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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.02.2016

CORAM:

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

Cr1.A.No.94 of 2012

1.Madhiashagan
2.Dhevan @ Devaraj ... Appellants 1 & 2/Accused 1 & 2

vs.

State,rep.by
The Inspector of Police,
Baluchetty Chathram Police Station,
Kancheepuram Dt. ... Respondent/Complainant
(Crime No.25 of 2009)

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 21.09.2011 passed by the Sessions
Judge No.2, Kancheepuram.

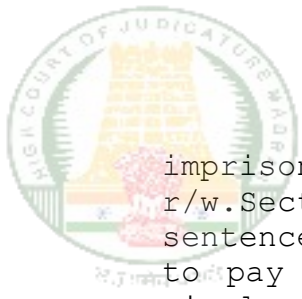
For Appellants : Mr.S.Shanthakumari

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

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

The appellants are the accused 1 and 2 in Sessions Case No.35 of 2010, on the file of the Sessions Judge No.2, Kancheepuram. The first accused stood charged for the offence under Sections 452, 302, 201 r/w.34 of the Indian Penal Code; the second accused stood charged for the offence under Sections 452, 302 r/w.34 and Section 201 r/w.Section 34 of the Indian Penal Code. By judgement dated 27.9.2011, the trial Court convicted them on all the charges and sentenced both the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/- each, in default, to undergo simple imprisonment for six months under Section 452 of the Indian Penal Code; to undergo seven years rigorous imprisonment and to pay a fine of Rs.1000/- each, in default, to undergo simple



imprisonment for six months for the offence under Section 201 r/w. Section 34 of the Indian Penal Code. The trial Court sentenced the first accused to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo six months simple imprisonment for the offence under Section 302 of the Indian Penal Code and sentenced the second accused to undergo imprisonment for life and to pay a fine of Rs.1000/- in default, to undergo six months simple imprisonment for the offence under Section 302 r/w. Section 34 of the Indian Penal Code. Challenging the said conviction and sentences, the appellants are before this Court with this appeal.

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

The deceased in this case was one Lakshmi. P.W.1 is her husband. P.W.1 was doing tender coconut business at Kizhambi Road Junction in Perumbulipakkam Village. The accused also were doing the same business. In such a way, the accused 1 and 2 had become the friends of P.W.1 and they used to visit his house. In course of time, the accused developed a desire to have illicit intimacy with the deceased. This is stated to be the motive for the occurrence. On 23.1.2009, P.W.1, early in the morning, had gone to his business place. Their son had gone to school. The deceased, after some time, went to the business place of P.W.1, received Rs.20/- for the purpose of taking tea and returned home. While she was so alone at her house, it is alleged that these two accused came to her house and extended sexual overtures towards her. But she did not consent for the same. She resisted and told that she would expose them. The accused enraged over the same. Therefore, they attacked the deceased with wooden log and as a result, she died. Then they dragged the dead body and dropped the same into a well. P.W.1's son, who returned from the school in the evening on the day of occurrence, on noticing his mother not found at home, went to the place of P.W.1 and informed him. Then P.W.1 and his son went in search of the deceased. But they were not able to find her anywhere. Therefore, P.W.1 went to the police station and made a complaint.

3. P.W.15, who was the then Sub Inspector at Vishnu Kanchi Police station, received a complaint at 11.00 a.m. on 24.1.2009 and registered a case for woman missing in Crime No.25 of 2009. Ex.P16 is the FIR and Ex.P1 is the complaint. Then he forwarded the documents to Court and took up the case for investigation. When he went near the place of occurrence, he found blood stains on the earth near the well. There were also blood stains on the pipe attached to the motor. Therefore, he suspected some foul play. So, he engaged three local villagers to climb down into the well to search for the deceased. Accordingly, the dead body



was found inside the well immersed in water. The body was lifted out of the well. P.W.15 prepared an observation mahazar and a rough sketch regarding the place of occurrence. He altered the case into one for suspicious death. He handed over the case diary to the Inspector, for investigation.

4. P.W.16 took up the case for investigation, proceeded to the place of occurrence and conducted inquest on the body of the deceased, in the presence of witnesses. He recovered the dress materials and other belongings of the deceased, found on the body. He collected two bottles of water from the well. He examined P.W.1 and other witnesses and recorded their statements. Then he forwarded the body for postmortem.

5. P.W.8-the Doctor, who conducted autopsy on the body of the deceased on 26.1.2009 at 11.40 a.m., found the following injuries.

"Extremities - Pale. Following antemortem injuries seen on the body: (1) Fracture dislocation seen on the lower 1/3rd of right arm bone (humerus) with surrounding areas of contusions. (2) Fracture dislocation seen on medial 1/3rd of right collar bone with surrounding areas of contusions (3) Fracture dislocation seen on upper 1/3rd of right tibia and fibula (leg bones) with surrounding areas of contusions (4) Laceration with irregular margin obliquely placed seen on the occipital region measuring 9 cm X 3 cm X brain deep with surrounding areas of contusions; curved fracture seen over occipital bone measuring 12 cms in length with irregular margin and brain deep; Dura found torn at its posterior end (occipital region). Occipital to be of cerebrum found lacerated measuring 6 cm X 1 cm X 0.5 cm (5) Laceration seen over right eyebrow measuring 2 cm X 1 cm X 0.3 cm with irregular margins. Oral cavity - Normal oesophagus and trachea - NAD. Both lungs - Normal, C/s - place and empty. Heart - intact. chambers - empty Great vessels - Intact. Coronaries patent. Stomach - Empty, Nil. Specific smell - NAD, C/s.pale neck structures - Intact. Hyoid Intact."

Ex.P.11 is the postmortem certificate. She gave opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries on the body of the deceased. She further



opined that the death would have occurred 50 to 60 hours prior to the occurrence.

6. P.W.16 continued the investigation and examined few more witnesses, collected the postmortem certificate and the doctor's final opinion. On 30.01.2009 at 6.00 p.m., the second accused appeared before P.W.3-Mr.Selvadurai, the then Village Administrative Officer of Ariaperumbakkam and gave a voluntary confession. P.W.3 reduced the same into writing. Ex.P7 is the said extra judicial confession. In the said confession, he disclosed that yet another person, who joined in the commission of the crime, was in Vellaigate Village. Then he produced the second accused to the police, along with the statement. P.W.16 arrested him in the presence of witnesses and as identified by him, at Vellaigate, he arrested the first accused. On such arrest, the first accused disclosed the place where he had hidden the woodenlog. In pursuance of the same, he took the police to the hide-out and produced the woodenlog and also an Atlas cycle as well an old Hercules cycle. He recovered the same under a mahazar. Then P.W.16 altered the case into one under Section 376 r/w.501 and Section 302 of the Indian Penal Code and submitted Ex.P22-alteration report to the Court. He examined many more witnesses and handed over the case diary to his successor in office for further investigation. P.W.17 took up the case, continued the investigation and finally laid charge-sheet against the accused.

7. Based on the above materials, the trial Court framed appropriate charges against the accused. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined, 22 documents and 14 material objects were marked. Out of the said witnesses, P.W.1, the husband of the deceased has spoken about the fact that his wife was lastly seen alive on 23.01.2009. P.W.2 has spoken about the observation mahazar, rough sketch and the discovery of the dead body from the well. P.W.3 has spoken about the extra judicial confession given by the second accused and the confession given by the first accused to the police, out of which the woodenlog was detected. P.W.4 is the son of the deceased, who has stated that in the evening, on the date of occurrence, when he returned from the school, his mother was not available at home and he reported the matter to his father and both of them searched for her, but in vain. P.W.5 has stated that both the accused took a cycle for hire on 21.1.2009 in the morning but did not return the same. P.W.6 has not stated anything incriminating. He has stated that as requested by the police, he climbed down into the well and recovered the dead body. P.W.7 has stated that lastly he saw the deceased at the shop of P.W.1 when she had come there to get money from P.W.1.



P.W.8 is the Doctor, who conducted the postmortem. P.W.11 is the head of the sniffer dog squad, who had stated that the sniffer dog did not bring out any clue regarding the crime. P.W.12 has spoken about the fact that he handed over the dead body to the Doctor for postmortem. P.W.13 is the clerk of the Court, who forwarded the material objects for chemical examination. P.W.14 has spoken about the chemical examination conducted on the material objects. According to him, human blood was found on the material objects. P.W.15 has spoken about the registration of the case and the investigation done by him. P.Ws.16 and 17 had spoken about the investigation done by them respectively.

8. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side.

9. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement. That is how they are before this Court.

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

11. This is a case based on circumstantial evidence. The prosecution has succeeded in proving that on 23.1.2009, the deceased lastly left the business spot of P.W.1 to go to her house at around 5.30 p.m. Thereafter nobody had seen her anywhere. It is also in evidence that at the house there were traces of blood stains in some places. Thereafter the dead body was found in a well on 24.1.2009. The dead body was not floating. From out of the fact that there were blood stains on the structure of the well and on the pipe line, the Sub-Inspector of Police had suspected some foul play and then only he made arrangements for the witnesses to climb down into the well to search for the deceased. Thus, it has been clearly established that the deceased would have died somewhere between 5.30 p.m. on 23.1.2009 and 1.15 p.m. on 24.1.2009. From the medical evidence it has been clearly established that the deceased had died due to injuries on her body.

12. Now, the next circumstance is the extra judicial confession said to have been given by the second accused to P.W.3-Selvadurai. It is in evidence that P.W.3 had no acquaintance with the second accused at all. He was not the Village Administrative Officer of the occurrence village. When that be so, it is too difficult to believe that the second



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accused would have chosen to surrender before him to give a confession. Apart from this confession, there is no other evidence against the accused. The discovery of a woodenlog, at the instance of the first accused, cannot be sufficient to sustain the conviction.

13. It is too well settled that extra judicial confession, by its very nature, is a weak piece of evidence and unless it fully inspires the confidence of the Court, the same cannot be the sole foundation for conviction. In this case, the so called extra judicial confession given by the second accused to P.W.3 is highly suspicious, which does not draw corroboration from any other source. Therefore, based on the same, the conviction imposed on the second accused cannot be sustained.

14. So far as the first accused is concerned, the confession of the co-accused cannot be the foundation for conviction. The proper course to be adopted is to keep the extra judicial confession of the co-accused aside, marshal all the other evidences and if the Court finds from such evidences that the accused has committed the crime, then in order to lend assurance to the said conclusion, as a last resort, the extra judicial confession of the co-accused can be looked into as provided in Section 30 of the Indian Evidence Act, 1872.

15. Here in this case the extra judicial confession alleged to have been given by the co-accused, namely, the second accused, itself is a suspicious one and therefore, the same cannot be the foundation for convicting the first accused because there is no other evidence against him. In our considered view, the prosecution has failed to prove the case beyond reasonable doubts against both the accused and therefore, the appellants are entitled for acquittal.

16. In the result, this criminal appeal is allowed; the conviction and sentences imposed as against the appellants are set aside. The appellants/accused are acquitted. Bail bonds, if any, executed by them shall stand cancelled. Fine amounts, if any, paid by them shall be refunded to them forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



To

1. The Inspector of Police,
Baluchetty Chathram Police Station,
Kancheepuram Dt.

2. Sessions Judge No.2,
Kancheepuram.

3.-Do-Thro The Principal Sessions Judge,
Kancheepuram.

4.The Judicial Magistrate II,
Kancheepuram.

5.The Public Prosecutor,
High Court, Madras.

+1cc to M/S.S.Shantha kumari, Advocate, S.R.No.7992

Crl.R.C.No.94 of 2012

ug(CO)
srg(16/02/2016)