

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.07.2019

Pronounced on:14.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.302 of 2017

Arumugam ..Appellant / Sole Accused

Vs.

State by
Inspector of Police,
Mettupalayam P.S.
Coimbatore District
Crime NO.1874 of 2011

..Respondent/Complainant

Appeal filed under section 374[2] of Code of Criminal Procedure, to call for the records pertaining to the judgment passed in S.C.No.329 of 2012 dated 22.09.2016 by the First Additional District and Sessions Court, Coimbatore and set aside the same.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.R.Prathap Kumar
Additional Public Prosecutor

JUDGMENT

M.NIRMAL KUMAR, J.

The appellant is the sole accused in S.C.No.329/2012 on the file of the learned I Additional District and Sessions Court, Coimbatore, he stood charged and tried for the commission of the offence under section 392 and 302 IPC (2 counts). The Trial Court, vide impugned Judgment dated 22.09.2016, convicted him for the commission of the offence under section 302 and 392 IPC and under Section 302 IPC, awarded him the sentence of imprisonment for life (double murder-2 counts) and also imposed a fine of Rs.5,000/- (each Rs.2500/-) and in default, to undergo three months rigorous imprisonment and for the offence under Section 392 IPC, imposed him the sentence of five years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- and in default to undergo three months Simple imprisonment.

2. The sole accused/appellant, aggrieved by the conviction and sentence awarded by the Trial Court, vide impugned Judgment dated 22.09.2016, has preferred the present Criminal Appeal.

3. The facts leading to the filing of this Criminal Appeal briefly narrated, are as follows:

3.1. The gist of the case is that the deceased viz., Palanisamy and Rajamani are husband and wife and they were residing in their farm house in Vannampadugai, Mettupalayam by doing agricultural work and they also rearing cattle in the farm. P.W.2 is the son of deceased Palanisamy and Rajamani. P.W.3 is the Daughter-in-Law of the deceased. They are residing in Mettupalayam Town. Five days prior to the occurrence, both the deceased visited the house of P.W.1 and 2. P.W.3 is the friend of the deceased, on 08.07.2011, both D1/Palanisamy and PW.3 had gone to meet astrologer and they returned back by 05.00 clock in the evening. Thereafter both of them had gone to their respective houses. On 09.07.2011, P.W.3 who normally meets D1, found both the deceased not present at their house and their cattle were tied. Since the deceased were not available, P.W.3 untied the cattle for grazing and at around 04.30 p.m, he had tied the cattle and went back to his home, till then the deceased not returned back to their farm house.

3.2. On the next day on 10.07.2011, at about 10.00 a.m, he again came to the house of the deceased, then to, the deceased were not available and made search in the nearby places, however he could not find them. Thereafter he called P.W.2 Son of the deceased and informed about his parents missing. P.Ws1 and 2 had come to the farm house along with P.Ws 3 to 5 who are from the neighbouring farm house joined and searched for the deceased, along with them 30 relative persons also joined and searched. At about 02.30 p.m they saw the body of D1 found in the Bhavani river nearby their farm land with injuries on his head and some of his flush were also eaten by fish and the body was in decomposed stage. P.W.2 gone to the Police station, gave a complaint. The complaint was written by P.W.6. Thereafter, the Police had come to the scene of occurrence, prepared observation Mahazaar, Rough Sketch enquired the witnesses in the scene of occurrence and sent the body for postmortem. On 11.07.2011 after postmortem, the body was handed over. D1 body was cremated. Based on the complaint given, a FIR in Cr.No.1874/2011 was registered on 10.07.2011 under Section 174 Cr.P.C and women missing.

3.3. After two days of recovery of the body of D1, on 12.07.2011, the body of D2 was found near Vachinapalayam pumping station in the Bhavani river in a decomposed stage, which is 11 km away from the farm house of the deceased. Thereafter, the

body was retrieved and the investigation was conducted. The Investigation Officer has prepared Observation Mahazar and rough sketch and conducted inquest and the body was sent for postmortem. During the inquest, the witnesses have noticed about the missing of Palanisamy / D1's cellphone and D2's personal gold wearing such as hearing stud, nose stud, Thali etc., Thereafter, the Investigation Officer altered the Sections from Section 174 Cr.P.C to Section 392, 302, IPC and 201 IPC. On 21.07.2011, the appellant / accused had appeared before the Village Administrative Officer / P/W.17 and had given a extra judicial confession who recording the same and produced the appellant along with the report / Ex.P5 to the respondent Police. Thereafter, before the Police the accused had given a confession / Ex.P6 and on his confession, M.Os.1 to 4 / gold ornaments of D2, M.O.5/Cellphone of D1 and M.O.11, the wooden stick used for assaulting deceased were recovered. After examination of the witnesses and seizure of the articles, charge sheet was filed against the appellant.

4. The contention of the appellant is that the entire case is based on the extra judicial confession / Ex.P5 given to PW.17 on 21.07.2011. M.Os.1 and 2 are the nose stud and M.O.3 is the set of hearing and M.O.4 is Thali which are normally available and there is no specific identification of the articles. Further in the complaint there is no mention of the missing of any gold articles and the mobile phone of D1. It is also admitted by P.W.1 and 2 that there is no electricity in the farm house. In such case, the usage of mobile phone / M.O.5 is questionable one. The Lower Court had rightly rejected the evidence of P.W.23, 24 and 26, so called witnesses to the occurrence. In such circumstances, it is clear that this case is based on circumstantial evidence, wherein, last seen theory, motive and recovery have to be proved by chain of links leading to irresistible one that the appellant had committed the offence and in the background of eyewitness being disbelieved. The only materials as against the appellant is extra judicial confession. The one pair of hearing and nose stud/M.Os.1, 2 and 3 recovered from P.W.25 through Ex.P6 and M.O.4 Thali recovered near Bhavanisagar Garbage Dump is highly artificial. According to the prosecution, the appellant was in need of money and sold M.O.1 to 3 and also M.O.11 Mobile Phone. In such circumstance, hiding of M.O.4 Thali in the Garbage dump has no reason. P.W.s 19, 20 and 21 are the witnesses for recovery of M.O.11 Mobile Phone, their evidences are also highly doubtful. No bill or simcard or any documents have been produced to show that the D1 was using mobile phone/M.O.11 and the same belongs to D1. As far as recovery of cellphone is concerned, it was purchased by P.W.20 from the accused/appellant in the presence of P.W.19 and 21, whereas M.O.5 Mobile Phone was produced and handed over to the Police by P.W.19. The finding of D2's dead body 11 K.m away from

the farm house is also doubtful. P.W.1 and 2 have admitted that there were only 3 feet of water in the river and the water in the river was not flowing, stagnated. When there was no flow of river, D2 body being recovered 11 Km away from the farm house, is not possible. The last seen theory had been projected by P.W.s 3, 9, 10 and 11. P.W.3 admits that about 05.30 p.m on 08.07.2011, he had parted from D1 and gone to his resident. P.W.9 who is from the adjoining farm states that he has seen D1 at about 06.00 p.m and P.W.10 wife of P.W.9 states that she had met D1 at about 07.00 pm and was speaking to him. Thereafter no one had seen the deceased till their body were recovered and other witnesses namely 23, 24, 26 who said to have seen the accused assaulting the deceased have been disbelieved by the Lower Court. In fact, the appellant had examined the Sub Inspector of Homeguard Force as D.W.1 and marked Exs.D1 to D3, through which he exposed the falsity of P.W.26 as a independent witness and the Lower Court on the evidence of D.W.1 and Ex.s D1 to D3 had rightly disbelieved P.W.26 and thus, in view of the above there is no chain of links and hence prays for acquittal.

5. The appellant had also relied upon the judgment of this Court reported in CrI.A.NO.361/2012 Balu @ Balamurugan Vs. State with regard to confession and it is relevant to extract the following paragraphs:

"12. On 15.04.2008, at about 5 p.m., in a Neem tree, in the land of one Periyasamy, near Pillangkulam - Kai-Kalathur Road, Thangammal, wife of P.W.2 Ramalingam and mother of P.Ws. 3 and 4 Rajaram and Rajasekar, was found hanging. Her jewellery consisting of golden ear rings (M.O.7), golden nose stud and screw (M.Os.8 and 11), golden thali and kundus (M.Os. 9 and 10) were found missing.

41.

"12. A perusal of the confession of the accused recorded by the police under Section 27 of the Indian Evidence Act for the purpose of recovery of M.O. 1, knife, shows that there were frequent quarrels between the accused and the deceased for the last more than a year as the accused went on demanding the deceased to return the amount, but the deceased evading to settle the dues. It is also seen from the perusal of the confession of the accused that even on the fateful day of occurrence, the accused demanded the deceased to settle the dues which resulted in a wordy quarrel and thereafter the deceased pushed down the accused and due to that he has taken the knife from his waist and gave a single stab on the deceased. It is well settled by a number of decisions that in the interest of justice, it is permissible to look into confession

recorded under Section 25 or Section 27 of the Indian Evidence Act in order to decide the nature of offence said to have been committed by the accused.

[emphasis supplied by us]

13. The above said principle was laid down in the following decisions:

1. Thandavan, In re reported in 1972 LW (Crl) 244 : 1973 Cri LJ 1041.
2. Ganesan, In re reported in 1973 LW (Crl) 42 : 1974 Cri LJ 381.

14. This Court further taken a similar view in the following decisions:

1. Inre Chandran, In re reported in 1988 LW (Crl) 113;
2. Muthuswamy v. State reported in 1994 (1) LW (Crl) 44;
3. Vairamuthu v. State reported in 1996 (1) LW (Crl) 9.

50. Section 114 of the Evidence Act provides for the Court to presume existence of any fact which it thinks likely to have happened, considering the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. But, this presumption is rebuttable. To illustrate the presumption several examples were given in the section itself. Among them, illustration (a) which weighed with the mind of the Trial Court to convict the accused is relevant here. It runs as under:-

"(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

6. Relied upon Crl.A.No.661/2017 Karthick @ Karthikeyan Vs. State and C.A.No.16 and 87 of 2016 reported in Sukumar Vs. State with regard to the point of reliability and it is relevant to extract the following paragraphs:

Paragraph Nos.21, 22 and 23 of Crl.A.No.661/2017:

"21. Now coming to the reliability of the Extra Judicial Confession stated to have been given by the Appellant, we have to look into these principles. The principles for deciding, whether an extra judicial confession can be looked into and can form basis of conviction of an accused, are enumerated in Sahadevan Vs. State of Tamil Nadu (2012-Crl.LJ-3014) as given below:-

(i) The extra judicial confession is a weak evidence by itself. It has to be examined by the court

with greater 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.

22. In S.K.Yusuf Vs. State of WB (2011-11-SCC-754), the Honourable Supreme Court has held that the extra judicial confession is a weak piece of evidence. It must be established to be true and made voluntarily. The extra judicial confession can be accepted and can be the basis of a conviction, if it passes the test of credibility. On this aspect, a reference can be made to the decision of the Honourable Supreme Court, rendered in the case of State of Rajasthan Vs. Rajaram (2003-8-SCC-180).

23. If the facts and circumstances, surrounding the making of confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with, is whether when the accused made the confession, he was a free man or his movements were controlled by the Police, either by themselves or through some other agency employed by them for the purpose of securing such a confession."

Paragraph No.16 of CrI.A.No.16 and 87 of 2016:

"16. In our considered view, it all depends upon the facts and circumstances of each case where the Court is required to analyse the entire facts and circumstances of the case to come to a conclusion as to whether the said extra judicial confession allegedly given by the accused was really made by him and that too voluntarily. While deciding the said question, the fact that the procedure contemplated in the Village Administrative Officer's Manual has not been followed will also be taken into account by the Court. But the extra judicial confession cannot be rejected on the sole ground that there is violation of the said guidelines issued under the Village Administrative Officer's Manual."

7. The learned Additional Public Prosecutor appearing for the State submitted that a case came to be registered on the complaint given by P.W.2, who is the son of deceased. In this case, two elderly persons who are father and mother of P.W.2 had been done to death by appellant by attacking them with wooden stick / M.O.11. Thereafter committed robbery on the valuables namely M.O.1 to 5 from the deceased and thrown the bodies of the deceased into the Bavani River to make it appear as though it was the case of drowning. PW.2 is the son of the deceased who had given the complaint. Earlier to the complaint he had received information about missing of his parents through P.W.3. Thereafter P.W.1 to 5 had made search, by that time 30 of the relatives of P.W.1 had joined in the search. After a thorough search, on the banks of the River, D1 body was found at about 2.30 p.m. Thereafter, P.W.s 1 to 5 had gone to the Police Station and lodged a complaint / Ex.P1. The Investigation Officer / P.W.34 had registered an FIR Ex.P29 and had forwarded the same to the Court and to the Superior Officers and P.W.38 on receipt of the FIR had reached the scene of occurrence and prepared Observation Mahazar, Rough Sketch and examined the witnesses in the scene of occurrence and making note of the head injuries on D1 and thereafter conducted inquest and sent the body to the postmortem. Thereafter search for D2 continued and P.W.12 had seen the body floating in the river in a far place and informed P.W.1 about the same. Thereafter P.W.2 informed the Police and reached the scene of occurrence, found the decomposed body of their mother and at that time, the jewels worn by her were found missing. The Police had reached the scene of occurrence and prepared observation mahazar, rough sketch and examined the witnesses and sent the body for postmortem. The evidence of P.W.s 1, 2 and 8 have clearly spoken about the usage of mobile phone by D1 and the jewels of D2. The accused was surrendered before the Village Administrative Officer, given a confession statement. Thereafter, the Investigation Officer arrested him and taken under his custody. Based on the confession of the accused, the jewels of D2 namely M.O.s 1 to 4, the mobile phone/M.O.5 of D1 and the wooden stick/M.O.11 were recovered. P.W.12/Sathyapriya, relative of the accused, from whom M.O.1 to 3 were recovered. M.O.4 and M.O.11 was recovered in the presence of P.W.17 from the hidden place. M.O.5 / Mobile phone was recovered from P.W.21. Thereafter, the postmortem Doctor was examined and the postmortem report of D1 was marked as Ex.P13 and the postmortem report of D2 was marked as Ex.26 and on completion of investigation, charge sheet was also filed. The Trial Court, on a thorough consideration and appreciation of the oral and documentary evidences, had rightly reached the conclusion to convict and sentence the appellant/accused and would plead that the conviction and sentence recorded by the Trial Court vide impugned Judgment may not warrants interference and prays for dismissal of this criminal appeal.

8. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

9. In this case, two persons were done to death. It is a murder for gain. The death of D1 and D2 is a homicide and it was not due to drowning as could be seen from Diatom test of D1 / Ex.P.16 and D2 / Ex.P18. P.W.9, 10 and 11 have spoken about the seeing of deceased on 08.07.2011 between 06.00 and 07.30 p.m. P.W.3 and D1 had gone to meet astrologer during the day time and thereafter both of them returned back and D1 had gone to his house. P.W.3 who calls upon the deceased regularly, on 09.07.2011 had gone to the house and however, he did not find them. Since their cattle were tied, he untied all the cattle in morning for grazing and tied in evening, till that time, he could not find them. Thereafter he again on 10.07.2011 visited the house of deceased, then to, they were not available. Therefore, he called P.W.2 /their son, gave information about the missing of his parents. P.W.1 / daughter-in-law and P.W.2 had reached the house. P.W.s 4 and 5, the persons from the neighbouring farm along 30 of the relatives searched for D1 and D2. Initially, the body of D1 and D2 was found with injuries on 10.07.2012. After two days of recovery of the body of D1, on 12.07.2013, the body of D2 was found. It was also noticed that the jewels and mobile phone of the deceased were found missing. Later it came to be recovered on the confession of the accused/appellant which had been clearly spoken to by P.W.25, P.W.17 and P.W.s 19 to 21. The wooden stick used in the assault was also recovered. The medical evidence reflects the injuries on the accused and the report is also in conformity with other evidence. P.W.25 has no ground to grind against the appellant.

10. Thus from the evidence and materials it is categorically proved that D1 and D2 had been murdered for gain. To believe that D1 and D2 had died due to drowning is falsified by the diatom test as well as from the report and further the river water was in flow as could be seen from the evidence of P.W.37 / Assistant Executive Engineer. The recovery leads to motive. Thus, in this case the chain of circumstances have been interlinked proving to the fact that the appellant had murdered the deceased and dropped them for their valuables.

11. Thus, we are of the view that the prosecution, through the cogent evidence both oral and documentary, had proved the guilt of the accused beyond all reasonable doubt. Hence, we are of the considered view that the Trial Court has rightly reached the conclusion of convicting the accused and the impugned judgment of the Trial Court, does not require any interference at the hands of this Court.

12. In the result, the criminal appeals are dismissed and the judgment of the learned First Additional District and Session Court, Coimbatore , vide judgment dated 22.09.2016 in SC.No.329/2012 is hereby confirmed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District and Session Judge,
Coimbatore.
 2. The Inspector of Police,
Mettupalayam P.S.
Coimbatore District
 3. The Superintendent of Police,
Central Prison, Coimbatore.
 4. The Public Prosecutor
High Court, Madras.
- +1 cc to Mr.T.Muruganantham, Advocate, S.R.No.69277

NMI (CO)
SSM(16/09/2019)

Criminal Appeal No.302 of 2017

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