

CASE NO.:
Appeal (crl.) 429 of 2006

PETITIONER:
Ponusamy

RESPONDENT:
State of Tamil Nadu

DATE OF JUDGMENT: 10/04/2008

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T
REPORTABLE

CRIMINAL APPEAL NO. 429 OF 2006

S.B. SINHA, J.

1. This appeal is directed against the judgment and order dated 23rd June, 2005 passed by a Division Bench of the High Court of Judicature at Madras in Criminal Appeal No. 937 of 1998 whereby and whereunder an appeal from a judgment of conviction and sentence passed by the Ist Additional District Judge-cum-Chief Judicial Magistrate, Erode dated 12th October, 1998 in S.C. No. 93 of 1998 convicting the appellant herein for commission of an offence under Section 302 of the Indian Penal Code as also under Section 201 thereof and sentencing him to undergo rigorous imprisonment for life and two years respectively, was dismissed.

2. Deceased Selvi was the wife of the appellant. She was earlier married to one Easwaran, PW-9. Allegedly Easwaran had married one Balamani and after divorcing her, he married the deceased. He, however, continued to have relations with Balamani. He purported to have divorced Balamani by a letter. The deceased was living with her mother Ramathal, PW-1. Appellant thereafter married the deceased. He had been informed, about the fact of the earlier marriage of the deceased. He agreed to the proposal of marriage but wanted two acres of land. A Deed of Gift in favour of the deceased was executed by her father. Appellant wanted the same to be registered in his name. His request was not acceded to. He left the house of PW-1 after three days of marriage. A year thereafter, he intended to live with the deceased and approached Thangavel, PW-2, therefor. As the deceased also agreed to the said proposal, they left the house of PW-1 on 5th March, 1997. She was not seen thereafter. Allegedly in the morning of 10th March, 1997, the appellant met PW-2 and informed him that the deceased had gone away from his house on that date. A search for her was carried out. On the next date, the appellant was seen at the Sevoor bus stop. Kannan Naicker, PW-10 was also present there. He asked the appellant and questioned the deceased's whereabouts, in response where to he allegedly disclosed that he had murdered her on 9th March, 1997. PW-10 allegedly became panicky. He became sick. He then requested Arunachalam @ Mani, PW-11, to take him to a doctor. When they returned from the doctor's clinic, they found the appellant in the office of the Village Administrative Officer, PW-18. He purported to have made a confession again before PW-18 that he had murdered Selvi before PW-18. He also had a packer of paper in his hand.

3. PW-10 then requested PW-11 to inform PW-2 about the matter. On receiving the said information an attempt was made to lodge a First Information Report at Sathyamangalam police station. The First Information Report was refused to be registered thereat in the absence of any

dead body or any other evidence with regard to the murder. A search was conducted for the dead body. On the bank of L.B.P. canal dead body was found on 14th March, 1997 which fell within the jurisdiction of Kadathur police station. A complaint was made before Ramasamy, Inspector of Police, PW-13, at 10.30 a.m. on the same day, whereupon a First Information Report was registered under Section 302 and Section 201 of the Indian Penal Code. Investigation was taken up by PW-22, the Deputy Superintendent of Police of Gobichettipalayam.

4. PW-1 identified the dead body on the basis of a talisman, which was found on her hand, as also on identification of her saree. A key was found tagged in the saree. The key was removed. On a query enquiry made by PW-22, in regard to the lock for which the key was used, it was stated that the lock was fitted to a trunk. The trunk was brought. The key was fitted in the lock of the trunk. It was opened with the said key.

5. An inquest was conducted. The dead body was also subjected to postmortem examination. In the said report it was stated :-

"Highly decomposed with maggots all over the body.
Teeth 1/3 nose, eye, mouth absent. Thorax : No fracture ribs. Heart : Partially decomposed. Lungs : Decomposed. Hyoid Bone : Intact. Stomach, Liver, Spleen and Kidney : Partially liquefied with greenish discolouration. Intestine, Bladder and Uterus : Partially decomposed. Head : No fracture skull. Brain : Completely liquefied."

6. PW-18, the Village Administrative Officer, in the meantime took the appellant to the Tahsildar, PW-19. Not only he confessed that he had murdered his wife and thrown the dead-body in the canal but also produced a 'thali chain', M.O. 1 and ear rings, M.O.2 belonging to the deceased. Confessional statement of the appellant was reduced into writing. He was thereafter produced before the Judicial Magistrate.

7. Admittedly, there was no eye witness to the occurrence.

8. The entire prosecution case is based on circumstantial evidence. The Learned Sessions Judge in his judgment found the following circumstances to arrive at his conclusion with regard to the guilt of the appellant. :-

- 1) Deceased was last seen in his company on 5th March, 1997.
- 2) She was not seen in anybody else's company between 5th March, 1997 and 10th March, 1997.
- 3) Appellant made an extra judicial confession not only before PW-2 but also before PWs. 10 & 18.
- 4) On the basis of his confession that the dead body had been thrown in L.B.P. canal a search for the dead body was made and recovered.
- 5) Dead body was that of a female. It was identified to be that of the deceased with reference to the manglasutra and some other jewellery which were found on her person. Photograph of the deceased was superimposed on the photograph of the dead-body and it was found to be that of her.
- 6) Appellant produced the belongings of the deceased before the Village Administrative Officer, PW-18, which admittedly belonged to her.

9. The appeal preferred thereagainst by the appellant has been dismissed by the High Court by reason of the impugned judgment.

10. Mr. A.T.M. Rangaramanajam, learned Senior Counsel appearing on behalf of the appellant, in support of the appeal would submit :-

- 1) It was improbable that the appellant had confessed his guilt before PW-2.
- 2) The purported extra judicial confession by the appellant before PW-10 should not be relied upon, having regard to the latter's conduct, inasmuch, he did not report thereabout to the police on the pretext of his becoming sick in respect of which no material was brought on record.
- 2) Post-mortem report clearly established that the body recovered was in a highly decomposed stage which was, thus, not in a position to be identified, and, in that view of the matter, the corpus delicti having not been proved, the impugned judgment cannot be sustained.
- 4) No fracture having been found on hyoid bone, it is evident that the deceased did not die of strangulation which was the positive case of the prosecution.
- 5) No explanation having been furnished for the delay in lodging the First Information Report, the entire prosecution case is suspicious.
- 6) Conduct of the prosecution witnesses and in particular that of PW-1, PW-2 and PW-10 is such, that would lead to the conclusion that they are not trustworthy witnesses.
- 7) Extra judicial confession, in any event, being a weak evidence, it was obligatory on the part of the prosecution to lead evidence corroborating thereto.
- 8) Extra judicial confession in any event being contrary to or inconsistent with the medical report, it would not be safe to rely thereupon.

10. Mr. R. Shunmugasundaram, learned Senior Counsel appearing on behalf of the State, on the other hand urged :-

- 1) The dead body having been identified with reference to manglasutra, key and saree, the courts below rightly held that the dead-body was that of the deceased 'Selvi'.
- 2) The jewellery items which were handed over by the appellant himself in a packet, were identified by PW-1 when she was afforded an opportunity to do so.
- 3) It is not correct to contend that PW-10, despite extra judicial confession made before him, did not take any step in that behalf as he had immediately sent PW-11, Mani, to inform PW-2 thereabout. It is thereafter only, that they went to the police station.
- 4) Sufficient explanation had been offered by PW-1, in regard to the delay in lodging of the First Information Report, having regard to the fact that Sathyamangalam police station had refused to record the First Information Report in the absence of the dead body and/or any other record. A First Information Report was lodged only after the dead body was seen and identified with reference to the talisman, M.O.4; key, M.O. 5 and the silver ring which was found on her toe.
- 5) Thiru Devarajan, who examined himself as PW-22, and was working as Deputy Superintendent of Police, was a witness to the identification of the dead-body to be that of Selvi from the ninji, "dayath" tied on the hand and from the key tied to the end of the saree. Only at his instance, the trunk was brought and the lock opened with the key.
- 6) Requisition, Ext.P.3, was made by the Superintendent of the police for chemical test and the Chemical Text Report, Ext.P.5 categorically established the identity of the deceased.
- 7) Absence of fracture on the hyoid bone itself would not lead to the conclusion that the deceased did not die of strangulation as

medical jurisprudence suggests that only in a fraction of such cases, a fracture of hyoid bone is found.

11. The relationship of the appellant with that of the deceased is not in dispute. That they were married and immediately thereafter started living in the house of P-1 is also not denied or disputed. It further stands established that PW-2 is the husband of Rukmani, another daughter of PW-1. It has also not been disputed that the deceased was earlier married to Easwaran, PW-9. The prosecution has also brought on record a Deed of Gift dated 25th January, 1996 executed by the husband of PW-1 in favour of the deceased. There is also no serious dispute that the appellant did not maintain any relationship with the deceased for about a year. They were last seen together on 5th March, 1997, when they travelled together from the house of PW-1.

12. Voluntary statement made by the appellant to PW-2 on 10th March, 1997 that she had been missing was found by both the courts below to be untrue.

13. Indisputably, some delay took place in lodging the First Information Report. Till 11th March, 1997 PW-1 or for that matter PW-2, was not sure about the death of the deceased. Only when an extra judicial confession was made by the appellant, an attempt was made to lodge a First Information Report.

14. The contention of the learned counsel that the statement to the said effect, purported to have been made, by PW-1 should not be relied upon as no officer from the police station had been examined to establish the said fact, cannot be accepted for more than one reason. PW1 is a rustic villager. She is an illiterate lady. According to her, she had been turned away from the police station on the premise that no dead body was recovered or there being no other evidence relating to her death. No exception to such a statement can be taken. The courts cannot be oblivious of such conduct on the part of the police officers. Apathy on the part of the police officers to accept complaints promptly is well known phenomena.

They were searching for the deceased earlier but without success. Only on the disclosure statement made by the appellant before PW-10 and the police officer at Sathyamangalam police station having refused to record the First Information Report, they started searching for the body on the bank of the canal. The Investigating Officer, Village Administrative officer as also other prosecution witnesses, clearly proved the discovery of a dead body. Identification of the dead body on the basis of the manglasutra, saree as also the sliver ring on the toe of the deceased is not in dispute. Significantly, a key was also recovered. PW-22, a responsible officer, with a view to satisfy himself as regards the identity of the dead body, with reference to the key tied at the end of the saree, asked PW-2 to bring the trunk and found it to be of the lock put on the said trunk.

15. Attempts on the part of the prosecution to establish identity of the dead body to be that of the deceased did not stop there. It was sent for opinion of a Chemical Examiner. It was opined :-

" During superimposition, the following observations were made :-

a) The anthroposcopic land mark on the fact in item 1 and those on the skull item 2 fitted fairly well.

b) The outline of the face in item 1 and the outline of skull item 2 were found to be in fair congruence.

OPINION

The skull item 2 could very well have belonged to the female individual seen in photograph item 1."

The said report has been proved. Its' veracity is not disputed before us. We do not find any cogent reason to doubt its correctness thereof.

16. Appellant is said to have thrown the dead-body in the canal. The fact that there was sufficient water in the canal has also been established. In a situation of this nature, a presumption about the knowledge of the appellant in regard to location of the dead body of 'Selvi' can be drawn. His confession led to a discovery of fact which had a nexus with commission of a crime.

17. This Court in *State of Maharashtra vs. Suresh* : (2000) 1 SCC 471 opined :-

"26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was conceded by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

18. We have to consider the factual background of the present case in the light of the relationship between the parties. If his wife was found missing, ordinarily, the husband would search for her. If she has died in an unnatural situation when she was in his company, he is expected to offer an explanation therefor. Lack of such explanation on the part of the appellant itself would be a circumstantial evidence against him.

19. In *Trimukh Maroti Kirkan vs. State of Maharashtra* : (2006) 10 SCC 681, it was observed :-

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

[See also *Raj Kumar Prasad Tamarkar vs. State of Bihar and another* : 2007 (1) SCALE 19].

20. It is true that the autopsy surgeon, PW-17, did not find any fracture on the hyoid bone. Existence of such a fracture lead to a conclusive proof of strangulation but absence thereof does not prove contra.

In Taylor's Principles and Practice of Medical Jurisprudence, Thirteenth Edition, pages 307-308, it is stated :-

" The hyoid bone is 'U' shaped and composed of five parts : the body, two greater and two lesser horns. It is relatively protected, lying at the root of the tongue where the body is difficult to feel. The greater horn, which can be felt more easily, lies behind the front part of the strip-muscles (sternomastoid), 3 cm below the angle of the lower jaw and 1.5 cm from the midline. The bone ossifies from six centres, a pair for the body and one for each horn. The greater horns are, in early life, connected to the body by cartilage but after middle life they are usually united by bone. The lesser horns are situated close to the junction of the greater horns in the body. They are connected to the body of the bone by fibrous tissue and occasionally to the greater horns by synovial joints which usually persist throughout life but occasionally become ankylosed.

Our own findings suggest that although the hardening of the bone is related to age there can be considerable variation and elderly people sometimes show only slight ossification.

From the above consideration of the anatomy it will be appreciated that while injuries to the body are unlikely, a grip high up on the neck may readily produce fractures of the greater horns. Sometimes it would appear that the local pressure from the thumb causes a fracture on one side only.

While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause death, the application of such force, as evidenced by extensive external and soft tissue injuries, make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.

As stated, even in older people in which ossification is incomplete, considerable violence may leave this bone intact. This view is confirmed by Green. He gives interesting figures : in 34 cases of manual strangulation the hyoid was fractured in 12 (35%) as compared with the classic paper of Gonzales who reported four fractures in 24 cases. The figures in strangulation by ligature show that the percentage of hyoid fractures was 13. Our own figures are similar to those of Green."

22. In 'Journal of Forensic Sciences' Volume 41 under the Title \026 Fracture of the Hyoid Bone in Strangulation : Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated :-

" The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, postmortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of

death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age-dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones."

23. Mr. Rangaramanajam, however, relied upon Modi's 'Medical Jurisprudence and Toxicology', Twenty-Third Edition at page 584 wherein a difference between hanging and strangulation has been stated. Our attention in this connection has been drawn to point No.12 which reads as under :-

Hanging
Strangulation

Fracture of the larynx and trachea \026 Very rare and that too in judicial hanging.

Fracture of the larynx and trachea \026 Often found also hyoid bone.

24. A bare perusal of the opinion of the learned Author by itself does not lead to the conclusion that fracture of hyoid bone, is a must in all the cases.

25. We must also take into consideration the fact that the dead-body was decomposed with maggots all over it. Other marks of strangulation which could have been found were not to be found in this case. The dead body was found after a few days. We are, therefore, of the opinion that medical evidence does not negate the prosecution case.

26. There cannot be any doubt that extra judicial confession is evidence of weak nature as has been held in *Kuldip Singh and another vs. State of Punjab* : (2002) 6 SCC 757

However, it must also be noticed that therein, not only the confession made by the appellant was found to be unbelievable, even the recovery of the dead body, pursuant to the disclosure statement made, was also found to be so. There was no other evidence on record on the basis of which the conviction of the appellant could be sustained.

In this case, however, not only an extra judicial confession was made

by the appellant before PW-10, the same was also made before PW-11. The jewellery which had been put on by the deceased was produced by the appellant. Only upon the disclosure made by the appellant that the dead body had been thrown in the canal, a search was made and it was found. The dead body was also identified to be that of the deceased.

27. In *Vinayak Shivajirao Pol vs. State of Maharashtra* : (1998) 2 SCC 233 this Court opined :-

"10. There is no ambiguity in the above statement. It shows that the appellant killed his wife. Both the Courts have found that the statement was made voluntarily by the appellant. The sequence of events shows that at the time when the appellant made a confession, neither he nor the military authorities had any knowledge of the recovery of the headless trunk of the appellant's wife. The military authorities were in no way biased or inimical to the appellant. Nothing is brought out in the evidence in respect of the military officers which may indicate that they had a motive for attributing an untruthful statement to the appellant. The statement has been proved by one of the officers to whom it was made. The said officer has been examined as PW 32. A perusal of the evidence shows that the vague plea raised by the appellant that the statement was obtained from him on inducement and promise is not true. In such circumstances it is open to the Court to rest its conclusion on the basis of such statement and no corroboration is necessary."

28. We have been taken through the evidence of PW-10 and PW-18. We have no reason to differ with the findings of the learned trial Judge as also the High Court that the extra judicial confession was voluntary or truthful. We, therefore, are of the opinion that no case has been made out for interference with the impugned judgment. The appeal fails and is dismissed accordingly.