



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.417 of 2016

Babu [A1]

...Appellant/Accused No.1

-Versus-

State Rep. by
The Inspector of Police,
Usilampatti Town Police Station,
Madurai District.
[Crime No.289 of 2012]

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging judgement of conviction and sentence passed by the learned IV Additional District and Sessions Judge, Madurai, in S.C.No.22 of 2013 dated 04.08.2016.

For Appellant

: Mr.M.Karunanithi

For Respondent

: Mr.C.Ramesh, APP

JUDGEMENT

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

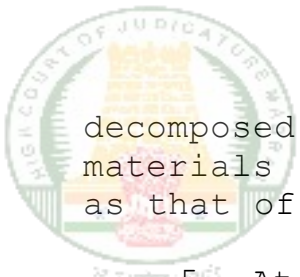
The appellant is Accused No.1 in S.C.No.22 of 2013 on the file of the learned IV Additional Sessions Judge, Madurai. There were two other accused in the said case by name (1) Ponnusamy and (2) Parameshwari, who were arrayed as Accused Nos.2 and 3 respectively. A1 stood charged for offences under Sections 302 and 201 of IPC and A2 & A3 stood charged for offences under Sections 201 r/w 34 r/w 202 of IPC. During the pendency of the trial, A3 died and hence, charges against her stood abated. The trial court, by judgement dated 04.08.2016, acquitted A2, however, convicted A1 alone for offences under Sections 302 and 201 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for three months for offence under Section 302 of IPC; and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for offence under Section 201 of IPC. Challenging the above said conviction and sentences A1 is now before this court with this criminal appeal.



2. **The case of the prosecution in brief is as follows:-** The deceased in this case was one Mrs.Kasthuri, who was hardly aged 21 years. P.Ws.2 and 3 are the father and mother respectively of the deceased. The deceased was working in a textile company at Santhi Nagar. She had studied upto X Standard. The said company, later on, started a branch at Kavanampatti village. The deceased who was residing with P.Ws.2 and 3 at Usilampatti used to go to Kavanampatti every day for work by bus. As usual on 18.04.2012, she went to Kavanampatti for her company in the morning at 06.00 a.m. In normal course, she should have returned home in the evening after finishing her duty hour. But, on 18.04.2012, she did not return home. Therefore, P.Ws.2 and 3 went in search of her. No where they could find the deceased. Therefore, P.W.2 went to Koodal Pudur Police Station on 18.04.2012 itself and made a complaint at 10.00 a.m. P.W.27, the then Sub Inspector of Police entered the same in the General Diary and started inquiring into the missing of the deceased.

3. On 19.04.2012, around 08.00 a.m. when P.W.1, the then Village Administrative Officer, was at his Office, the appellant/A1 appeared before him and wanted to confess his guilt. After having ascertained that the appellant/A1 was in a voluntary mood to confess, P.W.1 allowed him to confess orally. P.W.1 reduced the same into writing. Ex.P.1 is the alleged extra judicial confession. P.W.1 prepared a special report under Ex.P.2. P.W.1 rushed to the police station and produced the appellant/A1 before the Sub Inspector of Police at Usilampatti Police Station along with the special report and the extra judicial confession. P.W.1 also made a complaint in this regard. Ex.P.2 is the complaint. Based on the above said complaint, P.W.29, the then Sub Inspector of Police, registered a case in crime No.289 of 2012 under Sections 302 and 201 of IPC. Ex.P.12 is the FIR. He forwarded both the FIR and the complaint to the jurisdictional court. Then, he handed over the case diary to the Inspector of Police for investigation.

4. P.W.30, the then Inspector of Police, Usilampatti Police Station, took up the case in Crime No.289 of 2012 for investigation. He arrested the appellant/A1. While in custody, A1 made a voluntary disclosure statement to P.W.30. P.W.30 recorded the same in writing. In the extra judicial confession made to P.W.1, the appellant/A1 had disclosed that he had killed the deceased and buried the dead body just in front of his house within the compound wall of his house. P.W.30 immediately gave intimation to the Tahsildar cum Executive Magistrate for exhumation of dead body. P.W.9, arrived at the place of occurrence where the dead body has been buried and with the help of P.W.11, P.W.9 exhumed the dead body from the place identified by the appellant/A1. On such exhumation, it was found that the dead body was that of a female, but the body was highly



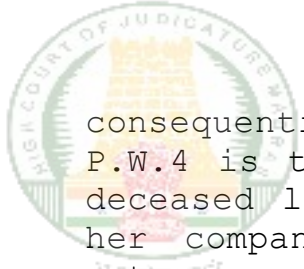
decomposed and it was beyond recognition. From the dress materials found on the dead body, P.Ws.2 to 4 identified the same as that of the deceased.

5. At the request made by P.W.30, the Inspector of Police, P.W.24, Dr.Kumar, conducted autopsy on the body of the deceased near the place wherefrom the dead body was exhumed. Since the body was in a highly decomposed condition and it was mutilated, he was not able to give any definite opinion regarding the cause of death. P.W.30, thereafter, forwarded the appellant/A1 to the court for judicial remand. He prepared an observation mahazar and a rough sketch at the place of occurrence. The appellant/A1 in his disclosure statement had stated the place where he had hidden a 'L' shaped iron rod. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1-Iron rod. P.W.30 recovered the same under a mahazar. P.W.30 also recovered a pair of cheppals and other materials from the place of occurrence where the dead body was buried. Then, he forwarded the appellant/A1 to the court for judicial remand and also forwarded the material objects to the court. He recovered the personal belongings of the deceased which were found on the dead body of the deceased. Since the dead body was beyond recognition, the skull of the deceased was preserved and the same was used for comparison with the live photograph of the deceased. The superimposition test revealed that the dead body was that of the deceased. Thus, according to the prosecution, the identity of the dead body was established.

6. In the mean time, at the request made by P.W.30, a Finger Print Expert came to the place of occurrence. Despite the efforts taken by him, the Finger Print Expert was not able to lift any chance finger print anywhere from the place of occurrence. P.W.30, collected all the materials including the photographs taken at the place of occurrence. Since he was transferred, the investigation was thereafter taken over by P.W.31 on 07.09.2012. He examined few more witnesses, collected rest of the materials and finally he laid charge sheet against all the accused.

7. Based on the above materials, the trial Court framed as many as three charges against A1 to A3 as detailed in first paragraph of this judgment. Pending trial A3 died and hence, charges against her stood abated. A1 and A2 denied the charges and they were put on trial. In order to prove the case, on the side of prosecution, as many as 31 witnesses were examined and 18 documents were marked, besides nine material objects, marked as M.Os.1 to 9.

8. Out of the said witnesses, P.W.1, the Village Administrative Officer, has spoken about the extra judicial confession given by A1. He has further stated about the voluntary confession made by the appellant/A1 to P.W.30 and the



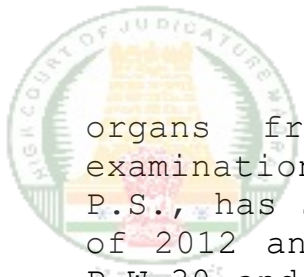
consequential recovery of M.O.1. P.Ws.2 and 3 are the parents and P.W.4 is the relative of the deceased. They have stated that the deceased left the house of P.W.2 on 08.04.2012 at 06.00 a.m. for her company. They have further stated that since she did not return on the next day, P.W.1 made a complaint at Koodal Pudur Police Station. They have further stated that after the dead body was exhumed from the place of occurrence, on being identified by the appellant/A1, they identified the dead body from out of the personal belongings found on the body of the deceased.

9. P.W.5 to 7 and 12 to 18 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 has spoken about the observation mahazar and rough sketch prepared by the police at the place of occurrence. P.W.9, the Tahsildar has spoken about the exhumation of the dead body from the place which was identified by the appellant/A1. P.Ws.10 and 11 are the menials. They who have stated that as directed by the Tashildar they dug a pit and took out the dead body from the place of burial. P.W.10, a Senior Police Photographer has spoken about the photographs taken at the place of occurrence. P.W.20, the Deputy Superintendent of Police [Finger Print], Special Branch, Theni District Police Office has spoken about his examination for chance finger prints at the place of occurrence.

10. P.W.21, an expert in Forensic Science Laboratory has stated that she conducted superimposition test on the skull produced by the police through court which revealed that the skull of the dead body tallied with the live photograph of the deceased. Thus, according to her, the identity of the dead body has been established by means of superimposition test. P.W.22 is a Deputy Director in Forensic Science Laboratory, has stated that he conducted examination on the visceral organs of the deceased during which no poison was detected in any of the internal organs.

11. P.W.23 is landlord of the house where the appellant/A1 was residing. He has not stated anything incriminating against the accused. P.W.24 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.25, the then Grade I Police Constable, Usilampatti P.S., has spoken about the handing over the FIR in Crime No.289 of 2012 which was registered by Usilampatti Police Station based on the extra judicial confession of the appellant/A1 made to P.W.1 and the special report submitted by P.W.1. P.W.26, the then Head Constable, Usilampatti P.S., has stated that he assisted the doctor when the doctor conducted autopsy on the dead body of the deceased.

12. P.W.27, the the Special Sub Inspector of Police, Koodal Pudur Police Station, has spoken about the registration of the case in Crime No.163 of 2012 for "Woman Missing". P.W.28, the Deputy Director of Forensic Science Laboratory, has stated that she visited the place of occurrence and assisted the investigating officer in recovering the dress materials and other internal



organs from the dead body for the purpose of scientific examination. P.W.29, the then Sub Inspector of Police, Usilampatti P.S., has spoken about the registration of the FIR in Crime No.289 of 2012 and forwarding the FIR and other documents to the court. P.W.30 and P.W.31 have spoken about the investigation done by them in this case and P.W.31 has further spoken about the filing of charge sheet against the accused.

13. When the above incriminating materials were put to the A1 and A2 under Section 313 of Cr.P.C., they denied the same as false. Their defence was a total denial. They, however, did not chose to examine any witness, nor did they mark any documents on their side.

14. Having considered all the above, the trial court convicted the appellant/A1 alone for offences under Sections 302 and 201 of IPC and sentenced him as stated in the first paragraph of this judgement, however, acquitted A2 from the lone charge. Challenging the said conviction and sentence, A1 is before this Court with this criminal appeal.

15. We have heard the learned counsel for the appellant/A1 and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record.

16. This is a case based on circumstantial evidence. In a case of this nature, it is absolutely necessary for the prosecution to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us now go into the circumstances projected by the prosecution.

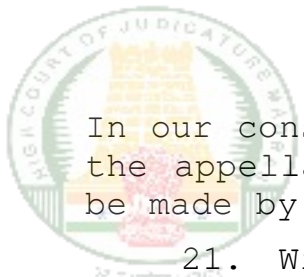
17. P.Ws.2 to 4 have stated that the deceased left her house for her work spot on 08.04.2012 at 06.00 a.m. In normal course, she should have returned in the evening of that day itself. But, she did not return to home. P.W.1, therefore, made a complaint at Koodal Pudur Police Station on 08.04.2012. But, on 19.04.2012, the appellant/A1 appeared before P.W.1 and made an extra judicial confession at 08.00 a.m. Thereafter, the dead body was exhumed from the place identified by the appellant/A1 and his disclosure statement in Ex.P.1 extra judicial confession. The dead body was admitted beyond recognition. However, P.Ws.1 to 4 have identified the dead body as that of the deceased based on the personal belongings found on the dead body. Scientifically the prosecution has established the identity of the dead body by superimposition test conducted by P.W.21. Thus, it has been clearly established that the dead body which was exhumed was that of the deceased and the death of the deceased had occurred some time between 06.00 a.m. on 08.04.2012 and 19.04.2012.



18. The learned counsel for the appellant/A1 would submit that the cause of death of the deceased has not been established by the prosecution. It is true, but, on that score we cannot hold that it was not a homicide. There are other circumstances to prove the same about which we will discuss a little latter.

19. P.W.1, the Village Administrative Officer, has stated that the appellant/A1 appeared before him on 19.04.2012 and made an extra judicial confession at 08.00 a.m. In the said extra judicial confession, he has stated that he had developed illicit intimacy with the deceased and few months prior to 09.04.2012, he took the deceased to a secluded place and had sexual intercourse with her. On 09.04.2012, according to him, there was no one else as other inmates had gone for a function. Therefore, he informed the same to the deceased and wanted her to come to his house. She came to his house around 07.45 a.m. Then, they took lunch. In the mean while, they had sexual intercourse. After they had lunch, the appellant/A1 received a phone call from his father to come to the temple as it was getting late. When the appellant/A1 informed the same to the deceased and wanted her to leave, the deceased told him that under the promise of marriage, he had sexual intercourse with her on many occasions and therefore, it was time for him to tie thali to complete the marriage and to take her also to the temple where his parents had gone. The appellant/A1 was reluctant. When he expressed his inability to marry her, she told that she would go to the police with a police. On hearing this from the deceased, the appellant/A1 got infuriated. Since she was in a mood to go to the police, he decided to kill her. Accordingly, he strangled the deceased by neck and killed her. Then, he dug a pit in front of his house within the compound wall and buried the dead body. In order to burke any symptom of burial, he used cement plaster and put up a platform on the same. His parents returned home only on 15.04.2012. When they inquired as to why, the appellant/A1 was very dull, which was unusual. He disclosed about the entire occurrence. A2 and A3 who are the parents of the appellant/A1 told him not to disclose about the occurrence to anyone and they could exhume the dead body and bury it elsewhere in a day or two or burn it. Since he was afraid of police and his conscience irked, he went to P.W.1 and confessed his guilt.

20. The learned counsel for the appellant/A1 would submit that the above long confession would not have been given by the appellant/A1 at all for he had no reason to disclose the same to P.W.1 because he is a total stranger to P.W.1. We find no force at all in this argument for P.W.1, after all, is an independent public servant and a responsible Village Administrative Officer, who had no axe to grind against the appellant/A1. In the light of the fact that the dead body was later on exhumed from the place identified by the appellant/A1 and disclosed by him in Ex.P.1 extra judicial confession, we find no reason to disbelieve P.W.1.



In our considered opinion , the extra judicial confession given by the appellant/A1 to P.W.1 is believable upon which reliance could be made by this court safely.

21. With the said extra judicial confession and a special report, P.W.1 took the appellant/A1 to the police station and produced him before the Sub Inspector of Police, Usilampatti Police Station. The appellant/A1 took the police and the witnesses to the place of burial and identified the same. The fact that the appellant/A1 had given extra judicial confession to P.W.1 and his conduct in taking the police and the witnesses to the place where the dead body had been buried and identifying the same, would all go to give a presumption that the appellant/A1 was the one who killed the deceased and buried the dead body at the said place. The appellant/A1 has got no explanation to offer as to how he came to know that the dead body was buried at that particular place. The burial of the dead body at that place was within the exclusive knowledge of the appellant/A1 alone. But for the said disclosure statement made by him to P.W.1 and but for his conduct in identifying the place , the fact that the dead body of the deceased had been buried would not have come to light at all. Going by the natural human conduct and in the absence of any explanation from the appellant/A1 as to how, he came to know about the burial of the dead body, we have to presume as provided under Section 114 of the Evidence Act that it was the appellant/A1 who killed the deceased and buried this dead body at the place identified by him.

22. It is too well-settled that if an extra judicial confession inspires the fullest confidence of the court, even in the absence of any corroboration from any independent sources, the said extra judicial confession by itself could be the basis for conviction. It is only in a case where the extra judicial confession creates some doubt though not material, the court shall look for corroboration from independent sources. In the case on hand, in our considered view, the extra judicial confession made by the appellant/A1 to P.W.1 inspires the fullest confidence of the court. Apart from that the extra judicial confession draws adequate corroboration from the conduct of the appellant/A1 in identifying the place wherefrom the dead body was exhumed. The recovery of the dead body from the place of burial on the disclosure statement made by the appellant/A1 would squarely fall with both under Sections 27 as well as 8 of the Evidence Act as relevant evidence. Thus, the extra judicial confession draws adequate corroboration from other sources also. Of course, the presumption under Section 114 of the Evidence Act is rebuttable, but the appellant/A1 has not rebutted the said presumption either by means of direct evidence or circumstantial evidence. The presumption under Section 114 of the Evidence Act coupled with the extra judicial confession to P.W.1 would all clinchingly go to prove that the deceased was killed and her body was buried in front of the house of the appellant/A1 by him. As we have already



discussed hereinabove, the doctor, who conducted autopsy could not give definite opinion regarding the cause of death because the dead body was highly decomposed. But, on that score, we cannot hold that the prosecution has failed to prove that the death of the deceased was a homicide. The extra judicial confession which inspires the confidence of this court clearly states that the deceased was killed by strangulation by neck and then the dead body was buried. Thus, the extra judicial confession clearly proves that the death of the deceased was of a homicide. As we have already concluded such homicide was caused only by the appellant/A1 and therefore, his act would squarely fall within the first limb of Section 300 of IPC and so he is liable to be punished for offence under Section 302 of IPC. Further, since the burial of the dead body was with the intention to erase the evidence of murder, he is also liable to be punished for offence under Section 201 of IPC. The trial court was right in convicting the appellant/A1 for the above said offences and we do not find any infirmity in the same.

23. Now, turning to the quantum of sentence, the trial court itself has imposed the minimum punishments for the proved charges which also do not require any interference at all at the hands of this court.

24. In view of the foregoing discussions, the criminal appeal fails and the same deserves only to be dismissed.

25. **In the result**, the criminal appeal is dismissed and the conviction and sentences imposed by the trial court are hereby confirmed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1. THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.
2. THE CHIEF JUDICIAL MAGISTRATE, MADURAI
3. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE NO.I, USILAMPATTI, MADURAI DISTRICT.
4. THE SUPERINTENDENT OF POLICE, MADURAI DISTRICT.
5. THE SUPERINTENDENT OF PRISON, CENTRAL PRISON, MADURAI.
6. THE INSPECTOR OF POLICE, USILAMPATTI TOWN POLICE STATION, MADURAI DISTRICT.
7. THE PUBLIC PROSECUTOR, HIGH COURT, CHENNAI.

Copy to : The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

Criminal Appeal (MD)No.417 of 2016

02.12.2016