



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2012

CORAM:

THE HONOURABLE MS.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MS.JUSTICE S.NAGAMUTHU

Criminal Appeal(MD)No.159 of 2011

Chinnasamy

.. Appellant/sole accused

Vs.

State, rep. by Inspector of Police,  
Mimisal Police Station,  
Pudukkottai District.  
(Crime No.21 of 2010)

..Respondent/Complainant

PRAYER:This criminal appeal has been preferred under Section 374 (2) Cr.P.C against the judgment dated 23.05.2011 made in S.C.No.51 of 2010 by the Additional District & Sessions Judge, (Fast Track Judge), Pudukkottai.

For Appellant : Mr.N.Anandkumar

For Respondent : Mr.C.Ramesh  
Additional Public Prosecutor

\*\*\*\*\*

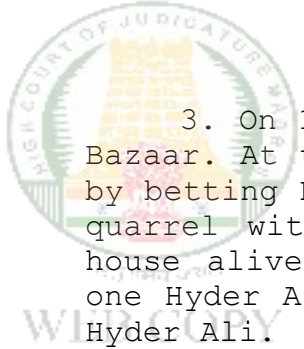
#### J U D G M E N T

(The judgment of the court was made by S.NAGAMUTHU,J.)

The appellant is the sole accused in S.C.No.51 of 2010 on the file of the learned Additional District and Sessions judge (Fast Track Court), Pudukkottai. He stood charged for the offence under Section 302 IPC. The trial Court by Judgment, dated 23.05.2011 convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo imprisonment for three years. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The brief facts of the prosecution case are as follows:-

The deceased in this case was one Mr.Arul Chandrasekar. P.W.1 is the wife of the deceased and P.W.2 is the uncle of the deceased. P.W.3 is the brother of the deceased. The deceased was a resident of Kannaakkoor Village in Pudukkottai District. The accused also hails from the same Village. The accused had frequent quarrels with his wife, since his wife had suspicion that he was having illicit intimacy with a woman at Bharathi Nagar. During such quarrels, the wife of the accused used to go to the house of the deceased and to complain about the accused. The deceased Arul Chandrasekar used to persuade both of them and to advice them to be cordial. This was not liked by the accused. Because of the above events, the accused developed an intention to do away with the deceased.



3. On 19.02.2010 at about 9.00 p.m., the deceased was in Thaaazhanoor Bazaar. At that time, the accused went there and called him to play cards by betting Rs.500/-. The deceased declined to come. The accused developed quarrel with him and finally he told him that he would not go to his house alive thereafter. The accused was then working as a driver under one Hyder Ali in the Tractor attached to a Tractor belonging to the said Hyder Ali.

4. On 19.02.2010, at about 10.00 p.m., the deceased, P.Ws.5 and 6 were proceeding in a TVS-50 motorcycle towards their house from the Bazaar. The accused followed them in the Tractor with trailer and he was in the driver's seat. At one particular place, since the Tractor was coming in such a way to hit the TVS 50 motor cycle, they stopped the TVS 50 motor cycle. The accused over took them and parked the Tractor at a distance. Again the deceased, P.Ws.5 and 6 started the TVS 50 motorcycle and overtook the Tractor and proceeded toward their house. At that time, the accused again started the Tractor and followed them. Since the Tractor was about to hit the TVS 50 motorcycle, they stopped the motorcycle. The deceased was standing by the side of the motorcycle and P.Ws.5 and 6 were on the other side. The accused, intentionally drove the vehicle against the motorcycle as well as the deceased and hit against them and due that, they fell down. The deceased sustained serious injuries and died instantaneously.

5. P.W.1, the wife of the deceased heard about the occurrence. She proceeded to the Police Station on 20.02.2010 at 9.00 a.m. and preferred a complaint under Ex.P1. P.W.14, the then Sub Inspector of Police attached to Mimisal Police Station registered a case on the said complaint in Crime No.21 of 2010 under Section 304(A) IPC. Ex.P6, is the First Information Report. He forwarded Ex.P1 and Ex.P.6 to the Court and then handed over the case diary to P.W.18, the Inspector of Police.

6. Taking up the case for investigation, P.W.18 proceeded to the place of occurrence and prepared an Observation Mahazar in the presence of P.W.4 and another witness. He also prepared Ex.P.10-Rough Sketch regarding the place of occurrence. He recovered blood stained earth and sample earth from the place of occurrence. He also recovered the damaged parts of TVS 50 motor cycle. All these properties were recovered under Ex.P.11 mahazar in the presence of P.W.4 and another witness. M.O.6 series are the damaged parts of the TVS 50 motor cycle. He also recovered the Tractor with Trailer under Ex.P.12 mahazar in the presence of witnesses. M.O.7 is the Tractor with Trailer and M.O.8 is the TVS 50 motor cycle, which was used by the deceased. Then, he proceeded to the Government Hospital at Aranthangi. In the Hospital on the same day, he conducted inquest on the body of the deceased.

7. During the inquest, he examined P.Ws.1 to 4 and one Muthuservai in the presence of Panchayators and prepared Ex.P.13-inquest report. Then he forwarded the dead body to the hospital for postmortem. P.W.16-Dr.Sureshkumar, conducted inquest on the body of the deceased on 20.02.2010 at 8.45 p.m. He found the following injuries:

External Injuries:

- 1) Abrasion left side of face 5 x 4cm
- 2) Abrasion below left eyebrow 3 x 2 cm



- 3) Abrasion below left ear 4 x 4 cm
- 4) Abrasion right forearm 8 x 3 cm
- 5) Abrasion right side of back 10 x 5 cm
- 6) Abrasion left side of chest 12 x 6 cm
- 7) Abrasion right side of chest 10 x 10 cm

Dentition: 8/8

8/8

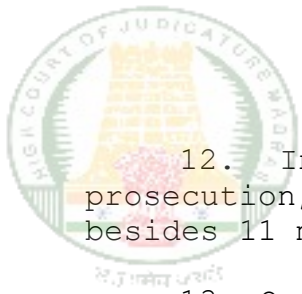
Thoracic cavity asymmetrical. About 250 ml of blood in cavity. Fracture rib left side 3, 4, 5, 6 ribs, right side 4, 5, 6 ribs. Lungs laceration right side 5 x 3 x 2cm left side 6 x 4 x 2cm. About 300ml of blood in peritoneal cavity. Liver weighs 1.6.kg laceration of right side 1 No.8 x 4 x 2cm. Heart congested weight 250 gm. Stomach contains 30 ml of partly digested rice. Spleen weighs 150 gm congested. Kidney weighs 150 gms congested. Small, large intestine empty. Bladder about 200 ml of urine. Skull: No external injuries. Membrane intact. Brain matters intact."

8. Ex.P9 is the postmortem certificate. He opined that the deceased would appear to have died of multiple organ injuries.

9. Continuing the investigation, P.W.18 altered the case on 20.02.2010 into one of "suspicious death". Ex.P14 is the alteration report. In the said report, P.W.18 has recorded that from the statements made by P.Ws.1 to 4. During inquest, he suspected that it was not a mere accident, but a case of suspicious death. Continuing the investigation, on 21.02.2010, P.W.18 examined P.Ws.5 and 6 and few more witnesses viz., Nallusamy, Ubakaram, Murugan and Buvaneshwaran. Based on their statements, he again altered the case into one under Section 302 IPC. Ex.P5 is the alteration report. On 22.02.2010, the accused was produced by the Village Assistant, as he had been sent by P.W.10. At this stage, it needs to be mentioned that P.W.10 is working as the Village Administrative Officer of Nattanipurasakudi Village. According to him, on 22.02.2010, while he was in his office, the accused appeared before him and wanted to give a voluntary confession. Accordingly, he gave a voluntary confession, which was reduced into writing by P.W.10. Ex.P3 is the said confession. He also produced M.O.1, the key of the Tractor. P.W.10 prepared a report under Ex.P4 regarding the above. Then he forwarded Ex.P3, M.O.1 and the accused along with Ex.P4 report to the police station.

10. That is how, P.W.18 arrested the accused in the police station on 22.02.2010. He recovered the key of the Tractor. Then he forwarded the Tractor with the trailer for examination by the Motor Vehicle Inspector. P.W.15 examined the Motor vehicle and certified that there was no mechanical failure. Ex.P8 is the report relating to the Tractor and the Trailer. P.W.18 had requested P.W.15 to examine the TVS 50 Motor Cycle and issued certificate. Continuing the investigation, P.W.18 made request to the learned Magistrate to record the statements of witnesses under Section 164 of Cr.P.C.

11. Finally, on completing the investigation, he filed charge sheet under Section 302 IPC. Based on the above material, the trial Court framed charge under Section 302 IPC. He denied the same and therefore he was put on trial.



12. In order to establish the charge, on the side of the prosecution, 18 witnesses were examined and 14 documents were exhibited, besides 11 material objects.

13. Out of the above witnesses, P.W.2 had turned hostile and he has not supported the case of the prosecution. P.Ws.1 and 3 have spoken to about the motive. P.Ws.5 and 6 have spoken to about occurrence. P.W.10 has spoken to about the extra Judicial Confession given by the accused to him. The others are official witnesses.

14. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidences placed by the of prosecution. He denied them as false. However, he did not choose to examine any witness on his side nor to exhibit any document.

15. Having considered the above materials, the lower Court found the appellant guilty under Section 302 IPC. That is how, the appellant is before this Court.

16. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor.

17. A perusal of the Judgment of the trial Court would go to show that the trial Court has found the accused guilty relying on the evidences of P.Ws.5 and 6 and that of the extra judicial confession said to have been given by the accused to P.W.10, the Village Administrative Officer.

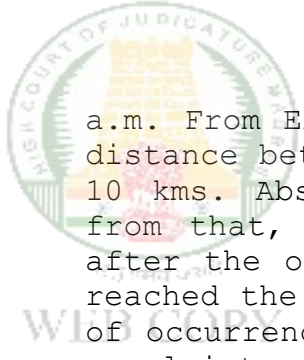
18. The learned counsel for the appellant would submit that P.Ws.5 and 6 would not have been present at the time of occurrence and their evidences cannot be believed. He would further submit that Ex.P3-confession statement said to have been given by the accused to P.W.10 cannot be true.

19. The learned Additional Public Prosecutor would oppose the appeal. According to him, P.Ws.5 and 6 admitted the deceased in the hospital and they were the eye witnesses to the occurrence. He would submit that their evidences cannot be disbelieved for any reason. He would further state that the evidences of P.Ws.5 and 6 are duly corroborated by Ex.P3-voluntary confession statement given by the accused to the Village Administrative Officer. Based on these two, the learned Additional Public Prosecutor would submit that the conviction and the sentence imposed on the appellant should be sustained.

20. We have considered the above submissions and also perused the materials available on record carefully.

21. The foremost question is as to whether the evidences of P.Ws.5 and 6 are believable? In this regard, we need to refer to certain facts.

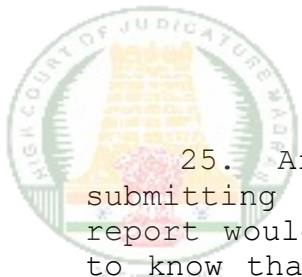
22. According to the case of the prosecution, the alleged occurrence was at 10.15 p.m. on 19.02.2010. But the complaint (Ex.P1) is stated to have been given by P.W.1 at the police station only on 20.02.2010 at 9.00



a.m. From Ex.P6, the First Information Report, it could be seen that the distance between the Police Station and the place of occurrence is hardly 10 kms. Absolutely, there is no explanation for the said delay. Apart from that, P.W.1 during cross examination, has stated that immediately after the occurrence, on information, from some other source, the Police reached the place of occurrence. She has further stated that at the place of occurrence, she told the police about the entire occurrence by way of complaint. P.W.5 would also states that during cross examination, that immediately after the occurrence, within a short time, the police arrived at the scene of occurrence. He has further stated that he along with P.W.6 narrated the entire occurrence to the Police and the same was reduced into writing. In the said complaint, he along with P.W.6 signed. The Village Panchayat Board President had also arrived at the scene of occurrence, at the time when the Police arrived. It is his further evidence that thereafter, the Police took P.Ws.5 and 6 to the Police Station for the purpose further enquiry. He has also stated that on that night itself, information was passed on to the family members of the deceased. P.W.6 has, in cross examination, stated that within half-an-hour of the occurrence, Police arrived at the scene of occurrence. He has also stated that at that time itself, he along with P.W.6 narrated the entire occurrence to the Police and the same was reduced into writing. Thereafter, he along with P.W.6 signed the document. He has also stated that the Village Panchayat Board President, Mr.Anand had also arrived at the scene of occurrence, when the Police arrived at the place of occurrence. He has further stated that the Police took him and P.W.6, to the Police Station in the night itself. These witnesses have not been cross examined by the prosecution, by treating them as hostile.

23. From the evidences of P.Ws.5 and 6, it is crystal clear that immediately after the occurrence, the Police arrived at the scene of occurrence on some information. Atleast, at the place of occurrence, immediately after the occurrence, there would have been the earliest information passed on to the Police. As stated by P.Ws.5 and 6, the said information was reduced into writing and the signatures were also obtained. In our considered opinion that information is the earliest information and that has been suppressed. The prosecution has not offered any explanation in respect of the same. In our considered opinion it is too difficult to believe that till 9.00 a.m. on the next day, the Police had no information. We firmly believe from the evidence of these witnesses that the Police arrived at the scene of occurrence immediately after the occurrence and there, they received a complaint and the same has been suppressed. This creates initial doubts in the case of the prosecution.

24. Coming to the evidences of P.Ws.5 and 6, though they claim that they were present at the place of occurrence, immediately after the occurrence, when the Police arrived, according to P.W.18, they were not examined. The inquest was held on 20.02.2010. According to P.W.18, P.Ws.5 and 6 were not examined even during inquest. He has categorically stated that during inquest, he examined only P.Ws.1 to 4 and one Muthuservai. It is not explained to the Court as to why P.Ws.5 and 6, who are the vital witnesses and who claim to be the eye witnesses, were not examined at the earliest opportunity, during inquest. Neither P.Ws.5 and 6 nor P.W.18 has offered any explanation as to why they were not examined during inquest. This creates further doubt in the veracity of the evidences of P.Ws.5 and 6.



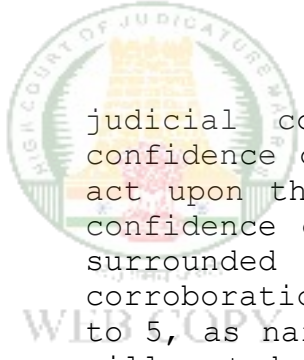
25. After the inquest was over, P.W.18 altered the case by submitting Ex.P14-alteration report. A perusal of Ex.P15-alteration report would go to show that from the evidences of P.Ws.1 to 4, he came to know that it was not a mere Motor vehicle accident, but it is a case of suspicious death. When a specific query was made to the learned Additional Public Prosecutor, as to how P.W.18 had come to the conclusion that it was not a mere accident, he has no satisfactory reply. P.Ws.1 to 4 did not say anything about the occurrence, as they did not happen to be the eye witnesses. When that be so, it is highly strange as to what made P.W.18 to submit Ex.P14-alteration report so as to alter the case into one of suspicious death.

26. According to P.W.18, P.Ws.5 and 6 were examined only on 21.02.2010. After examination of these two witnesses, the case was again altered into one under Section 302 IPC vide Ex.P5. Thus, the case was altered into one of murder only based on the examination of P.Ws.5 and 6. Thus, it is the positive case of the prosecution that neither on 19.02.2010 nor on 20.02.2010, P.Ws.5 and 6 did say anything that it was a murder. They have chosen to say about the occurrence only on 21.02.2010. But the contrary evidence of P.Ws.5 and 6 is that they were examined on 19.02.2010, immediately after the occurrence at the place of occurrence itself. This contradiction has not been explained away by the prosecution. At any rate, if we go by evidence of P.W.18, that P.Ws.5 and 6 were examined only on 22.2.2010, still the prosecution has failed to explain as to why these two witnesses were not examined for two days. This also creates doubt in the case of the prosecution.

27. P.Ws.5 and 6 would further say that they informed about the occurrence to the family members of the deceased immediately after the occurrence. P.W.1 rushed to the spot immediately. Had it been true that P.Ws.5 and 6 were really eye witnesses to this occurrence and told P.W.1 that it was a murder, certainly, P.W.1 in the complaint itself would have stated that it was a murder. But, in the complaint she told that it was only an accident and that is why this case was registered under Section 304A IPC. This would clearly go to indicate that as an after thought, P.Ws.5 and 5 have been introduced to speak as though it was a murder.

28. From the above narration of facts and discussion made, we are of the view that P.Ws.5 and 6 would not have been present at the time of occurrence and they have been procured belatedly and projected as eye witnesses by the prosecution. Thus, the evidence of P.Ws.5 and 6 do not inspire the confidence of this Court.

29. Coming to the extra judicial confession given by the accused to P.W.10, we are of the view that it cannot be true. When we go by the facts narrated above, we have got every reason to believe that the accused would not have made such a confession at all to the Village Administrative Officer. The extra judicial confession, in our opinion, is also a concocted one. Assuming that Ex.P3-confession statement was made by the accused, it may not be safe for this to convict the accused based on the same alone. It is settled law that extra judicial confession is a weak piece of evidence and in general, the Courts do expect as a rule of caution, that there should be corroboration from independent source. For a moment, we do not say that a Court cannot act solely upon the extra



judicial confession. If the extra judicial confession inspires the confidence of the Court, there cannot be any impediment for the Court to act upon the same. Thus, the question is as to whether it inspires the confidence of the Court. In this case, the extra judicial confession is surrounded by lot of suspicion. Above all, instead of drawing corroboration from independent sources, it gets contradicted by P.Ws.1, 4 to 5, as narrated above. Therefore, we are of the considered view that it will not be safe to convict the accused based on the above, so called extra judicial confession alone.

30. In view of the foregoing discussions, we hold that the prosecution has not proved the case beyond all reasonable doubts and the Judgment of the lower Court requires interference.

31. In the result, the conviction and sentence imposed by of the lower Court is set aside and the appellant/accused is acquitted. The appeal is allowed. The bail bond, if any, executed by him shall stand cancelled and fine amount if any paid by him, will be refunded to him. He is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-

Deputy Registrar (Writs)

/True Copy/

Assistant Registrar

To

1. THE ADDITIONAL DISTRICT JUDGE,  
FAST TRACK COURT, PUDUKKOTTAI.
2. -DO- THRO' THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,  
PUDUKKOTTAI.
3. THE JUDICIAL MAGISTRATE, ARANTHANGI.
4. -DO- THRO' THE CHIEF JUDICIAL MAGISTRATE, PUDUKOTTAI.
5. THE SUPERINTENDENT,  
CENTRAL PRISON, TIRUCHIRAPPALLI.
6. THE DISTRICT COLLECTOR, PUDUKOTTAI.
7. THE DIRECTOR GENERAL OF POLICE, CHENNAI-4.
8. THE INSPECTOR OF POLICE,  
MIMISAL POLICE STATION, PUDUKOTTAI DISTRICT.
9. THE ADDL.PUBLIC PROSECUTOR  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

CrI.A.(MD)No.159 of 2011  
22.11.2012