

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved On 07.12.2017</i>	<i>Delivered on 13.12.2017</i>
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CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

CRL.A.No.245/2017 & CMP.No.6003/2017

Mani

..

Appellant / Sole Accused

Versus

State rep by
The Inspector of Police
Sulur Police Station
Coimbatore District.
[Crime No.11/2015]

..

Respondent / Complainant

Appeal filed under section 376[2] Cr.P.C., against the Judgment passed in SC.No.162/2016 on the file of the learned I Additional District and Sessions Judge, Coimbatore dated 18.04.2017 and to set aside the same.

For Appellant : Mr.B.Kumarasamy
for Mr.S.Gunalan

For Respondent : Mr.R.Ravichandran, GA [Crl.Side]

JUDGMENT

M.SATHYANARAYANAN, J.

The appellant is the sole accused in SC.No.164/2016 on the file of the Court of the learned I Additional District and Sessions Judge, Coimbatore and she stood charged and tried for the commission of the offence u/s.302 IPC and the Trial Court vide impugned judgment dated 18.04.2017, found her guilty of the commission of the offence u/s.302 IPC and sentenced her to undergo rigorous imprisonment for life, with fine of Rs.5000/- and in default, to undergo three months rigorous imprisonment. Challenging the said conviction and sentence, the appellant/accused has filed the present appeal.

2 The facts leading to the filing of this appeal, necessary for the disposal of this criminal appeal, are as follows:-

2.1 The appellant / accused, viz., **Tmt. Mani**, is the mother-in-law of the deceased, viz., **Birija**, who was the wife of P.W.1's elder son, viz., **Chandrasekar**. The son of the appellant / accused, viz., Chandrasekar and Birija [deceased] – a native of Kerala State,

were working together in Annapoorna Spinning Mill and they developed a love with each other and got married and out the said wedlock, they begot two children.

2.2 The elder son of the appellant / accused, viz., Chandrasekar – husband of the deceased Birija died in a road accident. Thereafter, the daughter-in-law of the appellant / accused, viz., Mrs.Birija started having acquaintance by talking to very many persons over mobile phone and the said attitude was not liked by the appellant / accused and her younger son **Dharmaraj**. About three months prior to the date of occurrence, Tmt.Birija, got Bank Loan and constructed a house and shifted there. The appellant / accused also wanted her son, viz., Dharmaraj, to marry her widowed daughter-in-law and it was refused by Dharmaraj on the ground that the local residents are speaking ill about her character.

2.3 On 02.12.2015, the appellant / accused met her daughter-in-law Birija at about 12.00 Noon at her house and after feeding the cattle in her house, went along with her son Dharmaraj to the house of Birija, where they found that Birija was lying with cut

injuries in a pool of blood near the kitchen and suspecting that somebody has committed the murder of her daughter-in-law, she proceeded to Sulur Police Station and lodged a complaint under **Ex.P.6** to **P.W.11-Mr.Palaniyandi** the **Sub-Inspector of Police** attached to the said Police Station, who on receipt of the same, has registered a case in Cr.No.838/2015 for the offence u/s.302 IPC at about 16.00 hours on 02.12.2015. The **Printed FIR** is marked as **Ex.P.11**. P.W.11 forwarded the original complaint [Ex.P.6] and the Printed FIR [Ex.P.11] to the jurisdictional Magistrate Court as well as to the higher officials.

2.4 P.W.13-Mr.Ramesh Kannan, was the Inspector of Police attached to the said Police Station at the relevant point of time. On receipt of the complaint under Ex.P.6 and FIR under Ex.P.11 at about 16.15 hours on 02.12.2015, he took up the investigation and proceeded to scene of crime at about 16.45 hours on the same day and inspected the said place upto 15.00 hours. He summoned the services of the Dog Squad and examined the persons present in the scene of crime, viz., **Nagarajan – P.W.2** and **Nandhakumar** and prepared the **Observation Mahazar** and the **Rough Sketch**, which are marked

as Exs.P.4 and 16 respectively. P.W.13 recovered **Blood-stained tiles [M.O.4]** and the **sample tiles [M.O.5]** between 18.00 hours and 18.30 hours under the cover of the **Mahazar [Ex.P.5]** in the presence of the said witnesses. P.W.13 sent the body for postmortem to find out the cause of death along with a requisition through **P.W.10-Jeyaraj, Head Constable** to the Coimbatore Medical College Hospital. P.W.13 examined P.Ws.1 and 2 and Nandhakumar and one Kannan and recorded their statement. He also conducted inquest on the dead body of the deceased Birija in the Mortuary on 03.12.2015 between 07.00 a.m. and 10.00 a.m. in the presence of the Panchayatdhars and other witnesses. The **Inquest Report** is marked as **Ex.P.16**. The **Accident Register** is marked with objection under **Ex.P.18**.

2.5 P.W.12-Dr.Jeyasingh, was working as the District Police Surgeon and Associate Professor and the Head of the Department attached to the Forensic Medicine, Coimbatore Medical College Hospital. He received the body of the deceased along with the requisition at about 1.25 p.m. on 03.12.2015 and commenced the postmortem at about 1.30 p.m. on the same day and noted the following features:-

“The following Ante-mortem injuries noted over the body:-

1 Transverse cut injury 13x3 cm bone deep noted over the neck extending from angle of mandible on right side, 3cm below to mastoid on left side. On dissection the wound cutting the underlying muscle, vessels, nerves and C-7 vertebra on back side.

2 Transversely oblique cut injury 7x4cmxbone deep noted over outer aspect of neck on left side. The medial ends is 3cm left to midline and the lateral end is 5cm below the left ear lobe. On dissection the wound cutting the underlying muscle, vessels, nerves and outer aspect of C-5 vertebra.

3 Transversely oblique cut injury 11x3cmxmuscled deep noted over mid and right occipital region, 2cm above the injury no.1.

4 Cut injury 1x0.5cmxmuscled deep continuous with tailing of 6cm noted over back of right shoulder.

5 Cut injury 3x1cmxmuscled deep noted over back of right shoulder continuous with 1cm tailing medially.

6 Cut injury 1x0.5cmxmuscled deep noted over front of right shoulder, 1cm below above mentioned injury.

7 Linear reddish abrasion 5x0.2cm noted over right clavicle region, 3x0.2cm noted over left side neck, 4cm above the left side clavicle.

Note:All the margins are sharp and filled with dried blood clots.

Other findings:-

- Peritoneal and Pleural cavities-empty
- Hyoid bone – intact.
- Heart-all chambers contains about few cc of fluid blood. Coronaries patent.
- Stomach contains about 30 ml of grey colour fluid, no specific smell, mucosa pale.
- Small intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale.
- Liver, Spleen, Kidney, Lungs and Brain-cut section pale.
- Urinary bladder – empty.
- Uterus : Normal in size cut section empty.
- Viscera preserved and sent for chemical analysis.
- Blood preserved for analysis.”

P.W.12 after concluding the Postmortem, has issued the **Postmortem Certificate** under **Ex.P.13** and opined that “*the deceased would appear to have died of shock and hemorrhage due to multiple injuries and the death would have occurred 6-12 hours prior to the body kept in cold storage room*” and also sent the Viscera for chemical analysis and on receipt of the **Chemical Analysis Report** under **Ex.P.14**, gave the **final opinion** under **Ex.P.15** that “ *the Viscera does not contain any poison.*”

2.6 P.W.13, the Investigating Officer in continuation of the investigation, had examined the Panchayatdars, viz., P.W.4, Tmt.Priya, Madhu, Murugadoss and Mani, S/o.Aaro and recorded their statements. He also seized the cloth worn by the deceased and also sent M.Os.4 and 5 under Form 95 to the Court of the Judicial Magistrate No.7, Coimbatore and also examined P.W.10. When P.W.13 was present in the Police Station, **P.W.1-Mrs.Shiyamala**, the **Village Administrative Officer** along with her **Menial, Palanichamy** came to the Police Station along with the defacto complainant – the appellant / accused along with the **complaint** as well as the statement given by

the defacto complainant – the appellant/accused to P.W.1, marked as **Ex.P.1 series**. P.w.13 enquired the appellant / accused and in the presence of P.W.1 and her Menial, she came forward to give a **confession statement** and the **admissible portion** of which is marked as **Ex.P.2**, pursuant to which, she took P.Ws.13 and 1 to the house of the deceased at about 1.00 p.m. on 02.12.2015 and produced the **blood-stained aruval [M.O.1] ; blood-stained saree [M.O.2] and blouse [M.O.3]** and P.W.13 recovered the same under the cover of the **Mahazar [Ex.P.3]**. Thereafter, the appellant / accused was taken back to the police station and she was explained about the reasons for arrest and after informing her relatives, had sent her to the Court of the Judicial Magistrate, No.7, for judicial custody. P.W.13 had examined P.W.1-VAO and her Menial Palanichamy, P.Ws.5 and 6 and recorded their statements u/s.161[3] Cr.P.C. and sent Ex.P.3 as well as the requisition under Form 95 to the said Court. P.W.13 on 07.12.2015 had examined the son of the appellant / accused namely Dharmaraj and P.W.8-Palanimurugan and recorded their statements. On 08.12.2015, P.W.13 sent the seized articles for chemical analysis to the Zonal Forensic Laboratory, Coimbatore, along with the requisition.

2.7 P.W.13, on transfer to the District Crime Branch, Coimbatore, has handed over the investigation to P.W.14.

2.8 P.W.14-Thiru.M.Shanmugam, the Inspector of Police attached to Sulur Police Station, took up the investigation on 23.04.2016 and had examined P.W.12, the doctor who conducted autopsy and also examined Mr.Vijayakumar, Scientific Assistant attached to Forensic Laboratory and recorded their statements. P.W.14 also examined the Head Clerk attached to the Judicial Magistrate Court No.7, Coimbatore and Grade-I Constable Mr.Alagar, attached to the said Police Station as well as Mr.Palaniyandi, the Sub-Inspector of Police, who registered the FIR based on the complaint under Ex.P.6 given by the appellant / accused.

2.9 P.W. 14, after completion of the investigation, has filed the charge sheet / final report against the appellant / accused for the offence u/s.302 IPC before the learned Judicial Magistrate, No.7, Coimbatore, who took it on file in PRC.No.8/2016 and issued summons to the accused and on her appearance, furnished her the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively

tried by the Sessions Court, committed the same to the Court of Principal Sessions Judge at Coimbatore, who took it on file in SC.No.162/2016 and the said Court, in turn, made over the case to the Court of I Additional District and Sessions Judge, Coimbatore, who took the same on file and on appearance of the appellant / accused, had framed the charge u/s.302 IPC and questioned her. The appellant / accused pleaded not guilty to the charge framed against her.

2.10 The prosecution, in order to sustain their case, examined P.Ws.1 to 14 and marked Exs.P.1 to 18 as well as M.Os.1 to 8.

2.11 The appellant/accused was questioned under section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against her in the evidences rendered by the prosecution and she denied it as false. The appellant/accused did not file any documents nor let in any oral evidence.

2.12 The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, has convicted

and sentenced the appellant/accused as stated above and hence, this appeal.

3 Mr.Kumarasamy, learned counsel representing Mr.S.Gunalan, learned counsel appearing for the appellant / accused would submit that the case of the prosecution rests upon circumstantial evidence and the following circumstances are projected by the prosecution to connect the appellant/accused for the commission of the offence of murder of her daughter-in-law, Tmt.Birija:-

[1] Motive [2] Last seen theory spoken to by P.W.5
[3] Extra-judicial confession given by the appellant to
P.W.1-Village Administrative Officer [4] Recovery of
incriminating materials / articles ; and [5] Scientific Evidence.

4 The learned counsel for the appellant / accused made the following submissions:-

- 1) The admitted case of the prosecution is that Tmt.Birija – daughter-in-law of the appellant / accused after becoming widow, used to talk with very many persons over phone and

her character and conduct was not good. The deceased Birija was having an affair with P.W.8 who is also a married man and he was a frequent visitor to her house, having very close intimacy and used to have physical relationship also. It was the appellant / accused who saw the dead body of her daughter-in-law, went to Suler Police Station, lodged the complaint under **Ex.P.6** to P.W.11 and even at the time of inquest, she was present along with her husband and son Dharmaraj and the services of sniffer dog were also summoned and by normal course of human conduct, if the accused who had committed the murder, would not have been present in the scene of crime. But, however the appellant / accused was present and her statement was also recorded by P.W.13 and only pursuant to the alleged extra-judicial confession given by the appellant / accused to P.W.1-VAO, she was implicated and the said version of the prosecution belies common sense and logic is wholly unbelievable.

- 2) P.W.5 was said to have seen the appellant / accused did not support the case of the prosecution and he was treated as a

hostile witness and even some portion of his evidence, assuming that it supports the case of the prosecution, it is nothing strange and unusual that the appellant / accused – mother-in-law of the deceased to visit the house of her daughter-in-law who had two children born out of the wedlock with the deceased son of the appellant/accused and therefore, her presence assuming has been proved by the prosecution, the same would not lead to any suspicion.

- 3) The recovery of incriminating articles pursuant to the admissible portion of the confession statement, marked as **Ex.P.2** in the presence of P.W.1, cannot be believed at all and even assuming that the prosecution has proved the recovery, the same would not *per se* lead to the inference that the appellant / accused has committed any offence.

- 4) Though the scientific evidence had proved that the deceased died on account of homicidal violence and that Ex.P.7-Biological Report would indicate that the relevant material objects were tainted with human blood, that may not be a sole

circumstance to connect the appellant / accused with the commission of the offence.

- 5) Lastly it is submitted by the learned counsel for the appellant / accused by drawing the attention of this Court to the evidence of P.W.5 - Ramesh ; P.W.8-paramour of the deceased and P.W.13 - Investigating Officer and would submit that a perfunctory investigation has been conducted by P.W.13 and though P.W.8 was very categorical that it was he who lodged the complaint at the earliest point of time telephonically, the case was not even entered in the General Diary maintained in the police station and though P.W.13 would admit that he had also developed suspicion against P.W.8 and examined him at least three times, he had failed to conduct a proper investigation, as to the role played by him, especially, when P.W.8 has admitted that he was having very close intimacy with the deceased despite the fact that he is a married man having a child.

5 In sum and substance, it is the submission of the learned counsel for the appellant /accused that the case of the prosecution bristles with inconsistencies and very many infirmities and it miserably failed to prove the case beyond any reasonable doubt and that there are very many vital links missing in the chain of circumstances projected by the prosecution and in any event, the Trial Court ought to have awarded benefit of doubt and acquitted the appellant / accused and hence, prays for setting aside the conviction and sentence and honourable acquittal of the appellant / accused.

6 *Per contra*, Mr.R.Ravichandran, learned Government Advocate [Crl.Side] would submit that the appellant / accused – mother-in-law of the deceased Birija started having suspicion about her character and conduct and under that pretext, went to the house of the deceased on 02.12.2015 and with the lethal weapon, viz., M.O.1-aruvai, committed the murder of the deceased on 02.12.2015. It is the further submission of the learned Government Advocate [Crl. Side] that the presence of the appellant / accused near the house of the deceased Birija in or about the time of the commission of the offence, has been proved through the testimony of P.W.5 and though he was treated as a

hostile witness, a portion of his evidence supports the case of the prosecution and there cannot be any impediment to take note of the same to sustain the case of the prosecution. The prosecution was also able to prove the motive through the testimony of P.W.8-paramour of the deceased Birija and the appellant / accused voluntarily came to the office of P.W.1-VAO and given the extra-judicial confession which was reduced into writing in the form of statement and P.W.1 along with her menial, came to Sulur Police Station and handed over the complaint with the recorded statement of the appellant / accused marked as Ex.P.1 series and also the appellant / accused voluntarily came forward to give a confession statement under Ex.P.2 which was recorded in the presence of P.W.1 and her menial, in pursuant to which, M.Os.1 to 3 were recovered under the cover of the Mahazar under Ex.P.3 and those articles were subjected to chemical analysis and as per Ex.P.8 those articles were tainted with human blood and thus, the prosecution was able to prove the chain of circumstances which unerringly point out to the guilt on the part of the appellant / accused. Lastly, it is submitted by the learned Government Advocate [Crl. Side] that the Trial Court, on a proper appreciation of the oral and documentary evidences has rightly reached the conclusion to convict the appellant / accused and imposed

the sentence and in the absence of any infirmity, the well considered findings rendered by the Trial Court may not be interfered with and prays for the dismissal of the appeal.

7 This Court paid its anxious consideration and best attention to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record as well as the original records and the impugned Judgment.

8 The following questions arise for consideration:-

[a] Whether the prosecution is able to prove the chain of circumstances connecting the appellant / accused with the commission of the offence of murder of her daughter-in-law?

[b] Whether the reasons assigned and the findings recorded by the Trial Court are sustainable?

Question Nos.1 & 2:-

9 The **motive** for the commission of the offence is projected by the prosecution is that the widowed daughter-in-law of the appellant / accused was talking with very many persons / strangers through mobile phone and in spite of advise, she did not mend her ways and fearing reputation and honour, the appellant / accused had committed the murder of her daughter-in-law. **P.W.4** is the mother of the deceased and in the **cross-examination** would state that since her daughter married the son of the appellant / accused against her wish, she did not like her and she was not having any contact with her daughter and when she attended the funeral ceremony of her son-in-law, her daughter was having two sons and she was staying with her mother-in-law – the appellant / accused. She did not state anything about the attitude exhibited by the appellant / accused towards her daughter-in-law on account of her alleged conversation through phone with very many persons. **P.W.8** was the paramour of the deceased Birija. **P.W.8** in his **chief-examination** would state that he is eking out his livelihood as a Call Taxi Driver and whenever the deceased Birija wants to go outside, she used to travel in the Call Taxi driven by him

and therefore, she started having acquaintance with him and that he was also having close and intimate relationship with the deceased and she was living separately in her house at Naickenpalayam. P.W.8 would further depose that the appellant / accused on an occasion, asked him why he is coming to the house of her daughter-in-law and he has also disclosed the relationship between him and the deceased Birija and the appellant / accused has castigated him as to the said conduct and asked him not to come to the house of her daughter-in-law and thereafter, P.W.8 stopped frequently going to the house of the deceased. P.W.8 would further depose that on the date of occurrence on 02.12.2015 at about 12.40 hours, he contacted the deceased Birija through telephone and she asked him about his whereabouts and asked him to come to her house about 2.00 p.m. with regard to their marriage. P.W.8 went to the house of the deceased at about 2.15 p.m. on 02.12.2015 and found that the deceased was found dead near the kitchen and he was flabbergasted and came to the Bypass Road and contacted the Police Helpline No.100 and informed the fact that someone was found murdered in Naickenpalayam and the person on the other side asked him about the area in which he belongs and having come to know that he was from Sular, asked him to contact Sular Police

Station and also gave the telephone number of the Sulur Police Station. P.W.8 contacted Sulur Police Station and the person attended the phone call got the address and disconnected the phone. P.W.8 would further state that he was frequently receiving phone call through his mobile phone and since he was in a panic state of mind, he did not attend the same and about 5.30 p.m. on 02.12.2015, he went to Sulur Police Station and he was asked to wait and at about 11.00 p.m., the Inspector of Police of the said Station came and examined P.W.8 till 3.00 a.m. and he was frequently summoned and examined and through newspaper, he became aware of the surrender of the appellant / accused before P.W.1.

10 P.W.8 in the **cross-examination** would state that he got married and out of the wedlock, he is having a child aged about 4 ½ years and he developed intimacy with the deceased Birija three years prior to her death. He would further depose that before he was examined on 07.12.2015, his statement was recorded by the police and on subsequent dates, though he was examined, his statements were not recorded. P.W.8 would further state that his mobile number is 9659775000 and the mobile number of the deceased is 9659745000

and the Airtel is the service provider and both the mobile numbers had add-on facility and he has also disclosed the said numbers to the police during the course of enquiry. The defence has also put some questions to him for the purpose of eliciting contradiction.

11 P.W.11, who on receipt of the complaint under Ex.P.6 received from the appellant / accused, registered FIR under Ex.P.11 and in the **cross-examination** would depose and that with regard to the complaint given by P.W.8 at about 2.15 p.m. on 02.12.2015, it was not brought to his knowledge and denied the suggestion that FIR was registered as per the advise of P.W.13-the Investigating Officer. **P.W.13**, the Investigating Officer who conducted the initial investigation, in his **cross-examination** would depose that P.W.11 on receipt of the FIR, has telephonically informed him about the registration of the case at about 4.00 p.m. on 02.12.2015 and spoken about the procedure to be followed in the event of telephonic information received by the Police Station.

12 P.W.13 would further depose that he started examining P.W.8 in the Police Station from 11.00 p.m. on 02.12.2015

and continued the examination till the early morning hours on the next day ; but he did not record his statement. He would further depose that when P.W.8 was examined, he told him that on seeing the dead body of the deceased, he contacted Sulur Police Station and he did not examined the Station Writer as to the recording of the said information in the Temporary Note Book. P.W.13 would concede that even in the FIR it is stated that the deceased used to speak with very many persons through mobile phone and her conduct and character is not good. P.W.13 would admit that though the services of the Finger Print Bureau was summoned and they also checked as to the availability of the any finger prints and but did not submit their report and he also did not peruse the Report of the Dog Squad and would further admit that when the Dog Squad came, the appellant / accused along with her husband and son Dharmaraj were also present in the scene of crime. P.W.13 would further state that though P.W.13 would admit that normally photographs of the body will be taken, it was not taken in the instant case, though he had given the information to the photographer and the photographs of the dead body was taken by the Constable Mani through his Cellphone and though it was developed and printouts were taken, he did not sent the said photographs to the Court. P.W.13

would also admit that P.W.4-mother of the deceased ; her sister, brother-in-law and neighbours would also state that the character and conduct of the deceased was not good. P.W.1 would further admit that he did not seize the cellphone of the deceased and he did not conduct investigation with regard to the call details and also no examined the two sons of the deceased, viz., Harisudan aged about 13 years and Dhanush aged about 11 years. He would further state that P.W.1-VAO in her statement, did not state that she had acquaintance of the appellant / accused. P.W.13 was also questioned with regard to the contradiction elicited through the testimony of P.W.8 and he would depose that during the course of investigation, P.W.8 did not state about the fact of the appellant / accused meeting him on an occasion and told him not to have relationship with her daughter-in-law.

13 It is to be remembered at this juncture that the case of the prosecution rests upon circumstantial evidence and for conviction based on circumstantial evidence, the following conditions must be fulfilled as enunciated by the Hon'ble Supreme Court in various decisions:-

[1] The circumstances from which the conclusion of the guilt is to be drawn should be fully established.

[2] The facts so established should be consistent not only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

[3] The circumstances should be of conclusive nature and tendency.

[4] They should exclude every possible hypothesis except the one to be proved.

[5] There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.

14 The prosecution also heavily placed reliance upon the **extra-judicial confession** given by the appellant / accused to **P.W.1- Mrs.Shyamala, Village Administrative Officer**, marked as **Ex.P.1 series**. It is well settled position of law that the extra-judicial

confession by itself, is a very weak type of evidence and when the Court taking into consideration the surrounding circumstances, entertains doubt about its voluntary nature, it will not be safe to rely upon it and even if the Court wants to place reliance upon the same, it would generally look for an independent reliable corroboration before doing so and only when such extra-judicial confession is corroborated by several other other proved circumstances, the Court can rely upon the same.

[State of Punjab Vs Bhajan Singh reported in **AIR 1975 SC 258 ; Pakkirisamy V. State** reported in **1997 [8] SCC 158** and **Balwinder Singh V. State** reported in **1996 SCC [Cri.] 59]**

15 This Court, keeping in mind the ratio laid down in the above cited decisions in respect of the circumstantial evidence and the extra-judicial confession, has carefully and independently applied its mind to the oral and documentary evidences and other materials relied upon by the prosecution.

16 It was the appellant / accused who saw the body of her daughter-in-law in her house, went to Suler Police Station and lodged the complaint under Ex.P.6 to P.W.11 who upon receipt of the

same, has registered the case in Cr.No.838/2015 u/s.302 IPC at about 16 00 hours on 02.12.2015. P.W.13 who commenced the investigation on receipt of the FIR, would admit that when he went to the scene of crime on the same day to conduct investigation, he saw the appellant / accused along with her husband and her son Dharmaraj and he has also recorded their statement. It is also an admitted fact that the services of the Dog Squad were summoned and when it came, the appellant / accused was very much present and she was not identified.

17 This Court can take judicial notice of the fact that a normal person who commits the heinous offence of murder, would not remain present in the place of crime ; but in the case on hand, not only the appellant / accused has lodged the complaint under Ex.P.6 ; but also was present in the scene of crime when P.W.13 conducted investigation and also gave her statement. The prosecution started becoming aware of the fact of the commission of the offence of murder by the appellant / accused only when she went to P.W.1-VAO to give extra-judicial confession statement on 06.12.2015, four days after the occurrence. P.W.13 would admit that P.W.1 did not state in her statement during the course of investigation about the acquaintance

with the appellant / accused. It is not even the case of the prosecution that the appellant / accused, fearing third degree methods at the hands of the police at the time of arrest, had voluntarily went to P.W.1 and gave a statement which was recorded by P.W.13. It is well settled position of law that the extra-judicial confession is a very weak piece of evidence and unless the credence of the same is established in the form of an independent reliable sources, it cannot be acted upon and always it is the duty cast upon the Court to look for corroboration from the other available evidence on record. However, in the considered opinion of the Court, no other corroborative evidence is available for the following reasons:-

[a] P.W.5 was projected by the prosecution to speak about the last seen theory and he was treated as a hostile witness and he was cross-examined by the prosecution with the permission of the Court and he would depose that he did not state that the appellant / accused was coming from the house of the deceased at about 12.00 Noon on 02.12.2015 and within half-an-hour thereafter, she once again came to the house of the deceased.

[b] In the cross-examination done on behalf of the appellant /

accused, he denied the suggestion that he did see the appellant / accused at about 10.30 a.m. and 11.00 a.m. near the house of the deceased and he has spoken falsely. It is also to be noted at this juncture that even for the sake of argument, the appellant / accused was found near the house of the deceased, it cannot lead to the suspicion for the reason, being the mother-in-law of the deceased, she can visit the house of her daughter-in-law / deceased and on that pretext, a suspicion cannot be developed.

[c] The crucial witness examined on behalf of the prosecution is P.W.8-paramour of the deceased Birija and he would state that he was having close intimacy and relationship with the deceased including physical relationship despite the fact that he is a married man, having a child and he was contacted by the deceased through mobile phone at about 12.40 p.m. and she asked him to come to her house at about 2.00 p.m. to discuss about the marriage and when he reached the house of the deceased and went inside at about 02.15 p.m., he found the deceased was found murdered and lying in a pool of blood and he immediately contacted the Police Helpline by dialing 100 and he was asked to contact Suler Police Station and he told about the details and

at about 17.30 hours on the same day, he went to the Police Station and after P.W.13 came to the Police Station, he was examined between 11.00 p.m. on 02.12.2015 upto 3.00 a.m. on the next day and he was repeatedly examined. In the cross-examination, he would state that when he was examined by the police on 07.12.2015, his statement was recorded and previously he was examined by the police on 02.12.2015 ; 03.12.2015 ; 04.12.2015 and 05.12.2015 and his statements were not recorded and he has also disclosed his mobile number as well as the number of the deceased. P.W.13 would admit that he did not done any investigation as to the call details of the said mobile numbers. P.W.13 would further admit that the services of the Finger Print Experts were also summoned and they also took the finger prints and however, they did not submit their report and with regard to the summoning of Dog Squad and the investigation conducted on that basis, he did not produce any materials. He also made a crucial administrative that P.W.8, during the course of his investigation, he did not state about the appellant / accused meeting him on an occasion and asked about the relationship between him and her daughter-in-law ad he told her about the relationship and upon hearing the same, she had castigated him not have such a relationship. P.W.8 did not state so in his statement at the

time of examination by the appellant / accused during the course of investigation. However, in the course of evidence before the Court, he made material improvements and it was also elicited from him and when a specific question was put to P.W.13, he has deposed that P.W.8 did not state so. In the considered opinion of the Court, it is a material improvement and his testimony was relied upon by the prosecution to prove the motive and in the light of the same, the motive aspect has not been proved by the prosecution.

18 P.W.13 would also admit during the course of investigation that he became aware that very many persons examined, had also spoken about the character and conduct of the deceased. It is the categorical evidence of P.W.8 that immediately on seeing the dead body of the deceased at about 2.15 p.m. on 02.12.2015, he contacted Police Helpline and he was in turn asked to contact Sulur Police Station and accordingly, he contact Sulur Police Station and informed the fact of murder and the person who attended the phone call, noted the address. However, the said fact has not been noted down in the General Diary / Temporary Note Book, maintained in the Police Station

and it was also admitted by P.W.13. Thus, the earliest information given by P.W.8 was not acted by the Sulur Police Station and only on the basis of the complaint given by the appellant / accused at about 4.00 p.m. on the same day under Ex.P.6 and FIR under Ex.P.11 came to be registered and the investigation commenced.

19 In the considered opinion of the Court, the prosecution has built the case primarily upon the extra-judicial confession under Ex.P.1 series coupled with the testimony of P.W.8 and the testimonies of P.Ws.1 and 8 bristle with glaring inconsistencies and infirmities and therefore, it is not safe to rely upon their evidence to sustain the conviction of the appellant / accused. No doubt, the recovery was also effected in pursuant to the admissible portion of the confession statement of the appellant / accused under Ex.P.2 and the autopsy done by P.W.12 also confirm the fact that the deceased died on account of homicidal violence and the scientific evidence has also proved that M.O.1-arival and M.Os.2 and 3 – cloth were tainted with human blood. However, mere recovery and incriminating circumstances coupled with the scientific proof, would not *per se* lead to the inference

/ conclusion that the appellant / accused has committed has committed the murder of her daughter-in-law.

20 In the considered opinion of the Court, the prosecution has miserably failed to prove the chain of circumstances connecting the appellant / accused that the commission of the offence of the murder of her daughter-in-law and very many vital links are missing in the said chain of circumstances. Therefore, the benefit of doubt also enure in favour of the appellant / accused and the reasons and findings rendered by the Trial Court vide impugned judgment warrants interference in the light of the aforesaid discussion and findings.

Thus, Questions No.1 and 2 are answered accordingly.

21 In the result, the **criminal appeal** is **allowed** and the **conviction and sentence** for the offence u/s.302 IPC awarded by the learned I Additional District and Sessions Judge, Coimbatore in SC.No.162/2016 dated 18.04.2017 are hereby **set aside**. The appellant / accused is acquitted of the charge levelled against her. Fine

amount, if any paid, shall be refunded to the appellant / accused.

22 It is reported that the appellant / accused is in jail.

Hence, she is ordered to be released forthwith unless her presence / custody / detention is required in any other case / proceedings. Consequently, the connected miscellaneous petition is closed.

[M.S.N., J] [S.P.I., J].

13th December 2017

Internet: Yes

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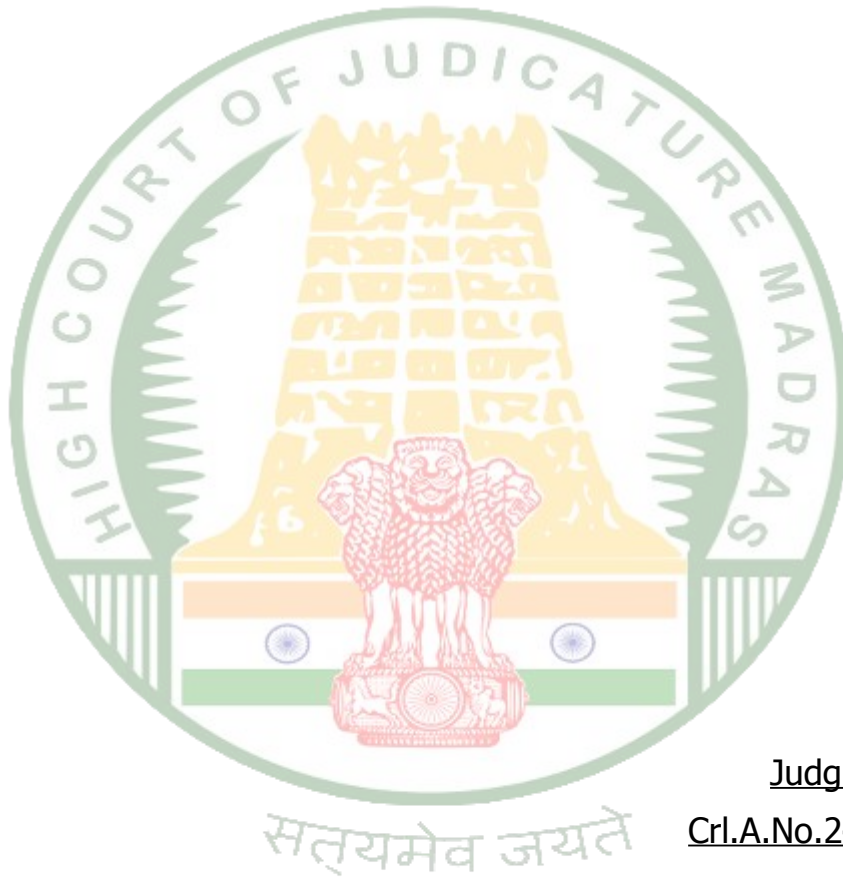
- 1.The I Additional District and Sessions Judge
Coimbatore.
- 2.The Principal District and Sessions Judge
Coimbatore.
- 3.The Judicial Magistrate No.7
Coimbatore.
- 4.The Chief Judicial Magistrate
Coimbatore.
- 5.The Inspector of Police
Sulur Police Station
Coimbatore.
- 6.The Superintendent
Central Prison, Coimbatore.
- 7.The District Collector
Coimbatore.
- 8.The Director General of Police
Mylapore.
- 9.The Public Prosecutor
High Court, Chennai.



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M.SATHYANARAYANAN, J.,
AND
SATRUGHANA PUJAHARI, J.,

AP



Judgment in
Crl.A.No.245/2017

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13.12.2017