

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

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

Criminal Appeal No.607 of 2016

Senthil ... Appellant/A1

Vs

State rep. By
The Inspector of Police,
Palacode Police Station,
Dharmapuri District
(Crime No.410 of 2013) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., by the appellant against the conviction and sentence imposed on the appellant by the judgment dated 09.12.2015 passed in S.C.No.196 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

For Appellant : Mr.V.Paarthiban, for
Mr.P.M.Jayachandran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the first accused in S.C.No.196/2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri. The second accused in this case is one Mrs.Kavitha. The first accused/appellant stood charged for offences under Sections 120B, 302 and 201 I.P.C. A.2 stood charged for offences under Sections 120B, 302 r/w 109 I.P.C. By judgment dated 09.12.2015, the trial Court convicted and sentenced the appellant/A.1 to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for offence under Section 120B I.P.C; and to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for offence under Section 302 I.P.C., and to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for offence under Section 201 I.P.C. The trial Court also convicted and sentenced A.2 to undergo imprisonment

for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for offence under Section 120B I.P.C., and to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 302 r/w 109 I.P.C. Challenging the said conviction and sentence, the appellant/A.1 is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Srividya. She was the wife of the appellant/A.1. The appellant is a Lorry Driver by profession. In due course of their matrimonial life, there arose misunderstanding between the appellant/A.1 and his wife Mrs.Srividya because, the appellant/A.1 had developed illicit intimacy with A.2/Mrs.Kavitha wife of Mr.Sivakumar. It is further stated that because of the said illicit intimacy and because the deceased was a hindrance for the appellant/A.1 to continue his illicit relationship with A.2, both A.1 and A.2 conspired to do away with the deceased, Mrs.Srividya. It is further alleged that in pursuance of the said conspiracy, on 25.12.2013, around 9.30 pm, A.1 took the deceased from his house to a lonely place; killed her by strangulating her by neck; undressed the dead body; threw the same into a Well and thereafter, he ran away from the scene of occurrence. The said act of A.1 to kill the deceased was due to the inducement made by A.2, it is alleged. The occurrence was not thus, noticed by anyone. It is further alleged that on 26.12.2013, around 12.00 noon, P.W.8 the owner of the Well found the dead body floating. P.W.1, the father of the deceased came to know about the same. Thereafter, he rushed to the Palacode Police station and made a complaint at 10.30 pm on 26.12.2013. The Sub Inspector of Police, Palacode Police Station (P.W.13), registered a case in Crime No.410/2013 on the complaint of P.W.1 under Section 174 Cr.P.C., (suspicious death). Ex.P.1 is the complaint made by P.W.1 and Ex.P.12 is the F.I.R. The case was taken up for investigation by P.w.16, the then Inspector of Police.

3.P.W.16, has stated that around 4.00 pm, on 26.12.2013, he came to know that a dead body of a female was found floating in the Well owned by P.W.8. According to him, he went to the place of occurrence found the dead body; arranged for a photographer and he also informed the Fire and Rescue service officials to retrieve the body from the Well. Accordingly, the dead body was retrieved. Since, it was too late, he forwarded the dead body first to the hospital for being kept in the mortuary. It was thereafter, the F.I.R., was registered at 10.30 pm on 26.12.2013. He then went to the place of occurrence on 27.12.2013 at 6.00 am, prepared an observation mahazar and a rough sketch in the presence of witnesses. On returning to the hospital, he conducted inquest on the dead body of the deceased between 8.00 am and 10.00 am. During which, he examined P.Ws.1 to 3 and few more witnesses. Then he forwarded the dead body for post mortem.

4.P.W.11 - Dr.Thunder Chief, conducted autopsy on the body of the deceased. He found the following injuries.

"External Injuries:-

Reddish scratch abrasions seen on following regions:-

- 1)1x0.2x0.2 cm on outer aspect of lower part of right arm
- 2)10x0.3 cm on back of right elbow
- 3)3x0.2 cm, 3x0.2cm on outer aspect of right forearm.
- 4)Multiple abrasions (9 no's) on inner aspect of right arm, measuring 3.5 x0.2 cm - 0.2 x 0.2cm
- 5)3x0.1cm, on outer aspect of upper part of right thigh.
- 6)7x0.1 cm, 3x0.1cm, 0.3 x 0.2cm an outer aspect of right side of abdomen
- 7)Multiple abrasions (8 no's) on front and outer aspect of right leg measuring 5x0.1cm - 0.5x0.5 cm
- 8)Multiple abrasions (7 no's) on front of left leg, measuring 6x0.1 - 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)5x0.5 cm on left shoulder
- 11)1x0.5 cm on right shoulder
- 12)3x0.1cm abrasion on mid forehead
- 13)Multiple abrasions (10 no's) on front of neck measuring 8x0.1 cm - 0.5 x0.5 cm.
- 14)4x3cm 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."

Ex.P.11 is the post mortem certificate. P.W.11 gave opinion that the death of the deceased was due to manual strangulation and he ruled out the possibility of death by drowning.

5.When the investigation was in progress, on 28.12.2013, at 8.00 am, the appellant/A.1 voluntarily appeared before P.W.9, the then Village Administrative Officer at his office and he wanted to confess. P.W.9 after having ascertained that

the appellant was in a voluntary mood to make confession, allowed him to confess. P.W.9 reduced the same into writing. Ex.P.4 is the said confession. In the said confession, the appellant/A.1 told that because, the deceased was a hindrance for his illicit intimacy with A.2, he took her from his house to a lonely place; strangled her to death; removed her dress and threw the nude dead body into the Well belonging to P.W.8. He has further stated that he did not disclose about the occurrence to anybody. The appellant/A.1 received the dead body after the post mortem was conducted and cremated the dead body after performing religious ceremonies. Since, his conscious pricked him, he came to P.W.9 to make confession.

6.P.W.9, along with a special report, produced the appellant/A.1 to P.W.16 - the Investigating Officer. P.W.16 arrested him. While in custody, he made a voluntary confession. But, no fact whatsoever was discovered out of the same. Based on the confession made by A.1 to the Village Administrative Officer, A.2 was arrested. P.W.16 recovered the blood stained clothes near the Well belonging to P.W.8. He altered the case into one under Sections 302 r/w 120B I.P.C., and submitted an Alteration Report to Court. He collected the call details of the telephonic conversation between A.1 and A.2 during the relevant time. He collected the post mortem certificate and other relevant documents. At his request, the internal organs of the deceased were sent for chemical examination. It reveal that there were neither poison nor alchochal in her visral organs. The investigation was continued by P.Ws.19 & 20 and finally, final report was filed against both the accused.

7.Based on the above materials, the trial Court framed charges against the appellant/A.1 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 20 witnesses were examined and 19 documents were exhibited, besides 10 Material Objects were marked.

8.Out of the said witnesses, P.Ws.1 to 3 are the father, mother and elder brother respectively of the deceased. They have stated about the illicit relationship between A.1 and A.2. They have further stated that on 25.12.2013, around 9.00 pm, the deceased was found missing. They have also stated that a week before 26.12.2013, A.1 as a Lorry Driver, had gone on a trip in a Lorry. They have also stated that the dead body of the deceased was found on 26.12.2013, around 12.00 noon. P.W.1 has further stated about the complaint made by him to the Police. P.Ws.4 & 5 have spoken about the preparation of observation mahazar and rough sketch at the place of occurrence and also the recovery of certain material objects. P.W.6 is an important witness for the prosecution. According to him, around 9.00 pm, on 25.12.2013, he found the appellant/A.1 and the deceased going together along with the road. P.W.7, the mother of A.1/appellant has stated that on

25.12.2013 till 9.00 pm, the deceased was very much available in the house and thereafter only, she was found missing and they also went in search of the deceased. P.W.8 is the owner of the Well where the dead body of the deceased was found floating. He found the dead body at 12.00 noon on 26.12.2013.

9.P.W.9, the then Village Administrative Officer has spoken about the extra judicial confession allegedly given by A.1 on 28.12.2013 at 8.00 am. He has further stated that along with the confession, he produced the appellant/A.1 to P.W.16- the Investigating Officer. P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11, Dr.Thunder Chief, has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. P.W.12, a Constable has stated that he handed over the dead body to the Doctor for post mortem. P.W.13, the Sub Inspector of Police has spoken about the registration of the case on the complaint of P.W.1. P.Ws.14 & 15 are the Scientific Experts of Regional Forensic Laboratory and they have stated that there were neither poison nor alchohal found in the visral organs of the deceased. P.Ws.16, 19 & 20 have spoken about the investigation done and the final report filed in this case. P.W.17 is the Fire and Rescue person who has stated about the retrieval of the dead body from the Well owned by P.W.8. P.W.18 has spoken about the photographs taken by him at the place of occurrence, as requested by P.W.16.

10.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 chose to examine any witness nor did they mark any documents on their side. Their defence was a total denial.

11.Having considered all the above materials, the trial Court convicted and sentenced the appellant/A.1 as stated in the first paragraph of this judgment. So far as A.2/Mrs.Kavitha is concerned, she has filed a separate appeal in CrI.A.No.109 of 2016 and by judgment dated 01.08.2016, this Court acquitted her. The present Criminal Appeal has been filed by A.1.

12.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.

13.This is a case based on circumstantial evidence. It is needless to point out that, in a case of this nature, the prosecution has to prove the circumstances projected by it, beyond reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point 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 principle in mind, let us go into the circumstances projected by the prosecution

in the present case.

14.The first and foremost circumstance is that the deceased was lastly seen alive on 25.12.2013 around 9.00 pm at her house. This has been spoken by P.W.7, the mother of A.1. Thereafter, she was not seen alive. The dead body of the deceased was seen for the first time by P.W.8 at 12.00 noon on 26.12.2013. P.W.11, Dr.Thunder Chief, who conducted autopsy on the body of the deceased has given opinion that the death of the deceased was due to manual strangulation. He has further ruled out the possibility of death due to drowning. We find no reason to reject the said opinion offered by P.W.11. From these evidences, it has been clearly established that the deceased was done to death by manual strangulation some time between 9.00 pm on 25.12.2013 and 12.00 noon on 26.12.2013. Undoubtedly, it is a homicide.

15.The next question is "Who is the perpetrator of the Crime?" Admittedly, there has been no eye witness account. The prosecution relies on only the two circumstances, to prove that it was this accused who caused the death of the deceased. The first circumstance is that according to P.W.6, A.1/appellant was seen along the deceased going along with the road on 25.12.2013 at 9.00 pm. The learned counsel for the appellant would submit that P.W.6 is none else than the maternal uncle of the deceased and he has been planted. During cross examination, it has been elicited that he was very much present on 26.12.2013 when inquest was held by P.W.16 on the body of the deceased and at that juncture, he did not disclose anything to the Investigating Officer that he had seen the appellant/A.1 and the deceased together going along the road on 25.12.2013 around 9.00 pm. He had come forward with a statement for the first time few days after 26.12.2013 that he saw the appellant/A.1 and the deceased going along the road. Absolutely, there is no explanation as to why at the earliest point of time, he did not disclose this vital fact to anyone including the Investigating Officer. He is not a total disinterested witness. He is after all the maternal uncle of the deceased. Had it been true that he had seen the deceased and the appellant/A.1 going together on 25.12.2013 at 9.00 pm, by all natural human conduct, he would have disclosed the same either to the family members of the deceased or to the Investigating officer on 26.12.2013. The said unnatural conduct of P.W.6 makes his evidence unbelievable. Apart from that, P.W.1 has stated that the appellant being a Lorry Driver, had gone on a trip in a lorry a week before 26.12.2013. This fact has been mentioned even in Ex.P.1 complaint. Thus, in the light of the evidence of P.W.1, that the appellant had gone on a trip in a Lorry for one week before 26.12.2013, in the absence of any other evidence that the appellant/A.1 was anywhere seen in the Village and in the light of the fact that P.W.6 is unbelievable, we find it difficult to believe the case of the prosecution that the appellant/A.1 came to his house and took the deceased at 9.00

pm on 25.12.2013.

16.The next circumstance relied on by the prosecution is the extra judicial confession said to have been made by the appellant to P.W.9, the then Village Administrative Officer. It is not the case of the prosecution that P.W.9 was known to the appellant earlier so that, he could repose confidence in him. Admittedly, P.W.9 is a total stranger to the appellant. When that be so, it is difficult to believe that the appellant would have chosen a total stranger to repose confidence and to make an extra judicial confession. Apart from that, it is the positive case of the prosecution that the appellant came to the Village on 26.12.2013 and he had been very much present at the time of inquest and he received the dead body after the post mortem was over and conducted last rites and cremated the dead body. This conduct of the appellant is consistent with the plea of innocence which he has made. It is stated that thereafter, on 28.12.2013, he went to P.W.9, the then Village Administrative Officer to make a confession. We find it difficult to believe this version of the prosecution. At any rate, there are lot of doubts as we have already pointed out, in respect of this extra judicial confession, allegedly made by the appellant to P.W.9. It is the law that if an extra judicial confession inspires the confidence of the Court that by itself can be the foundation to convict the accused, even in the absence of any corroboration from any other source. It is only in a case where, the extra judicial confession is shrouded with any doubt, the same needs corroboration from independent sources. The extra judicial confession in this case is a very weak piece of evidence and in our considered view, solely based on the same, it is not safe to sustain the conviction imposed on the appellant. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubt against the appellant also. It is also needs to be mentioned that already this Court has acquitted A.2 disbelieving the case of the prosecution. For these reasons, we hold that the appellant is entitled for acquittal.

17.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A.1 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.196 of 2014 by the judgment dated 09.12.2015 are hereby set aside. The appellant/A.1 is acquitted of the charges levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant/A.1, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-

Asst.Registrar (CS III)

/true copy/

To

1.The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.

2.do thro'The Principal Sessions Judge,Dharmapuri.

3.The Judicial Magistrate, Palacode.

4.do thro'The Chief Judicial Magistrate, Dharmapuri.

5.The Superintendent,
Central Prison,
Vellore.

6.The Public Prosecutor,
High Court, Madras.

7.The District Collector,
Dharmapuri.

8.The Inspector of Police,
Palacode Police Station, Dharmapuri.

9.The Director General of Police,
Mylapore, Chennai.

+1 cc to Mr.P.M.Jayachandran,advocate,sr.72473

Copy to:
The Section Officer,
Criminal Section,
High Court,Chennai.

su(co)
krd 13/2



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