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CRL.A.No.225 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

CRL.A.No.225 of 2019
AND
CRL.M.P.Nos.5457 of 2019 & 4726 of 2020

Jayapal

.. Appellant/Accused

Vs.

The State rep. by
The Inspector of Police
Pallipalayam Police Station
Namakkal District
(Cr.No.168/2013)

.. Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C. to set aside the judgment dated 31.12.2018 passed in S.C.No.71 of 2014 on the file of the Sessions Court (Fast Track Mahila Court), Namakkal.

For Appellant	Mr.A.Mohan
For Respondent	Mr.M.Babu Muthumeeran Additional Public Prosecutor



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J U D G M E N T

N. ANAND VENKATESH, J.

This Criminal Appeal has been filed against the judgement and order dated 31.12.2018 passed by the Sessions Judge (Fast Track Mahila Court), Namakkal, in S.C.No.71 of 2014, convicting the appellant for the offence under Section 302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.2,000/-, and in default to undergo six months rigorous imprisonment.

2. The prosecution story runs thus:

2.1. The deceased Mallika is the wife of the appellant and through the wedlock, they had a son named Manimaran and a daughter named Lavanya. They were residing as tenants in the premises belonging to P.W.6. The appellant was a drunkard and the household was managed by the deceased, who was earning as a coolie. There used to be frequent quarrels between the deceased and the appellant. On 09.04.2013, at about 02.30 p.m., the deceased picked up a quarrel with the appellant and the appellant is said to



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have mixed some poisonous substance with alcohol and forcibly administered it in the mouth of the deceased and thereafter, the appellant suffocated the deceased, by pressing his hands over her nose and mouth and as a result, Mallika died.

2.2. P.W.9, who is the father of the deceased Mallika, came to visit his daughter on 09.04.2013 at about 04.30 p.m. and he found his daughter lying on the floor and since there was no movement, P.W.9 asked the appellant as to what happened and the appellant informed P.W.9 that Mallika is dead.

2.3. The appellant is said to have meet the Village Administrative Officer (P.W.1) on 10.04.2013 at about 5.00 a.m. and he voluntarily gave an extra-judicial confession to P.W.1, which was marked as Ex.P2. The appellant is said to have admitted the commission of crime and murdering his wife Mallika. P.W.1 prepared a report along with the statement of the appellant and handed it over to the police. Based on the same, an FIR (Ex.P4) was registered on 10.04.2013 at about 06.00 a.m. in Crime No 168



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of 2013.

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2.4.The Investigation was taken up by P.W.14, who proceeded to the scene of occurrence at about 7.00 a.m. and prepared the observation mahazar (Ex.P5) and rough sketch (Ex.P14). M.O.1 to M.O.3 were also handed over by the appellant on his own. The statement of the witnesses were recorded under 161(3) Cr.P.C. and after collecting the post-mortem certificate, final opinion and laboratory report, the charge sheet was laid before the Judicial Magistrate, Thiruchengode.

2.5. The Judicial Magistrate issued the copies to the appellant under 207 Cr.P.C. and the case was committed to the Court of Session and it was forwarded to the Court below, which was taken on file as S.C.No.71 of 2014. The Court below framed charges against the appellant for the offence under Section 302 IPC.

2.6. The prosecution examined P.W.1 to P.W.15, marked Ex.P1 to



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Ex.P18 and identified and marked M.O.1 to M.O.6. The accused was questioned under Section 313(1)(b) Cr.P.C. about the incriminating materials that were collected during the course of the trial and the accused denied the same as false.

2.7. The Court below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution had established the case beyond reasonable doubts and convicted and sentenced the appellant for the offence under Section 302 IPC.

3. Heard Mr.A.Mohan, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent State.

4. P.W.1, the V.A.O. had set the criminal law in motion, based on the alleged extra-judicial confession given by the appellant on 10.04.2013 at



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about 05.00 a.m. in his office. The complaint (Ex.P1) was given at about 06.00 a.m., based on which, the FIR (Ex.P4) was registered in Crime No.168 of 2013. The extra-judicial confession which was recorded by P.W.1 was marked as Ex.P2. On carefully going through the same, it can be seen that the appellant had explained about his strained relationship with the deceased Mallika and that on the fateful day, there was a quarrel and the appellant became enraged and he mixed a poisonous substance in alcohol and forcibly administered to the deceased and thereafter, the appellant pressed with his hand on her nose and mouth and as a result, she died.

5. The doctor who conducted post-mortem was examined as P.W.7 and he has stated that, the deceased died due to asphyxia. Post-mortem certificate (Ex.P9) and final opinion (Ex.P10) were marked through P.W.7. For better appreciation, the final opinion given by P.W.7 is extracted hereunder:

“The deceased would appear to have died of asphyxia. 24-36 hours prior to autopsy.”



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6. It is clear from the above that no alcohol or any poisonous substances were detected in the vital organs of the deceased. P.W.7, during cross examination, has further stated that, such suffocation and death due to asphyxia can also be caused, if a person suffers from asthma. What becomes evident from the evidence of P.W.7 is that, the death of the deceased did not take place, in the manner in which it was projected in the so-called extra-judicial confession given to P.W.1.

7. The next important issue that has to be taken into consideration is, as to whether the appellant had really met P.W.1 on 10.04.2013 at 5.00 a.m. in his office. On the face of it, it sounds very unnatural, since no V.A.O. office opens at 5'o clock in the morning. There is yet another factor, which completely falsifies the evidence of P.W.1 and that is the evidence of the father of deceased, who was examined as P.W.9.

8. The father of the deceased (P.W.9), in his evidence, has stated that,



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he came to visit his daughter on 09.04.2013 between 4.00 and 04.30 p.m. and he saw the appellant lying next to his daughter, in an inebriated condition. P.W.9 had to virtually make the appellant wake up from his inebriated state and at that point of time, the appellant informed P.W.9 that his wife Mallika is dead. P.W.9 is said to have gone home and once again returned at about 06.00 p.m. and he remained there till 12'o clock next day and the appellant was also present in the same place. He further stated that the police came to the crime scene between 5.00 and 5.30 a.m. on 10.04.2013. If this evidence of P.W.9 is taken into consideration, the appellant going and giving an extra-judicial confession on 10.04.2013 at 5.00 a.m., becomes questionable.

9. P.W.2, who is the brother of the deceased and P.W.3, who is one of the neighbours, have spoken about the frequent quarrels that used to take place between the appellant and the deceased. P.W.4 and P.W.6 also speak about the quarrels between the appellant and the deceased. The evidence of all these witnesses, at the best, will only establish that there was no cordial relationship between the appellant and the deceased Mallika and nothing



more.

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10. Once the evidence of P.W.1 and the so-called extra-judicial confession given by the appellant becomes unbelievable, the very foundation of the case of the prosecution gets shaken. That apart, P.W.9, who was the first person to visit the house of the deceased only found the appellant lying next to the deceased. Nothing more came out of his evidence, to point the finger at the appellant and to make him responsible for the death of Malliga. The post-mortem certificate and the final opinion given by the doctor clearly shows that, there were no injuries or any sign of struggle by the deceased and the manner in which, the prosecution had projected the murder, gets derailed on the evidence of P.W.7 and Ex.P9 and Ex.P10 marked through her.

11. In the considered view of this Court, the prosecution has miserably failed to prove the case against the appellant beyond reasonable doubts and the benefit of doubt has to go to the appellant. In view of the same, we have to necessarily interfere with the conviction and sentence



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imposed against the appellant by the Court below.

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In the result, this Criminal Appeal stands allowed and the judgment and order of conviction and sentence dated 31.12.2018 passed by the Sessions Judge (Fast Track Mahila Court), Namakkal, are set aside and the appellant is acquitted from all the charges. Fine amount, if any, paid shall be refunded to him. Bail bond, if any, executed by him shall stand cancelled. The appellant is directed to be released forthwith, if his detention is not required in any other case. Connected Miscellaneous Petitions stand closed.

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[P.N.P., J.] [N.A.V., J.]

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To

1.The Sessions Judge (Fast Track Mahila Court)
Namakkal
(S.C.No.71/2014)

2.The Inspector of Police
Pallipalayam Police Station
Namakkal District
(Cr.No.168/2013)

3.The Superintendent
Central Prison
Coimbatore

4.The Public Prosecutor
Madras High Court
Chennai



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AND
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