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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.11.2017

Pronounced on: 11.12.2017

CORAM:

**THE HONOURABLE MR .JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

Cr1.A.[MD].No.397 of 2016

Christu Arockiasamy @ Rajakalai

.. Appellant/
Sole accused

Vs.

State rep. by the
Inspector of Police,
Mathur Police Station,
Pudukkottai District.
(Crime No.2 of 2013)

.. Respondent/
Complaint

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 24.11.2015, made in S.C.No.65 of 2013, by the learned Sessions cum Mahila Court Judge, Pudukkottai.

For appellant : Mr.M.Karunanithi

For respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 24.11.2015, made in S.C.No.65 of 2013 by the learned Sessions cum Mahila Court Judge, Pudukkottai.

2.The appellant was convicted and sentenced to undergo imprisonment as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.



364 IPC	To undergo seven years rigorous imprisonment	To pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
201 IPC	To undergo seven years rigorous imprisonment	To pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.

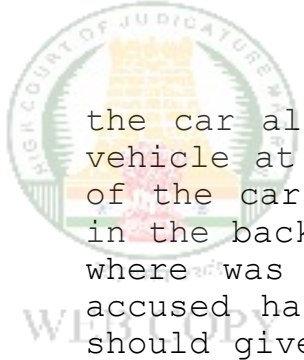
All the sentences were ordered to run concurrently .

3.The brief facts of the case of the prosecution is as follows:

(a) The accused is the son of the deceased by name Mathalai Mery. PW9 is the brother of the accused. The husband of the deceased died 15 years back. After the death of the husband, the deceased along with the accused and PW9 went to her parental home at Eechampatti and lived together. The accused studied upto I.T.I and learned to drive cars. For the last one year, the accused was working in a private concern at Manapparai by staying in the house of one Thiyagarajan. During that period, he was addicted to alcohol and other bad habits, and in order to spend money for his wayward life, he borrowed loan from several persons and he had become a debtor. The deceased had an ancestral property. The accused schemed that if the said property of the deceased is sold, he could clear his debts, purchase a new car and drive the same for hiring, after giving some paltry amount to his brother - PW9. Hence, the accused was pressurizing the deceased/mother to sell the ancestral property and give money to him. The deceased has not accepted the same. The accused, therefore, decided to murder his mother (deceased), under the impression that only if she dies, he could inherit the ancestral property and sell the same.

(b) On 27.12.2012 one Rangaraj had given the TATA Sumo Car bearing Registration No.TN-46-E-7201 to the accused to go to Sabarimala. The accused went to Sabarimala, where he had purchased a knife and hidden the same in the TATA sumo vehicle. On 01.01.2013, in the morning, the accused called his mother (deceased) over phone and asked her to come to Manapparai stating that based on the loan given by his friends, he is going to purchase a property near the twin tamarind trees at Keelapoosaripatti and that after seeing the land, she could give the advance amount. Believing the words of the accused, on the same day, at 6.00 p.m., the deceased came to Manapparai from Eechampatti. As it was late night, the accused left the deceased in her aunt's house - PW7 at Manjampatti and the accused returned back to Manapparai Taxi market in the TATA Sumo Car.

(c) Next day, ie., on 02.01.2013 at 8.00 a.m. the accused went with the TATA Sumo car and took his mother, PW7 and another aunt's daughter - PW8 in the TATA Sumo car and dropped PW7 and PW8 at the Litter Flower School at 8.30 a.m. and proceeded in



the car along with his mother. Thereafter, the accused stopped the vehicle at the twin tamarind trees outskirts and closed the glasses of the car. The accused came nearer to his mother, who was sitting in the backside of the driver seat. At that time, the deceased asked where was the land that was going to be purchased by him. The accused has stated that he has mounting debts and therefore, she should give money after selling half of the ancestral property. The deceased replied that she will not sell her property. Enraged over the same and stating that until she was alive, she will not leave him to enjoy the fruits of the property and by saying so, the accused took a knife from the hide out, closed the mouth of the deceased with his left hand and stabbed the deceased on her left side chest, on the right side neck and on the centre of the neck. The accused also cut the hands of the deceased. On receiving the injury, the deceased died instantaneously in the car. In order to screen the evidence, the accused took the dead body of the deceased and threw it inside thorny bushes at Vannan Kalingu.

(d) On 03.01.2013 PW1 - the then Village Administrative Officer at 1.00 p.m. got an information that a female dead body aged about 50 years was lying near the land in Survey No.261, at Vannan Kalingu. On hearing the said information, PW1 proceeded to the place where the body was lying and found the dead body of the woman with stab injury on the neck and left hip and on the hand of the deceased. Hence, he immediately went to Mathur Police Station and gave a complaint - Ex.P1 in this regard.

(e) On receipt of Ex.P1, PW29 - the then Sub Inspector of Police registered a case in Crime No.2 of 2013 under Section 302 and 201 IPC. Ex.P13 is the FIR. Then, PW29 forwarded Ex.P1 - complaint and Ex.P13 - FIR to the Court as well as to the Inspector of Police - PW30.

(f) PW30 took up the investigation on the same day at 5.00 p.m., proceeded to the place where the dead body was lying, prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P14) in the presence of witnesses and then, on 04.01.2013 he conducted inquest on the body of the deceased at Trichy Government Hospital in the presence of panchayatars. Then, PW30 arranged for a photographer and took photograph of the place of occurrence. As per the request of PW30, forensic experts and a sniffer dog squad visited the place where the dead body was found. Since the identity of the deceased could not be found, PW30 made a paper publication. Thereafter, he recorded the statements of the people in and around the place where the dead body was found. After knowing the identity of the deceased from her relatives, PW30 sent the dead body of the deceased to the hospital for postmortem through PW27 - Head Constable.

(g) PW23 - Dr.Renugadevi conducted postmortem on the body of the deceased on 04.01.2013 at 3.20 p.m. and she found the following injuries on the body of the deceased:



bloodstained polythene bag containing with tamarind, TATA Sumo Car, bloodstained shirt and pant, bloodstained sleeveless banion. PW30 recovered the same under mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court.

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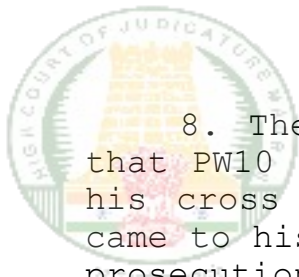
(i) PW30, during the course of investigation, recorded the statements of PW10, PW11 and other witnesses. Due to transfer PW30 handed over the investigation to his successor - PW32. PW32 took up the investigation. At the request of PW32, the material objects were sent for chemical examinations through Court. The chemical examination report (Ex.P18) and serological report (Ex.P19) disclosed that there are human blood group of "B" smeared on most of the material objects, including the knife, etc. PW32 collected the medical documents and recorded the statement of medical witnesses and other witnesses. He altered the offences under Sections 364, 302 and 201 IPC and forwarded the alteration report to the Court. After completion of investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court had framed three charges under Sections 364, 302 and 201 IPC against the accused. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, as many as 32 witnesses were examined as PWs.1 to PW32 and Exs.P1 to P21 were exhibited, besides 17 Material Objects (MOs.1 to 17).

5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, on the side of the accused, no one was examined and no document was marked.

6. The trial Court, after considering the oral and documentary evidence, has found the accused guilty of all the charges and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant/accused has come up with this appeal.

7. The learned counsel appearing for the appellant / accused would submit that the entire case of the prosecution rests on the circumstantial evidences. But the prosecution has miserably failed to connect the chain of events so as to prove the guilt of the accused. In this regard, the learned counsel for the appellant submitted that in Ex.P3 - Extra Judicial Confession Statement, the Inspector of Police has first put his signature and below the signature of the Inspector of Police, the VAO has affixed his signature, which would show that the said extra judicial confession statement was not prepared by PW10 and it was created in the Police Station.



8. The learned counsel for the appellant would further submit that PW10 is a stranger to the accused and PW10 himself admitted in his cross examination that he did not know the accused before he came to his office. Hence, it is not safe to believe the case of the prosecution that the accused gave a statement to PW10, who is alien to him.

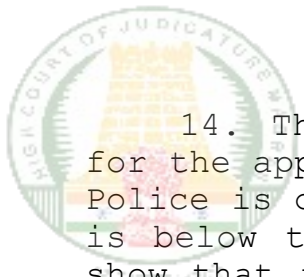
9. The learned counsel for the appellant would further submit that in the recovery mahazars viz., in Ex.P9, there are corrections and PW10 has also admitted the same. But, no explanation was offered by the investigating officer, which would show that the corrections were made to suit the convenience of the prosecution case.

10. The learned counsel for the appellant would further submit that though the investigating officer and PW10 have stated that after giving extra judicial confession statement, the accused has produced a pair of ear-stud and nose-stud, PW9 - the brother of the accused has admitted in his cross examination that the said nose-stud and ear-stud of the deceased were already handed over to his relatives, which would go to show that the alleged arrest and recovery is nothing but a concocted story. As there are lot of contradictions in the evidences of the prosecution, the benefit of doubt may be extended in favour of the accused and this appeal may be allowed.

11. Per contra, the learned Additional Public Prosecutor submitted that in this case, the prosecution has clearly proved the chain of circumstances by examining the evidences of PW8, who is the relative of the deceased and PW9, who is the brother of the deceased and PW10, who recorded the extra judicial confession statement of the accused, PW16 and PW17, who saw the car lastly nearby the place of occurrence. PW13 - who was running water wash workshop has clearly stated in his evidence that before washing the car, there was bloodstain in the car and foul smell of the blood also emanated from the car, which categorically proved that the occurrence had happened in the car and the same has been done by the accused. Thus, the prosecution has categorically proved the guilt of the accused beyond reasonable doubts. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

12. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

13. According to the prosecution, it is a case of abduction, murder and screening of evidence and the said act has been done by the accused. According to the accused, it is not he, who committed the offences. The trial Court has come to the conclusion that it is the accused, who committed the offences and accordingly, imposed the conviction and sentence against the accused.



14. The first and foremost submission of the learned counsel for the appellant is that in Ex.P3 the signature of the Inspector of Police is on the top from the bottom, whereas the signature of PW10 is below to the signature of the Inspector of Police, which would show that it was created by the investigating officer in the Police Station. A bare perusal of the extra judicial confession statement marked as Ex.P3 would go to show that it is not so as stated by the learned counsel for the appellant. The signature of the Inspector of Police is on the left side corner of the page, where VAO - PW10 has left a small space before putting his signature on the left side. Therefore, it cannot be said that the Inspector of Police had put his signature first and then, PW10 had put his signature. Further, the said signature was put by the Inspector of Police - PW30 only as an acknowledgment for the receipt of the confession statement from PW10. More over, simply because the signature of the Inspector of Police is on the top of the left corner, the Court cannot throw away Ex.P3. Therefore, this contention is rejected.

15. The next submission of the learned counsel for the appellant is that PW10 is a stranger to the accused and therefore, it is not possible for the accused to give voluntary confession to PW10 and therefore, Ex.P3 is not believable. Generally, a person, who is fearing to appear before the Police or fearing about getting hauled up by the Police, would only choose to appear before the Village Administrative Officer, because he is the person dealing with the public related issues in the village. Here, in this case, PW10 is the Village Administrative Officer of the nearby village viz., Viralimalai. In Ex.P3 itself, it is stated by the accused that he was worried about the acts committed by him and that he would get peace of mind, if he gets punishment for the acts committed by him. The accused has further stated that fearing to appear before the Police, Court, etc., and knowing about the nook and corner of that area as he used to drive the vehicle in that area for hiring, he chose to appear before PW10 and to state about the acts committed by him. Thus, it can be stated that according to the accused, PW10 is a known person, though PW10 did not know about the accused. As the accused himself chose to appear and give confession statement before PW10, Ex.P3 cannot be doubted. Even assuming that the prosecution has failed to prove about the accused gaining confidence on PW10 for giving confession statement, Ex.P3 - extra judicial confession statement cannot be rejected for that reason alone. There are other aspects to be analysed.

16. At this juncture, this Court is of the view that it would be appropriate to refer to the decision of the Hon'ble Supreme Court in Sahadevan and another Vs. State of Tamil Nadu, reported in (2012) 6 SCC 403, wherein the Hon'ble Supreme Court, after analyzing a catena of decisions relating to the principles of extra judicial confession statement, has held in paragraph No.16 as follows:



appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

"(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the Court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

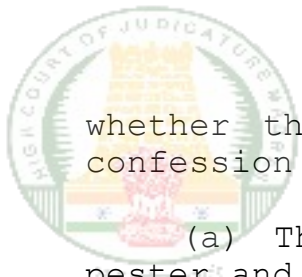
(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

17. In this case, the prosecution heavily relies on Ex.P3 - Extra Judicial Confession Statement. Bearing in mind the above principles, now let us examine Ex.P3 with greater care and caution. Ex.P3 is stated to be recorded by PW10 in the presence of one V.Duraisamy, Village Assistant on 07.01.2013. Ex.P3 runs to several pages. A perusal of Ex.P3 would go to show that a chain of events have been mentioned in the same. The occurrence was stated to have happened on 02.01.2013. The identity of the deceased came to be known to the Police only on 04.01.2013. There is no dispute that Ex-P3 - Extra Judicial confession statement was given by the accused before PW10 on 07.01.2013. Within three days of the occurrence, it is not possible for the investigating agency to cook up such a chain of events in order to bring home the offences against the accused. In other words, it can be stated that unless those events are voluntarily stated by the accused, the said statements could not have been recorded. Thus, Ex.P3 fully inspires the confidence of the Court.

18. In a case based on circumstantial evidence, it is absolutely necessary for the prosecution to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain so as to unerringly point to the guilt of the accused and there should not be any alternative hypothesis which would be inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now analyse the circumstances projected by the prosecution and let us see



whether the chain of events mentioned in Ex.P3 - extra judicial confession statement and the circumstantial evidences go together:

(a) The accused himself admitted in Ex.P3 that he used to pester and get money from the deceased for his wayward life.

(i) The said conduct of the accused has been clearly stated by PW6, who is the aunt of the accused.

(b) It is stated by the accused that on 28.12.2012 the TATA SUMO car was given by PW14 to him for running the same for hiring.

(i) PW22 in whose name the vehicle stands has stated that she sold the car to PW14. The car was recovered from PW14. PW14 has stated in his evidence that he knew the accused as he is working as a driver in the Manapparai Car Stand. PW14 has further stated that on 27.12.2013 he handed over the car to the accused in order to go to Sabarimala and that on 02.01.2013 the accused called him for giving the key of the car and as per his direction, the accused handed over the key in the car stand.

From the above evidence of PW14, it is clear that the car was with the accused from 27.12.2013 to 02.01.2013.

(c) It is stated by the accused that on 01.01.2013 the accused called the deceased to Manapparai and as such on the same day, at 6.00 p.m. the accused came there and as it was late at night, they stayed at the house of the deceased's aunt - PW7 and on the next day, at 8.00 p.m. the deceased came out of the house of PW7 and boarded the car.

(i) PW7 has categorically stated in her evidence that on 01.01.2013 at 7.00 p.m. the deceased came to her house and stayed, and that on the next day, at 8.00 a.m. since the accused called the deceased over phone, the deceased left the house. PW7 has further stated that before leaving the house, the deceased asked her (PW7) to give some tamarind fruits to her and accordingly, she gave some tamarind fruits to the deceased. It is seen from the record that the polythene carry bag containing bloodstained tamarind fruits was, later on, recovered and marked as MO.8.

(ii) PW8, who had lastly seen the deceased along with the accused, has stated in her evidence that on 02.01.2013 she along with the deceased travelled in the car and alighted at the school, where she is working and thereafter, the deceased and the accused alone travelled in the car.

From the evidences of PW7 and PW8, the prosecution has clearly proved that the deceased was lastly seen alive with the accused.

(d) The accused has further stated in Ex.P3 that nearby the twin tamarind tree at Keela Poosaripatti Village, he stopped the vehicle and took the knife from the hide out and stabbed the deceased on her chest and on the neck of the deceased and then, he



removed a pair of ear stud and nose stud from the body of the deceased and then, he took the car. The accused has further stated that he threw away (a) polythene bag in the hands of the deceased which was containing bloodstained cell phone, Money purse, Tamarind fruits, water bottle, (b) the body of the deceased, (c) the bloodstained sheet cover of the car, (d) the knife and (e) his bloodstained shirt, pant, banion at five different places.

(i) PW16 and PW17 have stated in their evidence that on 02.01.2013 at 11.30 a.m. when they were riding in a motorcycle on Viralimalai - Keeranoor Road, the TATA Sumo Car bearing Registration No.46-E-7201 came in a great speed and that the driver was a young man aged about 20 to 25 years.

(ii) The investigating officer - PW30 has stated in his evidence that the above said material objects were recovered from different places as stated by the accused. PW10, who put his signature in the recovery mahazar, has also corroborated the same. More over, as per the forensic report, there was bloodstain on all the material objects, including knife.

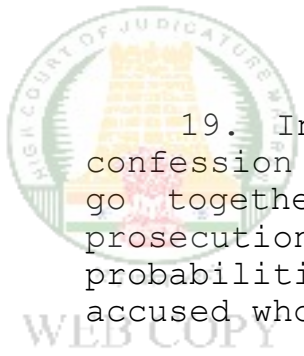
The above recoveries made at different places on the basis of the confession statement of the accused and the bloodstain found on all the material objects, especially on the knife, strengthened the case of the prosecution that this accused had committed the offence.

(e) The next circumstance stated by the accused is that on the same day of the occurrence, he gave the car for water wash at J.J. Water Service.

(i) PW13 who is working in J.J. Water service has stated in his evidence that on 02.01.2013 at 1.00 p.m. the car bearing registration No.TN-46-E-7201 came for water service and there was bloodstain in the car and there was also foul smell of the blood in the car. PW13 has further stated that when he asked the accused about the bloodstain and foul smell of the blood, the accused had stated that it was due to supply of meat in the car to one Muslim boy.

(ii) PW23, who conducted postmortem has stated in his evidence that the deceased would appear to have died of due to stab wounds. PW23 has further stated that the injuries could have been caused by the knife like MO.12. More over, as stated earlier, there was human bloodstain on the knife - MO.12, which was recovered on the confession of the accused.

The admission of the accused and the evidences of PW23 and PW13 would go to show that it was this accused, who had committed offences and in order to screen the evidence, the accused has given the car to PW13 for water wash.



19. In view of the above, we hold that the extra judicial confession statement of the accused and the circumstantial evidences go together and the circumstantial evidences projected by the prosecution completely form a chain of circumstances and in all probabilities, it is proved by the prosecution that it was this accused who had committed the above offences.

20. Now let us analyse the next submission of the learned counsel for the appellant ie., there are corrections in Ex.P9. But, no explanation was offered by the investigating officer, which would show that the corrections were made to suit the convenience of the prosecution case. A bare perusal of Ex.P9 would go to show that there was only one single correction. PW10 has categorically stated in his evidence that the said correction was made before him. Admittedly, it was only a minor correction and the same does not create any doubt on the creation of Ex.P9 as stated by the learned counsel for the appellant. Hence, the said submission of the learned counsel for the appellant is rejected.

21. The last submission of the learned counsel for the appellant is that though the investigating officer and PW10 have stated that after giving confession statement, the accused has produced a pair of ear-stud and nose-stud, PW9 - the brother of the accused, has admitted in his cross examination that the said nose-stud and ear-stud of the deceased were already handed over to his relatives, which would go to show that the alleged arrest and recovery is nothing but a concocted story. The ear-stud and nose-stud produced by the accused have been recovered by the investigating officer only through Ex.P5 - mahazar, in which PW10 and one Village Assistant - Mr.V.Durai samy have put their signatures as witnesses. PW10 has also categorically stated in his evidence that after giving confession statement before the Inspector of Police, the accused produced a pair of ear-stud and a pair of nose stud on 07.01.2013. Of-course, it is true that PW9, who is the brother of the accused, has stated in the cross examination that a pair of ear-stud and nose-stud of the deceased had already been handed over to his relatives. But, the defence has failed to prove as to when it was handed over to the relatives of the deceased ie. before the date of recovery of the jewels or long after the recovery of the jewels from the accused. Further, it is also not clear that as to who received the jewels. However, it is seen that the trial Court in its judgment has directed to return the MO.1 and MO.2 to the legal heirs of the deceased after the appeal period, which would go to show that MO.1 and MO.2 are still in the custody of the trial Court. Thus, the above statement of PW9 in the cross examination suffers from material discrepancies and inherent improbabilities. Therefore, the said contention cannot be accepted.

22. Now turning to the quantum of punishment, the trial Court has imposed only minimum punishment which also does not require any interference at the hands of this Court. We do not find any merit at all in this appeal.



23. In the result, this Criminal Appeal fails and the same is accordingly dismissed; the conviction and sentence imposed on the appellant/accused in S.C.No.65 of 2013 is confirmed.

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Assistant Registrar(CSI)

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Sub-Assistant Registrar

To

1.The Sessions cum Mahila Court Judge,
Pudukkottai.

2.The Principal District and Sessions Judge,
Pudukkottai

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

4.The District Collector, Trichy

5.The Superintendent, Central Prison, Trichy
(In Duplicate for communication to the accused)

6.The Inspector of Police,
Mathur Police Station,
Pudukkottai District..

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

Copy to:-

The Section Officer, Criminal Section,,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.M.Karunanithi, Advocate, SR.No.91998

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RL/11C/12P/SKN/RSK/SAR4/28/12/2017

Judgment made in
Crl.A.[MD].No.397 of 2016