

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15..02..2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Criminal Appeal No.44 of 2017
and
Crl.M.P.No.1110 of 2017

A.Kavitha

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
Namakkal Police Station,
Namakkal District.
[Crime No.2018 of 2010]

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C against the judgement of conviction and sentence passed by the learned Principal Sessions Judge, Namakkal, in S.C.No.85 of 2011 dated 22.11.2016.

For Appellant

: Mr.V.Rajmohan
Mr.K.Sukumaran

for

For Respondent

: Mr.P.Govindarajan, APP

JUDGEMENT

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

The appellant is the sole accused in S.C.No.85 of 2011 on the file of the learned Principal Sessions Judge, Namakkal. She stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 22.11.2016 convicted her for offence under Section 302 of IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one year. Challenging the above said conviction and sentence, she is before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- The accused is the wife of the deceased Mr. Alagarsamy. The marriage between the accused and the deceased was celebrated 15 years before the occurrence and through the said wedlock, a male and a female children were born to them. For quite some time, the deceased had gone abroad on account of his job. A new house was constructed at A.S. Pettai in Namakkal. The deceased thereafter returned India and lived with the accused. Thereafter, there was a change in his attitude. He became a drunkard. He used to quarrel and manhandle the accused and her children frequently in drunken state. The accused fed up with the same. Therefore, she decided to to away the deceased. This is stated to be the motive for the occurrence. It is alleged that in the night intervening 25.10.2010 and 26.10.2010 the accused was in the house and her son was suffering from fever on that date. She gave medicines to him and the child was thus sleeping under medication. The deceased came late to the house fully drunk and in an inebriated condition, he attacked the deceased. Then, he attacked his son also who was suffering from fever. The accused, however, managed to escape making the deceased to sleep. When the accused was so sleeping, it is alleged that the accused took out a grinding stone and dropped the same on the head of the deceased. The deceased died on the spot. It is alleged that then she informed the same to her father. Her father came to the house of the accused and after having seen the dead body, he took the accused to P.W.1, the Village Administrative Officer, at this office.

3. It is alleged that on 26.10.2010 at 06.00 a.m. the accused made a voluntary confession to P.W.1 in which she narrated the entire occurrence. P.W.1 reduced the same into writing (Ex.P.1). Then, he took the accused and produced her before the police along with Ex.P.1 and his special report (Ex.P.2).

4. On the report given by P.W.1, the Village Administrative Officer, P.W.14, the then Sub Inspector of Police, registered a case in Crime No.2018 of 2010 against the accused under Section 302 of IPC at 08.45 a.m. on 26.10.2010. Ex.P.3 is the FIR. He forward both the Ex.P.1 and Ex.P.3 to the court which were received by the learned jurisdictional Magistrate at 10.30 a.m. on 26.10.2010. In the mean time, he handed over the case diary to the Inspector of Police for investigation.

5. P.W.15, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence. He took the accused also along with him. He prepared an observation mahazar and a rough sketch at the place of occurrence. He also recovered the blood stained material objects, on being

identified by the accused, from the place of occurrence. They were all recovered under a mahazar. Then, he produced the accused before the Tahsildar in whose presence the accused made a voluntary confession. That was recorded by means of a videograph. Then, P.W.15 forwarded the accused to the court for judicial remand. He also forwarded the material objects to court. At his request, the material objects were sent to the forensic science laboratory for chemical examination.

6. In the mean time, after having conducted inquest on the body of the deceased, P.W.15 forwarded the dead body to the hospital for postmortem. P.W.12, Dr.V.Kalaiselvam, who conducted autopsy on the body of the deceased at 04.05 p.m. on 26.10.2010, found the following injuries on the dead body:-

"External Examinations:- (1) Lacerated wound 10 x 2 cm x bone depth in left fronto temporal region (starting from 6 cm above left eye to 6 cm above left ear.
(2) Irregular 'V' shaped laceration 4 x 2 cm x bone depth in left supra orbital region.
(3) Deformity of left maxillary region.
(4) Bleeding from both nostrils present.
(5) Brown colour fluid oozed from mouth
(6) Facial edema present on left side .
(7) Transverse lacerated wound 8 x 3 x 3 cm at about 2 cm below the chin.
(8) Impacted abrasion 6 x 3 cm below manubrium sternum.

Internal Examinations: Head & Neck: Linear fracture 10 cm in length on the left fronto temporal region with Hemorrhagic contusion of brain underneath. Irregular fracture involving the left orbital bone and left maxilla (multiple segment). Irregular fracture of nasal bone.

Dissection of Neck: Hemorrhage present in the sub cutaneous plane. Crush injury involving the thyroid cartilage and upper tracheal rings. Blood clots ween in tracheal air passage. Surrounding muscle tissue contused. Hyoid bone intact. Thoracic cavity: oblique fracture in the sternum - 5 cm from manubrium sternum. Fracture 3rd, 4th, 5th, 6th and 7th ribs on ride side. Irregular laceration 5 x 4 x 3 cm in right lung with about 500 ml of blood in right thoracic cavity. Left lung and heard intact and pale. Abdominal cavity: About 500 ml of hemorrhagic fluid present. Irregular laceration 5 x 4 x 2 cm in right lobe of liver. Stomach: 100 gram of

partially digested food particles - No specific smell; Spleen and both kidneys intact and pale. Intestine distended with gas. Bladder empty. No fracture in extremities."

He opined that the injuries found on the dead body could have been caused by a stone like M.Os.5 and 6 grinding stones. He further opined that the death of the deceased was due to shock and hemorrhage as a result of multiple injuries found on the dead body.

7. After the post-mortem was over, P.W.15 recovered the blood stained dress materials from the body of the deceased and forwarded the same also to the court. Then, on completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 17 documents and 9 material objects were marked.

9. Out of the said witnesses, P.W.1, the Village Administrative Officer, has stated about the extra judicial confession allegedly given by the accused at 06.30 a.m. on 26.10.2010. According to him, the accused came along with her father to make an extra judicial confession. He has further spoken about the report submitted by him to the police and also the subsequent preparation of the observation mahazar and the rough sketch prepared by the police at the place of occurrence and also the recovery of material objects. P.W.2 is the mother of the deceased. She has stated about the frequent quarrels between the accused and the deceased. She has not stated anything about the occurrence. P.W.3 is a close relative of the deceased. She has also not stated anything about the occurrence. She has spoken only about the frequent quarrels between the accused and the deceased.

10. P.W.4 is an important witness for the prosecution. He was the Head of the Sniffer Dog Squad at Namakkal District. On 26.10.2010 at 11.00 a.m., at the request made by the Investigating Officer in this case, he went to the place of occurrence along with the police sniffer dog. But, the dog could not get any clue to make a break through in the detection of the crime. P.W.5 another neighbour of the deceased. He has also spoken only about the motive. P.W.6 has stated that he heard only about the occurrence. P.W.7 is yet another neighbour of the deceased. He has stated that on the date of occurrence, the son of the deceased stayed at her house since the deceased was fully drunk. P.W.8 has spoken about the confession made by the accused to the police and the consequential recovery of material objects

from the place of occurrence. P.W.9 has turned hostile. He has not supported the case of the prosecution in any manner. He is the son of the accused and the deceased. P.W.10, the Tahsildar of Namakkal Village has stated that the accused was produced before him on 26.10.2010 and she made a confession to him between 05.45 p.m. and 06.15 p.m. and he videographed the same. The compact disc is M.O.9. P.W.11, the constable, has stated that he took the dead body and handed over the same to the doctor for postmortem.

11. P.W.12 has spoken about the postmortem conducted and his final opinion regarding the cause of death of the deceased. P.W.13 another constable has stated that the Sub Inspector of Police handed over to him the FIR at 10.00 a.m. on 26.10.2010 and he handed over the same to the learned Magistrate at 10.30 a.m. on the same day. P.W.14 has spoken about the registration of the case. P.W.15 has spoken about the investigation done by him in this case and the filing of charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. she denied the same as false. However, she did not choose to examine any witness nor did she mark any document on her side. Her defence was a total denial.

13. Having considered all the above, the trial court convicted the appellant/accused for offence under section 302 of IPC and sentenced her accordingly as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the accused is now before this Court with the present criminal appeal.

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

15. In this case, as we have already narrated, there is no controversy over the fact that the dead body of the deceased was found in the house. To prove that the accused was in the house on the crucial night and she dropped the grinding stone on the head of the deceased and killed him, the prosecution relies only on Ex.P1-Extra Judicial Confession said to have been given by the accused at 06.30 a.m. on 26.10.2010 at the Office of P.W.1.

16. The learned counsel for the appellant/accused would submit that the accused would not have made such confession at all and this has been created for the purpose of the case. We find force in the said argument. P.W.13, the Head Constable,

Namakkal Police Station, has stated that Ex.P.1 along with Ex.P.2 was handed over to him only at 10.00 a.m. on 26.10.2010 which he handed over to the learned Magistrate at 10.30 a.m. Had it been true that the extra judicial confession given by the accused at 06.30 a.m. and had it been true that the FIR was registered at 08.45 a.m. it should be explained to the court as to why the FIR was handed over to P.W.13 only at 10.00 a.m. on 26.10.2010. This creates an initial doubt in the case of the prosecution.

17. Next comes the evidence of P.W.4, the Head of the Sniffer Dog Squad. He has stated that he received a requisition to take sniffer dog to the place of occurrence in the morning on 26.10.2010 and accordingly he visited the spot. He took the dog to the place of occurrence at 11.00 a.m. but the dog could not make any further progress. Thus, this has happened before 11.00 a.m. Had it been true that at 08.45 a.m. itself the FIR was registered against the accused, it is not explained to the court as to why the sniffer dog was requisitioned and why it was brought to the place of occurrence before 11.00 a.m. It is the case of the prosecution that the accused was produced before the police at 08.45 a.m. and the accused was also brought to the place of occurrence by the Inspector of Police. When that be so, it is not explained as to why sniffer dog was also brought to the police station. Apart from that, P.W.4 has given a report under Ex.P.7 to the police. A perusal of the same would go to show that though there is a column in Ex.P.7 to mention about the time of receipt of the requisition, the date and time of departure of the dog, the date and time of arrival at the place of occurrence and the property recovered. There is no entry made as against these column in Ex.P.7. P.W.14 was also cross examined in respect of the same. He has got no explanation at all. It is contended by the learned counsel for the appellant/accused that the sniffer dog was brought to the scene of occurrence early in the morning between 06.00 a.m. and 07.00 a.m. because the assailant was not known. Since the assailant was not known till 10.00 a.m., the confession allegedly given by the accused was prepared and she has been implicated. This argument of the learned counsel for the appellant/accused cannot be fully rejected. We find force in the same. The learned Additional Public Prosecutor is not in a position to explain as to why in Ex.P.7, the date and time of receipt of requisition and the date and time of arrival of sniffer dog at the scene of occurrence were omitted to have been mentioned. In the absence of any such explanation, the doubt raised by the learned counsel for the appellant/accused that the police sniffer dog could have been brought to the place of occurrence around 07.00 a.m. cannot be obviated. As we have already pointed out, had it been true that the assailant was already known, it is not understandable as to why the sniffer dog was brought to the place of

occurrence. These doubts would create doubt in the case of the prosecution that the accused appeared before P.W.1 at 06.30 a.m. and made confession. It is stated that the father of the accused accompanied her to the Office of the Village Administrative Officer, but, he has not been examined. The Village Administrative Officer was not previously known to the accused and she had no acquaintance at all. When that be so, it is doubtful as to whether the accused would have chosen a total stranger to make such a confession. At any rate, in view of the above discussion, we find that Ex.P.1 is a doubtful document.

18. It is too well-settled by a catena of judgements of the Hon'ble Supreme Court that extra judicial confession by itself could be the sole foundation for conviction, provided it inspires the fullest confidence of the court. It is also the settled law that if there are doubts regarding extra judicial confession, as a rule of caution, the court should look forward for corroboration from any independent sources. But, in the instant case, absolutely, there is no evidence to corroborate Ex.P.1. Above all, the son of the deceased has turned hostile and there is no evidence at all on record to show that the accused was in the house on the crucial night. Thus, the accused cannot be expected to explain as to how the deceased sustained injuries and died. Her defence is that she came to know about the death of her husband only on the next day as she was not at home. Having regard to these facts and circumstances, we are of the view that the prosecution has failed to prove the case against the accused beyond any reasonable doubt. Though the prosecution has succeeded in establishing suspicion against the accused, such suspicion however strong, it may be, the same cannot take the place of proof. In view of the same, we hold that the accused is entitled for acquittal.

19. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant by the trial court are set aside and she is acquitted of the charge. Fine amount already paid, if any, shall be refunded to her. The appellant/accused shall be released forthwith unless and otherwise her presence is required in connection with any other case. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Principal Sessions Judge,
Namakkal,Namakkal District.

2.The Inspector of Police,
Namakkal Police Station, Namakkal
District.

3.The Public Prosecutor, High Court, Chennai.

4. The Judicial Magistrate, Rasipuram.

5. -do- Through The Chief Judicial Magistrate, Namakkal.

6. The District collector, Namakkal.

7. The Director General of Police, Mylapore, Chennai.

8. The Superintendent, Special Women Prison, Vellore.

+ 1 cc to Mr.K. Sukumaran, Advocate Sr.10398

Cr1.A.No.44 of 2017

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