



Crl.A.No.334 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.07.2024

PRONOUNCED ON : 25.07.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Govindan

... Appellant/Sole Accused

v.

State represented by

Inspector of Police,

B-6, Peelamedu Police Station,

Coimbatore District.

(Crime No.349 of 2011)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant/sole accused and sentence in S.C.No.25 of 2013 dated 25.11.2014, on the file of the learned Sessions Judge, Mahalir Neethimandram, Coimbatore and set aside the conviction and sentence imposed in judgment dated 25.11.2014 and acquit the appellant/sole accused.

For Appellant : Mr.V.Raja Mohan



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For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
JUDGMENT

(Order of the Court was made 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 25.11.2014 in S.C.No.25 of 2013, on the file of the learned Sessions Judge, Mahalir Neethimandram, Coimbatore.

2.(i) It is the case of the prosecution that the appellant/accused was a neighbour of the victim, who was aged eight years old at the time of the occurrence; that in order to fulfil his carnal desire, he decided to kidnap the victim; that on 28.02.2011, he lured the victim and took her to an isolated place to commit rape on the victim; that when the appellant realised that it was not possible to commit rape, he had caused the death of the victim by pushing her down and strangulating her neck with the rope; and that in order to screen the offence, he had placed dry coconut leaves [தென்னை ஓலைகள்] on the body of the deceased and set fire on her.

(ii) PW1, the father of the victim, lodged a complaint [Ex.P1] on



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01.03.2011 at 9.30 a.m., after his search for his daughter was in vain.

PW13, the Special Sub-Inspector of Police, on receipt of the complaint, registered the FIR in Cr.No.349 of 2022, under the head, 'Girl Missing'.

(iii) PW20, the Inspector of Police took up the investigation and after the examination of a few witnesses, he came to know that the missing girl's body was found near Peelamedu in the land of Oornayakkar [உள்ள நாயக்கர்] at Peelamedu. He went to the scene of the occurrence, prepared the Rough Sketch [Ex.P2] and Observation Mahazar [Ex.P20] in the presence of the witnesses. Thereafter, he altered the offences to Section 364, 302 and 201 IPC and sent the alteration report [Ex.P22] to the learned Judicial Magistrate No.VI, Coimbatore. On 01.03.2011. He conducted an inquest over the dead body of the deceased in the presence of panchayatars and prepared the inquest report [Ex.P23] and seized the clothes of the deceased [M.O.1 to M.O.3], which were lying at the place of the occurrence, besides seizing the brandy bottle [M.O.4] and the burnt coconut leaves [M.O.8], under the Seizure Mahazar [Ex.P3]. Thereafter, he sent the body of the deceased for postmortem, which was conducted by PW14, who had



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issued Ex.P11-Postmortem certificate and Ex.P12-Final opinion.

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(iv) On 02.03.2011, during the course of the investigation, PW8, the Village Administrative Officer, brought the appellant along with his Special Report [Ex.P5] stating that the appellant surrendered before him and gave an extra judicial confession. PW20 arrested the appellant and on his confession, seized the half burnt lungi [M.O.9] of the appellant from his residence, examined the other witnesses and took steps to record the judicial confession of the appellant under Section 164 of the Cr.P.C. The appellant, however did not give any judicial confession before the Magistrate. He examined the other witnesses and filed the final report, against the appellant, for the offences under Section 364, 376 r/w 511, 302 and 201 of the IPC before the learned Judicial Magistrate No.VI, Coimbatore.

(v) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and was committed to the Court of Session in S.C.No.25 of 2013 and made over to the learned Sessions Judge, Mahalir Neethimandram, Coimbatore, for trial. The trial Court framed charges for



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the offences under Sections 364, 376 r/w 511, 302 and 201 of the IPC against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 20 witnesses as P.W.1 to P.W.20, marked 23 exhibits as Exs.P1 to Ex.P23 and marked 10 material objects as M.O.1 to M.O.10. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witness nor marked any document on his side.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of the offences under Sections 366, 376 r/w 511, 302 ad 201 of the IPC. The appellant was sentenced as follows:

<i>Offence under</i>	<i>Sentence imposed</i>
366 IPC	To undergo 10 years RI and to pay a fine of Rs.5,000/-, in default to undergo SI for one year.
376 r/w 511 IPC	To undergo 7 years RI and to pay a fine of Rs.5,000/-, in default to undergo SI for one year.



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<i>Offence under</i>	<i>Sentence imposed</i>
302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-.
201 IPC	To undergo 7 years RI and to pay a fine of Rs.5,000/-, in default to undergo SI for 6 months.
The sentences were ordered to run concurrently.	

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

3. Heard, Mr.V.Raja Mohan, learned counsel appearing for the appellant, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

4. The learned counsel for the appellant submitted that the prosecution had not established the circumstances; that the circumstances in any case do not form a complete chain and point out only to the guilt of the appellant; that the extra judicial confession said to have been given by the appellant to PW8 is unreliable; that the fingerprint impression said to have been compared by PW11 is of no value as there is no evidence to show as to when the sample fingerprint of the appellant was taken and in any case PW11, who was working as an Inspector was not competent to compare the fingerprint impressions and therefore, it cannot be treated even as an opinion



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evidence; and that the evidence of PW4, PW6 and PW9, the witnesses who speak about the fact that the deceased was last seen with the appellant, were examined belatedly and their statements were sent belatedly to the Magistrate, and shows that their evidence is an afterthought and they have been examined to suit the prosecution case. He therefore prayed for acquittal of the appellant.

5. The learned Additional Public Prosecutor *per contra* submitted that the appellant is closely related to the deceased and the extra judicial confession in the instant case inspires confidence; that the evidence of PW4, PW6 and PW9, who were independent witnesses, cannot be brushed aside and their evidence corroborates the version in the extra judicial confession; that the evidence of PW11, who compared the chance fingerprint lifted from the brandy bottle seized from the scene of the occurrence and the thumb impression of the appellant found in the Arrest Register conclusively prove the involvement of the appellant and therefore, there is no infirmity in the conviction recorded by the trial Court. Hence, he prayed for dismissal of the appeal.



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6. We have carefully considered the rival submissions and have perused all the relevant records.

7. (i) As stated earlier, the prosecution examined PW1 to PW20. PW1 and PW2 are the father and mother of the deceased, respectively. PW1 would state about asking his daughter to go to a nearby shop and buy cigarettes for him on the fateful day. He also states that the appellant, who was in his house, followed the victim. PW3, who was known to the victim and PW1, had seen the body of the deceased in a half-burnt stage and had informed PW1 about the same and thereafter, informed the police. PW4 is the owner of the provision shop, who stated that the victim came to his shop around 7.00 pm., to buy cigarettes and beedi and that at that time, the appellant came there, promised the victim to buy chocolates and asked her to go with him. PW5 is the Observation Mahazar witness. PW6 is the resident of Peelamedu Pudur and went to the scene of the occurrence upon learning that the body of a girl was found in the land belonging to the Oornayakkar [ஓர் நாயக்கர்]. He would also state that he saw the appellant and the



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deceased near the said land, the previous day at about 7.30 p.m.

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(ii) PW7 is the witness to the Rough Sketch and Observation Mahazar. PW8 is the Village Administrative Officer to whom the appellant is said to have made the extra judicial confession. The statement recorded by PW8 was marked as Ex.P5. PW9 was running a Tea shop and had seen the appellant and the deceased near the land. PW10 is the witness to the confession of the appellant. PW11, who was working as an Inspector of Police at the Fingerprint Division, Coimbatore Commissioner's office, had lifted the chance fingerprint from the bottle and compared it with the thumb impression of the appellant, available in the Arrest Register.

(iii) PW12 is the photographer who took the picture of the appellant at the scene of the occurrence. PW13 is the Special Sub-Inspector of Police, who registered the FIR. PW14 is the Doctor, who conducted the postmortem and issued Ex.P11-Postmortem Certificate and Ex.P12-final opinion. He had also examined the appellant and issued Potency Certificate-Ex.P13. PW15 is the Judicial Magistrate, who recorded the Section 164



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Cr.P.C statements of some of the witnesses. PW16 is the Judicial Magistrate, before whom the appellant was produced to record his confession. However, PW16 would state that the appellant refused to make a confession and that the appellant informed him that the police induced him to make a confession.

(iv) PW17 is the Assistant Director of the Forensic Science Laboratory, who compared the skull with the pictures of the victim and had issued Ex.P16. PW18 is the Assistant Director at Serology Department of the Forensic Sciences Laboratory and he examined whether semen was detected from the vaginal swab taken from the victim. He had issued a report [Ex.P17], stating that there were no traces of semen. PW19 was working in the DNA Department of Forensic Sciences Laboratory and on comparison of the thigh bone of the victim, found that the deceased was the biological child of PW1 and PW2. PW20 was the investigating officer.

8. The evidence adduced by the prosecution would show that the case is based on circumstantial evidence. The identity of the victim has been



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established from the evidence of PW19, who conducted the DNA examination on the basis of the thigh bone of the victim and found that the victim was the biological child of PW1 and PW2. PW17, the Assistant Director in the Forensic Sciences Laboratory, has conducted a superimposition test by comparing the skull with the pictures of the deceased and found that the skull belonged to the person found in the pictures.



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9. PW1 the father of the deceased, had identified the body of the deceased on the information given by PW3 and also the dress materials of the deceased that were found near the scene of the occurrence. Therefore, the identity of the victim has been established by the prosecution without any doubt. PW14, the postmortem doctor found that the deceased had sustained several external injuries in his report [Ex.P11]. He had also found a ligature mark on the neck of the deceased. He had opined that the deceased would appear to have died of Asphyxia due to violent compression of the neck by ligature strangulation. The above evidence, coupled with the circumstances under which the body was found, establishes that the victim suffered a homicidal death.

10. As regards the involvement of the appellant, the prosecution primarily relies on the extra judicial confession given by the appellant to PW8. The other circumstance is that he was last seen with the deceased, spoken to by PW4, PW6 and PW9. The third circumstance relied upon by the prosecution is that the chance finger print lifted from the brandy bottle near the occurrence tallied with the right thumb impression of the appellant



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found in the Arrest Register maintained at the police station.

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11. (a) (i) As regards the extra judicial confession, it is seen from the record that PW8 had deposed that the appellant came to his office when he was with his Assistant Ramamoorthy and a few other villagers. He examined the appellant privately after requesting the Villagers to leave. According to PW8, the appellant had given his confession which was recorded by him and marked as Ex.P5. Strangely, in the said document-Ex.P5, only PW8 and his Assistant-Ramamoorthy had signed. During the course of the cross examination, PW8 stated that he had requested the appellant to sign the said statement and the appellant stated that since he had voluntarily surrendered, there was no necessity for him to sign. This version, in our view, seems artificial. If the appellant had volunteered to make an extra judicial confession, there was no reason for him to refuse to affix his signature to the extra judicial confession.

(ii) Be that as it may. There is no evidence to show that the appellant was known to the Village Administrative earlier and therefore, it is seen that



he was a total stranger to the appellant. There is no necessity for the appellant at that stage, as even according to the prosecution, he was not suspected of the alleged crime, to go to a stranger, to confess about the crime.

(iii) The extra judicial confession by itself is a weak piece of evidence, especially, when it is given to a stranger. This question has been reiterated in several decisions and it would be useful to refer to the following observations of the Hon'ble Supreme Court in ***Pawan Kumar Chourasia v. State of Bihar*** reported in **2023 SCC Online SC 259**, in this regard.

“5. As far as extra-judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra-judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a



matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility.”

(b) (i) As regards the evidence of last seen, it is the evidence of PW4 that he was running a provision shop near the house of the victim and that the victim came to buy cigarettes and beedi on 28.02.2011 at about 7.30 p.m. It is also his version that the appellant came there and called the victim by stating that he would buy chocolates for her and the victim went along with him. He would also state that when PW1 enquired with him, the next morning, he told him that he saw the victim and the appellant near the shop. In our view, the evidence of PW4 and the evidence of PW1 do not inspire confidence.

(ii) It is the prosecution case that the victim was sent by PW1 to the provision shop for buying cigarettes and beedi and that the appellant, who was with PW1 in his house, followed her. In the complaint, however, PW1 does not refer to his sending the daughter to the provision shop. He would state that the victim was playing with her friends and went missing. That



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apart, if PW1 had sent the victim to the shop of PW4, he would not have waited till the next morning to enquire him as to whether his daughter came to his shop. The complaint was also registered only on 01.03.2011 at about 9.30 a.m. Even in the belated complaint, the reference to sending the victim to the shop is not found. Above all, we find that PW4's statement reached the Magistrate only on 15.03.2011. In such circumstances, PW4's version, in our view, is an afterthought and cannot be used to prove the circumstance of appellant being last seen with the victim.

(iii) PW6 is the next witness, who, according to the prosecution, saw the victim along with the deceased near the land of Oornayakkar [ஓர்நாயக்கர் ஸாயக்கர்], where the body of the deceased was found. He did not disclose this fact of his seeing the appellant and the victim to anyone until the body was found at 1.30 p.m., on 01.03.2011. Though the investigating officer states that he examined PW6 on 01.03.2011, his statement reached the Magistrate only on 15.03.2011. It is PW6's version that the appellant was known to him. However, he has not disclosed this fact to anyone when, according to him, he knew that the victim was missing and his evidence, in



our view also, does not inspire confidence.

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(iv) PW9 was having a Tea shop near the land where the body of the deceased was found. He was not known to either the appellant or the victim. He came to know of the occurrence after the same was reported in the newspaper and thereafter went to the police station to depose against the appellant. According to him, he had identified the appellant at the police station. No Test Identification Parade was conducted to ascertain if the statement of PW9 was correct. PW9 had seen the picture of the appellant in the newspaper and also seen him in the police station. Therefore, in our view, the evidence of PW9 is also of no avail to the prosecution as regards the circumstances of last seen.

(c) The next circumstance relied upon is that the fingerprint of the accused was found in the brandy bottle, found at the scene of the occurrence. It is the evidence of PW11 that she took the fingerprint from the brandy bottle seized from the place of occurrence and compared it with the thumb impression found in the Arrest register maintained by the



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investigating officer at the police station. Firstly, we find that she is not a fingerprint expert. She was working as an Inspector in Commissioner's office to lift fingerprint impression. Secondly, in her report-Ex.P9, which is the 'Scene of Occurrence Visiting Report', she found the chance fingerprint on the bottle, which contained a label, 'Honey Bee Brandy' and also got photographs from the police photographer. In the same exhibit, we find another letter addressed to the Additional Superintendent of Police, written by her, which states as follows:

“The chance print marked as J1 is identical with
Right Thumb finger print of one Govindan S/o. Saminathan
arrested in Peelamedu Police Station crime number”

In the said letter, there is nothing to indicate as to when the sample fingerprint of the appellant was taken. However, in her deposition, for the first time, she would state that she found that impression in the Arrest Register maintained at the police station. Strangely, PW20, the Investigating officer, does not state anything about the handing over of the Arrest Register to PW11 or about the comparison said to have been made by PW11. Above all, we are unable to comprehend as to why the investigating officer chose not to send the fingerprint impression lifted from the bottle to a fingerprint



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expert and send it for comparison, after obtaining a sample fingerprint in the manner known to law. In view of the above infirmity, no reliance can be placed on PW11's report or her evidence.

12. Thus, in our view, the extra judicial confession relied upon by the prosecution is unreliable and in any event cannot be the sole basis, in the absence of any other circumstances, to complete the chain of circumstances. It is PW1's earlier version that the victim was playing with her friends. However, strangely, in his deposition, he would state that he had sent the victim to the provision shop to buy cigarettes and the appellant who was with him followed the victim. The statement of witnesses, who had allegedly last seen the deceased with the appellant, were sent to the Magistrate belatedly, which also raises a doubt with regard to the date and time of their examination. The evidence of witnesses of last seen hence does not inspire confidence.

13. In any case, in the absence of any other circumstances, the evidence of last seen alone would be of any consequence. That apart, we



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also find from the evidence of PW1 that he went in search of the victim and when he returned to his house at 9.30 p.m on 28.02.2011, the appellant was in PW1's house. Further, the explanation offered by PW1 for the belated complaint, is also unacceptable.

14. For the above reasons, we are of the view that it would be highly unsafe to convict the appellant on the basis of the evidence relied upon by the prosecution and the appellant is therefore entitled to acquittal. The judgment of conviction and sentence passed by the trial Court, is hence liable to be set aside.

15. As a result, this Criminal Appeal is allowed, and the appellant is acquitted of all the charges. The conviction and sentence passed in S.C.No.25 of 2013, dated 25.11.2014 on the file of learned Sessions Judge, Mahalir Neethimandram, Coimbatore, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.



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

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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

To

1. The Sessions Judge,
Mahalir Neethimandram,
Coimbatore.
2. The Inspector of Police,
B6- Peelamedu Police Station,
Coimbatore.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras.

Pre-delivery judgment in
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