

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20..02..2017

Coram:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.46 of 2017

Manikandan

...Appellant/Accused

-Versus-

State Rep. by its
Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
[Crime No.658 of 2015]

... Respondent/complainant

Appeal filed under Section 374(2) of Cr.P.C. challenging the judgement of conviction and sentence dated 24.10.2016 passed by the learned Sessions Judge, Fast Track (Mahila) Court, Krishnagiri, Krishnagiri District in S.C.No.130 of 2015.

For Appellant : Mr.P.Pugalenthiraj

For Respondent : Mr.P.Govindarajan, APP

JUDGEMENT

(Judgement of the Court was delivered
by DR.ANITA SUMANTH, J.)

This Criminal Appeal is filed challenging the judgement of the Sessions Judge, Fast Track Mahila Court, Krishnagiri, in S.C.No.130 of 2015 dated 24.10.2016, convicting the sole accused of murder under Section 302 of IPC and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for six months.

2. The case of the prosecution in brief is as follows: The accused was residing at Balaji Nagar, Savalur Koot Road, Kaveripattinam, Krishnagiri Taluk. He used to go to Ayothipattinam village for tiles laying work. The deceased in this case was one Mrs.Palaniammal. She was already married, but,

got separated from her husband. She also came for the same work at Ayothipattinam where the accused was working. In due course, the accused expressed his desire to marry the deceased. After six months thereafter, the accused married the deceased at Karrukkanchavadi Murugan Temple in Kaveripattinam. Thereafter, the accused and the deceased were living together as husband and wife at Balaji Nagar.

3. The accused was owning a decorated ox [boom boom ox]. The accused is also a cultural artist who used to take boom boom cow around villages and perform the said art to earn his livelihood. The deceased also used to go with him for performing the said art, but, in due course, the accused came to know that the deceased was carrying illicit relationship with many men. Out of suspicion, the accused decided to do away with the deceased. After the illicit relationship came to the knowledge, the deceased refused to share bed with the accused. This further aggravated the motive for the accused to kill the deceased. On the night intervening 17.08.2015 and 18.08.2015, the accused and the deceased alone were in their house.

4. It is alleged that around 04.00 a.m. on 18.08.2015, out of the above motive, the accused pressed a pillow against the face of the deceased who was sleeping and caused suffocation which resulted in her death. Early in the morning, the accused pretended as though the deceased had died unexpectedly due to natural cause. He went to the houses of his neighbours early in the morning and informed them that the deceased was found dead. The neighbours came and found the deceased dead. They informed the family members of the deceased about the occurrence. On receiving such information, P.W.1, the mother and P.W.2, the uncle of the deceased came to the house of the accused. They were all made to believe that it was a natural death. As per the custom, they decided to wash the body and keep it in the dead body freezer box for the relatives to pay their last respects to the deceased. When the body was washed and kept in the freezer box, through nose blood started oozing out. There were also scratch marks found on the neck of the deceased. This raised a suspicion in the mind of the people. It is alleged that when they inquired repeatedly, though initially, the accused disowned any knowledge about the cause for the death of the deceased, later on, he confessed to them that he pressed a pillow against the face of the deceased out of anger which resulted in her death.

5. P.W.4, a neighbour to whom the above statement was made by the accused, informed the same to P.W.1. Thereafter, P.W.1, went to the police station and made a complaint at 11.00 p.m. on 19.08.2014. On knowing that P.W.1 proceeding to the police

station to make a complaint, the accused fled away from the scene of occurrence. On the basis of the said complaint, a case in Crime No.658 of 2015 was registered under Section 302 of IPC by the Sub Inspector of Police (P.W.15). Ex.P.1 is the complaint and Ex.P.8 is the FIR. Then, he forwarded both the complaint and the FIR to the court which were received by the jurisdictional Magistrate at 07.30 a.m. on 20.08.2008. In the mean time, he handed over the case diary to the Inspector of Police for investigation.

6. P.W.16 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch. He conducted inquest on the body of the deceased and forwarded the same to the hospital for postmortem.

7. P.W.14 Dr.R.Hariharam, conducted autopsy on the body of the deceased at 11.50 a.m. on 20.08.2015. He found the following:-

"Rigor mortis present moderately built lady. Eys partially closed. Bleeding was found in the nose, mouth closed, tongue with in. Teeth full. Ears normal. Face congested and in dark blackish colour. Lips are in dark colour. On examination carniya hemorrhage seen. External genitalia normal. Spleen and anus found open. Motion passed.

External Injuries:

- (1) Swelling at occipital - 4 x 4 cm
- (2) Abrasion at chin - 3 x 1/4 cm - just like nail mark - dark blackish
- (3) At left side of chest - dark blackish contusion 6 x 3 c.m. On examination fracture found in 4, 5 & 6 Ribs.

Internal Injury: Skull bone intact. Blood clots found on external skull over and occipital lobe. Brain congested. Hyoid bone intact. Left side lungs congested and blood clots found in left chamber. Right side lungs congested. Heart chambers enlarged with blood clots. Stomach empty. Bladder empty. Uterus normal in size."

He opined that the death of the deceased was due to asphyxia due to suffocation.

8. P.W.15, during the course of investigation, recovered cloths found on the body of the deceased. When the investigation was in progress, it is alleged that the accused on his own appeared before P.W.7, the Village Administrative Officer, on 20.08.2015 at 07.00 p.m. and made a voluntary confession which

he reduced into writing. Then, along with a report and the confession, P.W.7 produced the accused before P.W.16 at 09.00 p.m. on 20.08.2015. P.W.16 arrested the accused. While in custody, he made a voluntary confession in which he disclosed the place where he had hidden a pillow. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the same. P.W.16 recovered the same. The investigation was thereafter continued by his successor (P.W.17). He examined many more witnesses. At his request, the material objects were sent to the Forensic Sciences Laboratory for chemical examination. He collected the chemical analysis report. On completing the investigation, P.W.17 laid charge sheet against the accused.

9. 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 17 witnesses were examined, 12 documents and 9 material objects were marked.

10. Out of the said witnesses, P.W.1, the mother and P.W.2, the uncle of the deceased have stated that on getting information that the deceased was no more, when they came to the house, they found the dead body of the deceased. It was kept in the dead body freezer box. P.W.4 told them that there were scratch marks on the neck and the blood was oozing out through the nose. He also told that the accused confessed to the guilt.

11. P.Ws.3 and 4, neighbours have stated that they found scratches on the neck of the deceased. P.W.1, another neighbour, has also stated so. He has further stated that the accused confessed to them. P.W.6, yet another relative, has stated that he joined P.Ws.4 and 5 and inquired the accused and at that time, the accused told that he killed the deceased by pressing a pillow against her face. P.W.7 has spoken about the extra judicial confession made to the police besides consequential recovery of the material object from his possession.

12. P.Ws.8 to 13, the neighbors, have stated that they were present when the accused confessed to P.W.4. P.W.14, the doctor, has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.15 has spoken about the registration of the case. P.W.16 and P.W.17 have spoken about the investigation done by them. P.W.17 has further spoken about the filing of charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as

false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

14. Having considered all the above, the trial court convicted the appellant/accused for the charge of murder and sentenced him thereafter 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.

15. 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.

16. As we have already narrated, the only piece of evidence upon which the trial court has made reliance to convict the accused is the extra judicial confession made by the accused to P.W.7 on 20.08.2015 at 07.00 p.m. The learned counsel for the appellant/accused would point out that the accused was found in the police station at 11.00 a.m. on 21.08.2015. The learned counsel has referred to the evidence of P.W.5 wherein he has categorically stated that at 11.00 a.m. on 21.08.2015, when he went to the police station there were 50 people in the police station who belonged to the occurrence village. At 11.00 a.m. the accused was arrested and he was kept in the custody. P.W.4 has also stated so. P.W.1 has stated that when he went to the police station, the accused was kept in the police station in custody. P.W.2 has stated that on 21.08.2015 at 11.00 a.m. the accused was in the custody at the police station. From these evidences, it is crystal clear that the accused was all along in the custody of the police and thus, it is highly unbelievable that the accused had gone to P.W.1, the Village Administrative Officer, at 07.00 p.m. on 20.08.2015 and made an extra judicial confession. If this extra judicial confession is rejected, we find no other evidence against the accused. The oral evidence of the prosecution witnesses that the accused made an oral extra judicial confession to them is also doubtful to be believed. Assuming that the said extra judicial confession could be considered, this being, a weak piece of evidence, it would not be safe to act upon the same for want of corroboration from any other independent sources on material particulars. Thus, we find no material against the accused to sustain the conviction and so the accused is entitled for acquittal.

17. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the trial court are hereby set aside. The appellant/accused is

acquitted of the charge and he is directed to be set at liberty forthwith, unless his presence is required in connection with any other case. Fine amount already paid, if any, shall be refunded. The bail bond executed by the appellant/accused shall stand terminated.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge, Fast Track (Mahila) Court, Krishnagiri, Krishnagiri District.
 - 2.-do- Thro, The Principal Sessions Judge, Krishnagiri district.
 - 3.The Judicial Magistrate-I, Krishnagiri District.
 4. -do- Thro' The Chief Judicial Magistrate, Krishnagiri District.
 - 5.The Inspector of Police, Kaveripattinam Police Station, Krishnagiri District.
 6. The Superintendent, Central Prison, Vellore.
 7. The District Collector, Krishnagiri District.
 8. The Director General of Police, Mylapore, Chennai-4.
 - 9.The Public Prosecutor, High Court, Chennai.
- +1cc to Mr.Puglenth, Advocate, S.R.No.10899

Cr1.A.No.46 of 2017

NRI (CO)
RS (02/05/2017)