



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08.12.2021

JUDGMENT DELIVERED ON : 17.12.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Criminal Appeal No.499 of 2018

Marimuthu
S/o.Chandran

.. Appellant/Accused

Vs.

State represented by
Inspector of Police,
Kondalampatti Police Station,
Salem District.
Crime No.626 of 2012

.. Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 22.06.2018 passed in S.C.No.325 of 2016 on the file of learned III Additional Sessions Judge, Salem.

For Appellant : Mr.A.Arasu Ganesan

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J

This criminal appeal is directed against the judgment and order of conviction and sentence dated 22.06.2018 passed by the learned III Additional Sessions Judge, Salem, in S.C.No.325 of 2016.

2. The prosecution story runs thus:

2.1. Pounammal [PW-1], aged 48 years, is the widow of Palanichamy. Pounammal [PW-1] has five daughters viz., Saraswathi [not examined], Gomathi [PW-2], Jothi [PW-3], Poonkodi [not examined] and Tamilselvi [deceased]. Pounammal



[PW-1] gave all her daughters in marriage and was living in Thasanaickanpatti village and was a daily wage earner. Tamilselvi was given in marriage to one Pachamuthu. However, the couple got estranged, after which, Tamilselvi lived with her mother Pounammal [PW-1]. Tamilselvi was a flower vendor and used to go at 4'o clock in the evening for vending flowers and return by 7.30 p.m. On 21.10.2012, Tamilselvi went for flower vending but did not return home in the night. Therefore, Pounammal [PW-1] and others started searching for her.

2.2. On 22.10.2012, around 6'o clock in the morning, the body of Tamilselvi was found in a bush en route to Uthukuzhikadu. On getting this information, Pounammal [PW-1] and other family members went there and thereafter, Pounammal [PW-1] gave a written complaint [Ex.P1] to the police, based on which, Valarmathi [PW-10], Sub-Inspector of Police, registered a case in Kondalampatti P.S.Crime No.626 of 2012 u/s.302 IPC on 22.10.2012 at 7.15 hours against unknown persons and prepared the printed First Information Report [Ex.P10], which reached the jurisdictional Magistrate on the same day at 9 hours, as could be evidenced from the endorsement thereon.

2.3. Investigation of the case was taken over by Saravanan [PW-14], Inspector of Police (hereinafter referred to as 'the Investigating Officer'), who went to the place of occurrence and prepared the observation mahazar [Ex.P2] and rough sketch [Ex.P11]. From the place of occurrence, the Investigating Officer [PW-14] seized the following items under the cover of

a mahazar [Ex.P3]:

- (i)soil with bloodstains [MO-11];
- (ii)soil without bloodstains [MO-12]; and
- (iii)a stone with bloodstains [MO-13].

2.4. The Investigating Officer [PW-14] conducted inquest over the body of Tamilselvi and during the inquest, the family members of Tamilselvi were examined and it has been recorded in the inquest report [Ex.P12] that Tamilselvi was having affairs with several men and one of them could have been the cause for her death. In column IV of the inquest report [Ex.P12], it is stated that Tamilselvi was last seen alive by one Mariappan at 7.15 p.m. on 21.10.2012 and in column III, it is stated that Pounammal [PW-1] had seen the dead body of Tamilselvi at 6.00 a.m. on 22.10.2012. After the inquest, the body of Tamilselvi was sent to the Government Mohankumaramangalam Medical College and Hospital for postmortem, where Dr.Paneerselvam [PW-9], performed autopsy on the body of Tamilselvi and issued the postmortem certificate [Ex.P7]. In his evidence as well in the postmortem certificate [Ex.P7], Dr.Paneerselvam [PW-9] has noted the following injuries:



WEB COPY

- A wide open cut throat injury over centre of neck and front, sides of neck M-11x5 cms exposing vertebral facia with upper part of larynx and lower part of trachea, it is situated 5 cms above suprasternal notch, 5 cms below mid chin and 9 cms below right mastoid process and 8 cms below left mastoid process with severance of both sides of sterno mastoid muscles and vessels.
- incised cut injury over inner surface of left middle proximal phallanges M-2.5x0.5x0.5 cms.
- laceration seen over right side perineum just below the vagina M-3x0.5x0.5 cms.
- Ant bite mark seen over upper part of pubic region and perineum (postmortem). '

2.5. After obtaining the viscera report [Ex.P8], Dr.Paneerselvam [PW-9] gave his final opinion [Ex.P9], wherein he has stated as follows:

'Final Opinion: The deceased would appear to have died of shock & haemorrhage due to cut throat injury sustained.'

2.6. While the investigation was in progress, it is stated that the appellant surrendered before Shanmugam [PW-6], Village Administrative Officer, on 22.10.2012 at 3.30 p.m. and gave an extra judicial confession stating that, though he was married, he was having an affair with Tamilselvi; Tamilselvi was insisting that he should marry her; she was causing him trouble; therefore, on 21.10.2012, he took her to a secluded spot, stabbed and murdered her. This confession was recorded and the same was marked as Ex.P29.

2.7. Thereafter, Shanmugam [PW-6] took the appellant and produced him before the Investigating Officer [PW-14] at 4.30 p.m. The Investigating Officer [PW-14] placed the appellant under arrest and recorded his police confession, based on which, the following items were recovered under the cover of a mahazar [Ex.P5]:

- (i)TVS suzuki bearing registration No.TN-32-Z-7655 [MO-14];
- (ii)a knife with bloodstains [MO-15];
- (iii)pants with bloodstains [MO-16];
- (iv)a red colour shirt with bloodstains [MO-17]; and
- (v)a Nokia cellphone [MO-18].

2.8. After examining witnesses and collecting the various reports, the Investigating Officer [PW-14] completed the investigation and filed a final report in P.R.C.No.4 of 2013 in



the Court of the Judicial Magistrate V, Salem, for the offence u/s.302 IPC, against the appellant.

2.9. On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.325 of 2016 and was made over to the III Additional Sessions Court, Salem, for trial. The trial Court framed a charge u/s.302 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

2.10. To prove the case, the prosecution examined 14 witnesses and marked 30 exhibits and 19 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. None was examined from the side of the appellant nor any exhibit marked.

2.11. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 22.06.2018 in S.C.No.325 of 2016, convicted and sentenced the appellant as follows :

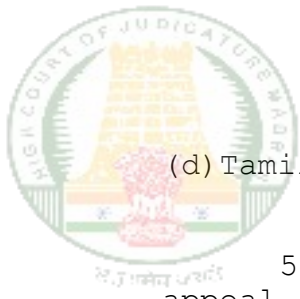
Provision under which convicted	Sentence
Section 302 IPC	Life imprisonment and fine of Rs.1,000/-, in default, 6 months rigorous imprisonment.

2.12. Challenging the aforesaid conviction and sentence, the appellant/accused has filed the present appeal.

3. Heard Mr.A.Arasu Ganesan, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

4. The prosecution has proved the following facts beyond a peradventure:

- (a) Tamilselvi was the daughter of Pounammal [PW-1] and sister of Gomathi [PW-2] and Jothi [PW-3];
- (b) Tamilselvi got estranged from her husband, was living with her mother Pounammal [PW-1] and was a flower vendor;
- (c) Tamilselvi went for flower vending around 4'o clock on 21.10.2012 and her body was found in a bush en route to Uthukuzhikadu at 6'o clock in the morning of 22.10.2012 with injuries all over the body;



(d) Tamilselvi died of homicidal violence.

5. The short question that falls for consideration in this appeal is, was the appellant herein the perpetrator of the offence.

6. The prosecution case rests on the following circumstances to fasten criminal liability on the appellant:

- (i) the extra judicial confession [Ex.P29] that is alleged to have been given by the appellant to Shanmugam [PW-6];
- (ii) the recovery of a knife with bloodstains [MO-15], pants with bloodstains [MO-16] and a shirt with bloodstains [MO-17];
- (iii) the last seen together evidence of Mani [PW-4] and Jothibasulu [PW-5].

7. Now, let us discuss the circumstances enumerated above:

7.1. Circumstance No.(i) : the extra judicial confession [Ex.P29] that is alleged to have been given by the appellant to Shanmugam [PW-6]:

7.1.1. Shanmugam [PW-6], in his evidence, that was recorded on 13.10.2017, has stated that, at the relevant point of time, he was working as the Village Administrative Officer of the village; on 22.10.2012, around 07.00 a.m., Arumugam, the Village Assistant, told him that an unidentified body of a lady was lying en route to Uthukuzhikadu; so, he [PW-6] went to the place along with him; the Inspector of Police was there; he stood as witness for the observation mahazar, rough sketch and the recovery of certain articles like soil with bloodstains, etc., from the place of occurrence; on the same day, at 04.30 p.m., while he was in his office, the appellant came and surrendered before him and confessed to him that he was having an affair with Tamilselvi; that Tamilselvi was pestering him to marry her; as he was already married, he was not willing to marry her; so, he decided to get rid of her and murdered her; after recording the confession [Ex.P29], he took the appellant and produced him before the Investigating Officer [PW-14]; on the next day i.e., on 23.10.2012, he accompanied the Investigating Officer [PW-14] and the appellant to effect seizure of the knife [MO-15], pants [MO-16], shirt [MO-17] and cellphone [MO-18].

7.1.2. In the cross-examination, Shanmugam [PW-6] stated that he did not record the confession statement of the appellant, but, merely heard the confession and produced him before the Investigating Officer [PW-14]. However, the



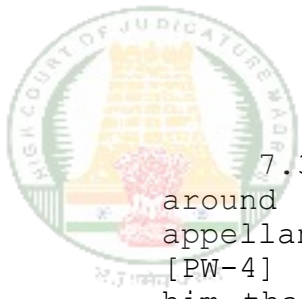
prosecution recalled him and further examined him in chief on 24.04.2018 and marked the written confession statement [Ex.P29]. In the confession statement [Ex.P29], it is not stated in the preamble portion as to the time at which the appellant surrendered before Shanmugam [PW-6], V.A.O and gave the statement. However, in the report [Ex.P30] that was submitted by Shanmugam [PW-6] to the Inspector of Police, the date of surrender has been stated as 22.10.2012 and the time has been corrected as 16.30 p.m. Similarly, in the preamble portion of the police confession [admissible portion of which has been marked as Ex.P4], the time has been corrected as 17.30. In the chief-examination on 13.10.2017, Shanmugam [PW-6], V.A.O., has stated that the appellant surrendered before him at 04.30 p.m. on 22.10.2012. However, in the cross-examination on 24.04.2018, Shanmugam [PW-6], V.A.O., has stated that the appellant surrendered at 03.30 p.m. on 22.10.2012. Of course, all these may appear very trivial, however, what makes the confession suspect is that, in Form-91 [Ex.P20], which relates to the seizure of pants with bloodstains [MO16] and shirt with bloodstains [MO-17], it is clearly stated that they were seized from the appellant at 02.00 p.m. on 22.10.2012. This clearly shows that the appellant was already in the custody of the police from 02.00 p.m. on 22.10.2012 and only thereafter, at 04.30 p.m., he was produced before Shanmugam [PW-6], V.A.O and the extra judicial confession was recorded. Hence, we are not able to place any reliance on the extra judicial confession [Ex.P29] to sustain the conviction of the appellant.

7.2. Circumstance No.(ii) : the recovery of a knife with bloodstains [MO-15], pants with bloodstains [MO-16] and a shirt with bloodstains [MO-17]:

7.2.1. Insofar as the bloodstains found in the above material objects, we only have the serology report that the bloodstains are of human blood. Beyond that, we do not have the results of blood grouping test. That apart, the prosecution has not placed any evidence relating to the blood group of Tamilselvi and the appellant.

7.3. Circumstance No.(iii) :the last seen together evidence of Mani [PW-4] and Jothibasu [PW-5]:

7.3.1. Mani [PW-4] is the brother-in-law of Tamilselvi. In his evidence, he has stated that while he was searching for Tamilselvi in the night of 21.10.2012, he met Jothibasu [PW-5] and when he enquired him, the latter told him that he had seen Tamilselvi and the appellant together and that they were quarrelling with each other.



7.3.2. Jothibasus [PW-5], in his evidence, has stated that around 09.00 p.m. on 21.10.2012, he saw Tamilselvi and the appellant together talking loudly; within a short while, Mani [PW-4] came in search of Tamilselvi and at that time, he told him that he had seen Tamilselvi and the appellant together just a while ago.

7.3.3. The testimonies of Mani [PW-4] and Jothibasus [PW-5], reveal that the family of Tamilselvi knew that she was in the company of the appellant in the night of 21.10.2012, whereas, there is absolutely no mention about it in the complaint [Ex.P1], which was given on the next day 22.10.2012 by Pounammal [PW-1]. Even in the First Information Report [Ex.P10], the name of the appellant has not been mentioned. In Column IV of the inquest report [Ex.P12], it is stated that the deceased was last seen alive by Mariappan on 21.10.2012 at 07.15 p.m. Both Mani [PW-4] and Jothibasus [PW-5], in their testimonies, have stated that after the body of Tamilselvi was found on 22.10.2012, they both were present near the body when the police were there. If these two witnesses had been present there, definitely, they would have stated that Tamilselvi was seen with the appellant on the previous day at 9'o clock in the night by Jothibasus [PW-5], in which event, the name of Jothibasus [PW-5] would have found a place in Column IV of the inquest report [Ex.P12]. However, the inquest report [Ex.P12] shows that Tamilselvi was having relationship with several men and it is suspected that one of them would have murdered her. Thus, the absence of the name of the appellant in the complaint [Ex.P1], First Information Report [Ex.P10] and the inquest report [Ex.P12], makes the evidence of Jothibasus [PW-5] that he saw Tamilselvi and the appellant together on the previous night at 09.00 p.m. Suspect.

In the result, this Criminal Appeal is allowed and the appellant is acquitted of the charge u/s.302 IPC. The conviction and sentences passed in S.C.No.325 of 2016 on the file of the learned III Additional Sessions Judge, Salem., vide judgment and order dated 22.06.2018, are set aside. Fine amount, if any, paid by the appellant shall be refunded. The appellant is directed to be released forthwith, unless his presence/custody is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

gm



To

1. The III Additional Sessions Judge,
Salem.
2. The Inspector of Police,
Kondalampatti Police Station,
Salem District. (Crime No.626 of 2012)
3. The Superintendent,
Central Prison,
Salem.
4. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.Arasu Ganesan, Advocate, S.R.No.67821

Pre-delivery judgment
in
Criminal Appeal No.499 of 2018

SRA(CO)
SU(27/12/2021)