



BAIL SLIP

The Appellant/Sole Accused Jeyaprakash, S/o.Kannan was directed to be released on bail as per order of this Court dated 04.06.2019 made in CRL MP(MD).3059 of 2019 in CRL A(MD).132 of 2019.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.03.2022

DELIVERED ON : 10.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)No.132 of 2019

Jeyaprakash

...Appellant / Sole Accused

Vs.

The State, rep. by
The Inspector of Police,
Thenkarai Police Station,
Theni District.
(Crime No.107 of 2017)

... Respondent / Complainant.

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence passed by the learned Additional District and Sessions Court, Theni @ Periyakulam made in S.C.No.145 of 2017 dated 21.12.2018.

For Appellant : Mr.M.Karunanithi
for Mr.K.Baalasundaram
For Respondent: Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

This Criminal Appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 21.12.2018, made in S.C.No.145 of 2017, by the learned Additional District and Sessions Judge, Theni @ Periyakulam.

2. The brief facts of the prosecution case is as follows:

(i) The deceased Kannieswari is the wife of P.W.8. P.W.8 and his wife were working under P.W.1 in his land and the accused is working in the neighbouring land and he become acquainted with P.W.8 and used to take him to fix snare to catch jungle fowl. On

<https://hdservicerecord.gov.in/hdservicerecord>



the date of occurrence, the accused asked P.W.8 to check the snare. After P.W.8 went to his regular work, when he came back at about 4.00 p.m., he found his wife dead inside the house and P.W.1 immediately was under the impression that she was killed by carnivore and therefore, informed the same to P.W.6 Forest Range Officer. P.W.6 came to the place of occurrence at 5.15 p.m and on seeing the injuries in the dead body ruled out wild animal attack. P.W.8 informed P.W.1 about the death of his wife. P.W.1 is the land owner where P.W.8 is working. On hearing the news about the death of the deceased, P.W.1 rushed to his land and found the dead body and informed the Forest Officials. Thereafter, P.W.1 lodged a report - Ex.P.1 before P.W.20-The Special Sub-Inspector of Police, Thenkarai Police Station.

(ii) P.W.20 registered the crime in Crime No.107 of 2017 under Section 302 IPC. and forwarded the complaint and First Information Report to the Judicial Magistrate Court, Periyakulam, through P.W.14 and he has handed over the same to the learned Judicial Magistrate, Periyakulam at 1.30. a.m. on 09.02.2017. P.W.20 went to the place of occurrence and sent the dead body to hospital for post-mortem.

(iii) P.W.21, Inspector of Police/ Investigation Officer took up the case for investigation, went to the place of occurrence and prepared the Observation Mahazar-Ex.P.5 and rough sketch-Ex.P.11. He also collected bloodstained earth in the presence of P.W.11 and other witnesses and also sent a communication to the sniffer dog squad. Thereafter, he conducted an inquest over the dead body in the hospital and prepared an inquest report Ex.P.12. He also collected the blood-stained clothes from the dead body. P.W.2 and P.W.3 after hearing the news about the death of the deceased rushed to the spot and found the dead body.

(iv) When the matter stood thus, on 09.02.2017, while P.W.4-VAO was in office at about 2.00 p.m., the accused appeared before her and gave a confession narrating the killing of the deceased stating that he had an eye over the deceased. When he attempted to have sex with her, she refused and raised alarm. Therefore, he caused cut injury as a result, she died and then P.W.4 has prepared a Special report Ex.P.2 and handed over the accused to the police.

(v) P.W.7 also seen P.W.8 rushed to bring the Forest Officials. P.W.7- Village Menial was also present when the accused confessed to the crime to P.W.4. P.W.18-Medical Officer conducted autopsy over the dead body and found the cut injuries over the dead body and issued Ex.P.10 Post Mortem Certificate and gave a final opinion-Ex.P.11 that the deceased would appear to have died of shock and haemorrhage due to external injuries.



(vi) P.W.15 handed over the material object to the Court for the purpose of forensic analysis. The Scientific Officer of Regional Forensic Laboratory was examined as P.W.17, he found that the related blood items Nos.1 and 4 to 7 which were sent for analysis, belong to 'B' group and issued Ex.P9-Serology report in this regard. He also examined the material objects and issued Ex.P.8 Biological report.

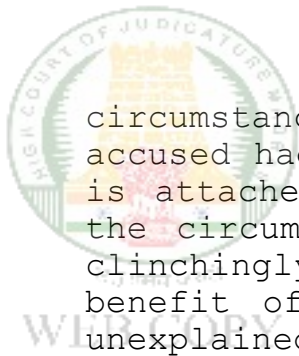
(vii) P.W.21 in continuation of investigation, after P.W.4 handed over the accused to P.W.21, he arrested the accused at about 15.30 hours in the presence of P.W.4 and P.W.7 and recorded the admissible portion of confession and the same is Ex.P.15. Pursuant to the same, he seized the M.O.1- Aruval and Lungi-M.O.2 and thereafter, he has sent the accused to Judicial custody. After examining the Medical Officer and other witnesses, he has handed over the case file to P.W.22.

(viii) P.W.22 took up further investigation and obtained a certificate from Tahsildar and filed a final report against the accused, after examining the witnesses.

(ix) The prosecution, in order to bring home the guilt of the accused, examined as many as 22 witnesses as P.W.1 to P.W.22, marked 15 documents as Exs.P1 to P15 and 8 material objects as M.O.1 to M.O.8. After analyzing the oral and documentary evidence, the trial Court has found, the accused guilty under Section 302 IPC. Assailing the same, the present Criminal Appeal is filed.

3. It is the main contention of the learned counsel appearing for the appellant that the entire case is based on circumstantial evidence and the prosecution has not proved all the circumstances conclusively. The very FIR that has been filed by the owner of the land-P.W.1 would indicate that the husband was the suspect. Thereafter, the final report has been filed against the present accused, who was working in the neighbouring land. He further submits that in order to prove the guilt of the accused, the circumstances relied upon by the prosecution are highly improbable and unbelievable. The alleged extra-judicial confession is not reliable and no such confession was reduced in writing by P.W.4-VAO. Only the Special report of the VAO is sought to be relied upon by the prosecution as extra-judicial confession.

4. The learned counsel for the appellant further submits that on previous day itself, the accused and P.W.8 were taken to the Police Station and they were in Police custody. Therefore, giving an extra-judicial confession on 09.02.2017 is highly improbable. There is no other evidence available on record to connect the accused with the complicity of the crime. Further, there are lot of corrections in the seizure mahazar which also creates a serious doubt in the case, there is no link between each of the



circumstances. Similarly, the case of the prosecution that the accused had given a statement before P.W.4 is unbelievable and same is attached with artificiality. Hence, it is his contention that the circumstances as projected by the prosecution having not been clinchingly established the accused is certainly entitled to the benefit of doubt. The recovery is also doubtful, which remains unexplained by the prosecution. The learned counsel, therefore submitted that the entire prosecution case has to fall on the ground as the prosecution has failed to establish all the links of the chain in the circumstances relied upon by them. Hence, he prays to allow the Criminal Appeal.

5. The learned Additional Public Prosecutor submitted that P.W.8 husband of the deceased clearly spoken about the manner in which the accused induced P.W.8 to go away from the place of occurrence. That itself proves the conduct of the accused. That apart the extra judicial confession given before P.W.4 would clinchingly establish the charge against the accused. It is his further contention that P.W.4 has not been cross examined. Therefore, her evidence remains un-rebutted, which itself proves the guilt of the accused. It is further submitted that the other witnesses also clearly spoken about the presence of the accused in the nearby place. The serology report also proved the fact that all the material objects seized from the accused contain the human blood of 'B' group. Therefore, the prosecution had established the case beyond the reasonable doubt and hence, prays for dismissal of this appeal.

6. We have heard the learned counsel on either side and perused the entire materials available on record.

7. The prosecution has mainly relied upon the extra judicial confession of the accused to bring home the guilt of the accused.

8. The case of the prosecution is based on extra judicial confession of the accused. The motive against the accused is that the accused had an eye-over the deceased to have sex with her. When he attempted to have sex, she resisted the same, at that stage, he caused cut injury and killed her. The law was set in motion on the basis of Ex.P.1 Complaint, lodged by P.W.1, who is the owner of the land, where the deceased and her husband P.W.8 were working. Initially on 08.02.2017, P.W.8 after return from his regular work, saw the dead body of his wife and then suspected that she died of animal attack and informed the Forest Officials. P.W.6 the Forest Range Officer visited the spot and ruled out the animal attack and thereafter, FIR came to be registered. Only on the information provided by P.W.8, P.W.1 rushed to the place of occurrence. Then only P.W.1 gave a complaint to the police. P.W.1 suspected the husband of the deceased and the investigation has been proceeded in the basis of above complaint.

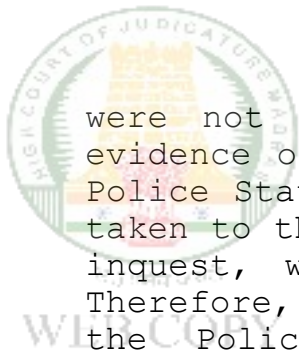


9. It is an admitted fact that the accused was working in neighbouring land of P.W.1. P.W.2, on the date of occurrence at about 3.30 p.m. saw the accused in the neighbouring land. P.W.3 has also visited the place of occurrence. He has also seen the accused in the neighbouring land, at the relevant point of time. P.W.2 and P.W.3 evidence do not show any incriminating material against the accused. The presence of the accused in the neighbouring land or adjacent land is quite natural, since he was also working in that place as a Watchman.

10. The only circumstance that the prosecution has relied upon is so-called extra judicial confession given by the accused before P.W.4 - VAO in the presence of P.W.7 - Village Menial. It is the evidence of P.W.4 that on 09.02.2017 at about 2.00 p.m. accused appeared before her and confessed the crime narrating the manner in which he killed the deceased. It is relevant to note that P.W.4 has not chosen to reduce in writing, the so-called extra judicial confession given by the accused and get it signed by the accused. Whereas, P.W.4 has narrated the incident in the Special report -Ex. P.2 which was handed over to the police (Exhibit P.2). The confession has not been recorded, as is normally done. There was no reason given by P.W.4 as to why she had not recorded the statement of the accused at the relevant point of time and get the signature of the accused. Though it is the case of the prosecution that the accused has confessed to the crime to P.W.4 in the presence of P.W.7, when we carefully peruse the cross examination of P.W.7, he categorically admitted that he has seen the accused only in the Police Station and he had never seen the accused before that. Therefore, the evidence of P.W.4 that the accused appeared before her and confessed in the presence of P.W.7, is highly doubtful. This doubt is further fortified by the fact that P.W.2 who is residing nearby land rushed to the spot after hearing news from P.W.8 regarding the death of the deceased. In the cross examination, he has clearly stated that when he went to the Police Station at about 8.00 a.m. on the next day, the accused and P.W.8 were already under the custody of the police.

11. P.W.3 who is also residing nearby the land, has also went to Police Station on the date of occurrence itself at about 9.00 p.m. His evidence also clearly indicates that the next day morning 6.00 a.m. when he went to the Police Station again he was informed that the accused was also brought to the Police Station at the relevant point of time. When these evidences were analyzed with the evidence of P.W.7 Village Menial, it is clear that the accused and P.W.8 were already under the custody of the police, on the date of occurrence itself. This fact is further strengthened by the inquest report.

12. The inquest report clearly shows that at the time of occurrence on 09.02.2017, the husband of the deceased and the accused



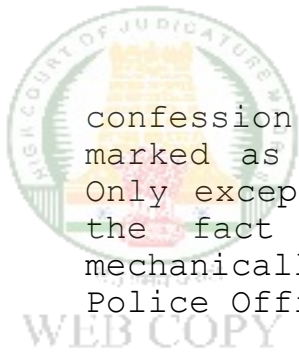
were not at all present. These facts clearly substantiate the evidence of P.W.2 and P.W.3 that they have seen the accused in the Police Station, the previous night itself. If really P.W.8 was not taken to the custody, his presence would be quite natural during the inquest, whereas the inquest report does not show his presence. Therefore, this fact clearly shows that the accused was already in the Police custody. Therefore, the alleged extra judicial confession said to have been given to the VAO on 09.02.2017 at 2.00 p.m. is highly unreliable and improbable. Being the VAO, when accused appeared before her and make a confession, it was the duty of the VAO to record it properly and prepare necessary copies, which was not done in this case.

13. As already discussed above the evidence P.W.7 makes the evidence of P.W.4 as unreliable. Therefore, the alleged extra judicial confession relied upon by the prosecution is not at all sufficient to form the basis for a conviction. Though it is contended by the learned Additional Public Prosecutor that non-cross-examination of P.W.4 would render her evidence reliable, as this Court has found serious infirmities in the arrest and recovery, mere non-cross-examination of P.W.4 by itself would not prove the case of the prosecution. Failure to cross examine P.W.4 may be due to the careless attitude of the Lawyer, who defended the accused. But that may not be a ground to presume the guilt.

14. It is also relevant to note that the prosecution has relied upon the arrest, seizure and recovery of M.O.1 and M.O.2 from the accused. The so-called seizure mahazar relating to M.O.1 and M.O.2 when perused, there is a correction in respect of the measurement of M.O.1 and similarly as far as M.O.2 is concerned, it is stated as Dhoti has been seized. Whereas, the report indicate that it is only a Lungi and the same is also written in a different ink. This also creates serious doubt about the genuineness of the seizure mahazar. In any event, when the evidence of the witnesses itself proved the fact that the accused was already in custody prior to the extra judicial confession and arrest, the alleged extra judicial confession assumes insignificance.

15. The only conclusion that could possibly be arrived is that the extra judicial confession came in existence when the accused was already under the police custody. Therefore, the arrest and the alleged recovery of material objects also assumes insignificance. The same cannot be given much importance. Though the Serology report indicates that the Lungi stated to have been seized from the accused which also contains human blood group 'B', but the fact remains that when a serious doubt is entertained about the very arrest and seizure, Serology report alone is not sufficient to establish the guilt of the accused.

16. The trial Court has marked the entire confession given by the accused as exhibit which is not permissible. Any



confession given to the Police by the accused should not to be marked as a document to prove the case as against the accused. Only exception is that only statements leading to the discovery of the fact alone are to be exhibited. The trial Court has mechanically marked the whole confession statement given before the Police Officer, which is also impermissible in the eye of law.

17. That apart, it is the evidence of P.W.8 that the dead body was found inside the house on his return from the regular work in the field. Whereas, the observation mahazar and rough sketch and evidence of the Investigation Officer clearly show that the dead body was found outside the house. This also creates a serious doubt about the prosecution case.

18. As the entire prosecution is based on the circumstantial evidence, it is the duty of the prosecution to establish each and every link of circumstances relied upon by them to prove the guilt of the accused. Even if any one of the links is not proved, the prosecution cannot succeed in proving the guilt of the accused.

19. Considering the entire facts as discussed above, we are of the view that the evidence relied upon by the prosecution has not established the guilt against the accused. In view of the above discrepancies and doubts seen in the prosecution case, we hold that prosecution has not established the charges levelled as against the accused beyond all reasonable doubt. Therefore, the conviction and sentence rendered by the trial Court for the offence under section 302 IPC is liable to be interfered and accordingly the same are set aside and the accused is given the benefit of doubt.

20. In the result, the Criminal Appeal stands allowed and the conviction and sentence imposed on the appellant/sole accused, by Judgment dated 21.12.2018, made in S.C.No.145 of 2017, on the file of the Additional District and Sessions Court, Theni @ Periyakulam, are set aside and the appellant/sole accused is acquitted from the charges. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond, if any, executed by the appellant and the sureties shall stand terminated.

Sd/-

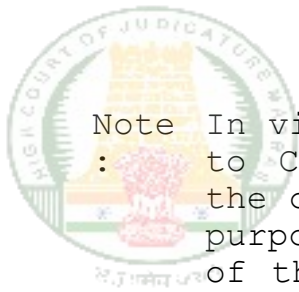
Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional District and Sessions Court,
Theni @ Periyakulam
- 2.The Judicial Magistrate, Periyakulam.
3. The Chief Judicial Magistrate, Theni.
- 4.The Inspector of Police,
Thenkarai Police Station,
Theni District.
- 5.The District Collector, Theni.
6. The Director General of Police, Mylapore, Chennai.
- 7.The Superintendent of Central Prison,
Madurai.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

Judgment delivered in
Crl.A.(MD)No.132 of 2019
10.03.2022

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TR(17.03.2022) 8P 11C