

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.84 of 2017

M.Settu .. Appellants

Vs

The State Rep. By Inspector of Police,
Kottapatti Police Station. .. Respondent

Prayer:- Criminal Appeal filed under Section 302 I.P.C., against the judgment passed in S.C.No.198 of 2014 on the file of the Principal District & Sessions Judge, Dharmapuri dated 18.01.2017.

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.198/2014 on the file of the learned Principal Sessions Judge, Dharmapuri. The trial Court convicted the accused for offence under Section 302 I.P.C. By

judgment dated 18.01.2017, the trial Court sentenced the accused to undergo imprisonment for life and to pay a fine of Rs.1,000/- (no default sentence was imposed). Challenging the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

The appellant/accused was a resident of Poiyapatti Village. His wife is one Mrs.Indira. Out of the said wedlock, they have got three children. The second child is Ms.Gayathri. During the year 2012, she was doing IX standard in a local school. The other two children were also studying in different schools. The accused is a poor man earning his livelihood by rearing milch animals and also by doing other agricultural works. He is living along with his children and wife in the said village.

3.One Mr.Theethan of the same Village was residing in his house situated just opposite to the house of the accused. The deceased in this case was one Mr.Sivagiri, who was the son of Mr.Theethan. The deceased had failed in XII examination and thus, he was staying at his house and he was simply roaming around without any job. It is alleged that Mr.Sivagiri had fallen in love with Ms.Gayathri who was

hardly aged about 13 years. This came to the knowledge of the accused. The accused informed the father of the deceased and requested him to suitably advise the deceased not to spoil the future of his daughter Ms.Gayathri. But, the deceased continued to stalk Ms.Gayathri. The accused therefore, developed grudges against the deceased. This is stated to be the motive for the occurrence.

4.On 01.06.2012, early in the morning, at 6.00 am, the accused went out for agricultural work and then returned to his house at 7.30 am. At 8.00 am, his wife left for a Morapadu Village. Except his daughter Ms.Gayathri, the other two children had gone to school. The accused around 10.00 am, leaving Ms.Gayathri alone at his house, left to the bus stop at Poiyapatti to go to Dharmapuri to attend a function. On reaching the bus stop, he realised that he had forgotten to give Rs.500/- to purchase a school bag for his younger daughter. Therefore, from the bus stop, he returned to his house.

5.At his house, Ms.Gayathri was not seen. The accused went in search of her. At 11.00 am, he found Ms.Gayathri and the deceased together under a tree in the land belonging to one Mr.Ramasamy Gounder. They were in a compromising position. On seeing them, in such a condition, the accused got wild. He rushed towards them, attacked the deceased and strangulated him with the dhupatta of

Ms.Gayathri and killed him on the spot. His daughter Ms.Gayathri was threatened by him not to raise any alarm. She therefore, went back to her house. The accused also returned home and did not disclose the same to anybody. Like an innocent man, he went to various functions at different places. Thereafter, on 02.06.2012, the dead body of the deceased was found under the tree in the field of Mr.Ramasamy Gounder.

6.P.W.1, the mother of the deceased went to the said place and found the dead body. Then she went to Kottapatti Police Station and made a complaint at 9.00 am on 02.06.2012. She suspected that the deceased would have been done to death by the accused and another person. On the said complaint, a case was registered in Crime No.210/2012 for offence under Section 302 I.P.C. Both the documents were sent to Court which were received by the learned Judicial Magistrate at 4.30 pm on 02.06.2012.

7.The case was taken up for investigation by P.W.19, the then Inspector of Police. He went to the place of occurrence at 10.15 am, prepared an observation mahazar and rough sketch, in the presence of witnesses. Then, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

8.P.W.17 – Dr.Krishnakumar, conducted autopsy on the body of

the deceased on 02.06.2012 at 3.45 pm. He found the following injuries:-

"1) Multiple aberrations of various sizes present over the abdomen, both upper limbs, both upper thighs and right leg and over the back.

2) Scrotum swollen with gas.

3) Hyoid Bone : Fracture on left side.

4) Deep ligature mark present over the anterior aspect of neck, extending upto backsides on both sides of size 2cm X 15 cm."

Ex.P.14 is the post mortem certificate and Ex.P.16 is his final opinion. He gave opinion that the deceased would have died due to manual strangulation.

9.P.W.19, during investigation, recovered the blood stained clothes from the body of the deceased. When the investigation was in progress, it is alleged that the accused on his own went to P.W.14, the Village Administrative Officer of Poiyapatti Village and made a voluntary confession. P.W.14 reduced the same into writing. Then

along with a special report, she handed over the accused to P.W.14 on the same day.

10.P.W.14 arrested the accused and while in custody, he made a voluntary confession, in which, he disclosed the place where he had hidden a Dhupatta. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the Dhupatta (M.O.7). The same was recovered by P.W.19. Then, he forwarded all the material objects to the Court. On completing investigation, he laid charge sheet against the accused.

11.Based on the above materials, the trial Court framed a lone charge against the accused for offence under Section 302 I.P.C. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 21 documents were exhibited, besides 11 Material Objects were marked.

12.Out of the said witnesses, P.W.1, the mother of the deceased has spoken about the affair between the deceased and Ms.Gayathri. She has also stated about the fact that the accused once informed her and requested her to warn the deceased. She has further stated that the dead body of the deceased was lastly found on 02.06.2012

under the tree, in the field belonging to one Mr.Ramasamy Gounder. P.W.2 is the father of the deceased. He has also spoken about the same facts. P.W.3 is the uncle of the deceased. He has stated that on 01.06.2012, around 11.00 am, the deceased went out of his house and thereafter, he did not return. The dead body of the deceased was found at 7.00 am on 02.06.2012. P.W.4 has also spoken about the same facts. He is the yet another uncle of the deceased. P.Ws.5,6,7 & 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has also stated that he found the dead body of the deceased at 7.30 am on 02.06.2012. P.W.10 has also stated about the same facts as spoken by P.W.9. P.W.11 is the sister of the deceased. She has also spoken about the love affair between Ms.Gayathri and the deceased. She has further stated that on 01.06.2012, the deceased wanted her to go to the house of the accused and to inform Ms.Gayathri to come to the land of Mr.Ramasamy Gounder and accordingly, she informed Ms.Gayathri. Thereafter, the deceased left the house. P.W.12 has stated that around 11.30 to 12.00 noon, on the day of occurrence, he heard somebody talking among themselves in the land of Mr.Ramasamy Gounder. P.W.13 has spoken about the preparation of observation mahazar and rough sketch. P.W.14 has spoken about the extra judicial confession made by the accused. P.W.15 has spoken about the arrest of the accused. P.W.16 has turned hostile and he

has not supported the case of the prosecution in any manner. P.W.17 has spoken about the post mortem conducted and his final opinion regarding the cause of death of the deceased. P.W.18 has spoken about the registration of the case. P.W.19 has spoken about the investigation done and the final report filed.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, he examined three witnesses by name Ms. Indira; Ms. Sulochana & Mr. Palani as D.Ws. 1 to 3. D.W.1 - Mrs. Indira has stated that on the day of occurrence, till 5.00 pm, she was in the land of Mr. Ramasamy Gounder doing agricultural work. According to her, even between 7.00 am and 5.00 pm on that day, when she was in the said land, neither the accused nor the deceased had come. D.W.2 Ms. Sulochana has stated that she was working in the Principal Sessions Court at Dharmapuri. She has given Ex.D.1 which is a copy of a mahazar prepared by the Inspector of Police for the recovery of Dhupatta (M.O.7). D.W.3, the then Sub Inspector of Police of Kottapatti Police Station has stated that the accused made a complaint on 18.01.2012 against one Mr. Hariharasudan and four others. Upon which, a case has been registered in Crime No.9/2012. According to him, the said case was referred to as a mistake of fact. In effect, the defence of the accused was a total denial.

14. Having considered all the above materials, the trial Court convicted the appellant/sole accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life. Challenging the same, the appellant/sole accused is before this Court with this Criminal Appeal.

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

16. This is a case based on the circumstantial evidence. From the evidence of P.W.1, the mother of the deceased and P.W.11, the sister of the deceased, it is crystal clear that the deceased left for Mr. Ramasamy Gounder's land on 01.06.2012 around 11.00 am. Thereafter, he did not return. The dead body of the deceased was found around 7.00 am to 7.30 am on 02.06.2012 at Mr. Ramasamy Gounder land. The Doctor who conducted autopsy has given opinion that the death of the deceased was due to manual strangulation. There is no reason to reject the same. From these evidences, the prosecution has clearly established that the death of the deceased was a homicide which had occurred somewhere between 11.00 am

on 01.06.2012 and 7.30 am on 02.06.2012.

17.Now, the question is as to "Who was the perpetrator of the Crime ? P.Ws.1 & 11 and few other witnesses had stated about the love affair between the deceased and the daughter of the accused. Assuming that the same is true, this would only go to prove the motive. So far as the actual occurrence is concerned, the prosecution relies on only Ex.P.8 – the extra judicial confession said to have been made by the accused at 8.00 am on 09.06.2012. In the said extra judicial confession, the accused has confessed that it was he who strangled the deceased and killed him, by using the dhupatta (M.O.7), as he found the deceased and Ms.Gayathri in a compromising position.

18.The learned counsel for the appellant would submit that the said extra judicial confession cannot be true. The learned counsel would take us through the evidence of P.W.11, the sister of the deceased, who has stated that the accused was found in the Police custody on 02.06.2012 onwards. Apart from that, P.W.14, the then Village Administrative Officer, in chief examination, has stated that as it was oral confession made by the accused, she reduced the same into writing in her own handwriting. It is the clear evidence of P.W.14 even in chief examination that the special report (Ex.P.7)

was written by P.W.14 in her own handwriting. But, Ex.P.8, the extra judicial confession is not in the handwriting of the Village Administrative Officer (P.W.14) but, it is a computer generated hard copy. She has not at all stated that the confession was fed into a computer at her office and in the computer print out, the signature of the accused was obtained. The confession made by the accused at the police station at 11.00 am on 09.06.2012, is also a computer print out. More or less, Exs.P.8 and P.9 are the same. Coupled with the evidence of P.W.11, wherein she has stated that the accused was in police custody from 02.06.2012 onwards, the fact that Ex.P.8 is a computer generated copy whereas, the evidence of P.W.14 is that the confession was reduced into writing in her own handwriting by her would all go to show that Ex.P.8 is a suspicious document and the accused would not have made any such confession at all.

19. Apart from that, D.W.1 also stated that between 7.00 am and 5.00 pm on the day of occurrence, neither the accused nor the deceased had come to the land of Mr. Ramasamy Gounder, where she was working. From these facts, we hold that Ex.P.8 is a suspicious document, upon which, no reliance could be made. If once, Ex.P.8 is rejected, we find no other evidence against the accused to sustain the conviction. Thus, the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for

acquittal.

17.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/sole accused by the learned Principal Sessions Judge, Dharmapuri in S.C.No.198 of 2014, dated 18.01.2017, are set aside and the appellant/sole accused is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/sole accused, shall stand discharged.

(S.N.J) & (A.S.M.J.,)
13.03.2017

jbm

Index:Yes

To

1.The Principal District and Sessions Judge,
Dharmapuri.

2.The Public Prosecutor,
High Court, Madras.

**S.NAGAMUTHU.J.,
and
ANITA SUMANTH.J.,**

jbm

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