

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM:

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

Criminal Appeal Nos.79 & 116 of 2017

Chinna @ Chinnasamy (A1) ... Appellant in Crl.A.No.79 /2017
Malathi (A2) ... Appellant in Crl.A.No.116 /2017

- Vs -

State rep by Inspector of Police,
Bungalow Pudur Police Station,
Erode District.
(Cr.No.254 of 2014) ... Respondent in both the
appeals

Prayer in both the appeals:- Appeals filed under Section 374 of
the Code of Criminal Procedure against the judgment passed by
the learned III Additional District and Sessions Judge,
Gobichettipalayam in S.C.No.77 of 2015 dated 23.11.2016.

For Appellant : Mr.N.Manokaran
in Crl.A.No.79/2017
For Appellant : Mr.S.Kaithamalai Kumaran
in Crl.A.No.116/2017
For Respondent : Mr.P.Govindaraj
Additional Public Prosecutor

C O M M O N J U D G M E N T

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

The appellant in Crl.A.No.79 of 2017 is the first accused
and the appellant in Crl.A.No.116 of 2017 is the second accused
in S.C.No.77 of 2015 on the file of the learned III Additional
District and Sessions Judge, Gobichettipalayam. The first
accused stood charged for offence under Section 302 I.P.C. and
the second accused stood charged for the offence under Section
302 r/w 34 I.P.C. By judgment dated 23.11.2016, the trial Court
convicted both the accused and sentenced the first accused to
undergo imprisonment for life and to pay a fine of Rs.5,000/- in
default to undergo simple imprisonment for six months for the

offence under Section 302 I.P.C. The second accused was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months for the offence under Section 302 r/w 34 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

2. The case of the prosecution in brief is as follows:

2.1. The deceased in this case was one Mr. Ravichandran. He was the husband of the second accused. They were living together in their house at Sabarish Garden at Kanakampalayam village. They have a son and a daughter. The first accused was their neighbour. It is alleged that the first accused had developed illicit intimacy with the second accused. This came to the knowledge of the deceased. He questioned the second accused about the same. This has resulted in frequent quarrels between them.

2.2. On 10.10.2014, around 05.00 p.m. the second accused had gone to a nearby channel for washing clothes. At that time, the first accused came there and they were talking together. This was noticed by the deceased. He shouted at the second accused as well as at the first accused. This is stated to be the immediate motive for the occurrence.

2.3. It is alleged that on 10.10.2014 around 09.45 p.m., the deceased was sleeping in his house. He was in a drunken state. The second accused called the first accused over phone to her house. The first accused accordingly came. Since the deceased was a hindrance for continuance of their illicit intimacy, it is alleged that the accused 1 and 2 decided to do away with the deceased. In pursuance of the same, it is alleged that the second accused gave a pillow to the first accused and the first accused in turn, laid the pillow against the face of the deceased while he was sleeping. The deceased was thus smothered, then the first accused took out a knife and cut the tongue of the deceased. The deceased died instantaneously. The occurrence was not witnessed by anyone.

2.4. It is further alleged that around 10.00 p.m. the second accused spoke to P.W.1 the mother of the deceased over phone. P.W.1 was also residing in the same village but in a different area. The second accused told her that the deceased was lying with injuries in his house and he was struggling for life. Immediately P.W.1 and other family members along with the neighbours rushed to the house of the deceased and they found the deceased lying in the room with injuries. The second accused was in the house and she was wailing. When they enquired her, she told that she was sleeping in a different room and on hearing the alarm raised by the deceased, when she rushed to the place where the deceased was sleeping, she found the deceased alone lying with injuries. She did not notice anybody

else. Then, immediately he called P.W.1 over phone. Immediately, thereafter, P.W.1 and his another son made arrangements for ambulance. But the para medical staff in the 108 ambulance after having examined the deceased declared him dead. Thereafter, P.W.1 went to Bungalowpudur police station and made a complaint at 02.00 a.m. on 11.10.2011. Ex.P1 is the complaint and Ex.P21 is the F.I.R. The said case was registered under Section 174 Cr.P.C.

2.5. The case was taken up for investigation by P.W.20 the then Inspector of Police. He went to the place of occurrence at 02.25 a.m. and prepared an observation mahazar and a rough sketch in the presence of the witnesses. He recovered the bloodstained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased and sent the same for postmortem.

2.6. P.W.14 Dr.Kalyani conducted autopsy on the body of the deceased on 11.05.2014 at 01.00 p.m. She found the following injuries:

"Injuries: Bilateral severe periorbital edema, more on right eye noted. Severe subconjunctival hemorrhage noted in both eyes. Bluish discolouration of right eye lids both upper and lower eyelids noted. (2) Abrasion 4x3 cms below angle of mandible right side. (3) Linear abrasion of size 19x2 cms in the nape of neck, upper third close to hairline. Contusion along the margins noted. The abrasion extends across the nape of neck horizontally. (4) Contusion 4x4 cms right cheek. (5) Tongue- through and through incision of anterior and middle third of tongue along the long axis of tongue noted. (6) Contusion 3 x 3 cms left chest lateral to nipple. Thorax: fracture 3,5,6 ribs anterior third left side noted. Fracture 3, 4 ribs anterior third right side noted. Extensive bluish discolouration s/o contusion noted in inner aspect of chest wall in the left side middle third noted. Lungs right 540 gms left 480 gms congested. Hyoid bone - intact muscles in the nape of neck shows contusion in upper area. Stomach-contains partially digested food particles 560 gms, smell of ethanol present. Liver - congested 1100 grams, spleen, kidneys congested each 130 grams, intestines disintented with gas. Bladder empty. Skull - no fracture of skull bone. Brain c/o extensive subarachnoid hemorrhage in the frontal region and base of skull."

Ex.P10 is the postmortem certificate and Ex.P11 is her final opinion. According to her, the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased. The chemical analysis conducted on the internal organs revealed that there was ethyl alcohol thereby indicating that the deceased was drunk.

2.7. While the investigation was in progress, it is alleged that the first accused appeared before P.W.12 the then V.A.O of Kannakampalayam village and made a voluntary confession at 09.00 a.m. P.W.13 reduced the same into writing. Ex.P4 is the said extra judicial confession. Then, he took the first accused along with the extra judicial confession and produced him before P.W.20. P.W.20 arrested the first accused at 10.30 a.m. on 20.10.2014. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the said place and produced the knife. P.W.20, thereafter altered the case into one under Section 302 I.P.C. Ex.P25 is the said alteration report.

2.8. P.W.20 arrested the second accused on the same day at the house of the deceased. She made a voluntary confession, in which, she disclosed the place where she had hidden the pillow and a duphata. Accordingly she produced the same. P.W.20 recovered the same. At his request, all the material objects were sent for chemical examination, which revealed that there were human bloodstain on all the material objects. On completing the investigation, he laid chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 20 witnesses were examined, 29 documents and 7 material objects were marked.

2.10. Out of the said witnesses, P.W.1 the mother and P.W.2 the brother of the deceased have stated about the illicit relationship between these two accused and the fact that the deceased reprimanded both of them. P.W.1 has further stated about the phone call received at 10.00 p.m. on 10.10.2014 from the second accused. They have further stated that when they went to the house they found the deceased lying with bleeding injuries. When they enquired, the second accused told that she was sleeping in a different room and on hearing the alarm raised by the deceased, she rushed to the other room and she found the deceased alone lying there and there was nobody else in the room. P.W.3 is the sister of the second accused. She has also stated that she received a phone call at 10.00 p.m. from the second accused and rushed to the place of occurrence.

2.11. P.W.4 has spoken about the preparation of the observation mahazar and rough sketch and recovery of material objects from the place of occurrence. P.W.5 is a neighbour of the deceased. He has stated on 10.10.2014 around 06.00 p.m. he found the second accused and the deceased quarreling with each other. Thereafter, around 10.00 p.m. the second accused came to his house and told him that the deceased was lying in the house with injuries. He requested P.W.5 to help her to take the deceased to the hospital.

2.12. P.W.6 is yet another neighbour of the deceased. She has also stated about the quarrel between the second accused and the deceased at 06.30 p.m. on the date of occurrence. She has further stated that at 10.00 p.m. when she heard that the deceased was lying with injuries, she rushed to the place of occurrence. P.W.7 is yet another neighbour of the deceased. He has stated that three months before the alleged occurrence, around 10.30 p.m. he found the first accused scaling down the compound wall of the house of the deceased. He has further stated that on 10.10.2014 at 10.15 p.m. the second accused informed that her husband was lying with injuries and immediately she went to the place of occurrence.

2.13. P.W.8 is yet another neighbour. He has also stated about the same facts as spoken by P.W.7. P.W.9 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.10 has stated that on 10.10.2014 around 10.00 p.m. he found someone scaling down the compound wall of the house of the deceased. He has not stated anything about the occurrence. P.Ws.11 and 12 have turned hostile and they have not supported the case of the prosecution in any manner.

2.14. P.W.13, the Village Administrative Officer has spoken about the alleged extra judicial confession given by the first accused on 20.10.2014 and subsequent disclosure statement made to P.W.20 and consequential recovery of the knife (M.O.2). P.W.14 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.15 has spoken about the fact that he handed over the F.I.R. to the learned Magistrate. P.W.16 has stated that he handed over the dead body of the deceased to the doctor for postmortem.

2.15. P.W.17 Dr.Kulandaivelu has stated about the medical opinion offered by him from out of the findings of the doctor who conducted postmortem. According to him, the injuries found on the ribs were antemortem in nature. P.W.18 has spoken about the chemical analysis conducted on the internal organs of the deceased. P.W.19 has spoken about the registration of the case on the complaint of P.W.1. P.W.20 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However they did not choose to examine anyone nor mark any documents. Their defence was a total denial. Having considered all the above, the trial Court convicted them as detailed in the first paragraph of this judgment and that is how the appellants are before this Court with these appeals.

4. We have heard the learned counsel appearing for the appellants, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

5. It is not in dispute that the second accused and the deceased was living together in their house along with their children. It is not disputed by the second accused about her presence in the house on the crucial day. The deceased and the second accused were found quarreling around 06.30 p.m. by the neighbours. At 10.00 p.m., the second accused had called P.W.1 over phone and informed her that the deceased was lying in the room with injuries struggling for life. P.Ws.1 and 2 and others rushed to the house of the deceased. They made arrangements for the 108 ambulance. After the arrival of the ambulance, after examining the deceased the ambulance staff informed that the deceased was no more. The doctor who conducted autopsy had found that there were injuries on the ribs and there were also other injuries. They were all found to be antemortem in nature. The doctor gave opinion that the death of the deceased was due to shock and hemorrhage due to the said injuries. Thus, the prosecution has clearly established that the death of the deceased had occurred sometime between 06.30 p.m. and 10.00 p.m. on 10.10.2014 and it was a homicide.

6. It is also in evidence that the deceased was fully drunk at the time of occurrence. This is evident from the medical opinion and the chemical analysis conducted on the visceral organs of the deceased. The case of the prosecution is that the deceased was done to death by both the accused. But there is no eyewitness to the same. Nobody had seen the first accused anywhere near the place of occurrence. Admittedly, the second accused alone was in the house when the occurrence had taken place.

7. The second accused has stated that since the deceased was fully drunk, she was fast asleep in a different room where her children were sleeping. It is her defence that on hearing the alarm raised by the deceased, awakened by the same, according to her, she rushed to the room where the deceased was sleeping. To her shock, she found the deceased lying with injuries and struggling for life. This defence taken by the second accused is to be examined at this stage. Immediately, around 10.00 p.m. according to P.W.1, the second accused called her over phone and

informed her about the above facts. Similarly, she had gone to the house of the neighbours and informed them. She was also wailing and wanted their help to shift the deceased to the hospital. The neighbours also rushed to the house by the time when they reached, P.Ws.1 and 2 have also came and then all of them tried to take the deceased to the hospital even before he could be shifted, he died. P.W.2 did not abscond, she was all along wailing out of grief. This conduct of the second accused is inconsistent with the guilt of the second accused pleaded by the prosecution.

8. So far as the second accused is concerned, the only evidence upon which the prosecution now relies on is the extra judicial confession stated to have been given by the first accused to P.W.13 on 20.10.2014. It is contended by the learned counsel that this extra judicial confession would not have been truly made by the first accused. Assuming that the said extra judicial confession was made by the first accused voluntarily, it is not a substantive piece of evidence against the second accused vide judgment of the Hon'ble Supreme Court in Kashmira Singh Vs. State of Maharashtra reported in 1952 AIR SC 159. Further, the conduct of the second accused in having been present throughout wailing in grief and informing P.Ws.1 and 2 about the occurrence, rushing to the house of neighbours, bringing them to her house and requesting them to help her to take the deceased to the hospital would all go to probabalise the innocence pleaded by the second accused. Since the extra judicial confession of the first accused is not a substantive piece of evidence against the second accused and since there is no other evidence against the second accused, she is entitled for acquittal.

9. Now turning to the case against the first accused, the only piece of evidence on which much reliance is place by the prosecution is the extra judicial confession said to have been made by him to P.W.13 on 20.10.2014. The learned counsel for the appellant would submit that the extra judicial confession would not have been made at all voluntarily by the first accused. The occurrence was on 10.10.2014, whereas it is stated that the extra judicial confession was made on 20.10.2014. It is not as though the first accused had any acquaintance with P.W.13. P.W.13 is admittedly a total stranger. P.W.10 a neighbour of the deceased has stated that on 10.10.2014 around 09.00 p.m. when he was returning to his house, at that time, he noticed someone switched on the zero watts light in the bed room of the deceased and immediately switched the same off. Within two minutes, someone rushed out of the house of the deceased scaling down the compound wall and ran away. He has also spoken about the illicit relationship between the first accused and the second accused. Had it been true that the person who was fleeing away from the scene of occurrence at the crucial point

of time was the first accused, he would not have omitted to mention the same. But he has stated that someone had fled away from the scene of occurrence, thereby indicating that it was not the first accused. Absolutely there is no reason to reject the evidence of P.W.10. Had it been true that it was the first accused, it is not explained to the Court as to why P.W.10 has not stated that it was the first accused who fled away from the scene of occurrence. This evidence is contrary to the so called extra judicial confession made by the first accused. As we have already pointed out, the first accused had been really guilty would not have chosen a total stranger to make an extra judicial confession. Thus, the so called extra judicial confession said to have been given by the first accused is shrouded with lot of doubts. It is the law that if the extra judicial confession inspires the fullest confidence of the Court, the same can be the sole basis for conviction, even in the absence of any corroboration from any other independent sources on material particulars. But, here in this case, since the extra judicial confession is stated to have been made by the first accused is shrouded with doubts as discussed herein above, we are unable to place reliance on his so called confession to sustain the conviction of the first accused. Therefore, the first accused is entitled for acquittal. We hold that the prosecution has not proved the case against the accused beyond reasonable doubts.

10. In the result,

(i) both the appeals are allowed and the conviction and sentence imposed on the appellants / accused 1 and 2 by the learned III Additional District and Sessions Judge, Gobichettipalayam in S.C.No.77 of 2015 dated 23.11.2016 is set aside and the appellants are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) Since the appellants are in jail, they are directed to be set at liberty forthwith, unless their detention is required in connection with any other case.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

kk

To

1. The Judicial Magistrate No.1
Gobichettipalayam.
2. The chief Judicial Magistrate,
Gobichettipalayam.
3. The III Additional District and Sessions Judge,
Gobichettipalayam.
4. Chief Judicial Magistrate.
Erode.
5. The Sessions Judge,
Gobichettipalayam.
6. The Superintendent Central Prison,
Coimbatore.
7. The Superintendent,
Women Central Prison,
Coimbatore.
8. The Inspector of Police,
Bungalow Pudur Police Station,
Erode District.
9. The District Collector,
Erode.
10. The Director General of Police,
Mylapore Chennai-4.
11. The Public Prosecutor,
Madras High Court.
12. The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to mr.S. Kaithamalai Kumaran, Advocate Sr. 14488
+1cc to Mr.M. Manokaran, Advocate Sr. 14447

CrI.A.Nos.79 & 116 of 2017

KS (CO)
VR(15/5/2017)