



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.08.2018

PRONOUNCED ON : 29.08.2018

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CORAM :

**THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR**

CRL.A(MD)Nos.183 and 207 of 2016

Crl.A(MD)No.183 of 2016

Tamil Selvi

... Appellant / Accused No.4

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(In Crime No.242 of 2013)

... Respondent/Complainant

Crl.A(MD)No.207 of 2016

1.Baskar @ Basheer Mohammed
2.Gopalakrishnan @ Gopal
3.Krishnamoorthy

... Appellants/Accused Nos.1 to 3

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(In Crime No.242 of 2013)

... Respondent/Complainant

COMMON PRAYER: Appeals filed under Section 374 of the Code of Criminal Procedure, 1973, praying to set aside the judgment and conviction dated 28.01.2016 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in S.C.No.46 of 2015 and acquit the appellants.

For Appellants : Mr.T.Senthilkumar
(in both cases)

For Respondent : Mr.R.Anandharaj

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(in both Criminal Appeals)

Additional Public Prosecutor.

**COMMON JUDGMENT****N.SATHISH KUMAR, J**

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These Criminal Appeals are filed against the judgment and conviction rendered by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur, dated 28.01.2016, convicting the appellants for the offence under Section 120-B IPC and sentencing them to undergo life imprisonment each and to pay a fine amount of Rs.1,000/- in default to undergo one month rigorous imprisonment each and for the offence under Section 302 r/w 120-B IPC sentencing them to undergo life imprisonment each and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment each and convicting the appellants 2 and 3 in CrI.A (MD)No.207 of 2016 for the offence under Section 302 IPC and sentencing them to undergo life imprisonment each and to pay a fine amount of Rs.1,000/- in default to undergo one month simple imprisonment. The above sentences have been ordered to run concurrently.

2.The brief facts leading to this case are as follows:-

(i) The deceased, Karunamoorthy, who is the husband of the fourth accused and son of P.W.2. P.W.1 is the brother of the fourth accused, namely, Tamil Selvi. The deceased and the fourth accused were residing in the house of P.W.2. Every day, the deceased used to leave house at 08.00 a.m., and return back at 08.00 p.m. The fourth accused had illegal affair with the first accused, namely, Basheer and the same came to the knowledge of the deceased-Karunamoorthy. Hence, the fourth accused informed the first accused through phone to eliminate her husband which was also overheard by P.W.2 the father of the deceased. When the matter stood thus, on receiving information from P.W.4 that the deceased was lying down with injuries near railway station at about 08.00 p.m., on 02.06.2008, P.W.1 rushed to the place of occurrence and the deceased was taken to the hospital where the doctor declared the death of the deceased. In this regard, P.W.1 lodged a complaint (Ex.P.1) to P.W.21, the Sub Inspector of Police. After receipt of Ex.P.1 from P.W.1 at 04.00 p.m., on 03.06.2008, P.W.21, registered a case in Crime No.242 of 2013 for the offence under Section 174 Cr.P.C and forwarded the First Information Report through P.W.18 to P.W.23, the Inspector of Police, and the Tahsildar, Kuzhithalai.

(ii) P.W.23, the Inspector of Police / Investigating Officer went to the place of occurrence and prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.28) and seized material objects M.O.1 to M.O.3 in the presence of P.W.5 and one Vivek. Hereafter, the Investigating Officer conducted inquest on the deceased in the hospital and prepared inquest report Ex.P.29 and



gave requisition under Ex.P.21 for postmortem. P.W.16, the Medical Officer conducted autopsy over the dead body and issued a report (Ex.P.22) and opined that the deceased died due to head injuries. Thereafter, the Investigating Officer in continuation has altered the crime from the offence under Section 174 Cr.P.C to the offence under Section 302 IPC and sent alteration report (Ex.P.30) to the learned Judicial Magistrate No.II, Kuzhithalai.

(iii) While P.W.11, Village Administrative Officer, (in charge), on 06.06.2013 at about 12.00 a.m., was in office along with his assistant, the first accused appeared before him and confessed that he along with other accused committed the crime. His extra-judicial confession has been recorded under Ex.P.4 in the presence of his assistant and handed over the first accused, Ex.P.4, the vehicle and mobile phone of the first accused (M.O.4 and M.O.5) to P.W.23, the Inspector of Police. P.W.23, had arrested the first accused and recorded his voluntarily confession statement in the presence of P.W.11. In pursuance of the same, M.O.4 and M.O.5 have been seized under Ex.P.5. Thereafter, the Investigating Officer arrested the second and third accused on 06.06.2013 at about 03.00 p.m., in the presence of P.W.11 and seized material objects M.O.6 and M.O.7 under Ex.P.8 and M.O.8 and M.O.9 under Ex.P.9 and sent the accused Nos.1 to 3 to the Court for judicial remand and also sent the properties to the Court. Thereafter, on 09.06.2013 at about 6.30 a.m., arrested the fourth accused in the presence of P.W.12, Village Administrative Officer and seized M.Os.2, 11 and 13 under Ex.P.12 and sent the fourth accused to the Court for judicial remand and also sent the properties to the Court and handed over the case to P.W.24, the Inspector of Police for further investigation.

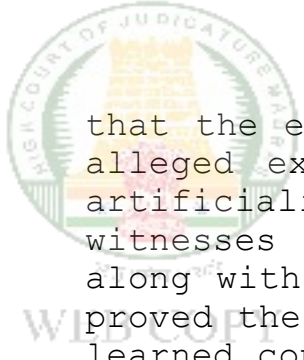
(iv) P.W.24, after conducting further investigation altered the crime from the offence under Section 302 IPC to the offences under Sections 302 and 120(b) IPC and sent alteration report/Ex.P.34 to the learned Judicial Magistrate Court No.II, Kuzhithalai and after concluding the investigation, laid final report against the accused persons.

(v) Before the trial Court, on the side of the prosecution, P.Ws.1 to 24 were examined, Exs.P1 to 34 and M.O.1 to M.O.16 were marked. On the side of the appellant none was examined and no document was marked. On questioning under Section 313 Cr.P.C., the accused persons denied charges. Based on the evidences and materials, the trial Court found the accused persons guilty, convicted and sentenced them, as stated supra. Aggrieved over the same, the present Criminal Appeals came to be filed.

3.Heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent.

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4.The learned counsel appearing for the appellants submitted



that the entire case is based on the circumstantial evidence. The alleged extra-judicial confession given to P.W.11 is completely artificiality and creates serious doubt. None of the prosecution witnesses has deposed that they have seen the accused Nos.1 to 3 along with the deceased on any occasion. The prosecution has not proved the last seen theory. Further, it is the contention of the learned counsel for the appellants that the arrest and recovery of the material objects from the accused is highly doubtful. Hence, the learned counsel for the appellants submitted that none of the circumstances relied upon by the prosecution is clearly established. Hence, he prays for acquittal of the accused.

5.The learned Additional Public Prosecutor appearing for the respondent submitted that P.W.1 to P.W.3, P.W.6 and also P.W.7 have spoken about the illegal contact between the first and fourth accused. P.W.10 has seen the accused beside the Railway Toll Gate on the occurrence date. P.W.13 has seen the accused Nos.1 to 3 in the place of occurrence on 02.06.2013 besides the first accused gave extra-judicial confession (Ex.P.4). Based on the confession, the second and third accused have been arrested and recoveries have been made and the fourth accused has also been arrested. The Investigating Officer also seized a cell phone from her and her call details clearly established that she had in contact with the first accused. All these aspects have been clearly established the complicity of the fourth accused and the circumstances relied upon by the prosecution have also been established. Hence, the learned Additional Public Prosecutor appearing for the respondent prays for dismissal of these Criminal Appeals.

6.In the light of the above submissions, now, it is to be analysed whether the prosecution proved the case beyond all reasonable doubt.

7.The accused persons stood charged for the offences under Sections 120(b) and 302 r/w 120(b) IPC. The second and third accused stood charged for the offence under Section 302 IPC. The prosecution has examined as many as 24 witnesses and marked 34 documents (Ex.P.1 to Ex.P.34). Based on the evidence and materials, the trial Court found the accused persons guilty.

8.The main charge of the prosecution is that the fourth accused being the wife of the deceased had illegal connection with the first accused. Pursuant to the said illegal contact, she decided to eliminate her husband. Accordingly, the first accused with the help of the second and third accused on 02.06.2013 attacked the deceased near the railway gate, Kuzhithalai.

9.The entire prosecution is based on the following circumstances which were relied upon by the prosecution:-
(i) Motive;



(ii) the accused Nos.1 to 3 were seen near the place of occurrence on 02.06.2013 and the accused 1 to 4 were seen together near the Toll Gate Bus Stop at Kuzhithalai;

(iii) Extra Judicial Confession given to P.W.11 by the first accused;

(iv) Recovery of the material objects from the fourth accused and

(v) Phone call details.

10.As far as the motive is concerned, the prosecution has relied upon the evidence of P.Ws.1 to 3, 6 and 7. P.W.1 is the brother of the fourth accused who has given information to P.W.21. Admittedly, the deceased was found lying near the railway gate on 02.06.2013. This fact is not in dispute. He immediately rushed to the hospital where the doctor declared the death of the deceased. On scanning the entire evidence of P.W.1, it is seen that P.W.1 has never stated that he is aware of the illegal connection between the first and fourth accused and he has also deposed that P.W.2, the father of the deceased did not inform about the illegal connection between the first and fourth accused. His entire evidence has been improved at a later stage, during the investigation. The very next date, when he was examined by the Investigating Officer, he never whispered anything about the alleged illegal connection between the first and fourth accused. Further, the evidence of P.W.2, the father of the deceased to that effect that the fourth accused used to speak with the first accused and she has instructed the first accused to eliminate her husband which was overheard by him, is highly improbable for the simple reason that the father of the deceased who overheard such conversation would not keep quiet. At the most, he would disclose the same to his son or his relatives or at the time when the police enquired him. But he has not chosen to divulge anything. Only for the first time, when the Investigating Officer examined him on 05.06.2013, he has stated about the same.

11.It is curious to note that the above statements have been sent to the Court with inordinate delay. P.W.3, the mother of the deceased though in her evidence stated that there was illegal connection between the first and fourth accused, she has also not spoken about the same before the Investigating Officer when she was examined at earlier stage, but stated the same to the Investigating Officer for the first time, when she was examined further. Further her evidence clearly shows that till the death of her son, P.W.3 and P.W.2 were residing separately and they have not maintained cordial relationship with the deceased or the fourth accused. This fact clearly makes evidence of P.W.1 and P.W.2 unbelievable about the alleged motive projected by the prosecution.

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12.A careful perusal of the evidence of P.W.6 and P.W.7, it is



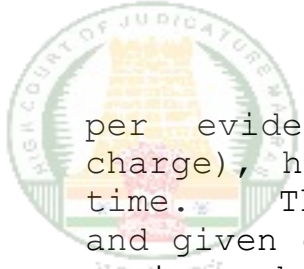
seen that they are also relatives of P.W.2 and 3 and they also not divulged anything immediately to the police. The evidence of P.W.7 is also highly unbelievable. Therefore, the motive as projected by the prosecution is highly doubtful in this case as to the illegal connection between the first and fourth accused.

13.As far as the second circumstance that the the accused Nos.1 to 3 were seen near the place of occurrence on 02.06.2013 and the accused 1 to 4 were seen together near the Toll Gate Bus Stop at Kuzhithalai is concerned, the main witnesses P.W.8 and P.W.9, which were relied upon by the prosecution, were declared as hostile and they have not supported the prosecution.

14.It is to be noted that P.W.13 in his evidence stated that when he went to answer the nature of call, he had seen the accused Nos.1 to 3 in the place of occurrence at night hours in torch light, and at that time, the third accused was carried an iron rod. He also on the very next date came to know about the death of the deceased. But he has not divulged anything to the police. However, he was examined only on 12.06.2013. Therefore, the evidence of P.W.13 is highly doubtful in this case and further cross-examination of P.W.13 clearly indicates that he is none other than stock witness of the prosecution. Therefore, the circumstances relied upon by the prosecution that the accused were seen in the place of occurrence is highly doubtful. Admittedly, the dead body as per the evidence of P.W.1, found at about 08.00 p.m., on 02.06.2013. Therefore, P.W.13 had seen the accused Nos.1 to 3 at night hours in torch light is highly doubtful.

15.As far as another circumstance relied upon by the prosecution that the accused 1 to 4 were seen at toll gate bus stand is concerned, the evidence of P.W.10 clearly indicates that he saw the accused 1 to 4 at toll gate bus stop and he had also overheard the conversation, admittedly, he had not reported the same to anyone and he also immediately went to Coimbatore on the same date. Therefore, the prosecution case that he was also examined on 04.06.2013 and 12.06.2013 is not believable. Such inference is forfeited by the fact that his 161(3) statement was reached to the Court only on 10.11.2014. In view of these facts, the circumstances projected by the prosecution is highly doubtful.

16.Another circumstance relied upon by the prosecution that the extra judicial confession of the first accused to P.W.11 that on 06.06.2013 at about 12 noon, the first accused appeared before him and confessed the crime, which was recorded under Ex.P.4 is concerned, it is to be noted that the extra judicial confession does not suffer from infirmities then the Court can act on the same. Whereas in the case, the extra judicial confession as projected by the prosecution create some doubts. Such extra judicial confession cannot be given importance. Admittedly, as

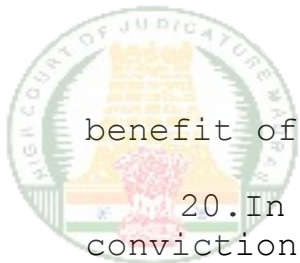


per evidence of P.W.11, Village Administrative Officer (in charge), he has no acquaintance with the accused at any point of time. Therefore, the first accused being a stranger, appeared and given confession before P.W.11, the evidence of P.W.11 creates serious doubts. Further, the evidence of P.W.11 indicates that immediately after handing over the accused to the Police Officer for further investigation, other documents have been created by the Inspector of Police then and there and typed by the Inspector of police in his computer. Whereas, the Investigating Officer himself given a different stand to the effect that the above documents have been typed by some other constable. All these facts clearly indicate that the evidence of P.W.11 is doubtful. Therefore, the alleged extra judicial confession said to have been given to him also creates serious doubt. The alleged extra judicial confession also reached to the Court only on 07.06.2013. If the extra judicial confession has been really recorded by P.W.11 and handed over to the Investigating Officer, the same ought to have reached to the Court on the same date, whereas the same has been received by the Judicial Magistrate only on 07.06.2013, the delay in sending the same to the Court remains unexplained. The above delay coupled with the artificiality attached with evidence of P.W.11, we are unable to give any credence to Ex.P.4.

17. Similarly, there are material contradictions in the arrest, recovery, the evidence of P.W.11 and P.W.23 and the evidence of P.W.3 shows that the fourth accused was taken from her house within two days, after the death of the deceased. Therefore, the prosecution case that the fourth accused was arrested in the presence of P.W.12 is also highly doubtful and the alleged recovery made also highly doubtful. All the documents were sent to the Court with inordinate delay, which in fact creates serious doubts about the prosecution case.

18. Hence, we are of the view that the entire circumstantial evidence relied upon by the prosecution has not been proved without any doubt. The chain of circumstances to be proved without any doubt. Further, the alleged call details filed by the prosecution to show that the connection between the first and fourth accused is not established. Hence, merely, on the call details, we cannot presume that the first and fourth accused had illegal relationship. The evidence of P.W.3 clearly indicates that the fourth accused was taken from her house only after the occurrence and therefore, the arrest projected by the prosecution is also doubtful.

19. In view of the above facts, we are of the view that the circumstances relied upon by the prosecution are not clearly established. All the circumstances relied upon by the prosecution are not established clingingly. Hence the accused are entitled to



benefit of doubt.

20. In the result, these Criminal Appeals are allowed; the conviction and sentence imposed on the appellants by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur, in S.C.No.46 of 2015 dated 28.01.2016 are set aside. The appellants are acquitted of the charges levelled against them. Fine amount, if any, paid by the appellants shall be refunded to them. The appellants are directed to be set at liberty forthwith, if they are not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Judicial Magistrate No.II, Kulithalai.
2. The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Karur.
3. -do- through The Chief Judicial Magistrate, Karur.
4. The Superintendent, Central Women Prison, Trichirappalli.
5. The Superintendent, Central Prison, Trichirappalli.
6. The Superintendent of Police, Karur District, Karur.
7. The District Collector, Karur.
8. The Inspector of Police,
Kulithalai Police Station,
Karur District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

The Section Officer/Record Keeper
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.T.SENTHIL KUMAR, ADVOCATE IN SR No. 80723

MYR

TE/RSK/SAR-2 : 26/09/2018 : 8P/13C