

Bail Slip

The Appellants/Accused (Viz.) 1) Vediappan, S/o. Kulandai, 2) Seit @ Muniappan, S/o.Mani and 3) Rajkumar, S/o.Sevathan were directed to be released on bail by the order of this court dated 31.03.2105 and made in MP No.1 of 2014 in Cr1.A.661 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM:

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.661 of 2014

1. Vediappan
2. Seit @ Muniappan
3. Rajkumar .. Appellants / Accused

Vs

The State, by, The Inspector of Police,
Indur Police Station,
Dharmapuri District
(Crime No.290 of 2011) .. Respondent / complainant

Prayer:- Criminal Appeal filed under Section 374 of the Criminal Procedure Code praying to set-aside the conviction and sentence imposed in the judgment, dated 19.11.2014, made in S.C.No.93 of 2013 on the file of the Additional Sessions Court, Dharmapuri District, by allowing this Criminal Appeal.

For Appellants : Mr. S.Vijayakumar,
Legal-Aid Counsel

For Respondent : Mr. M.Maharaja,
Additional Public Prosecutor

J U D G E M E N T

(Judgment of the Court was delivered by S.Nagamuthu. J.,)

The appellants are the accused 1 to 3 in S.C.No.93 of 2013 on the file of the learned Additional Sessions Judge, Dharmapuri. The trial court framed as many as five charges against the accused as detailed below:-

Charges	Accused	Section of law
Charge No.1	Accused 1 to 3	120-B I.P.C.,
Charge No.2	Accused 2 and 3	364 I.P.C.,
Charge No.3	Accused 1	364 r/w 109 I.P.C.,
Charge No.4	Accused 2 to 3	302 I.P.C.,
Charge No.5	Accused 1	302 r/w 109 I.P.C.,

2. The accused denied the same. By judgment, dated 19.11.2014, the trial Court convicted all the three accused and sentenced them as detailed below:-

Accused	Section of law	Sentence
A-1 to A-3	120-B IPC.,	Each of the accused to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.500/-, in default to undergo Rigorous Imprisonment for six months.
A-2 and A-3	U/s 364 IPC.,	Each of the accused to undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.
A-1	U/s 364 r/w 109 IPC	To undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.
A-2 and A-3	U/s 302 IPC	Each of the accused to undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.
A-1	U/s 302 r/w 109 IPC	To undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.

3. The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Kandasamy. He was residing at Seshampatti Village in Dharmapuri District. Formerly, he was working at the Office of the Superintendent of Police at Dharmapuri. He had two wives, by names, Mrs.Arayer and Mrs.Pachiyammal. The deceased was residing with Mrs.Arayer (P.W.7). All these three accused also belonged to the same village. The accused 1 and 2 are land brokers and the third accused is a friend of the second accused. After his retirement, the deceased purchased a land through the first accused and thus, the accused 1 to 3 became friendly towards the deceased and used to visit his house frequently. In due course, the deceased felt that the said land purchased, through the first accused, was not fit for cultivation. Therefore, he decided to sell the same. It appears that he gave a power of attorney in favour of the first accused. There was some misunderstanding between the accused and the deceased in this regard. It is further alleged that on 01.10.2011, the deceased had gone, on his own, to the field in the same village. It is further alleged that the accused 2 and 3 had taken the deceased in a motorcycle to Kombai Village. The accused 2 and 3 killed the deceased by hitting him with stones and abandoning the body, by the side of the road, the accused 2 and 3 did so, (according to the case of the prosecution) at the instigation made by the first accused. The occurrence was not actually witnessed by anyone.

5. P.W.1 is the son of P.W.7, Mrs.Arayer. He was also living with the deceased. According to him, on 02.10.2011, around 08.00 am, he found the dead body of the deceased by the side of a road. Then, on a complaint made by him, at 12.00 noon on 02.10.2011, P.W.13, the Inspector of Police, Indur Police Station, registered a case in Crime No.290 of 2011 under Section 302 IPC. Since the assailant was not known, in the complaint the name of the assailant was not mentioned. Ex.P-16 is the First Information Report. Then, he forwarded both the documents to the Court and took out the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of the witnesses. Then, he recovered material objects from the place of occurrence. He then conducted inquest on the body of the deceased between 02.00 pm and 04.00 pm. Then, he forwarded the same for postmortem. P.W.10, Dr.Sivakumar, conducted autopsy on the body of the deceased, on 02.10.2011 at 04.30 pm. He found the following injuries:-

"External Injuries: (1) Laceration over left ear 5x3 cm (2) Laceration on left lower jaw 4x3xbone depth with mandible # (3) Laceration over right right lower jaw 5x3 cmxbone depth with mandible # (4) black coloured contusion over front of neck 11x7 cm (5) Ligature mark seen on right 5 cm to left

SCM at the level of cricoid cartilage 13x1.5 cm. (6) Abrasion left upper arm 15x2 cm. Contusion over left temporal bone 7x6 cm.

Internal Examination: Hyoid bone - both side # Larynx - scented with tear large blood vessels contused. Sternum - intact. Ribs-normal. Lungs-Normal, Pale. Heart chambers - empty. Stomach 150gms of rice particle undigested. Liver, spleen kidney - pale, urinary bladder - empty. E.I.-Normal. Head vault, base-normal, meninges - normal, brain normal. The incised preserved are: (1) stomach with intestines with contents (2) Liver (3) Kidney (4) Hyoid Bone left (5) Nseel (6) Skin with mark (7) blood (8) Tongue with trachea (9) Lungs."

6. P.W.10, the Doctor, gave opinion that the deceased would have died due to shock and hemorrhage caused on account of the injuries found on the body of the deceased. Ex.P-12 is the postmortem certificate.

7. P.W.13 examined few more witnesses and recorded their statements. When the investigation was in progress, it is alleged that the first accused surrendered before P.W.5, the then Village Administrative Officer, Nagerkoodal Village, at 03.00 pm on 07.10.2011. He wanted to confess. P.W.5 allowed him to confess and then reduced the same into writing. Ex.P-1 is the said Extra Judicial Confession given by the first accused. Then, he took the first accused and the said report before P.W.13. P.W.13 arrested the accused and while in custody, the first accused gave a voluntary confession in which he disclosed the place where he had hidden the General Power of Attorney executed in favour of the first accused by the deceased and few more documents pertaining to the said transaction. In pursuance of the same, he took the police and the witnesses to his house and produced Exs.P-3 and P-4 and also M.O.1. He recovered the same under a mahazar. On the same day, he arrested the second accused in the presence of the same witnesses and on his disclosure statement, a Hero-honda Motor Cycle bearing registration No.TN29-AK-1309 was recovered. On the same day, at 07.30 am, on 08.10.2011, he arrested the third accused in the presence of the same witnesses, from whom a motorcycle bearing Registration No.TN29-AJ-1409 was recovered. On returning to the Police Station, he forwarded the accused to the Court and also handed over the material objects also to the Court. On his request, the material objects were also sent for chemical analysis. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 21 documents were exhibited, besides marking 17 material objects.

9. Out of the said witnesses, P.Ws.1 to 4 have turned hostile and they have not stated anything against the accused. P.W.1, the son of the deceased has stated that the dead body of the deceased was found at 08.00 am on 02.10.2011. He has also not stated anything in respect of the motive or anything against the accused. P.W.5, the Village Administrative Officer, has stated about the Extra Judicial Confession allegedly given by the first accused and also the confession made by him to the Police, which resulted in the recovery of material objects. P.W.6 is the yet another son of the deceased and P.W.7 is the wife of the deceased. They have also stated about the fact that the dead body was found. P.W.8 has not stated anything incriminating against the accused. P.W.9 is the wife of P.W.1 and the daughter-in-law of the deceased. She has also stated that the dead body was found. P.W.10 has spoken about the postmortem conducted. P.W.11 has spoken about the photographs taken at the place of occurrence. P.W.12 has stated that he handed over the dead body of the deceased for postmortem. P.W.13 has spoken about the investigation done and the final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor marked any document on their side. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the second paragraph of this judgment. Aggrieved over the same, the appellants are before this Court with this Criminal Appeal.

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

12. As we have already pointed out, there is no eye-witness to the occurrence. The prosecution relies solely on the extra judicial confession said to have been given by the first accused to P.W.5.

13. The learned counsel for the appellants would submit that it is highly doubtful that the first accused would have gone to P.W.5 to confess.

14. We find some force in the said argument. It is not

in evidence that the first accused had a friendly acquaintance with P.W.5, so as to repose confidence on him. P.W.5 is a total stranger to him. Above all, P.W.5 was associated himself with the Inspector of Police in the matter of investigation from the beginning. Thus, in our considered view, it is doubtful as to whether the first accused would have made such a confession to P.W.5.

15. It is in law that, if an extra judicial confession is fully believable and the same inspires the confidence of the Court, then, there will be no impediment to act upon the same, even without waiting for any corroboration from any other independent source. But, in a case where the extra judicial confession is shrouded with doubts, then the said extra judicial confession, which, by itself, is a very weak piece of evidence and cannot be the sole basis for conviction and as a measure of prudence, the Court should look for corroboration and material particulars from independent source. Here, in this case, as we have already pointed out, the extra judicial confession allegedly given by the first accused to P.W.5 is full of doubts and the same does not draw any corroboration from any other independent source. Therefore, in our considered view, it is not safe to act upon the said extra judicial confession allegedly made by the first accused to P.W.5.

16. So far as the other accused are concerned, absolutely there is no evidence. It is in law that the extra judicial confession of the co-accused cannot be the foundation to convict the other accused. The law on this subject has been well settled by the Hon'ble Supreme Court, in the case of Kashmira Singh v. State of Madhya Pradesh (1952 AIR 159) wherein, the Hon'ble Supreme Court has held that an extra judicial confession of the co-accused is not a substantive evidence against the other accused and the proper approach to the confession of the co-accused is to keep the same aside first and then, to marshal the other evidences available against the accused excluding the confession altogether from consideration and on such marshaling and on such appreciation, if the court is able to come to the conclusion that the accused has committed the said offence, the court can look into the confession given by the co-accused as a last resort to add strength to the said conclusion. In other words, the extra judicial confession of co-accused cannot be the sole basis for the conviction as the same is not the substantive evidence against others. Therefore, in the instant case, the so-called extra judicial confession made by the first accused cannot be the foundation for convicting the accused 1 to 3. The recovered material objects on the disclosure statement made by the accused have got no connection with the crime. Therefore, the disclosure statement made by the first accused, which resulted in the recovery of the facts, which are not

relevant, are also not admissible. Thus, the recovery of the material objects, disclosure statement made by the accused would not in any manner advance the case of the prosecution.

17. In view of the foregoing discussion, we hold that the prosecution has failed to prove the case of the accused beyond all reasonable doubts. Therefore, the appellants are entitled for acquittal.

18. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants / A-1 to A-3 by the learned Additional Sessions Judge, Dharmapuri, in SC.No.93 of 2013, by the judgment, dated 19.11.2014, are hereby set-aside. The appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srk

To

1. Additional Sessions Judge, Dharmapuri.
2. The Judicial Magistrate, Dharmapuri.
3. do Thro The Chief Judicial Magistrate
Dharmapuri.
4. The Superintendent, Central Prison, Salem.
5. The Inspector of Police,
Indur Police Station,
Dharmapuri District.
6. The Public Prosecutor, High Court, Madras.
7. The District Collector, Dharmapuri District.
8. The Director General of Police, Mylapore, Chennai 4.

9. The Section Officer, Criminal Section,
High Court, Madras.

10. The Section Officer, Tamilnadu State
Legal Services Authority,
High court, Madras.

1 cc to Mr.I.C.Vasudevan, Advocate, sr.36171.

Crl.A.No.661 of 2014

gr co
kra 25.07.2016



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