

KALA @ CHANDRAKALA

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v.

STATE THROUGH INSPECTOR OF POLICE

(Criminal Appeal No. 1791 of 2010)

AUGUST 12, 2016

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[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

Penal Code, 1860 – s.302 r/w s.34 and s.201 – Murder of appellant's husband – Death allegedly caused by strangulation with a saree – Circumstantial evidence – Extra-judicial confession – Conviction of appellant and her father by trial court – High Court affirmed the conviction of appellant but acquitted her father extending him benefit of doubt – Extra-judicial confession allegedly made by appellant to PW4 – Recovery of a motor bike (moped) and nylon saree (allegedly used in the offence) – On appeal, held: In cases based upon circumstantial evidence the chain of circumstances should be complete to fasten the guilt on the accused – However, prosecution failed to complete the chain of circumstances and to prove commission of offence by the appellant beyond periphery of doubt – As regards extra-judicial confession, which is a weak kind of evidence, it is most unlikely that the appellant would have made confession to an inimical person like PW-4, with whom she did not share a good relationship – Same does not inspire confidence in absence of corroboration – Recovery evidence not proved to be related to commission of offence – Appellant entitled to benefit of doubt and thus acquitted – Evidence– Circumstantial evidence.

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Evidence – Confession – Extra-judicial confession – Appreciation of – Held: It is a weak piece of evidence – Before acting upon it, the Court must ensure that the same inspires confidence and is corroborated by other prosecution evidence – Confession made to an inimical person in absence of corroboration with other evidence on record, not safe to act upon in the facts and circumstances of the present case.

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Allowing the appeal, the Court

HELD: 1.1. The present case depends upon the

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A circumstantial evidence and the extra-judicial confession made by the appellant to PW-4, sister of the deceased. It is trite law that the chain of circumstances should be complete to fasten the guilt on the accused. [Para 5] [801-E]

B 1.2. Apparently the accused did not have good relationship with PW-4. Making confession to such an inimical person is most unlikely. When the witness had gone in search of the deceased to the house of the accused it is most unlikely that the confessional statement would be made to her readily. It is not that the appellant had gone to the house of PW-4 to make the confession. [Para 6] [802-B-C]

C 2. Extra-judicial confession is a weak piece of evidence. Before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. [Para 7] [802-D-E]

D *Sahadevan and Anr. v. State of Tamil Nadu* (2012) 6 SCC 403;2012 (4) SCR 366; *Balwinder Singh v. State of Punjab* 1995 Supp (4) SCC 259; 1995 (5) Suppl. SCR 10 ; *Pakkirisamy v. State of Tamil Nadu* (1997) 8 SCC 158; *Kavita v. State of Tamil Nadu* (1998) 6 SCC 108; 1998 (3) SCR 902; *State of Rajasthan v. Raja Ram* (2003) 8 SCC 180;2003 (2) Suppl. SCR 445; *Aloke Nath Dutta v. State of West Bengal* (2007) 12 SCC 230;2006 (10) Suppl. SCR 662; *Sansar Chand v. State of Rajasthan* (2010) 10 SCC 604; 2010 (12) SCR 583; *Rameshbhai Chandubhai Rathod v. State of Gujarat* (2009) 5 SCC 740; *Vijay Shankar v. State of Haryana* (2015) 12 SCC 644; 2015 (9) SCR 977 – relied on.

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G 3. In the circumstances of the case, the confession made to PW-4 does not inspire confidence. She was not having good relationship with accused and confession made to her is not corroborated by other evidence on record, hence, it would not be safe to act upon it in the facts and circumstances of the case. [Para 8] [803-B]

H 4. The prosecution has not been able to establish that the death was caused by strangulating the deceased and the piece of nylon saree was used to cause the death as the Doctor, did not

mention the cause of death in the post-mortem report. Hence, recovery of the piece of nylon saree is of no value as the prosecution has not been able to link the same with the commission of the offence. [Para 10] [804-C] A

5. In the instant case, particularly when the body has not been recovered at the instance of the accused and the recoveries of moped and piece of nylon saree are not proved to be related to commission of offence, the extra-judicial confession made by the appellant to PW-4 being *prima facie* unusual and doubtful and not corroborated by other evidence on record, the prosecution has failed to complete the chain of circumstances so as to fasten the guilt and to prove the commission of offence by the appellant beyond periphery of doubt. The father of appellant has also been extended benefit of doubt. As such, the appellant is entitled for benefit of doubt in view of the evidence which has been adduced by the prosecution. [Paras 13 and 14] [804-H; 805-A-C] B C

Case Law Reference D

2012 (4) SCR 366	relied on	Para 7
1995 (5) Suppl. SCR 10	relied on	Para 7
(1997) 8 SCC 158	relied on	Para 7
1998 (3) SCR 902	relied on	Para 7
2003 (2) Suppl. SCR 445	relied on	Para 7
2006 (10) Suppl. SCR 662	relied on	Para 7
2010 (12) SCR 583	relied on	Para 7
(2009) 5 SCC 740	relied on	Para 7
2015 (9) SCR 977	relied on	Para 7

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1791 of 2010. E

From the Judgment and Order dated 24.06.2009 of the High Court of Judicature at Madras, in Criminal Appeal No. 1022 of 2007. F

Sunil Fernandes, Puneeth K. G., Ms. Astha Sharma, P. Ramesh, Advs. for the Appellant. G

A M. Yogesh Kanna, Ms. Nithya, Advs. for the Respondent.

The Judgment of the Court was delivered by

B **ARUN MISHRA, J.** 1. The appellant is the wife of the deceased Murugesan. The prosecution has alleged that the appellant along with her father and nephew committed murder of Murugesan on 17.5.2005 by strangulating him with a saree and placed his body under a bridge of canal. On 20.5.2005, on the basis of the information received from the Village Administrative Officer that a gunny bag is lying under LBP canal south near Sandhiyapuram, the complaint was registered. The body was found in a highly decomposed condition as such initially the identification of the person could not be ascertained. On 21.5.2005 Dr. Sivakumar P.W.20 performed the autopsy. Doctor was unable to ascertain the cause of death as the body was in a highly decomposed condition and it was opined by him that there was no antemortem injury to hyoid bone. On 31.5.2005 Susheela, P.W. 4, sister of the deceased, lodged a complaint that her brother Murugesan was murdered by his wife, his father-in-law and nephew of wife.

E 2. The trial court convicted the appellant and her father for commission of offence under Section 302 read with Section 34 IPC and Section 201 IPC and sentenced them to undergo imprisonment for life and imposed a fine of Rs.1,000/- and in default to undergo simple imprisonment for six months and also to undergo one year simple imprisonment under Section 201 IPC. The appeal, preferred before the High Court, was allowed in respect of the father of the accused, but the conviction and sentence of the appellant has been affirmed. Aggrieved thereby the appeal has been preferred.

F 3. It was submitted on behalf of the appellant that the chain of circumstances is not complete so as to fasten the guilt upon her. The confession made by the appellant to P.W.4 is not worthy of acceptance and made to police is inadmissible in evidence. There was no reason for the appellant to make a confession to Susheela, P.W.4 as she was not having good relations with her. The recovery of the body is not at the instance of the appellant and the recovery of the motor bike and nylon saree is of no value. The prosecution has failed to examine the material witnesses. It was submitted that the appellant has in statement under section 313 Cr.P.C. mentioned that she had gone to the police station along with photograph of the deceased on 23.5.2005 when

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there was beat of drum in the village by which she came to know that a body was found below the bridge of the canal. It was submitted that the appellant is innocent and deserves to be acquitted. A

4. It was contended by the learned counsel appearing on behalf of the State of Tamil Nadu that the accused and the deceased used to quarrel frequently. It was the habit of the deceased of drinking alcohol and indulge in gambling. Once the accused persons came to know of the deceased having entered into agreement of sale, they had decided to get rid of him and thereby murdered him and threw the body below the bridge of the canal. The deceased was last seen in the company of the accused. It was submitted that the extra-judicial confession made by the appellant to P.W.4 and recovery of motor bike and nylon saree which was used for committing murder show that the chain of circumstances is complete. The appellant did not disclose the fact of disappearance of the deceased from 16.5.2005 to 31.5.2005 to the police and she was not the person to identify the articles belonging to the deceased. The deceased was identified by the articles i.e. chappal, shirt etc. by Susheela, P.W.4. It was therefore submitted that the conviction recorded by the trial Court and affirmed by the High Court calls for no interference in the appeal. B
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5. The case depends upon the circumstantial evidence and the extra-judicial confession made by the appellant to Susheela, P.W.4, sister of the deceased. This is trite law that the chain of circumstances should be complete to fasten the guilt on the accused. E

6. Firstly, we will examine whether the extra-judicial confession which is a weak kind of evidence, inspire the confidence. Susheela, P.W.4 has stated that Murugesan was married to the appellant 14 years before the incident. She came in search of his brother Murugesan to the house of the deceased. Murugesan has told her on 12.5.2005 that appellant had threatened to kill him as he was habitual of consuming alcohol. When she did not receive any telephone call for 15 days from the deceased, she went to his village. On enquiry she was informed by the appellant that she, her nephew Prakasam and father murdered the deceased and threw his body under the bridge. Susheela, P.W.4 further stated that the appellant touched her legs and stated that she would give properties of her father to two children and that she should not inform the police. Thereafter, P.W.4 went to the police station on the same day and lodged the complaint - Ex.P2. The F
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- A police showed her the photograph, shirt and slippers and asked her to identify the same. She identified them to be of her brother. She has further stated to have gone to police station after 5 days with photograph of deceased. In the cross-examination, she has also stated that she had signed the agreement for sale of land executed by the accused. It is apparent that accused was not having good relationship with Susheela, P.W.4. Making confession to such an inimical person is most unlikely. When the witness had gone in search of the deceased to the house of the accused it is most unlikely that the confessional statement would be made to her readily. It is not that the appellant had gone to the house of P.W.4 to make the confession. On the other hand query was made by the daughter of the deceased to Susheela, P.W.4 as to the whereabouts of the deceased, meaning thereby the whereabouts of the deceased were not known even to his daughter. In case the deceased had been killed in the house, perhaps the daughter would have known about the offence having been committed by the accused.
- D 7. In *Sahadevan and Anr. v. State of Tamil Nadu* (2012) 6 SCC 403, it has been observed that extra-judicial confession is weak piece of evidence. Before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. In *Balwinder Singh v. State of Punjab* 1995 Supp (4) SCC 259, it has been observed that extra-judicial confession requires great deal of care and caution before acceptance. There should be no suspicious circumstances surrounding it. In *Pakkirisamy v. State of Tamil Nadu* (1997) 8 SCC 158 it has been observed that there has to be independent corroboration for placing any reliance upon extra-judicial confession. In *Kavita v. State of Tamil Nadu* (1998) 6 SCC 108 it has been observed that reliability of the same depends upon the veracity of the witnesses to whom it is made. Similar view has been expressed in *State of Rajasthan v. Raja Ram* (2003) 8 SCC 180, in which this Court has further observed that witness must be unbiased and not even remotely inimical to the accused. In *Aloke nath Dutta v. State of West Bengal* (2007) 12 SCC 230 it has been observed that the main features of confession are required to be verified. In *Sansar Chand v. State of Rajasthan* (2010) 10 SCC 604 it has been observed that extra-judicial confession should be corroborated by some other material on record. In *Rameshbhai Chandubhai Rathod v. State of Gujarat* (2009) 5 SCC 740 it has been observed that in the case of retracted confession it is unsafe for the Court to rely on it. In *Vijay*
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Shankar v. State of Haryana (2015) 12 SCC 644 this Court has followed the decision in *Sahadevan* (supra). A

8. In the circumstances of the case, the confession made to Susheela, PW.4 does not inspire confidence. She was not having good relationship with accused and is not corroborated by other evidence on record, hence, it would not be safe to act upon it in the facts and circumstances of the case. The extra-judicial confession made to police is admissible only with respect to the recoveries made of the moped as well as a piece of nylon saree, pursuant to the information, which articles are not proved to be connected with offence. B

9. Firstly, we deal with the recovery of the Bajaj moped at the instance of the appellant. It is deposed by Soundarrajan, P.W.12 that he was running a cooking gas agency and the absconding accused Prakasam was using Bajaj M-80 motor cycle to deliver gas cylinders. The appellant accused was first brought by the police to his residence and later on to shop, and the vehicle was recovered by the police from his shop along with certificate of the registration. Prakasan had taken one week leave from him and thereafter did not turn up. C D

Though the prosecution has alleged that Bajaj M-80 vehicle was used to carry the body of the deceased by Prakasam and the appellant and they were seen by two witnesses while going towards canal. But the said witnesses had not been examined in the court by the prosecution for the reasons known to it. Thus the prosecution has failed to establish that the vehicle in question was used for carrying the body of the deceased and it was so carried as alleged. The vehicle has been recovered from its owner with no blood stains. It was not in possession of the appellant and was recovered from the gas agency where it was supposed to be. Merely by the fact that the vehicle was used by Prakasan for distribution of the cooking gas cannot be a circumstance so as to fasten the guilt upon the appellant. It was a well known fact that vehicle was used by Prakasam for distribution of cooking gas. Use of the vehicle in the offence in question has not been proved and its recovery which is not from the possession of the appellant, the same cannot be used as a circumstance to fasten the guilt upon the appellant. E F G

10. Now coming to the question of recovery of piece of nylon saree. The statement of Dr. Sivakumar, P.W.20 autopsy surgeon indicates H

A that the body of the deceased was decomposed. As per chemical test
report poison was not found. There was no wound caused to larynx
before death. As the body of the deceased was highly decomposed
the cause of death was not mentioned by the Doctor, P.W.20 in the
post-mortem report. On query being made to him by the Inspector of
B Police regarding cause of death, he answered that that since the body
was decomposed he was unable to say so, thus, the cause of death has
not been established. No internal and external injury has been mentioned
in the autopsy report. Thus, the prosecution has not been able to
establish that the death was caused by strangulating the deceased and
the piece of nylon saree was used to cause the death. Hence, recovery
C of the piece of nylon saree is of no value as the prosecution has not
been able to link the same with the commission of the offence.

11. The appellant had not kept quiet for 15 days from 16.5.2005
to 31.5.2005. She had clearly stated in the statement under Section 313
that she had gone to the police station on 23.5.2005 along with
D photograph of the deceased and had also stated that the deceased
frequently used to go outside for 2 to 5 days. This explains her conduct,
nothing more can be attributed to her exclusive knowledge which she
was required to explain within the purview of Section 106 of the
Evidence Act. Knowledge of any other fact is not attributable to her in
E view of the evidence adduced in the case. Thus, the submission
based upon the provisions contained in Section 106 is of no avail to the
respondent.

12. The prosecution has also not led evidence that the appellant
was ever required to identify the articles of the deceased. There is
nothing on record indicating that they were shown to her for the
F purpose of identification and she had refused to identify them. There
is contradiction in the version of Susheela P.W.4 as to when she identified
the deceased. On one hand, she had stated that she did so on 31.5.2005,
on the other hand, she has stated that she went to the police station with
the photograph of the deceased after five days thereof.

G 13. In the instant case, which is based on the circumstantial
evidence, particularly when the body has not been recovered at the
instance of the accused, the recoveries of moped and piece of nylon
saree which were made are not proved to be related to commission of
offence, they are not proved to be incriminating materials. The extra-
judicial confession made by the appellant to Susheela, P.W.4 is prima
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facie unusual and doubtful and is not corroborated by other evidence on record. Merely, the fact that the deceased had left the house on 16.5.2005, as per version of appellant, cannot be used as a circumstance against her so as to fasten guilt. The deceased used to drink alcohol and used to spend money recklessly. Due to his bad habits, there may be so many enemies of him. How the deceased spent the amount of Rs.1,30,000/- which he received on execution of agreement is not on record. The prosecution has not been able to complete the chain of circumstances so as to fasten the guilt and to prove the commission of offence by the appellant beyond periphery of doubt. The father of appellant has also been extended benefit of doubt. As such, the appellant is entitled for benefit of doubt in view of the evidence which has been adduced by the prosecution.

14. Resultantly, the appeal is allowed. The appellant is acquitted giving her the benefit of doubt. The judgments and orders of the courts below of conviction and sentence are quashed and set aside.

Divya Pandey

Appeal allowed.