceased. In his cross

examination, he has stated that he came to know that the police arrested the accused in his native place, namely, Valasi at Dharmapuri.

10. P.W.5, the father of the deceased, after hearing the news, went to the Medical College Hospital, Coimbatore. In his cross examination, he has stated that on 06.04.2010, at about 10.00 a.m., he went to the Medical College Hospital, Coimbatore and at that time, he saw the accused in the police van. P.W.6 is a brother of the house owner, where the accused, deceased and P.Ws.1 & 2 were residing. P.W.7, a neighbour, residing in the same housing block, also spoke about the quarrel between the accused and the deceased.

11. P.W.8 is a Mahazar witness and also witnessed to the recovery of M.Os 1 and 2. P.W.9 is a local political leader, before whom, the accused appeared on 06.04.2010, at about 11.00 p.m., and gave an extra judicial confession and he recorded the same under Ex.P.4 and he produced the accused before the respondent police. P.W.10 turned hostile. P.W.11 belongs to the native village of the deceased, he along with P.W.9 recorded the extra judicial confession of the accused. According to him on 06.04.2010, he met P.W.9 and informed him about the murder and after accused appeared before P.W.9 he called him over telephone and informed him about the same. Then, P.W.9 recorded the confession of the accused.

12. P.W.12 is the Village Administrative Officer. He is the witness to the confession statement of the accused and also witnessed the recovery of M.O.4. P.W.13 is Head Constable, who accompanied the dead body of the deceased to the Government Medical College Hospital, Coimbatore and identified the dead body for postmortem. P.W.14, the doctor, conducted postmortem on the dead body of the deceased and gave postmortem certificate Ex.P.11.

13. P.W.15 is the Head Constable, who registered the first Information Report and sent the same to the Judicial Magistrate and higher officials. P.W.16, Head Clerk of the Judicial Magistrate Court, sent the material objects for chemical examination. P.W.17, the investigating officer, conducted investigation, arrested the accused and recovered the material objects and after completing the investigation, he laid the charge sheet against the accused.

14. 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 of the witnesses nor did he mark any documents on his side.

15. Having considered all the above, the trial Court found accused/Appellant guilty under the above said charge and accordingly, sentenced him as detailed in the first paragraph

of this judgment. Aggrieved over the same, accused/Appellant is before this Court with this Criminal Appeal.

16. We have heard Mr. C. Chellappan, learned Legal Aid Counsel, appearing for the appellant and Mr. M. Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

17. It is a case of circumstantial evidence. The prosecution mainly relied upon the extra judicial confession given by the accused before P.W.9. According to prosecution, the occurrence said to have taken place in the intervening night of 03/04.04.2010. P.W.1 is the brother of the deceased. P.W.2 is the sister of the deceased. Both of them saw the quarrel in the midnight of 03.04.2010. On the next day morning, they found the house of the accused and the deceased locked outside and they left for work. On 04.04.2010, at about 5.30 p.m., when they returned to home, they saw house of the deceased was still locked, hence, P.Ws.1 and 2 opened the door and found the deceased dead, and P.W.1 lodged a complaint, after registering the First Information Report, the respondent police started investigation. Subsequently, on 06.04.2010, the accused said to have appeared before P.W.9, a local political leader and gave an extra judicial confession and after recording the statement, he produced the accused before the investigating officer, P.W.17 and he arrested the accused. Based on the disclosure statement, P.W.17 recovered the material objects.

18. But, according to P.W.2, the sister of the deceased, she was told that the accused was arrested on 05.04.2010, at about 5.00 a.m., in his native village. P.W.4, a close relative of the deceased, in his cross examination, stated that he came to know that the accused was arrested in his native village. The another important witness is P.W.5, the father of the deceased, who was residing in the native place, on hearing the news, came to the Government Medical College Hospital, Coimbatore, on 05.04.2010, at about 10.00 a.m. and at that time, he saw the accused in the custody of the police.

19. From the above evidence, it is clear that the respondent police arrested the accused on 05.04.2010 itself. In the said circumstance, the alleged extra judicial confession said to have given by the accused, on 06.04.2010, at about 11.00 p.m., cannot be believed. Apart from that, the conduct of P.Ws.1 and 2, brother and sister of the deceased also creates a doubt in the prosecution case. According to them, they saw the accused and the deceased were

quarreling till the midnight of 03.04.2010 and the next day morning they saw the house of the deceased locked from outside. Though they were residing in the opposite house of

the accused, they have not taken any steps to enquire about the same. Only on 04.04.2010, at about 5.00 p.m., they were said to have seen the deceased, hence, the conduct of the P.Ws.1 and 2 also quite unnatural.

20. Except the extra judicial confession, there is no other evidence available to prove the guilt of the accused. It is well settled principle that in a case based on 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 this broad principles in mind, we analyze the facts of the present case.

21. As we have discussed earlier, the one and only circumstance relied upon by the prosecution, namely, the extra judicial confession, is very much doubtful. Hence, it is unsafe to convict the accused based on the above extra judicial confession and the prosecution failed to prove the case beyond any reasonable doubt. In the above circumstances, the accused/appellant is entitled for acquittal.

22. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned VI Additional Sessions Judge, Coimbatore at Tiruppur in S.C.No.239 of 2010, dated 26.06.2012, is set aside and appellant/accused is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by appellant/accused, shall stand discharged.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,Tiruppur.

2.The Judicial Magistrate,
thru the Chief Judicial Magistrate,
Tiruppur.

3.The learned VI Additional Sessions Judge,
Coimbatore at Tiruppur.

4.The Principal Sessions Judge,
Tiruppur.

5.The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.

6.The Superintendent Central Jail,
Coimbatore.

7.The District Collector,
Tiruppur.

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

9.The Public Prosecutor,
High Court, Madras.

10.The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.T.Ganesan, Advocate, S.R.No.38647

+1cc to Mr.C.C.Chellappan, Advocate, S.R.No.38168

skv

cg(30/12/2016)



Cr1.A.No.120 of 2013

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