

BAIL SLIP

The Appellant herein/Accused Viz K.Veerabashiram S/o.Muniappan was directed to be released on bail as per order of the Court dated 12/03/2013 made in MP.No.1/2013 in Crl.A.No.622/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-03-2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Crl.A.No.622 of 2012

K.Veerabathiran .. Appellant/Sole Accused

Versus

State represented by
The Inspector of Police,
Burgur Circle,
Krishnagiri District. .. Respondent/Complainant
Crime No.558/09

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by the Principal District Sessions Judge, Krishnagiri, dated 21.6.2012, in S.C.No.112 of 2010.

For Appellant : Mr.M.G.Udhayashankar for
Ms.S.Shantha Kumari

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(The Judgment of the court was made by M.Jaichandren,J)

The appellant is the sole accused, in S.C.No.112 of 2010, on the file of the Principal District and Sessions Court, Krishnagiri. He stood charged for an offence under Section 302 I.P.C. By the judgment, dated 21.06.2012, the trial Court had convicted the accused for an offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life. No fine was imposed. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

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

2.1) The deceased in this case is one Mrs.Gandhimathi. The marriage between the accused and the deceased had been celebrated, on 24.6.2009. Since then, the accused and the deceased were living together, as husband and wife. In due course of time, the deceased had developed a kind of suspicion about the fidelity of the accused. This had resulted in frequent quarrels between them.

2.2) It is further alleged that, on 5.11.2009, the accused and the deceased were sleeping together, on a cot, in their house. At about 11.00 a.m, the deceased had questioned the accused as to his conduct and about the illicit intimacy he had been having with others. Though the accused had tried to persuade her that he did not have any such bad conduct, the deceased was not convinced. She had shouted at the accused and had stated that she was not willing to live with him. This quarrel went on for some time. According to the prosecution, the accused had slapped the deceased, on her right cheek. Then he had taken an electric wire which was found in the house. He had put it around the neck of the deceased and had strangled her using the same as a ligature. The deceased had died on the spot. Thereafter, the accused had left the body of the deceased and had gone out of the house and had slept in a nearby temple.

2.3) At about 7.30 a.m., on 6.11.2009, he had gone to the local Village Administrative Officer and had made a voluntary confession. P.W.1 had reduced the same into writing. Thereafter, with the report, he had produced the accused, and the Extra Judicial Confession recorded by him, at the Bargur Police Station.

2.4) P.W.8, the then Sub Inspector of Police, on receipt of the said report, registered a case, in Crime No.558 of 2009, under Section 302 I.P.C., at 9.30 a.m. She had forwarded Ex.P-1 (confession of the accused) and Ex.P-15 (First Information

Report) to the learned Judicial Magistrate, who had received it, at 8.00 p.m, on 6.11.2009.

2.5) P.W.11, took up the case for investigation. He had proceeded to the place of occurrence and had prepared an observation mahazar and a rough sketch, in the presence of P.W.1 and another witness. Then he had conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.6) P.W.2, conducted the autopsy on the body of the deceased, on 6.11.2009, at 4.40 p.m. He had found the following injuries:

External Injuries:

Thin intermittent ligature mark parchment like appearance seen over thyroid cartilage size 4 x 0.5 cm and contusion on another. Thin ligature mark size 3 x 0.5 c.m just below right ear seen with contusion. On dissection of neck contusion of strap muscles seen surrounding areas hemorrhage. Thyroid cartilage seen with haemorrhages. Hyoid bone intact on opening of Thorax ribs intact, Heart 100 ml blood, lungs right 400 gms c/s digested food 250 gms, liver 1200 gms c/s congested uterus, spleen 100gms c/s congested, kidneys 100 gms c/s congested. Membranes - intact normal brain weight 1200 gms.

He had opined that the deceased would appear to have died of ligature strangulation. Ex.P-8 is the postmortem certificate. He had forwarded the accused to court, for judicial remand. He had recovered the clothes found on the body of the deceased and had forwarded the same to the court. He had concluded the investigation and he had laid the charge sheet against the accused, for the offence under Section 302 I.P.C.

3. Based on the above materials, the trial court had framed a charge, under Section 302 I.P.C. The accused had denied the charges. In order to prove the charge, on the side of the prosecution, as many as 11 witnesses were examined, 18 documents were marked and 6 material objects were also marked. Out of the said witnesses, P.W.1 has spoken about the Extra Judicial Confession given to him by the accused, at 7.30 a.m., on 6.11.2009. P.W.2 has spoken about the postmortem conducted and he has given his opinion about the cause of death of the deceased. P.W.3 is the forensic expert, who has stated that when he had examined the internal organs of the deceased, he had found no poison in the same. P.W.4 is the mother of the deceased. She has stated about the marriage between the accused and the deceased and the frequent quarrels which used to take place between them. She has stated that, on the receipt of the

telephonic message about the occurrence, she had gone to the place of occurrence and she had found the dead body of the deceased. P.W.5 and P.W.6 had turned hostile and they have not supported the case of the prosecution, in any manner. P.W.7 is the Head Clerk of the jurisdictional Magistrate court, who has stated that the internal organs of the deceased were sent for medical examination, based on the requisition from the Inspector of Police, Burgur Police Station. The report is Ex.P-13. P.W.8, has spoken about the registration of the case. P.W.9 has spoken about the fact of his handing over the dead body of the deceased for postmortem. P.W.10 is the resident of the village, where the occurrence had taken place. She had stated that on one occasion, when she had told the accused not to quarrel with the deceased, the accused had stated that he had decided to kill the deceased. P.W.11 has spoken about the investigation and the laying of the charge sheet.

4. When the incriminating materials were put to the accused, under Section 313 Cr.P.C, he had denied the same, as false. However, he did not choose to examine any witness on his side, nor had he marked any documents. His defence was a total denial. Having considered all the above, the trial Court has convicted him, under Section 302 I.P.C., and had imposed the sentence of life imprisonment on the accused. Challenging the same, he is now before this Court, with this appeal.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing on behalf of the State and we have also perused the records, carefully.

6. In the present case the prosecution relies only on the Extra Judicial Confession said to have been given by the accused to P.W.1, at 7.30 p.m., on 6.11.2009, and the conduct of the accused after the occurrence. According to P.W.1, at 7.30 a.m., the accused had come to his office and he had given the Extra Judicial Confession, in which he had stated that he had only strangulated his wife and that she had died, on the spot.

7. The learned counsel for the appellant had submitted that P.W.1 cannot be believed for the reason that the accused had no acquaintance with P.W.1. It is true that, in the normal course, one may not expect the accused to go to a total stranger, to confess. In this regard, we may refer to a judgment of the Hon'ble Supreme Court in *Ram Singh Vs. Sonia and others*, (2007) 3 SCC 1, wherein the Supreme Court while evaluating an extra judicial confession made before a stranger, had held that an extra judicial confession made even to a stranger cannot be eschewed from consideration, if the court found it to be truthful and voluntarily made before a person, who had no reason

to make a false statement. Similar view has been taken by the Supreme Court in *Gura Singh Vs. State of Rajasthan*, (2001) 2 SCC 205, also. Applying these principles to the facts of the case, now we have to examine whether the extra judicial confession said to have been given to P.W.1 was voluntary and trustworthy.

8. From the evidence of P.W.4, it could be seen that at the time when she had reached the place of occurrence, the accused had gone missing. It is not the case of the accused that he was present at the place of occurrence, after the death of the deceased had come to light. It is stated in his confession that he was sleeping along with the deceased, in the same cot, and thereafter, he was found missing. Of course the conduct of the accused is explainable. However, in the present case the accused has got no explanation relating to his conduct, for absconding for such a long time, until he had gone to the office of P.W.1. This conduct of the accused would obviate the doubt regarding the confession made by him to P.W.1, who is said to be a stranger to the accused. Thus, we hold that the extra judicial confession made to P.W.1 is true and voluntary.

9. We are conscious of the legal position that an Extra Judicial Confession, by itself, is a very weak piece of evidence and unless it inspires the confidence of the court, it is not safe to base the conviction solely on the basis of the said Extra Judicial Confession. In this case, we are of the view that the Extra Judicial Confession made by the accused to P.W.1 inspires the confidence of the court, as it also has sufficient corroboration from the conduct of the accused, as he had absconded from the place of occurrence.

10. It is not the case of the defence that there was some body else who would have committed the murder. There is no other hypothesis which is inconsistent with the guilt of the accused. Therefore, from these circumstances, we hold that the prosecution has clearly proved that it was only this accused who had caused the death of the deceased.

11. After arriving at the above conclusion, it has to be seen as to the nature of the offence, that the accused had committed. In Ex.P-1 it is stated that it was only the deceased who had provoked the accused. She had questioned the accused with regard to the illicit intimacy he had developed with other persons. Though the accused had tried to persuade her stating that he did not have any such bad conduct, the deceased was not convinced. She had shouted at the accused and had stated that she was not willing to live with him. It was only in the midst of such quarrel the accused had given a slap on the right cheek of the accused and had strangulated her with a wire, thereafter. In our considered view, the case of the accused would squarely

fall within the first limb of Section 300 I.P.C. As the accused had caused the death of the deceased, on account of the grave and sudden provocation, his act would squarely fall within the first exception to Section 300 I.P.C. Therefore, the accused is liable to be punished only for an offence under Section 304 Part I of I.P.C.

12. With regard to the quantum of punishment, the learned counsel for the appellant would submit that the accused is a young man and that he has to take care of his family. Further, he had no bad antecedents and that there were serious chances for his reformation. So far as the aggravating circumstances are concerned, there was no pre-meditation and there was no strong motive for the accused to commit the murder of the deceased. Having considered all the above mitigating and the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment, for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks, would meet the ends of justice.

13. In the result, the Criminal Appeal is partly allowed in the following terms:-

i) The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304 (i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. The sentence so imposed is ordered to run concurrently.

ii) The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure.

iii) The lower Court is directed to issue necessary warrant to secure the custody of the accused and to commit him to prison to undergo the remaining period of sentence, if any.

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-s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1) The Principal District Sessions Judge,
Krishnagiri,

2) The Public Prosecutor,
Madras High Court,
Chennai.

3.The Chief Judicial Magistrate Krishnagiri
(for Information)

4.The Judicial Magistrate No.I Krishnagiri

5.The Inspector of Police
Burgur Police Station Krishnagiri District

6.The District Collector Krishnagiri District

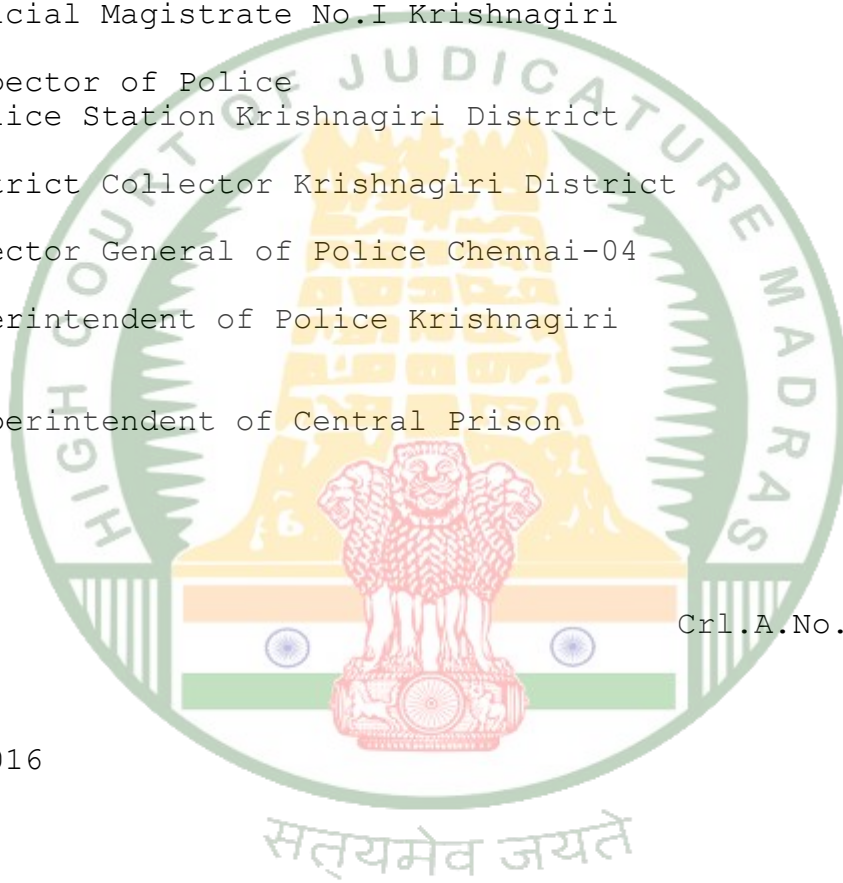
7.The Director General of Police Chennai-04

8.The Superintendent of Police Krishnagiri
District

9. The Superintendent of Central Prison
Vellore

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