

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRIMINAL APPEAL Nos. 168, 177 & 330 of 2012

S. Kumar

S. Thangam

..Appellants in Crl.A. No.
168 of 2012

Prakash

Vellaiyan @ Vijayakumar
@ Marappan

Genan @ Sasikumar ..Appellants in Crl.A.No.
177 of 2012

Seeni @ Srinivasan

..Appellant in Crl.A. No.
330 of 2012

Vs.

State rep. by

Inspector of Police,

Vellithiruppur Police Station,

Erode District

(Crime No. 15 of 2008)

..Respondent in all the
appeals.

Prayer: Criminal Appeals as against the judgment dated
24.01.2012 in S.C. No. 189 of 2010 on the file of Additional
District Sessions Judge, Fast Track Court No.IV, Bhavani, Erode.

For Appellants in
Crl.A. No. 168/2012 :: Mr.V. Udayakumar

For Appellants in
Crl.A. No.177/2012 :: Mr.C. Munusamy for
M/s.C & K Law Firm

For Appellant in
Crl.A.No. 330/2012 :: NA

For Respondent
in all Crl.A. :: Mr.M. Maharaja
Addl. Public Prosecutor

J U D G M E N T

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

The appellants herein are accused Nos. 1 to 6 in S.C. No. 189 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.IV, Bhavani, Erode District. The seventh accused was one Mrs. Uthira. By judgment dated 24.01.2012, the Trial Court, while acquitting the 7th accused of all the charges, convicted the appellants herein under Sections 148 and 302 I.P.C. and sentenced them to undergo rigorous imprisonment for 3 years for the offence under Section 148 I.P.C and imprisonment for life, to pay a fine amount of Rs.1000/- , in default to undergo rigorous imprisonment for one year for the offence under Section 302 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

(i) The deceased in this case was one Madhappan. A1 is his son. Accused 2 to 6 are the friends of A1. The seventh accused was having an illicit intimacy with the first accused. Yet another accused, by name, Vignesh, was also involved in the occurrence. Since he was a juvenile accused, his case was separately dealt with. The first accused demanded partition of the joint family properties from the deceased. But, the deceased, was not ready to partition the properties and allot the share to the first accused. The first accused had a doubt that the deceased would give away the properties to his kept concubine. Therefore, the first accused decided to do away with the deceased.

(ii) It is the further case of the prosecution that accordingly, all the accused along with the juvenile accused went to the brick kiln of the deceased on 20.01.2008 at 11p.m. and they killed the deceased by cutting him with Aruval. Thereafter, they abandoned the dead body and fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

(iii) At about 3.30a.m. on the next day, P.W.1., who is the brother-in-law of the deceased, got information over phone about the occurrence and he, along with other relatives, reached the village, where the deceased was residing. Thereafter, he went to the scene of occurrence, at 6 a.m., where he found the deceased lying with cut injuries. Immediately, he rushed to the Police Station and lodged a complaint, in this regard, at 9a.m. on 21.01.2008. In the said complaint, P.W.1 has stated that the dead body was near the brick kiln and the assailants were not known.

(iv) Based on the complaint given by P.W.1, P.W.15, the then Sub Inspector of Police, registered a case in Crime No. 15 of 2008 for the offence under Sections 147, 148 and 302 I.P.C. Ex-P1 is the complaint and Ex-P8 is the First Information Report. P.W.15 forwarded both the documents to Court and handed over the investigation to P.W.17, the Inspector of Police.

(v) P.W.17 took up the case for investigation on 21.01.2008. He proceeded to the scene of occurrence and prepared an Observation Mahazar, (Ex-P9) and a rough sketch (Ex-P10), in the presence of one Palanichamy, a Village Administrative Officer and P.W.11, a Village Assistant. He also took photographs of the scene of occurrence. He recovered blood stained earth, sample earth and several material objects like spectacles, battery, etc. from the place of occurrence. Thereafter, in the presence of Panchayatdhars and other witnesses, he conducted inquest on the body of the deceased and Ex-P11 is the inquest report. P.W.17 sent the dead body for postmortem to the Government Hospital, Anthiyur.

(vi) P.W.14, Dr. Ranjani, Assistant Surgeon, attached to Government Hospital, Anthiyur, conducted autopsy on the body of the deceased on 21.01.2008 at 4p.m., during which time, she found the following injuries:

"External Injuries:

1. A lacerated injury of 15 x 3 cms of bone depth R occipital region, R temporal region with R Ear cut into two extending upto R forehead until angle of R eye.
2. A lacerated injury of 10 x 3 cms of bone depth on L side of neck from the centre of neck to left ear involving the trachea which was cut open.
3. A lacerated injury of 10 x 5 cms on L hand which was cut into two pieces with the skin holding it.
4. L elbow joint and both L forearm bones cut with complete damage of L forearm muscle and skin.
5. R palm cut into two with the skin holding them both.
6. Laceration of 10 x 3 cm of bone depth on R ankle joint.
7. A laceration of 10 x 5 cms of muscle depth on back of R thigh.

8. A laceration of 5 x 2 cm of muscle depth back of R thigh.

9. A laceration of 10 x 1 cm of muscle depth on back of L thigh.

10. A lacerated injury of 20 x 5 cm of bone depth with fracture of both R & L parietal bone on the centre of head.

Internal Examination:

Abdomen: Uniform Thorax

Heart: Empty pale 150 gms.

Lungs: R 300 gms L 300gms pale

Hyoid Bone: Intact

Stomach: Full. Contains 500 ml of partially digested food.

Liver: 1500 gms pale

Spleen: 100 gms pale

Kidney: R 120 gms pale L 120 gms

Bladder: Empty

Head:1. Fracture R & L parietal bones.

2. Fracture R occipital bones and

3. # R temporal bones

Membranes covered with clotted blood. Cavity contains 100 ml of blood.

Brain:

1. Injuries in the parietal R & L region 2. R temporal region and 3. R occipital region.

1500 gms. Blood sample preserved. PM concluded at 5.30p.m...."

P.W.14 opined that death was due to shock and haemorrhage due to injuries to vital organs and other injuries sustained. Ex-P7 is the postmortem certificate issued by her.

(vii) Continuing the investigation, P.W.17 examined a few more witnesses. Though a fingerprint expert was brought to the scene of occurrence, no clue was taken out of the same. While so, it is alleged that on 21.04.2008, the first accused appeared before P.W.10, the Village Administrative Officer of Moraiyanur Village at 11 a.m. and gave a voluntary confession statement admitting his guilt. The confession statement given by the first accused was reduced into writing by P.W.10. Ex-P5 is the said extra judicial confession statement. Then, P.W.10 along with P.W.11, the Village Assistant, took the first accused to the Police Station and produced him before P.W.17 along with Ex-P5. P.W.17 arrested the first accused at 2.45p.m and at that

time, he gave a voluntary confession statement, in the presence of P.W.s 10 and 11, in which he disclosed the place where the other accused were hiding. He further disclosed the place where he had hidden the minidor vehicle bearing registration No. TN-30-U-1035. In pursuance of the same, the first accused took the Police and the witnesses to Kolathur Checkpost and identified accused Seeni @ Srinivasan (A6), Thangam(A3), Vellaiyan(A4), Genan @ Sasikumar(A5). P.W.17 arrested all the above said accused. He examined Thangam, the third accused and recorded his confession statement between 6p.m. and 7p.m., pursuant to which, he recovered the vehicle bearing registration No. TN-30-U-1035 in the presence of the same witnesses and also a blood stained Aruval under a mahazar. The fourth accused gave a voluntary confession statement at 7.30p.m and the fifth accused gave a voluntary confession statement at 8.30p.m. Pursuant to the said confession statements, accused 4 and 5 produced a blood stained Aruval each from the hideout and they were recovered under mahazars.

(vii) On the next day, at 4 a.m. P.W.17 arrested the seventh accused. Nothing was recovered from her. On returning to the Police Station, he sent the accused for judicial remand and forwarded the material objects to the Court. Then, he handed over the investigation to his successor P.W.16. P.W.16 conducted further investigation and recorded the statements of P.W.9 and P.W.14. On completing the investigation, he filed the final report against the accused.

(viii) Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 7 documents were marked, besides, 7 material objects.

(ix) Out of the said witnesses, P.W.1 has stated that, on receipt of information over phone about the occurrence, he, along with other relatives, rushed to the scene where he saw the dead body of Madhappan near the brick kiln and thereafter, he went to the Police Station and gave a complaint. P.W.2, Marayi, the kept concubine of the deceased, has stated that she witnessed the occurrence and she has further stated that at least, six people committed the murder of the deceased. P.W.3 is the father of the deceased. He has stated that he found the dead body of his son near the brick kiln. P.W.s 4 and 5 have also stated so. P.W.6 has turned hostile. P.W.7 has also stated that he was informed about the incident by Rasammal, the wife of the deceased and when he went to the place of occurrence, he found the deceased lying with cut injuries. P.W.8, the constable attached to Vellithiruppur Police Station, has stated that he took the First Information Report pertaining

to Crime No. 15/2008 and handed over the same to the learned Judicial Magistrate, Bhavani, at 5.40p.m. on 21.01.2008. P.W.9, Police Constable, attached to Vellithiruppur Police Station has stated that he handed over the dead body for postmortem to Government Hospital, Anthiyur. P.W.10, who was the Village Administrative Officer, Moraiyanur Village, at the relevant point of time, has spoken about the extra judicial confession statement given by the first accused, the arrest of other accused and the recovery of M.Os. 1 to 6. P.W.11 is the Village Assistant, who has corroborated the evidence of P.W.10. P.W.12, the photographer, has spoken about the photographs taken. PW.13 is the Head Clerk attached to the Judicial Magistrate's Court, Bhavani, who has spoken about the receipt of the case properties and sending the same, along with a requisition, for chemical analysis to the Forensic Laboratory. P.W.14 has spoken about the postmortem conducted and her final opinion about the cause of death. P.W.15, the then Sub-Inspector of Police, has spoken about the registration of the case and forwarding of copies of First Information Report to the Court as well as to the Inspector of Police. P.W.17 has spoken about the investigation done and P.W.16 has spoken about the final report filed.

(x) When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. The defence of the accused was one of total denial. Having considered all the above, the Trial Court convicted the accused as stated in the first paragraph of the judgment. That is how, the accused/appellants are before this Court with these appeals.

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

4. In this case, it is seen that the first accused and the deceased were on inimical terms though they happen to be the son and father respectively. The dispute was on account of the refusal of the deceased to partition the joint family properties and allot the share to the first accused. It is in evidence that P.W.2 is the kept concubine of the deceased. The said witness claims that she witnessed the occurrence. Had it been true, i.e, if she had witnessed the entire occurrence, then she would have told P.W.1 about it, who came to the scene of occurrence, on being informed over phone about the occurrence at 3.30a.m. Further, P.W.2 claims that the occurrence was at 3a.m. If that is true, then, in Ex-P1, the names of the assailants would have been mentioned by the P.W.1. The very fact that in the First Information Report, the names of the assailants were not mentioned, though the complaint was made by P.W.1 after having met P.W.2, makes it difficult to believe the evidence of

P.W.2. In our considered view, P.W.2 would not have witnessed the occurrence at all.

5. Apart from the above evidence, the prosecution relies upon the evidence of P.W.10, before whom the extra judicial confession statement is said to have been given by the first accused. Though P.W.s 10 and 11 have spoken about the same, we find it difficult to believe their evidence for the simple reason that P.W.s 10 and 11 are total strangers to the first accused. It is quite hard to believe that the first accused would have chosen such strangers to confess about his guilt. Even assuming that such a confession was made by the first accused, the same, by its very nature, is a weak piece of evidence. Unless it draws corroboration from other independent sources, it would not be safe to act upon such uncorroborated extra judicial confession statement alone. At this juncture, it has to be stated that we do not propose to say that there cannot be any conviction at all, solely, based on an extra judicial confession statement. But, we only say that if the extra judicial confession statement inspires the confidence of the Court, then, even in the absence of any corroboration from independent sources, acting upon such uncorroborated extra judicial confession statement, conviction can be made. But, in the case on hand, we find it difficult to believe that the first accused would have gone to P.W.10 to make such a confession and moreover, there is no corroboration from any other independent sources. In such view of the matter, it is not possible to sustain the conviction of the first accused solely based on the extra judicial confession statement said to have been given by him.

6. So far as accused 2 to 6 are concerned, the extra judicial confession statement of the first accused cannot be the foundation for convicting them. As per settled law, extra judicial confession of a co-accused cannot be the sole foundation for conviction, since the proper approach would be to keep the extra judicial confession of the co-accused aside, marshal all other evidences available and if only, the Court comes to the conclusion from the evidences that the accused had, indeed, committed the murder, then, to lend assurance to the said conclusion, the Court may look into the extra judicial confession of the co-accused. In the case on hand, absolutely, there is no other evidence against accused 2 to 6. Above all, we have already concluded that the extra judicial confession (Ex-P5) is not believable.

7. In view of the foregoing discussion, we hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and therefore, they are entitled for an acquittal.

8. In the result, the appeals are allowed and the conviction and sentence imposed on the appellants/accused by the Trial court are set aside and they are acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the accused/appellants.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. Additional District Sessions Judge,
Fast Track Court No.IV,
Bhavani, Erode.
 2. The Public Prosecutor, High Court,
Madras.
 3. The Inspector of Police,
Vellithiruppur Police Station,
Erode District.
 4. The Judicial Magistrate Bhavani.
 5. The Chief Judicial Magistrate, Erode.
 6. The Superintendent, Central Prison, Coimbatore.
- +1 cc to M/s. C. Munusamy, Advocate Sr.8436
+ 1 cc to M/s. V. Udayakumar, Advocate Sr.8646
+ 1 cc to M/s. S. Jayakumar, Advocate Sr.8991

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& 330 of 2012

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MP(CO)
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