

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2016

CORAM

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

CRL.A.No.623/2016

Mohan .. Appellant/sole accused

Vs

State by
The Inspector of Police,
Sholinghur Police Station,
Vellore District (Cr.No.14 of 2012)... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District in S.C.No.86 of 2012, dated 26.07.2013.

For Appellant : Mr.T. Vijayaraghavan

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.86 of 2012 on the file of the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District . He stood charged for the offences under Sections 376 read with 511 of IPC; 302 IPC and 302 read with 201 of IPC. By judgment dated 26.07.2013, the trial court convicted him under all the charges and sentenced him as detailed below:

Penal provision(s) under which convicted	Sentence
Section 376 r/w 511 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for one month.

Penal provision(s) under which convicted	Sentence
Section 302 of IPC	Imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for further period of one month
Section 302 r/w 201 IPC.	Rigorous Imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to under rigorous imprisonment for one month.

Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) P.W.1 is a resident of Sholinghur village in Vellore District. He was running a small Hotel near the Bus Stand at Sholinghur. On 05.01.2012, early morning at 6.30 a.m., he found the dead body of a woman, by name Vijaya (hereinafter referred to as "deceased"). There were injuries on the body. P.W.1 suspected that she would have been done to death by someone. Therefore, he immediately proceeded to Sholinghur Police Station and made a complaint at 10.00 a.m. A case was registered on the said complaint in Cr.No.14 of 2012 for the offence punishable under Sec.302 IPC. The assailant was not then known.

(b) P.W.15 Inspector of Police took up the investigation. He went to the place of occurrence; prepared Observation Mahazar and a Rough Sketch in the present of witnesses. He recovered blood stained earth and sample earth from the place of occurrence under a Mahazar. Then, in the presence of some witnesses, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(c) P.W.11 Doctor Rajmohan conducted autopsy on the body of the deceased on 05.01.2012 at 4.00 p.m. He found the following injuries on the body of the deceased :

A body of a female, aged about 45 years, lied on back, moderately nourished symmetrical, scalp hair black and white. Mouth & lips crushed. Tongue crushed. All teeth broken out. Both ears crushed. General appearance tallied with that of police report.

External Injuries:

1. Face disfigured, left side face patterned crushed injuries

2. Right side shoulder joint. Multiple abrasions with swelling.
3. Right side fore arm multiple puncture wound measuring
1 c.m x 0.5 c.m

Opening of thorax:

Both side ribs normal
Heart pale. Chambers empty
Both lungs pale. Hyoid bone intact.

On opening of abdomen

Stomach pale and empty
Liver pale
Spleen pale
Both kidneys pale
Intestine - pale, distended with gas

On opening of skull Both side temporal bones fractured. Frontol and parietal bones fractured. Brain covering membrane beneath the fracture ruptured. Base of skull fractured.

(d) Ex.P.10 is the Postmortem Certificate. He gave opinion that the injuries found on the body of the deceased could have been caused by hitting of stone M.Os 1 and 2. He further opined that the death was due to shock and hemorrhage due to the injuries found on the body of the deceased.

(e) P.W.15 recovered blood stained clothes from the body of the deceased. When the investigation was in progress, the accused appeared before P.W.2, the then Village Administrative Officer and made a voluntary confession. P.W.2 ascertained that the accused was in a voluntary move to make confession. Therefore, he allowed him to make an oral confession. P.W.2 reduced the said confession, orally made by the accused, into writing. Ex.P.2 is the confession. In the said confession, the accused told that he wanted to have sexual intercourse with the deceased and wanted her consent to have sexual intercourse. However when he made an attempt, since she resisted, the accused took a stone and hit the deceased and killed her. Thereafter, according to confession, he dragged the body to the Bus Stand and abandoned the same. He further told that he was wearing the same clothes, which he was wearing at the time of occurrence, which were all very blood stained. P.W.2 then took the accused to the Police Station and produced him before P.W.15.

(f) P.W.15 arrested the accused at 4.10 p.m. While in the police custody, the accused made voluntary confession, in which, he disclosed that he hit the deceased with stones and came forward to identify the two hidden small stones. In pursuance of the same, he took the police and witness to the place of

occurrence and produced the stones. P.W.15 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the accused to Court for judicial remand and handed over the stones along with the material objects recovered from the place of occurrence. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects, including the clothes, recovered from the accused and the stones. P.W.15 collected the medical records, examined few more witnesses and 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 15 witnesses were examined and 22 documents and 5 material objects were also marked.

4. Out of the said witnesses, P.W.1, the Shop Owner said that he found the dead body of the deceased near the Sholinghur bus stand at 6.30 a.m on 05.01.2012. He has further spoken about the complaint made to the police. P.W. 2 the Village Administrative Officer has spoken about the Extra Judicial Confession, allegedly given by the accused; P.W.3 yet another Village Administrative Officer has spoken about the preparation of the observation mahazar and the rough sketch. He has spoken about the confession made by the accused to the police and the consequential recovery of the stones from the hide out in pursuance of the said confession.

5. P.W.4 has also spoken about the observation mahazar and the rough sketch prepared. P.W.5 has stated that he found the dead body at the place of occurrence and he did not state anything incriminating. P.W.5 has stated that only one thing that he found incriminating about the accused was around 5.00 a.m on 04.12.2012 he was found with blood stained clothes. P.W.6 and P.W.7 have also not stated anything incriminating.

6. P.W.8 has spoken about the recovery of the stones; P.W.9 has spoken about the fact that he examined the jewels recovered from the body of the deceased and certified that they were not gold.

7. P.W.10, the Head clerk of the Judicial Magistrate's Court stated that he forwarded the Material Objects to Forensic Department for examination. P.W.11 has spoken about the post mortem conducted and his final opinion regarding the cause of death; P.W.12, the police Constable has stated that he handed over the Material Objects to the Court as directed by the Investigating Officer; P.W.13 has spoken about the fact that he handed over the First Information Report to the Court; P.W.14

has spoken about the registration of the case and P.W.15 has spoken about the investigation done by him and the final report filed.

8. 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 as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

10. This is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us go into the circumstances projected by the prosecution.

11. The dead body of the deceased was found at 6.30 a.m, on 05.01.2012. P.W.11, Doctor, who conducted autopsy on the body of the deceased found that there were number of injuries and those injuries could have been caused by hitting with stones. He had further opined that the death was due to shock and hemorrhage due to the injuries found on the body of the deceased.

12. We find no reason to reject the said opinion of P.W.11. From this evidence, it has been clearly established that the deceased had died some time before 6.30 a.m on 05.01.2012. Now the question is who are the perpetrators of the crime.

13. In order to prove the case, the prosecution relies mainly on the Extra Judicial Confession, said to have been given by the accused to P.W.2 on 05.01.2012 at 10.00 a.m. According to P.W.2, as already extracted, the accused appeared before him and stated that he wanted to have sexual intercourse with the deceased and he even made sexual overtures towards her. Since she rejected and cried, he hit her with stones and killed her. If this Extra Judicial confession is found to be believable and if the same inspires confidence of this Court, as per the principle enumerated above, even in the absence of any independent witness, the accused can be convicted solely based

on the uncorroborated extra judicial confession. The learned counsel for the appellant pointed out that the extra judicial confession cannot be true and he would further point out that the said confession is not at all admissible in evidence.

14. We have gone through the cross examination of P.W.2. During the cross examination he has stated that the accused gave voluntary confession and he reduced the same into writing by his own hand and in the same, the accused signed. But the extra judicial confession, which was alleged to have been handwritten by P.W.2 is not before this court and the same has been suppressed. What is available before this Court as Ex.P.2 is a computer generated document.

15. When P.W.2 was questioned about the discrepancy, he has told during the course of cross examination, that he went to the police station and the Inspector wanted him to type out the extra judicial confession. Thereafter, with the help of a friend, he typed out the extra judicial confession and got a computer generated copy of the same. He has further admitted that the accused signed in Ex.P.2 in the police station in the presence of Inspector of Police. Thus it is clear that Ex.P.2 came into picture when the accused was very much in the custody of the police. Therefore, Ex.P.2 is not admissible in evidence in view of the bar contained in Section 25 of the Evidence Act. If this Extra judicial confession is rejected as inadmissible, then what remains for the prosecution is the evidence of P.W.5, who has stated that the accused was found somewhere with blood stained clothes around 12.00 midnight on 04.12.2016. In our considered view, assuming that the same is true, based on the timing of the death as deposed by P.W. 11 in his evidence that the deceased had died some time before 6.30 a.m on 05.01.2012, we cannot sustain the conviction.

16. Under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived of only by following the procedure established by law. The said procedure denotes a fair procedure where the proof of guilt should be made beyond reasonable doubts. In other words, the Court cannot afford to convict an individual on mere surmises or suspicion. In the instant case, the prosecution has not even succeeded in establishing a mere suspicion against these two accused. Thus, we hold that the trial Court had convicted the appellant / accused only on mere surmise and therefore the same should not be allowed to sustain. We hold that the prosecution has failed to prove the case against the appellant / accused beyond reasonable doubts and therefore the appellant / accused is entitled for acquittal.

17. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District in S.C.No.86 of 2012, dated 26.07.2013 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

sr

To

1. The II Additional District and Sessions Judge,
Vellore at Ranipet, Vellore District
2. do thro the Principal Sessions Judge
Vellore
3. The Judicial Magistrate Sholingur
4. do thro the Chief Judicial Magistrate
Vellore District
5. The Inspector of Police,
Sholinghur Police Station,
Vellore District
6. The Superintendent
Central Prison,
Vellore
7. The District Collector
Vellore District
- 8., The Director General of Police
Chennai

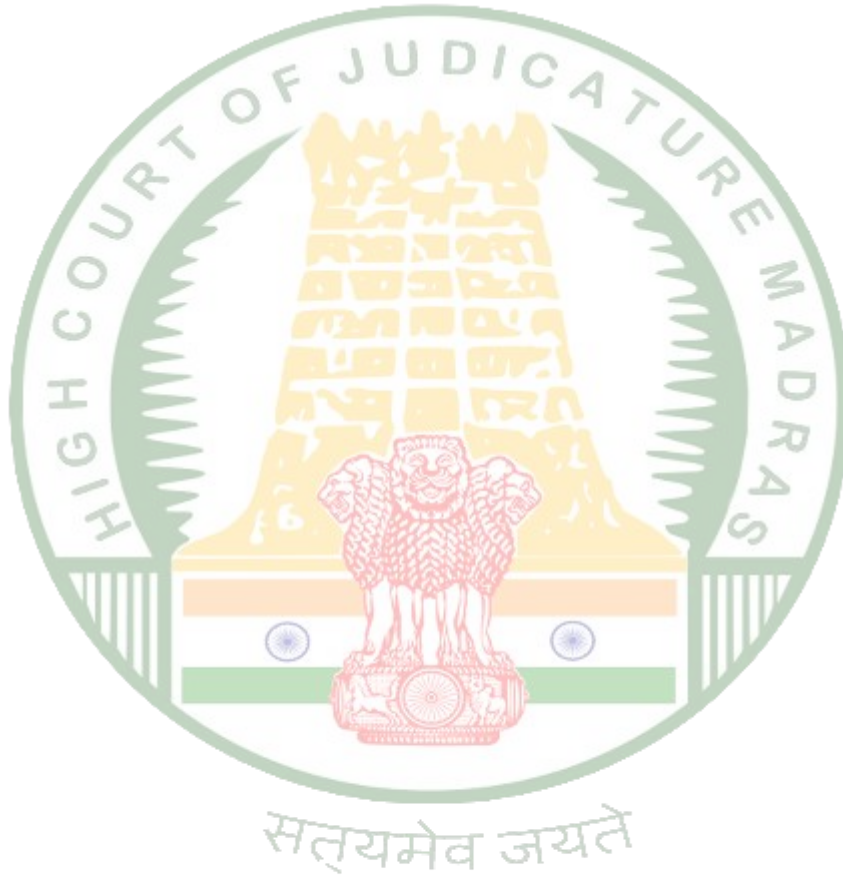
9. The Public Prosecutor,
High Court, Madras

10. The Public Prosecutor,
High Court, Chennai.

1 cc to Mr.T. Vijaya ragavan, Advocate, sr. 71781

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