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CrL.A(MD)No.509 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.09.2023
PRONOUNCED ON : 12.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A(MD)No.509 of 2021

Reka

... Appellant

Vs.

The Inspector of Police,
Papanasam Police Station,
Thanjavur District.
(In Crime No.354 of 2016).

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the entire records connected to the judgment in S.C.No.44 of 2017 on the file of the Mahila Court (Fast Track Mahila Court), Thanjavur dated 04.01.2020 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



JUDGMENT

M.NIRMAL KUMAR., J.

This appeal arises against the judgment of learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thanjavur in Sessions Case No.44 of 2017, dated 04.01.2020 wherein the appellant was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- in default, to undergo three months Simple Imprisonment for offence under Section 302 IPC.

2.The case of the prosecution is that the appellant being an unmarried woman, had given birth to a male child named Siva in Raja Mirasudhar Hospital, Thanjavur. The said male child suffered from slight mental deficiency right from the birth. Not being able to bear with the insults from the Villagers of her immoral character, the appellant decided to do away the said male child. On 05.10.2016, at about 14.00 p.m., finding no one was around Thirukarukavur Vettaru bridge, the appellant murdered the said child by drowning him in water and allowed it to be washed away. On 07.10.2016, when PW1/Village Administrative Officer of Thirukarukavur



village was on duty, he was informed by Jagadeesh/Village Assistant that a decomposed body of a four year male child was found in the reed bushes opposite to the Veterinary Hospital of Thirukarukavur. Immediately, PW1 had rushed there and found the decomposed body of the male child and thereafter, informed the same to the respondent Police in person and lodged a complaint (Ex.P1). On receiving the complaint, PW10, Sub Inspector of Police registered an FIR (Ex.P8) in Crime No.354 of 2016 under Section 174 Cr.P.C., and sent the same to the Tahsildar, Papanasam for enquiry as well as to the officials for information.

3.On 09.10.2016, when PW1 was at home, the appellant came to PW1's house at early hours and confessed that she is the mother of the said male child and due to the insults of the villagers that her child was born out of illicit relationship, she had murdered her child by drowning him the river under Thirukarukavur Vettaru bridge. PW1 had recorded the confession of the appellant and after obtaining the appellant's signature, had prepared a report/Ex.P2. Thereafter, PW1 handed over the appellant to the respondent Police along with the confession and his report. Before the Investigating Officer, the appellant gave a confession Ex.P3, based on which, the accused



was arrested, M.O.1/Pant and M.O.2/Towel were seized under a Mahazar/Ex.P4. PW13/Investigation Officer visited the scene of occurrence and prepared the Observation Mahazar (Ex.P5) and Rough Sketch (Ex.P9), in presence of Muruganantham/PW5 and Dineshkumar. Thereafter, he had conducted an inquest on the body of the male child, in presence of Panchayathars and prepared the inquest report (Ex.P10). The body was then sent to the Government Hospital, Papanasam through PW12, Special Sub Inspector of Police. PW13, Investigating Officer recorded the statements of PW1, Jagadeesh/Village Assistant, Govindharaj/PW3, Raja, Senthil, Ramesh, Muruganantham/PW5 and Dineshkumar. MO1 & MO2 were sent to the Court through Form 91 (Ex.P11). The Investigating Officer had also seized a shirt (MO3) through Form 91 (Ex.P13). He then altered the FIR from Section 174 Cr.P.C., to 302 IPC through an alteration report (Ex.P12). PW9, Assistant Surgeon of Papanasam Government Hospital had conducted postmortem on the body of the male child on 09.10.2016 at about 12.10 p.m., and prepared the postmortem certificate (Ex.P7), confirming that the child had died due to drowning.

4.On receipt of the postmortem report (Ex.P7) and Biological Report



(Ex.P6), PW13 had filed the charge sheet before the learned District Munsif-cum-Judicial Magistrate, Papanasam on 24.12.2016 and the same was taken on file as P.R.C.No.36 of 2016. On committal, the charge sheet were transferred to the Sessions Court and taken on file in S.C.No.44 of 2017.

5.During trial, thirteen witnesses examined as PW1 to PW13 and thirteen documents marked as Exs.P1 to P13 and three Material Objects were marked as MO1 to MO3 on the side of the prosecution. On the side of the defence, no witness were examined nor any documents were marked. On conclusion of trial, the trial Court rendered a judgment of conviction as stated above.

6.The contention of the learned counsel for the appellant is that since there were no eye witnesses admittedly and the entire case proceeds on the alleged extra judicial confession [Ex.P2] said to have been given by the appellant to P.W.1/Village Administrative Officer, the extra judicial confession alone cannot form the sole basis for convicting the accused, without corroboration and in this case, since P.W.1/Village Administrative



Officer had admitted that the appellant was a total stranger and not familiar to him, the appellant gaining confidence on P.W.1 and volunteering to give a confession is highly improbable. He further submitted that the appellant had studied only upto III Standard, she could not understand the contents of the confession statement/Ex.P2 recorded by P.W.1 and there is nothing in Ex.P2 to show that the contents were read over, affirmed to be correct and thereafter, the appellant had signed the confession statement.

7.The learned counsel submitted that P.W.6, P.W.7 and P.W.8 who were running petty shops near the river and who were claimed to have seen the appellant carrying her baby to the river, had not supported the case of the prosecution and were treated as hostile witnesses. Likewise P.W.3 and P.W.4, the neighbours of the appellant also did not support the case of the prosecution. P.W.5, who is the witness for the observation mahazar, though admits of having signing the observation mahazar, does not know the contents of the observation mahazar, thereby rendering the document as insignificant. P.W.9/Doctor who conducted the postmortem had issued Ex.P6, confirming that there was no presence of diatom and in Ex.P7 records maggots were seen over the scalp, both of which are contradictory



to each other. He further submitted that the case of prosecution is that the appellant took her child to the river and drowned him to death, but in the absence of diatom, immersion before death is doubtful.

8.Learned counsel also submitted that P.W.1 on getting information from the Village Assistant that a decomposed body was stuck in the reed bushes in the river, lodged a complaint to the Police on 07.10.2016. Thereafter the body was recovered, after which the inquest and postmortem were conducted. Two days thereafter, on 09.10.2016 the appellant is said to have appeared before P.W.1 and gave an extra judicial confession/Ex.P2, based on which she was arrested by the respondent police and her confession statement/Ex.P3 was recorded. Based on her confession, the material objects M.O.1/Trouser and M.O.2/Towel were shown recovered from the house of the appellant. He would submit that the presence of her child's trouser and towel in the house of the appellant, is not a disclosure and it has no significance. In this case, the Trial Court had primarily proceeded against the appellant based on the extra judicial confession/Ex.P2, but the said extra judicial confession is without corroboration and highly doubtful. Though the Trial Court admits that



evidences of P.W.3 and P.W.4 do not support the case of the prosecution, had come to the conclusion that the deceased was mentally unsound based on the evidence of P.W.3 and P.W.4, which is not proper. Likewise, the Trial Court's finding that P.W.6, P.W.7 and P.W.8, though had not supported the case of the prosecution, but confirm a body was found in the reed bush and recovered near the river bed, is unacceptable. Further, the finding of the Trial Court that the appellant had not given proper explanation in her examination under Section 313 Cr.P.C. to be taken as a circumstance against the appellant is improper. It is settled position in law that no conviction can be premised solely on the basis of Section 313 Cr.P.C. answers. Thus, each circumstances projected by the prosecution are broken links, inconsistent and cannot stand the scrutiny of double test to prove unerringly that the appellant is the reason and cause for the death of her son. Hence, he prayed for setting aside the judgment of the Trial Court.

9.Learned Additional Public Prosecutor submitted that P.W.1/Village Administrative Officer was informed by the Village Assistant on 07.10.2016 that a decomposed body was found near the bridge, thereafter P.W.1 lodged a complaint to P.W.10, who registered the FIR/Ex.P8 under



Section 174 Cr.P.C. in Crime No.354 of 2016. P.W.13 took up the investigation, conducted the inquest in the presence of P.W.2 and others, examined P.W.3 and P.W.4, who are the neighbours of the appellant, prepared observation mahazar in the presence of P.W.5 and examined P.W.6 to P.W.8 who are running petty shops near the river bed, who stated that they have seen the appellant carrying her four year old son to the river on 05.10.2016. P.W.9/Doctor who conducted postmortem had issued Ex.P6 and Ex.P7, confirming the death of the victim as due to drowning. Added to it, the appellant appeared before P.W.1/Village Administrative Officer on 09.10.2016 at about 6.00 a.m. sensing that she would be caught since the Police is investigating the death of her son, gave an extra judicial confession/Ex.P2. Immediately P.W.1 took the appellant along with Ex.P2 to P.W.13, who enquired and arrested the appellant where again she gave a confession/Ex.P3 in the presence of P.W.1/Village Administrative Officer and the Village Assistant. Thereafter, on the confession statement of the appellant, the material objects M.O.1 and M.O.2 were seized from her house. After conclusion of investigation and collecting the reports, the charge sheet filed. On conclusion of the trial, the Trial Court finding that the extra judicial confession was voluntarily given, truthful, supported and



corroborated with evidence and materials had rightly convicted the appellant. Hence, he prayed for dismissal of the appeal.

10.Considering the submissions made and on perusal of the materials, it is seen that the appellant is the mother of the deceased, a four year old boy, who died in a mysterious circumstances by drowning in the river. The case projected against the appellant is that on 05.10.2016 at about 2.00 p.m., the appellant carried her son under the bridge where she immersed him in the water and drowned him to death and thereafter left the body in the river. To prove the same, the prosecution examined P.W.6, P.W.7 ad P.W.8, who were running petty shops near the river bed and who had seen the appellant carrying her son. However, P.W.6, P.W.7 and P.W.8 did not support the case of the prosecution and they were treated as hostile witnesses. As regards the fact that the appellant was not happy about having her son who was in an unsound mind and the child was seen as an epitome of her illicit relationship by several people, the prosecution had examined P.W.3 and P.W.4, the neighbours of the appellant. Even P.W.3 and P.W.4 did not support the case of the prosecution. P.W.9/Postmortem Doctor had issued Ex.P6 and Ex.P7, which creates doubt on the case projected by the



prosecution. The prosecution case is that the appellant immersed her son in the water and drowned him to death. On the other hand, while Ex.P6 confirms that there is no diatom, Ex.P7 states that the death was due to drowning, which defies rationale. P.W.10/Sub-Inspector of Police registered FIR/Ex.P8 for the offence under Section 174 Cr.P.C. P.W.11 is the Head Constable attached to the respondent police who submitted the copy of the FIR/Ex.P8 to the Tahsildar, Papanasam for unknown reasons and there is no explanation as to what happened thereafter. P.W.13/Investigating Officer narrates the sequence of investigation, arrest of the accused on production by P.W.1, recording of confession/Ex.P3 and recovery of M.O.1 and M.O.2 from the house of the appellant. The deceased child is none other than the son of the appellant and hence, in the absence of any evidence to show that the child was wearing M.O.1 and M.O.2 on the fateful day, seizing the material objects from the appellant's house is of no significance. The finding of the Trial Court is primarily based on Ex.P2/extra judicial confession of the appellant. It is not in dispute that the appellant studied only upto III Standard. While P.W.1 admits that Ex.P2 was written by him, there is nothing on record to show that it was written as disclosed by the appellant, read over to the appellant



and admitted it to be true. Furthermore, P.W.1 admits that the appellant is unfamiliar and a total stranger to him, there is no reason for the appellant to gain confidence, faith and trust on P.W.1 to give any confession to a stranger. It is settled proposition of law that an extra judicial confession is a weak piece of evidence which cannot be acted upon, without other corroborating or supporting materials and circumstances. In this case there is absolutely no corroboration.

11.In the case of *Bhagat Ram vs. State of Punjab* reported in *AIR 1954 SC 621*, the Apex Court had held that in cases of circumstantial evidence, the conclusion drawn from circumstances to show the cumulative effect of the circumstances, must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

12.In the case of *Padala Veera Reddy vs. State of Andhra Pradesh* reported in *AIR 1990 SC 79*, the principle and the test to satisfy, to consider circumstantial evidence are is as follows:

“10.(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly



established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

13. In the case of *Sahadevan and another vs. State of Tamil Nadu* reported in (2012) 6 SCC 403, the Apex Court had set out the principles of extra judicial confession, which are as follows:

“16. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of



cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

- i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- ii) It should be made voluntarily and should be truthful.
- iii) It should inspire confidence.
- iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- vi) Such statement essentially has to be proved like any other fact and in accordance with law.

14. In the case of the *Premchand vs. State of Maharashtra* reported in (2023) 5 SCC 522, the Apex Court held that the explanation that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and



therefore, no conviction can be premised, solely on the basis of Section 313 Cr.P.C. statements.

15.Thus, from the facts of the case and the guidelines and the principles laid down by the Apex Court, it is seen that in this case the extra judicial confession is not trustworthy to place reliance, act upon and since the circumstantial evidence is not so complete as to withstand the double test unerringly leading to the conclusion that the appellant had committed the offence.

16.In view of the above, this Court finds that the prosecution had miserably failed to prove the case against the appellant beyond all reasonable doubts. Accordingly, the conviction and sentence imposed on the appellant in S.C.No.44 of 2017 dated 04.01.2020 by the learned Sessions Judge, Mahila Court [Fast Track Mahila Court], Thanjavur is hereby set aside. The appellant is acquitted from all the charges levelled against her.



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17.In the result, the Criminal Appeal stands allowed.

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M.S.R.,J M.N.K.,J
12.01.2024

Index: Yes
Speaking order
Neutral Citation : Yes
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To

- 1.The Sessions Judge,
Mahila Court [Fast Track Mahila Court],
Thanjavur.
- 2.The Inspector of Police,
Papanasam Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrL.A(MD)No.509 of 2021

M.S.RAMESH., J.
and
M.NIRMAL KUMAR., J.

vv2/cse

PRE-DELIVERY JUDGMENT IN
CRL.A(MD)No.509 of 2021

12.01.2024