2023INSC739

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.975 of 2011

Moorthy .....Appellant

Versus

State of Tamil Nadu .....Respondent

J U D G M E N T

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The appellant was convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code (for short, 'IPC'). He was sentenced to undergo life imprisonment for the offence punishable under Section 302 and rigorous imprisonment for seven years for the offence punishable under Section 201, IPC. Sentences were ordered to run concurrently. The appeal preferred by the appellant has been dismissed by the High Court by the impugned judgment.

2. The deceased Shanthi was the wife of the appellant. According to the prosecution case, the appellant suspected that the deceased had illicit intimacy with one Peethambaram. On 29th May 2006 at about 9:00 p.m., the appellant took the deceased to the bank of Ponnai River and assaulted her with a stick. The said Shanthi succumbed to the injuries. He buried the dead body in the same place. PW Nos.3 and 4 are the parents of the deceased who were enquiring with the appellant about the whereabouts of the deceased. However, the appellant told them that the deceased was missing.

3. The prosecution relied upon the extra-judicial confession made by the appellant before PW-1 Ganesan Perumal in the presence of PW-2 Tyagarajan Kannan. Secondly, the prosecution relied upon the recovery of the dead body and the stick allegedly used as a weapon of assault at the instance of the appellant. Thirdly, according to the prosecution, the skeleton was identified by PW nos.3 and 4 on the basis of the clothes thereon.

SUBMISSIONS

4. The main submission of the learned counsel appearing for the appellant is that PW nos.1 and 2

were complete strangers to the appellant. Moreover, the alleged extra-judicial confession was made by the appellant before the said two witnesses 2 months and 11 days after the date of the incident. The learned counsel further submitted that the conduct of PW-1 who was the Village Administrative Officer, does not inspire confidence as he immediately did not report the matter to the police. The learned counsel further submitted that the identity of the body/skeleton was not established. He submitted that recourse was not taken to DNA test for identification of the skeleton. He also submitted that there is a material discrepancy in the evidence of PW-18 Investigating Officer and PW-1 about the place from which the stick, which was the weapon of offence, was discovered. He pointed out that PW nos.8 to 11 who were cited as witnesses to support the theory of last seen together, did not support the prosecution.

5. Dr. Joseph Aristotle, the learned counsel appearing for the State submitted that there are no major discrepancies and contradictions in the version of PW nos.1 and 18. He submitted that though PW-8 was declared as hostile, his evidence

cannot be discarded in its entirety. He placed reliance on a decision of this Court in the case of ***Rameshbhai Mohanbhai Koli & Ors.*** v. ***State of Gujarat***[1]. He submitted that the discovery of the dead body at the instance of the appellant is a very important circumstance against the accused. He relied upon a decision of this Court in the case of ***Anuj Kumar Gupta*** v. ***State of Bihar***[2].

OUR VIEW

6. Firstly, we will deal with the prosecution case about the extra-judicial confession. As regards extra-judicial confession, the law has been laid down by this Court in the case of ***Pawan Kumar Chourasia*** v. ***State of Bihar***[3]. In paragraph 5 it is held thus :

> **"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**

1 (2011) 11 SCC 111
2 (2013) 12 SCC 383
3 2023 SCC OnLine SC 259

> **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."
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> (emphasis added)

7. We have perused the evidence of PW-1 Ganesan who was posted as the Village Administrative Officer at the time of the commission of the offence. He was not permanently posted in Village Seekkarajapuram as he stated that at the time of recording of evidence, he was transferred as Village Administrative Officer to Ranipet. PW-1 admitted in the cross-examination that he did not know the appellant before he came to him and allegedly made the extra-judicial confession. The incident is of 29th May 2006 but the alleged extra-judicial confession was made on 10th August 2006. It is impossible to

understand why would the appellant meet the Village Administrative Officer, who was a total stranger to him, more than two months after the incident for making a confession. PW-1 and the appellant were not known to each other till 10th of August 2006. Normally an accused will confide only with a person in whom he has implicit faith. He would not go to a stranger to make a confession of guilt. The fact that the alleged confession was made by him more than two months after the incident makes it more suspicious.

8. PW-1 claims that he recorded the statement of the appellant and took a thumb impression of the appellant. There is no evidence adduced by the prosecution to prove the thumb impression. PW-1 claims that after making the confession, the appellant took him to the place of the incident which is located near the railway overbridge on the bank of the river Ponnai. PW-1 did not take the appellant to the police station after the alleged confession was made. He admittedly did not inform the police immediately after recording the alleged extra-judicial confession. PW-1 claims that he visited the place of incident with the appellant who showed him the scene of the alleged offence. Only

thereafter he took the appellant to the police. It is also pertinent to note that in his cross-examination, PW-1 admitted that there were 6-7 huts near the place of residence of the appellant and the families residing therein belonged to the same caste as that of the appellant. Thus, there were people around before whom the appellant could have confessed.

9. PW-2 was working as an Assistant with PW-1. He has deposed on the same lines as PW-1. However, it is not the case of the prosecution that the appellant confided with PW-2. He was present when the appellant allegedly made an extra-judicial confession and was recorded by PW-1. He stated that he along with PW-1 were taken by the appellant to the place where he committed murder and buried the body. He claimed in the cross-examination that he knew the appellant before the incident but the appellant did not confide before him.

10. Extra-judicial confession is always a weak piece of evidence and in this case, for the reasons which we have recorded earlier, there is serious doubt about the genuineness of the prosecution case regarding the extra-judicial confession. Therefore, the prosecution case about the extra-

judicial confession does not deserve acceptance.

11. Now we consider the evidence of PW-18 who is the Investigating Officer. He stated that the dead body was found at a depth of 2 ft. after digging. He stated in the cross-examination that the stick allegedly used by the appellant as a weapon of assault was recovered from a bush at a distance of 50 feet from the place where the dead body was found. He accepted in the cross-examination that none of the relatives had lodged a missing complaint.

12. As far as the alleged recovery of the dead body at the instance of the appellant is concerned, we must note that the dead body was recovered from a place which was accessible to all. A day prior to the alleged discovery at the instance of the appellant, PW nos.1 and 2 had gone to the place where the dead body was found. It is not the case of the prosecution that the place where the dead body was buried was accessible and known only to the appellant. This also raises serious doubt about the theory of the prosecution about the discovery of the body at the instance of the appellant.

13. PW nos.3 and 4 have deposed mainly on the issue of the identity of the dead body as they were present when the dead body was recovered. However, the body had decomposed and only the skeleton was exhumed. In the cross-examination, PW-3 Rajagopalan, the father of the deceased, stated that the appellant came to him one month prior to the date of knowledge of the murder of his daughter. PW-3 stated that at that time the appellant asked him whether he had murdered the deceased. He stated that the appellant went to the police station to lodge a complaint. PW-3 accepted that he did not search for his daughter and did not file any missing complaint. This conduct of PW-3 is not natural.

14. If we peruse the evidence of PW-1 and PW-18, the recovery of the weapon of the offence at the instance of the appellant becomes extremely doubtful. PW-1 deposed that the stick was buried 1 ft deep in the river bank about 5 ft away towards the west of the place in which the body was buried. However, PW-18 stated that the stick was recovered from a bush at a distance of about 50 ft. on the north of the place where the dead body was buried. This also makes the prosecution case vulnerable as

far as the discovery of the stick at the instance of the appellant is concerned.

15. Though the respondent tried to rely upon the evidence of PW-8 who has been declared hostile, we find that he had made a general statement that he had seen the appellant and deceased together two years back. Moreover, the other witnesses examined to prove the last seen together theory were declared hostile. Thus, the prosecution could not establish the last seen together theory.

16. There is serious doubt about the genuineness of the prosecution case regarding the recovery of a dead body at the instance of the appellant and the recovery of the alleged instrument of the offence at the instance of the appellant. Most importantly, for the reasons we have recorded earlier, it is not possible to accept the case of the prosecution which is entirely based on the extra-judicial confession made by the appellant. Thus, there was no legal evidence on record to convict the appellant. In any case, the guilt of the appellant has not been proved beyond a reasonable doubt.

17. Accordingly, the appeal is allowed. The judgment and order dated 31st March 2008 passed by the Court of Additional District and Sessions

Judge in Sessions Case No.24 of 2008 as well as the impugned judgment and order dated 28th January 2009 passed by the High Court of Judicature at Madras in Criminal Appeal No.394 of 2008 are hereby set aside and the appellant is acquitted of the offences alleged against him.

18. As the appellant is on bail, his bail bonds stand cancelled.

.....J.
[ABHAY S. OKA]

.....J.
[SANJAY KAROL]

New Delhi
August 18, 2023.