

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-03-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.851 of 2012

Silor Mani .. Appellant/Accused

Versus

State represented by
The Inspector of Police,
Thirukkalukundram Circle. .. Respondent/Complainant
Sadras Police Station.

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by the Additional District & Sessions Court cum Fast Track Court No.1, Chengleput, dated 30.6.2008, in S.C.No.305 of 2007.

For Appellant : Ms.A.R.Sindhu

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

The appellant in the present Criminal appeal is the sole accused in S.C.No.305 of 2007, on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Chengleput. The accused stood charged for an offence under Section 302 I.P.C. The trial Court had convicted and sentenced the appellant/accused to undergo life imprisonment and to pay a fine of Rs.1000/-, and in default to undergo rigorous imprisonment for one month. Challenging the said conviction and sentence, the appellant is before this court, by filing the present Criminal Appeal.

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

2.1) The deceased Suseela was the wife of the accused. As they did not have a child, through their marriage, they had adopted one Johnson, who is the son of the sister of the deceased. They were living in a house given by the Government, in M.G.R.Street, Chitlampakkam, Chennai. As the deceased wanted to construct a 'Pucca' house, by removing the 'Katcha' house, in which they were living, differences of opinion had arisen between the deceased and the accused. Hence, they had quarreled with each other. While so, on 23.4.2007, when the accused and the deceased were working in the groundnut field, belonging to one Seetharaman, at about 4.00 p.m., a whistle sound was heard from the nearby burial ground. The deceased had gone to the burial ground and had come back after some time. The accused had suspected the fidelity of his wife Suseela. Therefore, he had quarrelled with her, when she had returned home, on 23.4.2007. On 24.4.2007, at about 7.30 a.m., when they were working in the groundnut field, the accused had got into a wordy quarrel with the deceased, suspecting her fidelity. Thereafter, he had beaten the deceased with 'Velikattan Kattai'. Due to the injuries sustained by the beating, Suseela had died on the spot.

2.2) P.W.1, Chellappan, on receipt of the information from P.W.3, Elumalai, that her sister Suseela had been done to death, by her husband, had gone to the Sadras Police Station and had lodged a complaint, marked as Ex.P-1, to the Sub Inspector of Police, examined as P.W.9.

2.3) P.W.9, the Sub Inspector of Police, on receipt of the complaint from P.W.1, on 24.4.2007, at 10.00 p.m., had registered a case, in Crime No.116 of 2007. He had prepared the First Information Report, marked as Ex.P-10. He had forwarded the said Report to the higher officials and to the court concerned.

2.4) P.W.10, the Inspector of Police, on receipt of the telephonic information about the occurrence from the Sub Inspector of Police, had gone to the scene of occurrence and prepared the Observation Mahazar, marked as Ex.P-4 and the Rough Sketch, marked as Ex.P-11, in the presence of witnesses. He had gone to the burial ground near the land of one Gopu and had prepared the Observation Mahazar, marked as Ex.P-5 and the Rough Sketch, marked as Ex.P-13. He had then seized the blood stained earth, ordinary sample earth and blood stained groundnut plant leaves, in the presence of the witnesses, under Ex.P-6 mahazar.

Thereafter, at about 1.20 p.m., P.W.5, Swaminathan, Village Administrative Officer, and P.W.6, Subramani, had produced the accused before P.W.10. At that time, the accused had given a confession statement. The admissible portion of which had been marked as Ex.P-2. P.W.10 had then arrested the accused and based on the confession statement, M.O.2, 'Velikattan Kattai' had been recovered under the mahazar, marked as Ex.P-8. Thereafter, he had conducted the inquest over the body of the deceased, in the presence of panchayatdars and had prepared an inquest report, marked as Ex.P-14. He had handed over the dead body of the deceased to the Head constable, for postmortem.

2.5) P.W.8, Dr.Sankaralingam, who was working in the Chengalpattu Medicial College, Chengalpattu, on 25.4.2007, had received the body of the deceased Suseela, at about 10.30 a.m. He had conducted the postmortem over the dead body. He had found the following injuries.

1. Lacerated wound 10x5x3 cm seen over the left jaw and cheek region.
2. Exposing body of left mandible contusion 3 x 3 cm over left neck muscles.
3. Contusion 3 x 2 cm over left temporal region.

He had issued the postmortem certificate marked as Ex.P-9. On completion of the postmortem, the jacket and the sarees were handed over to the Head constable. P.W.10 had recovered the same under Form 95, marked as Ex.P-15. He had examined the witnesses and the doctor who had conducted the autopsy. The seized articles were sent for chemical examination, along with the requisition letters of the Inspector of Police and the Judicial Magistrate, marked as Ex.P-16 series. On receipt of the reports, marked as Exs.P-17 to P-19 and on completion of the investigation, P.W.10, had laid the charge sheet against the accused.

3. The trial Court, accordingly, framed a charge under Section 302 I.P.C. The accused had denied the same. In order to prove the case, the prosecution had examined 10 witnesses. Exs.P-1 to P-19 and 3 Material Objects were also marked on the side of the prosecution to prove the case.

4. P.W.1, Chellappan, is the brother of the deceased Suseela. He had deposed in his evidence that there were frequent quarrels between his sister Suseela and the accused. He had

stated that, on receipt of the information from one Elumalai that his sister had been murdered by the accused, he had lodged a complaint Ex.P-1 with the Sadras Police Station.

5. P.W.2, Johnson, is the adopted son of the deceased. He was aged about 11 years at the time of occurrence. He had stated that, after coming back from school, he saw his deceased mother. P.W.3, Elumalai, had stated that he had informed P.W.1 about the death of the deceased, over phone. P.W.4, is the mother of the deceased Suseela. She had deposed in her evidence that the accused used to beat the deceased and that on receipt of the information that her daughter had been murdered by the accused, she had gone to the scene of occurrence.

6. P.W.5, who is the Village Administrative Officer, had deposed in his evidence that the accused voluntarily appeared before him and made a confession to him on 24.4.2007. He had stated that as it was narrated by the accused, the confession was recorded only by the Inspector of Police and the confession so recorded is Ex.P-2. P.W.6, Subramani, who had been examined on the side of the prosecution had turned hostile. P.W.7, is the Doctor, who had conducted autopsy over the dead body of the deceased. He had opined that the deceased would have died of shock and haemorrhage due to the head injuries. P.W.8, who is the mahazar witness had deposed in his evidence that he had attested the observation mahazars and the rough sketch prepared by the Inspector of Police. P.W.9, is the Sub Inspector of Police, who had prepared the First Information Report, based on the complaint given by P.W.1. P.W.10, is the Inspector of Police, who had conducted the investigation. On completion of the investigation, he had laid the charge sheet against the accused.

7. When the above 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 marked any documents. Having considered the evidence on record, the trial Court convicted him under Section 302 I.P.C. Challenging the same, the accused had come up with this appeal.

8. We have heard the learned counsel appearing on behalf of the appellant/accused and the learned Additional Public Prosecutor appearing on behalf of the State. We have perused the records available before this Court, carefully.

9. As we have already narrated P.W.1, the brother of the deceased has spoken about the frequent quarrel between the accused and the deceased. From this evidence, we are of the view that the prosecution has succeeded in establishing the fact that there were frequent quarrel between the accused and the deceased. This by itself would not go to prove the guilt of the accused.

10. The prosecution relies only on the extra judicial confession said to have been given by the accused to P.W.5, under Ex.P-2. Even in chief examination, P.W.5, had stated that at the time when the accused gave confession, P.W.10, the Inspector of Police was very much present at his office and the confession, as it was narrated by the accused was reduced into writing only by P.W.10. He has further stated that Ex.P-2 is the said confession which was reduced to writing by P.W.10. During chief examination, P.W.5 has reiterated that at the time when the extra judicial confession was given to him by the accused, the Inspector of Police was very much present. From the evidence of P.W.5, in chief examination itself, it has been made clear that the accused was in the custody of the police, when he made Ex.P-2. Therefore, Ex.P-2, is not relevant, as the same is barred by Section 25 of the Indian Evidence Act, 1872. Once Ex.P-2 is rejected, we find that there are no other evidence against the accused to prove the guilt. Therefore, the accused is entitled for acquittal.

11. In the result, the appeal is allowed. The conviction and sentence imposed on the appellant/accused, by the trial Court, by its judgment, dated 30.6.2008, is set aside and he is acquitted of the said charge. The bail bond, if any, executed by him, shall stand cancelled and the fine amount, if any, paid by him, shall be refunded.

12. We place on record our appreciation for the assistance rendered by the learned counsel, Ms.A.R.Sindhu, appointed by this court, as the legal aid counsel for the appellant. The learned counsel shall be paid the appropriate remuneration, by the Tamil Nadu State Legal Services authority, Chennai.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The District Munsif Cum Judicial Magistrate,
Thirukazhukundram.

2.-Do- Thro The Chief Judicial Magistrate,
Chengalpattu.

3.The Additional Sessions Court
cum Fast Track Court No.1, Chengleput.

4.-Do- Thro The Principal Sessions Judge,
Chengalpattu.

5.The Inspector of Police,
Thirukkalukkundram Circle,
Sadras Police station,
Crime No.116/07

6.The Superintendent,
Central Prison I,
Puzhal, Chennai.

7.The District Collector,
Chengalpattu.

8.The Director General of Police,
Mylapore, Chennai-4

9.The Public Prosecutor,
Madras High Court.

10.The Secretary,
TamilNadu State Legal services Authority,
Chennai.

+1cc to M/S.A.R.Sindhu, Advocate sr.20413

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srg 03/05/2016

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