

Bail Slip

The Appellants herein/Accused Viz 1.Thimmakka (A1) W/O.Ammasaiyappa, 2. Muniammal (A2) W/O Thimmappa were released on bail by order of this Court dated 18/6/12 made in M.P.No.1/12 in CrI.A.No.233/12 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-02-2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.233 of 2012

1. Thimmakka
2. Muniammal

.. Appellants/Accused

Versus

State by:

The Inspector of Police,
Uthanapalli Police Station,
Krishnagiri District.
(Cr.No.90/07)

.. Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by the Principal District and Sessions Court, Krishnagiri , dated 14.10.2011, in S.C.No.161 of 2009.

For Appellants : Mr.P.M.Duraiswamy

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

The appellants are Accused Nos.1 and 2, in S.C.No.161 of 2009, on the file of the Principal District and Sessions Court, Krishnagiri. The first appellant is the daughter of the second appellant. They stood charged for the offence, under Section 302 I.P.C. The Trial Court, by its judgment, dated 14.10.2011, had had convicted them, under Section 302 I.P.C and had sentenced them to undergo imprisonment for life and to pay a fine of Rs.1000/-, and in default to undergo rigorous imprisonment for

six months. Challenging the same the appellants are before this court with this appeal.

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

2.1) The second appellant is a resident of V-Mathepalli Village, in Krishnagiri District. The first appellant is her daughter. The first appellant was given in marriage to the deceased. The deceased and the first appellant were residing at Sinigiripalli Village, in Krishnagiri District. It is alleged that, on 29.7.2007, in the evening, the second appellant had gone to the house of the deceased. When they were together, at about 6.00 p.m, the deceased came to the house in drunken state. He questioned the first accused as to why she did not come to the local chandy, as requested by him. While he was in a drunken state he threw the materials which the first accused had purchased and kept in her house and had attacked the first accused. The second accused had intervened and had requested the deceased not to attack the first accused. While so, the deceased had attacked the second accused, indiscriminately. The deceased had pushed both the accused down and had attacked them, repeatedly. Infuriated over the same, it is alleged that the first accused took a stone which was lying there and hit deceased on his head. The second accused also took another stone lying there and hit on the deceased. The deceased fell down and within a short while he had died. Thereafter, it is alleged that both the accused had escaped from the scene of occurrence and abandoning the dead body inside the house.

2.2) It is further alleged that P.W.1, the Village administrative officer of Thiagadurgam Village had heard about the occurrence. He had immediately gone to the house of the deceased, where he had found both the accused. On seeing P.W.1, the accused 1 and 2 had voluntarily given independent confessions, one after the other. P.W.1 had reduced the same into writing (vide Ex.P-1 and Ex.P2). Then, he had prepared a Special Report, under Ex.P-3. P.W.1 had taken both the accused to Uthanapalli Police Station and had produced them before P.W.9, the Sub Inspector of Police. He had handed over Exs.P-1 to P-3, to P.W.9. On receiving the said documents, P.W.9 had registered a case, in Crime No.90 of 2007, under Section 302 I.P.C., against both the accused. Ex.P-22 is the First Information Report. P.W.9 had forwarded all the relevant documents to the court and had handed over the investigation to the Inspector of Police. The learned Magistrate had received the documents at 12.30 p.m.

2.3) P.W.10 took up the case for investigation and had proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of P.W.4 and another witness. He had recovered the blood stained earth and sample earth and also the stones lying at the place of occurrence,

under a mahazar. Then, he had conducted inquest on the body of the deceased and had forwarded the body for Postmortem. P.W.5, Doctor Dinesh, conducted the autopsy on the body of the deceased, on 30.7.2007, at 3.20 p.m. He had found the following injuries.

1. Laceration Occipital region 7 x 4 cm exposed bone.
2. Laceration temporal region 3 x 2 cm exposed bone
3. Laceration Zycoma 2 x 1 cm

Ex.P-11 is the postmortem certificate. He had given the opinion that the injuries found on the deceased would have been caused by stones and that the death would have occurred due to the shock and haemorrhage, due to the injuries sustained by the deceased.

2.4) P.W.10 arrested both the accused, on being produced by P.W.1. On such arrest, both the accused gave voluntary confessions. They also disclosed the place where they had hidden the sarees with blood stains. Pursuant to the same they were recovered under a mahazar. Then, he had forwarded the accused to the court for judicial remand and had handed over the material objects to the court. Upon his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains found on the material objects, except in the sample earth recovered from the scene of occurrence. On completion of the investigation, he had laid the final report against both the accused.

3. Based on the above materials, the trial court had framed the charge, under Section 302 I.P.C. The accused had denied the same. In order to prove the charge, on the side of the prosecution, as many as 10 witnesses were examined, 25 documents and 7 material objects were marked. Out of the said witnesses P.W.2 had turned hostile and she did not support of the case of the prosecution, in any manner. P.W.1, the Village Administrative Officer has stated about the Extra Judicial Confession said to have been given to him, by both the accused, under Exs.P-1 and P-2. P.W.3 is the brother of the deceased, who has stated that he had heard about the occurrence. He had further stated that and P.W.1 were present when the accused were examined by the police. P.W.4 has spoken about the observation mahazar and the recovery of the material objects at the place of occurrence. P.W.5 has spoken about the autopsy conducted over the dead body of the deceased and he had given his opinion that the death was due to shock and haemorrhage. P.W.6 had spoken about the arrest of the accused and the consequential recovery of the blood stained earth and sample earth. P.W.7 is the head constable, who had taken the dead body of the deceased for conducting autopsy. P.W.8 is the Head Clerk of the jurisdictional Court, who had sent the material objects for chemical analysis. P.W.9 is the Sub Inspector of Police, who had

registered the F.I.R. on receiving the complaint from P.W.1. P.W.10 is the Inspector of Police, who had conducted the further investigation and had laid the charge sheet against the accused.

4. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C, they had denied the same as false. However, they did not choose to examine any witness on their side, nor marked any documents. Having considered all the above, the trial Court had convicted them under Section 302 I.P.C. and had accordingly, imposed the sentence on them. Challenging the said conviction and sentence the accused are now before this Court, with this appeal.

5. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor and we have also perused the records, carefully.

6. In the present case, the prosecution relies mainly on the Extra Judicial Confessions, said to have been given by the accused to P.W.1, on 30.7.2007, under Exs.P-1 and P-2. The learned counsel for the appellants would submit that the accused would not have made such voluntary confessions at all and therefore, no reliance could be placed on Exs.P-1 and P-2.

7. We have analysed the evidence, thoroughly. P.W.6 has stated that the Village Administrative Officer had arrived at the scene of occurrence only after the arrival of the police. It was only in the presence of police Exs.P-1 and P-2 would have been made by the two accused. We do not find any reason to reject the evidence of P.W.6 in this regard. If it is so, it goes without saying that Exs.P-1 and P-2 had been made while the two accused were in the custody of the police. Therefore, the said statements are not admissible in evidence, in view of the bar under Section 25 of the Indian Evidence Act, 1872..

8. Further, there are other reasons to reject Exs.P-1 and P-2. P.W.1 is not a known person to these accused. Therefore, it is difficult to believe that these accused would have chosen a total stranger to confess. Above all P.W.6 has admitted that these two accused speak only Kanada and they did not speak tamil at all. Whereas Exs.P-1 and P-2 are in tamil language. This also creates doubt in Exs.P-1 and P-2.

9. Reliance can be placed upon Sahadevan Vs. State of Tamil Nadu Criminal Appeal No. 1405 of 2008 decided on May 8, 2012 in which it was held as follows :

"Penal Code, 1860 - S. 302 - Murder - Affirmation of Conviction - Imprisonment for life and fine - Extra judicial confession - Conviction solely based upon the, confession is neither reliable nor has been recorded in accordance with law- No eye witness - If the extra

judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base conviction on such confession. - In such circumstances, the court would be fully justified in ruling such evidence out of consideration."

10. In *Balwinder Singh Vs. State of Punjab* [1995 Supp. (4) SCC 259], it had been held that an extra judicial confession, by its very nature, is a weak piece of evidence and requires appreciation with a great deal of care and caution. Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

11. In *Pakkirisamy Vs. State of Tamil nadu* [(1997) 8 SCC 158], the Supreme Court had 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 extra judicial confession.

12. In *Kavita Vs. State of T.N.* [(1998) 6 SCC 108], the Supreme Court had stated the dictum that there is no doubt that conviction can be based on extra judicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witnesses to whom it is made.

13. In *State of Rajasthan Vs. Raja Ram* [(2003) 8 SCC 180], the Supreme Court had stated the principle that 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 evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court had further expressed the view that such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of the witness who appears 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. Similar views have also been expressed by the Supreme Court, in *SK*.

Yusuf V. State of W.B. [(2011) 11 SCC 754] and Pancho Vs. State of Haryana [(2011) 10 SCC 165].

14. The aforesaid judgments of the Supreme Court lays down the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. The principles laid down are:

(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.

In this case, we have already pointed out that Exs.P-1 and P-2 are inadmissible in evidence. Even factually, Exs.P-1 and P-2 are doubtful documents and there is no corroboration for the same. For the foregoing reasons, we find it difficult to sustain the conviction of the appellants. In such circumstances, we are compelled to hold that the prosecution has failed to prove the case beyond reasonable doubt and therefore, the accused are entitled to be acquitted.

15. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the appellants by the trial Court, by its judgment, dated 14.10.2011, are set aside and they are acquitted of the charge levelled against them. The bail bond, if any, executed by them, shall stand cancelled and the fine amount, if any, paid by them, shall be repaid to them.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Krishnagiri.
 2. The Judicial Magistrate No.2,
Hosur.
 3. -Do- thro The Chief Judicial Magistrate,
Krishnagiri.
 4. The Superintendent,
Central Prison for Women,
Vellore.
 5. The Inspector of Police,
Uthamapalli Police station,
Krishnagiri District.
 6. The District Collector,
Krishnagiri District.
 7. The Director General of Police,
Mylapore, Chennai-4.
 8. The Public Prosecutor,
Madras High Court.
- +1cc to Mr.P.M.Doraiswamy, Advocate Sr.11215

Criminal Appeal No.233 of 2012

msm(CO)
srg(03/05/2016)

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