

Munian Vs. the State

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Court : Chennai

Decided On : Oct-27-1994

Reported in : 1995CriLJ2165

Judge : Janarthanam and;Thangamani, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 173(2)

Appeal No. : Criminal Appeal No. 182 of 1987

Appellant : Munian

Respondent : The State

Advocate for Def. : R. Raghupati, Addl. Public Prosecutor

Advocate for Pet/Ap. : R. Sankare Subbu, Adv.

Judgement :

Janarthanam, J.

1. The appellant was the accused in S.C. No. 60 of 1985 on the file of Court of Session, North Arcot Division, Vellore. He was found guilty under Sections 302 and 201 of the Indian Penal Code, convicted thereunder and sentenced to imprisonment for life for the offence under Section 302 of the Indian Penal Code

and to rigorous imprisonment for three years for the offence under Section 201 of the Indian Penal Code with a direction that the sentences were to run concurrently.

2. Aggrieved by the conviction and sentence, the present action had been resorted to.

3. Brief facts are : (a) the accused is a resident of Semmiamagalam village, situate within the limits of Porur Police Station. P.W. 1 is his wife. Their marriage took place some ten years prior to the occurrence, which event happened on 7-11-1984. Three off-springs came into existence to them and of them second and third off-spring had ephemeral existence and died subsequently. The first off-spring is a female, named Rani and she attained ten years of age on the date of occurrence.

(b) Aliamangalam is any adjacent village. P.W. 2 is a resident of the said village. He is a frog-man and he used to take out articles accidentally got dropped or slipped into a well as and when such contingency arose. There is a well at Semmiamangalam in the garden land of one Chinnakulandai. The well is without a parapet wall. The said well is provided with steps to go into the well. The people in the village used to take bath in the wells available in the village. That apart, they used to fish in such wells.

(c) Some three years prior to the occurrence, the accused developed infatuation towards one Yamuna, a married woman and her husband is by name Darman, The clandestine relationship between them continued for quite sometime blissfully and eventually the accused eloped with the said Yamuna to Bangalore and started living with her making it appear to the outside world as if they were husband and wife. They migrated to other placed also and ultimately they returned to the village Semmiamangalam. In the meantime, the said Darman got married to another woman. He did not at all take seriously the elopement of his wife Yamuna with the accused. Likewise, P.W. 1 started living with her daughter Rani in the village. Even subsequent to the return of the accused to the village, along with Yamuna they started living separately without any objection emerging from any quarter whatever.

(d) On the afternoon of the day of occurrence, Rani went out of the house for the purpose of fishing in a well situated in the village. The accused was stated to have objected to Rani going out for the purpose of fishing. Rani, however, did not pay heed to the objection emerging from the accused. The accused, in turn, was stated to have become wild at the conduct of his daughter Rani.

(e) The said Rani, who went out for fishing did not at all return home. A hectic search appeared to have been made and the same proved futile.

(f) Two days thereafter, that is to say on the afternoon of 9-11-1984, P.W. 2 was standing under an Arasa tree in his village. One Manickman, his brother's brother-in-law was also available there. At that time, the accused met P.W. 2 and requested him to come to his rescue in retrieving a thavalai (utensil) fallen into a well. Initially, P.W. 2 expressed that he was unable to perform such a feat, as he was not well. Manickam however, persuaded him to oblige P.W. 2. Consequently, P.W. 2 acceded to the request of the accused. The accused in turn, took him in his bicycle to the well where the utensil was stated to have been dropped or fallen. While both of them reached near the well, the accused got down from the bicycle and parked it underneath a banian tree. He was then stated to have divulged P.W. 2 as to his committing the murder of his daughter Rani by throttling by his hand and throwing the dead body into the well, tied to the body a stone by means of string. So saying he requested P.W. 2 to oblige him in retrieving the body from the well. Then, P.W. 2 asked the accused to point out the well and the accused in turn pointed out the well. P.W. 2 further demanded from the accused to pin-point the place inside the well where the dead body was dropped. The accused in turn pointed out the place by dropping a stone into the well at the place where the dead body was dropped. P.W. 2 then, got down into the well, immersed into the water and was able to find a body lying underneath the water being tied to a stone by means of a string. He, without retrieving the body, came out of the well and told the accused that he would not take out the body from the well unless the elders were present at the time of retrieval of the body. The moment P.W. 2 told so, the accused escaped from there in his bicycle. Despite hot chase by P.W. 2, he could not secure the accused.

(g) P.W. 2 went to the house of P.W. 5, a landlord and informed him of what transpired between him and the accused and his finding out a dead body lying underneath the well belonging to one Chinnakulanai. P.W. 5 along with P.W. 2 proceeded to the said well. He also sent word to the village Administrative Officer, viz., P.W. 11 besides other respectable persons of the village.

(h) The accused in the meantime appeared to have contacted P.W. 6, Ex-president of the said village and divulged to him as to what transpired between him and P.W. 2. He also specifically appeared to have told P.W. 6 that P.W. 2 was not amenable to retrieve the body, unless respectable persons of the village were available there.

He therefore, entreated P.W. 6 to come along with him to the said well. P.W. 6 and the accused were proceeding towards the well. On the way, the accused, it is said, some how or other mysteriously disappeared. Consequently, P.W. 6 asked P.W. 3 to trace out the accused and apprehend him. He was able to trace out the presence of the accused in the garden land of one Parsurama Pillai. At that time, P.W. 4, was available in his adjacent land guarding his maize field since the crop was ripe for harvest. P.W. 3 appeared to have requested P.W. 4 to catch hold of the accused. The accused, in turn, climbed up an electric lamp post and in such process he appeared to have proclaimed that the villagers were after him just to severely thrash him as he had committed the murder of his daughter and thrown her into the well. He, however, appeared to have stated that he wanted to commit suicide by coming into contact with the live electric wire and that perhaps was the reason for climbing the electric lamp post. When he reached the top of the electric lamp post and touched the over hanging wire, it so happened that electric energy was not then passing through the wires. Naturally, he got down from the lamp post and in such process, he had been apprehended by P.W. 3 and P.W. 4 and he had been brought to the village. He however, was detained in the Village Panchayat Board Office by tying him to the pillar there.

(i) P.W. 2 in the meantime dived into the well and retrieved the body. The body was tied by means of a rope M.O. 1 to a stone M.O. 2. The body so retrieved was placed outside the well.

(j) P.W. 11, the Village Administrative Officer, sent a report Ex. P. 6 to Porur Police Station which was stated to have been received by the then Sub-Inspector of Police at 6.20 P.M. A case in Cr. No. 253 of 1984 had been registered on the strength of Ex. P. 6 for an offence Section 302 of the Indian Penal Code. Express Report had been prepared and sent to the concerned official Ex. P. 9 is the copy of the Express F.I.R.

(k) P.W. 13 was the then Inspector of Police. At 7.05 p.m. he received the express copy of the First Information Report and took up further investigation. At 7.45 p.m., he went to the scene and after inspecting the scene-place, he prepared Ex. P. 7 Observation mahazar in the presence of P.W. 11. He also drew a rough sketch Ex. P. 10 of the scene. At 8.30 p.m. he seized M.Os. 1 and 2 under Ex. P. 8 Mahazar. Exs. P. 7 and 8 were attested by P.W. 11 and another. Between 8.45 p.m. and 11.45 p.m., he held inquest over the body of the deceased. Ex. P. 11 is the inquest report. During inquest he examined P.Ws 1 to 3 and 6. After inquest, he despatched the body of the deceased with a requisition through a Constable P.W. 9 for the purpose of autopsy. At 12 mid-night, he arrested the accused at the Panchayat Board Office. He also examined P.Ws. 4, 5 and 11.

(l) P.W. 7 was the Medical Officer attached to the Government Hospital, Porur. On receipt of the requisition from P.W. 13, he held autopsy over the body of the deceased at 11 a.m. on 10-11-1984. Ex. P. 10 is the post-mortem certificate, he issued. During autopsy, the Doctor, P.W. 7 found fracture of hyoid bone of the deceased. He was, however, unable to come to any conclusion as to whether the fracture of the said bone was anti-mortem or post-mortem. P.W. 13 in such a situation gave a requisition for the preservation of the hyoid bone by P.W. 7, so as to see that the same was sent to the Chemical Examiner for the purpose of examination. Doctor, P.W. 7, in turn, preserved the hyoid bone, awaiting a direction from the Court for forwarding the preserved hyoid bone to the Chemical Examiner.

(m) After autopsy was over, the Constable P.W. 9 seized from the body of the deceased M.O. 4 skirt and handed over the same at the police station which appeared to have been seized under Form-95.

(n) On 10-11-1984, P.W. 13 examined P.Ws. 7, 9 and 12 and also made arrangement for sending the accused to judicial custody. On 26-11-1984, he gave Ex. P. 3 requisition to the Judicial II Class Magistrate, Porur, for the issuance of a direction to the Doctor, P.W. 7 for forwarding the preserved fractured hyoid bone to the Chemical Examiner for the purpose of examination.

(o) P.W. 10 was the then Head Clerk attached to the Judicial II Class Magistrate, Porur. Pursuant to the requisition Ex. P. 3, a communication under the original of Ex. P. 4 had been sent to the Chemical Examiner with the request for the examination of the hyoid bone, marking a copy to the Medical Officer, P.W. 7, P.W. 7 accordingly, despatched fractured hyoid bone, M.O. 3 to the Chemical Examiner and the Chemical Examiner, in turn, sent the fractured hyoid bone to P.W. 8, Additional Professor of Forensic Medicine, Madras Medical College, Madras, under a communication Ex. P. 5 P.W. 8 in turn on examination of the fractured hyoid bone forwarded her opinion in the shape of Ex. P. 2 stating that,

'Ante-mortem fractures of hyoid bone seen'. Based upon such opinion, P.W. 7, the Doctor would render his final opinion that the deceased would appear to have died of Asphyxia due to strangulation about 60 to 72 hours ago prior to commencement of post-mortem.

(p) P.W. 13 after completing the investigation, laid a final report under Section 173(2) of the Code of Criminal Procedure before the Judicial, II Class Magistrate, Porur on 18-3-1985, against the accused for offences under Sections 302 and 201 of the Indian Penal Code.

(q) On committal, learned Sessions Judge, framed charges under Sections 302 and 201 of the Indian Penal Code as against the accused. The accused, when questioned as respects the charges so framed, denied the same and claimed to be tried. The prosecution in proof of the charges so framed, examined P.Ws 1 to 13, filed Exs. P. 1 to P. 11 and marked M.Os. 1 to 4.

(r) Learned Sessions Judge on consideration of the materials placed and after hearing the arguments of learned counsel appearing for the appellant/accused and also learned Public Prosecutor, however, rendered the verdict as stated above.

4. From the submissions of Mr. R. Sankara Subbu, learned counsel appearing for the accused/appellant and Mr. R. Raghupathi, learned. Additional Public Prosecutor representing the prosecution, the only question that arises for consideration in this case is as to whether the conviction and sentence imposed upon the appellant by the Court below are sustainable in law.

5. Admittedly, the entire case of the prosecution rests on evidence not direct, but only circumstantial in the shape of the so-called extra-judicial confession, that too, retracted, the motive for the commission of the offence and the medical opinion as to the cause of death. If the facts placed on record in the shape of testimony of witnesses relatable to motive the circumstance impelling to the making of the extra-judicial confession and the medical opinion as to the cause of death are scanned and sifted in a broad spectrum analysis, it goes without saying that the prosecution has to face dismal failure in the sense of not establishing the guilt of the accused/appellant beyond any shape of doubt. There is no pale of controversy that the accused abandoned his wife, P.W. 1 and his beloved daughter, Rani, the deceased some three years prior to the occurrence and eloped with one Yamuna, the wife of one Darman. Yet another fact about which there is no dispute at all that his elopement with Yamuna was not taken serious note of either by Darman or by P.W. 1 and that perhaps was the reason that Darman calmly and quietly married a woman of his choice without caring for his eloped wife Yamuna. In the same fashion P.W. 1 also started living with her daughter without caring for her husband, the accused, obviously thinking that she had been destined to such a fate. Even when the accused returned to the village some time prior to the occurrence along with Yamuna, no serious problem arose in village to him either at the hands of the said Darman or at the hands of his wife, P.W. 1 and they had a calm and quiet living without any hitch or itch whatever between them.

6. It is the case of the prosecution that on the afternoon of the day of occurrence, the deceased went out of the house for the purpose of fishing in the wells in the village and at that juncture, the accused was stated to have objected to her going out and despite his objection, the deceased went out of the house for fishing. The accused, in turn, was stated to have become wild. The deceased so gone out of the house did not at all return home. It is in this back drop and setting, the

prosecution made it appear that the motive for the murder of the deceased cannot be anyone other than the estrangement that came into being between him and his daughter prior to her departure from the house for the purpose of fishing. Taking such an episode on the face value, we are not able to give any credence to such a story as trotted out by the prosecution. As adverted to earlier, the accused was blissfully having a life with his concubine Yamuna without caring for any one. It is not at all the case of the prosecution that the accused ever cared for his family members, P.W. 1 wife and his beloved daughter, the deceased, at any point of time after his elopement with Yamuna. In such a situation, can anyone comprehend that he had any concourse of dealings with his family members in the day to day affairs Our reaction and response to such a question posed cannot be anything other than an emphatic 'no', on the facts and in the circumstances of the case. We rather feel that a motive for motive sake had been trotted out by the prosecution so as to serve as some sort of an incriminating circumstance suiting to the exigencies of the prosecution case. It is also startling to note that the motive given by the prosecution at the time when they sent a brief of history of the case under Ex. P. 3 to the Doctor P.W. 7 who conducted the post-mortem was altogether different. Better it is for us to reflect such a story in the very same language as had been given in Ex. P. 3.

'The accused Muniyan s/o. Kuppapandithan, Semmiyamangalam is the father of the deceased Rani (age 10). No other issue to the accused except the deceased Rani. 60 cents of landed property is there on the name of mother-in-law of the accused. The accused is having a concubine. In order to satisfy his concubine and to get the 60 cents landed property the accused strangulated the neck of his daughter tied a rope in her waist and tied the other end of rope with a stone and thrown her in a field well on 7-9-84 at about 4.00 p.m. at Alyamangalam village. The body of the deceased Rani was lifted from the well on 9-11-84 at about 4 p.m. and sent for post-mortem.'

This sort of motive trotted out at the earliest point of time by the prosecution makes us not to place any credence on the motive aspect of the case as now trotted out by the prosecution in the sense of the accused having estranged feelings towards his daughter, the deceased when she did not pay heed to his

words, when he said that she ought not to go for the purpose of fishing. Such a conclusion of ours is, however, reinforced and strengthened by the evidence of P.W. 6 who candidly admit in the course of cross-examination that the relationship of the accused with his beloved daughter Rani was always cordial.

7. According to the prosecution, the murder of the deceased by way of strangulation of her neck had happened on the evening of 7-11-1984 and such murder of the deceased at the hands of the accused came to light two days later on 9-11-1984 by his making an extra-judicial confession initially to P.W. 2 and subsequently to all sorts of persons, he came into contact, viz., P.Ws. 6, 3 and 4. There is no dispute that P.W. 2 is altogether a quite stranger to the accused in the sense that neither he nor P.W. 2 had any sort of contact with the other on any prior occasion other than the day of which the accused happened to meet him, while he was standing near Arasa tree, that is to say at about 2 p.m. on 9-11-1984. It is not as if he straightway divulged the real state of affairs to P.W. 2. The service of P.W. 2, a frog-man had been requisitioned by the accused under the facade of retrieving a vessel fallen inside a field well of one Chinnakulandai. Though, P.W. 2 was initially little bit reluctant because of his ill-health, some how or other he acceded to such a request, as he had been requested by his brother's brother-in-law Manickam who was then standing near him. Only when P.W. 2 accompanied the accused in his bi-cycle and travelled a little bit of distance, the accused some how or other got down from his cycle and parked the same underneath a banyan tree and started divulging as to how he happened to murder his daughter by throttling and throw the body in the well by tying it with a stone by means of a rope. The very purpose of divulging such an information by the accused was to retrieve the body from the said well and see that the evidence of commission of the offence of murder was once and for all destroyed unnoticed by anyone. We are not able to comprehend such a story, when especially there was not even an inkling of any suspicion whatever as relatable to the hand of the accused in the murder of the deceased at any point of time prior to his making such extra-judicial confession. Further, it is not as if the body of the deceased was found floating in the well attracting the attention of the villagers, and, therefore, he sought the help of P.W. 2 in retrieving the body so as to see that the body was once and for his all consigned to flames, thereby destroying the evidence, if any available.

8. We are also unable to digest the conduct of P.W. 2 in diving into the well, searching for the body and tracing it out in the well tied to a stone by means of a string and then coming out of the well without retrieving the body and stating to the accused that he would retrieve the body only in the presence of the elders of the village. We have to recapitulate here that the service of the accused had been requested by the accused only for the purpose of retrieval of utensil dropped in the well. When P.W. 2 came to know of the heinous commission of the offence or murder of the deceased by the accused, it behoves upon him not to accede to such a request in diving into the well and inform the same to the authorities concerned. The further conduct of the accused, as stated by P.W. 2 that the moment he told so, the accused escaped from there in his bicycle. If really what P.W. 2 stated to was true, the accused could have escaped from the scene once and for all unnoticed. But such an event did not happen. The prosecution wants us to believe that the accused from there straightway went to the house of P.W. 6 Ex. President of Panchayat and again divulged the real state of affairs to him and asking him to go to the scene for the retrieval of the body or otherwise, P.W. 2 would not perform such a feat. Having told so to P.W. 6, P.W. 6 also was stated to have accompanied the accused to a little distance; can we comprehend the accused to make a sudden disappearance from there The further puzzling factor is that on such a sudden and so-called unexpected disappearance, P.W. 6 would avail of the services of P.W. 3 to some how or other trace out the accused, apprehend him and bring him back. Yet another astonishing factor is that when P.W. 3 made a search to locate the whereabouts of the accused, he was able to trace him out in the garden field of Parasuram Pillai and on sighting him, he requested the adjacent land owner P.W. 4 to catch hold of him and at that juncture, the accused was stated to have climbed an electric lamp post in order to commit suicide by coming into contact with the electric live-wires, so as to avoid the torture to be meted to him at the hands of the villagers, in case, he was caught as he had committed the murder of his daughter, the deceased. As quirk of fate would have it, the prosecution would say that there was no electric energy passing through the hanging wires then. Consequently, there was no other go for the accused to climb down and in such process he was caught hold by P.Ws. 3 and 4 and brought back to the village. The accused was subsequently detained in the

Panchayat Board Office by tying him to a pillar there.

9. Why we have narrated all these sequence of events is that if really the accused wanted to escape from the perilous situation, he was placed after divulging the information to P.W. 2, it is against the natural course of human conduct to say that he contacted P.W. 6 subsequently and again divulged the fact of how he committed the murder of the deceased and requested the service of P.W. 2 and again escaped from there to be once again caught after making an extra-judicial confession to P.Ws. 3 and 4. In such circumstances, we are not impressed with the testimony of P.Ws. 2, 3, 4, 5 and 6 in the sense that their testimony is not bearing any semblance or impress of truth and consequently, we are unable to place safe reliance on their testimony as relatable to extra-judicial confession stated to have been made by the accused.

10. It is a settled proposition of law that if the foundation of the case of the prosecution hinges upon extra-judicial confession, that too, retracted, it goes without saying that such an extra-judicial confession requires corroboration in material particulars by evidence all undi, besides the same being, found to be true, voluntary and reliable, before every criminal liability is muled upon the accused. In the case on hand, we already recorded a finding that the evidence relatable to the making of extra-judicial confession by the accused is not at all safe to be relied upon for any purpose whatever. Such being the case, the question of looking forward to corroborative pieces of evidence all undi could not at all arise for consideration. Further, what is worse, is no evidence all undi by way of corroborative circumstances are also available, except the one circumstance of the deceased meeting her fateful end by homicidal violence in the sense of her having been done to death by throttling, inasmuch as the hyoid bone was fractured and such fracture could have taken place prior to her being dropped in the well. Even such circumstance, by itself is not sufficient to bring home the guilt of the accused.

11. For the reasons as above, we are of the view that the prosecution miserably failed to bring home the guilt of the accused to any offence whatever, beyond any shadow of doubt. Consequently, the conviction and sentence imposed upon the

accused/appellant as had been done by the Court below for the offence under Sections 302 and 201 of the Indian Penal Code as well are not sustainable and they accordingly set aside and the appellant/accused is acquitted. The appeal is thus, disposed of. Bail bond if any, executed by him shall stand cancelled.

12. Appeal allowed.

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