



Crl.A.No.389 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	23.07.2024
DELIVERED ON	29.07.2024

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH
and
THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.389 of 2020
and
Crl.M.P.Nos.7244 of 2020 and 1216 of 2024

B.Althaf

...Appellant/Accused

vs

The State
Represented by
The Inspector of Police,
Kelamangalam Police Station, Krishnagiri District.
In Crime No.97 of 2011

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to set aside the judgment of conviction and sentence dated 17.03.2020 passed against the appellant in S.C.No.96 of 2011 by the learned Additional District and Sessions Judge, Hosur and acquit him.



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For Appellant : Mr.T.Muruganantham
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal has been filed by the accused challenging the conviction and sentence imposed upon him vide judgment dated 17.03.2020 in S.C.No.96 of 2011 on the file of the learned Additional District Judge, Hosur.

2. For the sake of convenience, the accused is hereinafter referred to as the 'appellant'.

3.(i) It is the case of the prosecution that the appellant and P.W.18 fell in love with each other; that P.W.18 is the brother's daughter of P.W.1; that the appellant was employed under P.W.1; that the deceased was son of P.W.1 aged about 9 years; that the deceased had seen the appellant and P.W.18 in the bed room in an inappropriate position and threatened the appellant that he would disclose the said fact to his father/P.W.1; that apprehending that the deceased would inform P.W.1, the appellant decided



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to do away with the deceased; that on 05.04.2011, he took the deceased in a motor cycle from a browsing centre and took him to a hill and pushed him down the hill, as a result of which, the victim died.

(ii) P.W.1/the father of the deceased gave a complaint [Ex.P1] on 06.04.2011 at about 1.00 p.m., stating that his son went to the browsing centre and did not return; and that in spite of searches made by him, he could not be traced.

(iii) P.W.19/the Sub Inspector of Police, received the complaint and registered a 'Boy Missing' case in Crime No.97 of 2011, and P.W.20/the Deputy Superintendent of Police, took up the investigation, went to the browsing centre, prepared the Observation Mahazar [Ex.P12], and Rough Sketch [Ex.P11], examined a few witnesses, and constituted a special team, to trace the missing boy. On 18.04.2011, at about 1.30 p.m., P.W.10/the Village Administrative Officer, along with the appellant, came to the police station, stating that the appellant had given an extra judicial confession to him. Thereafter, P.W.20 arrested the appellant and, on his confession,



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recovered the body of the deceased at about 3.30 p.m. He prepared the Rough Sketch [Ex.P14] and the Observation Mahazar [Ex.P7]. He conducted an inquest over the dead body of the deceased in the same place, in the presence of the Panchayathars, between 4.30 p.m. and 6.30 p.m. and prepared the inquest report [Ex.P15]. On the same day, he sent the body of the deceased for the conduct of a post-mortem, which was conducted by PW14, who issued the post-mortem certificate [Ex.P9]. After examining other witnesses, he filed the Final Report for the offences under Sections 364 and 302 of the IPC before the learned District Munsif cum Judicial Magistrate, Denkanikottai, against the appellant.

(iv) 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.96 of 2011 and was made over to the learned Additional District Judge, Hosur, Krishnagiri District, for trial. The trial Court framed charges under Sections 506(i), 364 and 302 of the IPC against the appellant, and when questioned, the appellant pleaded 'not guilty'.



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(v) To prove the case, the prosecution examined 20 witnesses as P.W.1 to P.W.20, marked 17 exhibits as Ex.P1 to Ex.P17, and marked 4 Material Objects as M.O.1 and M.O.4. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant did not examine any witnesses or mark any documents on his side.

(vi) On the appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt, held the appellant guilty of the charge under Sections 506(i), 364 and 302 of the IPC, and sentenced him as follows:

<i>Offence</i>	<i>Sentence imposed</i>
Section 506(i) of IPC	To undergo 2 years RI along with a fine of Rs.500/- in default three more months SI;
Section 364 of IPC	To undergo 10 years RI along with a fine of Rs.1,000/- in default six more months SI.
Section 302 of IPC	To undergo life imprisonment along with a fine of Rs.1,000/- in default six more months SI.
Sentences were ordered to run concurrently.	



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

4. Heard, Mr.T.Muruganantham, learned counsel appearing for the appellant, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the appellant submitted that the identity of the body of the deceased has not been established by the prosecution; that the evidence relied upon by the prosecution is the extra judicial confession, which is said to have been given by the appellant to P.W.10/the Village Administrative Officer, and the alleged recovery of dead body on his confession; and that the extra judicial confession and the recovery cannot be believed as there was no reason as to why the appellant had to give a confession to a stranger, who was admittedly not the Village Administrative Officer of the village to which the appellant belonged. Hence, he prayed for acquittal.



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6. The learned Additional Public Prosecutor for the respondent/police, *per contra*, submitted that the prosecution had established the motive, and the circumstances of last seen with the deceased, the extra judicial confession, and the recovery of the body at the instance of the appellant, and those circumstances form a complete chain pointing out only to the guilt of the appellant; and that therefore, there is no reason to interfere with the finding of guilt arrived at by the trial Court. Hence, he prayed for the dismissal of the appeal.

7. We have carefully considered the rival submissions and perused the materials available on record.

8. The prosecution had examined twenty witnesses to prove its case. P.W.1 is the father of the deceased, who states that the deceased went to a browsing centre and that he went missing on 05.04.2011. P.W.2 is the mother of the deceased. P.W.3 is an employee under P.W.1, who corroborates the said facts. P.W.4 to P.W.7 are hearsay witnesses, who came to know that P.W.1's son went missing from a browsing centre on 05.04.2011. P.W.8 and P.W.9 are the Mahazar witnesses. P.W.10 is the



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Village Administrative Officer before whom the appellant is said to have given the extra judicial confession. The special report of the Village Administrative Officer was marked as Ex.P4. P.W.11 is the assistant to P.W.10-VAO. P.W.12 speaks about the appellant borrowing a bike from him. P.W.13 is said to have seen the appellant along with the deceased on 05.04.2011 and saw both of them going in a two-wheeler between 5.45 p.m. and 6.00 p.m. P.W.14 is the post-mortem doctor. P.W.15 is a hearsay witness who came to know that the appellant had murdered the deceased. P.W.16 is the photographer. P.W.17 is the Constable who assisted the investigation. P.W.18 is the lady who said to have had a romantic relationship with the appellant and was examined to establish the motive. P.W.19 is the Sub Inspector of Police who registered the FIR, and P.W.20 is the investigating officer.

9. The evidence let in through the above witnesses would show that the prosecution relies upon the following circumstances:

(a) Motive;



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- (b) The extra judicial confession given to P.W.10;
- (c) The circumstances of last seen spoken to by P.W.13; and
- (d) The recovery of the body on the confession of the appellant;

10. As regards motive, P.W.18 was examined by the prosecution to show that she had a love affair with the appellant. However, in the cross-examination, she specifically stated that the deceased had not seen P.W.18 and the appellant together in a bed room and had not threatened the appellant that he would disclose their relationship to P.W.1/father of the deceased. However, her evidence only states that the deceased had seen them talking. In our view, the motive as projected by the prosecution has not been established through the evidence of P.W.18.

11. Be that as it may. As regards the extra judicial confession, it is said to have been given to P.W.10/the Village Administrative Officer, who admittedly was not the Village Administrative Officer of the appellant's village. It is the case of the prosecution that P.W.10 was in charge of the appellant's village as a Village Administrative Officer. However, the Village



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Administrative Officer could not produce any documents to show that he was also functioning as Village Administrative Officer of Kelamangalam Village, Krishnagiri District. In any case, P.W.10 was a total stranger to the appellant. There is no reason why the appellant suddenly found the need to give an extra judicial confession to a total stranger. The extra judicial confession also has not been recorded by P.W.10, and it is only in the form of a special report that he sent it to the investigating officer. The evidence of P.W.10 does not inspire confidence, and hence, in the absence of any other circumstances, it would be of no avail to the prosecution. In this regard, we rely upon the observations of the Hon'ble Supreme Court in ***Pawan Kumar Chourasia v. State of Bihar***, reported in **2023 SCC Online SC 259**, for better understanding:

“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



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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.”

12. As regards the circumstances of last seen, it is seen that P.W.13 was examined by the prosecution to show that he had seen the appellant and the deceased together going in a motor cycle on 05.04.2011. Admittedly, P.W.13 is known to P.W.1. He had not disclosed this fact to P.W.1 or to the police until he was examined by the police on 19.04.2011, after the arrest of the appellant. If he had really seen the appellant and the deceased, he would have informed either P.W.1 or the investigating officer, who were struggling to trace the missing boy until 18.04.2011. His evidence, in our view, does not inspire confidence. Therefore, we are not inclined to believe the testimony of P.W.13.

13. As regards the recovery of the body on the confession of the



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appellant, since P.W.10 cannot be believed in our view, the arrest is also doubtful, and the consequential recovery of the body on the confession of the appellant is also doubtful. In any case, we find that the post-mortem doctor/P.W.14 has stated that the deceased could not be identified in her report [Ex.P9], and the doctor has stated in Ex.P9, as regards the cause of the death as follows:

“No definitive conclusion regarding the cause of death could not given as the body is highly decomposed and absence of all organs.”

The doctor would also opine that the eyes were absent, the mouth opened and teeth were absent, and there were no skin or tissues in front of the neck. The prosecution had not adopted any scientific method to ascertain the identity of the body recovered. It is not known how P.W.1 could identify the body when the doctor herself stated that the body was in a highly decomposed state.

14. For all the above reasons, we are of the view that the prosecution



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has not established the circumstances conclusively, and in any case, the circumstances do not form a complete chain pointing out only the guilt of the accused. It is well settled that the circumstances concerned '*must or should*' be established and not '*may be*' established to hold the accused guilty of the offence. In this regard, it would be useful to refer to the following observations of the Hon'ble Supreme Court in ***Kamal v. State (NCT of Delhi)***, reported in **2023 SCC OnLine SC 933**.

“18. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It has been held that there is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by



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the accused.”

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15. In view of the above, the appellant is entitled to the benefit of doubt. Therefore, the Judgment of conviction and sentence passed by the trial Court, are liable to be set aside.

16. As a result, this Criminal Appeal is allowed, and the appellant is acquitted of all charges levelled against him. The conviction and sentence passed in S.C.No.96 of 2011, dated 17.03.2020 on the file of learned Additional District Judge, Hosur are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected miscellaneous petitions are closed.

(M.S.R.,J.) (S.M.,J.)
29.07.2024

Internet : yes

Index : yes/no

Neutral citation : yes/no

dk

Note: Issue order copy today.

Copy to:

1. The Additional District Judge,
Hosur.



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- 2.The Inspector of Police,
Kelamangalam Police Station,
Krishnagiri District.
- 3.The Superintendent of Prison
Central Prison Salem.
- 4.The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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Dated: 29.07.2024