



Crl.A.(MD)No.601 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.12.2022	22.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

Crl.A.(MD)No.601 of 2019

K.Kannan

... Appellant

vs.

The State Rep. by
The Inspector of Police,
Courtallam Police Station,
Tirunelveli District.
(Crime No.59 of 2013)

... Respondent

PRAYER : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment delivered by the learned Additional District and Sessions Judge (Fast Track Court), Tenkasi, Tirunelveli District, in S.C.No.341 of 2013, vide judgment dated 19.08.2019, and set aside the same and consequently, acquit the appellant honourably.

For Appellant : Mr.R.Anand

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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JUDGMENT

**DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.**

The appellant, who is held guilty of murdering his wife and sentenced to undergo life imprisonment and with fine of Rs 2,000/- in default one year simple imprisonment, being aggrieved has preferred this Criminal Appeal.

2. The case of the prosecution is that the appellant is the husband of the deceased Tmt.Kuttalam. They both got married on 01.02.2008. The appellant married her as second wife, since his first wife died after giving birth to two children. The deceased did not attain puberty though crossed the age of 28 and she was not taking care of the children properly. Being frustrated by her conduct and unsatisfactory sexual life, the accused decided to murder his wife, so that, he can marry some other lady. On 14.02.2013 at about 2.30 p.m., at his house, he attacked her, pulled her down and stamped on her stomach and ribs with his legs. Then strangled her neck with a nylon rope and hanged her to the roof with a tuppata (shawl).



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2.1. On hearing that, his sister found dead hanging to the roof, the younger brother of the deceased and his wife went to the house of the accused. Dropped the body and informed the respondent Police. On registering the F.I.R. at about 20.30 hours in Crime No.59 of 2013 under Section 174 Cr.P.C., the Police took up the investigation. The Investigation Officer arranged for inquest by Revenue Divisional Officer, since the suspicious death of Kuttalam was within seven years of her marriage. The body was sent to the Head Quarters Government Hospital, Tenkasi, for autopsy. On coming to know that the Police has intensified the investigation and fearing they will find out his crime, the appellant went to the Office of the Village Administrative Officer of his Village on 16.02.2013 at about 8.00 a.m. and confessed to him about his act of crime. The Village Administrative Officer after recording his confession, handed over the appellant to the Police. To the Police, the appellant narrated the sequence of events in detail and disclosed the place, where he has hidden the nylon rope used for strangulating his wife. Accordingly, the nylon rope was recovered under Mahazar on 16.02.2013 at about 11.00 a.m.



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2.2. The case was altered to Section 302 I.P.C. On receipt of the Revenue Divisional Officer's report, Post-mortem Report and recording the statements of witnesses, the investigation got completed and Final Report filed against the appellant for offence under Section 302 I.P.C.

2.3. Before the learned Sessions Judge, to prove the charge, the prosecution has examined 22 Witnesses. Marked 19 Exhibits and 2 Material Objects. The appellant opted to remain silent. No oral or documentary evidence on the side of the defence.

2.4. The trial Court on considering the evidence of P.W.1, P.W.2, P.W.5, P.W.6, P.W.7 and P.W.8 held that the prosecution has proved the identity of the deceased. The testimony of the Doctors P.W.18, P.W.19 and the Post-mortem Report Ex.P.14, which discloses injuries both external and internal found on her body establishes that it was a homicide. Through the confession statement of the accused to the Police, leading to the recovery of M.O.1 [Nylon rope] and the extra judicial confession to the Village Administrative Officer, admitting the guilt, motive to cause death is established. The evidence of P.W.1 that he and the



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accused were together during the forenoon of 14.02.2013 and attended the Court in connection with a theft case, being taken into consideration and applying Section 106 of the Indian Evidence Act, 1872 and following the judgments of the Hon'ble Supreme Court rendered in **State of Rajasthan vs. Thakur Singh** reported in **[2014] 12 SCC 211** (<http://Indiankanoon.org/doc/91640534>) and **Trimukh Maroti Kirkan vs. State of Maharastra** reported in **[2006] 10 SCC 681** (<http://Indiankanoon.org/doc/845834>), held that the accused, who was living with the deceased under same roof, failed to rebut the presumption strongly pitted against him.

Case of the appellant:

3. The trial Court erred in convicting the appellant based on the extra judicial confession to the Village Administrative Officer examined as P.W.3. The extra judicial confession which is a weak piece of evidence, requires corroboration by the substantive evidence. In the instant case, there is no substantive evidence to corroborate the extra judicial confession. Further, the trial Court failed to take note of the fact that P.W.3 in his cross examination admits that he saw the accused in the Police Station on 15.02.2013 itself. Therefore, it is apparent that the accused was first taken to the Police Station and then, the



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alleged confession from the accused extracted on the next day i.e., 16.02.2013.

Hence, the said extra judicial confession is wholly unreliable. The reliance of the statement given by the appellant during the RDO enquiry, which is part of Ex.P.11 Report as admissible evidence under Section 80 of the Indian Evidence Act is erroneous and unsustainable.

4. The learned counsel for the appellant submitted that it is a case of death san eyewitness. Except the alleged extra judicial confession given to P.W.3, there is no other evidence even to remotely presume that the circumstantial evidence implicate the accused without any break of chain. The R.D.O. enquiry is not a judicial proceedings and the alleged statement of the accused to the R.D.O. during the inquest is not admissible in evidence under Section 80 of the Indian Evidence Act, since the previous statement of the accused is not capable of being contradicted during the trial. The theory of suicide due to humiliation by one Ayyappan taken as a defence by the accused by way of suggestion to the witnesses not been appropriately appreciated by the trial Court.



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5. The learned counsel referring the cross-examination of P.W.1, submitted that P.W.1 admits that he and the appellant attended the Court and reached the home of the appellant at about 04.00 p.m. on that day. While so, the prosecution case that the appellant killed his wife at 02.30 p.m. gets improbable. In the view of this fact, no presumption under Section 106 of the Indian Evidence Act can be drawn. Further, he submitted that the deceased incapacity to give birth to a child as alleged motive to murder his wife unfound. This is in fact a reason for the deceased to commit suicide due to depression and the appellant cannot be held guilty and convicted for the death of Kuttalam, who committed suicide due to mental depression.

6. The learned Additional Public Prosecutor, referring the external and internal injuries mentioned in the Post-mortem Report [Ex.P.14] which says the deceased died due to injury to the vital organ (Liver) and Asphyxia coupled with Ex.P.13, the Bone Case Certificate, which reveals the hyoid bone of the deceased was intact, contended that these evidence clearly prove that the deceased was murdered and it is a homicide, not suicide. The appellant after committing the murder has left the house and joined P.W.1 and other, pretending as if he is



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mourning the death of his wife. He tried to impress upon the relatives and others as if the deceased committed suicide, being mentally depressed. His fake mourning did not last long and when the Police drew suspicion, to avoid physical harassment, he surrendered before the Village Administrative Officer on 16.02.2013.

7. The alleged presence of the accused in the Police Station on the next day of the occurrence, does not discredit the prosecution case. It is not the case of the prosecution that the accused went absconding after committing the crime. It is the case of the prosecution that the accused after committing the crime, left the house and then, joined other members of the family after they all reached the house hearing the death of Kuttalam. He joined with others and pretended mourning. Participated in the R.D.O. enquiry and gave statement as if he left the house at about 02.00 p.m. and returned at 07.00 p.m., the said admission is relevant under Section 21 of the Indian Evidence Act. The sister-in-law of the deceased Mariammal (P.W.2) in her previous statement to Revenue Divisional Officer had stated that the deceased came to her house on 14.02.2013 at about 11.00 am, left her house at about 02.00 p.m. soon after her husband and appellant returned from



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the Court. This previous statement of P.W.2 not impeached in the cross-examination. The Revenue Divisional Officer, who recorded the statement of the accused during the enquiry was examined as P.W.15 and it is not correct to plead that the accused had no opportunity to cross-examine him to contradict the previous statement.

8. The learned Additional Public Prosecutor, summed up that the trial Court taking into consideration the evidence, holistically has held that the appellant admit that he was with the deceased till 02.00 pm on the eventful day. The deceased was found hanging, but it is not suicide. As per the Post-mortem Report, the deceased had died due to injury to the vital organ (Liver). In the said circumstances, the murder inside the dwelling house, where he resides warrants application of Section 106 of the Indian Evidence Act. Therefore, there is no error in the finding of the Court below.

9. Heard both sides. Records perused.



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10. The case of the prosecution that the accused to get rid of his wife, who was sterile and indifferent to his children born through his first wife, first strangled the deceased with nylon rope and then, hanged her, there is ligature mark around the front portion of her neck upto 10 c.m. The extra judicial confession, which is marked as Ex.P.2, the accused has confessed that he kicked his wife on her stomach and strangled her. The Post-mortem Report [Ex.P.14] discloses the following external and internal injuries:-

***"External injuries:** Clean Black Coloured Wound seen front of the Neck. It is approximately 10cm Length x 2-3cm Breadth size. 7cm from (below) Right ear lobe. 5 cm below from left lobe. Front of neck, just above the thyroid cartilage 2x2cm small abrasion seen left inner side of Arm, Two (1x1cm) size abrasion seen over left back of shoulder. External Genitalia normal.*

***Internal injuries:** Opening of neck all internal structure in the neck are perceived, slightly congested. Hyoid bone intact opening of thorax. All ribs are normal, thoracic cavity contains 100–150ml clotted blood seen, lacerated wound 5x5x2cm, Severed liver, lacerated wound 3x2x2cm seen in spleen. Both lungs appeared congested, heart congested, cavity empty. Both kidneys congested. Stomach contains undigested food seen, small and large intestine*



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empty. Uterus congenitally absent, ovaries present. Bladder empty. Skull spine- Normal. Brain –Normal."

10. The Doctor opined that the death was due to the injury caused to the vital organ [Liver] and Asphyxia. This is a substantial piece of evidence, which corroborate the extra judicial confession of the accused and therefore, the plea of the appellant that there is no corroboration to the extra judicial confession is incorrect.

11. Regarding presumption under Section 106 of the Indian Evidence Act, 1872 the said Section reads as below:-

"106.Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

12. The accused and P.W.1 were together on 14.02.2013 during the forenoon, is an admitted fact and there is no controversy about it. This has been spoken by P.W.1 in his cross-examination that, he and the appellant returned from the Court at about 03.00 p.m. The dead body was seen first by the children of the



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appellant, who returned from School around 04.00 p.m. Thereafter, information has been passed to P.W.1, P.W.2 and others, who have gone to the house and thereafter, given the complaint. P.W.1 in his cross-examination has stated that he was with the accused till 03.00 p.m. The contradiction in time about his company with the accused is not vital, since the witness, a rustic and admittedly had drinks together with the accused would have lost his sense of time. P.W.1, P.W.2 and P.W.5 are related to both to the deceased as well as to the appellant. Therefore, there is no necessity for them to falsely implicate the appellant or depose against him. The appellant, an auto driver by profession, was seen within the vicinity of the scene of occurrence at the relevant point of time and so, he is casted with burden of proving the fact where he was between 02.00 p.m. to 07.00 p.m., which is expressly within his knowledge. He has not raised the plea of *alibi* to prove that he was at different place at the time of occurrence. However, when the evidence indicates that he being the husband of the deceased and living under the same roof and was at the house around 02.00 p.m., 2 ½ hours before his wife was found dead, the presumption under Section 106 of the Indian Evidence Act gets attracted.



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13. Section 106 of the Indian Evidence Act will squarely apply and the trial Court has rightly relied upon the judgment rendered by the Hon'ble Supreme Court, explaining the applicability of Section 106 of the Indian Evidence Act, 1872 to the facts of the case and applied the same to the facts of this case.

14. The learned counsel appearing for the appellant submitted that the evidence of P.W.1 and P.W.3 indicates that the appellant was found at the Police Station even on the date of occurrence and therefore, the extra judicial confession is tainted with suspicion.

15. As rightly pointed out by the learned Additional Public Prosecutor, it is not the case of the prosecution that the accused absconded after committing the crime. It is the specific case of the prosecution that the accused was very much available at the scene of occurrence and for investigation, posing as if he is innocent only after sensing that the Police has narrow down and needle of suspicion to him, he has gone to the Village Administrative Officer's Office, confessed his guilt and also stated the reason for confessing the guilt to the Village Administrative Officer, so that, he can avoid the custodial torture.



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Therefore, on this ground also, the contention raised by the learned counsel for the appellant, is not convincing to entertain a doubt about the prosecution case.

16. In the result, this Criminal Appeal is dismissed. The judgment of conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court), Tenkasi, in S.C.No.341 of 2013, dated 19.08.2019, is confirmed. The appellant shall be secured to undergo the remaining period of sentence. The period of imprisonment already undergone by the appellant/accused shall be set off under Section 428 of Cr.P.C.

Index : Yes / No
Internet : Yes
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To

[G.J., J.] [S.M., J.]
22.12.2022

- 1.The Additional District and Sessions Judge (Fast Track Court),
Tenkasi.
- 2.The Inspector of Police,
Courtallam Police Station,
Tirunelveli District.
- 3.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
SUNDER MOAHN, J.

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PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.601 of 2019

DATED : 22.12.2022