

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.529/2016

Raja @ Subramani ...Appellant/Accused

Vs

The State rep by
The Inspector of Police,
Ethappur Police Station,
Salem ..Respondent/Complainant

Appeal filed u/s.374 (2) A Cr.P.C against the judgment in
S.C.No.257 of 2014 dated 15.12.2015 on the file of II Additional
District and Sessions Court, Salem.

For Appellant : Mr.N.A. Nissar Ahmed
For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.257 of 2014 on the file of the III Additional District and Sessions Court, Salem. He stood charged for the offence punishable under Secs.341, 302 and 201 IPC. By Judgment dated 15.12.2015, the trial Court convicted the accused; for the offence punishable under Sec.341 IPC and sentenced him to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week; under Sec.302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment and also convicted him for the offence punishable under Sec.201 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo three months simple imprisonment. Challenging the said conviction, the appellant has come up with this appeal.

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

(a) The deceased in this case was one Muniammal. The accused is her husband. The marriage was performed between the accused and the deceased thirty years before the occurrence. In due course, the accused had developed illicit intimacy with a neighbour by name Miss Mary. This was not to the liking of the deceased. She protested against this relationship. This resulted in a quarrel between the deceased and the accused. This is stated to be the motive for the accused to do away with the deceased.

(b) It is alleged that on 17.08.2012 around 12.00 midnight, there was a quarrel between the accused and the deceased. After the quarrel, the deceased was proceeding near Palaniswamy Gounder Thottam Gate, then the accused intercepted her, pushed her down, smothered and strangled her, which resulted in her death. Thereafter, abandoning the dead body, the accused fled away from the scene of occurrence. The occurrence was not noticed by any one.

© P.W.1 is a close relative of the deceased. P.W.4 is an agriculturist. On 18.08.2012 around 6.00 a.m, P.W.4 found the dead body of the deceased at the place of occurrence. He informed the same to P.W.1. P.W.1 rushed to the scene of occurrence, found the dead body and thereafter, he made a complaint to the police, upon which, the present case was registered.

(d) P.W.14 the then Inspector of police took up the case for investigation and proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. He recovered the silver toe ring embedded with green stone, hair, blood stained earth and sample earth from the place of occurrence. He conducted inquest on the dead body of the deceased and forwarded the same for Post Mortem.

(e) P.W.12 Dr.Gokularamanan, who conducted autopsy on the dead body of the deceased, opined that the deceased would have died due to strangulation and smothering. He found number of abrasions on the dead body of the deceased besides the following injuries:

EXTERNAL EXAMINATION: 1. Bluish discolouration seen over finger and toe nails 2. Sub conjunctival haemorrhage sen in left eye.

INJURIES: Dark Reddish Abrasion seen on
1) left side of lower lip upto angle of mouth, M 1.5 cm x 0.7 cm 2) Just innerto the above another abrasion M 0.5 cm x 0.5 cm 3) Just below the center of

lower lip M 1.5 cm x 0.5 cm 4) 4 small abrasions M 0.3 cm x 0.3 cm seen on the left side of chin 5) over the angle of left side of jaw M 1 cm x 0.4 cm 6) 0.5 cm front of previous, another abrasion M 0.7 x 0.4 cm 7) 2 cms below left ear M 5 cms x 0.6 cm 8) On the right side of chin M 1.5 cm x 0.5 cm 9) 0.5 cm below another abrasion 1.5 cm x 0.3 cm 10) ON the upper aspect of right side of neck 1 cm away from midline M. 0.6 cm x 0.6 cm 11) on the upper aspect of left side of neck M 1 cm x 0.5 cm 12) on the center of right side of neck multiple small abrasions M 0.3 cm x 0.2 cm 13) on the center of left side of neck M 1 cm x 0.5 cm 14) Laceration seen on the inner aspect of front of left foot M 1 cm x 0.5 cm x 0.2 cm

INTERNAL EXAMINATION:

O/D Head: SCALP- Contusion seen over the left parietal region M 4 cms x 3 cms x 0.5 cm Cranial vault, DURAMATER Intact, Brain Edematous on C/s Congested. Base of Skull Intact

O/D Neck: Neck structures - Fracture Dislocation of C4, C5 with surroundings soft Tissue contusion over an area M. 10 cm x 5 cm x 0.5 cm Hyoid bone-fracture of left side greater horn at the junction of anterior 2/3 and posterior 1/3rd with surrounding soft tissue contusion Larynx & Trachea congested

O/D THORAX RIB CAGE -Intact. LUNGS -Both, LUNGS- Edematous ONC/S congested HEART-Normal in size on c/s chambers-Contain fluid blood, valves and Coronaries patent.

O/D ABDOMEN-Stomach contain 25 ml of brown colour fluid with the specific smell mucosa-congested liver, spleen and kidneys-Normal in size on c/s congested bladder empty.

PELVIS: Intact uterus-Normal in size on c/s cavity - Empty, External genitalia -Intact

Viscera preserved and sent for chemical analysis.

OPINION: Reserved pending chemical analysis report.

Time since death the deceased would

appeared to have died within 24 Hrs prior to autopsy.

(f) When the investigation was in progress, the accused voluntarily appeared before P.W.9, the then Village Administrative officer at 6.00 p.m on 18.08.2012 and made a voluntary confession. Having ascertained that the accused was in a voluntary mood to make confession, P.W.9 allowed him to confess. P.W.9 reduced the same into writing. Ex.P.4 is the Extra Judicial Confession. Then he, along with the Special Report Ex.P.5 produced the accused to P.W.14.

(g) On such production, P.W.14 arrested the accused. While in custody, the accused made a voluntary confession, in which he disclosed that he would identify the clothes hidden by him. In pursuance of the same, he took the police to the place of occurrence and produced the clothes with blood stains. On returning to the Police Station, he forwarded the accused to Court for judicial remand and handed over the material objects recovered from the place of occurrence to Court. At his request, the material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects. P.W.14, on completing the investigation, laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 20 documents and 9 material objects were also marked.

4. Out of the said witnesses, P.W.1, is a relative of the deceased. He has stated that on being informed by P.W.4, he went to the place of occurrence and found the dead body and made a complaint.

5. P.W.2 and P.W.3 have stated about the illicit relationship between the accused and Mary and frequent quarrels between the accused and the deceased. They have further stated that they found the dead body of the deceased as informed by P.W.4.

6. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 is the daughter of the deceased. She has spoken about the illicit relationship between the accused and Mary and also the frequent quarrels between the deceased and the accused.

7. P.W.7 and P.W.8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has spoken about the preparation of observation mahazar and rough sketch. He has also spoken about the extra judicial confession made by the accused at 6.00 p.m on the same day. Under Ex.P.6 he has further recovered the material objects and the disclosure statement made by the accused.

8. P.W.10 has spoken about the photographs, taken at the place of occurrence, as instructed by the P.W.14. P.W.11 has stated that he took the dead body and handed over the same for post mortem. P.W.12 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the registration of the case and P.W.14 has spoken about the investigation done and final report filed.

9. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the Trial Court convicted the accused. Challenging the said conviction, the appellant has come up with this appeal.

10. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

11. As already narrated herein above, the prosecution, in order to prove the case, mainly relies on the extra judicial confession, allegedly made by the accused before P.W.9, the then Village Administrative Officer. The learned counsel for the appellant submitted that the accused would not have chosen a total stranger to make a voluntary confession. This argument does not find any force at all. In the Extra Judicial confession itself the accused has explained as to why he had chosen P.W.9 to confess. P.W.9 is an independent public servant in the same village. He has no grudge against the accused. Therefore, we hold that Ex.P.4, the extra judicial confession, was voluntarily made by the accused to P.W.9. In Ex.P.4, the accused has spoken about the motive and has narrated the entire occurrence confirming his guilt.

12. The learned counsel for the appellant would submit that the extra judicial confession by its very nature, is a very weak piece of evidence and therefore, it cannot be the sole

basis for conviction. In this regard, we have to state that unless the extra-judicial confession inspires the confidence of the court, as a rule of prudence, the court should expect corroboration from any other independent source on material particulars. However in the instant case we are fully convinced that the voluntary confession was made by the accused to P.W.9, voluntarily and there is not even a slightest doubt about the same and so we need not look for any corroboration from any independent source. It is also pertinent to mention that there is also corroboration coming forward from the evidences of P.W.1 and P.W.3, stating about the motive. The conduct of the accused in absconding even after the dead body was noticed by some body is a strong circumstance duly corroborative of Ex.P.4. From these evidences, we hold that the accused caused the death of the deceased by strangulating manually and smothering by closing her mouth.

13. Having come to the said conclusion now we have to examine as to what was the offence committed by the accused by his act. As we have already narrated, the prosecution relies mainly on Ex.P.4, the voluntary confession to prove as to what actually incited him in causing the death. Ex.P.4 reveals that when the accused wanted money from the deceased, the deceased abused her in obscene language. The accused, depressed over the said utterances, consumed liquor and around 12.00 midnight, when the deceased came out of the house, again there arose quarrel between the deceased and the accused. It was only in that quarrel, the accused had pushed her down and killed her. From this fact, we hold that the act of the accused would squarely fall under third limb of Section 300 IPC and the first exception to Section 300 of IPC and he is therefore, liable to be punished for the offence punishable under Sec.304 Part II.

14. Now, turning to the quantum of punishment, considering the age of the accused, that he had no criminal antecedents and the status of other family members, economic situation and all other relevant facts, we hold that sentencing him to undergo rigorous imprisonment for five years with fine would meet the ends of justice. For the offence punishable under Secs 341 and 201 IPC, we find no evidence. Therefore, we acquit him from these two charges.

15. In the result, the appeal is partly allowed; the conviction and sentence imposed by the II Additional District and Sessions Court, Salem. in S.C.No.257 of 2014 dated 15.12.2015 for the offence punishable under Sec.302 IPC is set aside and instead, the appellant is convicted for the offence punishable under Sec.304 Part II IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks. The conviction and sentence for the offence

punishable under Secs.341 and 201 IPC are set aside and he is acquitted from these two charges. It is further directed that the period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The II Additional District and Sessions Court, Salem.
2. do thro'the Principal Sessions Judge, Salem.
- 3.The Judicial Magistrate I, Attur.
- 4.do thro'The Chief Judicial Magistrate, Salem.
- 5.The Superintendent of Central Prison, Coimbatore.
- 6.The Director General of Police, Mylapore, Chennai.
- 7.The District Collector, Salem.
- 8.The Superintendent of Police, Salem.
9. The Inspector of Police,
Ethappur Police Station,
Salem
- 10.The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.N.A.Nissar ahmed, advocate,sr.74165.

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