



Crl.A(MD)No.343 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2022

CORAM :

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

Crl.A(MD)No.343 of 2019

Thirunavukarasu

.. Appellant/Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.
(Crime No.175/2016)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order, dated 25.07.2019 in S.C.No.142 of 2017 passed by the learned Sessions Judge, Mahila Court, Pudukkottai,.

For Appellant : Mr.D.Rameshkumar

For Respondent : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor



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JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 25.07.2019 in S.C.No.142 of 2017 passed by the learned Sessions Judge, Mahila Court, Pudukkottai District, wherein the appellant was convicted for the offence punishable under Section 302 IPC., and sentenced to undergo Life Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo six months simple imprisonment.

2. It is the case of the prosecution that Muthudurai (P.W-1) and his deceased wife, Divya were living with their two children in Kulamangalam South Village, Aranthangi Taluk; Muthudurai (P.W-1) was a freelance Electrician. The appellant hailed from Pandikudi Village in Aranthangi Taluk and he was also a freelance Electrician, having worked in Singapore earlier. Since the appellant got acquainted with Muthudurai(P.W-1), together, they started taking up electrical jobs. In that connection, the appellant used to frequently visit the house of



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Muthudurai (P.W-1) and got acquainted with Divya.

2.1. It is alleged that the appellant and Divya were in illicit intimacy, which was objected to by Muthudurai (P.W-1). Since Muthudurai had warned Divya not to talk to the appellant, Divya ceased to meet the appellant. The appellant thought that Divya has developed intimacy with someone and that is why, she was avoiding his company. Therefore, it is alleged that between 10.00 p.m. on 23.10.2016 and 5.00 a.m. on 24.10.2016, the appellant had called Divya to a secluded place behind her house, quarrelled with her as to why she was avoiding him and in that quarrel, the appellant is said to have throttled Divya, caused her death and fled away.

2.2. Muthudurai (P.W-1) searched for Divya in the morning on 24.10.2016 and found her body in the jasmine garden on the western side of his house and raised a hue and cry. Villagers assembled there and on a written complaint (Ex.P1), given by Muthudurai(P.W-1),



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Manirasa(P.W-14), Special Sub Inspector of Police registered a case in Kulamangalam Police Station Crime No.175/16 under Section 174 Cr.P.C. and prepared the printed FIR(Ex.P16), which reached the jurisdictional Magistrate on 24.10.2016 at 4.40 p.m., as could be seen from the endorsement thereon.

2.3. Pertinent it is to state that, in the complaint(Ex.P1), Muthudurai (P.W-1) has not whispered a word about the appellant. Therefore, in the FIR, none was named as accused.

2.4.Investigation of the case was taken over by Baskaran (P.W-15), Inspector of Police, who went to the place of occurrence and prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P17). From near the dead body, the Investigating Officer(P.W-15) seized a black colour Nokia mobile phone (M.O.4) under the cover of a mahazar (Ex.P5).



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2.5. According to the Investigating Officer(P.W-15), during the examination of witnesses, it came to light that in the night of 23.10.2016, the appellant secretly met Divya in the jasmine garden, had a quarrel with her and throttled her to death. Therefore, this story finds a place in the inquest report (Ex.P18).

2.6. Divya's body was sent for postmortem to the Government Hospital, Aranthangi, where Dr.Dhanalakshmi(P.W-9) performed autopsy on it and issued postmortem certificate (Ex.P6) wherein the following injuries have been recorded:

“External injuries: (1) Multiple nail marks present over front of neck (L) side chest. (2) Contusion of size 5x2x0.5 cm over back of (L) side of neck- Brownishblack discoloratio.

Internal injuries: (1) On opening neck-Trachea was normal (2) Hyoid bone: No (3) On opening thorax – No rib, Pleural cavity – no blood collection (4) Lungs-Normal c/s congested (5) Heart-Normal c/s congested (6) on opening abdomen: No blood



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collection in Peritoneal cavity (i) stomach – distended contains 100 gms of rice mixed with fluid (ii) Intestine empty (iii) Liver-normal c/s congested (iv) Kidney-normal c/s congested (v) spleen- normal c/s congested.”

2.7. Pathology Report (Ex.P7) marked through K.Balakrishnan, P.W-10, the Pathologist reads as under:

“Microscopic Report: Section studied shows mild congestion in dermis and intramuscular hemorrhages.”

2.8. After getting this opinion, Dr.Dhanalakshmi(P.W-9) gave her final opinion (Ex.P9) with regard to the cause of death, which reads as follows:

“the deceased would appear to have died of Asphyxia as a result of manual strangulation.”



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2.9. On the same day, ie., on 24.10.2016, the case was altered from one under Section 174 Cr.P.C. to one under Section 302 IPC vide alteration Report (Ex.P19).

2.10. While so, it is alleged that the appellant surrendered before Raja (P.W-5), Village Administrative Officer and gave an extra judicial confession (Ex.P3), wherein he has stated *inter alia* that he hails from Pandikudi Village; he has a sister Chitra; he is unmarried; he has studied ITI after which he worked in Singapore as an Electrician and returned to the village a year ago; he was doing electrical work locally and thus, got introduced to Muthudurai (P.W-1) at Kulamangalam Village; together, they started taking up electrical jobs; in that connection, when he used to visit the house of Muthudurai(P.W-1), he developed intimacy with his (P.W1's) wife Divya; coming to know all these, Muthudurai (P.W-1) warned Divya not to have any connection with him; therefore, Divya stopped talking to him; thinking that Divya was having an affair with somebody, he went to meet her in the night of 23.10.2016 at the usual



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place namely, the jasmine garden; at that time, he saw someone running from there and suspected that Divya was having an affair with him; when he asked Divya as to who the person was, Divya said that none ran; and further questioned his authority; therefore, he got angry with her and an altercation ensued in which he throttled her neck, murdered her and escaped; coming to know that police were looking out for him, he returned to the village and fearing that he would suffer torture at the hands of the police, he is confessing to the crime.

2.11. After recording the extra judicial confession, Raja (P.W-5), Village Administrative Officer, took the appellant and produced him before the Investigating Officer(P.W-15), who placed him under arrest on 25.10.2016 at 17.30 hours and sent him to judicial custody.

2.12. After examining various witnesses and collecting the reports of experts, the Investigating Officer (P.W-15) completed the investigation and filed a final report in PRC.No.XXII/2017 in the Court of the Judicial



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Magistrate, Alangudi, under Section 302 IPC against the appellant.

2.13. 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, Pudukkottai in S.C.No.142 of 2017 and made over to the Mahila Court, Pudukkottai for trial.

2.14. The trial Court framed a charge under Section 302 IPC., and when questioned, the appellant pleaded not guilty.

2.15. To prove the case, the prosecution examined 15 witnesses, and marked 19 documents and 4 material objects.

2.16. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he gave a written explanation alleging the animosity which the prosecution had against him. However, no witness was examined from the side of the



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appellant nor any document marked.

2.17. After considering the evidence on record and hearing either side, the trial Court, by judgement and order dated 25.07.2019, has convicted the appellant under Section 302 IPC and sentenced him to undergo Life Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo six months simple imprisonment. Challenging the same, the present appeal has been filed.

3. Heard Mr.D.Rameshkumar, learned counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent.

4. The prosecution has proved the following facts beyond a cavil.

1. Divya was the wife of Muthudurai (P.W-1).
- 2.The couple was residing in Kulamangalam South Village.
- 3.The body of Divya was found in the morning of 24.10.2016 in



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the jasmine garden near the house of Muthudurai (P.W-1).

4. The death of Divya was a homicide.

5. The short point that emerges for consideration in this appeal is, whether the appellant was the perpetrator of the offence.

6. In order to connect the appellant to the crime, the prosecution placed very strong reliance on the extra judicial confession (Ex.P3), that was said to have been given by the appellant to Raja (P.W-5). Of course, we have set out the free English translation of the extra judicial confession (Ex.P3) in paragraph No.(2.10) supra.

7. The prosecution also placed strong reliance on the evidence of Rajesh (P.W-2), who has stated *inter alia* that he knows the appellant and Divya; the appellant is related to him; the appellant and Muthudurai (P.W-1) were together taking up electrical jobs; the appellant had intimacy with Divya; on 23.10.2016 around 9.45 p.m., the appellant



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called him (P.W-2) to his house and asked him to drop him near the house of Divya through his (P.W-1's) motorcycle; at that time, the appellant told him that Divya is having intimacy with others and therefore, he wanted to question her about it; the appellant asked him (P.W-2) to give his (P.W-2's) mobile phone in order to contact Divya and ask her to come to the usual place where they would meet; if he (the appellant) calls Divya from his mobile phone, Divya would not attend the call; therefore, he (P.W-2) gave his mobile phone to the appellant; his mobile number is 9787683170; he left the appellant near the house of Divya and waited nearby; at that time, he heard some murmurs and other suspicious noise from the jasmine garden and so, he used his torch light to find out what it was; at that time, he saw the appellant throttling Divya with vengeance; when he asked the appellant why he is doing so, the appellant continued to do the said act; therefore, he got scared and went off to his friend's house; again, on 24.10.2016, he returned to the village where the body of Divya was found and heard that his mobile phone has been recovered by the police; therefore, he told the police about the



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incident and also about the fact that the appellant had taken his phone.

8. In the cross-examination, he(P.W2) has stated that on the same evening, i.e., on 24.10.2016, the appellant was secured by the police around 5 o' clock; he and his friend Kedi Soda @ Rajasekaran were also secured by the police. In the cross-examination, he(P.W-2) has further stated that he and the appellant belong to Pandikudi village, where there is a dispute between two groups with regard to the construction of a temple in which he belongs to the opposite group. He has also stated that on account of the fight between the two groups, the Revenue authorities had initiated enquiry for breach of peace.

9. The evidence of Rajesh (P.W-2) does not inspire the confidence of this Court for the simple reason that, according to him, it was he, who had brought the appellant from the appellant's house to Divya's house and while he was waiting nearby, he saw the appellant throttling Divya. Thereafter, his conduct of going back to his village and returning in the



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morning appears very strange. The presence of Rajesh (P.W-2) has not been spoken to at all by Muthudurai (P.W-1) in his evidence. Had Rajesh (P.W-2) spilled the beans on the next morning, Muthudurai (P.W-1), in his complaint, would have narrated these facts also whereas in the complaint (Ex.P1), there is absolutely no reference to Rajesh (P.W-2) at all. The complaint (Ex.P1) was given at 9.00 a.m. on 25.10.2016 whereas Rajesh (P.W-2) has stated that he went to the place of occurrence at 7.00 a.m. itself. The evidence of Rajesh (P.W-2) that the appellant was taken into custody by the police at 5.00 p.m., on 24.10.2016, would vitiate the extra judicial confession that is said to have been given by the appellant to Raja (P.W-5), Village Administrative Officer at 3.00 p.m. on 25.10.2016.

10. An extra judicial confession has to pass two tests, namely, voluntariness and truthfulness. Even if we give the benefit of doubt to the prosecution with regard to voluntariness albeit the fact that the appellant had come into the custody of the police on 24.10.2016 at 5.00



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p.m itself, the extra judicial confession does not pass the test of truthfulness. Rajesh (P.W-2) has stated that he had brought the appellant from his house and dropped him near the house of Divya and had also witnessed the occurrence, whereas, there is absolutely no whisper of Rajesh (P.W-2) in the extra judicial confession. That apart, in the extra judicial confession (Ex.P3), the appellant has stated that he came on his own to meet Divya in the jasmine garden and at that time, he saw someone running from there; when he questioned Divya, she completely denied everything and therefore, he got irked that Divya was speaking lies and so, he throttled her. This story is not compatible with the story of Rajesh (P.W-2). Even in the inquest report (Ex.P.18), there is no reference to Rajesh (P.W-2) at all. In column No.4 of the inquest report(Ex.P.18), it is stated that Divya was last seen alive at 9.30 p.m., on 23.10.2016 by her husband Muthudurai (P.W-1) and not by Rajesh (P.W-2). Therefore, we are of the opinion that the evidence on record is insufficient to sustain the conviction and sentence imposed on the appellant.



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11. In the result,

(i) This Criminal Appeal is allowed.

(ii) The conviction and sentence imposed on the appellant, vide judgment and order, dated 25.07.2019 by the learned Sessions Judge, Mahila Court, Pudukkottai, in S.C.No.142 of 2017 are set aside and the appellant is acquitted of the charge under Section 302 IPC. The bail bond executed by the appellant shall stand terminated and fine amount, if any, paid by the appellant, shall be refunded to him.

[P.N.P., J.] & [R.H., J.]
29.08.2022

Index : Yes/No
Internet : Yes/No
PJJ

To
1. The Sessions Judge,
Mahila Court,
Pudukkottai District.



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- 2.The Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

**Judgment made in
Crl.A.(MD)No.343 of 2019**

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