



Citation : CDJ 2013 MHC 2042

Court : High Court of Judicature at Madras

Case No : M.P.No. 1 of 2013 in CrI.A.No. 866 of 2012

Judges : THE HONOURABLE MR. JUSTICE K.N. BASHA & THE HONOURABLE MR. JUSTICE P. DEVADASS

Parties : Muthu Versus State by The Inspector of Police, Uthiramerur Police Station, Kanchipuram District

Appearing Advocates : For the Petitioner: M.G. Udhaya Shankar, Advocate. For the Respondent: V.M.R. Rajendran, Addl. Public Prosecutor.

Date of Judgment : 01-04-2013

Head Note :

Criminal Procedure Code - Section 389(1) -

Case Referred:

BALU @ BALAMURUGAN Vs. INSPECTOR OF POLICE, KAI-KALATHUR, PERAMBALUR DIST. (CDJ 2013 MHC 1656)]

Comparative Citation:

2013 (2) Crimes 745,

Judgment :

(Prayer: This Petition is filed under Section 389(1) of Cr.P.C., to suspend the sentence passed by the learned Sessions Judge, Sessions Court No.II, Kancheepuram, in S.C.No.28/2011 by Judgment dated 31.10.2012 and enlarge him on bail pending disposal of the Cr.A.No.866/2012.)

P. Devadass, J.

The accused, who was sentenced to life u/s.302 IPC in the Sessions case in SC.No.28/2011 by the learned Sessions Judge No.II, Kanchipuram, seeks suspension of his said sentence.

2. Deceased Viji is alleged to have developed illegal intimacy with P.W.4, Pachaiammal, wife of the accused. On 28.11.2010, the deceased was murdered. For this, prosecution has prosecuted the accused.

3. There is no eye-witness to the killing. Prosecution sought to prove the case through circumstantial evidence.

4. Each circumstance must be 'incriminating' in nature. It must be 'proved'. The totality of such

proved circumstances must form a 'complete chain' without any 'missing link' unerringly proceeding towards the accused as 'the author of the offence committed' [See NAVARASU MURDER CASE – INSPECTOR OF POLICE, TAMILNADU Vs. JOHN DEVID (2011(3) CTC 104), SK.YOSUF Vs. STATE OF WEST BENGAL (2011(3)SCC(cvi)620) and THIRUPATHI Vs. INSPECTOR OF POLICE, MAYANUR (2012 MLJ (CrI)289)].

5. The Sessions Judge No-II, Kanchipuram relied on the extra-judicial confession of the accused to P.W.4 Pachaammal, statement of the accused recorded under Section 27 of the Evidence Act and the 'discovery evidence' and convicted and sentenced the accused as stated above.

6. The learned counsel for the petitioner would contend that the conviction has been recorded based on inadmissible evidence and thus the learned Sessions Judge No-II, Kanchipuram has passed illegal sentence.

7. The learned counsel for the petitioner contended that although P.W.4, has turned hostile, her evidence has been relied on and Ex.P20 confessional statement of the accused to P.W.18 Inspector of Police also has been relied on to convict the accused and this is against all canons of Criminal Jurisprudence and it is as against basic Principles of Criminal Law.

8. On the other hand, Mr.V.M.R.Rajendiran, the learned Additional Public Prosecutor would contend that the learned Sessions Judge No-II, Kanchipuram, has given the verdict on his appreciation of the evidence adduced before him.

9. We have anxiously considered the rival submissions, perused the portion of the evidence pointed out by either side and also the impugned judgment of the learned Sessions Judge No-II, Kanchipuram.

10. There are certain principles which are fundamental, which are also basis of Indian criminal law, namely, "no amount of confession made to police is admissible". [See section 25 of the Indian Evidence Act, 1872 and statement given to police during investigation cannot be used against the accused(See Section 161 Cr.P.C.). A statement given to police u/s.161 Cr.P.C., cannot be used to record a conviction is adumbrated in section 162 Cr.P.C. These are rudimentary principles of Criminal Law of this country.

11. In this case, the learned Sessions Judge No-II, Kanchipuram relied on the extra-judicial confession stated to have been given by the accused to P.W.4 and also culpatory statement of the accused in Ex.P20 recorded by the Police Officer P.W.18 for the purpose of Section 27 of the Evidence Act.

12. The prosecution version is that the accused after killing the deceased revealed to his wife/P.W.4 that he had killed her paramour. It will be "Extra-Judicial Confession" coming under section 24 of the Evidence Act, if it is proved to be genuine and voluntary. [See ALADI ARUNA MURDER CASE – S.ARULRAJA Vs. STATE OF TAMILNADU (2010(8)SCC 233 = 2010(3) MWN (Cri) 146), STATE OF RAJASTHAN Vs. RAJARAM(2003 (8)SCC 180) and SANJEEVAN @ REGU Vs. INSPECTOR OF POLICE, PUTHUKADAI POLICE STATION, K.K. DIST. (2012(3) MWN(Cri)388(D.B) = 2012(1) MLJ Cri 89]. But, it is pointed out by the learned counsel for the petitioner that before the learned Sessions Judge No-II, Kanchipuram, P.W.4 had completely turned hostile, she denied that her husband had made such a statement to her.

13. During investigation, the Investigating Officer P.W.18 took P.W.4 to P.W.16 Tmt.Kanchana, the learned Judicial Magistrate, Maduranthagam, who has recorded her statement (Ex.P12) under Section 164 Cr.P.C. Learned Sessions Judge referring to P.W.4's said statement held that the said extra-judicial confession of the accused to P.W.4 is proved, although P.W.4 has turned hostile.

14. A statement given by a witness u/s.164 Cr.P.C., is like a previous statement given during investigation u/s.161 Cr.P.C., because it is not a 'substantive evidence' adduced before the Trial Judge, it was not recorded in the presence of the accused, it was recorded- 'res inter alia acta - recorded behind the back of the accused, it is recorded from a witness during investigation. Besides giving to a police officer, it was also given to a Magistrate. The objective behind recording such statement under Section 164 Cr.P.C. is that it is for an assurance that the investigation is going on on right direction, it is going against a right person/s and, a belief that it will instill a sense of feeling in the mind of the deponent that later he should not resile from it. Such a statement of witness under Section 164 Cr.P.C. cannot be used against the accused, when especially the deponent herself has turned hostile before the Trial Judge. However, such a statement can be used in favour of the accused.

15. Now, in this case, it has been pointed out by the learned counsel for the petitioner that in order to rely on the alleged extra-judicial confession of the accused to P.W.4, [who has turned hostile], the learned Sessions Judge No-II, Kanchipuram relied P.W.4's statement (Ex.P12) to the learned Judicial Magistrate, Maduranthagam u/s.164 Cr.P.C., which is inadmissible.

16. There is 'an exception' to the 'total bar' contained in Section 25 of the Evidence Act in Section 27 of the Act to the effect that 'so much of information leading to the recovery of a fact' is admissible provided it is 'non-culpatory/non-incriminating' in nature. [See PULIKURI KOTTAYYA Vs. KING-EMPEROR (A.I.R. 1947 P.C.67), MUSTKEEM @ SIRAJUDIN Vs. STATE OF RAJASTHAN (2011(3) (Cri.) 473), C.VENKATESH Vs. INSPECTOR OF POLICE, MUNEERPALLAM, (2012(3)MWN(Cri)414 D.B), KUMAR @ THAMBI & ORS Vs. INSPECTOR OF POLICE, DINDUGAL TALUK POLICE STATION (2012 Cri. L.J. 2673 = 2012(2)MLJ(Cri.) 494) and VIJAYAKUMAR Vs. STATE (2012(1) MWN (Cri) 463 D.B)]. Thus, any amount of incriminating information or culpatory statement in the confessional statement of the accused cannot be taken into account to convict him, this is because of the bar contained in Section 25 of the Evidence Act.

17. However, in this case, the learned Sessions Judge No.II, Kanchipuram has taken into account the inculpatory statement of the accused in his Ex.P20 confessional statement, wherein the accused is alleged to have stated to the Police Officer P.W.18 that he had killed the deceased.

18. It has been pointed out by the learned counsel for the petitioner that to take into account the said incriminating information contained in the confessional statement of the accused recorded for the purpose of Section 27 of the Evidence Act, the learned Sessions Judge No.II, Kanchipuram also called in aid Ex.P12 statement of P.W.4 recorded by the learned Judicial Magistrate under Section 164 Cr.P.C.

19. It is basic that a piece of evidence which is inadmissible cannot be used for corroboration. But, the situation in the case is still worse. Because, in this case, the said statement given by P.W.4 under Section 164 Cr.P.C. which has been inadmissible has been used by the learned Sessions Judge No-II, Kanchipuram to corroborate another piece of inadmissible evidence.

20. M.O.1 knife is stated to have been recovered on the basis of Ex.P20 disclosure statement of the accused to Police. It has been pointed out by the learned counsel for the petitioner that apart from it being not established by the evidence of independent witnesses, it itself should not be a basis to convict a person for the offence of murder under Section 302 IPC. [See LIMBAJI & ORS Vs. STATE OF MAHARASHTRA (2010(1)SCC 340) and BALU @ BALAMURUGAN Vs. INSPECTOR OF POLICE, KAI-KALATHUR, PERAMBALUR DIST.(CDJ 2013 MHC 1656)]

21. These are the premises upon which the entire judgment of the learned Sessions Judge No.II, Kanchipuram is based.

22. "No one shall be jailed (deprived of his life or personal liberty) except by procedure established by law" is the soul of the Indian Magna carta[See Article 21, Constitution of India]. A person can be jailed 'only' in accordance with law, otherwise it will be illegal and unconstitutional.

23. In this connection, it has been pointed out by the learned counsel for the petitioner that the present case is a classic case of conviction based on "in admissible evidence". A finding of guilty not based on legal evidence is an affront to Basic Human Right, namely, 'one's presumption of innocence'.

24. In this appeal bail petition since an argument that without any legal evidence, a person has been jailed by a judicial order has been placed before us, we are constrained to go deep in to the matter.

25. Now, in view of the foregoing, we are convinced that absolutely it is a fit case for immediate suspension of sentence of imprisonment imposed upon the petitioner by the learned Sessions Judge No.II, Kanchipuram.

26. In fine,

[1] Petition allowed

[2] Appeal Bail granted.

[3] The sentence of imprisonment is suspended.

[4] There shall be two sureties, they and the petitioner shall execute a bond for Rs.10,000/- [Rupees ten thousand only] each to the satisfaction of learned District Munsif cum Judicial Magistrate, Uthiramerur.

[5] The petitioner shall appear before the said Court on the first working day of every English Calendar month at 10.30 a.m. until further orders.