

SUPREME COURT OF INDIA

Kadamanian @ Manikandan

Vs.

State Represented by Inspector of Police

CrI.A.No.2341 of 2010

(Jagdish Singh Khehar and Arun Misra, JJ.,)

31.08.2016

JUDGMENT

Jagdish Singh Khehar, J.,

1. The prosecution in the instant case was lodged against the appellant herein - Kadamanian @ Manikandan, as well as, against co-accused - I.T. Manian @ Manikanda, for the offences under Sections 201, 302, 376 and 404 of the Indian Penal Code. The Aforesaid offences were allegedly committed by the accused with reference to M. Jayalakshmi.

2. As per the prosecution version, M. Jayalakshmi went missing at 7 a.m. on 6.9.2007, having left her residence to answer the call of nature. Since she did not return, a missing person's report was lodged on 7.9.2007 by her father P. Matheswaran at Namakkam Kumarapalayam Police Station. It is also relevant to mention, that in the first information report registered on 7.9.2007, the complainant had attached the photograph of M. Jayalakshmi, and had also indicated for her identification, that she was wearing a green colour jacket and saree. It was also expressly mentioned, that she was wearing a nose-stud.

3. On 9.9.2007, a dead body of a female, was found by a sweeper, Natarajan - PW4. Based on the recovery of the dead body, another first information report came to be lodged. On 18.9.2007, the parents of the deceased - Jayalakshmi, identified the clothing and other artifacts, recovered with the dead body, as belonging to their daughter. It is also relevant to indicate, that the aforesaid identification was affirmed by none other than the mother of the deceased, Vedammal - PW2. The mother identified her daughter from the photograph of the dead body.

4. The first needle of suspicion with reference to the appellant herein - Kadamanian @ Manikandan emerged from the statement of the investigating officer, Arumugam - PW20 dated 21.01.2008, affirming with Shanmugam - PW6, that the appellant had been seen close to the place of occurrence. Consequent upon the needle of suspicion having been pointed at the appellant, the appellant allegedly made an extra-judicial confession to

R.V.Alagurajan - PW12. The aforesaid extra-judicial confession can be extracted from his statement made by R.V. Alagurajan - PW12, to the police. A relevant portion thereof is being reproduced hereunder:

"...My name is Manikandan. I am also addressed as Keda Manian. Name of my wife is Durgadevi. I have one son and a daughter. My native place is Karanthai near Tanjavur. I have come to Bavani many years back and settled here. I am engaged in the profession of driving autorikshaw. From 1.9.2007 onwards, I am running share autorikshaw bearing registration number T.N. 38 Q 1311 Annamalai of Krishnampalayam taking on hire basis along with I.T. Mani. One Mubarak take the collection from me every day and deposit with the owner on two installments. Myself and I.T. Manian have the habit enjoying the prostitutes who approach bus stand area. On the last 8.9.07 when myself and I.T. Manian were operating share autorikshaw, one woman boarded the share autorikshaw from the bus stand. She did not get down till the last even after other passengers got down from the autorikshaw. When asked her name, she innocently told that her name as Jayalakshmi and she was from Komarapalayam. She also told that she did not have any money. When myself and Mani told her that we will take her to her village for which she agreed. On the way, myself and Mani planned to enjoy that woman. We came to share autorikshaw stand near bus stand and handed over the collection to Mubarak and left that place. When Mubarak enquired, Mani told that woman was his relative lady. Then on the way, I along went to a brancy shop in Nachippa street and consumed liquor. Then all three of us consumed food in the nearby Amutham mess. When we came out, it was slightly drizzling. We told that lady that we can leave after the rain stops and after passing through public toilet and took her to old municipal ward office. We engaged discussion with that lady and told her to compromise to our desire and asked her to lay with us. She refused and started to shout and then we took her to the land on the southern side. There, we tried to remove her blouse and saree, she shouted. That lady was a strong woman. We could not perform what we planned. I got annoyed and picked up a stick from nearby and inserted twice or thrice in her private part. Her shout mellowed down. Mani told that "let us leave". From not to find further identification of the lady, I smashed her face with a stone. Mani also picked up another stone and threw it on the face of that woman. We stripped that woman's saree and petty coat and threw them out. We came to know that she was dead. We thought that the nose pin worn by her would disclose her identity. I removed the nose pin and kept it with myself. Then both of us came and picked up the share autorikshaw and left it in the workshop of the owner at Moolapattarai. On the next day, I came and asked Mani whether police made any enquiry with him for which Mani replied in negative. I thought that Mubarak may suspect us and indirectly told Mani, if any one say anything, let us slit the throat. There after, we went to the vacant plot near the municipality Kalyana Mandapam and put the nose pin removed from that woman in a plastic bag and concealed it there and then for the next 5 days, I did not run the autorikshaw. Therefore, I went to jail in connection with two case in Bavani. I came

to know that police were in search me suspecting me. I was scarred and have to you and surrender myself."

5. After R.V. Alagurajan - PW12 had allegedly effectuated the surrender of the accused - appellant before the Inspector of Police, Erode town, he had also submitted a letter dated 21.01.2008, at the police station, which read as under:

"I, village administrative officer of 35B Erode town was in my office today at about 12.30 O'Clock in the afternoon with my assistant Manikkam, Keda Manian alias Manikandan, resident of door number 47 Sreenivasapuram, Bavani appeared before and told that he was involved in the murder of a woman on the last 8th September near the Erode bus stand and gave a statement and I am producing him and the statement given by him to you for further action."

6. Consequent upon the appellant, having been produced before the Inspector of Police, the accused-appellant Kadamanian @ Manikandan made a confessional statement on the same day, i.e., on 22.01.2008, to the Inspector of Police, Erode, inter alia affirming as under:

"... That woman was a healthy and strong and she pushed me and started shouting. We got annoyed as we could not do anything as we planned and therefore, I picked up a stick which was lying there and stabbed her private part three times with that stick. Her shouts mellowed down and she became semi conscious. I.T. Mani told to leave at that stage. I told him that it would be dangerous if we leave her like that and she would identify us and her identity should not be known to any one and therefore, I picked up the stone which was laying nearby and threw it on her face and assaulted her. Mani also picked up another stone and threw it on her face. We came to know that she was dead. There was no movement of her. We removed her saree, petty coat, beads from her neck and kept it nearby and we thought with the nose pic worn by her, her identity would be known easily and there removed the nose pin also. Then we came out. At that time, Shanmugam who words as Kalasi saw us. We went to share autorikshaw stand and picked up the share authorikshaw and went to Moolapattaraai and left the auto rikshaw in the work shop. I.T. Mani left for his house. On the next day, earlier morning, I boarded a bus from Moolapatrai reached home. On the next day after noon, I reached Erode share auto bus stand, as if I know nothing met Mani and asked him whether police made any enquiry. He answered in negative. I told him that some information may come out through Mubarak and if any information is leaked out through some one, we should slit throat of such person. However, we told him to assess the situation. I told him that I will not come for next five days and when I left there, I went to vacant plot on the south of municipality Kalyanamandapam and put the nose pin which I removed from that woman in a plastic bag and buried it near the transformer in that plot. Then I left for home. I was careful that no one should suspect me. In the meanwhile on one, there was a quarrel between me and my wife as regard to eating of mutton. Neighbor Gobi came and asked "why are you shouting? How can we live here? And a dispute arose between me and him and a case has been registered against me and I was in custody for 13 days. When I came out on bail, I

was arrested on a Rowdy case and sent me to custody. When I came out on bail, when I reached to share auto rikshaw stand for running auto rikshaw, police however came to know that myself and I.T.Mani have committed the murder of that woman and the police is in search of us. I thought, if police arrest me, they would beat me and harass and therefore, surrendered before town VAO today. He has sent me to you. At that time, I have given this statement. If I am taken, I would identify and produce the nose pin where I have concealed it."

7. It is the version of the prosecution, that based on the afore-stated statement made by the appellant, a nose-stud was recovered at the instance of the appellant on 22.01.2008. The fact, that the same belong to the deceased - Jayalakshmi was confirmed by various witnesses including PW2 - Vedammal, the mother of the deceased. After recording the statements of the prosecution witnesses, and also, the statement of the accused under Section 313 of the Criminal Procedure Code, the accused were afforded an opportunity to lead their evidence in defence. The accused availed off the above opportunity, and thereafter, the trial Court rendered its judgment dated 5.8.2009, convicting both the accused of the offences levelled against them.

8. Dissatisfied with the order passed by the trial Court dated 5.8.2009, both the appellants preferred Criminal Appeal No. 528 of 2009, before the High Court of Judicature at Madras (hereinafter referred to as the "High Court"). A Division Bench of the High Court, accepted the appeal preferred by accused no.2 - I.T. Manian @ Manikanda, and ordered his acquittal. The appeal preferred by the appellant herein was dismissed. Although, the sentences awarded by the trial Court, under various provisions of the IPC, were by and large maintained, the sentence awarded to the appellant (by the trial Court) under Section 376 of the Indian Penal Code was reduced from 10 years to 7 years. Insofar as the other sentences are concerned, the appellant was ordered to suffer imprisonment for three years for the offence under Section 201 of the Indian Penal Code, he was convicted under Section 302 of the Indian Penal Code to suffer life imprisonment, and for the offence under Section 404 of the Indian Penal Code, he was sentenced to suffer imprisonment for three years.

9. During the course of hearing, learned counsel for the appellant raised various contentions. First and foremost, it was sought to be canvassed, that there was no direct or ocular evidence recorded at the behest of the prosecution, so as to render clear and unambiguous culpability of the appellant. It was pointed out, that the conviction of the appellant by the trial Court, as also, by the High Court, was based only on circumstantial evidence.

10. The most relevant circumstantial evidence taken into consideration by the High Court, according to learned counsel, was the extra-judicial confession made by the appellant, to R.V. Alagurajan - PW12 on 22.1.2008. The details of the aforesaid confessional statement have already been recorded by us hereinabove. It was the submission of the learned counsel for the appellant, that R.V. Alagurajan - PW12 was a stark stranger to the appellant, and therefore, there was no occasion for the appellant, to have made a confessional statement to him. It was submitted, that in any case, keeping in mind the fact, that the deceased -

Jayalakshmi had gone missing on 6.9.2007, there was no justification for the accused - appellant to have made a confessional statement months thereafter, on 22.1.2008.

11. We would have ordinarily dealt with the instant submission by itself. However, during the course of hearing, the same was sought to be linked with another submission advanced at the hands of the learned counsel for the appellant, namely, the recovery of the nose-stud at the behest of the confessional statement made by the accused -appellant to the Inspector Arumugam - PW20 on 22.1.2008. It was the contention of the learned counsel for the appellant, that the nose-stud recovered at the behest of the appellant, weighed only 0.215 mg. It was pointed out, that there are thousands of such nose-pins, and it was wholly improper for the prosecution to rely on the trumped up recovery of a nose-pin. It was submitted, that it was the case of the prosecution itself, that the nose-pin in question was of the value of just about Rs.450/-. The more vigorous submission with reference to the nose-pin was, that the case of the prosecution, that the appellant herein, as also, the co-accused had badly mutilated the face of the deceased - Jayalakshmi, by crushing her face with stones, and as such, there was no question of the recovery of the nose-pin from a mutilated face. It was submitted, that if the accused had taken the nose-pin after mutilating the face of the accused, the nose-pin ought to have had fragments of skin, bone and blood. However, the nose-pin recovered was clean and without any human tissue. It was also submitted, that the nose-pin, which was allegedly recovered at the instance of the appellant, was perfectly in-tact. In this behalf, it was pointed out, that if the face of the deceased - Jayalakshmi was crushed with stones, the nose-pin could not be expected to have retained its original shape.

12. We have given our thoughtful consideration to the two submissions advanced at the hands of the learned counsel for the appellant. Insofar as the extra-judicial confession is concerned, it is necessary to emphasize, that the non-recording of the extra-judicial confession over a span of time, in the facts of the present case, was inconsequential.

13. We say so, because the appellant was not a suspect till 21.1.2008. The appellant feared his arrest with reference to the allegations pertaining to the deceased - Jayalakshmi, only when the investigating officer, Arumugam - PW20 affirmed with Shanmugam - PW6 on 21.01.2008, that the appellant had been seen, close to the place of occurrence. It is immediately thereafter, and on the immediately following day, that the appellant made an extra-judicial confession to R.V. Alagurajan - PW12. It is also not a matter of dispute, that R.V. Alagurajan - PW12 was the then Village Administrative Officer. It is obvious, that the aforesaid extra-judicial confession was made as is apparent from the statement of the appellant (extracted hereinabove) to save himself from any adverse, physical handling by the investigating authorities. Undoubtedly, R.V. Alagurajan - PW12, the Village Administrative Officer, effectuated the aforesaid object, by accompanying the appellant to the police station, and ensuring his arrest at the hands of Arumugam - PW20.

14. Insofar as the submissions advanced at the hands of the learned counsel for the appellant with reference to the nose-pin are concerned, we are of the view, that none of the contentions advanced on behalf of the appellant, can be accepted as a valid justification, for exculpating the appellant from the charges levelled against him. In this behalf, it would be relevant to

mention, that a missing person's report was registered by the father of the deceased - P. Matheswaran, on 7.9.2007. In the missing person's report, it was clearly mentioned, that the deceased was wearing a nose-pin when she had gone missing. The reason for indicating, that the deceased was wearing a nose-pin, was with the clear purpose of aiding the identification of his missing daughter - Jayalakshmi. This was obviously for the reason, that the deceased - Jayalakshmi, was mentally unstable, and would not have been in a position to express her identification, or the identification of her parents, or the place of her residence, by herself. In the recovery mahazar dated 22.1.2008, the recovered nose-pin was depicted as being imbedded with four white stones. It is therefore apparent, that the nose-pin worn by the deceased - Jayalakshmi when she had gone missing, was not any ordinary unidentifiable artifact, but was clearly different from the usual nose-studs. Not only that, the photograph of the deceased submitted along with the missing person's report dated 7.9.2007 shows a clear picture of the nose-pin, and therefore, to say that the involvement of the accused on the basis of the nose-pin, was improper, is not acceptable. Insofar as the absence of blood, skin tissue and bone tissue on the nose-pin is concerned, it is clear to us, that the submissions were made by the learned counsel, without having viewed the photograph of the deceased, as is available on the record of the trial Court. As already noticed hereinabove, the nose-pin was worn by the deceased Jayalakshmi, in the photograph attached to the missing person's report dated 7.9.2007. The same was missing from the photograph of the deceased, after her body was recovered. The nose itself was not mutilated, and was in-tact. No injury whatsoever was found on the nose, in the photograph of the deceased. It was therefore wholly unjustified, for the learned counsel for the appellant to have raised the submission, that the absence of any human tissue on the nose-pin, would lead to the inference, that the nose-pin in question, was not the one belonging to the deceased. For the reasons recorded hereinabove, we find no merit in the instant contentions, advanced on behalf of the appellant. Insofar as the veracity of the extra judicial confession made by the appellant is concerned, it would be relevant to mention that, learned counsel, during the course of hearing, placed reliance on a judgment rendered by this Court in *Kala @ Chandrakala vs. State through Inspector of Police* (Criminal Appeal No. 1791 of 2010, decided on 12.08.2016), wherein this Court had observed as under:

“6. Firstly, we will examine whether the extra-judicial confession which is a weak kind of evidence, inspire the confidence. Susheela, P.W.4 has stated that Murugesan was married to the appellant 14 years before the incident. She came in search of his brother Murugesan to the house of the deceased. Murugesan has told her on 12.5.2005 that appellant had threatened to kill him as he was ^habitual of consuming alcohol. When she did not receive any telephone call for 15 days from the deceased, she went to his village. On enquiry she was informed by the appellant that she, her nephew Prakasam and father murdered the deceased and threw his body under the bridge. Susheela, P.W.4 further stated that the appellant touched her legs and stated that she would give properties of her father to two children and that she should not inform the police. Thereafter, P.W.4 went to the police station on the same day and lodged the complaint - Ex.P2. The police showed her the photograph, shirt and slippers and asked her to identify the same. She identified them to be of her brother.

She has further stated to have gone to police station after 5 days with photograph of deceased. In the cross-examination, she has also stated that she had signed the agreement for sale of land executed by the accused. It is apparent that accused was not having good relationship with Susheela, PW.4. Making confession to such an inimical person is most unlikely. When the witness had gone in search of the deceased to the house of the accused it is most unlikely that the confessional statement would be made to her readily. It is not that the appellant had gone to the house of P.W.4 to make the confession. On the other hand query was made by the daughter of the deceased to Susheela, P.W.4 as to the whereabouts of the deceased, meaning thereby the whereabouts of the deceased were not known even to his daughter. In case the deceased had been killed in the house, perhaps the daughter would have known about the offence having been committed by the accused.

7. In *Sahadevan and Anr. v. State of Tamil Nadu*¹ it has been observed that extra-judicial confession is weak piece of evidence. Before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. In *Balwinder Singh v. State of Punjab*² it has been observed that extra-judicial confession requires great deal of care and caution before acceptance. There should be no suspicious circumstances surrounding it. In *Pakkirisamy v. State of Tamil Nadu*³ it has been observed that there has to be independent corroboration for placing any reliance upon extra-judicial confession. In *Kavita v. State of Tamil Nadu*⁴ it has been observed that reliability of the same depends upon the veracity of the witnesses to whom it is made. Similar view has been expressed in *State of Rajasthan v. Raja Ram*⁶ in which this Court has further observed that witness must be unbiased and not even remotely inimical to the accused. In *Aloke Nath Dutta v. State of West Bengal*⁵ it has been observed that the main features of confession are required to be verified. In *Sansar Chand v. State of Rajasthan*⁷ it has been observed that extra-judicial confession should be corroborated by some other material on record. In *Rameshbhai Chandubhai Rathod v. State of Gujarat*⁸ it has been observed that in the case of retracted confession it is unsafe for the Court to rely on it. In *Vijay Shankar v. State of Haryana*⁹ this Court has followed the decision in *Sahadevan (supra)*."

15. Based on the aforesaid judgment rendered by this Court, it was submitted, that the extra-judicial confession being a weak piece of evidence, should not have been relied upon, for determining the culpability of the appellant.

16. Having given our thoughtful consideration on the above contention, we are of the view, that the judgment relied upon by learned counsel, is wholly inapplicable in the facts and circumstances of this case, for two distinguishing features in the present case, namely, that the extra judicial confession in the instant case was made to the Village Administrative Officer R.V. Alagurajan - PW12, who was totally unbiased and unconnected with the controversy in hand. He could also not to be stated to be inimical to the appellant. He is not shown to have any relationship with either the complainant or the accused. Moreover, insofar as the extra judicial confession made in the judgment relied upon by the appellant is concerned, the same had been made by the accused, to the sister of the deceased, which by

itself made the extra judicial confession extremely doubtful. We are therefore not impressed with the submission advanced by the learned counsel for the appellant, based on the cited judgment.

17. The next contention advanced at the hands of the learned counsel for the appellant was, on the third circumstantial evidence taking into consideration, namely, the last seen evidence. For establishing the above circumstance, the prosecution had relied upon two witnesses, Shanmugam - PW6, and Mubarak - PW7. In the statements recorded by the aforesaid two witnesses under Section 161 of the Criminal Procedure Code, they had stated, that they had seen the appellant and the co-accused in the company of the deceased - Jayalakshmi. While recording their statements before the trial Court, Shanmugam - PW6 and Mubarak - PW7 resiled from the version indicated by them, to the investigating officer. It is therefore apparent, that no last seen evidence, could be substantiated by the prosecution, during the course of the trial of the appellant. We are of the view, that the deposition at the hands of Shanmugam - PW6 and Mubarak - PW7, can be described as a matter of improper handling of the case, inasmuch as, both Shanmugam - PW6 and Mubarak - PW7 had also recorded their statements under Section 164 of the Criminal Procedure Code, affirming, that they had seen the appellant and the co-accused in the company of the deceased - Jayalakshmi. However, since the statement of the two prosecution witnesses recorded under Sections 161 and 164 of the Criminal Procedure Code, was not put to them, after they were declared hostile, and were subjected to cross-examination at the behest of the prosecution, we have no alternative, but to overlook the last seen evidence sought to be projected by the prosecution. In the above view of the matter, it was the contention of the learned counsel for the appellant, that there was no material evidence available on the record of the case, to return a clear finding of guilt, against the appellant. It was submitted, that the circumstantial evidence projected through the prosecution witnesses, did not complete the chain of circumstances, as would establish the guilt of the appellant.

18. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the appellant. As noticed hereinabove, there was a clear and categorical extra-judicial confession made by the appellant to R.V. Alagurajan - PW12 on 22.1.2008. During the course of recording his testimony, R.V. Alagurajan - PW12 was subjected to vigorous cross-examination. His testimony however remained unshaken. Resultantly, the trial Court, as also, the High Court, concluded that the extra-judicial confession was genuine. We endorse the above determination at the hands of the trial Court and the High Court. Consequent upon the accused-appellant's extra-judicial confession, the appellant was taken to the police station by R.V. Alagurajan - PW12, and produced before Inspector Arumugam - PW20. It is therefore apparent, that the arrest of the appellant at the behest of R.V. Alagurajan - PW12, has also been clearly established. The next chain in the circumstantial evidence projected at the hands of the prosecution, was the recovery of the nose-pin on 22.1.2008, based on the statement of the appellant, to Inspector Arumugam - PW20. The afore-stated nose-pin has been identified by the members of the family of the deceased, as the one that was actually worn by the deceased, when she went missing. Since the nose-pin was recovered at the instance of the appellant, from a remote place under an electric

transformer, no one but the appellant could have been aware of its location. Its recovery was therefore sufficient, along with the other evidence referred to above, to clearly implicate the appellant. It is also necessary for us to mention, that there is yet another aspect of the matter, which furthers the cause of the prosecution, namely, the statement of M.Abdul Khader - PW8. In this behalf, it would be relevant to mention, that the appellant used to hire a share-autorikshaw, for earning his livelihood. The aforesaid autorikshaw was hired from the garrage of Annamalai - PW9. M.Abdul Khader - PW8 was engaged as an accountant at the garrage of Annamalai - PW9. It was pointed out in the deposition of M.Abdul Khader - PW8, that on a daily basis the share-autorikshaw hired by the accused-appellant and the co-accused used to be returned to the garrage of Annamalai - PW9 between 8.30 p.m to 9.30 p.m.. However, on the date of occurrence, i.e., the relevant date when the alleged crime was committed, the share-autorikshaw was returned on the following day, at 1.30 a.m. The case of the prosecution is, that the autorikshaw was used by the appellant and the co-accused in commission of the crime. It was imperative for the appellant to have expressly indicated the reasons and justification for not returning the autorikshaw to the garrage of Annamalai - PW9 between 8.30 p.m. to 9.30 p.m., on the relevant date. Not having done so, by itself, is a cause of suspicion, specially when there is other material evidence, projected by the prosecution, to demonstrate the involvement of the appellant, in the commission of the crime. We are of the view, that the aforesaid evidence recorded by the prosecution was sufficient, even in the absence of last seen evidence, to return a finding of guilt against the appellant. It is imperative for us to record, that in addition to the afore-stated submissions advanced at the hands of the learned counsel for the appellant, learned counsel had also contended, that the co-accused was acquitted by the High Court, and that, his acquittal was based on the same evidence, produced through the same witnesses. It was contended, that it was improper and unjustified, for the High Court, to have convicted the appellant, and acquitted the co-accused, on the same evidence. We find no justification in the instant contention advanced at the hands of the learned counsel. We have already recorded hereinabove, that the extra judicial confession made to R.V. Alagurajan - PW12, was by the appellant herein, and not by the co-accused. We have also recorded hereinabove, that the recovery of the nose-pin found missing from the nose of the deceased, was at the instance of the appellant, and not at the hands of the co-accused. Therefore, the case of the co-accused, was on a clearly different footing, and there was sufficient justification for the High Court, to have taken a different view,SW in the case of the co-accused.

19. For the reasons recorded hereinabove, we find no justification whatsoever to interfere with the conviction and sentence awarded to the appellant, by the High Court.

20. The instant appeal is accordingly dismissed.

¹(2012) 6 SCC 0403

²1995 Supp (4) SCC 0259

³(1997) 8 SCC 0158

⁴(1998) 6 SCC 0108

⁵(2007) 12 SCC 0230

⁶(2003) 8 SCC 0180

⁷(2010) 10 SCC 0604

⁸(2009) 5 SCC 0740
⁹(2015)12 SCC 0644