

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

C O R A M

HE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal No.286 of 2017

Kumar
S/o.Rajendran

... Appellant/Accused

-vs-

The State represented by its
Inspector of Police,
Rasipuram Police Station,
Namakkal District.
Crime No.41 of 2012

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Fast Track Mahila Court, Namakkal, passed in S.C.No.60 of 2013 on 17.04.2017.

For Appellant : Mr.P.Vijendran

For Respondent : Mr.V.Arul
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by C.T.SELVAM, J.)

This appeal arises against judgment of learned Sessions Judge, Fast Track Mahila Court, Namakkal, passed in S.C.No.60 of 2013 on 17.04.2017, convicting appellant/accused for offences u/s.302 and 302 r/w 201 IPC and sentencing him to life imprisonment and fine of RS.5,000/- i/d 6 months R.I. for offence u/s.302 IPC and 5 years R.I. and fine of Rs.2,000/- i/d 2 months R.I. for offence u/s.302 r/w 201 IPC.

2. Prosecution case is that deceased is the daughter of one Ramachandran. She was married to one Rajkumar and blessed with a male child. Differences arose between them and hence, they were separated. Thereafter, deceased developed relationship with

appellant/accused, compelled him to marry her and he initially refused. Later, he married her in the presence of her parents, but refused to take her home. As the deceased repeatedly was compelling appellant/accused to take her with him, he, under the guise of taking her to his home, on 11.01.2012, took her to Kalyani canal at Navamarathukadu and asked her to sleep the night there. When the deceased was asleep, appellant/accused threw a stone on her head owing to which the deceased died instantaneously. In order to screen the offence, appellant/accused tore away the clothes of deceased, tied a stone to her hip and another to her neck and threw her body in a Well belonging to one Sadasivam. A case was registered in Crime No.41 of 2012 on the file of respondent u/s.174 Cr.P.C. and later, altered to reflect offence u/s.302 IPC. Upon completion of investigation, a charge sheet was filed informing commission offences u/s.302 and 201 IPC before learned Principal District and Sessions Judge, Namakkal. On committal, the case was tried in S.C.No.60 of 2013 on the file of learned Sessions Judge, Fast Track Mahila Court, Namakkal. Before trial Court, prosecution examined 21 witnesses and marked 39 exhibits and 26 material objects. None were examined on behalf of defence nor were any exhibits marked.

3.1. PW-1, Village Administrative Officer, deposed that on 15.01.2012 at about 04.30 p.m., on obtaining information, over phone, from his Assistant that an unidentified body of a female was floating in the Well of one Sadasivam, went to the scene, saw the body and preferred Ex.P1, complaint. PW-1 deposed that thereafter, he again went to the scene with his Assistant and police personnel also reached the scene. An Inspector prepared observation mahazar, caused photographs to be taken, lifted the body of the deceased from the Well, recovered ropes used to tie stones to the hip and head of the deceased and sent the body to Government Hospital, Salem. PW-1 also deposed that on receiving information from police on 20.01.2012 that the body was identified, he along with police went to Government Hospital, Salem and inquest was conducted.

3.2. PW-2, neighbour of accused, deposed that she was engaged in agricultural work in the land of Sadhasivam on lease basis. Since her goat went near the Well, she went there, saw the body of the deceased floating in the Well and informed her husband, who informed the same to Sadhasivam, owner of the Well. PW-15, husband of PW-2, has also spoken on the same lines.

3.3. PW-3, Village Administrative Officer, Singalapuram, deposed that on 21.01.2012 at about 05.00 a.m., while he was in his office along with his menial, appellant/accused came there, confessed that he had committed the offence and gave a voluntary confession statement. PW-3 deposed that he produced

appellant/accused before the Rasipuram Police Station and to being with the police till 01.30 p.m. on such date. PW-3 also deposed to seizures made by police based on the confession given by appellant/accused.

3.4. PW-4, owner of the Well, deposed that on being informed by PW-15 that an unidentified body of a female was floating in the Well, he went there and waited there till police officials arrived.

3.5. PW-5, a resident at Annaipalayam, spoke to the recovery of the body and attestation of mahazars.

3.6. PW-6, Scientific Officer, spoke to examination of viscera of deceased and of submitting Ex.P14, chemical analysis report.

3.7. PW-7, mother of deceased, spoke to the marriage of deceased with appellant/accused in their house, of appellant/accused taking her to his native place and bringing her back the home the next day. PW-7 deposed that she did not know when appellant/accused took the deceased with him, that they were in search of deceased for several days, that they made several calls to the cellphone of deceased but there was no response and since all their attempts to contact her failed, they went to Annaipalayam, wherein one lady informed them that an identified female body was found 4 or 5 days back. Immediately, they went to the police station, identified the clothes worn by deceased at the police station and her body at the Government Hospital, Salem. PW-8, brother of deceased, has also spoken on the same lines except informing that deceased had informed them over phone that she was going with appellant/accused and her cellphone was switched off the next day onwards. PW-10, brother of deceased, has also spoken on the same lines but he deposed that appellant/accused informed them and took the deceased from their home.

3.8. PW-9, a resident at LIC Colony, Rasipuram, deposed to knowing appellant/accused, of seeing him along with deceased on 11.01.2012 at about 06.30 p.m. and of hearing the news of an unidentified body of a female floating in the Well 7 to 8 days thereafter.

3.9. PW-11, Constable, deposed that a search was conducted near the Well with the assistance of a sniffer dog.

3.10. PW-12, Doctor, who conducted post-mortem on the body of deceased, opined that the deceased would appear to have died owing to head injuries.

3.11. PW-13, photographer, deposed that on instructions by

police officials, he took photographs of the body of deceased.

3.12. PW-14, Sub Judge, Dharmapuri District, spoke to recording of Section 164 Cr.P.C. statements of one Ramakrishnan, PWs.7, 8 and 10, marked as Exs.P21 to P24.

3.13. PW-16, Constable-Grade I, spoke to handing over the body of deceased to Doctor for post-mortem and on completion thereof, handing over the body to the relatives. PW-16 also spoke to handing over the viscera of deceased to Forensic Science Department for chemical analysis.

3.14. PW-17, Sub-Inspector of Police, Rasipuram, spoke to registration of case in Crime No.41 of 2012 u/s.174 Cr.P.C., of forwarding Ex.P25, Original First Information Report to Revenue Divisional Officer, Namakkal and copies thereof to higher officials.

3.15. PW-18, Special Sub-Inspector of Police, Vennadhur, spoke to receiving First Information Report through post and of handing over the same to Metropolitan Magistrate, Rasipuram.

3.16. PW-19, Assistant Director, Forensic Science Department, Chennai, spoke to various tests conducted by him.

3.17. PW-20, Inspector of Police, Vennathur, Namakkal District, who conducted initial investigation in the case, spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports. PW-20 also deposed that he handed over the case papers to PW-21, Inspector of Police, Rasipuram, for further investigation.

3.18. PW-21, Inspector of Police, spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, seizure of material objects and of obtaining various reports and on completion of investigation, filing charge sheet informing commission of offences u/s.302 and 201 IPC.

4. On appreciation of materials before it, trial Court, under judgment dated 17.04.2017, convicted appellant/accused for offences u/s.302 and 302 r/w 201 IPC and sentenced him to life imprisonment and fine of RS.5,000/- i/d 6 months R.I. for offence u/s.302 IPC and 5 years R.I. and fine of Rs.2,000/- i/d 2 months R.I. for offence u/s.302 r/w 201 IPC. Against such finding, the present appeal has been filed.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent.

6. The prosecution story of an extra judicial confession

having been given by appellant/accused to PW-3, a Village Administrative Officer, is unacceptable for the following reasons:

PW-3 was the Village Administrative Officer of Singaalanthapuram village within Pelukurichi police limits. PW-3 has admitted to Singaalanthapuram not falling within respondent police station limits. He admitted to being a resident of Rasipuram i.e, residing within the respondent police station limits. PW-3 admits to not knowing appellant/accused before the alleged confession made to him. PW-3 has spoken of appellant/accused having tendered a confession to him at about 05.00 a.m. on 21.01.2012 while he and his menial were at his office. Both circumstances of his being at his office at 05.00 a.m. along with his menial as also of appellant/accused tendering a confession to him, who was a total stranger, are unnatural. The unnatural circumstance is further exemplified by the fact that the Village Administrative Officer's seal has not been affixed to PW-3's report in Ex.P5 or the alleged confession statement in Ex.P4 and further that the menial Balakrishnan, who allegedly attested the confession statement, has not been examined. Evidence of PW-3 is rendered unbelivable not only regards extra judicial confession of appellant/accused also alleged recovery of clothes and cellphone of the deceased as also a stone upon statement of appellant/accused recorded by investigation officer. PW-3 has deposed to such statements and recoveries having been effected from 11.00 a.m. onwards on 21.01.2012 and that thereafter, the observation mahazar was prepared at about 01.30 p.m. PW-3 has admitted to the observation mahazar reflecting the presence of the articles allegedly recovered through the confession of appellant/accused. The observation mahazar prepared at 01.30 p.m. necessarily cannot reflect the articles seized at the instance of appellant/accused, if indeed the same has been recovered in the manner suggested by the prosecution. When both extra judicial confession as also recovery at the instance of appellant/accused fall, we are left with the prosecution suggestion of the last seen theory through the evidence of PW-9 to the effect that he knew appellant/accused and that he saw appellant/accused in the company of deceased on 11.01.2012 at about 06.30 p.m. Having spoken to not having informed anybody regards the same, PW-9 would have it that on 21.10.2012 at about 3.30 p.m., he has on his way out from the LIC office at Rasipuram when the investigation officer asked him if he had seen appellant/accused and deceased. This most unnatural circumstance is falsified by his admission that he was a supplier of tea at the police station. As above recorded, the evidence of PWs.7, 8 and 10, mother and brothers of deceased, are discrepant regards the manner in which the deceased came to leave home. While these witnesses have spoken to going over to the place of occurrence after their being unable to contact the deceased over cellphone

for several days, the prosecution has failed to procure and produce cellphone records in support of such claim. Clearly, in the instant case, it is upon information had from the police agency about the death of deceased that the family members, PWs.7, 8 and 10, have gone over and obliged the police agency.

For the aforesaid reasons, the Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Fast Track Mahila Court, Namakkal, passed in S.C.No.60 of 2013 on 17.04.2017, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled. Appellant is directed to be released forthwith, if his detention is not required in any other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge, Fast Track Mahila Court, Namakkal.
- 2.The District Judge, Namakkal.
- 3.The Judicial Magistrate, Rasipuram.
- 4.Do - Through The Chief Judicial Magistrate Namakkal.
- 5.The District Collector, Namakkal.
- 6.The Director General of police, Mylapore, Chennai.
- 7.The Superintendent Central Prison, Coimbatore.
- 8.The Inspector of Police, Rasipuram Police Station, Namakkal.
- 9.The Public Prosecutor, High Court, Chennai.

+1cc to Mr.P.Vijendran, Advocate, S.R.No.7129

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EV(CO)

RRK(28/02/2018)