

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM:

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

Criminal Appeal No.591 of 2013

Chinnappan

... Appellant

-Vs-

State rep by
Inspector of Police
Ammapettai Police Station
Erode District
(Crime No.1/2007)

... Respondent

This Criminal Appeal has been preferred against the conviction and sentence in S.C.No.13 of 2008 of 06.06.2008 on the file of the Additional District Sessions Judge, Fast Track Court No.4, Bawani, Erode District and prays this Court to set aside the conviction and sentence in S.C.No.13 of 2008 dated 06.06.2008 and acquit the appellant.

For Appellant : Mr.M.Shankar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.13 of 2008 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.4, Bhavani in Erode District. He stood charged for offences under Sections 302 IPC [2 counts], 201 and 364 IPC. By judgment dated 06.06.2008, the trial Court convicted the accused under Sections 302 IPC for 2 counts and 201 IPC. The trial Court, however, acquitted the accused from the charge under Section 364 IPC. For the offence under Section 302 IPC, the trial Court sentenced the accused to undergo

imprisonment for life for each count and to pay a fine of Rs.1,000/- for each count, in default to undergo rigorous imprisonment for one year. For the offence under Section 201 IPC, the trial Court sentenced the accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

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

[a] There are two deceased in this case, namely, Gloria Mary and Antony [hereinafter referred to as 'D1' and 'D2' respectively]. The alleged occurrence in this case was on 27.12.2006 at 3.00 a.m. Ten years prior to the occurrence, the accused married Gloria Mary [D1]. Out of the said wedlock, they had three children, namely Jennifer Nithya, Gilbert Silva and Arunsaet. In course of time, the accused had a suspicion, that D1 was having illicit relationship with some of his relatives. When the accused questioned D1 and her parents about the same, there arose some quarrel. Therefore, the accused abandoned D1 and her three children at Maattahalli Village in Karnataka State and returned to his native village, namely Chinnapallam in Tamil Nadu. This happened in 2004. From 2004 onwards, he was living separately and he was operating Parisal [Ferry] in Cauvery river at Chinnapallam Village. After some time, the parents and other relatives of D1, compromised the dispute between D1 and the accused, and persuaded him to take back D1 and her children. Accordingly, the accused took back D1 and her three children with him and from then onwards, the accused, D1 and her three children were residing at Chinnapallam Village. The accused continued to do the Ferry service to earn his livelihood.

[b] While so, within five months of their rejoining, D1 gave birth to a male child [D2]. Since the birth of D2 was within five months of their rejoining and since there was no access between D1 and the accused before five months, when they were living separately, the accused had a suspicion, that D2 was not born to him. He was proclaiming to D1 and others, that D2 was born to someone else and not to him and thus, he was not the biological father of the child.

[c] One Francis Anand [P.W.6] had no issue. Therefore, he wanted to adopt D2, for which D1 refused and the accused agreed. Under the guise of taking the child [D2] in adoption, P.W.6 used to visit the house of the accused. This gave rise to a new issue between the accused and D1. The accused started questioning D1, as to whether she had developed illicit intimacy with P.W.6. These are all stated to be the instances which culminated as a motive in the mind of the accused to commit

murder of both D1 and D2. So far as D2 is concerned, since according to the accused, he was not born to him, he wanted to finish his life also.

[d] It is further alleged that on 27.12.2006, early morning at about 3.00 a.m., the accused wanted D1 to accompany him in the Ferry to go for fishing. D1 believed the said deceiving words of the accused. The accused wanted her to take D2 also with her. Accordingly, D1 and D2 went along with the accused in the Ferry. In the Ferry, the accused had already kept a huge granite stone. He drove the Ferry towards South in Cauvery river. After having ensured that there was nobody in the vicinity, the accused stopped the Ferry in the midst of Cauvery river with a view to kill her, by pushing her into water. The accused attempted to tie her legs with a rope, which he was already having in the Ferry. D1 resisted and jumped into the river. Since she did not know to swim, she held the Ferry and was struggling. The accused pulled her up, put her into the Ferry and hit her against the stone, which he was already having in the Ferry. D1 became unconscious. Then, he tied her legs and hands with the rope. D2 cried. He tied the child [D2] with D1 with the rope and also tied the stone with D1. He pushed D1 and D2 along with the stone into the Cauvery river. Then, he returned with the Ferry.

[e] P.W.1 was the then Village Administrative Officer of Nerinjipettai Village. On 31.12.2006, at 9.30 p.m., when he was at his Office, one Mathiyannan @ Prakash [P.W.7] came to his Office and informed that at Nerinjipettai II Barrage, in the Cauvery river, a dead body of a woman with a child tied together was floating. Immediately, P.W.1 along with his Village Assistant rushed to the said place. Meanwhile, some local villagers came to the said place. They identified that D1 was Gloria Mary, the wife of the accused and the child was Antony [D2]. P.W.1 left his assistants at the spot to guard the dead bodies, returned to his Office, prepared a Report, went to Ammapettai Police Station and presented the same. P.W.14, the Sub Inspector of Police received the said complaint under Ex.P1 and registered a case in Cr.No.1 of 2007 under Section 174 Cr.P.C at 6.00 a.m. on 01.01.2007. Ex.P13 is the FIR. She forwarded both the documents to Court and handed over the case diary to the Inspector of Police for investigation.

[f] P.W.16 took up the case for investigation on 01.01.2007 at 11.00 a.m. At the place of occurrence, he prepared an Observation Mahazar and a Rough Sketch in the presence of two witnesses. Then, he held inquest on the bodies of both the deceased and prepared Reports under Exs.P17 and 18. Then, he forwarded the dead bodies for post-mortem. P.W.11 conducted

autopsy on the body of D1 at 4.30 p.m. He found the following injuries:

"External injuries: (1) Cut injury - 2
x 1/4 cm over the left eye brow."

Ex.P9 is the Post-mortem Certificate. On the same day, at 5.15 p.m., he conducted autopsy on the body of D2. No external injuries were found. Ex.P11 is the Post-mortem Certificate. He gave opinion that both the deceased had died due to drowning.

[g] When the investigation was in progress, the accused appeared before P.W.8, the Revenue Inspector on 02.01.2007 at 2.00 p.m. On such appearance, he made a voluntary confession to him, thereby confessing that he only killed D1 and D2. P.W.8 reduced the same into writing. Ex.P6 is the extra-judicial confession. Then he produced the accused along with Ex.P6 to the Inspector of Police at 4.00 p.m. P.W.16, the Inspector of Police arrested the accused and on such arrest, in the presence of P.W.8 and another witness, he gave a voluntary confession, in which, he disclosed the place where he had hidden the Ferry and oar [Thuduppu]. He recovered the same under a Mahazar [vide Mos.1 and 2]. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed the above charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 23 documents were exhibited, besides 11 material objects.

4. Out of the said witnesses, P.W.1 has spoken about the fact that he found the dead bodies of D1 and D2 at 9.30 p.m. on 31.12.2006. P.W.2 is an important witness for the prosecution. He has sated that on the day of occurrence, around 3.00 a.m., he was proceeding to his work place at Chinnapallam for the purpose of fishing. At that time, he found the accused and D1 and D2 going in the Ferry for fishing. He has stated that the accused drove the Ferry towards South in the river, whereas, he drove towards North. He has further stated that thereafter, he did not see all the three. He has further stated that he found the dead bodies on 01.01.2007. P.W.3 is the daughter of the deceased, who has turned hostile and he has not supported the case of the prosecution in any manner. P.W.4 is yet another important witness for the prosecution. He has stated that on 28.12.2006, he found the accused alone in his Ferry. According to P.W.4 he had gone to Chinnapallam for purchasing fish. When he enquired the accused whether he had fish, the accused told

him that he had no fish and ran away from the said place. P.W.5 is the brother of D1, who has spoken about the earlier occurrence, which formed the motive. P.W.6 has not stated anything about his alleged relationship with the deceased. P.W.7 - the Villager has also spoken on the hearsay evidence and he has not stated anything against the accused. P.W.8 has spoken about the extra-judicial confession given by the accused on 02.01.2007 at 2.00 p.m. at his Office. P.W.11 has spoken about the post-mortem conducted on the bodies of both the deceased and his Final Opinion regarding the case of death. According to him, the death was due to drowning. P.W.12 has spoken about the statements recorded by him from the witnesses under Section 164 Cr.P.C. P.W.14 has spoken about the registration of the case on the complaint of P.W.1. P.W.15 has stated that he examined the hyoid bone of D1 and gave opinion that there was no fracture. P.W.16 has spoken about the investigation done and his Final Report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor he did mark any documents in his favour. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant/accused is before this Court with this appeal.

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

8. This is a case based on circumstantial evidence. The first and foremost circumstance raised by the prosecution is, the long standing suspicion which the accused had against D1 and his denial of paternity of D2. In our considered view, this fact has been proved by the evidence of P.W.5 and also from out of the extra-judicial confession given by the accused. Thus, we hold that the prosecution has succeeded in proving the motive. In other words, since the accused had suspicion over the fidelity of D1 and since he was claiming that D2 was not born to him, since D2 was born within five months of their reunion, he had decided to kill both.

9. On the day of occurrence, around 3.00 a.m., when P.W.2 had gone to the river for fishing, he found the accused and D1 and D2 in the Ferry driven by the accused. The accused drove the Ferry towards South in Cauvery river and P.W.2 drove the

Ferry towards North. There is no denial of fact, that P.W.2 is also engaged in the same business. He is an independent witness. We find no reason to reject the evidence of P.W.2. Thus, when this witness has been subjected to cross examination, nothing has been elicited from him, so as to discredit him. Thus, from the evidence of P.W.2, the prosecution has clearly established that the accused had taken D1 and D2 in the Ferry into the river.

10. Thereafter, the accused alone returned in the Ferry. This was seen by P.W.4. P.W.4 had gone to Chinnapallam for the purpose of purchasing fish. Since the accused alone came in his Ferry from the river, he enquired him whether he had fish to sell. The accused answered in the negative using abusive words and immediately, he fled away from the said place leaving the Ferry by the side of the Bank to the river Cauvery. This witness is also an independent witness. Nothing has been elicited from him to doubt his credibility. From the evidence of P.W.4, it has been clearly established that the accused returned from the river alone, which means, insider the river, the accused had disposed of D1 and D2. Thereafter, the accused was not seen doing his regular business. He did not go in search of D1 and D2. The dead bodies were found floating on 31.12.2006 as spoken by P.W.1. Had it been true that the accused was innocent as he has been claiming, going by the nature of conduct, the accused would have gone in search of D1 and D2. The very fact that he did not go in search of D1 and D2 for many days would go only to prove the guilt of the accused. His conduct in not searching for the deceased would go to show that it was this accused who was responsible for the death of both the deceased.

11. It is in the evidence of P.W.8, that the accused appeared before him only on 02.01.2007 at 2.00 p.m. Though the dead bodies were found as early as on 31.012.2006, the accused did not appear before the police on that day or on the next day, had he been innocent. On 02.01.2007, he made a voluntary confession to P.W.8, in which he has narrated the entire occurrence, as to how he hit D1 against the stone; as to how he tied both D1 and D2 together with a stone and pushed them into water. This extra-judicial confession is a substantive piece of evidence. P.W.8 is again an independent witness. Though P.W.8 has been subjected to lengthy cross examination, nothing has been elicited from him so as to discredit him. Thus, the extra-judicial confession is yet another strong circumstance.

12. We are conscious of the legal position that an extra judicial confession is a weak piece of evidence and unless it inspires the confidence of this Court, it is not safe to base

conviction on the said extra-judicial confession. Here in this case, we are of the view that the extra-judicial confession given by the accused to P.W.8, inspires the confidence of the Court, as it leaves no doubt at all in the mind of the Court about the credibility of P.W.8. Apart from that, this extra judicial confession is duly corroborated by the other circumstances, more particularly, the evidence of P.Ws.2 and 4. The medical evidence also reflects the appropriate time of death of both the deceased. The cause of death also had been spoken by the Doctor who conducted post-mortem on both the deceased. From these proved circumstances, we are of the view that the prosecution has clearly proved that it was this accused who caused the death of both the deceased and also caused disappearance of the evidence.

13. The question is "what is the offence that the accused has committed by the above act?" The fact that both the bodies were tied with a rope that too to a stone would go to show that the intention of the accused was only to cause the death of both the deceased. Thus, the act of the accused would fall within the fifth limb of Section 300 IPC and thus, he is liable to be punished under Section 302 IPC [2 counts] for having caused the death of D1 and D2. Similarly, for having caused disappearance of the evidence by pushing them into water, with a view to get disposal of the dead bodies by a decent burial in water would make out an offence under Section 201 IPC. Thus, the trial Court was right in convicting the accused under Section 201 IPC.

14. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which calls for no interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant by the trial Court are hereby confirmed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

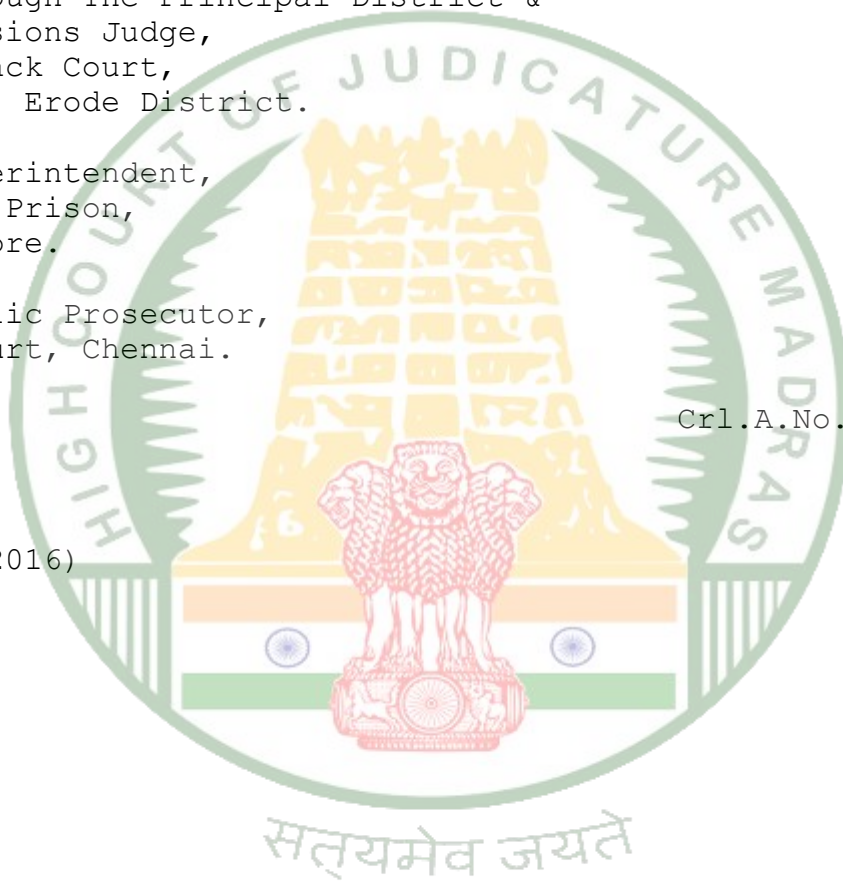
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To

- 1.The Additional District Sessions Judge,
Fast Track Court No.4,
Bawani, Erode District.
- 2.The Inspector of Police
Ammapettai Police Station
Erode District.
- 3.Do- Through The Principal District &
Sessions Judge,
Fast Track Court,
Bhavani, Erode District.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Chennai.

Crl.A.No.591 of 2013

SNS (CO)
CA (25/05/2016)



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