

Bail Slip.

The Appellant/Accused namely Amirtham W/o Sundar Rajan was released on bail vide order dated 23.12.2010 in M.P.1/2010 in CrI.A. No. 802/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.802 of 2010

Amirtham

... Appellant

Versus

State by Inspector of Police,
Perambalur Police Station,
Perambalur District.
Respondent

...

Criminal Appeal filed under Sections 374 (2) of the Code of Criminal Procedure, to set aside the judgment dated 28.01.2009 in S.C.No.129 of 2007 on the file of the Principal District and Sessions Judge, Perambalur and acquit the accused.

For Appellant : Mr.C.Muruganantham

For Respondent : Ms. T.P.Savitha

Government Advocate (Crl.Side)

JUDGMENT

The appellant herein is the sole accused in S.C.No.129 of 2007 on the file of the learned Principal District and Sessions Judge, Perambalur, Perambalur District. He stood charged for the offence under Section 302 of IPC. The accused denied the charges and opted for trial. After full fledged trial, the learned Principal Session Judge found her guilty of offences under Section 304 (ii) of IPC. The accused was accordingly convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months imprisonment. Challenging the said conviction and sentence, the accused is before this court with the present criminal appeal.

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

Admittedly, the deceased in this case is the husband of the accused. P.W.1 is working as a Village

Administrative Officer in Melapuliyur Village, on 25.11.2006 at about 10.00 a.m, when P.W.1 was in his office the accused herein came and gave a confession statement before P.W.1 in which she admitted that she murdered her husband by using the stone. Further she produced blood stained stone to the P.W.1 saying that the said stone is used for the commission of offence. The said confession was recorded by P.W.1 under Ex.P1 in the presence of P.W.3 who is the village Assistant.

3. After recording the confession, P.W.1 prepared a report under Ex.P.2 and thereafter, he produced the accused before the Inspector of Police along with the stone produced by the accused. Further he handed over the special report and extra Judicial Confession statement given by the accused to the police. On 25.11.2006 at about 12.00 noon P.W.9 Sivasubramanian, the then Inspector of Police, Perambalur, after receiving the confession statement of accused from P.W.1 arrested the accused. Further, on receipt of the complaint given by P.W.1, he registered a case in Crime No.572 of 2006 under Section 302 of IPC. He recovered the stone produced by P.W.1 which was used by the accused for attacking her husband. After registration of the case, he made arrangement for sending the accused to the judicial custody and thereafter he has visited the scene of occurrence. In the presence of P.W.4 Prabhakaran, P.W.8, one Selventhiran, he prepared observation Mahazar under Ex.P.7. Further, he draw a rough sketch under Ex.P.9. He examined the witness and prepared inquest report under Ex.P.10, in the presence of the same witnesses, he recovered the blood stained soil, sample soil and one polister saree from the scene of occurrence. Thereafter the dead body was entrusted to hospital authorities for conducting autopsy.

4. On receipt of the requisition made by the Investigating Officer, P.W.6 Doctor/Sekar attached with Government Hospital, Perambalur, conducted autopsy over the dead body of Sundaram, he found the following injuries in the dead body:-

Internal Injuries: A bone in left side of the front head was

broken about 3 c.m level.

External injuries: one decomposed wound was found, in 8*6 bone deep level, on the left side of the front head. The skin was in peeled.

5. He preserved the viscera and sent it to the chemical examination. On receipt of viscera, P.W.7 chemical examiner examined the viscera and found that there was no poison found in the dead body, he issued viscera report Ex.P.6. After receiving the viscera report, P.W.6 gave an opinion about the death of

Sundaram. According to him, death is due to the shock and haemorrhage of head injury sustained by the deceased. In continuation of investigation P.W.9 examined the Doctor and the chemical examiner, after receiving the post mortem report, he concluded the investigation and filed a final report under Section 302 of IPC against the accused.

6. Based on the above materials, the trial Court framed the charges under Section 302 of IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial. During the trial, on the side of the prosecution in order to prove their case as many as 9 witnesses were examined i.e. (P.Ws. 1 to 9) and 12 documents were marked as Exs.P.1 to P.12 besides 4 materials objects.

7. Out of the above said witnesses, P.W.1 is the Village Administrative Officer, he has stated in his evidence that on 25.11.2006, when he was on duty, the accused herein came to his office and gave a statement in which she has stated that the deceased is her husband, he frequently consumed the liquor and created much problem in her house and therefore, on the date of occurrence, when the deceased was in a drunken mood by using stone/M.O.4 assaulted him and caused injury on his forehead and thereafter, her husband died. He has stated that the statement given by the accused was recorded by him for which P.W.3 is stand as a witness. Further, he has stated after recording the confession statement, he handed over the accused to P.W.9 who is the Inspector of Police and lodged a complaint.

8. P.W.2 Periyasamy, who is neighbour to the deceased, deposed that on 24.11.2006 at about 04.00 hours, he saw the accused along with stone M.O.4. P.W.3 is the village Assistant working under the P.W.1 has stated after recording the confession statement given by the accused, P.W.1 handed over the accused to Police officer along with the special report. P.W.4 Prabhakaran did not support the case of prosecution in any manner. P.W.5 has stated that on the day of occurrence investigating officer in this case recovered M.Os.1 to 3 from the scene of occurrence. P.W.6 Doctor attached with Perambalur Government Hospital has stated about the receipt of requisition letter given by P.W.9 for conducting autopsy. Further he has stated on receipt of the requisition letter given by P.W.9, he conducted post mortem on the dead body of the deceased. P.W.7 is the chemical examiner who examined the vicera and issued a report. P.W.8 is a witness to the preparation of observation mahazar. P.W.9 is the Inspector of Police, who speaks about the investigation, arrest of the accused and about the filing of the charge sheet against the accused.

9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., she denied the same as false. However, she did not choose to examine any witness nor did she mark any documents.

10. Having considered the above, the learned Principal Session Judge found the accused guilty under Section 304 (ii) of IPC. Accordingly, the accused was convicted and sentenced as indicated in the first paragraph of this judgment. Aggrieved by the conviction and sentence, the accused has come up with the present appeal.

11. I have heard the learned counsel appearing for the appellant/accused and the learned Government Advocate appearing for the respondent/State and also perused the records carefully.

12. The learned counsel appearing for the appellant would contend that the evidence put forth by the prosecution in the trial Court is not in the form to connect the accused with the alleged crime. Further he submits that the contents of extra judicial confession recorded by P.W.1 is not supported through material evidence, thereby the prosecution has failed in its attempt to prove the case beyond reasonable doubt.

13. On the other hand, the learned Government Advocate would submit that the evidence given by P.Ws.1 and 3 had clearly proved offences committed by the accused.

14. I have considered the rival submissions made by the counsels.

15. In this case, P.W.6 doctor who conducted post mortem had clearly stated in his evidence that the death had happened only due to the consequences of the head injuries sustained by the deceased. So, a duty is cast upon the prosecution to prove that the alleged head injury found on the deceased is only due to the attack made by the accused.

16. In this regard, In the trial Court, the prosecution has attempted to prove their case by means of circumstantial evidence. In respect to the extra judicial confession given by the accused, P.W.1 has stated that after recording the confession statement given by the accused, P.W.3, who is his Assistant signed in the statement as a witness. Accordingly as per the said evidence, the said proceedings are completed in his office.

17. On the other hand, P.W.3 who attested in the confession statement has stated in his evidence that the signature found in

all the documents are obtained by the police. Furthermore he specifically stated in the cross examination that at the time, he went into the scene of occurrence, the accused alone present, in the scene of occurrence. Thereafter, the police came and arrested the accused. So on applying the said evidence with the evidence of P.W.1 it create a serious doubt over the case of prosecution as to whether the extra Judicial confession recorded by P.W.11 is true and genuine. According to the evidence given by P.W.9, arrest was made in the Police station. Further, as per the case of prosecution the accused has been produced by P.W.1.

18. In the said circumstances, the evidence of P.W.3 shakens the root of prosecution case. Accordingly, the prosecution has not proved the factum of arrest. Therefore, the genuinity of extra judicial confession has not been proved up to the level of law expected.

19. Further with regard to the other aspects on the side of the prosecution no body was examined to suspect the tussle taken place between the accused and the deceased. Further as per the case of prosecution the occurrence had happened at 12.00 o'clock midnight. In this regard, the son of the deceased who was examined as P.W.4 has stated that the occurrence never had happened till he went to the college. Usually a college student may leave his house at about 8.00 a.m. in the morning. So if really, the deceased and the accused are present in their house, there is no necessity for P.W.4 for giving false evidence. Accordingly, the origin and genesis of occurrence has also not indicated by the prosecution. So the said aspect has also not been proved by cogent evidence. The trial Court without considering the above two aspects convicted the accused which is erroneous in law.

20. In the light of the above submissions, I am of the view that the prosecution did not prove their case beyond reasonable doubt. Thereby, the conviction and sentence imposed upon the accused is liable to be set aside. Accordingly, the Criminal Appeal is allowed and conviction and sentence awarded by the trial court is set aside.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vsg1

To

1.The Principal District and Sessions Judge,
Perambalur, Perambalur District

2.The Inspector of Police,
Perambalur Police Station,
Perambalur District.

3. The Judicial Magistrate
Perambalur, Perambalur District

4. The Chief Judicial Magistrate
Perambalur.

5. The Superintendent
Central Prison, Trichy.

6. The Public Prosecutor,
High Court, Madras.

Copy to

The Section officer
Criminal Section, High court, Madras 104.

+1 CC to Mr.C. Muruganantham, Advocate sr 53344.

Cr1.A.No.802 of 2010

PVS (CO)
SP(01/11/2018)

सत्यमेव जयते

WEB COPY