

BAIL SLIP

That the Appellant/Accused namely Karthi @ Karthik @ Kathiksamy was directed to be released on bail as per Order of this Court dated 23.04.2013 and made in Crl.M.P.No.1 of 2013 in Crl.A.No.275 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 06.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Crl.A.No.275 of 2013

Karthi @ Karthik @ Karthiksamy ... Appellant/Accused

vs.

State, rep.by
The Inspector of Police,
Karungalpalayam Police Station,
Erode District ... Respondent/Complainant
(Crime No.461 of 2008)

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 28.2.2013 passed by the II
Additional Sessions Judge, Erode, in S.C.No.146 of 2011.

For Appellant : Mr.M.Guruprasad

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

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.146 of 2011, on the file of the II Additional Sessions Judge, Erode. He stood charged for the offence under Sections 302 and 379 of the Indian Penal Code. By judgement dated 28.2.2013, the trial Court convicted him under both charges and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months for offence under Section 302 of the Indian Penal Code and sentenced to undergo three years rigorous

imprisonment and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months for the offence under Section 379 of the Indian Penal Code. Challenging the said conviction and sentences, the appellant is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs. Amudha. P.W.1, is her husband. They were working in a private Textile Mill, known as 'M.R Textiles', at Karunkalpalayam, Erode. The deceased was employed in the ironing Section. The accused hailed from Adiyandhal Village, in Paramakudi Taluk. He was also working in the same mill in the same Section, where the deceased was employed. P.W.1 was working in a different Section. Since the deceased and the accused were working in the same Section, in due course, they became close to each other. The accused, in due course, extended sexual overtures towards the deceased. She also positively responded. The accused had chosen a bathroom situated on the back of the company, for their meeting. As and when her husband had gone out of the company, on receiving positive signal from the accused, the deceased would go to the said bathroom, where the accused and the deceased used to have sexual intercourse. On every such occasion, as a consideration, the deceased used to receive money from the accused. The accused also paid so. After sometime, the deceased wanted the accused to get her a gold chain, weighing two sovereigns. The accused was evasive. The deceased started to threaten the accused that she would inform her husband and others that the accused had sexually misbehaved her and see to that he lost his job. The accused was unable to bear the threat. He was afraid of the above allegations. Therefore, according to the case, he decided to do away the deceased.

(b) It is alleged that on 31.7.2008, at about 2.00 p.m., P.W.1 had gone out of the company. The accused gave a signal to the deceased. The deceased, in response to the same, had gone to the bathroom. In the bathroom, the accused had sexual intercourse with her. She renewed her demand for gold chain. This resulted in a quarrel. The accused, as per his plan, had already kept a rope in the bathroom. He took out the same, put it around the neck of the deceased and constructed her neck. The deceased died on the spot. The deceased was wearing a pair of gold ear studs, weighing half sovereign. The deceased removed the same by force, which resulted in injury to both the ears. Leaving the body inside the bathroom, the accused fled away from the scene of occurrence.

(c) P.W.1 returned to the company and found his wife missing. He was under the belief that the deceased would have gone elsewhere in the company for work. P.W.8, who was

working in the company, by about 5.00 p.m., had gone to the bathroom. The bathroom door was closed and the same was not bolted either from outside or inside. When P.W.8 opened the bathroom, to her shock, she found the deceased lying. She raised hue and cry. The people from the company rushed to the bathroom. They brought the deceased into the company premises. Believing that there was life in the body, they gave some first aid. But it turned out that the deceased was no more. They also found contusions on the neck of the deceased. The pair of ear studs were also found missing. P.W.1 noticed the same. P.W.1 believed that the deceased had been killed by somebody. Therefore, he immediately went to Karunkalpalayam Police Station and made a complaint under Ex.P1. P.W.14, the then Sub Inspector of Police of Karunkalkpalayam Police Station, on receipt of the said complaint, registered a case in Crime No.462 of 2008, under Sections 302 and 379 of the Indian Penal Code. Ex.P26 is the First Information Report. He forwarded Ex.P1 and Ex.P26 to the Court, which were received by the Judicial Magistrate at 10.00 p.m. on 31.07.2008.

(d) P.W.16, the Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence, where, at 9.15 p.m., on 31.07.2008, he prepared an observation mahazar and a rough sketch, in the presence of P.W.5 and another witness. Then on going over to the hospital, he conducted inquest on the body of the deceased and prepared Ex.P.28, report and forwarded the body for post-mortem. P.W.7, Mr.Ramamani, conducted autopsy on the body of the deceased, on 1.8.2008, at 11.00 a.m. He found the following injuries on the body of the deceased.

"1. Ligature mark encircling the whole neck about 37 cms.

2. 2 ligature marks seen on the back of the neck.

3. 1 cm breath on the front of neck below hyoid bone. 3 cm on the back-lower ligature mark 0.2 cm on the upper ligature mark (4) Face bluish. No other external injury. eyes closed, tongue inside the mouth."

He removed vaginal smear and forwarded the same for examination. The report revealed that the DNA extracted from the semen, taken from the vaginal smear of the deceased, tallied with the DNA drawn from the blood sample of the accused. Ex.P.28 is the post-mortem certificate. The Doctor gave opinion that the deceased died due to manual strangulation.

(e) During the course of investigation, on 2.8.2008, the accused, on his own, had gone to P.W.6, the Village Administrative Officer, of Erode Town, at 8.00 a.m. On

appearance, the accused wanted to give a voluntary confession. P.W.6 was convinced that the accused had come to him voluntarily to give confession and therefore, he verbatim reduced the oral confession given by the accused into writing. Ex.P3 is the said extra judicial confession given by the accused. Then, P.W.6 prepared a special report, under Ex.P4, and then produced the accused along with Ex.P3 and Ex.P4, at Karunkalpalayam Police Station, at 10.15 a.m. P.W.16, the Inspector of Police, arrested the accused and on such arrest, the accused gave a voluntary confession, in the presence of P.W.6 and another witness. The accused deposed that he had kept a pair of gold ear studs in his pocket. Accordingly, he produced the M.O.1 (series). P.W.16 recovered the same under a mahazar. Then, in pursuance of the disclosure statement, he took P.W.16 and the witnesses to Mettur Gandhi statue. From a place of hide-out, he produced the rope (M.O.2). P.W.16 recovered the same under a mahazar. On returning to the police station, he collected the blood sample from the accused and forwarded the same for examination. As we already pointed out, the report revealed that the DNA extracted from the vaginal smear of the deceased tallied with the DNA drawn from the blood samples of the accused. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused under Sections 302 and 379 of the Indian Penal Code. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 16 witnesses were examined, 30 documents were exhibited, besides 8 materials objects. Out of the said witnesses, P.W.1 is the husband of the deceased, he has spoken about the motive for the occurrence and also the fact that on 31.07.2008, at 2.00 p.m., he left the company for his house and when he returned to the company at 3.30 p.m., he found his wife not available in the company. He would further state that thereafter, the dead body of the deceased was found in the bathroom, by P.W.8. He has further stated that he found the missing of the gold ear studs from the body of the deceased. He has also spoken about the complaint made. P.W.2 is the Manager of 'M.R. Textiles'. He has stated that the accused, the deceased and P.W.1 were working in the company. He has further stated that the accused attempted to misbehave with the deceased on few occasions and it was reported to him. He reprimanded the accused. P.W.3 is the Proprietor of M.R.Textiles. He has also stated that on earlier occasions, the accused had scolded the deceased in filthy language and the same was reported to him and he reprimanded the accused. P.W.4 is a driver in the same company. He has stated that the deceased told him that the accused used to speak to her over phone, advancing sexual overtures. He has further stated that he informed the same to P.W.3. P.W.5 is a tailor in the same company. He has stated that the accused and the deceased used to enter into verbal

fight frequently. P.W.6 is the Village Administrative Officer. He has spoken about the extra judicial confession given by the accused, on 2.8.2008, at 8.00 p.m. P.W.6 has further stated about the recovery of M.O.1(series) and M.O.2 on the disclosure statement made by the accused. P.W.7 has spoken about the post-mortem conducted by her and her final opinion regarding the cause of death. P.W.8 has stated that she found the dead body of the deceased in the bathroom at 5.00 p.m. P.W.9 has stated that during the course of investigation, the accused was brought to him to conduct potential test and on examination, he found that the accused was capable of performing sexual intercourse with a woman. Ex.P17 is the certificate issued by P.W.9. P.W.10 is the Forensic expert in the Tamil Nadu Forensic Lab. She has stated that on 31.07.2009, the blood sample of the accused was sent to her along with the vaginal extract taken from the body of the deceased. When she conducted DNA examination she found that the DNA extracted from the semen taken from the vaginal smear of the deceased tallied with the DNA taken from the blood of the accused. P.W.12, is the Head Constable attached to Karunkalpalayam Police Station. He has stated that he took the dead body for post-mortem and the vicera for chemical examination and handed over the same. P.W.13, the Head Clerk of the Court has stated that, at the request of the Inspector of Police, he forwarded the material objects for chemical examination, on the orders of the Judicial Magistrate. P.W.14 has spoken about the registration of the case on the complaint of P.W.1. P.W.15 has spoken about the photographs of the dead body of the deceased, taken on the mortuary. P.W.16 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any one on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused under both charges, as detailed in first paragraph of this judgement and that is how the accused is before this Court.

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

7. This is a case based on circumstantial evidence. The first and foremost circumstance is that the accused as well as the deceased were working in the same ironing Section in the mill, known as 'M.R. Textiles', at Karunkalpalayam. It is also in evidence that on 31.07.2008, the deceased and the accused had turned up for work and they were working in the

same Section. It is also in evidence that P.W.1, the husband of the deceased was also employed in the same mill, but in a different Section. Till 2.00 p.m., the deceased was working in the same Section and the accused was also found there. At 2.00 p.m., P.W.1 went for his house. Thus, the deceased was lastly seen alive at 2.00 p.m. on 31.07.2008. The dead body of the deceased was found at 5.00 p.m., by P.W.8, in the bathroom. Ofcourse nobody has seen the movement of the accused or the deceased towards the bathroom between 2.00 p.m. and 5.00 p.m. The opinion of the Doctor, who conducted autopsy, has clearly established that the death was due to manual strangulation. Thus, the deceased died due to homicidal violence.

8. Now the question is as to who caused the death of the deceased?. In order to prove that it was this accused, who caused the death of the deceased, the prosecution mainly relies on three circumstances. The first and foremost circumstance is the evidence of the Forensic Expert, namely, P.W.10. The vaginal smear taken by P.W.7 was preserved and the same was tested for DNA. Similarly, the blood sample taken from the accused was also used for DNA examination. P.W.10 has opined that the DNA extracted from the semen, taken from the vaginal smear of the deceased, tallied with the DNA drawn from the blood sample of the accused. There is no reason to reject the evidence of P.Ws.7 and 10 in this regard. This scientific evidence would clearly go to establish that the accused had sexual intercourse with the deceased before her death. The accused has got no explanation for the same.

9. The next circumstance is that at the time that the dead body was found, the ear studs (M.O.1 series) were found missing from the ears of the deceased. At the earliest point of time, even before the assailant was not known, P.W.1 had mentioned about the missing of the ear studs in Ex.P1, complaint itself. According to P.W.1, when he found the dead body of the deceased, he also noticed that the ear studs (M.O.1 series) were found missing and that is why he mentioned the same in the complaint. There is no reason to reject this part of the evidence of P.W.1. From this evidence, the prosecution has clearly established that the theft of M.O.1 (series) and the causing of death of the deceased had taken place on one and the same transaction.

10. According to P.W.6, Mr.Alagurajan, the then Village Administrative Officer, on 2.8.2008, at 8.00 p.m., the accused appeared before him and wanted to confess voluntarily. P.W.6 was satisfied that the accused was in a voluntary mood to confess. Therefore, in verbatim, he reduced to writing whatever was confessed by the accused. Ex.P3 is the said extra judicial confession. In that confession, the accused has stated in a very detailed fashion as to how the relationship

between him and the deceased developed, how on many occasions, they had sexual intercourse in the bathroom of the company and as to how he took the deceased into the bathroom on the day of occurrence and as to how he killed the deceased by using the rope (M.O.2) to construct her neck. A reading of Ex.P3 would go to show that it is cogent, which gives all the details about the occurrence and involvement of the accused.

11. But, the learned counsel for the appellant would submit that the said confession cannot be true. P.W.1 has stated that on the next day of the occurrence, he was asked to come to the Police station, where he was shown M.O.1 (series). Thus, according to the learned counsel, when M.O.1 (series) was in the police custody, even on the next day of the occurrence, the so called confession said to have been made on 8.2.2008 cannot be true.

12. Though the said argument is attractive, we are not persuaded by the same. Since P.W.1 was examined, after a long time of the occurrence, out of fading memory, he would have mentioned the date on which he was shown the M.O.1 (series), mistakenly. Therefore, we are not inclined to give any weightage for this part of the evidence of P.W.1, where he has stated that he was shown M.O.1 (series) on the next day of the occurrence. We only take his evidence to the extent that M.O.1 (series) were shown to him in the police station.

13. The next argument of the learned counsel for the appellant is that the accused would not have chosen P.W.6, who is a stranger to him, to confess. It is not necessary that one should confess only to a known person. For his own reasons, the accused would have gone to P.W.6 to confess. Why he had chosen P.W.6 to confess has also been mentioned in Ex.P3 itself. He has stated that since there was suspicion that he had committed the murder, out of fear, he had gone to P.W.6 to confess, to avoid harassment. Thus, the reason for the accused for having chosen P.W.6 to confess, as mentioned in Ex.P3, is possible and therefore, the argument of the learned counsel that the accused would not have chosen P.W.6 to confess, is only liable to be rejected. It is true that an extra judicial confession by its very nature is a weak piece of evidence and unless it is free from any doubt and unless it inspires the fullest confidence of the Court, the same cannot be the only foundation for conviction, in the absence of any corroboration from any independent source of material particulars. Here in this case, assuming that Ex.P3 is shrouded with some suspicion, it is not as though the prosecution has left only with Ex.P3 to plead for conviction. Apart from this extra judicial confession, there are other evidences, as we already pointed out. The presence of the semen on the vagina of the deceased, as spoken by P.W.10, would duly corroborate the confession of the accused. It is

true that in the confession, under Ex.P3, the accused has not stated that he had sexual intercourse with the deceased before the occurrence. In our considered view, this is a wilful suppression by the accused. On that score, the entire confession cannot be rejected.

14. The next corroboration comes from the recovery of M.Os.1 and 2 from the custody of the accused. After Ex.P3 was recorded, P.W.6 had taken the accused and produced him before P.W.16. On arrest by P.W.16, the accused gave a voluntary confession, in which, he disclosed that he was in possession of M.O.1(series) in his shirt pocket and he had hidden M.O.2, rope, near Gandhi statue, at Mettur. In pursuance of the same, M.O.1 (series) were recovered from the pocket of the accused and M.O.2 was recovered from the place of hide-out, as shown by the accused. The accused has got no explanation as to how he came in possession of M.O.1 (series). Under Section 114 of the Indian Evidence Act, there arose a presumption that the accused had committed theft of M.O.1 from the deceased. Since the murder and the theft had been committed in one and the same occurrence, the presumption is that it was this accused, who caused the death of the deceased and also removed M.O.1(series) from the body of the deceased. Ofcourse, this presumption is rebuttable and such a rebuttal could be made either by means of direct evidence or by means of other circumstances brought on record by the accused. But in this case, the accused has not at all rebutted the said presumption. Thus, the unrebutted presumption that the accused was the one, who committed the murder of the deceased and also committed the theft of M.O.1 (series), draws corroboration from Ex.P3, the extra judicial confession and from the evidence of P.W.10, who has opined that the seminal stains of the accused were found on the vagina of the deceased. From these circumstances, in our considered view, the prosecution has clearly established the guilt of the accused beyond any doubt at all.

15. Now turning to the quantum of punishment, the trial Court has imposed only minimum punishment, which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

16. In the result, the appeal fails and the same is dismissed. The conviction and sentence imposed on the appellant is hereby confirmed.

Sd/-
Assistant Registrar(CS IV)

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To

1.The Inspector of Police,
Karungalpalayam Police Station,
Erode District

2.The Additional Sessions Judge,
Erode

3.The Judicial Magistrate No.2,
Erode.

4.The Chief Judicial Magistrate,
Erode.

5.The II Additional District Sessions Court,
Erode.

6.The Superintendent of Central Prison,
Coimbatore.

7.The Public Prosecutor,
High Court, Madras.

Crl.A.No.275 of 2013

MG(CO)
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