

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2016

CORAM

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

CRL.A.No.686/2013

Parasuraman .. Appellant/sole accused

Vs

State by
The Inspector of Police,
Thiruverkadu Police Station,
Nagapattinam District. ... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Nagapattinam, dated 03.11.2011, made in S.C.No.105 of 2008.

For Appellant : Mr.S.Senthilvel,
Legal Aid Counsel

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

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.105 of 2008 on the file of the learned Sessions Judge, Nagapattinam. He stood charged for offence under Section 302 of IPC. By judgment dated 03.11.2011, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for 3 years. Challenging the said conviction and sentence, the appellant/sole accused 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.Sangalani. The

accused is her husband. The marriage between them was celebrated 15 years before the occurrence. Out of the said wedlock, they have got 3 children. But in due course of their marital life, the accused developed suspicion over the fidelity of the deceased. This resulted in frequent quarrels between them. It is alleged that unable to bear with the adulterous contact of the deceased, the accused decided to do away with her. It is further alleged that few days before the occurrence, the deceased had gone to the house of her brother at Thoduvai Village. On the day of occurrence, it is alleged that over phone, the accused wanted the deceased to come to Sirkazhi Bus Stand, so that they could return to their house. Accordingly, the deceased came to Sirkazhi Bus Stand at 12.00 noon on 04.03.2005. The accused took her to Raja Theatre for matinee show at Sirkazhi for a film. After the matinee show was over, by about 7.30 p.m., they went to a hotel at New Bus Stand in Sirkazhi. Till 9.00 p.m., the accused managed to roam with the deceased. At 9.30 p.m., he took the deceased in a Town Bus and got down at Mangaimadam Bus Stop. From Mangaimadam Bus Stop, the accused engaged an auto in which they travelled together to go to their house. On their way, near the field of one Kaliyamoorthy, the accused driven by his earlier plan, wanted the Autorickshaw driver to stop the vehicle stating that he had abdominal pain. Following the accused, the deceased also got down. He went into a pit near the main road. The deceased also followed him and on reaching a secluded place, it is alleged that suddenly, the accused started mounting attack on the deceased. He pushed her down and by pressing her against the floor by means of his right leg on her chest, he strangulated. Within few minutes, she breathed her last. Abandoning the dead body of the deceased, he left the place of occurrence and came to his house.

(b) The next day morning, the passersby found the dead body of the deceased and informed the accused. The accused, as though, he had nothing to do with the death of the deceased, took his daughter to the place of occurrence and brought the dead body of the deceased to the house. P.W.1, the uncle of the deceased came to the house, found the dead body and suspected some foul play at the hands of the accused. He went to the police station and made a complaint at 11.30 a.m. on 05.03.2005 at Thiruvankadu Police Station.

(c) P.W.13, the then Sub-Inspector of Police, registered a case in Crime No.49 of 2005 under Section 174 Cr.P.C. (Suspicious death). Ex.P.11 is the First Information Report. He forwarded Ex.P.1 complaint and Ex.P.11 to court which were received by the learned Magistrate at 02.00 p.m. on 05.03.2005.

(d) The case was taken up for investigation by P.W.14, the then Inspector of Police. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of two witnesses (not examined in court). Then, he conducted inquest on the body of the deceased between 02.00 and 04.30 p.m. on 05.03.2005 and then forwarded the same for postmortem.

(e) P.W.5 Doctor Devalatha conducted autopsy on the body of the deceased on 06.03.2005 at 11.00 a.m. She found the following injuries:

"External injuries seen.

1. Contusion left side chest
2. Multiple irregular contusions in upper both sides of neck
3. Contusion in the left side cheek.

INTERNAL EXAMINATION OF NECK

On dissection of neck blood collected under neath the injuries. Hemorrhage was present in the underlying muscles of neck.

ABDOMEN - Stomach was distended and contains 100 ml of digested fluid.

Liver, spleen, kidneys and intestines were pale.

THORAX - Uniform, no fracture ribs - Lungs were pale. Heart was plugged with clot.

SKULL - No fracture, membranes were intact. Brain matter started decomposition.

SPINAL COLUMN - No fracture.'

Ex.P.4 is the Postmortem Certificate. She forwarded the internal organs for chemical examination. The report revealed that there was no poison. She gave opinion that the death was due to asphyxia due to strangulation and the death would have occurred about 36 to 40 hours before postmortem.

(f) On 08.03.2005, P.W.14 arrested the accused at 8.00 a.m. in the presence of P.W.7 and another witness. On such arrest, he made a voluntary confession in which he disclosed the place at where he had hidden a stick. In pursuance of the same, he took the police and the witness to the place of occurrence and produced M.O.3 Stick. Then, he altered the F.I.R. into one under Section 302 of IPC and submitted an Alteration Report Ex.P19 to court. He forwarded the accused to court and handed over the material objects also to court. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the

side of the prosecution, as many as 14 witnesses were examined and 20 documents and 8 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the uncle of the deceased. P.W.2 is a neighbour, P.W.3 is the daughter of the deceased. P.W.4 is yet another neighbour. They all turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 Doctor has spoken about the autopsy conducted by her and her final opinion regarding cause of death. She has opined that the death was due to asphyxia due to strangulation. P.W.6 Mr.L.S.Sathiyamoorthy, the learned Judicial Magistrate has spoken about the judicial confession recorded by him on 11.03.2005 wherein the accused had confessed his guilty. P.W.7, the Village Administrative Officer, who was examined to speak about the arrest of the accused and the disclosure statement made which resulted in the recovery of M.O.3, has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 is an Auto Driver who has stated that on the day of occurrence, he took the accused and the deceased in his Auto from Mangaimadam Bus Stop to go to Tsunami Shelters. On his way, according to him, the accused complained of abdominal pain of his wife and got down near a field. The deceased also got down. This was around 09.30 p.m. to 09.45 p.m. P.W.10 has spoken about the photographs taken at the place of occurrence as instructed by P.W.14. P.W.11 has spoken about the fact that he prepared the F.I.R. and handed over the same to court. P.W.12 has spoken about the chemical examination conducted on the internal organs which revealed that there was no poison. P.W.13 has spoken about the registration of the case. P.W.14 has spoken about the investigation done and his final report.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

7. When this appeal was called on 15.04.2016, there was no representation on behalf of the appellant. Therefore, the matter was ordered to be listed on 21.04.2016. On 21.04.2016 also, there was no representation on behalf of the appellant. Hence, this Court appointed Mr.S.Senthilvel, the learned Counsel, as a Legal Aid Counsel to defend the case on behalf of the appellant.

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

9. As we have already narrated, though a number of witnesses have been examined on the side of the prosecution, the prosecution is left only with the judicial confession given by the accused to P.W.6, the learned Judicial Magistrate No.II, Mayiladuthurai on 11.03.2005 as the other vital witnesses have turned hostile.

10. The learned Counsel for the appellant would submit that the said confession cannot be taken as a voluntary confession and therefore, the same should be rejected. The same is opposed by the learned Additional Public Prosecutor. He would submit that the judicial confession is voluntary and that by itself can be the sole foundation for conviction.

11. In order to appreciate the said contention of the learned Counsel for the appellant, we have carefully gone through the judicial confession recorded by P.W.6. According to his evidence and according to the proceedings recorded by him, the accused was produced before him on 10.03.2005 at 03.30 p.m. P.W.6 gave the statutory warnings as required under Section 164 of Cr.P.C. The recording of the judicial confession would go to show that he wanted to ensure that the confession was voluntary. After having warned him as required under Section 164 of the Cr.P.C., P.W.6 sent him back to the prison giving him more than 24 hours for him to relax and to cool down. The accused was again produced on 11.3.2005 at 03.45 p.m. Again the learned Magistrate gave all the statutory warnings as required under Section 164 of Cr.P.C. As a matter of fact, he had explained in simple term to the accused that he was not bound to make any confession and if any confession was made by him that could be used as an evidence against him. The learned Magistrate has also recorded his belief that after all the warnings and explanations, the accused volunteered to make confession. It was thereafter, the confession was recorded. After recording the confession, the learned Magistrate has recorded his belief that the confession was voluntarily made by the accused. He has also recorded the memorandum at the foot of the confession as required under Section 164 (4) of Cr.P.C. P.W.6 was cross-examined at length in this regard, but, nothing has been elicited to doubt the correctness of the belief recorded by the learned Magistrate about the voluntariness of the confession made by the accused. A careful reading of the proceedings of the learned Magistrate and his evidence has convinced us that the learned Magistrate has meticulously followed the procedure contemplated in law and he has recorded his belief that the

confession was made voluntarily by the accused. Therefore, we find no reason to hold that the said judicial confession was not voluntary. The same was not immediately retracted. The retraction was made only at the time of the trial of the case. The accused has not explained as to why there was reluctance on his part to retract the confession immediately. Thus, the belated retraction would not create any doubt in the judicial confession.

12. In the said confession, the accused has stated that when he was constructing a new house as his was damaged due to Tsunami, one Cart man was engaged by him for bringing bricks to the place of construction. The house was constructed by him with the help of the said man and the deceased. On one particular day, when they were engaged in construction, the accused had left a short distance to answer the call of nature. Within 15 minutes, he returned. At that time, he found the deceased lying on a mat along with the cart man indulging in sex. On seeing the accused, that cart man fled away from the place of occurrence. Then, according to the confession, he took the deceased to her brother's house at Thoduvai Village. He informed the brother of the deceased by name Rajendran about the above occurrence. Thereafter, she left the deceased at the house of Rajendran and returned to his village. He has further confessed that thereafter on 04.03.2005, by around 12.00 noon, he informed the deceased over phone and wanted her to come to Sirkazhi so that she could return to her house. Accordingly, she came to Sirkazhi Bus Stand. From Sirkazhi Bus Stand, he took her to Raja Theatre to see a Tamil Film, by name, Thirupacchi. After the matinee show was over, from the Theatre, he took her to a hotel near New Bus Stand where they had dinner at 07.30 p.m. Between 07.30 p.m. and 9.30 p.m., according to his confession, he was just roaming along with the deceased here and there at the bus stand. At 09.30 p.m., he took the deceased in a Town Bus No.5 and got down at Mangaimadam Bus Stop. From Mangaimadam Bus Stop, he engaged an Auto. In the Auto, they were proceeding towards Tsunami Shelters, near the field of one Kaliyamoorthi, he complained as though he had abdominal pain. Then, he got down from the auto. The deceased also got down. Thereafter, according to the confession, he went into the nearby field forwarded by the deceased and on reaching the secluded place, according to the confession, he pushed her down and by pressing her against the floor by means of his right leg on her chest, he strangulated her. Within 10 minutes, she breathed her last. Abandoning the body there, he returned to his house. He did not disclose about the same to anybody.

13. The judicial confession given by the accused to P.W.6 is corroborated by P.W.9, the Auto Driver. He has stated that

from Mangaimadam Bus Stop, he took the deceased and the accused at the place of occurrence. In our considered opinion, this confession is only reliable as it is voluntary. The medical evidence also corroborates the said confession. In this regard, we may refer to a decision of the Hon'ble Supreme Court in Alope Nath Dutta and others Vs. State of West Bengal reported in 2006 (10) Supp. SCR 1662 wherein the Hon'ble Supreme Court after having a detailed analysis of the acceptability of a judicial confession has held that in a case of retracted confession, the courts, while arriving at a finding of guilty would not ordinary rely solely thereupon and would look forward the corroboration of material particulars. Such corroboration must not be referable in nature and such corroboration must be independent and conclusive in nature.

14. In this case, as we have already pointed out, the retraction has been made by the accused after six years and he has not stated any reason for such retraction and under what situation he made the judicial confession. The judicial confession also draws corroboration from independent witnesses. In view of the foregoing discussion, we hold that the prosecution has proved the guilt of the accused beyond reasonable doubts. Therefore, the conviction and sentence imposed on the appellant by the trial court are liable to be confirmed. Thus, we do not find any merit at all in this appeal.

15. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentenced imposed by the trial court are hereby confirmed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Thiruverkadu Police Station,
Nagapattinam District.
2. The Sessions Judge, Nagapattinam.
3. The Public Prosecutor,
High Court, Chennai.

4. The Superintendent,
Central Prison
Cuddalore 4.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras 104.

1 cc to Mr.S.Senthilvel, Advocate, sr.27443

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kra 23.06.2016



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