



Crl. Appeal No. 5 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.06.2023
Pronounced on	30.06.2023

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Crl. Appeal No. 5 of 2019

Yuvaraj .. Appellant
Vs

State: Inspector of Police,
Elachipalayam Police Station,
Namakkal District. .. Respondent
Cr.No.62/2013

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment
passed in S.C. No.27 of 2016 dated 06.12.2018 on the file of the Principal
Sessions Judge, Namakkal.

For Appellant .. Mr.A.Padmanaban
For Respondent .. Mr.E.Raj Thilak,
Addl. Public Prosecutor



Crl. Appeal No. 5 of 2019

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JUDGMENT

K.GOVINDARAJAN THILAKAVADI, J.

The Appellant/Accused has preferred the instant criminal Appeal (as an aggrieved person) as against the judgment dated 06.12.2018 in S.C.No.27 of 2016 passed by the learned Principal Session Judge, Namakkal.

Facts:

2.The case of the prosecution is that the Appellant/Accused is an habitual drunkard and frequently developed quarrel with his father. He was in the habit of demanding money from his father for doing Rig business. When the same was refused by the deceased father, the Appellant/Accused uttered, “நீ செத்து தொலைந்திருந்தால் நான் நிம்மதியாக இருந்திருப்பேன்.” and decided to do away with him. On 01.05.2013/02.05.2013 in between 11.00 p.m and 01.00 a.m the Appellant/Accused took his father and inflicted a cut injury with koduval on the head of his father, who succumbed to the injuries sustained by him. Hence, the Appellant/Accused was charged for the offence



CrI. Appeal No. 5 of 2019

punishable under Section 302 IPC. The prosecution has examined 11 witnesses and marked Exs.P.1 to P.35. On the side of the Accused neither oral nor documentary evidence was let in.

3. The learned Principal Sessions Judge, Namakkal, after perusing the oral and documentary evidence on record and the arguments advanced on both sides passed the impugned Judgment in S.C.No.27 of 2016 on 06.12.2018 in which he had observed as follows:

"Taking into consideration of all the materials on record, this court is of the view the intention of the accused to do away with the deceased and putting into action proves that he has decided to cause death of the deceased and hence, prosecution proved that, accused committed murder of Kandasamy, with intention of causing death beyond reasonable doubt and the accused is liable to be punished u/s 302 IPC.

Taking into consideration of all the evidences,



CrI. Appeal No. 5 of 2019

documents and other materials on record, it is held as, the prosecution proved that the accused committed murder of Kandasamy on 01.05.2013 within the Elachipalayam PS jurisdiction beyond reasonable doubt and hence, the accused Yuvaraj is liable to be punished u/s 302 IPC.

In the result, the accused Yuvaraj committed murder, and taking into consideration of the same, accused is convicted u/s 302 IPC and sentenced to undergo Imprisonment for Life and imposed fine sum of Rs.10,000/- (Rupees Ten Thousand only) in default of payment of fine to undergo simple imprisonment for 4 years.

Since he is found guilty, he is not entitled to any compensation for his arrest and detention, no compensation is passed u/s 358 of Cr.P.C. Since the victim PW 1 has come forward with truth, he is entitled for compensation u/s 357(a) IPC and he can claim the Victim Compensation before the District Legal Services Authority, Namakkal by filing application u/s 357(a) and 357(A) IPC.



CrI. Appeal No. 5 of 2019

If any remission is given to him by the State Government, in that case, the accused is entitled to set off the period of imprisonment already undergone Section u/s 428 Cr.P.C."

4. Aggrieved by this, the present criminal appeal is preferred by the appellant/Accused.

5.The learned counsel for Appellant/Accused urges before this Court the following contentions,

(i) The prime witnesses P.W.1 to P.W.5 turned hostile. They did not support the case of the prosecution.

(ii)The conviction of the Appellant/Accused was based on the 'Extra Judicial Confession' (Ex.P.9) alleged to have been given by the Appellant/Accused to the Village Administrative Officer examined as P.W.6. There was no acquaintance between the accused and the Village Administrative Officer for the Appellant/Accused to repose confidence in



CrI. Appeal No. 5 of 2019

him and give the alleged confession statement. The alleged 'Extra Judicial Confession' is surrounded with suspicious circumstances and inherent improbabilities.

(iii) The trial Court failed to take into consideration the material discrepancy between the confessional statement before PW6/VAO and the disclosure statement before PW11/IO. The confession statement, (Ex.P.9) alleged to have been given by the accused to the Village Administrative Officer on 04.05.2013, reads as follows:

“04.05.2013 ம் தேதி மாலை 05.00 மணிக்கு
பெரியமணலி கிராம நிர்வாக அலுவலராகிய நான்
பெரியமணலி கிராம நிர்வாக அலுவலகத்தில் இருந்தபோது,
பெரியமணலி கிராமம் குஞ்சாம்பாளையம், செங்காட்டில்
குடியிருக்கும், கந்தசாமி மகன் யுவராஜ் என்பவர் ஆஜராகி
சொல்லிக்கொண்ட வாக்குமூலம் பின்வருமாறு
நான் பெரியமணலி கிராமம், குஞ்சாம்பாளையம்,
செங்காட்டில், எனது பெற்றோருடன் குடியிருந்து வருகிறேன்.



Crl. Appeal No. 5 of 2019

என்னுடன் பிறந்தவர்கள், சம்பூரனம், கோகிலவாணி என்ற இரண்டு அக்காள் உள்ளார்கள். அவர்களுக்கு திருமணமாகி தனது குடும்பத்துடன் இருந்து வருகிறார்கள். நான் 10ம் வகுப்பு வரை படித்துவிட்ட, EEE Diploma ஒரு வருடம் படித்தேன். பின்பு பிடிக்காததால் நின்று விட்டேன். அதன்பிறகு எனது சின்ன அக்காள் கோகிலவாணியின் கணவர் வடிவேல் என்பவர், நடத்திவரும் ரிக் வண்டியில் சுமார் 2 ஆண்டுகளாக உதவி மேனேஜராக வேலை பார்த்தேன், அதிலும் எனக்கு விருப்பம் இல்லாததால், சுமார் நான்கு மாதங்களாக வேலைக்கு போகாமல் வீட்டில் இருந்தேன். அப்போது எனக்கு மதுகுடிபழக்கமும், புகை பிடிக்கும் பழக்கமும் இருந்ததால் வேலைக்கு போகாமல் வீட்டில் இருந்ததை வைத்து எனது தகப்பனார் என்னை ரொம்பவும் கேவலமாக திட்டினார். அதனால்தான், நான் எனது தகப்பனார் பெயரில் இருக்கும் 5 ஏக்கர் நிலத்தில் கொஞ்சம் நிலத்தை விற்று பணத்தை கொடுத்தால் ரிக் தொழில் செய்து பிழைத்துக்கொள்வேன் என்று எனது அப்பாவிடம் கேட்டேன். அதற்கு அவர் முதலில் நீ விவசாயத்தை கவனி பிறகு பார்க்கலாம் என்று சொல்லி விட்டார். கிணற்றில் தண்ணீர் இல்லாமல் எப்படி விவசாயம் செய்வது என



CrI. Appeal No. 5 of 2019

கேட்டதற்கு என்னை கண்டபடி திட்டி விட்டார். பின்பு அதையெல்லாம் நான் பார்த்துக்கொள்கிறேன். நீ விவசாயத்தை கவனி என்று சொன்னதால் எங்களுக்குள் அடிக்கடி தகராறு ஏற்பட்டு, என் அப்பாவின் மீது எனக்கு வெறுப்பு வந்தது. எனவே அவரை தீர்த்து கட்டிவிடலாம் என்று முடிவு செய்தேன். இந்த விவரத்தை எங்களது பக்கத்து வீட்டு குப்புசாமியிடம் நான் சொல்ல அவர் என்னை சமாதானப்படுத்தினார். இருப்பினும் என் அப்பாவின் மீதுள்ள வெறுப்பும், ஆத்திரம் தீரவில்லை. எங்கள் காட்டிற்கு அருகில் அரசாங்கத்தால் போடப்பட்ட போரில் தண்ணீர் இருந்ததால் அந்த தண்ணீர் ஊற்றுக்காலை அனுசரித்து எங்களது காட்டிலும் போர் போடலாம் என்று எனது அப்பாவை 01.05.2013ம் தேதி இரவு 9.00 மணிக்கு மேல் கூட்டிக்கொண்டு கொடுவாளையம், உரித்த தேங்காயையும் எடுத்துக்கொண்டு மேற்சொன்ன அரசாங்க போர் அருகில் சென்று நீர் தாரைவார்க்க சொன்னேன். அதற்கு அவர் ஒரு பாலகுச்சியை வெட்டி வரச்சொன்னார். நான் வெட்டிக்கொண்டு வந்த குச்சி அவருக்கு பிடிக்காததால் என்னை மிகவும் கேவலமாக திட்டினார். அதனால் எனக்கு ஆத்திரம் ஏற்பட்டு அவரை முடித்து விட முடிவு செய்து



இன்னையோட செத்து தொலைடா தாயோலி என்று திட்டிக்கொண்டு என்கையில் இருந்த கொடுவாளால் என் அப்பாவின் தலையின் முன்பக்கமும், தாடையிலும் வெட்டினேன். அவர் கீழே விழுந்துவிட்டார். அதன்பிறகு நான் வீட்டிற்கு வந்து போட்டிருந்த துணிகளில் இரத்தம் படிந்திருந்ததாலும், என் கையில் இருந்த அருவாலில் இரத்தம் இருந்ததாலும், அவைகளை மறைத்து விட்டு எனது அம்மாமூலம் எலச்சிபாளையம் காவல் நிலையத்தில் புகார் கொடுக்க வைத்தேன். அதன்பிறகு போலீசார், துருவி துருவி விசாரித்ததால் நான் சேலம், தருமபுரி ஆகிய ஊர்களுக்கு சென்று சுற்றி விட்டு, போலீஸ்குக்கு பயந்து இன்று தங்கள் முன் ஆஜராகி எனது அப்பாவை கொலை செய்த விவரத்தை சொன்னேன்.

படிக்க கேட்டேன் சரியாக உள்ளது.”

6.The learned counsel for the appellant/accused would submit that 'Extra Judicial Confession' is a weak piece of evidence, particularly when the same is surrounded by suspicious circumstances.



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7.To support his contention he has relied upon the principles laid down in a decision case reported in **2023 Live Law(SC) 171 Nikhil Chandra Mondal Vs. State of West Bengal** in Crl.A.No. 2269 of 2010 dated 3rd March 2023, wherein the Hon'ble Apex Court has held as follows:

"15. It is a 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 (2012) 6 SCC 403. This Court, in the said case, after referring to various earlier judgments on the point, observed thus:

16. Upon a 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 an 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 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"



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8.He would further contend that according to the prosecution, the incriminating articles were recovered as per Section 27 of the Evidence Act. But the said incriminating articles alleged to have been hidden in the house by the Appellant/Accused were recovered by the police, which was already within the knowledge of the police through the special report (Ex.P.10) given by P.W.6/VAO while producing the Appellant/Accused to P.W.11/Investigating Officer. So recovery under Section 27 is not applicable. In this regard, he has relied upon the decided case in ***State of Haryana vs. Jagbir Singh*** reported in ***2004 SCC (CRL) 126 : 2003 11 SCC 261*** in which it was held that,

"Since the dead body was recovered on the basis of information already known, Section 27 of the Evidence Act has no application."

9.He further made reference to the observation made by the Hon'ble Supreme Court in ***Aher Raja Khima vs. State of Saurashtra, 1956 AIR SC 217*** in which it was held that,



CrI. Appeal No. 5 of 2019

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"a recovery of incriminating articles alleged to have been made by the accused while in custody is inadmissible in evidence, if the police already knew, were they were hidden, that takes the case out of the purview of Section 27 of Evidence Act."

10.The learned counsel further contended that there are lot of discrepancies with regard to the recovery of the incriminating articles. The Investigating Officer (P.W.11) deposed that the incriminating articles were recovered from the house of the Appellant/Accused. Whereas the Village Administrative Officer (P.W.6) deposed that the same was recovered from the cowshed, located behind the house of the accused.

11.The core stand of the learned counsel for the Appellant/Accused is that the entire prosecution case is based upon the "Extra Judicial Confession" purportedly given by the accused on 04.05.2013 before the Village Administrative Officer (P.W6). The trial Court had failed to appreciate that the "Extra Judicial Confession" in question has no legal sanctity in law.



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12. Advancing his arguments, the learned counsel for the Appellant/Accused brings it to the notice of this Court that the so called "Extra Judicial Confession" of the Appellant/Accused is a weak piece of evidence and by which no reliance can be placed to base a conviction. The learned counsel also projects an argument that the trial Court has committed an error in accepting the "Extra Judicial Confession".

13. By way of reply, the learned Additional Public Prosecutor for the respondent submits that the trial Court had come to a definite conclusion that the Appellant/Accused is responsible for causing the death of his father (Kandasamy) and that the respondent/Prosecution had proved its case beyond all reasonable doubt and finally convicted him under Section 302 IPC and imposed a punishment of life sentence upon the Appellant/Accused in respect of an offence under Section 302 IPC and also directed him to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for four years, which does not suffer from any legal infirmities.



CrI. Appeal No. 5 of 2019

14. Heard on both sides, records perused.

15. Since it is a case of circumstantial evidence, it is now well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and the circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond all reasonable doubt and the established circumstances should be consistent with the hypothesis of the guilt of the accused and inconsistent with his innocence. In a case based on circumstantial evidence, the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be to take the place of proof. It comes to be known that the Appellant/Accused frequently developed quarrel with his father (deceased) for want of money. Since the same was refused by the deceased father, the Appellant/Accused got angry and on the fateful day committed the murder of his father with a deadly weapon. P.W.1-Kannammal, the defacto complainant, the mother of



CrI. Appeal No. 5 of 2019

the Appellant/Accused, wife of the deceased Kandhasamy did not support the case of the prosecution. P.W.2-Mahazar witness had spoken about the preparation of the Observation Mahazar (Ex.P.4) and Rough Sketch (Ex.P.5) and Seizure Mahazar (Ex.P.6) by the police on 02.05.2013 and about affixing his signature in the observation Mahazar. P.W.3 to P.W.5 did not support the case of the prosecution and were treated hostile. P.W.6, the Village Administrative Officer had spoken about the "Extra Judicial Confession" alleged to have been made by the Appellant/Accused. P.W.7 Dr. Arul had spoken about conducting post-mortem over the body of the deceased and about issuing the post-mortem Certificate (Ex.P.15). The Chemical examination report and the final opinion given by P.W.7 are marked as Exs.P.16 & P.17. P.W.8 one Balachandran, Head Constable, Elachipalayam PS had spoken about subjecting the dead body of the deceased Kandhasamy to the duty Medical Officer, Tiruchengode Government Hospital for conducting Autopsy over the body and after post-mortem subjecting the body to the relatives of the deceased. P.W.10 one Rangaraj, Sub-Inspector of Police, Elachipalayam PS had spoken about receipt of Ex.P.21 complaint on



Crl. Appeal No. 5 of 2019

02.05.2013 at about 6.00 a.m and about registering a case in Crime No.62/2013 under Section 302 of Elachipalayam PS and P.W.9 Ramajayam, Head Constable, Elachipalayam PS had spoken about submitting (EX.P.22) FIR to the Judicial Magistrate, Tiruchengode. P.W.11- Chellamuthu, Inspector of Police, Elachipalayam PS had spoken about conducting investigation in this case.

16. Surprisingly the statement of witnesses P.W.1 to P.W.5, as rightly pointed out by the learned counsel for the Appellant/Accused, were not put to the Investigating Officer as to whether the above statements were given by them. On perusal of the evidence adduced by the Investigating Officer (P.W.11) he had only stated that he had recorded the statements of P.W.1 to P.W.5 we remind ourselves of the dictum laid down in the decided case of ***Tahsildar Singh and another vs. State of UP*** reported in ***AIR 1959 SC 1012*** in which it is held that,

"Per Majority (Sinha, Kapur, Sarkar and Subba



Rao JJ.) The procedure prescribed for contradicting a witness by his previous statement made during investigation, is that, if it is Intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to S. 162 only enables the accused to make use of such statement to contradict a witness in the manner provided by S.145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of S.145 of the Evidence Act. The argument that it would not be possible to invoke the second part of S.145 of the Evidence Act without putting relevant questions under the first part thereof cannot be accepted. The second part of S.145 of the Evidence Act clearly indicates the simple procedure to be followed."

17. Therefore, the evidence of P.W.1 to P.W.5 remains unchallenged and binding on the prosecution. On going through the judgment of the trial Court it is found that the conviction of the Appellant/Accused was based on



Crl. Appeal No. 5 of 2019

the alleged "Extra Judicial Confession" (Ex.P.9) given to the Village Administrative Officer and recovery of the incriminating articles under Section 27 of the Indian Evidence Act.

18.Coming to the alleged "Extra Judicial Confession" it is a settled principle of law that "Extra Judicial Confession" is a weak piece of evidence particularly when it is surrounded by suspicious circumstances. As it is observed by the Hon'ble Supreme Court in ***Heramba Brahma vs State of Assam*** reported in ***1982 AIR SC 1595*** it has to pass the test of reproduction of exact words, the reason or motive for confession and person selected in whom confidence is reposed. The said observation is extracted here under :

"We are at a loss to understand how the High Court accepted the evidence on this extra-judicial confession without examining the credentials of P.W.2 Bistiram; without ascertaining the words used; without referring to the decision of this Court to be presently mentioned wherein it is succinctly stated that extra-judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact



CrI. Appeal No. 5 of 2019

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words, the season or motive for confession and person selected in whom confidence is reposed"

19. In the present case, admittedly there was no history of previous association between the Village Administrative Officer and the Accused herein. There is no justification to infer that the accused could repose confidence in him. In the circumstances, it seems highly improbable that the accused would go to the Village Administrative Officer and blurt out a confession. Absolutely, there is no motive for confessing before the Village Administrative Officer. Therefore, there is no special reason for the accused approaching the Village Administrative Officer to make a confession. Above all, the Accused was very much available with other witnesses when the police visited the spot of occurrence before the alleged confession statement given to the Village Administrative Officer. Hence, the contention of the prosecution that the Accused approached the Village Administrative Officer due to fear of police cannot be accepted. While so, it is evident that this confession is only a make belief thought of during the investigation with the



CrI. Appeal No. 5 of 2019

assistance of an obliging Village Administrative Officer and it is unsafe to place any reliance on the same. Further a division Bench of this Court as pointed out ***In re Lakshmanan (1971 M.L.J., Criminal 178)*** that,

"under Rule 72 of the Criminal Rules of Practice, the Village Magistrates are absolutely prohibited from reducing to writing any confession or statement whatever made by an accused person after the police investigation has begun". It was intended to prevent false 'Extra Judicial Confession's being secured through the help of the village munsif after the commencement of the investigation. The extra- judicial confession itself is a weak evidence and its value becomes less when it is obtained by a person in the position of the village munsif after investigation of the case by the police has started. But on a careful examination of the relevant provisions relating to the matter, it is not possible to state it is illegal or Inadmissible in evidence, though the weight to be attached to the same may be relevant question for consideration on the facts and circumstances of each case."



CrI. Appeal No. 5 of 2019

10. Also in the aforesaid decision at Page No. 518 at Paragraph No. 15 it is observed as follows:

"15. We have already seen that no importance could be attached to Ex. P.5 statement stated to have been given by A.1 Raju before P.W.8 Village Administrative Officer. While so, the arrest of A.1, his confession as per Ex.P.7, and the consequential recovery of M.O.1 also fails to the ground."

20. For all intent and purport, therefore, Rule 72 of the Criminal Rules of Practice has become redundant and nugatory, logical corollary whereof would be that there does not exist any embargo for an accused person to make an extra-judicial confession before a Village Administrative Officer.

21. We, for the reasons stated herein before, are of the opinion that the 'Extra Judicial Confession' by the Appellant/Accused before the Village Administrative Officer was not inadmissible and, thus, could be relied upon. But the same must inspire the confidence of the Court.



Crl. Appeal No. 5 of 2019

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22.It is therefore crystal clear that Ex.P.9 confession statement recorded by P.W.6 cannot be thrown away as inadmissible. However, in the very same precedent of the Hon'ble Apex Court by relying on various other decisions, it is found highlighted that the 'Extra Judicial Confession' is a weak piece of evidence and in that connection, this Court in **Chandran vs State** in **Crl.A.No. 97 of 2005** at paragraph no.46 has observed as hereunder:

"46. Yet again in State of Rajasthan v. Raja Ram it was stated: (SCC p. 192, para 19) "19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be



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CrI. Appeal No. 5 of 2019

relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

23. In the present case, the conviction of the Appellant/Accused was mainly based on the "Extra Judicial Confession" given to P.W.6. The Appellant/Accused is said to have given "Extra Judicial Confession" to PW6//VAO under Ex.P.9 on 04.05.2013, wherein he has admitted that out of bitter hatredness towards his father, he wanted to do away with him. On 01.05.2013 after 09.00 p.m he took his father to the field for the purpose to



Crl. Appeal No. 5 of 2019

locate a place to erect a bore well. At that time, father wanted to find a water course by using a divider stick. The Appellant/Accused produced a stick and his father abused him for bringing a defective stick. Enraged, the Appellant/Accused caused the murder of his father by inflicting cut injury on his head with the aid of a deadly weapon.

24.It is unbelievable that the Appellant/Accused had chosen the night hours to take his father to the field to find a water course in the field. P.W.6 in his evidence admitted that he had no acquaintance with the Appellant/Accused before the alleged "Extra Judicial Confession". He also admitted that the Appellant/Accused is neither his friend nor related to him. Hence, it is difficult to believe that a person with guilty conscience will go to a total stranger to unburden his guilt. Therefore, the confessional statement is surrounded with suspicious circumstances and inherent improbabilities. It is settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. It is a settled principle of law that extra- judicial confession is a weak piece of evidence. It has been held that



CrI. Appeal No. 5 of 2019

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.

25. Reliance in this respect could be placed on the judgment of the Hon'ble Apex Court in the case of *Sahadevan and Another v. State of Tamil Nadu* reported in **(2012) 6 SCC 403**. The Hon'ble Apex Court, in the said case, after referring to various earlier judgments on the point. observed thus:

‘16. Upon a proper analysis of the aboveresferred judgments of this Court, it will be appropriate to state the principles which would make an 'Extra Judicial confession' an 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 prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(1) 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.

(ii) 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."

26. Adhering to the aforesaid caution reiterated and posited by the Hon'ble Apex Court, we also could start with the presumption that Ex.P.9 "Extra Judicial Confession" is a weak piece of confession. We have to search for other circumstances in support of the "Extra Judicial Confession", from



Crl. Appeal No. 5 of 2019

the evidence available on record. But, our discussion supra, would show that except the "Extra Judicial Confession" nothing is available in this case.

27. Therefore the alleged "Extra Judicial Confession" relied upon by the prosecution is not true and voluntary, and not beyond the realm of doubt. Moreover, the "Extra Judicial Confession" found not to be reproduction of exact words of the Accused herein. The trial Court ought to have rejected the evidence as to "Extra Judicial Confession".

28. Therefore, the alleged "Extra Judicial Confession" ought to have been proved beyond all reasonable doubt. Moreover, the evidence in the present case is contradictory and unacceptable in relation to the "Extra Judicial Confession" and alleged recovery. The same is not free from any suspicion. It has been held that where, 'Extra Judicial Confession' is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It is well settled that it is a rule of caution where the Court would generally look for an independent reliable corroboration before



CrI. Appeal No. 5 of 2019

placing any reliance upon such 'Extra Judicial Confession'. In this case there is no independent reliable corroboration to accept the alleged extra judicial confession. There is no evidence on record that the same is made voluntarily by the accused. The alleged 'Extra Judicial Confession' do not inspire confidence of this Court, and therefore, this Court declines to accept the same and comes to a resultant conclusion that the Appellant/Accused was not responsible for the death of Kandhasamy (Appellant father) and the respondent/Prosecuting agency had not proved its case beyond any shadow of doubt.

29.Next point for consideration is that whether the recovery under Section 27 is proved beyond reasonable doubt by the prosecution. On perusal of records it is seen that even before the incriminating articles were recovered by the police based on the confession made by the Appellant/Accused, the police had knowledge about the presence of the incriminating articles in the house of the Appellant/Accused. Before the recovery of the incriminating articles, the special report marked as Ex.P.10 prepared by the Village Administrative Officer was submitted to the police along with the



CrI. Appeal No. 5 of 2019

Appellant/Accused. Therefore, as rightly pointed out by the learned counsel for the Appellant/Accused, the incriminating articles recovered on the basis of information already known Section 27 of the Evidence Act has no application. If the police already knew, where the incriminating articles were hidden, that takes the case out of the purview of Section 27 of Evidence Act. Apart from that, P.W.11 the Investigation Officer deposed that the incriminating articles were recovered from the house of the Appellant/Accused. Whereas the Village Administrative Officer (P.W.6) deposed that the same was recovered from the cowshed, located behind the house of the accused. Such discrepancies would cast a serious doubt about the recovery of the incriminating materials at the instance of the Appellant/Accused.

30. In view of the ratiocination adhered to, the convictions recorded and sentences imposed cannot be upheld.

31. In the result, the Criminal Appeal is allowed setting aside the



CrI. Appeal No. 5 of 2019

convictions recorded and sentences imposed by the learned Principal Session Judge, Namakkal in S.C.No.27 of 2016. The Appellant/Accused shall be set at liberty and released forthwith unless he is not required to be detained in connection with any other case. Fine amount, if any, collected shall be refunded to him.

(M.S.J.) (K.G.T.J.)

30.06.2023

Index: Yes

Neutral Citation: Yes

vsn



CrI. Appeal No. 5 of 2019

To

1.The Principal Session Judge, Namakkal

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

3.The Public Prosecutor,
High Court, Madras.



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CrI. Appeal No. 5 of 2019



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Crl. Appeal No. 5 of 2019

M.SUNDAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

Pre delivery judgment made in

Crl. A. No.5 of 2019

06.2023