

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Crl.A.No.136 of 2017

Bhoopathy ... Appellant/Accused

vs.

State by,
The Inspector of Police,
Mettur Police Station,
Salem District ... Respondent /Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 26.10.2016 passed by the II
Additional District and Sessions Judge, Salem, in S.C.No.113 of
2009.

For Appellant : Mr.M.G.Udaya Shankar

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

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

The appellant is the second accused in Sessions Case No.113 of 2009 on the file of the II Additional District and Sessions Judge, Salem. He stood charged for offence under Sections 449, 302 and 414 IPC. By judgement dated 26.10.2016, the trial Court convicted him under Sections 449 and 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.3000/-, in default, to undergo simple imprisonment for two years for the offence under Section 302 IPC and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for six months for the offence under Section 449 IPC. The trial Court acquitted him from the charge under Section 414 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this criminal appeal.

The case of the prosecution in brief is as follows:

(a) The deceased in this case was one Mrs.Ayyammal. She was residing alone at her house at Jeeva Nagar, in Mettur. On 5.9.2006, it is alleged that around 11.00 a.m., the accused trespassed into the house of the deceased, strangled her neck by using a rope, killed her and then decamped with a gold chain weighing 9.710 gms and a pair of ear studs weighing 6.550 gms. The occurrence was not witnessed by anyone.

(b) P.W.1 is the son of the deceased. He was residing separately at Mecheri. On 6.9.2006, he received a phone call from one Ardhanari that his mother was found dead inside the house and the jewels were missing. Immediately, he rushed to the place of occurrence, found the dead body and then went to Mettur Police Station and made a complaint at 7.15 a.m. on 7.9.2006. On the said complaint, a case was registered in Crime No.346 of 2006, under Sections 302 and 380 IPC. Ex.P.1 is the complaint and Ex.P.32 is the FIR. He forwarded both the documents to the Court, which were received by the learned Magistrate at 10.00 a.m. on 7.9.2006.

(c) The case was taken up for investigation by P.W.19, the then Inspector of Police, Mettur Police Station. At 8.30 a.m., on the same day, he went to the place of occurrence, prepared an observation mazahar and a rough sketch and recovered the material objects from the place of occurrence. He conducted inquest on the body of the deceased between 10.00 a.m. and 12.30 p.m., at the house of the deceased and then forwarded the body for post-mortem. P.W.12, Dr.Kesavalingam conducted autopsy on the body of the deceased on 7.9.2006 at 3.30 p.m., He found the following injuries.

"Injuries:

1.A Transverse complete ligature mark is seen encircling the entire neck 48 cms x 0.75 cms. It lies above thyroid cartilage on the middle of neck. Margins of the ligature mark are contused and serrated. On dissection, skin underlying the ligature mark is contused and haemorrhagic larynx, trachea and hyoid bone - Intact.

2.Fracture of thyroid cartilage present.

3.A contusion on right side of neck 8 x 3 cms - Dark red. A contusion on left side of neck 9 x 3 cms - Dark red."

Ex.P.14 is the Post-mortem certificate. He gave opinion that the death of the deceased was due to asphyxia due to manual strangulation. He further opined that the death of the deceased would have occurred 36 to 48 hours prior to the time of post-

mortem.

(d) During the course of investigation, P.W.19 recovered the clothes from the body of the deceased and forwarded the same to the Court. He recovered the rope lying by the side of the dead body and forwarded the same also to the Court.

(e) When the investigation was in progress, on 9.09.2006, the accused appeared before P.W.10, the then Village Administrative Officer, at 6.00 a.m. On such appearance, the accused wanted to confess. Having asserted that the accused was in a voluntary mood to make confession, P.W.10, allowed him to confess, which he reduced into writing. Ex.P7 is the said extra judicial confession. Then, he produced the accused along with the confession statement to P.W.19 at 7.00 a.m. P.W.19 arrested him. While in custody, the accused made a voluntary confession, in which, he disclosed the place where he had hidden two 100/- rupee notes. Ex.P.19 recovered the same under Ex.P18-Mahazar. Then, he produced a Hercules cycle and a nylon rope from the place of hide-out. They were also recovered. On the same day, at 9.00 p.m., P.W.19 arrested one Murugan. He gave a voluntary confession, in which, he disclosed the place where he had hidden a 100/- rupee note. Then, the accused took the police to Karnataka State and identified one Kandasamy, who in turn identified one Kumar, who was running a jewellery shop. From the said shop, a pair of gold jewels were recovered. Then the accused was sent to the Court for judicial remand. On completing the investigation, he laid charge-sheet against three accused. The appellant is the first accused, one Vellaiyam (a) Mariappan and Murugan are the accused 2 and 3. The case against the other two accused were split up and thus, the accused alone faced the trial.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 19 witnesses have been examined, 36 documents and 11 material objects were marked. Out of the said witnesses P.W.1 is the son of the deceased. He has stated that his mother, namely, the deceased alone was in the house. She was found dead on the early morning of 6.9.2006. There were injuries on her body. The Doctor(P.W.12), who conducted autopsy on the body of the deceased has stated that the death of the deceased was due to asphyxia due to manual strangulation. Thus, the prosecution has clearly established that the death of the deceased was a homicide.

4. P.W.1 has stated that the deceased used to wear M.O.1, a pair of gold jewels and a gold chain, which were found missing.

Thus, the robbery of these jewels and the death of the deceased were occurred in one and the same occurrence. This fact has been clearly established by the prosecution.

5. Now the question is as to who were the perpetrators of the crime?

6. So far as the appellant is concerned, the prosecution relies on the extra judicial confession stated to have been given by the accused to P.W.10-the Village Administrative Officer on 09.09.2006 at 6.00 a.m. In the said extra judicial confession, he has spoken about his involvement in the crime and the fact that the jewels were robbed away. The learned counsel for the appellant would submit that there is no evidence that the accused had any acquaintance with P.W.10 and therefore, it would not have been natural for the accused to confess to a total stranger. Thus, according to the learned counsel, the extra judicial confession said to have been made to P.W.10, is unbelievable.

7. Though attractive this argument is, it does not persuade us at all. In the extra judicial confession itself, the accused explained as to why he has chosen P.W.10 to confess. The said explanation is convincing. Therefore, we have no doubt that the extra judicial confession was made really by the accused to P.W.10. There is also no evidence to even infer that the said extra judicial confession was induced by coercion and undue influence etc. We find that the said extra judicial confession is voluntary. It is too well settled that if the extra judicial confession inspires the fullest confidence of the Court, even in the absence of any corroboration from any other independent sources on material particulars, the Court could act upon the said extra judicial confession and convict the accused. The only case where the extra judicial confession is shrouded with any doubt, then, as a rule of prudence, the Court should look for corroboration from some other independent sources on material particulars.

8. In the instant case, since we find that the extra judicial confession is voluntary and there is no doubt about the same, even in the absence of any corroboration, we are of the view that the same could be the sole basis for conviction. Fortunately, there is corroboration from the other sources also.

9. After the accused was produced before P.W.19, the appellant/accused made a voluntary confession, out of which, one of the stolen properties was recovered. This gives rise to a presumption, under Section 114 of the Indian Evidence Act, that he committed the theft of the said gold jewels. Of course, the

said presumption is rebuttable. But absolutely there is no evidence to rebut the said presumption. Thus, by means of the said presumption, the fact that the accused was the perpetrator of the crime stands confirmed. The recovery of the stolen property from the possession of the appellant by itself, though an independent circumstance, could form the basis for conviction, which fact also is corroborated by the extra judicial confession made by the accused to P.W.10. From these evidences, in our considered view, the prosecution has clearly proved that it was this appellant, who trespassed into the house and committed the murder of the deceased. The trial Court has however acquitted the accused from the charge under Section 414 IPC. Therefore, we are unable to interfere with the same. We are impelled to confirm the conviction for the offence under Sections 302 and 449 IPC.

10. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which also does not require any interference, at the hands of this Court. Thus, we do not find any merit at all in this appeal.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

1.The Inspector of Police,
Mettur Police Station,
Salem District

2.The II Additional District and Sessions Judge,
Salem

3.-do- Thro' The Principal District & Sessions Judge,
Salem

4. Judicial Magistrate No.I,
Mettur

5. -do- Thro'Chief Judicial Magistrate,
Salem.

6.The Superintendent,
Central Prison, Coimbatore.

7. District Collector,
Coimbatore.

8. Deputy General of Police,
Mylapore, Chennai.

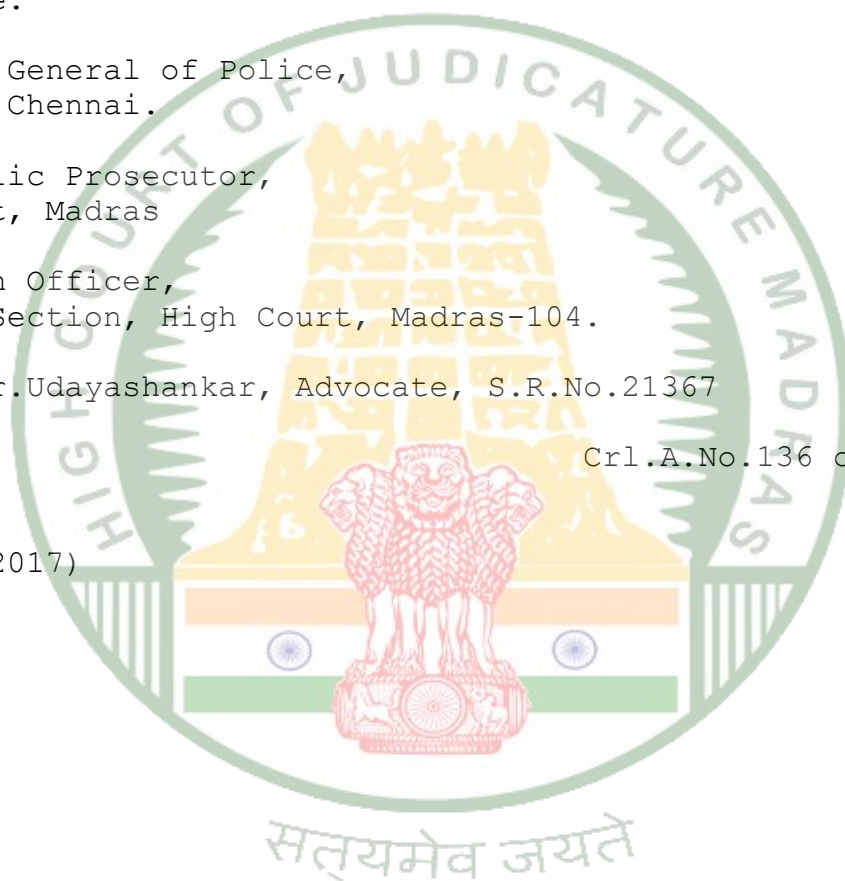
9.The Public Prosecutor,
High Court, Madras

10.Section Officer,
Criminal Section, High Court, Madras-104.

+lcc to Mr.Udayashankar, Advocate, S.R.No.21367

Cr1.A.No.136 of 2017

VGII(CO)
RS (24/04/2017)



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