

**T.Kathiresan Vs. State, Rep By**

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**SooperKanoon Citation :** [sooperkanoon.com/64171](http://sooperkanoon.com/64171)

**Court :** Chennai

**Decided On :** Aug-20-2015

**Judge :** S.Nagamuthu

**Appellant :** T.Kathiresan

**Respondent :** State, Rep By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

20. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.140 of 2013 T.Kathiresan : Appellant Vs. State, rep by The Inspector of Police, Thuraiyur Police Station, Trichy District, [Crime No.290 of 2012].. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 18.12.2012 made in S.C.No.200 of 2012, on the file of the learned Principal Sessions Judge, Trichirappalli. !For Appellant : Mr.N.Anandakumar ^For Respondent : Mr.R.Ramachandran Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J]. The appellant is the sole accused in S.C.No.200 of 2012, on the file of the learned Principal Sessions Judge, Trichirappalli. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 18.12.2012, the Trial Court has convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mrs.Rajeshwari. He was the wife of the accused. The marriage between them was celebrated nine months prior to the occurrence. Out of the said wedlock, they have two children. According to the case of the prosecution, the accused was having illicit relationship with many women, which was not to the liking of the deceased. She questioned the same often, which resulted in frequent quarrels between them. Because of the same, according to the case of the prosecution, the accused decided to do away with the deceased. Accordingly, on 16.07.2012, at 10.30 PM, in the cattle shed belonging to the accused and situated behind the house of the accused, he committed the murder of the deceased by strangulating her with a rope. It is further alleged that he had dragged the dead body to a nearby channel and abandoned the same there. With these allegations, the respondent filed the final report, upon which the Trial Court framed charge under Section 302 of the Indian Penal Code. The accused denied the same. 2.1. In order to prove the charge, on the side of the prosecution, as many as 15 witnesses were examined and 19 documents and three material objects were marked. PW-1 is the father of the deceased. He has stated that there were frequent quarrels between the accused and the deceased on account of the illicit relationship which the accused had with many women. He has further stated that four months prior to his examination before the Court, he had information from the neighbours that there was wordy quarrel between the accused and the deceased. He also heard that the accused had gone to the house of PW-2 and informed him that his wife was found missing. On the next day morning, he came to the house of PW-2 and in the company of PW-2 and PW- 3, went in search of the deceased. Then, they found the dead body of the deceased lying in the channel. He suspected that the

accused, after having killed his wife, had made a drama as though his wife was found missing. Therefore, PW-1 went to the Police Station and made a complaint, under EX-P1. 2.2. PW-2 is the brother of PW-1. According to him, on 16.07.2012, around 12.00 Noon, the accused came to his house, along with children and told him that the deceased was missing. He handed over the custody of the children to PW-2. Then, he went away stating that he was going in search of the deceased. On 17.07.2012, at 06.00 AM, PW-1 came to his house and along with the others, he went in search of the deceased. Then, they found the deceased lying dead in the channel. PW-3 has stated that he accompanied PW-1 and PW-2 and found that the deceased was lying dead in the channel. PW-4 and PW-5 are the star witnesses for the prosecution. According to them, on 16.07.2012, at 10.30 PM, when they were proceeding to their field, they heard some unusual noise from the cattle shed belonging to the accused. They lighted the torch towards the direction from where the noise was emanating and to their shock, they found the deceased lying in the cattle shed of the accused and the accused sitting on the deceased constricting her neck with a rope. They have further stated that thereafter, the accused carried the dead body towards the channel. They have further stated that thereafter, they simply returned, because, it was a family affair between the deceased and her husband. 2.3. PW-6 has spoken about the preparation of the Observation Mahazer, on 17.07.2012, at 09.00 AM by the Investigating Officer. PW-7 was the then Revenue Inspector, Kannanur Village in Thuraiyur Taluk. According to him, on 18.07.2012, at 09.00 AM, the accused appeared before him and voluntarily gave a confession. He reduced the same to writing under EX-P4. Then, he took the accused and EX-P4 to the Police Station and handed over to the police. PW-8 is the Village Administrative Officer, who has stated that on 18.07.2012, after the accused was produced before the Inspector of Police by PW-7, the accused gave a voluntary confession, in which he disclosed the place where he had hidden a petticoat and a rope. In pursuance of the said disclosure statement, the accused took the Investigating Officer and PW-8 to the place and produced the same. They were recovered under a mahazer. PW-9 has spoken about the photographs taken by him. PW-10, Dr.M.Selvamani, conducted autopsy on the body of the deceased and found the following injuries:- "Ligature mark 1.5 CM breadth [irregular]. was extended from side to side [nc]. mastoid process.

Bruise peritoneal haemorrhage present. [nc]. congested. Hyoid bone lessor horn fractured. Peritoneal cavity opened. No evidence of intraperitoial haemorrhage. Stomach appears pale, contains food particles. Liver congested. Left kidney congested. Small intestine appear pale. All of those above organs sent with preservative for chemical analysis. Both lungs congested. Brain congested. He opined that the deceased would appear to have of asphyxia due to strangulation. EX-P12 is the postmortem certificate. 2.4. PW-11 is the Sub-Inspector of Police, who carried the First Information Report from the Police Station to the Court. PW-12 is the Constable, who has stated that he carried the dead body to the Thuraiyur Government Hospital, for postmortem. PW-13 is the Head Clerk of the Court. He has stated about the forwarding of material objects to the Court for chemical examination. PW-14 has stated that on 17.07.2012, at 08.00 AM, when he was on duty as Sub-Inspector of Police, attached to the Thuraiyur Police Station, PW-1 appeared before him and made a complaint, under EX-P1. He registered a case in Crime No.200 of 2012 under Section 302 of the Indian Penal Code. EX- P15 is the First Information Report. PW-15 is the Investigating Officer, who has stated about the preparation of the Observation Mahazer, arrest made by him, the disclosure statement made by the accused, the consequential recovery of the petticoat and the rope at the instance of the accused and filing of the charge sheet against the accused. 2.5. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

4. The learned counsel appearing for the appellant would submit that the evidences of PW-4 and PW-5 cannot be believed, which is evident from their conduct, inasmuch as they did not disclose about the occurrence to anybody for a period of 40 days. According to PW-7, the accused surrendered before him on

18.07.2012 at 09.00 AM and made a voluntary confession. But, according to the evidence of PW-2 and PW-3, the accused was taken into custody by the police on 17.07.2012 itself and thereafter, he was kept in the Police Station. Thus, the so-called confession made by the accused to PW-7, the subsequent disclosure statements made by the accused and the consequential recovery of petticoat and the rope cannot be believed. The learned counsel would further submit that except this evidence, there is no other evidence available against the accused and therefore, the accused is entitled for acquittal.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the fact that the accused was having illicit relationship with many women has been spoken to by PW-1. Thus, according to the learned Additional Public Prosecutor, the motive has been proved. So far as the evidences of PW-4 and PW-5 are concerned, though they had disclosed about the occurrence after 40 days, on that score, their evidences cannot be rejected. So far as the confession made by the accused is concerned, though PW-2 and PW-3 have stated that the accused was taken into custody by the police on 17.07.2012 itself and he was kept in the Police Station and thus, he would not have made such confession, much weightage cannot be given for this discrepancy, as PW-2 and PW-3 hail from the remote village and without having any perception about the date, they would have given evidence. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the accused needs no interference at the hands of this Court.

6. We have considered the above submissions.

7. Of course, it is true that PW-1 has stated that the accused was having illicit relationship with many women. Assuming that this fact is true, this will not go to prove the guilt of the accused. PW-4 and PW-5 have stated that on 16.07.2012, at 10.30 PM, they saw the accused killing the deceased and carrying the dead body. Had it been true, they would not have kept mum for a period of 40 days, without disclosing about the occurrence to anybody. They have admitted during cross-examination that on 17.07.2012, at about 09.00 AM, when the dead body was taken from the channel, they accompanied the police and they were very much

available with the police. At that time, they did not disclose anything about the occurrence. But, admittedly, after a period of 40 days, they came forward with the version that they saw the accused killing the deceased and carrying the dead body. Had it been true that they witnessed the occurrence, by all natural human conduct, they would have raised alarm or at least they would have informed the somebody about the occurrence. This unnatural conduct of PW-4 and PW-5 would render them unbelievable. Therefore, we reject the evidences of PW-4 and PW-5.

8. The next piece of evidence available for the prosecution is the confession said to have been made by the accused to PW-7, on 18.07.2012, at 09.00 AM. But, PW-2 has stated that on 17.07.2012, when they were searching for the deceased, the accused also accompanied them and found the dead body lying in the channel. It was only this accused, who carried the dead body from the channel and brought the same to the house. They have further stated that on the same day, the police took custody of the accused. PW-3 has also stated so. From this evidence, it is crystal clear that the accused was very much available, on 17.07.2012 and he was taken into custody by the police on the same day. If that be so, the story projected by the prosecution that the accused appeared before PW-7, on 18.07.2012, at 09.00 AM, gave a voluntary confession, consequently, in the presence of PW-8, he made a disclosure statement and in pursuance of the same, petticoat and a rope were recovered cannot be believed. Thus, we reject the evidence of PW-7, PW-8 and PW-15 in this regard.

9. The next comes the conduct of the accused. It is the evidence of PW- 2, who is the brother of PW-1, that the accused came to the house of PW-2 along with children and told him that the deceased was found missing. He handed over the custody of the children to PW-2. Then, he left the place stating that he was going in search of the deceased. On 17.07.2012, at 06.00 AM, PW-1 came to his house and along with the others, he went in search of the deceased. When they reached the channel, the accused was present. Then, they found the deceased lying dead in the channel. After seeing the dead body, the accused alone carried the dead body from the channel to the house. This conduct of the accused would only go to suggest his innocence. This circumstance is surely consistent with the innocence of the accused. Thus, absolutely, there is no evidence to prove the guilt of the

accused. The prosecution has not proved the case beyond reasonable doubts and so, the conviction and sentence imposed by the Trial Court is liable to be set aside.

10. In the result, this Criminal Appeal is allowed, the conviction and sentence imposed on the appellant, vide Judgment dated 18.12.2012, made in S.C.No.200 of 2012, on the file of the learned Principal Sessions Judge, Trichirappalli, is set aside and he is acquitted of the charge. Fine amount, if any paid by him, shall be refunded to him. To 1.The Inspector of Police, Thuraiyur Police Station, Trichy District. 2.The Principal Sessions Judge, Trichirappalli. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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