

# SUPREME COURT OF INDIA

State of Tamil Nadu

Vs.

Manmatharaj

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

28.11.2008

## JUDGMENT

**Dr. Arijit Pasayat, J.**

1. Challenge in this appeal is to the judgment of the Division Bench of the Madras High Court allowing the appeal filed by the respondent (hereinafter referred to as the `accused') who was convicted for the offence punishable under Section 302 and Section 201 of the *Indian Penal Code, 1860* (in short the `IPC').

2. Prosecution version in a nutshell is as follows:

“The accused is a resident of Chockalingapuram. The deceased Mariammal was his wife. Their marriage had taken place ten years prior to the occurrence. (The occurrence was on 29.5.1990) The deceased and the accused have a son aged about eight years. The deceased was employed in a private establishment near her village. PW2 is her co-worker. The accused came to know that his wife was having an illicit affair with PW 2. Therefore, he warned his wife. However, the deceased continued her affair with PW2. Two weeks prior to the occurrence, on coming to know that the deceased and PW2 are happily spending their time in the plantain garden of Neerkathalingam, north of the village, the accused went there to catch them red-handed. Seeing his movements there, PW2 and the deceased parted company and moved away. On 25.5.1990, the deceased and PW2 were found sharing their bed in the very same plantain garden by PW3 and PW4. Both PWs 3 & 4 reprimanded them. Coming to know about this incident, the accused questioned his wife on 29.5.1990 and his wife flatly refused such an incident. There was an exchange of words between the two during which the accused abused the deceased stating that he had been put to shame on account of his wife's conduct and therefore, he must kill her. He wanted his wife to accompany him so that he could verify with PWs 3 & 4 about the incident on 25.5.1990 in her presence. With that object in his mind, the accused took his wife to the private establishment where she was working. Enroute, they found PW5 seated under a banvan tree. The deceased invited him to join them. However, the accused told PW5 not to accompany them. The deceased and the accused were proceeding towards north and they were passing a channel called "Vadi Kalvai" around 12 noon

on that day. The deceased refused to proceed further towards the private establishment where she was working. She also told the accused at that time that she would move only like that with PW2 and if the accused is not willing for such a course, then she would rather go with PW2. Deciding that she should not be allowed to live any more, the accused fisted her and pushed her inside the channel. Pressing her inside the water, he picked up a white stone lying nearby and repeatedly attacked on her head with that stone resulting in injuries on the back side of her head, left ear and over the right cheek. Mariammal was bleeding through the injury on her head which stained the earth as well as her saree. When Mariammal was being pushed by the accused, she bit his right hand index finger as well as his right hand resulting in injuries to the accused. Thinking that Mariammal would die, the accused leaving Mariammal at the spot itself, rushed to the establishment where his younger brother Kasirajan was working and confessed to him that he had attacked his wife with a stone. The accused and Kasirajan immediately went to the scene of occurrence where they found Mariammal fighting for her life. Immediately, the accused and his younger brother put her in a cart and took her to the house where she was laid on the western side of the house. When Mariammal was being taken down from the cart, the shirt of the accused and his younger brother became blood-stained. Sometime later, Mariammal died. The accused thought of burning his wife's body secretly. However, his conscience did not permit him to do so which impelled him to disclose the truth to someone. Accordingly, he reached the office of PW 1, the Village Administrative Officer around 8 p.m. On 29.5.1990 where PW7 and the Panchayat President were there. In their presence the accused gave a confessional statement.”

3. The Trial Court placing reliance on the extra judicial confession given to the Village Administrative Office (PW1) in the presence of PW7 directed conviction. In appeal, the High Court set aside the conviction. The High Court after referring to the evidence of PWs 1 and 7 held that Ex.P1 lacks authenticity.

4. Learned counsel for the appellant submitted that the High Court should not have directed acquittal doubting the authenticity of Ex.P1. Learned counsel for the respondent supported the judgment.

5. In the instant case, having concluded that Ex. P 1 lacks corroboration, High Court has referred to the oral evidence of PWs 1 and 7 to find out whether their evidence would pass the test of reliability. High Court was of the view that it could rely upon their evidence if it was held that Ex. P1 had come to be recorded without any suspicious circumstance surrounding it. In this context, a perusal of Ex.P15 as well as Ex. P1 itself give room to doubt the very truth of Exs. P1 and P15. At the foot of Ex. P1, PW1 had made an endorsement. The endorsement as it stood originally reads that PW1 himself had taken the accused and Ex. P1 to the Police Station. However, there is a correction in the endorsement made at the foot of Ex.P1 and it is made to appear that the accused was sent to the Police Station along with Ex. P1 and other material records only with PW7, village menial. PW7 would state that he went to the Police Station where he presented the accused as well as Exs.P1 and P3 to the Sub-Inspector of Police, examined as PW10 in this case. PW 10 had also stated so. But, in the

same breadth, PW7 stated that he reached the Police Station at 12 in the night i.e., in the midnight of 29.5.1990; waited there for one hour; the Inspector of Police came and gave Ex. P1 only to him. He knows the difference between a Sub-Inspector and an Inspector. If the evidence of PW7 is accepted, it will show beyond doubt that he had reached the Police Station only, in the midnight of 29.5.1990 and Ex. P1 had been handed over by him only to the Inspector of Police., Ex. P15 is the printed First Information Report. The evidence of PW10 shows that Ex.P1 had come to be registered in the Police Station at 10 p.m. on 29.5.1990. Though under normal circumstances, the evidence of PW7 regarding the time at which he reached the Police Station and to whom he had handed over the material records and the accused would not assume any importance if there are any other direct circumstance in favour of the prosecution, yet, in view of the fact that the prosecution, in this case, rests only upon the extra judicial confession statement which does not find corroboration at all on general particulars, this evidence of PW7, definitely cannot be brushed aside while appreciating the case of the prosecution.

6. One other circumstance in the evidence of PW 7 which definitely casts doubt on the case of the prosecution is that he stated that after giving the material records at the Police Station, he went back home and the Observation Mahazar and other material records were prepared by the Investigating Officer commencing from 6 a.m. on 30.5.1990. Therefore, according to PW7, after he handed over the material records at the Police Station, he went home and again participated in the exercise done by the Investigating Officer only from 6 a.m. onwards on the following morning. However, it is seen from the evidence of PW 14 that the preparation of records had all been done, right from the midnight of 29.5.1990 itself in which PW7 actively participated. If this piece of evidence of PW14 which stands corroborated by contemporaneous documents is accepted, then the oral evidence of PW7 that he had handed over the material records to the Inspector of Police alone cannot be totally brushed aside as inadvertent evidence. Why PW 7 wants to withhold even this piece of correct information in Court, namely, the time at which the material records starting from Ex.P4 had come to be prepared in a conduct can be definitely taken into account to doubt the evidence of PW7 and Ex.P1 would not have been registered at 10 p.m. as spoken to by PW 10.

7. When an extra judicial confession is given to the Village Administrative Officer, he goes to the scene of occurrence; observes the dead body as well as the scene; satisfies himself about the truth of the statement given by the person concerned and then, prepares the material records. In this case, he did not do anything of that sort. Over and above all this PW1 has categorically admitted he knows that when an extra judicial confession statement is given to him, he should prepare not only a duplicate of the same but also prepare a duplicate of the Yadast which must be sent to the Court by him. He had categorically admitted that he neither sent Ex.P1 nor Ex.P3 to the Court. He had been a Village Administrative Officer of ten years standing. The purpose of sending documents like Exs.P1 and P3 to the Court and the copies of the same to the Police is to eliminate false implication and to add credibility to the extra judicial confession statement itself. The failure on the part of PW1 to send the material records to the Court, especially, when he was aware of his duty in that regard is yet another circumstance which is sufficient to doubt the entire case of the prosecution put through PWs 1 and 7.

8. The High Court has rightly held that the prosecution version is unacceptable.
9. We find no infirmity in the reasoning of the High Court to warrant interference.
10. The appeal is dismissed.