



Crl.A.No.425 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2023

PRONOUNCED ON : 24.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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Murugan @ Murugesan

.. Appellant / Accused

v.

The Inspector of Police,
Panamarathupatti Police Station,
Mallur Taluk, Salem District.
(Crl.No.468/2001)

.. Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in connection with S.C.No.193 of 2002 on the file of the learned Additional District Sessions Judge (FTC No.II) Judge, Salem and set aside the conviction and sentence imposed in judgment dated 14.11.2002.

For Appellant : Mr.R.Diwakaran
for M/s.D.Geetha

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

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(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 14.11.2002 in S.C.No.193 of 2002 on the file of the learned Additional District Sessions Judge (FTC No.II), Salem.

2 (i) The case of the prosecution is that on 11.08.2001 at about 1.00pm, while the deceased aged about 11 years was playing along with her friends i.e., PW2 and PW4, the accused called the deceased and with an intention to commit rape on the victim, he removed her dress and when the victim resisted and threatened to complain about the incident to the villagers, the accused caused death of the deceased by strangulating her neck and thereafter by throwing a stone on her head.

(ii) It is the further case of the prosecution that the accused appeared before PW1, the Village Administrative Officer at about 10.30pm on 11.08.2001 and made an extra-judicial confession, stating that he attempted



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to commit rape on the deceased child and when she resisted, he pushed her down and strangled her neck and thereafter threw a stone on her head and caused her death; that PW1 thereafter took the accused to the place of occurrence to confirm if the dead body of the deceased was found in the place as stated by the accused; that thereafter, prepared a special report and sent the accused to the police station with his assistant; that the complaint was given by P.W.1 at about 2.30 am; which was marked as Ex.P2.

(iii) Based on the said complaint, an FIR was registered at 3.00am., by the Sub Inspector of Police for the offence under Sections 376 r/w 511 IPC and 302 IPC in Cr.No.468 of 2001, marked as Ex.P16. The said FIR was despatched to the Magistrate on 12.08.2021.

(iv) PW14, the Inspector of Police took up the investigation and examined the Village Administrative Officer-PW1 and his assistant one Vijaya Kumar (not examined in Court) and recorded their statements. The Investigating Officer, recorded the confession statement of the accused, the admissible portion of which was marked as Ex.P3, in which the accused



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had stated that he would identify the stone used by him to cause the death of the deceased.

(v) The Investigation Officer [PW14], thereafter prepared the Observation mahazar [Ex.P4] and Rough Sketch [Ex.P17] and conducted an inquest. The inquest report was marked as Ex.P18. He seized the stone M.O.3, under seizure mahazar [Ex.P5] and examined the other witnesses in the case.

(vi) P.W.14 sent the body of the deceased for post-mortem examination. PW6 - the post-mortem doctor, after examination issued a post-mortem certificate [Ex.P7]. He found the following injuries on the deceased and opined that the deceased died due to the head injuries 12-30 hours, before the post-mortem examination.

Injuries: (i) Abrasions on a)(L) side of forehead 2 x 1 cm, (L) ear 1 x 0.5cm, (L) side of lower jaw 0.5 x 0.5cm, (L) side of lower lip 0.5 x 0.5cm (R) cheek 1 x 0.5cm
(ii) Contusion on fronto temporal region of scalp 10 x 6 x 0.5cm
(iii) Communitied fracture present over (R) fronto temporal region of scalp



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(iv) Subdural and subarachnoid hemorrhages present over both cerebral hemisphere

(v) Fissured fracture of middle cranial fossa present 8 cm in length.

(vii). The investigation officer made a request to record the 164 statement of PW2. PW9, the learned Judicial Magistrate No.II, Salem, recorded the said statement of PW2 on 13.09.2001.

(viii) PW15 thereafter took up the investigation from PW14 and after examining the other witnesses filed a final report before the learned Judicial Magistrate No.II, Salem, for the offences under section 376 r/w 511 and 302 IPC against the accused.

(ix) On the 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 in S.C.No.193 of 2002 and was made over to the Additional District Sessions Court, FTC No.II, Salem, for trial. The trial Court framed charge u/s.376 r/w 511 IPC, 302 and 506(ii) IPC as against the appellant and when questioned, the appellant pleaded 'not guilty'.



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(x) To prove the case, the prosecution examined 15 witnesses and marked 18 exhibits and 7 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor was any document marked.

(xi) The Trial Court based on the evidence adduced during the trial, convicted the appellant/accused under Sections 376 r/w 511, 302 and 506

(ii) IPC and sentenced him as follows:

<i>Offence under</i>	<i>Sentence imposed</i>
376 r/w 511 IPC	Sentenced to undergo rigorous imprisonment for seven years.
302 IPC	Sentenced to undergo life imprisonment.
506 (ii) IPC	Sentence to undergo rigorous Imprisonment for one year.
The sentences imposed were directed to run concurrently.	

Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. Heard, Mr.R.Diwakaran, learned counsel for the appellant/accused



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and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

4. The learned counsel for the appellant submitted that the accused has been in custody from 14.11.2002 till date. He had not filed any appeal immediately after his conviction. However, at the instance of the Tamil Nadu State Legal Services, a counsel was appointed to file an appeal and an appeal was filed belatedly in the year 2021.

5. (i) The learned counsel further submitted that the prosecution has not established the case beyond a reasonable doubt. The prosecution case as regards how the occurrence took place is highly doubtful. The prosecution relied upon the evidence of PW2, who was the friend of the deceased and claimed to be an eyewitness, the extra judicial confession said to have been given by the accused to PW1 and the medical evidence, to show that the deceased died due to homicidal violence.



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(ii) The learned counsel submitted that the extra judicial confession cannot be believed as the accused is a total stranger to the VAO and there was no necessity for him to confess his guilt to him. That apart, PW1, after recording the alleged extra judicial confession did not go to the police station immediately and instead went to the scene of occurrence to verify if the dead body was present at the place mentioned by the accused and that it was no part of VAO's duty to conduct an investigation. There is an unexplained delay in the complaint, by P.W.1 after the alleged extra judicial confession.

(iii) The learned counsel further submitted that PW2, the child witness was aged about 12 years during her examination in Court, her evidence is self-contradictory and it is highly unsafe to rely upon her testimony to convict the appellant. PW2, though claimed to be an eyewitness had not informed anyone about the alleged occurrence which is an improbable conduct. The learned counsel further submitted that merely because the Doctor had opined that the death was caused due to homicidal violence, in the absence of any other convincing evidence, a finding cannot



be recorded that the deceased died due to the homicidal violence as the nature of injuries would suggest that such injuries can be caused due to a fall also.

(iv) The learned counsel further submitted that in any case, there is no evidence to show that there is an attempt to commit rape on the deceased and that therefore the judgment of conviction is unsustainable and liable to be set aside.

6. The learned Additional Public Prosecutor *per contra* submitted that the prosecution has proved its case beyond reasonable doubt. The evidence of Doctor-PW6 would show that the deceased died due to injuries sustained in the head which could be caused by a stone like M.O.3, which was seized at the instance of the accused. He also submitted that PW2 the child witness cannot be disbelieved merely because there are minor contradictions in her evidence. Her evidence suggests that she was frightened of the accused and therefore, she had not informed anybody about the occurrence until she was examined by the police. Therefore, the learned Additional Public Prosecutor submitted that there was no reason to interfere with the judgment



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of the trial Court and prayed for the dismissal of the appeal.

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7. We have carefully perused the records and considered the rival submissions carefully.

8. (i) As stated earlier, the prosecution has examined 15 witnesses and marked Ex.P1 to Ex.P18. PW1 is the Village Administrative Officer, who recorded the extra judicial confession of the accused and lodged complaint Ex.P2.

(ii) PW2, was the friend of the deceased and is said to be an eyewitness to the occurrence.

(iii) PW3 is the father of the deceased, who came to know about the occurrence, later through Mariamma-PW2.

(iv) PW4 is the sister of the accused, who according to the prosecution went along with the deceased to pick the black-berries, turned hostile.

(v) PW5 is the villager and speaks about seeing the deceased along with her friends, going to the “odai” channel to pick up black-berries.



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(vi) PW6 is the Doctor who conducted the post mortem and found the injuries that we have already extracted.

(vii) PW7 is the Constable, who had handed over the case properties for forensic science examination. PW8 is the police photographer who had taken the pictures at the scene of occurrence marked as Ex.P12 and the negatives marked as M.O.4.

(viii) PW9, is the Judicial Magistrate, who recorded the 164 statement of PW2

(ix) PW10, is the Headmistress of the school where the deceased was studying and marked the school certificate-Ex.P15 to prove that the deceased was born on 20.05.1991.

(x) PW11 is the Head Constable, who handed over the FIR, to the Judicial Magistrate on 12.01.2001 at about 10.30am



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(xi) PW12 is the Constable who took the body of the deceased to the doctor for postmortem and handed over the body to the relatives thereafter.

(xii) PW13, is the Sub Inspector of Police, who recorded the FIR on the complaint given by PW1, marked as Ex.P16.

(xiii) PW14 and PW15 are the investigation officers of the instant case.

9. From the above narrative, it would be seen that PW2 and PW4 were examined by the prosecution as Eyewitnesses. PW4, the sister of the accused turned hostile. PW2 is the other eyewitness, who supported the case of the prosecution. In addition to the deposition of PW2, we find that the other evidence relied upon by the prosecution is the extra judicial confession given by the accused to PW1, marked as Ex.P1. The evidence of Doctor – PW6 is that the deceased died due to head injuries.

10. (i) Before we analyse the evidence of PW2, we would like to



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examine the extra-judicial confession said to have been given by the appellant to PW1. It is well settled that an extra-judicial confession is a weak piece of evidence and it can be the sole basis for conviction provided it is voluntary and truthful. To ascertain voluntariness and truthfulness, the other circumstances, have to be looked into viz., whether the person to whom, the accused is said to have confessed is a reliable and trustworthy person and as to the necessity of the accused to confess to such a person. According to PW1, the accused came to his office at 10.30pm on 11.08.2001. PW1 admits that the accused was not known to him earlier. When he was asked specifically as to how the accused came to meet him, he stated that the accused told him that he asked the villagers and they directed him to go to PW1. We are of the view that the PW1's version of the accused going in search of a VAO to give a confession, is highly improbable.

(ii) Be that as it may, it is the version of PW1, the Village Administrative Officer that after recording the confession, he went to the place of occurrence along with his assistant, who was not examined by the prosecution.



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(iii) The prosecution is unable to explain why PW1 went to the place of occurrence instead of going to the police station to give a complaint. Even as per the version of PW1 he went to the police station at about 3.30am on 12.08.2001 and there is no explanation by the prosecution as to why, there was a huge delay by PW1 in taking his special report and the accused to the police station. The explanation offered by him in the cross examination is that he was busy with other work. We are unable to accept this explanation as it is opposed to normal human conduct.

(iv) It is also seen that the defence has pointed out the difference in the ink in the contents of Ex.P1 and the writings of PW1 in Ex.P1. We are of the view therefore that the evidence of PW1 does not inspire confidence and the alleged extra judicial confession given by the accused to PW1, does not appear to be voluntary.

11. (i) We are now left with the evidence of PW2, the child witness. It is the case of the prosecution that the children i.e., the deceased, PW2 and



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PW4, went to the odai channel to pick up black-berries at 1.00pm and thereafter, the occurrence took place. PW2 would state that after witnessing the occurrence, she did not tell anyone out of fear. It is her version that she told about the occurrence to the parents of the deceased when they enquired about the deceased. It is not clear from the evidence as to when she told the parents about the occurrence. PW2 would further add that she told PW1 who came along with the accused the next day, to enquire about the occurrence and she had also informed the police the next day. Though she had stated in the chief examination that the accused attempted to remove the dress of the deceased and thereafter, attacked her with the stone, during the cross examination, she would initially state that when they were climbing down from a huge rock, the deceased slipped and fell from the rock. On further questioning by the Court, she stated that the accused pushed the deceased down.

(ii) That apart, PW2 would further state as follows:

“ மணியக்காரர் எனக்கு சொல்லிக் கொடுத்தார்”

The above portion is extracted in vernacular so that the effect of the



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deposition is not lost in translation. The above version extracted in vernacular suggests that she deposed as taught to her by P.W.1. Thereafter, PW2 would reply to the question put by the learned trial Judge that she is telling the truth. In her evidence, she would state that they all went to the occurrence place at 10.00am, whereas, according to the prosecution case all of them left at 1.00pm. She would reiterate the time of occurrence in the cross examination as well.

(iii) PW3, the father of the deceased admits that he was aware through other witnesses that the deceased went along with PW2 and PW4. The prosecution case is not clear as to why the parents i.e., PW3 and his wife did not come to know of the alleged occurrence earlier. Further, it is also not known as to why PW3 who states that he went in search of the deceased the previous day when she did not return home, had not given any complaint. PW3 would state that he came to know on enquiry from PW2 that all the children went to the odai channel to pick black-berries and has not chosen to give any complaint.

(iv) The genesis of the prosecution case has been suppressed. It is a



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matter of common sense that if a 10 year old child goes missing, one would complain immediately, especially when the parents of the deceased were aware that she went along with PW2 and PW4 and did not return.

(v) PW3 has not stated when PW2 told him about the said incident. If PW2 had stated about the said incident the same day evening, there is no explanation as to why no complaint was given by PW3 on the same day. There are inherent contradictions in the evidence of PW2 and PW3. Therefore the prosecution case with regard to how the occurrence took place appears to be highly doubtful. It is unsafe to rely upon the evidence of such witnesses to record a finding of guilt.

12. The medical evidence which is an opinion, cannot be the sole basis for recording that the deceased died due to homicidal violence only. There is no evidence to establish the allegation of attempt to commit rape as well.

13. Therefore, this Court is of the view that though the circumstances



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and the evidence let in by the prosecution leads to a grave suspicion on the accused/appellant, it is trite that suspicion howsoever high cannot be the basis to render a finding of guilt. Therefore, we are constrained to set aside the judgment of conviction and hold that the prosecution has failed to establish their case beyond reasonable doubt.

14. For the aforesaid reasons, we are of the view that the judgment of conviction and sentence passed in S.C.No.193 of 2002, dated 14.11.2002 on the file of learned Additional District Sessions Judge (FTC No.II), Salem, is liable to be set aside.

15. In the result, this Criminal Appeal is allowed and the appellant/accused is acquitted of all the charges. The conviction and sentence passed in S.C.No.193 of 2002 on the file of the learned Additional District Sessions Judge (FTC No.II), Salem, *vide* judgment dated 14.11.2002, are set aside. The appellant/accused, who is now confined in Central Prison, Salem, is directed to be released forthwith unless his detention is required in some other case.



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(S.S.S.R.,J.) (S.M.,J.)
24.11.2023

Index : yes/no
Neutral citation : yes/no
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To

1. The Additional District Sessions Judge (FTC No.II),
Salem.
2. The Inspector of Police,
Panamarathupatti Police Station,
Mallur Taluk, Salem District.
3. The Superintendent,
Central Prison, Salem.
4. The Public Prosecutor,
High Court, Madras



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

ars

Pre-delivery Judgment in
Crl.A.No.425 of 2021

24.11.2023