

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM

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

Crl.A.No.452/2017
and
Crl.MP.No.9342/2017

Murugan .. Appellant / Sole Accused

Vs.

State rep. by,
The Inspector of Police
Modakurichi Police Station
[Cr.No.221/2013] .. Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of the learned Sessions Judge, Mahalir Court, Erode dated 21.11.2016 passed in SC.No.1/2015.

For Appellant : M/s.J.Star
For Respondent : Mr.V.Arul, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant is arrayed as the sole accused, in the case tried in SC.No.1/2015 on the file of the Court of the Sessions Judge, Mahalir Court, Erode, for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 21.11.2016, found the appellant / accused guilty of the above said offence and sentenced him to undergo imprisonment for life and a fine of Rs.1000/- with a default sentence of 2 years rigorous imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] P.W.1-Sathishkumar is the husband of the deceased

Parimala. P.W.1 and his wife were working in a Brickkiln known as Sakthi Sivan Chambers owned by one Deivasamy-P.W.8 in Savadipalayampudhur village. P.W.1 and his wife were residing in a thatched shed near the Brick kiln Chambers and the appellant/accused was also residing in the neighbouring shed.

[b] On 31.10.2013, P.W.8 distributed salary and bonus to his workers, which include P.W.1 and the appellant/accused, After receipt of salary and bonus from P.W.8, when P.W.1 returned to his house at 9.30 p.m., he found his wife Parimala was missing and he searched in the nearby places along with his parents and found the dead body of his wife with head injuries caused by a granite stone. As the appellant/accused was not available in the vicinity, P.W.1 suspected the involvement of the appellant/accused in his wife's murder and thereafter, he lodged the report-Ex.P.1.

[c] P.W.2-Kasiammal, sister of the deceased Parimala, on receipt of telephonic message about the death of her sister, went to the place of occurrence and saw the dead body. P.W.3-Kumar, deposed about his search for P.W.1's wife along with P.W.1 and others on 31.10.2013 and of his seeing of the dead body in the nearby canal. P.W.5-Rajavelu, deposed about his seeing of the appellant/accused in the company of the deceased Parimala near the Brickkiln Chambers at 9.00 p.m. on 31.10.2013. P.W.6-Elango stated about his hearing of noise of a woman at about 10.00 p.m., on 31.10.2013 from the place of occurrence and when he went out, he saw the appellant/accused standing. However, he was under the impression that the appellant/accused would have gone there to attend the nature's call. P.W.7-Ravikumar, stated that on 31.10.2013 at about 10.00 p.m., while he was proceeding to Modakurichi, the appellant/accused asked for a lift in the two-wheeler of P.W.7 till Modakurichi Bus Stand. P.W.13-Kanagaraj, Special Sub Inspector of Police attached to Modakurichi Police Station at the relevant point of time, received the complaint from P.W.1 under Ex.P.1 on 01.11.2013 at about 6.30 a.m. and registered the crime in Cr.No.221/2013 u/s.302 IPC. Ex.P.13 is the First Information Report. He despatched the originals of Ex.P.1 and Ex.P.13 to the jurisdictional Court and copies to the higher officials. P.W.14-Jamunarani, Head Constable attached to the said police station handed over the originals of Exs.P.1 and 13 to the Court of Judicial Magistrate No.3, Erode and copies P.W.15.

[d] P.W.16-Subburathinam, Inspector of Police attached to the respondent police station, on receipt of FIR in Cr.No.221/2013 on 01.11.2013, went to the place of occurrence and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.14] in the presence of P.W.4 and one Rajendran. He

recovered M.O.1-blood stained granite stone ; M.O.2--Blood stained earth ; M.O.3-sample earth and M.O.14- teeth [4 Nos.] under the cover of Mahazars in the presence of the said witnesses. He held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.15-Inquest Report. Thereafter, he sent the dead body for postmortem along with a requisition.

[e] P.W.10-Dr.Kalanjiarani, Assistant Surgeon in the Government Hospital, Erode, at the relevant point of time, received the requisition sent by P.W.15 and commenced the postmortem on 01.11.2013 at 3.50 p.m., and found the following injuries:-

"External Injuries:-

[1] Reddish black discoloured of right half of face along with disfiguration and mud seen over right half of the face and skull. # right frontal bone @ right maxilla @ right zygome @ right mandible.

[2] Loss of right incisor, canine from right upper jaw, with empty socket swollen and reddish.

[3] 2x4x2cm, reddish black lacerated injury seen over middle of right eyebrow with edges irregular and menjitis contused.

[4] Contusion of right eye and per orbital region, reddish brown in colour.

[5] Both ear bleeding.

[6] Lacerated injury 1x1x1cm reddish in colour, bleeding seen over. Lft side of occipital region, 15 cm from the angle of mandible left.

[7] Loosening of premolar, molar from socket over right upper jaw.

[8] Abrasion 1x2cm, reddish in colour seen over left shoulder."

Ex.P.5 is the Postmortem Certificate issued by him, wherein he had opined that "the deceased would appear to have died 18-24 hours prior to autopsy and died due to head injury causing shock and hemorrhage."

[f] P.W.15, the Investigating Officer, in continuation of investigation, examined the witnesses and recorded their statements ; recovered the material objects from the dead body under Form 91 and sent the same for chemical analysis through Court.

[g] When the matter stood thus, on 02.12.2013, at about 8.00 a.m., when P.W.4-Gurumoorthy and his menial were in their office, the appellant/accused appeared before them and

confessed his killing of the deceased Parimala on 31.10.2013. The same was typed in a Laptop under Ex.P.20. P.W.4 handed over the appellant/accused and Ex.P.20 to the Inspector of Police, Modakurichi Police Station, along with his Special Report-Ex.P.15.

[h] P.W.15, in continuation of his investigation, arrested the appellant/accused on 02.12.2013 at about 10.30 a.m. and recorded the voluntary confession statement of the appellant/accused under Ex.P.17, pursuant to which, M.O.12-T-Shirt and M.O.13-Lungi were recovered under Mahazar-Ex.P.16. He sent the properties to the Court and also the appellant/accused for judicial remand. Thereafter, he sent a requisition to the Court to send the Hyoid bone and other materials objects to Forensic Lab for chemical analysis under Ex.P.19. He also gave requisition to the Judicial Magistrate No.2, Erode, to record the confession of the appellant/accused under section 164 Cr.P.C.

[i] P.W.11-Shakeera Banu, Judicial Magistrate No.5, Erode, after giving reflection of time and necessary warning as mandated under section 146A Cr.P.C., recorded the statement of the appellant/accused on 18.12.2013 at about 3.15 p.m. under Ex.P.9.

[j] P.W.15, on transfer, has handed over the Case Diary to his successor. P.W.17-Subramanian, Inspector of Police, upon receipt of the Case Diary relating to Cr.No.221/2013, examined the witnesses ; medical officer and recorded their statements and after receipt of the medical reports and other documents and after completion of investigation, filed the Final Report u/s.302 IPC against the accused before the learned Judicial Magistrate No.3, Erode, who took it on file in PRC.No.13/2014 and issued summons to the accused and on his appearance, furnished him copies of the documents u/s.207

Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Erode, u/s.209 Cr.P.C., who in turn had made over the case to the learned Sessions Judge, Mahalir Fast Track Court, Erode, who took it on file in SC.No.1/2015 and on appearance of the appellant / accused, had framed the charges u/s.302 IPC and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

[k] The prosecution examined P.Ws.1 to 17 and marked Exs.P.1 to 22 besides marking M.O.1 to M.O.14.

[l] The appellant/accused was questioned under

section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. Though no witness was examined on the side of the appellant/accused, Exs.D1 and D2- Forensic Lab Reports from Coimbatore and Chennai respectively were marked.

[m] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/accused as above stated and hence, this appeal.

3 The learned counsel for the appellant contended that the Trial Court merely drawing presumption, has found the appellant/accused guilty u/s.302 IPC. The alleged extra-judicial confession given by the appellant/accused to P.W.4 is highly unreliable and creates serious doubt about the accused voluntariness. The evidence of P.Ws.5 and 6 is also highly unbelievable and unreliable and cannot be given any credence of importance. The evidence of P.W.11-Judicial Magistrate, who recorded the statement of the appellant/accused u/s.164 Cr.P.C., clearly show that the appellant/accused was pressurized and was beaten to give such a statement. Therefore, the extra-judicial confession said to have been recorded by P.W.4 is highly doubtful. It is his further submission that the conviction recorded by the Trial Court is not based on any legal evidence and the circumstances relied upon by the prosecution has not been established and hence, prayed for allowing of this appeal.

4 Per contra, Mr.V.Arul, learned Additional Public Prosecutor appearing for the State submitted that P.Ws.5 and 6 have spoken about the last seen theory, viz, seeing the appellant/accused in the company of the deceased Parimala and the extra-judicial confession-Ex.P.20 recorded by P.W.4, also clearly prove the complicity of the appellant/accused with the crime and therefore, submitted that the judgment of the Trial Court warrants no interference at the hands of this Court and prayed for dismissal of the appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, the point that arises for consideration is whether the prosecution has proved all the circumstances brought on record against the appellant/accused to substantiate the charge?

7 The specific charge framed against the appellant/accused is that due to illegal intimacy that existed between the appellant/accused and the deceased, the deceased

demanded money from the appellant/accused on 31.10.2013 at about 9.00 p.m. and when the same was declined by him, she threatened him that she would expose their relationship to others and as a result, the appellant/accused strangulated her and took a granite stone and put the same on her head. The deceased succumbed to head injuries.

8 The law was set in motion on the basis of Ex.P.1-first information said to have been given by P.W.1 on 01.11.2013 at 6.30 a.m. It is not in dispute that P.W.1 ; appellant/accused and others were working in a Brickkiln owned by P.W.38, as evidenced from the statements of the witnesses. They are all residing in a temporary thatched shed near the Brickkiln. It is the evidence of P.W.1 that on 31.10.2013, P.W.8 distributed bonus to all the workers and after receipt of the same, P.W.1 went to his house at 9.30 p.m. He found his wife missing and he went in search of her along with his parents, P.W.3 and other neighbours. After some time, they found the dead body of Parimala near the Canal. As the appellant/accused was not available at the relevant point of time, P.W.1 suspected the accused for foul play and therefore, he has given a complaint-Ex.P1 at 6.30 a.m. on 01.11.2013. The conduct of P.W.1 even after finding the dead body in the night hours on 31.10.2013 and lodging the complaint at 6.30 a.m. on the next day, i.e., on 01.11.2013, creates a serious doubt about the prosecution version. Though the prosecution relied on the evidence of P.Ws.5 and 6 to prove the last seen theory, the evidence of P.W.5, when carefully scanned, would reveal that when P.W.5 went to P.W.8 on 31.10.2013 at about 9.00 p.m., to receive his bonus, he saw the accused and deceased Parimala together near the canal and after receipt of bonus, he left for his home and the evidence of P.W.6 would show that on 31.10.2013 at about 9.30 p.m., while he was in the Brickkiln, he heard the noise of a lady and when he came out, he saw the appellant/accused standing there. It is to be noted that if really PW.6 had heard the cry of a woman and seen the appellant/accused at the place of occurrence, his normal conduct would be to inform his neighbours. Admittedly, P.Ws.1, 3, 4 and 5 are residing in the same vicinity and are neighbours. It is the evidence of P.Ws.1 and 3 that when P.W.1 found his wife missing on 31.10.2013 at about 9.30 p.m., they made a search and thereafter, they are said to have found the dead body on the same night. If really the dead body of Parimala was found on the night of 31.10.2013, the normal conduct of P.W.6 would have been of his informing the factum of hearing the alleged cry of a woman at 9.30 p.m. and seeing the appellant/accused on 31.10.2013 to P.Ws.1 and 3 or to his neighbours. Whereas, P.Ws.1 and 3, in their evidence, have never whispered about P.W.6 informing them about his hearing of the cry of a woman and seeing the appellant/accused in the said place at the relevant

point of time. P.W.7, in his evidence, has stated that he has given lift to the appellant/accused and dropped him at Modakurichi Bus stand at about 10.30 p.m. on 31.10.2013. It is relevant to point out at this juncture that it is the evidence of P.W.8-owner of the Brickiln that he distributed salary and bonus to his workers, including P.W.1 and the appellant/accused only at 10.00 p.m. on 31.10.2013. If the said statement of P.W.8 is taken note of, then the evidence of P.Ws.1 and 3 that they received the bonus from P.W.8 at 9.30 p.m., and thereafter, they went to their respective houses, is highly inconsistent and creates a doubt.

9 It is to be noted that P.W.5 is not a resident anywhere near the place of occurrence. His earlier statement before the Investigating Officer shows that he is only a chance witness and he did not even know the name of the appellant/accused. Hence, his evidence insofar as his witnessing the presence of the appellant/accused together with the deceased, is also doubtful. Further, his statement reached the Court only on 19.09.2014, though he is said to have been examined by the Investigating Officer on 03.11.2013. Similarly, the statement of P.W.6 also reached the Court only 19.09.2014, with an inordinate delay. From the above, a conclusion could be drawn that these witnesses are planted by the Investigating Officer at a later of point of time. If really these witnesses were present and had seen the appellant/accused in the company of the deceased and also heard the cry of a woman, their normal conduct would be to inform the same to others/neighbours. Whereas, P.Ws.1 and 3 who made a search of the deceased Parimala, did not know these facts. All these creates a serious doubt in the evidence of P.Ws.5 and

6. Therefore, the circumstances relied upon by the prosecution in the name of the last seen theory, is highly doubtful ; unreliable and falls to ground.

10 Further, having allegedly found the dead body in the night hours on 31.10.2013, the FIR came to be lodged only on the next day, i.e., on 01.11.2013 at 6.30 a.m., though the distance between the place of occurrence and the police station is only 7 kms and that it is the specific admission of P.W.1 in the cross-examination that one can reach the police station in a two-wheeler within 5 to 10 minutes. Besides, FIR reached the jurisdictional Court only at 3.55 p.m. on 01.11.2013, with an inordinate delay, which has not been properly explained by the prosecution. This delay also clearly suggest the fact that the dead body was found only on the next day and thereafter, the complaint came to be filed and the investigation commenced. When the delay give rise to embellishment, improvement and exaggeration, such delay, which remains unexplained, is fatal to

the prosecution.

11 Yet another circumstance relied on by the prosecution is the so-called extra-judicial confession-Ex.P.20 said to have been given by the appellant/accused to P.W.4 on 02.12.2013.

P.W.4, in his evidence, has stated that on 02.12.2013, the appellant/accused came to his office and confessed the crime and that he recorded the same in his Laptop and obtained the signature of the accused and handed over the same to the police station. P.W.4 never whispered in his evidence about the nature of the confession given by the appellant/accused. P.W.4 has not spoken about the substance of the words spoken to by the appellant/accused. Though the exact words of the confession is not required to be proved in all cases, the prosecution has to prove the extra-judicial confession as any other evidence and it should establish that the extra-judicial confession is also free from inducement, fear and made voluntarily. No doubt, an extra-judicial confession if voluntary one and does not suffer from any infirmity and the same can be the basis for a conviction. But, when the said extra-judicial confession suffer from any infirmity and create a doubt about its worthiness, the same cannot be given much importance. The evidence of P.W.4, in the cross-examination, when carefully scrutinised, it is the specific admission of P.W.4 that originally the extra-judicial confession was recorded by him in a white paper as narrated by the appellant/accused and thereafter, the same was retyped in a computer kept in the Panchayat Office. This admission of P.W.4 itself makes the extra-judicial confession as doubtful and nothing

but a fabricated one at a later point of time. P.W.4, in the chief examination, would admit that the extra-judicial confession was typed in a Laptop in his office itself. Whereas, in the cross-examination, he has given a different version that he has recorded the confession in a white paper and thereafter, retyped the same in the computer available at Panchayat Office. Also, the so-called confession recorded P.W.4 separately in a white paper before typing it in the computer, has also not seen the light of the day. This creates a doubt about the appellant/accused giving confession to P.W.4 and PW.4 recording. Therefore, we are of the view that in view of the above infirmities and discrepancies in the evidence of P.W.4, it is highly unsafe to give any credence to the extra-judicial confession-Ex.P.20.

12 The other circumstance which is fatal to the prosecution is the recording of the statement of the appellant/accused by P.W.11-Judicial Magistrate No.3, Erode,

u/s.164 Cr.P.C. Though the requisition was given for recording the confession, the appellant/accused did not give any confession admitting the crime. It is only in the nature of exculpatory statement and there is no incriminating material available in the statement recorded by the Judicial Magistrate. The appellant/accused has narrated only about his

arrest by the police and how his signature was obtained by the police using third degree methods and except that, there was no other incriminating material in the statement recorded by the Judicial

Magistrate to connect the appellant/accused with the grave crime. Therefore, Ex.P.9-statement recorded by the Judicial Magistrate No.3, Erode, does not help the prosecution in any manner.

13 No doubt, the prosecution has proved the ghastly murder by examining the medical officer and also exhibiting the Postmortem Certificate to substantiate the homicidal violence on the deceased Parimala. But the Trial Court, has given undue importance to the non-availability of the appellant/accused in the place of occurrence and had drawn the presumption based on the statement given before the Judicial Magistrate. Such presumption alone, will not substitute the legal evidence. It is a well settled position that suspicion, however may be strong, but that itself will not substitute the legal evidence. It is the duty of the prosecution to establish every circumstance brought against the appellant/accused without any infirmities and doubt. In the instant case, the Trial Court has given undue importance to the non-availability of the appellant/accused in the place of occurrence at the relevant point of time. That itself is not sufficient to base a conviction. Mere

abscondance without any materials, is not sufficient enough to convict a person, more particularly, when the prosecution evidence, viz., the extra-judicial confession itself is found to be fabricated and unnatural and the other circumstances, viz., the evidence of P.Ws.5 to 7, as discussed above, is also unworthy of acceptance. Their statements have been despatched to the Court only on 19.09.2014, with an inordinate delay. The said delay has also not been explained by the prosecution. Thus, for all the above reasons, we are of the view that the prosecution has failed to establish the circumstances clinchingly against the appellant/accused. Hence, we have no other option except to hold that the appellant/accused is entitled for benefit of doubt

14 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the

learned Sessions Judge, Mahalir Fast Track Court, Erode, for the offence u/s.302 IPC in SC.No.1/2015 vide Judgment dated 21.11.2016, are hereby set aside. The appellant/accused is acquitted of all charges leveled against him. Fine amount, if any paid by him, shall be refunded to him.

15 It is reported that the appellant / accused is in jail. He is directed to be released forthwith unless his presence/custody is required in connection with any other case/proceedings. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

AP

To

- 1.The Sessions Judge, Mahalir Needhimandram
Erode.
- 2.The Principal District and Sessions Judge
Erode.
- 3.The Judicial Magistrate No.3,
Erode.
- 4.The Chief Judicial Magistrate,
Erode.
- 5.The Inspector of Police
Modakurichi Police Station,
Erode District.
- 6.The District Collector
Erode District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Coimbatore.
(in duplicate for the Communicate detainee)

9. The Public Prosecutor,
High Court, Madras.

10.The Superintendent of Police,
Erode District.

+1cc to Mr.J.Stalin, Advocate SR.No.10922

Cr1.A.No.452/2017

MP (CO)
GN(01/03/2018)



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