

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.522 and 523 of 2014
and

M.P.Nos.1 and 1 of 2015

Rajendran

...Appellant in CrI.A.522
of 2014/Accused

1.Vaitheeswaran

2.Ramasamy

3.Venkat Reddy

...Appellants in CrI.A.523
of 2014/Accused 1, 2 & 4

-Vs-

State rep by

The Inspector of Police

Edappady Police Station

Cr.No.163 of 2012

...Respondent in both Appeals/
Complainant

These Criminal Appeals have been preferred to set aside the judgment of conviction passed by the learned II Additional Sessions Judge, Salem in S.C.No.129 of 2014 dated 23.09.2014.

For Appellant [A3] : Mr.R.N.Amarnath
[In CrI.A.No.522/2014]

For Appellants [A2 and A4]: Mr.P.Kumaresan
[In CrI.A.No.523/2014] for Mr.B.Nambiselvan

For Appellant [A1] : Mr.Philip Fernandes Jesudoss
[In CrI.A.No.523/2014]

For Respondent : Mr.M.Maharaja
in both appeals Additional Public Prosecutor

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellants are the accused 1 to 4 in S.C.No.129 of 2014 on the file of the II Additional Sessions Court, Salem. They stood charged for offences under Sections 120-B, 302 r/w 120-B IPC (2 counts) and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. By judgment dated 23.09.2014, the trial Court convicted the accused under all the charges and sentenced them to undergo simple imprisonment for six months for the offence under Section 120-B IPC; to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months for each count for the offence under Section 302 r/w 120-B IPC (2 counts) and to undergo simple imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months for the offence under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. Challenging the said conviction and sentence, the accused/appellants are before this Court with these appeals.

2. The case of the prosecution, in brief, is as follows:

[a] There are two deceased in this case by name, Ramasamy and Kuppammal [hereinafter referred to as 'D1' and 'D2' respectively]. Ramasamy [D1] had two wives by name Saroja and Kullammal. Saroja had a son by name Akilandamurthy and a daughter by name Thangam @ Vimala. Kullammal has a son, who is the first accused herein. Akilandamurthy died 17 years before in an accident. A sum of Rs.4,00,000/- [Rupees four lakhs only] was awarded as compensation in the claim made under the Motor Vehicles Act. D1 had spent the entire amount lavishly and nothing was saved. He had also borrowed a sum of Rs.3,50,000/- [Rupees three lakhs fifty thousand only] from third parties and spent the same also. These acts of the first deceased were questioned by Saroja and Kullammal. Therefore, he deserted the entire family, went to Chinnakkavur Village in Mettur Taluk and took Kuppammal [D2] as his third wife.

[b] There was an ancestral property measuring about four acres belonging to the ancestors of Saroja and Kullammal. They transferred the title for the said property in favour of the first accused. Thus, the first accused was claiming that he was the absolute owner of the entire extent of four acres. D1 had a land measuring 1-1/2 acres. D1 sold the same and paid a substantial amount to the first accused and his sister Vimala [P.W.3]. D1 was claiming that he would get a share out of the four acres of land which was transferred in the name of the first accused by Saroja and Kullammal. The first accused got

enraged over the same. This is stated to be the motive for the occurrence.

[c] It is further alleged that the accused 2 to 4 are the relatives of the first accused. On account of the above motive, it is alleged that all the accused, one week prior to 14.09.2012, conspired to do away with D1 as well as D2. It is further alleged that on 14.09.2012 during night, around 2.00 a.m., all the four accused gathered before the house of the deceased at Valayachettiur to execute the above conspiracy. The accused 3 and 4 were standing outside the house to caution the movement of anybody, and the accused 1 and 2 set fire to the house. D1 and D2 were inside the house and the said fact was known to all the four accused. Thus, according to the case of the prosecution, the house was set on fire with an intention to cause the death of both the deceased. After setting fire, all the four accused fled away from the scene of occurrence. This is precisely the case of the prosecution.

[d] P.W.1 is the brother's son of the deceased. At around 2.00 a.m. on 14.09.2012, according to him, he heard the information that the house of the deceased was burning. Therefore, he rushed to the house of the deceased. He found both the deceased sitting in front of the house with extensive burn injuries. The entire house, including the articles inside, were burnt. He immediately made arrangement for 108 ambulance and took both the deceased to the Government Hospital at Edappady. On his way, when he enquired both the deceased as to how the house caught fire, D1 told him that somebody would have set fire to the house. He did not name the persons who had set fire to the house, as he was not aware of that. With this information, he took the deceased to the Government Hospital, Edappady, from where they were referred to the Government Mohan Kumaramangalam Medical College Hospital, Salem.

[e] P.W.10 - Dr.Saravanan examined D1 at 5.00 a.m. on 14.09.2012 at Government Mohan Kumaramangalam Medical College Hospital, Salem. He admitted him as in-patient in the hospital and gave intimation to the Judicial Magistrate for recording his dying declaration. Simultaneously, he examined D2 at 5.00 a.m. who was also brought from Government Hospital, Edappady. Her condition was also serious. There were extensive burn injuries on her body. He admitted her as in-patient and gave intimation to the Judicial Magistrate for recording her dying declaration. He also gave intimation to the police.

[f] P.W.13, the then Sub Inspector of Pulampatti police station, on receiving intimation from the hospital, initially went to the Government Hospital at Edappady and on coming to

know that both the deceased had been taken to Government Mohan Kumaramangalam Medical College Hospital, Salem, he rushed to the said hospital. He found that they were not in a position to speak. By the side of the deceased, P.W.3 - Vimala and P.W.1 were present. P.W.13 recorded the statement of P.W.1 under Ex.P1 and on returning to the police station, he registered a case in Cr.No.163 of 2012 under "Accidental fire". The said FIR was registered at 6.00 p.m. under Ex.P32. He forwarded both the documents to Court and took up the case for investigation. At 6.30 p.m., he went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.2 and another witness. He also recovered the burnt articles from the place of occurrence. He examined the neighbour. On 16.09.2012 at 2.30 a.m. D1 died in the hospital. On receiving intimation from the hospital, P.W.13 altered the case into one under Section 174 Cr.P.C. and submitted the Alteration Report under Ex.P34 to the Court. Between 8.00 a.m. and 10.00 a.m. on 16.09.2012, in the hospital, he conducted inquest on the body of D1 and forwarded the body for post-mortem. P.W.7-Dr.Gokularamanan conducted autopsy on the body of D1 on 16.09.2012 and gave opinion that the death was due to extensive burn injuries.

[g] On 16.09.2012 at 6.30 p.m., D2 died in the hospital. On 17.09.2012, P.W.13 conducted inquest on the body of the deceased between 8.00 and 8.10 a.m. and forwarded the body for post-mortem. P.W.7 conducted autopsy on the body of the deceased and gave opinion that the death was due to the burn injuries.

[h] When both D1 and D2 were undergoing treatment in the hospital, on receiving intimation from the doctor, P.W.6, the then Judicial Magistrate-I, Salem had rushed to the Government Mohan Kumaramangalam Medical College Hospital, Salem on 14.09.2012 at 6.40 a.m. At 6.55 a.m., he recorded the dying declaration of D1 between 7.00 a.m. and 7.15 a.m. P.W.10 - Dr.Saravanan gave certificate that D1 was conscious. The learned Magistrate recorded that D1 was in a fit state of mind to make the dying declaration. Ex.P7 is the dying declaration of D1. From 7.20 a.m. onwards, he recorded the dying declaration of D2. P.W.10 gave opinion that D2 was conscious. The learned Magistrate recorded his satisfaction that D2 was in a fit state of mind to make the dying declaration.

[i] The investigation was thereafter taken up by P.W.14. He arrested the first accused on 24.09.2012 at 11.30 a.m. in the presence of P.W.9 and another witness. On such arrest, the first accused gave a voluntary confession, in which he disclosed the place where he had hidden the plastic can [M.O.2] and match

box [M.O.3]. In pursuance of the same, P.W.14 recovered the same under a Mahazar. On the same day, at 2.30 p.m., he arrested the accused 2 and 3 in the presence of the same witnesses. On such arrest, both the accused gave voluntary confessions one after the other.

[j] In his confession, the third accused disclosed the place where he had hidden the motor cycle bearing Registration No.TN-27-R-2767. The same was recovered under a mahazar, on being produced by the third accused [vide M.O.5]. In his confession, the second accused disclosed the place where he had hidden the motor cycle bearing Registration No.TN-27-R-1959. The second accused produced the same from the hide out and the same was accordingly recovered [vide M.O.4]. During the course of investigation, on 25.09.2012, at 11.00 a.m., in the presence of P.W.7, the fourth accused was arrested and on such arrest, he gave a voluntary confession. On completing the investigation, he laid charge sheet against these accused.

3. Based on the above materials, the trial Court framed appropriate charges, which the accused denied. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 39 documents were exhibited, besides 5 Material Objects.

4. Out of the said witnesses, P.W.1, the brother's son of the deceased has stated that on hearing about the occurrence, he went to the place of occurrence. He found the house in flames and D1 and D2 sitting in front of the house with burn injuries. He also stated that he took both the deceased to the hospital. On his way, according to him, D1 told him that somebody had set fire to his house and he had not named the person who set fire. P.W.2 has spoken about the Observation Mahazar prepared at the place of occurrence and the recovery of material objects. P.W.3, the daughter of the deceased has stated that on hearing about the occurrence, she went to the hospital. While in the hospital, when she enquired D1, he told her that some unknown persons had set fire to his house. He did not name the assailants. P.W.4 is the brother of the deceased and he has stated that he heard that the house was burnt and then he went to the hospital. He has been treated as hostile. He has not supported the case of the prosecution in any manner. P.W.5 is the daughter of D1 and D2. She has stated that on hearing about the occurrence at 2.30 a.m., when she went to the hospital, her mother and father did not say anything about the occurrence, though she enquired. P.W.6 has spoken about the judicial dying declaration recorded from both the deceased. P.W.7 has spoken about the post-mortem conducted on both the deceased. P.W.8 has stated that on 24.09.2012, when he was at his office at 9.00

a.m., the first accused appeared and gave a voluntary confession, which he reduced to writing. Then, he produced the first accused along with the extra judicial confession [Ex.P19] to the police. P.W.9 has spoken about the arrest of the accused and recovery of the material objects. P.W.10 has stated that he certified that they were conscious when dying declarations were recorded. P.W.11 turned hostile. P.W.13 has spoken about the registration of the case and the investigation done by him. P.W.14 has spoken about the further investigation done by him and the final report filed by him.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, they examined three witnesses as D.Ws.1 to 3. D.W.1 is the doctor who examined D1 and D2 at 3.20 a.m., on 14.09.2012, at the Government Hospital, Edappady. He has stated that both the deceased told him that when they were sleeping inside the house, the house caught fire, in which they sustained injuries. They did not state that the house was set on fire by anybody. D.W.2 is the Assistant from the Regional Transport Office, who stated about the ownership of the motorcycles allegedly recovered from the accused. D.W.3 is the doctor who admitted D1 and D2 at Government Mohan Kumaramangalam Medical College Hospital, Salem. He has spoken about the entries made by him in the Accident Registers in respect of both the deceased at the said hospital. On the side of the accused, as many as 11 documents have been marked.

6. Having considered all the above, the trial Court convicted the accused as detail in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with these appeals.

7. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. As we have already narrated, the prosecution relies on the judicial dying declaration recorded by P.W.6 and the extra judicial confession said to have been given by the first accused to P.W.8. In the judicial dying declaration given by D2, she had only stated that when she was sleeping inside the house, the house was in flames. She has not stated anything about these accused. Thus, the said dying declaration does not help the prosecution in any manner to prove the guilt of the accused.

9. So far as the judicial dying declaration given by D1 is concerned, of course, he has stated that his house was in flames

and when he opened the door and came out, he found these four accused fleeing away from the scene of occurrence in two motor cycles. But, the question is, "whether this dying declaration could be believed as containing the truth".

10. P.W.1, the brother's son of the deceased, has stated that on hearing about the occurrence, he rushed to the place of occurrence. At that time, both the deceased were sitting in front of the house with burn injuries. When he enquired D1, he told him that when he was inside the house, somebody had set his house on fire. When he made a specific query to him as to who set fire, he had told him that he did not know. Thus, he had not named the persons. Thus, at the earliest point of time, D1 had not stated anything against these accused. That statement made by D1 itself is a dying declaration. Thereafter, when he was taken to the Government Hospital at Edappady, D.W.1 examined him at 3.20 a.m. When he enquired D1, he again told him that somebody had set fire to his house, in which he sustained injuries. Then also he did not allege that his house was set on fire by any known persons. This is the second oral dying declaration by D1, in which also he did not make any allegation against these accused. Then, he was taken to Government Mohan Kumaramangalam Medical College Hospital, Salem. There D.W.3 admitted D1 and 2 in the hospital. To him also D1 did not say as to who set fire to the house. He simply said that the house was in flames, in which he sustained injuries. After he was admitted in the hospital, P.W.3 the daughter of the deceased enquired D1. D1 told her that somebody had set fire to the house. To her also, he did not name the assailants. After sometime, the daughter of D1 and D2, Gomathi - P.W.5 came to the hospital. She has also stated that when she specifically enquired D1 as to how the occurrence took place, he did not say anything against these accused. It was only after the arrival of the learned Magistrate, D1 had, in his dying declaration, mentioned about these four accused as the perpetrators of the crime. In view of the fact that in all the earlier dying declarations, the deceased did not say anything against these accused and only at the belated stage in the judicial dying declaration, he had stated about these accused, it is crystal clear that the said judicial dying declaration must be only out of tutoring. Therefore, we are not in a position to attach any importance to the said judicial declaration made by D1.

11. Next, the prosecution case relies on the so called extra-judicial confession said to have been made by the first accused to P.W.8. According to P.W.8, the Village Administrative Officer, on 24.09.2012, at 9.00 a.m., the first accused appeared before him and gave voluntary confession. The learned counsel for the appellants would submit that the same

cannot be true, as the first accused had no acquaintance with P.W.8 at all. We find force in the said argument. Admittedly, the first accused had no acquaintance with P.W.8. Therefore, it is too difficult to believe that the first accused would have had any reason to go before P.W.8 to repose confidence and to confess to him. P.W.8 has admitted that he participated in the investigation from the beginning. For these reasons, we are not prepared to believe that the first accused had gone to P.W.8 and made such a confession. Assuming that the said confession was given by the first accused, since an extra judicial confession by its very nature, is a weak piece of evidence, in the absence of corroboration from any independent source, it is difficult to act upon the same. In the instant case, as we have already pointed out, the evidence of P.W.8 does not inspire the confidence of this Court at all and we have got every doubt about the genuineness of the claim that the first accused made such an extra judicial confession. In view of the same, we are unable to act upon the said extra judicial confession.

12. Barring the above two circumstances, the prosecution relies on the motive. Of course, the motive has been spoken to and the same has been proved. The ill-feeling between the first accused and the deceased alone cannot go to conclusively prove that the appellants are the perpetrators of the crime.

13. In view of the foregoing discussion, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants are entitled to acquittal.

In the result, the appeals are allowed. The conviction and sentence imposed on the appellants/accused by the trial Court are set aside. The fine amount, if any paid by the appellants, shall be refunded to them. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

gms

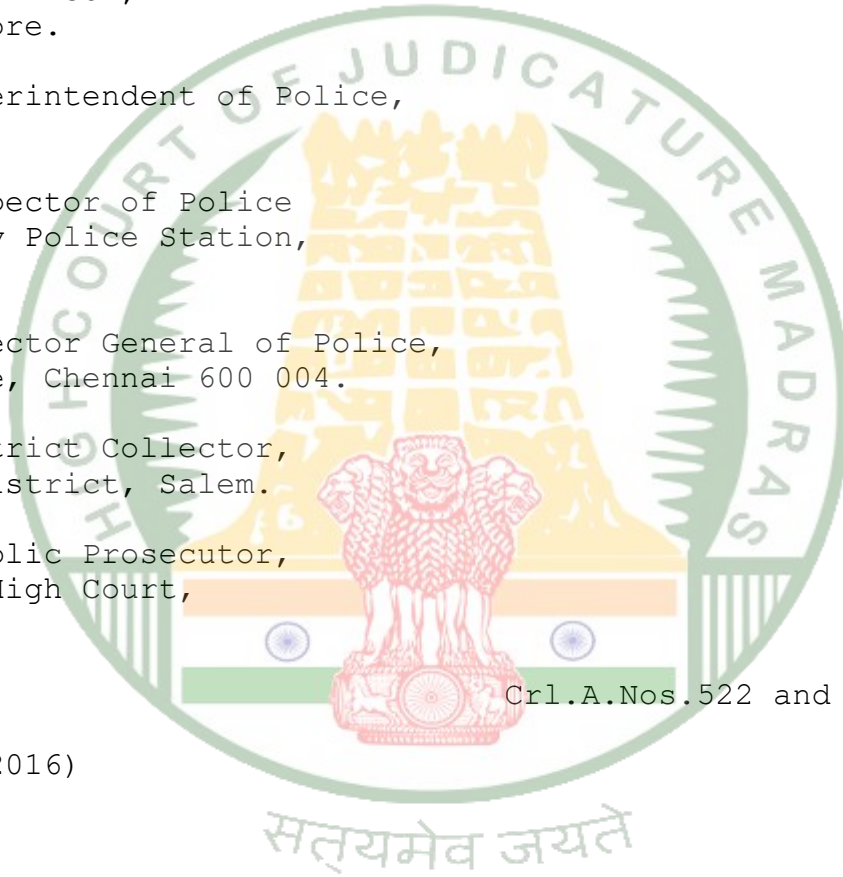
To

1.The II Additional Sessions Judge,
Salem.

- 2.Do Through The Principal Sessions Judge,
Salem.
- 3.The Judicial Magistrate No.I,
Sankari.
- 4.Do Through The Chief Judicial Magistrate,
Salem.
- 5.The Superintendent,
Central Prison,
Coimbatore.
- 6.The Superintendent of Police,
Salem.
- 7.The Inspector of Police
Edappady Police Station,
Salem.
- 8.The Director General of Police,
Mylapore, Chennai 600 004.
- 9.The District Collector,
Salem District, Salem.
- 10.The Public Prosecutor,
Madras High Court,
Chennai.

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GJ(CO)
CA(09/03/2016)



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