



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A.(MD).No.214 of 2016 &
Crl.M.P.(MD).No.4265 of 2016

Logendran .. Appellant/Sole Accused

Vs.

The State of Tamil Nadu represented by
The Inspector of Police,
Varusanadu Police Station,
Theni District.
(Cr. No.65 of 2011)

.. Respondent/Complainant

PRAYER: Appeal filed under Section 374 Cr.P.C. to allow the criminal appeal and acquit the appellant/sole accused by setting aside the judgment and conviction passed by the Sessions Judge, Mahalir Neethi Mandram, (Fast Track Mahila Court), Theni made in S.C.No.58 of 2013, dated 08.03.2013, dated convicting the appellant/sole accused for the alleged offence under Section 302 and 201 of IPC and sentenced him to undergo, life imprisonment and imposed Rs.10,000/- as fine amount in default to pay fine amount further 1 year RI imposed in respect of Section 302 of I.P.C. and in so far as Section 201 of I.P.C., 3 years R.I. and imposed fine of Rs.1000/- in default to pay a fine further 3 months R.I. Imprisonment.

For Appellant : Mr.G.Karuppasamy Pandian for
M/s.C.M.Ganesan

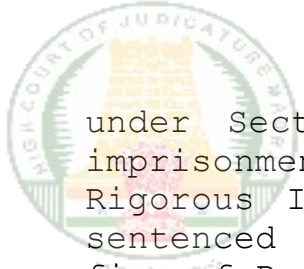
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor.

Judgment Reserved on	10/08/17
Judgment Pronounced on	22.08.2017

JUDGMENT

(Judgment of the Court was delivered by **N.SATHISH KUMAR, J.**)

Aggrieved over the judgment of the Sessions Court, Mahalir Neethi Mandram, (Fast Track Mahila Court) Theni, dated 08.03.2016, in S.C.No.58 of 2013, the present appeal has been filed. The Trial Court convicted the appellant/accused for the offence punishable



under Sections 302 and 201 IPC and sentenced to undergo life imprisonment and imposed fine of Rs.10,000/-, in default, 1 year Rigorous Imprisonment for the offence under Section 302 IPC and sentenced to undergo 3 years Rigorous Imprisonment and imposed fine of Rs.1,000/-, in default, 3 months Rigorous Imprisonment.

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

The deceased Kumudha, is the wife of the accused and daughter of PW1 and grand daughter of PW2. As the deceased was missing, PW1 lodged a complaint/Ex.P1.

ii) PW20 received the complaint from PW1 and registered the crime in Crime No.65 of 2011 for 'woman missing' and went to the place of occurrence and prepared observation mahazar/Ex.P11 and also drawn rough sketch/Ex.P12 in the presence of witnesses and examined the witnesses and thereafter, handed over the case file to the regular Inspector of Police.

iii) In the meanwhile, the accused appeared before the Revenue Inspector/PW18 on 15.06.2011 at about 5 p.m. and gave a confession admitting the crime that he has beat his wife, killed her and buried the dead body. PW18 recorded the confession under Ex.P8. Thereafter, handed over the accused and the confession statement to the police.

iv) PW21, Inspector of Police, altered the crime from woman missing to the offence under Sections 302 and 201 IPC and also forwarded the First Information Report to the Court and also gave a requisition to the Tahsildar and also arrested the accused in the presence of PW18 and PW13 and also recorded the confession. In pursuance to the same, PW21 has also seized spade/MO1 under Ex.P10 mahazar.

v) The accused also identified the place of burial of dead body in the presence of PW11 and PW13. Thereafter, the dead body was exhumed in the presence of the Tahsildar and witnesses and postmortem was conducted there itself. PW21 prepared observation mahazar/Ex.P13 and rough sketch/Ex.P14 and also examined the witnesses. PW24, the Tahsildar, who is also present on the place, which was identified by the accused and he has also examined the dead body and conducted the inquest under Ex.P17 mahazar and the inquest report is Ex.P16.

vi) PW16/medical officer conducted autopsy on the dead body in the place where the body was exhumed and found the following injuries:

1. Laceration of size 8 cms x 3cm x bone deep noted on right temporal Parital area of scalp.

<https://hcservices.eco.nagpur.gov.in/hcservices/> Contusion of Scalp, Skull & Dura:-

Contusion scalp 11 cms x 9 cms noted on the right-tempero-parital area of scalp. Fissured fracture of



length 11cms noted the vault of skull extending from the right termpero-partial bone. Brain-Liquefied with blood tint. Linear fracture of length 17 cms noted extending from the right middle cranial fossa to the left middle cranial fossa.

On dissection of chest and abdomen:-

Heart-flabby. All internal organs are found to be greasy en mass."

and issued Ex.P6/post mortem certificate and noted that the deceased died due to head injuries.

vii) PW17/Junior Scientific Officer, conducted superimposition test with the skull of the deceased and filed Ex.P7 report stating that the skull is matched with the photographs of the deceased. PW19, Inspector of Police, Andipatti Mahilar Police Station, and according to her, the deceased already gave a complaint against her husband in her police station, wherein she has stated that her husband in an intoxicated mood used to ill-treat her. The above complaint was enquired and thereafter closed.

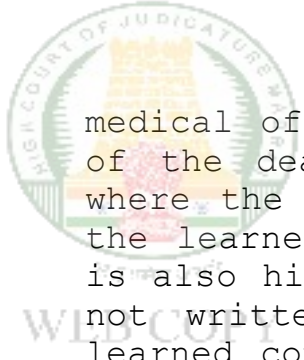
viii) PW21 in continuation of investigation examined the medical officer and forensic expert and finally laid a charge sheet against the accused in respect of the offence punishable under Sections 302 and 201 of IPC and Section 4(a) of the Tamil Nadu Prevention of Woman Harassment Act.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. he denied the same as false. During trial, on the side of prosecution as many as 26 witnesses were examined and 19 documents were exhibited besides 1 material object.

4. Having considered the above materials, the trial Court found the accused guilty as detailed in the first paragraph of this judgment and accordingly, punished him and that is how the appellant is before this Court with the appeal.

5. Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State and also carefully perused the records.

6. The learned counsel for the appellant submitted that the entire case is rest on the circumstantial evidence. The deceased allegedly went missing on 23.05.2011, whereas only on 15.06.2011, the extra judicial confession alleged to be given to PW18 cannot be given much importance, which was given after 23 days of the alleged occurrence. Further, PW18 is a total stranger. Therefore, the accused giving such confession to a stranger is also
All the family members of the deceased not supported the version of the prosecution and the recovery of the dead body is also highly doubtful. The evidence of the mahazar witnesses,



medical officer and Tahsildar clearly show that before exhumation of the dead body, people were very much present in the place, where the dead body was exhumed. Hence, it is the contention of the learned counsel for the appellant that the alleged recovery is also highly doubtful and the extra judicial confession is also not written by the Village Administrative Officer. Hence, the learned counsel submitted that the entire prosecution case creates serious doubt. The motive alleged by the prosecution is not been established. Hence, prayed for allowing the appeal.

7. The learned Additional Public Prosecutor submitted that admittedly, the deceased and the accused were residing together and suddenly the deceased went missing. Thereafter, the First Information Report was lodged for woman missing by the parents of the deceased. During the investigation, the accused himself has voluntarily given an extra judicial confession before PW18, who is the Revenue Inspector. A person appearing before the Revenue Inspector and giving a confession statement cannot be stated to be a strange one. In pursuance of the accused confession only, the dead body was exhumed. Further, Medical Officer in his evidence has clearly stated that the deceased would have died out of the head injuries. When the dead body itself was recovered at the instance of the accused, coupled with the extra judicial confession, no other evidence is required to prove the guilt of the accused. The evidence of the medical officer, Tahsildar, Revenue Inspector and Investigation Officer, not only prove the confession of the accused, but also the recovery of the dead body at the instance of the accused. There was no explanation whatsoever from the accused about the missing of his wife for long time. Hence, he submitted that mere minor discrepancy in the prosecution case cannot be considered to disbelieve the prosecution version. Hence, prayed for dismissal of the appeal.

8. Now it has to be seen that whether the prosecution has proved the guilt of the accused beyond reasonable doubt. The prosecution has mainly relied upon the circumstantial evidence as against the accused. The main charge of the prosecution is that on 23.05.2011 there was a quarrel between the accused and his wife in the house. As a result, the accused beat his wife with spade and caused death and thereafter he carried the dead body to vaigai river and buried the same. To establish the fact that on 23.05.2011 in the house only the husband and wife alone are present, absolutely there is no evidence on record. All the relatives including the parents of the deceased were not supported the prosecution in any manner. Though Ex.P1 was lodged by PW1, PW1 also not supported the version of prosecution, except he signed in Ex.P1. Ex.P1/complaint was originally lodged not only with respect of missing of the deceased namely, the wife of the deceased, but also the minor children. Though Ex.P1 stated to have been given on 11.06.2011, the same has been reached to the Court only on 16.06.2011. When the dead body was allegedly recovered at

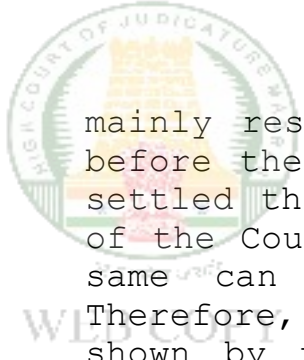


the instance of the accused, there was no reasons whatsoever assigned by the prosecution for such delay in despatching Ex.P1.

9. Be that as it may, the prosecution has also not examined the children of the accused and deceased to establish the fact that infact the deceased and the accused were together on the date of the alleged occurrence. Of course in the normal circumstances, when the husband and wife residing in the same house and anything happened to either of them, the burden is rest on the other to establish what was transpired in the house. Similarly Section 106 of the Indian Evidence Act also come into play in the said situation. It must be noted that before applying the presumption, it must be established by the prosecution that the husband and wife infact residing together at the relevant point of time in the house. If only the initial onus on the side of the prosecution is discharged, then the question of placing burden on the accused will come into play. In this case admittedly, there is no evidence whatsoever available on record to show that on 23.05.2011, both husband and wife infact, residing together in the house. Therefore, the burden cannot be shifted on the accused.

10. It is further to be noted that from the evidence of PW19, Inspector of Police, Andipatti Mahila Police Station, it could be seen show that there was a previous complaint lodged by the wife against the husband on 25.04.2011 and thereafter the same has been compromised on 25.04.2011 itself. Though the complaint filed by the deceased as against the husband for some illtreatment, it has been closed on 25.04.2011 itself. Absolutely there is no evidence whatsoever on record to show that after 25.04.2011, both husband and wife residing together till the death of the deceased. Prosecution has miserably failed to establish the above fact in this case. Therefore, merely because, the deceased, was the wife of accused, it cannot be presumed that both the husband and wife are residing together till the death of the deceased.

11. The prosecution has also relied upon the extra judicial confessioin stated to have been given by the accused before PW18. PW18 in his evidence has stated on 15.06.2011, the accused appeared before him and gave an extra judicial confession and immediately the same was reduced into writing by PW18 in the presence of PW11. Thereafter, the accused was handed over to the custody of police. The Inspector of Police also recorded the confession. In pursuance to the same, the dead body was recovered from the riverbed. It is not in dispute that the dead body was exhumed on 16.06.2007 in the presence of Tahsildar and Medical Officer and further the postmortem and inquest were conducted there itself. If the *corpus de-licti* is recovered at the instance of the accused, it is one of the strongest circumstances against the accused. On this aspect there is no doubt at all. Now, it has to be analysed whether the dead body of the decesed was recovered at the instance of the accused. In this case the entire case is



mainly rest on the alleged extra judicial confession/Ex.P8 given before the Revenue Inspector by the accused. It is also now well settled that if the extra judicial confession inspires confidence of the Court and does not suffer from any infirmity or doubt, the same can be the basis for the conviction of the accused. Therefore, to act upon the extra judicial confession it must be shown by the prosecution that the extra judicial confession is without any doubt it has been given in a normal circumstance by the accused. In this regard the evidence of PW11 and PW18 would have to be scanned carefully. Though PW18, the Revenue Inspector claims to have recorded the extra judicial confession/Ex.P8 on 5 p.m. on 15.06.2011 and handed over the accused to the police station immediately, the evidence of PW18 is not supported by PW13. PW13, the Village menial in his evidence has stated that only at the instance of the police he and PW18, went to the police station in the evening hours on 15.06.2011, where the accused was present in the police station and the police recorded the confession. Similarly when the evidence of PW13 and PW18 read together, their evidence are inconsistent with each other creating a serious doubt about the accused appeared before PW18 and gave a confession. PW18 in his evidence admitted that the confession of the accused has not written in his own handwriting and only his Assistant has written the confession. Whereas, PW13, Village Assistant never spoken anything about that. Who has written the confession at the instruction of PW18 is the big question mark here. A person called Pandian allegedly written the confession at the instruction of PW18 has also not been examined by the prosecution. That apart PW18 in his evidence has categorically stated that he has not written the confession while the accused giving confession and he has also admitted the same before the police. Further he also admitted that at the time of alleged confession, no assistant or persons was present in his office. It is also admitted by PW18 that PW13 and himself were present at the relevant time and went to the police station. That being so, writing of the confession by somebody is also highly doubtful, since PW18 himself has not recorded the confession in his own handwriting. Hence, We are of the view that the extra judicial confession Ex.P8 suffers from serious doubt and infirmities and that cannot be given much importance to convict the accused. Though the contention of the learned counsel for the appellant that PW18, Revenue Inspector being the stranger, extra judicial confession ought not have been given, the said contention cannot be countenanced for the simple reason that people normally tend to repose confidence on the officials. However, taking into consideration of the evidence of PW13 and PW18 and serious doubt with regard to recording of extra judicial confession by PW18, it cannot be given much importance to form a basis for conviction.

<https://hcservices.courts.gov.in/hcservices/> Another fact to be noted is that Ex.P8 was written in a similar paper that of other papers used by the police. The size of the paper in which Ex.P8 was written is similar to the other



papers used by the police during investigation. This fact clearly indicate and probablise the evidence of PW13 that extra judicial confession was infact prepared in the police station in the presence of PW13 and PW18. Hence, the same cannot be a valid confession to sustain a conviction. Though the prosecution relied upon the recovery of spade, it is to be noted that such recovery itself is based on the alleged extra judicial confession allegedly given before PW18. When extra judicial confession itself is doubtful and appears to be fabricated in the police station, the alleged discovery of fact under Section 27 of the Indian Evidence Act also becomes insignificant, since the confession before police or in their preence is inadmissible. Further the evidence of Tahsildar and others clearly show that before exhuming the dead body, the people have surrounded the place, this fact clearly shows that the people are aware where the body was burried. In view of the same, the alleged recovery also which was relied upon by the prosecution cannot be given much importance. Though the identity of the dead body was established that it is the wife of the accused and it has been exhumed, in the absence of other evidence and the so called extra judicial confession, which also suffers from serious doubt and that itself cannot be a ground to sustain the conviction, we are of the veiw that the prosecution case cannot succeed merely on the basis of extra judicial confession. Accordingly, we set aside the conviction and sentence. The judgment of the Trial Court convicting the appellant under Secitons 302 and 201 IPC and imposing the life imprisonment are hereby set aside.

13. In the result, the appeal is allowed and the conviction and sentence imposed by the learned Sessions Judge, Mahalir Neethi Mandram, (Fast Track Mahila Court), Theni, against the appellant in S.C.No.58 of 2013, dated 08.03.2016 are set aside. The Bail bond executed by the appellant, if any shall stand cancelled. Fine amount if any paid by the appellant shall be refunded. In view of the judgment acquitting him, the jail authorities are directed to set the appellant at liberty forthwith, if he is not required in connection with any other case or proceedings. Consquently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/

sub Assistant Registrar

To

1.The Sessions Judge, Mahalir Neethi Mandram, (Fast Track Mahila



2.The Principal District and Sessions Judge,
Theni.

3.The District Collector, Theni.

4.The Director General of Police, Mylapore, Chennai-4.

5. The Superintendent,
Central Prison, Madurai.

6.The Inspector of Police,
Varusanadu Police Station,
Theni District.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.C.M.Ganesan, Advocate,SR.73673

Judgement made in
CRL.A.(MD).No.214 of 2016 &
Crl.M.P.(MD).No.4265 of 2016
Dated: 22.08.2017

JIKR
KK/SV MMS/SAR2-23.08.2017-8P-9C