

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.723/2016

V. Shobana

Appellant(Sole Accused)

Vs

The State rep by
The Inspector of Police,
Nambiur Police Station,
Erode District
Crime No.198/2015

Respondent(Complainant)

Appeal filed u/s.374(2) of (1) Cr.P.C against the judgment in S.C.No.1 of 2016 on the file of Mahila Court, Erode dated 06.05.2016

For Appellant : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel for
Mr.R.Radha Pandian

For 1st Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.1 of 2016 on the file of the Fast Track Mahila Court, Erode. She stood charged for the offence punishable under Sec.302 IPC. By judgment dated 06.05.2016, the trial Court convicted the accused for the offence under Sec.302 IPC and sentenced her to undergo Life Imprisonment and to pay a fine of Rs.10,000/- in default, to undergo two years simple imprisonment. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(a) The deceased in this case was one Krishnapriya, hardly aged five years. P.W.1 is the father of the deceased and the accused is the mother of the deceased. The marriage between the accused and P.W.1 was celebrated in the year 2009. Out of the said wedlock, the deceased was born in a year. There arose frequent domestic quarrels between P.W.1 and the accused, as a result, the accused, who had gone to her mother's house at Chennai for delivery, stayed back with her mother. P.W.1 tried to bring her back into matrimonial home, but she refused. Thus, the accused was residing in Chennai with her child and with her mother. P.W.1 was residing with his parents at Kodarai village in Erode District. He is a taxi driver by profession.

(b) It is further alleged that later on, the accused along with her mother and child came to Nambiyur Village in Erode District and started residing there in a rental house. It is the further case of the prosecution that the accused had desired to go in for second marriage. She had the impression that the her child would be a hindrance for her for the second marriage. Therefore, according to the prosecution case, she decided to kill the deceased.

© It is alleged that on 08.07.2015 around 5.00 p.m, when the deceased was in the custody of the accused, she gave food mixed with pesticide known as Phorate (jpk;kl; vd;w FUiz) and made the child to consume. Though the child, due to bitter taste, refused to eat, the accused forced her to eat. Within a short while, the child fainted. The accused, thereafter, went to the house of P.W.2, neighbour and informed her that her child was unwell, then she informed P.W.3 another a neighbour. P.Ws.2 and 3 advised her to take the deceased to a nearby hospital. Accordingly, with the help of her brother, the accused took the child to a private hospital, run by P.W.6. Dr.Shanmugam. P.W.6 examined the child and found no life. He declared her dead. He wanted the accused to take the dead body to the Government Hospital at Gopi. But the accused along with her brother took the child back from the hospital and kept the dead body at the house of P.W.4, the mother-in-law of the accused. The mother-in-law returned only in the evening and P.W.1 also returned in the evening and they came to know that the child was no more. Then they passed on the information to the mother of the accused, who was in Chennai. She returned on the next day. Since it was made to believe that the child died a natural death, they gave a decent burial.

(d) On 10.07.2015, P.Ws.2 and 3 informed P.W.1 that the accused had forced the child to have food which created suspicion in their mind. Based on the said information, P.W.1

immediately rushed to Nambiyur Police Station and made a complaint at 2.30 p.m on 10.07.2015. The Sub Inspector of Police, Nambiyur Police Station registered a case in Cr.No.198 of 2015 under Sec.174 of Criminal Procedure Code (suspicious death). Ex.P.14 is the First Information Report.

(e) P.W.17 the then Inspector of Police took up the case for investigation. He went to the house of the accused, prepared an observation mahazar and a rough sketch in the presence of witnesses. He examined P.Ws 1 to 4 and few more witnesses and recorded their statements. He made a request to the Executive Magistrate/Tahsildar to exhume the dead body of the deceased. Accordingly, on 10.07.2015 the dead body was exhumed by P.W.9-Tahsildar. Dr.Peranantham P.W.8 was also present at the time of examination of the dead body. The Tahildar P.W.9 held inquest on the body of the deceased and inquest was held on the spot itself.

(f) P.W.8 Dr.Peranantham conducted autopsy on the body of the deceased. He found the following injuries:

Identification marks:

Identification marks could not be made out due to decomposition. However the body was identified by the In charge Police constable.

The body was covered white colour dhothi
On removal of the clothes:body wearing red colour middy and orange colour top and rose colour skirt and green colour pantees.

Decomposed body identified to us as KRISHNA PRIYA, aged about 5 years, Female.

-Both eyes found decomposed and shrunken

-Face, Chest and abdomen found bloated

-Scalp hairs come off easily without resistance

-Post mortem peeling of skin seen over all over the body in a patchy manner

-Teeth-10/10 All teeth found loosen

No evidence of ant ante mortem external and internal injuries seen over the body.

OTHER FINDINGS:

-Pleural and peritoneal cavities:empty

-Larynx and Trachea:cut section decomposed

-Hyoid bone-intact

-Heart:Flabby. Cut section decomposed.

-Stomach contains about 50 grams of undigested food particles and black colour granules, with unpleasant smell, mucosa decomposed.

-Liver, Spleen,Kidneys andLongs - cut

section decomposed
-Brain:Liquefied
-Urinary bladder-empty
-Uterus:Infantile.
Cut section decomposed
-Mud from above, below and sides of the dead body
-Viscera preserved for chemical analysis
OPINION:Reserved pending for chemical examiners report.

Ex.P.5 is the Post Mortem Certificate. P.W.8 collected the Visceral Organs from the dead body and also sand from the pit where the dead body was buried and forwarded all the material objects for chemical examination and the report revealed that in the internal organs of the deceased, there was poisonous substance known as Phorate (Thimmet). P.W.8 gave opinion that the death of the deceased was due to poisonous substance (Thimmet). Ex.P.16 is the final opinion.

(g) P.W.17, the Inspector of Police, based on the post mortem report, altered the case into one under Sec.302 IPC on 03.10.2015. When the investigation was in progress, it is alleged that on 03.10.2015, at 9.15 a.m, when P.W.11, the then Village Administrative Officer of Nambiyur was at his office, the accused, on her own, appeared before him and wanted to make a confession. P.W.11 allowed her to confess and reduced the same into writing. Ex.P.9 is the said confession. In the Extra Judicial Confession, the accused is said to have told that because the child was a hindrance for her to go for second marriage, she gave food, mixed with poison and killed the child. Along with Ex.P.9-Extra Judicial Confession, P.W.11 took the accused and produced her before P.W.17. P.W.17 arrested the accused. While in custody, the accused gave a voluntary confession, in which, she disclosed the place where she had hidden the pesticide. In pursuance of the same, she took the police and witnesses to her house and produced the Phorate pesticide. P.W.17 recovered the same under a mahazar in the presence of P.W.11 and other witnesses. On returning to the police station he forwarded the accused to Court for judicial remand and handed over the material objects recovered from the place of occurrence. At his request, the material objects were sent for chemical examination. The report revealed that it was Phorate pesticide. On completing the investigation, he laid charge sheet against the accused.

(h) On the case being committed to Court of Sessions, it came up before the learned Sessions Judge, Fast Track Mahila Court, Erode on 12.01.2016. The case was posted for hearing on 19.01.2016 and the accused was in custody. He gave time to the accused to engage an Advocate and the mater was adjourned to

25.01.2016, again to 27.01.2016, 10.02.2016 and 15.02.2016. In the meanwhile, the accused was released on bail on 15.02.2016. One Mr.M.S., learned counsel filed Memo of appearance. The case was adjourned to 22.06.2016. On that date, arguments were heard and the case was adjourned to 30.06.2016 for framing of charges. The trial court, accordingly framed charges against the accused for the offence under Sec.302 IPC. The accused denied the said charge. The trial Court, then ordered issuance of summons to 11 witnesses, to be examined on 15.03.2016 and for the rest of the witnesses, to be examined on 16.03.2016.

On 15.03.2016, the accused made appearance. P.Ws.1 to 5 were examined. The counsel for the accused was not present. The accused pleaded for adjournment to get his counsel. But the trial court, after making reference to the judgment of the Division Bench of this Court in the case of S. Yuvaraj vs State reported in 2015 (1) L.W (Crl) 55, examined those witnesses and recorded that there was no cross examination by the accused. On 16.03.2016, the trial court examined P.Ws.6 to 15. That day also, the counsel for the appellant was not present. The trial court again made reference to the judgment of the Division Bench of this Court in the case of S. Yuvaraj vs State and examined those witnesses. The trial Court recorded that there was no cross examination by the accused. The case was adjourned to 30.03.2016 and summons was issued to the investigating officers. The case was taken up for hearing on 30.03.2016. But the witnesses were not present. The accused made appearance. Her counsel did not appear. Therefore, the case was adjourned to 12.04.2016. On that day, P.Ws.16 and 17 were examined and on that date also, the counsel for the accused was not present. The trial Court again made reference to the judgment of the Division Bench of this Court in the case of S. Yuvaraj vs State and examined the witnesses. The accused did not cross examine. On that day, the trial Court directed the accused to execute a bond with two sureties for a sum of Rs.10,000/- on 15.04.2016. On that date, the accused filed a petition for adjournment. The petition was dismissed by the trial court. The trial Court examined her under Sec.313 of Criminal Procedure Code. She denied the same. The case was adjourned to 22.04.2016 for the examination of defence witnesses. On 22.04.2016, the accused did not produce any witness. The defence side evidence was suo motu closed by the trial Court and the case was adjourned to 04.05.2016. On 04.05.2016, another counsel filed Memo of appearance for the accused. On 04.05.2016 the trial Court made the following docket order:

" The accused present. M.P filed. MOA on behalf of the accused". After no arguments putforth by the counsel, no bond executed under Sec.437(A) Cr.P.C. For argument, call on 05.05.2016 finally subject to argument. On 05.05.2016 Judgment reserved for 06.05.2016".

On 06.05.2016, the trial court pronounced judgment and convicted the accused. That is how, she is before this Court.

3. We have narrated the various docket orders passed by the trial Court only to highlight the fact that in gross ignorance of the spirit of the observations made by the Division Bench of this Court in the case of S. Yuvaraj vs State cited supra and overlooking the constitutionally guaranteed fundamental right under Article 21 of the Constitution of India, which declares that the life and liberty of an individual could be deprived of only by following the procedure established by law. The trial Court has conducted the trial and convicted the accused. The said procedure denotes a fair procedure where the proof of guilt should be made beyond reasonable doubts. The trial Court, in our considered view, without affording sufficient opportunity to the accused and without affording legal assistance to the accused, has conducted the trial. Admittedly, on 06.05.2016 the accused made appearance. The counsel for the accused filed a petition under Sec.311 of Criminal Procedure Code to recall P.Ws.1 to 17. The trial Court dismissed the petition summarily. The Public Prosecutor requested time for argument. The defence counsel also did not come forward to argue. The Court made certain remarks such as "this Court need not wait for arguments of both sides, when the judgment is reserved for 06.05.2016". The trial Court delivered the judgment and convicted the accused for the offence under Sec.302 IPC and sentenced her to undergo life imprisonment and to pay a fine of Rs.10,000/- in default, to undergo two years simple imprisonment.

4. The learned counsel for the appellant would submit that the trial court had grossly erred in not affording fair trial to the accused. We find force in the said argument. Admittedly, the accused is an illiterate woman. For quite some time, she was in jail until 06.02.2016. Though, with great difficulty, the accused had engaged a counsel, he did not defend her effectively. Thus, there was no effective legal assistance at all to her. Still the trial Court thought it fit to proceed further. In our considered view, the trial Court was in grave error in doing so.

5. In this regard, we may refer to the recent judgment of the Hon'ble Supreme Court in Mohd. Hussain alias Zulfikar Ali Vs State (Government of NCT of Delhi) reported in (2012) 2 SCC 584. The accused in that case was an illiterate foreign national and he was unable to engage a counsel to defend him. He was tried, convicted and sentenced to death by the trial Court without assigning a counsel for his defence. Such a result was confirmed by the High Court, on a reference made by the trial Court. When the said judgment was under challenge before the Hon'ble Supreme

Court, a plea was taken that there was denial of fair trial to the accused, for want of legal assistance. The Hon'ble Supreme Court found that the private counsel by name Mr.Riyaj Ahmed represented the accused at the beginning of the trial and the said counsel cross examined some of the witnesses. Later on, when Mr.Riyaj Ahmed did not appear in the Court on some days, the trial Court appointed one Ms. Sadhana Bhatia a learned counsel, as Amicus Curiae to defend the accused at State expenses. But the said counsel did not choose to cross examine some witnesses. Later on, one of the accused wanted to recall P.W.1 for cross examination and that was allowed. But there was no cross examination done of the said witness though he appeared on three hearing dates. Since, he was not cross examined, the witness was discharged and thus he was not at all cross examined. In the above factual situation, the Delhi High Court in paragraph 47 of the judgment held as follows:

"47. We have ourselves also perused the trial court record and we are convinced that it is not a case where it can be said that the accused did not have a fair trial or that he had been denied legal aid. We are in full agreement with the above quoted views of the learned Additional Sessions Judge on this objection of the accused and we refuse to accept the plea of the appellant that this should be remanded back for a re-trial.

6. When the above finding was put under challenge before the Hon'ble Supreme Court by Mohd.Hussain, the accused and after having perused the trial Court records, the Hon'ble Supreme Court observed that before the committal Court the appellant was assisted by one Mr.Vijay Kr.Jain a learned counsel employed by the State and he continued till the case was committed to the Court of Sessions. Before the Court of Sessions, one Mr.Firoz Khan, a learned counsel was employed by the State. He participated in the proceedings before Sessions Judge only on few days of the trial. Therefore, he stopped attending the proceedings that too at the fag end of the trial and case another learned counsel was appointed. In the factual situation, in paragraph 11 of the judgment, the Hon'ble Supreme Court observed as follows:

"11. The appellant was initially assisted by a learned counsel employed by the learned Sessions Judge. However, in the mid way, the learned counsel disappeared from the scene, that is, before conclusion of the trial. It is apparent from the records that he was not asked whether he is able to employ counsel or

wished to have counsel appointed. When the parties were ready for the trial, no one appeared for the accused. The Court did not appoint any counsel to defend the accused. Of course, if he had a defence counsel, I do not see the necessity of the court appointing anybody as a counsel. If he did not have a counsel, it is the mandatory duty of the court to appoint a counsel to represent him.".

7. The Hon'ble Supreme Court in the said judgment referred to an earlier judgment of the Constitution Bench in Kartar Singh vs State of Punjab reported in 1994 3 SCC 569, wherein the Hon'ble Supreme Court highlighted the objects of cross examination as under:

" (1) to destroy or weaken the evidentiary value of the witness of his adversary;
(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;
(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness; and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

8. While referring to the judgment of the Hon'ble Supreme Court in Zahira Habibullah Sheikh (5) vs State of Gujarat reported in 2006 3 SCC 374, the Hon'ble Supreme Court observed that the concept of fair trial to an accused is central to the administration of justice and the cardinality of protection of human rights. Then referring to the judgment in M.H.Hoskot vs State of Maharashtra reported in 1978 3 SCC 544, the Hon'ble Supreme Court referred to an earlier observation of the Supreme Court, wherein, the Court has said:

" The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services.

Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards

where such supportive skill is absent for one side. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of layer-power for steering the wheels of equal justice under the law."

9. The Hon'ble Supreme Court by referring to the judgment in Maneka Gandhi Vs Union of India reported in 1978 1 SCC 248 and said that the procedure for depriving a person of his life or liberty should be fair, reasonable and just. The Constitution Bench further held that

" We are of the opinion that it is not fair or just that a criminal case should be decided against an accused in the absence of a counsel. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, in our opinion, if a criminal (whether a trial or appeal/revision) is decided against an accused in the absence of a counsel, there will be violation of Article 21 of the Constitution."

10. The Hon'ble Supreme Court has then referred to many more judgments including Khatri (2) vs State of Bihar reported in 1981 1 SCC 627. The Hon'ble Supreme Court has ultimately in paragraphs 23 to 25 of the judgment has concluded as follows:

"23. The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result, the accused charged with a serious offence must not be stripped of his valuable right of a fair and impartial trial. To do that, would be negation of concept of due process of law, regardless of the merits of the appeal. The Cr.P.C provides that in all criminal prosecutions, the accused has a right to have the assistance of a counsel and the Cr.P.C also requires the Court in all criminal cases, where the accused is unable to engage counsel, to appoint a counsel for him at the expenses of the State. However guilty the appellant upon the inquiry might have been, he is until convicted, presumed to be innocent. It

was the duty of the Court, having these cases in charge, to see that he is denied no necessary incident of a fair trial.

24. In the present case, not only the accused was denied the assistance of a counsel during the trial and such designation of counsel, as was attempted at a late stage, was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard. The Court ought to have seen to it that in the proceedings before the Court, the accused was dealt with justly and fairly by keeping in view the cardinal principles that the accused of a crime is entitled to a counsel which may be necessary for his defence, as well as to facts as to law. The same yardstick may not be applicable in respect of economic offences or where offences are not punishable with substantive sentence of imprisonment but punishable with fine only. The fact that the right involved is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our judicial proceedings. The necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of a counsel was a denial of due process of law. It is equally true that the absence of fair and proper trial would be violation of fundamental principles of judicial procedure on account of breach of mandatory provisions of Section 304 of Cr.P.C.

25. After carefully going through the entire records of the trial court, I am convinced that the appellant/accused was not provided the assistance of a counsel in a substantial and meaningful sense. To hold and decide otherwise, would simply to ignore actualities and also would be to ignore the fundamental postulates, already adverted to.

11. The Division Bench in Yuvaraj case had the benefit of going through most of the judgments referred to herein above. In Yuvaraj's case, the Division Bench of this Court has not at all declared that the witnesses, who were examined in the absence of the counsel for the accused should never be recalled. The Division Bench has not formulated any straitjacket formula in this regard. The Division Bench has not stated that the Court should not later on recall any witness so as to afford an opportunity by the Court to cross examine even if the accused had explained to the satisfaction of the Court the circumstances under which his counsel was not present. We regret to say, that the trial Court, in the instant case, has not even cared to have regard that the accused has got a right to be defended by a competent lawyer. As narrated already, one Advocate engaged by the accused appeared before the court on 15.02.2016 and charges were framed against the accused only on 01.03.2016. Straight away the case was posted to 15.03.2016 for examination of witnesses. For some reason or the other, the said counsel did not appear to defend. The said counsel, it appears, did not have any concern for the ethics and best practices of the legal profession. The learned counsel had forgotten his duty to appear before the Court when the case was called and to conduct his case after getting instructions from his client. But, such gross negligence and dereliction of duty on the part of the counsel cannot go to deprive the right of the accused to have legal assistance and to have effective defence. On 15.03.2016 and 16.03.2016 the said Advocate did not appear. On 04.05.2016 the accused engaged a new counsel. Until 04.05.2016 though there were several hearings, there is no indication that the learned Judge offered any legal assistance through legal aid to the accused, who is a poor woman. The accused in this case must have been blinking in the Court without knowing as to what was happening against her. On 04.05.2016 when the case came up for hearing the learned Judge further adjourned the case to 05.05.2016 for arguments and on 06.05.2016 for judgment. On 05.05.2016 the new counsel engaged by the accused filed a petition to recall all the 17 witnesses which was summarily rejected by the learned Judge. He did not even spare time to the accused to challenge the order. Also, when the Public Prosecutor requested for time to argue the case, the learned Judge refused to grant time. The defence counsel was not allowed time to prepare to argue the case. The learned Judge recorded that there was no need to wait for arguments of both the counsel and posted the case for judgment and accordingly, pronounced the judgment. This act of the learned Judge in blindly rushing to finish the case is really unwarranted and unfortunate. Granting adjournment for one or two days for the Public Prosecutor as well as the defence counsel to prepare for argument would not have made the heaven to fall. Rather it is part of a fair trial as guaranteed by the Constitution. But the learned Judge, on the day itself pronounced the judgment

sentencing the poor woman to life imprisonment though absolutely there is no evidence against her. Had there been arguments both by the Public Prosecutor and the defence counsel, the issues involved in this case would have been highlighted and clarified and the accused could have been acquitted for want of legally acceptable evidence. We feel that because of the over anxiety and undue haste shown by the learned Judge, there has occurred miscarriage of justice . As has been impressed upon by the Hon'ble Supreme Court, the learned Sessions Judge, who found the accused allegedly involved in serious offences should be more sensitive to afford fair trial to the accused, to the victim as well as the society at large. No undue haste should be shown.

12. As we have already pointed out no witness examined by the prosecution was cross examined by the accused, but the accused when questioned under Sec.313 Cr.P.C pleaded innocence. When she was forced to cross examine the investigating officer, this poor woman had asked a few irrelevant questions as if the answer elicited by her would get her out from the clutches of the prosecution case Unfortunately it has not happened. In the normal course we should have set aside the conviction and sentence and remanded back the case to the trial court for affording an opportunity to the accused to cross examine the witnesses and to lead further evidence if any and for fresh disposal. Having gone through the records and having heard the arguments of the learned counsel for the appellant, we are convinced that the accused is entitled for acquittal and no retrial is required. So, we do not propose to remand back the case to the trial court.

13. Let us now analyse the evidence and the other circumstances.

14. P.W.1 the husband of the deceased has stated that on 08.07.2015 at 8.30 p.m, P.Ws.2 and 3 told him that on 07.07.2015 they found that the accused was feeding the child and the child was weeping. But she forced her to eat. From out of this statement made by P.Ws.2 and 3 he suspected some foul play by the accused in the death of the deceased. P.Ws.2 and 3 have stated that they found the accused keeping food in her hand and feeding the child. The child was weeping. After some time, the accused came to the house of P.W.2 and told her that the child had fainted immediately. They went and found that the child was unconscious. Then the accused with the help of her brother, rushed the child to the hospital. Unfortunately, the child died. This conduct of the accused in rushing the child to the hospital is consistent with her innocence.

15. The doctor, who conducted autopsy on the body of the deceased had found some particles in the stomach. When they were chemically examined it was found out that it was

Organophosphorous particles. There was no food item found in the stomach. This would go to create doubt in the evidence of P.Ws.2 and 3 that the accused was forcing the child to eat poisonous substance mixed with food. The poisonous substance in the organ had got into the blood circulation. It was absorbed in the kidney and other visceral organs. At this juncture, we have to state that it cannot be ruled out that the deceased, being child of five years, would have taken the poisonous substance somewhere and consumed the same without knowing the effects. Such a behaviour on the part of the child is quiet common. If this is seen in the light of the conduct of the accused in going to inform P.W.2 and rushing to hospital would go to show that she would not have fed poisonous substance mixed with to the child.

Above all, there is no evidence that she was feeding poisonous substance alone. Had poison been mixed with food, as it is stated by the prosecution, the smell of Organophosphorous poison would have emanated which would not have missed the nose of P.Ws 2 and 3 and the undigested food should have been present in the stomach.

16. Now turning to the Extra Judicial Confession said to have been made by the accused to P.W.11, it was allegedly made on 03.10.2015 i.e., after three months of the occurrence. All these days the accused was very much with her parents and her relatives. When that was the case, it is not at all believable that the accused would have suddenly changed her mind and gone to a total stranger to make such an extra judicial confession. In our considered view, the extra judicial confession said to have been made by the accused does not inspire confidence of this Court. A perusal of the same would go to show that in Ex.P.9, the only signature of the accused is found below the signature of the VAO at the bottom of the paper at the last page. In our considered view, the said extra judicial confession would not have been made by the accused at all. Above all, if Extra Judicial confession is found to be believable and if the same inspires the confidence of this Court, then only, even in the absence of any independent corroboration, the accused could be convicted solely based on such uncorroborated extra judicial confession. In this case, Ex.P.9 does not draw any corroboration from any other source. Thus, closely scrutinising all the evidences let in by the prosecution, we find that absolutely there is no convincing evidence to hold that it was this accused who killed the deceased.

17. To be precise it should be said that there is no evidence that the death of the deceased was a homicide.

In the result,

(i) the appeal is allowed, the conviction and sentence imposed on the appellant by the Fast Track Mahila Court,

Erode in S.C.No.1 of 2016 are set aside and
the appellant is acquitted and
(ii) the fine amount, if any paid,
shall be refunded to her.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

sr

To

- 1.The Inspector of Police,
F.3, Nungambakkam Police Station,
Chennai
- 2.The District Judge, Sessions Court, (Mahila Court),
Erode
- 3.The Judicial Magistrate-II,
Gopichettipalayam
- 4.The Chief Judicial Magistrate,
Erode.
- 5.The Superintendent,
Central Prison, (Women)
Coimbatore
- 6.The District Collector,
Erode
- 7.The Director General of Police,
Mylapore, Chennai.
- 8.The Public Prosecutor,
High Court, Chennai.

+1cc to M/S.R. Radhapandian, Advocate Sr. 2528

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Judgment in
Crl.A.No.723/2016

NM(CO)
VR(11/04/2017)