



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
07.12.2021	23.12.2021

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.(MD) No.14 of 2019 and
Crl.M.P.(MD) No.9008 of 2021

Madasamy ... Petitioner/Appellant/Sole Accused
S/o.Arumugathevar,
8/24-A, North Street,
Sivanthipatti, Alangulam,
Palayamkottai,
Tirunelveli District
(Now confined at Palayamkottai Central Prison)

-vs-

State through
The Inspector of Police,
Sivanthipatti Police Station,
Tirunelveli District.
(In Crime No.16 of 2013) ... Respondent/Respondent/Complainant

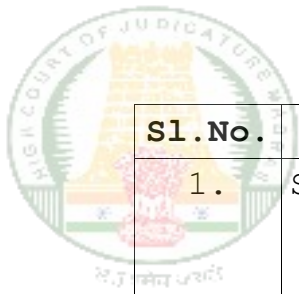
Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the entire records connected to the judgment in S.C.No.276 of 2016 on the file of the Hon'ble Principal Sessions Court, Tirunelveli dated 04.10.2018 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Anand
For Respondent : Mr.A.Thiruvadi Kumar
Addl. Public Prosecutor

J U D G M E N T

S.VAIDYANATHAN, J. ,
and
G. JAYACHANDRAN, J. ,

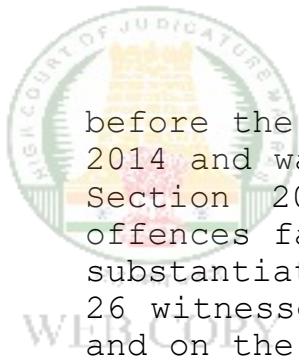
The appeal is filed by the sole accused, who was found guilty by the Trial Court for offences under Sections 364, 302, 201 and 316 IPC and he was convicted by the Trial Court for said offences as follows:



Sl.No.	Offence	Conviction and Sentence
1.	Section 364 IPC	To undergo life imprisonment with fine of Rs.2000/-, in default to undergo further period of three months simple imprisonment.
2.	Section 302 IPC	To undergo life imprisonment with fine of Rs.2000/-, in default to undergo further period of three months simple imprisonment.
3.	Section 201 IPC	To undergo two years rigorous imprisonment.
4.	Section 316 IPC	To undergo two years rigorous imprisonment.

The above sentences were ordered to run concurrently and the period of remand already undergone by the accused was ordered to be set off under Section 428 Cr.P.C by the Trial Court. Aggrieved by the order of the Principal Sessions Judge, Tirunelveli, the Appellant/Sole Accused has preferred the present Criminal Appeal before this Court.

2. The case of the prosecution is that the accused and deceased Thangarevathy were lovers and since their marriage was not accepted by the families of both sides, they decided to marry each other, while they were living in a rented house at Valliyoor and subsequently, they started living separately. While so, she became pregnant and insisted her husband to set up a separate matrimonial home, which was refused to be entertained by the accused. Thereafter, the deceased demanded Rs.10,000/- from the accused to meet her delivery expenses and threatened him to lodge a complaint with the Police, if he fails to pay the money. Being unable to bear the torture of continuous demand of money, on 24.03.2013 at about 3.30pm, he took her on a Two Wheeler bearing Reg.No.TN-72-AL-9189 to a far off place (Kallurani Parambu situated on the northern side of Alangulam) on the promise that he would hand over the money. After reaching the place, he informed her that he does not have money, thereby quarrel arose between them and in order to do away with her life, he took out a bill-hook (M.O.1) from his house and attacked on her face indiscriminately and left the place after causing her death. On the next day, viz., 25.03.2013 at about 7.00am, he again went to the spot of murder and dug a pit by hiring a spade from the shop of P.W.3 and buried her body. Based on the report of the Village Administrative Officer (P.W.1), a case was registered by the Sub-Inspector of Police (P.W.16) in Crime No.16 of 2013 for the offences afore-stated on 25.03.2013 at about 12:45pm and investigation has been conducted. Later on, the Inspector of Police (P.W.24), after receipt of all copies arrested the accused in the presence of the Village Administrative Officer and remanded to judicial custody. After investigation, a charge sheet was laid

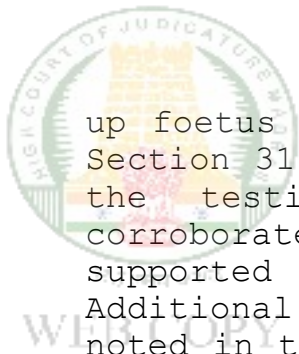


before the Judicial Magistrate No.III, Tirunelveli in P.R.C.No.27 of 2014 and was subsequently, made over to the Court of Sessions as per Section 209 Cr.P.C. for trial, pursuant to the commission of offences falling under Section 302 IPC. The prosecution, in order to substantiate the offences against the accused persons, has examined 26 witnesses, marked 27 documents and exhibited 13 Material Objects and on the side of the accused, neither witness was examined and nor document marked. Before commencement of Trial, charges were altered and framed under Sections 364, 302, 201 and 316 IPC against the accused. The accused was questioned under Section 313 Cr.P.C. and he denied the charges levelled against him. The Trial Court, after analyzing the evidence let in by the prosecution, found the accused guilty of the offence and convicted him as stated supra.

3. The foremost submission made by the learned counsel appearing for the Appellant was that there was a delay in sending the FIR to the Court and no reason has been forthcoming as to the delay in registration of the FIR and sending it Court. Secondly, the conviction was based on the circumstantial evidence and there was no eye witness to connect the accused to the alleged occurrence. Learned counsel for the Appellant further submitted that the entire case rests upon the extra judicial confession made before the Village Administrative Officer (P.W.1), completely ignoring the dictum that apart from the extra judicial confession, it is incumbent upon the prosecution to prove the case beyond reasonable doubt by producing incriminating materials.

4. Learned counsel for the Appellant also submitted that the prosecution also failed to prove as to what necessitated the accused to murder the deceased, especially when both loved each other, married and lead their married life happily, thereby, there was absolutely a lacuna in respect of the motive for the occurrence. The Respondent Police, having failed to trace out the real culprit, had implicated the Appellant in the alleged occurrence, by falsely stating that owing to continuous quarrel and demand of money by the deceased, the murder had taken place. It was also argued on the side of the Appellant that the Appellant was not in a state of sound mind at the time of alleged occurrence and therefore, it was prayed that the conviction and sentence imposed on the Appellant is highly unsustainable and is liable to be set aside.

5. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State contended that the deceased was brutally attacked by the accused with bill-hook and thereafter, on the next day, the body of the deceased was buried into a pit. The prosecution had clearly established the case against the accused beyond reasonable doubt through testimonies and the seizure of material objects, more particularly, M.Os.1 and 3 corroborate the version of the prosecution witnesses about the attack made by the accused. When the deceased was brutally attacked, a few months grown



up fetus was inside her womb and therefore, the Trial Court added Section 316 IPC in addition to other punishable offences. Thus, all the testimonies relied upon by the prosecution were duly corroborated by both oral and documentary evidence, besides supported by the scientific and other evidence. The learned Additional Public Prosecutor also referred to the severe injuries noted in the Postmortem Report (Ex.P.11) to invite the attention of this Court to prove the brutal attack made by the accused on the deceased. Hence, it was prayed that there is no ground made out in the appeal, warranting interference by this Court and the appeal is to be dismissed *in limine*.

6. This Court has given its anxious consideration to the submissions made on either side and perused the materials available on record.

7. The questions that arise for consideration in this case, are:

(i) Whether the prosecution, through the testimonies of witnesses, exhibits and material objects marked, is able to prove its case beyond reasonable doubt?

(ii) Whether the reasons assigned by the trial Court in the impugned judgment for convicting and sentencing the appellant/accused are sustainable?

8. The primary argument advanced by the learned counsel for the Appellant was that except the circumstantial evidence and extra judicial confession, no other witnesses were examined on the side of the prosecution. It is pertinent to mention here that the Hon'ble Supreme Court in the case of **Yanob Sheikh Alias Gagu Vs. State of West Bengal**, reported in **(2013) 6 SCC 428**, observed that in order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative. In **Gulam Sarbar Vs. State of Bihar**, reported in **(2014) 3 SCC 401**, it was further observed by the Apex Court as under:-

"19 In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of .

witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by **Section 134** of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness,



it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence. (Vide:

Vadivelu Thevar & Anr. v. State of Madras; AIR 1957 SC 614; Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638; Mahesh & Anr. v. State of Madhya Pradesh (2011) 9 SCC 626; Prithipal Singh & Ors. v. State of Punjab & Anr., (2012) 1 SCC 10; and Kishan Chand v. State of Haryana JT 2013(1) SC 222).

9. Of course, the conviction is on the basis of the circumstantial evidence, but at the same time, it cannot be lost sight of the fact that extra judicial confession can be relied upon depending upon the facts and circumstances of each case. In this case, the prosecution has fully established various circumstances, which speak about the guilt of the Appellant including the recoveries, extra judicial confession, conduct of the Appellant etc. Moreover, there was no denial at all by the accused in his statement under Section 313 Cr.P.C. of the Code that he was absconding from the scene of occurrence till he was arrested and the evidence of P.W.1 and P.W.3 with regard to the same are also consistent and reliable. Sections 24 to 30 of the Indian Evidence Act, 1872 contemplate the reliability and acceptability of the extra judicial confession, which reads as follows:

24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise,¹ having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise,² having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.



25. Confession to police officer not to be proved.—No confession made to a police officer¹, shall be proved as against a person accused of any offence.—No confession made to a police officer¹, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate¹, shall be proved as against such person.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate², shall be proved as against such person.

27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. Confession made after removal of impression caused by inducement, threat or promise relevant.—If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

29. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.—If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who



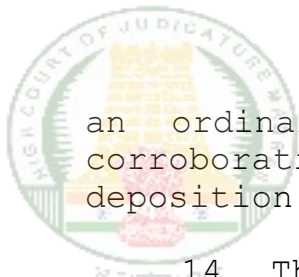
makes such confession."

10. The Supreme Court has time and again held that extra-judicial confession can be relied upon, if the same is voluntary in nature and made in a fit state of mind. It can be relied upon in corroboration with the nature of circumstances and the credibility of the witnesses who speak to such a confession. It was the accused, who, after burying the body of the deceased informed the occurrence to P.W.2 (Ramalingam), who, in turn took him to the Village Administrative Officer (P.W.1) of Muthur Village. On visualizing the circumstances, the information given by the accused to his friend P.W.2 was voluntary in nature and there was no threat or coercion or promise, contrary to the provisions of the Evidence Act. Moreover, the accused was working as a Mason and he may have easy access to deadly weapons like Aruval, Spade, Crowbar easily for the nature of his work and therefore, it could be easily inferred that with the spade, he could have attacked the deceased.

11. It has been contended by the learned counsel for the Appellant that the marriage between the accused and the deceased was an inter-caste one and that there is every possibility of honour killing, this Court is not inclined to accept the said contention for the simple reason that if the relatives of the accused or deceased wanted to do away with the life of the deceased, they could have very well done it, when she was in the hospital or in a different place.

12. On a scrutiny of the evidence of P.W.15, who rented her house to the accused and the deceased, it is seen that the accused stayed with the deceased in the house of P.W.15 for three days and thereafter, took her out by intimating P.W.15 that since the wife of the accused was pregnant, he had been taking her to the hospital for regular check up. Thus, it is obvious that the deceased was at last seen with the accused riding on a two wheeler, (though for getting money), the accused tactfully informed the house owner otherwise. The evidence of P.W.15 is very natural and it cannot be disbelieved. Even a small piece of evidence is sufficient to establish the circumstantial evidence.

13. P.W.13 / Nambi categorically deposed that he used to hire out the weapons like ladder, crowbar, spade, etc., and since the accused was familiar to him, he rented the spade, assuming that it was going to be used for some construction purpose, as the deceased was a Mason. However, the spade was not returned to him nor was money paid for the usage of the spade. From this evidence, it could be visualized that the accused would have attacked the deceased with the very same spade, as a reading of the Postmortem report (Ex.P.11) discloses the fact that among other injuries, there was "an oblique heavy cut injury of size 3x0.5cm x bone deep over right parietal region" and the said injury is not at all possible to be made with



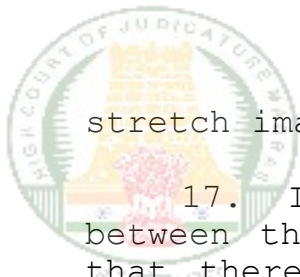
an ordinary weapon like knife. Therefore, there is a clear corroboration between the postmortem report (Ex.P.11) and the deposition of P.W.3.

14. The next plea raised by the accused was that there was a delay in lodgment of FIR and reaching the Court. A careful scrutiny of the deposition of P.W.17 / SSI unfolds the fact that the FIR was handed over to him by his Superior Officer at 2:00pm on 25.03.2013 for the purpose of reaching it to the concerned jurisdictional Court, namely, Judicial Magistrate No.3, Tirunelveli and since there was no frequent bus facility to Tirunelveli, he got down at the Tirunelveli junction and thereafter, reached the Court at 5.45pm through some other bus. From his deposition, it is apparent that there was no delay in preparation of FIR and on account of lack bus service, there was a slight delay, which cannot be construed as a fatal to the prosecution case at all and the procedures adumbrated under Section 154 Cr.P.C. have been duly complied with.

15. The Hon'ble Supreme Court, while dealing with a motor accident case in **Ravi vs Badrinarayan & Others**, reported in **(2011) 4 SCC 693**, has held as follows:

"21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

16. The next point canvassed by the learned counsel for the accused was that the accused was an unsound person and he has been falsely implicated in this case. This contention is far from imagination, because, from his statement, it could be seen that he had cleverly deposed that he had not married the deceased and is a bachelor. Having tied a Thali, lived together with a lady (deceased), which was witnessed by P.Ws.14 & 15, he tactfully answered in order to escape from the conviction. Above all, to all questions, his reply was only one word "false" and therefore, at no



stretch imagination, it can be said that he was an unsound person.

17. In the given circumstances, finding no contradiction between the medical and the ocular testimony, we are of the view that there is no prima facie ground raised in the memorandum of appeal to interfere with the judgment of the Trial Court and thereby, the judgment of Trial Court in respect of the Appellant is liable to be upheld.

18. Accordingly, **the Criminal Appeal is dismissed**, confirming the conviction and sentence awarded against the Appellant herein vide judgment dated 04.10.2018 made in S.C.No.276 of 2016 by the Principal Sessions Judge, Tirunelveli. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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To:

1. The Principal Sessions Court,
Tirunelveli.
2. The Judicial Magistrate No.III
Tirunelveli.
3. The Inspector of Police,
Sivanthipatti Police Station,
Tirunelveli District.
- 4.The Superintendent,
Central Prison, Palayamkottai.
5. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

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The Section Officer,
V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai

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