

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14..02..2017

CORAM

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

Criminal Appeal No.872 of 2016

M.Kongallaiya

... Appellant /Sole Accused

-Versus-

State Rep. by
The Inspector of Police,
Kadathur Police Station,
Erode District.
[Crime No.331 of 2013]

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C against the judgement of conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, [Mahila Fast Track Court], Erode dated 29.01.2016 made in S.C.No.37/2015.

For Appellant : Mr.C.Sivakumar

For Respondent : Mr.P.Govindarajan,
A.P.P

JUDGEMENT

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

The appellant is the sole accused in S.C.No.37 of 2015 on the file of the learned Sessions Judge, Mahila [Fast Track] Court, Erode. He stood charged for offence under Section 302 and 201(i) of IPC. The trial court, by judgement dated 29.01.2016, convicted the appellant under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for two years for offence under Section 302 of IPC and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in

default to suffer simple imprisonment for two years for offence under Section 201(i) of IPC. Challenging the above said conviction and sentences, the accused is before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Meenakshi. Three years before the occurrence, the accused married the deceased. It was a love marriage. They were residing at the house of one Mr.Mathialagan at Arasur Village. The accused was working in a private company. Though three years had passed after the marriage, they were not blessed with any child. The accused took the deceased to a Doctor , who declared that there was no chance for the deceased to bear a child. The accused, therefore, decided to go in for second marriage . He requested the deceased to give consent for the second marriage, but, the deceased declined. Therefore, the accused decided to do away with the deceased. It is further alleged that on 07.07.2013, when the accused told the deceased about the impossibility of having a child, the deceased told that they could end their lives by committing suicide. The accused also agreed for the same. Then, taking a nylon rope, the accused had led the deceased to a nearby river where he tied one end of the nylon rope to his waist and the other end to the waist of the deceased. They both jumped into the river , but, the deceased escaped and came to the bank. The accused got infuriated. Therefore, according to the case, he hit the deceased, pushed her down, strangled her and killed her. Then, he dragged the body to a nearby bush and abandoned the dead body there. He, thereafter, returned home, took kerosene , went to the place of occurrence, poured kerosene and set fire to the dead body. The occurrence was not witnessed by anyone.

3. P.W.1, the Village Administrative Officer of Makkinamkombai village found the dead body of the deceased in a half burnt condition on 07.07.2013. However, the identity of the dead body was not known. He made a complaint (Ex.P.1) to the police on the same day. The Sub Inspector of Police, Kadathur Police Station, on receipt of the said complaint, registered a case in Crime No.331 of 2013 under Section 174 of Cr.P.C. for "Suspicious Death". Ex.P.20 is the FIR. Then, he forwarded both the complaint and the FIR to the court. Then, he handed over the case diary to the Inspector of Police for investigation.

4. The case was taken up for investigation by P.W.22, the then Inspector of Police. He went to the place of occurrence, prepared an observation mahazar, a rough sketch. He recovered the nylon rope found at the place of occurrence under a mahazar. He collected the hairs from the dead body for the purpose for future examination. Then, he conducted inquest on the body of

the deceased and forwarded the same to the hospital for postmortem. But, the identity of the dead body could not be ascertained.

5. When the investigation was in progress, it is alleged that on 14.07.2013, the accused appeared before one Mr.Venkatachalamoorthy and made a voluntary confession narrating the events which led to the identity of the deceased. Mr.Venkatachalamoorthy produced the accused before P.W.15, the then Village Administrative Officer. P.W.15, in turn, produced him before P.W.22. The accused made a voluntary confession to P.W.22. P.W.22 thereafter, altered the case into one under Sections 302 and 201 of IPC. In his disclosure statement, the accused disclosed the place where he had kept a plastic can and a portion of the rope. Accordingly, he took the police and the witnesses to his house and produced the same. The identity of the dead body was made by the relatives of the deceased. The superimposition test of the skull of the dead body was done which also revealed the identity of the dead body as that of the deceased. The investigation was thereafter continued by P.W.23. On completing the investigation, P.W.23 laid charge sheet against the accused.

6. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 23 witnesses were examined, 28 documents and 17 material objects were marked.

7. Out of the said witnesses, P.W.1, the Village Administrative Officer has stated that he found the dead body of the deceased at 08.30 a.m. on 08.07.2013. He has also spoken about the complaint made by him. P.W.2 has stated that the dead body was found at the place of occurrence in a half burnt condition. P.W.3, the land lord, has stated that the accused and the deceased were living together. He has also stated that the dead body was, later on, found at the place of occurrence.

8. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence. P.W.5 has stated that the brother of the accused was known not to him. He has further stated that the accused appeared before him and made a voluntary confession that he killed the deceased and burn the dead body. Then, according to him, he took him to the Village Administrative Officer (P.W.15). The accused gave a voluntary confession (Ex.P.12). Then, according to him, the accused was produced before the police.

9. P.W.6 has spoken about the fact that the deceased was working in his company. P.W.7, a neighbour of the accused, has

stated that the accused and the deceased were living together. P.W.8 has spoken about the photographs of the dead body taken at the place of occurrence. P.W.9 has not stated anything incriminating against the accused. P.W.10 has spoken about the superimposition test conducted. P.W.11, a Forensic Expert, has stated that he visited the place of occurrence and assisted the police. P.W.12 is the father of the deceased. He has stated about the fact that both the accused and the deceased were living together. He has not stated anything incriminating. P.W.13 is the sister of the deceased. She has also stated the same facts as spoken by P.W.12. P.W.14, the Head Clerk of the Magisterial Court has stated that he forwarded the material objects on the order of the learned Magistrate to the Forensic Science Laboratory for chemical examination.

10. P.W.15, the Village Administrative Officer has stated that on 14.07.2013, P.W.5 produced the accused before him along with confession statement. The accused made a voluntary confession (Ex.P.12). Then, according to him, he produced the accused before the police. P.W.16, a Police Constable, has stated that he handed over the FIR to the court as directed by the Sub Inspector of Police. P.W.17, another constable, has stated that he took the dead body and handed over the same to the doctor for postmortem. P.W.18, yet another constable has stated that he handed over the material objects to the Forensic Science Laboratory for examination. P.W.19 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death of the deceased. P.W.20 has spoken about the registration of the case. P.W.21, yet another Forensic Expert, has stated that in the material objects, he found the traces of kerosene. P.W.22 and P.W.23 have spoken about the investigation in this case and the filing of charge sheet.

11. 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.

12. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

13. 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.

14. As we have already narrated, in the instant case, the prosecution relies only on the circumstantial evidence to prove the alleged guilt of the accused. The foremost circumstance is that the dead body of the deceased was found by P.W.1 at 08.30 a.m. on 08.07.2013. The dead body was in half burnt condition. But, the medical evidence would go to show that the death of the deceased was due to asphyxia as a result of strangulation. From these evidences, the prosecution has succeeded in establishing beyond any doubt that the deceased had died of homicide and the death was before 08.30 a.m. on 08.07.2013.

15. Now, the question is, Who were the perpetrators of the crime? In order to prove that it was this accused who committed the crime, the prosecution again to depend only upon the extra judicial confession said to have been given by the accused to P.W.5 and P.W.15. P.W.15 is not already known to the accused. He was a total stranger. When that be so, as rightly contended by the learned counsel for the appellant, it is highly doubtful as to whether, the accused would have chosen such a total stranger to confess. If the evidence of P.W.5 is rejected, then, as a corollary, we have to reject the evidence of P.W.15 also. According to P.W.5, the accused spoke in Kannada language and he reduced the same into writing by translating into Tamil. According to him, when he produced the accused to the Village Administrative Officer (P.W.15). He handed over the said statement recorded by him and signed by him also. But, P.W.15 has stated that when P.W.15 produced the accused, there was no statement already brought by P.W.5 as it was stated by P.W.5. According to him, in his presence at his office, the accused confessed in Kannada language. P.W.5 translated the same and then it was reduced into writing in Tamil. That confession is Ex.P.12. Ex.P.4 is not the confession of the accused, but, it is the statement of P.W.5. Ex.P.12 is stated to be the confession given by the accused in the presence of the Village Administrative Office. Both these documents are in the hand writing of P.W.5. As we have already pointed out, it is highly doubtful as to whether the accused would have gone to P.W.5 who was a total stranger and confessed. There was no motivating factor for the accused to make such a confession. Therefore, we are unable to attach any importance to the so called extra judicial confession said to have been made by the accused. It is too well settled law that extra judicial confession on being substantive in nature could be the sole foundation for conviction, if it inspires the fullest confidence of the court.

In case, if it is shrouded with any doubt, then, as a rule of prudence, the court should look for corroboration from any other independent sources. In the absence of any such corroboration from any other independent source, it would not be safe to sustain the conviction solely based on the extra judicial confession. In the instant case, we do not find any other evidence from any other independent source to corroborate the so-called extra judicial confession made by the accused. Therefore, we are unable to sustain the conviction though the prosecution has succeeded in establishing a strong suspicion against the accused such suspicion, however strong, it may be, cannot take the place of proof, we cannot afford to convict the accused on mere suspicion as we need proof of guilt. In such view of the matter, we hold that the prosecution has failed to prove the case against the accused beyond any responsible doubt and so, the accused is entitled for acquittal.

16. In the result, the criminal appeal is allowed. The conviction and sentences imposed on the appellant/accused by the trial court are hereby set aside and he is acquitted from both the charges. Fine amount already paid, if any, shall be refunded to him. The bail bond executed by the appellant/accused shall stand terminated.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- सत्यमेव जयते
- 1.The Sessions Judge, Mahalir Neethimandram,
[Mahila Fast Track Court], Erode.
 - 2.The Principal Sessions Judge,
Erode.
 - 3.The Chief Judicial Magistrate,
Erode.
 - 4.The Judicial Magistrate,
Gobichettipalayam.

5.The Additional Superintendent,
Central Prison,
Coimbatore.

6.The District Collector,
Mylapore, Chennai.

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

8.The Inspector of Police,
Kadathur Police Station,
Erode District.

9.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.C.Sivakumar, Advocate Sr.9551

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