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Crl.A.Nos.260 & 274 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.Nos.260 & 274 of 2020

- | | |
|----------------------------|---|
| 1. Krishnamurthy | .. Appellant in Crl.A.No.260/2020
/ Accused No.1 |
| 2. Sasikumar @ Varadarajan | .. Appellant in Crl.A.No.274/2020
/ Accused No.2 |

v.

State by the Inspector of Police,
Velur Police Station,
Namakkal District.

.. Respondent in both Crl.As.

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in connection with S.C.No.63 of 2017 on the file of the learned Principal Sessions Judge, Namakkal and set aside the conviction and sentence imposed by the learned Principal Sessions Judge, Namakkal in S.C.No.63 of 2017 dated 04.03.2020.

For Appellant

in Crl.A.No.260/2020	: Mr.Philip Ravindran Jesudass
in Crl.A.No.274/2020	: Mr.A.Padmanaban



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For Respondent
in both Crl.As.

: Mr.A.Gokulakrishnan
Additional Public Prosecutor

COMMON JUDGMENT

(Order of the Court was made by SUNDER MOHAN,J.)

These appeals have been filed by Accused Nos.1 and 2, challenging the conviction and sentence imposed upon them vide judgment dated 04.03.2020 in S.C.No.63/2017 on the file of the learned Principal District Judge, Namakkal.

2.(i) It is the case of the prosecution that A1 is the grandson of the deceased and A2 is the friend of A1; that P.W.1 is the mother of A1 and also the daughter-in-law of the deceased; that the deceased owned three acres of land; that A1 was aggrieved by the fact that the deceased settled one acre in the name of P.W.1; that no property was settled in his name and was demanding from the deceased to settle the remaining two acres in his favour; that in spite of repeated requests, the deceased was not inclined to part with the property and hence, enraged by the conduct of the deceased,



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A1 and A2 decided to do away with the deceased and pursuant to their common intention, they went to the house of the deceased on 12.04.2013 at about 1.00 p.m and they saw the deceased sleeping on the cot in the verandah of the house and caused his death by tying a rope around his neck and also hitting his head with the stone (குழவிக்கல்) and thereafter, in order to make it appear that the murder was committed pursuant to a burglary in the house, they stole some cash and silver vessels.

(ii). It is the further case of the prosecution that P.W.1, who was living in the same house had gone out of the house to do her regular construction work, came back in the evening; found that her father-in-law/deceased was lying dead in a pool of blood, the almirahs were broke open and the cash and silver items were missing; that she went to the police station and gave a report to the Sub Inspector of Police which was reduced into writing and a case was registered in Crime No.164 of 2013 for the offences under Sections 302, 454 and 380 of IPC; that the complaint was marked as Ex.P.1 and the FIR was marked as Ex.P.25.



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(iii) P.W.17/Investigating Officer after receiving the report went to the scene of occurrence and prepared observation mahazar. Then he seized the bloodstained earth, the earth which was not bloodstained and the bloodstained pillow cover found on the cot where the deceased was lying. He also seized the knife from the scene of occurrence and held an inquest and the body was sent to post-mortem. P.W.14, the Doctor attached to Paramathi Vellore Government Hospital, conducted postmortem and found the following injuries on the deceased.

General Examination: 1.Dried blood stains present all over the face, neck, upper chest, right shoulder region 2. Left lower limb: past below knee amputation.

External Injuries: 1. Incised wound 10 cm X 3 cm X 2cm extending from 4 cm below the body of left mandible in a slightly oblique direction to about 5 cm below the body of right mandible. 2. Incised wound over right ear lobule splitting it into two halves. 3. A punctured wound 1 cm X 1cm X 0.5 cm over right sub mandibular region. 4. Contusion over right side of face present 5 cm X 6 cm. 5. Right side of face is compressed 6. Contusion over right side clavicle.

O/D: 1.Hyoid bone broken.

Trachea: Anterior surface cut injury exposing the cavity of trachea, cut injury involving major vessels of the neck and involving the muscles of the neck.

Face: Fractures of right mandible, right maxilla and right Zygomatic



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bone present.

Skull: A 5cm x 5cm x 0.5 cm subepicriosteal henna bone over the left parietal region. Skull intact. Brain pale. Both clavicles-intact.

Thorax: Ribs and sternum intact Lungs: Both lungs pale.

Heart: Pale, chambers empty.

Abdomen: Stomach: pale contain about 100 ml of undigested food particles.

Liver: pale,

Spleen: pale.

Kidneys: pale.

Intestines: pale.

All over organs : pale

Bladder: empty.

The following organs are preserved. 1. Stomach and its contents 2. intestines 3. sample of liver 4. sample of kidney 5. preservative – nail 6. Blood.

Thereafter, the Investigating Officer [PW17] examined the other witnesses.

(iv) It is the case of the prosecution that on 14.04.2013, the first accused went to the house of P.W.8-Village Administrative Officer and gave an extra judicial confession. On the basis of the said extra judicial confession, PW8 prepared a special report and produced the accused before the Investigating officer. Thereafter, on examination of other witnesses and



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collecting other documents, the Investigating officer-PW17 filed a final report, before the learned Judicial Magistrate, Paramathy, for offence u/s.449, 302 and 302 r/w 34 IPC against the appellants.

(v) On appearance of the appellants, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.63/2017 and was made over to the Principal Sessions Court, Namakkal, for trial. The trial Court framed charge u/s.449 and 302 IPC as against the 1st appellant and u/s.449 and 302 IPC r/w 34 IPC as against the 2nd appellant and when questioned, the appellants pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 17 witnesses and marked 37 exhibits and 18 material objects. When the appellants were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the appellants nor any document marked.



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(vii) The Trial Court based on the extra judicial confession given before the Village Administrative Officer marked as Ex.P.8 and the recoveries made pursuant to the confession given before the Police had convicted the appellants/accused and sentenced them as follows:

Sl.No.	Offence under Section	Sentence imposed
A1	302 IPC	To undergo life imprisonment and pay fine of Rs.10,000/- in default to undergo Simple Imprisonment for four years.
A2	302 IPC r/w 34 IPC	To undergo life imprisonment and pay fine of Rs.10,000/- in default to undergo Simple Imprisonment for four years.

Hence, the accused have preferred these two appeals challenging the above conviction and sentence.

3. Heard, Mr.Philip Ravindra Jesudass, learned counsel for the appellant in Crl.A.No.260 of 2020 and Mr.A.Padmanabhan, learned counsel for the appellant in Crl.A.No.274 of 2020 and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.



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4. The primary contention of the learned counsel for the appellants is that:

(a) the entire case is based on circumstantial evidence which has not been conclusively established by the prosecution.

(b) The evidence of P.W.8-VAO, before whom the extra judicial confession was made by the A1 shows that his evidence is contrary to the confession statement itself and that it is a weak piece of evidence as held by the Hon'ble Supreme Court in a number of judgments, including the decision in *Nikhil Chandra Mondal Vs. State of West Bengal* reported in *2023 Live Law (SC) 171*.

(c). Though the bloodstained objects were recovered on the confession of the accused, the bloodstains were not proved to be that of the deceased. Therefore, the learned counsel appearing for the appellants submitted that the recovery of articles cannot be taken as a circumstance to convict the appellants.



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5. The learned Additional Public Prosecutor however meticulously pointed out to the various portions of evidence and submitted that the circumstances have been conclusively established and the prosecution has proved its case beyond reasonable doubt.

6. This Court has examined and compared the evidence of P.W.8 and the extra judicial confession said to have been given by the first accused marked as Ex.P2. In the extra judicial confession, which is marked as Ex.P2, it is stated as follows:

"என் தாத்தா மீது ஆத்திரமுற்று 12.04.2013 ன் தேதி பகல் 1.30 மணி சுமாருக்கு நானும் எனது நண்பர் சசிசுமாரும் சேர்ந்து எங்கள் வீட்டு வராண்டாவில் கட்டிலில் படுத்து தூங்கிக்கொண்டு இருந்த எனது தாத்தா ராமசாமியை கையிற்றால் கழுத்தை இறுக்கியும் கத்தியால் கழுத்தை அறுத்தும் ஆட்டுக்கல்லால் எனது தாத்தாவை அடித்துக்கொலைசெய்துவிட்டோம்."

Whereas, in the evidence, PW8 has attributed specific overt acts to each of the accused and the relevant portion is extracted hereunder.

"....ஆஜர் எதிரி கிருஷ்ணமூர்த்தியின் வீட்டிற்கு வெளியே தாழ்வாரத்தில் கட்டிலில் தூங்கிக்கொண்டிருந்த ஆஜர் எதிரி கிருஷ்ணமூர்த்தியின் தாத்தாவின் கழுத்தில்



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சசிசுமார் கயிற்றை போட்டு இறுக்கியதாகவும், ஆஜர் எதிரி
கிருஷ்ணமூர்த்தி அவருடைய தாத்தாவின் கழுத்தை
கத்தியால் அறுத்ததாகவும், அவ்வாறு அறுத்தும் ஆஜர்
எதிரி கிருஷ்ணமூர்த்தியின் தாத்தா இறக்காததால் அருகில்
கிடந்து ஆட்டாங்கல்லில் இருந்த குழவிக்கல்லை ஆஜர்
எதிரி கிருஷ்ணமூர்த்தி எடுத்து ஆஜர் எதிரி
கிருஷ்ணமூர்த்தியின் தாத்தாவின் வலது பக்க கண்ணத்தில்
அடித்ததாகவும்,,,,,"

Thus, it is seen from Ex.P2-extra judicial confession said to have been given by the 1st accused, both accused had joined together and committed the acts of strangulating as well as stabbing the deceased. However, in the evidence-PW8 would state that A2 had strangulated the deceased with the rope and A1 had used knife to cut the neck of the deceased and slapped the deceased on the chin with the grinding stone. Thus, the Village Administrative Officer in his deposition has attributed specific overt acts to each of the accused, which is not found in the alleged extra judicial confession. This is a material discrepancy and therefore, it is unsafe to rely on his testimony. That apart, PW8, the Village Administrative Officer is a total stranger to the 1st appellant. Thus, in the facts of the case, apart from the discrepancy in the evidence of PW8, this Court finds that it is highly doubtful that the 1st appellant had voluntarily appeared before PW8 and



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made the confession.

7. The Hon'ble Supreme Court in *Nikhil Chandra Mondal's case* [cited supra], has observed that extra judicial confession is a weak piece of evidence, especially, when it is surrounded by suspicious circumstances and at paragraph No.15, has held as follows:

"15. It is settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence. Reliance in this respect could be placed on the judgment of this Court in the case of Sahadevan and another V.State of Tamil Nadu. This Court in the said case, after referring to various earlier judgments on the point, observed thus:

“16.Upon proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession and admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the



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prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

(i) The extra – judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

In the present case, this Court had already observed that the evidence of PW.8, is not reliable and hence the extra judicial confession said to be given to PW8 cannot be taken as a circumstance.

8. The next circumstance relied upon by the prosecution is the recoveries made on the confession of the accused. The following items are said to have been recovered on the confession of A1 given to the police. The



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admissible portion of his confession was marked as Ex.P7

1. ரத்தம் படிந்த ஆட்டுக்கல் ஒன்று அதன் எடை சுமார் 10 கிலோ, அதன் நீளம் சுமார் 30 செ.மீ
2. ரத்தம் படிந்த முழுக்கையுடன் கூடிய புளுகலரில் கருப்பு கோடு போட்ட பாலிஸ்டர் சட்டை ஒன்று அதன் முன் பக்க வலது புறம் நெஞ்சு பகுதியில் மஞ்சள் மற்றும் வெள்ளை கலரில் பூ டிசைன் உள்ளது.
3. ரத்தம் படிந்த காட்டன் மீட்டப்பட்ட லுங்கி அதில் கருப்பு மற்றும் காக்கி கலர்களில் கட்டம் போட்ட புளுகலர் லுங்கி ஒன்று.

The defence have denied the recovery of incriminating articles as could be seen from the suggestions made in the cross examination of PW17. Be that as it may. Though it is seen that bloodstains were found in the articles, the prosecution was unable to link the bloodstains to that of the deceased. In this regard, it is worthwhile to refer to the following decisions of the Hon'ble Supreme Court relied upon by the learned counsel for the appellants.

(a) In the *Sattatiya's case* (cited supra), at paragraph No.26, the Hon'ble Supreme Court has held as follows:

“26.....The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional



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Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder.”

(b) In ***Raghunath's case*** (cited supra), at paragraph No.8, the Hon'ble Supreme Court in has held as follows.

“8. There is no evidence on record to show that the bloodstain sent to FSL bears a certificate that the blood is human blood and it belongs to a particular group which is the same blood group of the deceased Kundan Lal. Therefore, the bloodstain is of a human blood is not conclusive evidence that it belongs to the blood group of deceased Kundan Lal.”

9. Apart from the extra judicial confession and the recoveries, it is seen that there is no other circumstance to link the accused to the crime. P.W.1 to P.W.7, P.W.9 and P.W.10 to P.W.12, turned hostile. Except for the official witnesses, all the witnesses examined by the prosecution to prove the other circumstances have turned hostile. The conviction cannot be based only on the extra judicial confession, the voluntariness and the truthfulness of which is highly doubtful in the facts of the case. As observed earlier, the recoveries cannot be a circumstance against the



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accused. Therefore, this Court is of the view that the judgment of conviction rendered by the Trial Court cannot be sustained and is liable to be set aside.

10. It is represented by the learned counsel for the appellants that the appellant in Crl.A.No.260 of 2020/A1 is in jail and the appellant in Crl.A.No.274 of 2020, was granted suspension of sentence vide order of this Court dated 05.11.2020 made in Crl.M.P.No.4441 of 2020 and has already been enlarged on bail.

11. In the result, these two Criminal Appeals are allowed. Both the appellants are acquitted of all charges levelled against them. The appellant in Crl.A.No.260 of 2020 / A1, is directed to be released, forthwith. The conviction and sentence imposed by the learned Principal Sessions Judge, Namakkal, vide judgment in S.C.No.63 of 2017 dated 04.03.2020, are set aside. Fine amount, if any, paid by the appellants shall be refunded. Bail bond executed shall stand discharged.

(S.S.S.R.,J.) (S.M.,J.)
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Index : yes/no

Neutral citation : yes/no

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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

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To

1. The Principal Sessions Judge,
Namakkal.

2. The Inspector of Police,
Velur Police Station,
Namakkal District.

3. The Superintendent,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras

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