

Bail Slip:- CrI.A.No.362 of 2012

That the petitioners herein/Accused 1 to 3 viz., 1. Jegan
2.Satheeshkumar 3. Vanadevan was directed to be released on bail
as per the order of this court dated 10.7.2012 and made in
CrI.M.P.No.1 of 2012 in CrI.A.No.362 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CrI.A.No.362/2012

1.Jegan
2.Satheeshkumar
3.Vanadevan

... Appellants/A1 to
A3

Vs

State by the Inspector of Police
B13 Pothanur Police Station
Coimbatore.

... Respondent

Appeal filed u/s.374 [2] Cr.P.C., against the judgment dated
08.03.2012 made in SC.No.157/2010 on the file of the learned
Additional District and Sessions Judge, Fast Track Court No.3,
Coimbatore.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.M.Maharaja
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused in SC.No.157/2010 on the
file of the learned Additional Sessions Judge, Fast Track Court
No.3, Coimbatore. They stood charged for the offence u/s.302

IPC. By the judgment dated 08.03.2012, the Trial Court convicted all the 3 accused for the offence u/s.302 IPC and sentenced each of them to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default, to undergo rigorous imprisonment for 3 months. Challenging the said conviction and sentence, the appellants are before this Court, with this appeal.

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

[a] The deceased in this case is one Clady Henry, who was the resident of Kurichi village in Coimbatore Taluk. P.W.1 is his brother and P.W.8 is his sister's son. P.W.1 and the deceased were residing along with their father in their house. The accused also belonged to the same village. On 11.03.2010, in the evening, P.W.1, his father and the deceased were in their house and involved in chatting. At that time, P.W.2 [sister's son of the deceased] and his friend Satheeshkumar [A2] came to the house of the deceased. P.W.2 found fault with the deceased that he was not able to get a house allotted by the Government because the deceased was a drunkard. On hearing the same, the deceased became enraged. He beat P.W.2. A2, a friend of P.W.2, questioned the same. He asked the deceased as to how bold was he to attack his friend [P.W.2]. The deceased reprimanded A2, not to interfere in their family affair. The deceased then attacked A2 also. A2 went away from the house of the deceased.

[b] On 12.03.2010 at about 10.00 p.m., P.W.1, deceased and other family members were in their house. P.W.2 came there accompanied by A2 and yet another friend of him, viz., A1. All the three accused questioned the deceased as to why the deceased attacked A2 on the previous occasion. This resulted in a quarrel. The deceased again attacked P.W.2 and A2 and A3 and chased them away. A3, at that time, told that he would not leave the deceased to live. After this incident, all the three accused left the place.

[c] The deceased, after some time, left the house to go to the near-by pond. P.W.2, who was in the house, also followed him. Near the pond, all the three accused were waiting under a street light-post. When the deceased went near the said place, all the three accused surrounded him. A1 took a big stone and hurled the same against the deceased. The deceased fell down. A2 sat on the deceased and strangled his neck. A2 again took another stone and dropped the same on the head of the deceased. A3 took yet another big stone and dropped it again on the head of the deceased. P.W.2 was hiding behind a bush and was witnessing the entire occurrence. On seeing P.W.2, the accused rushed towards him with stones to attack him also. P.W.2 ran away from the scene of occurrence.

[d] On 13.03.2010, at 7.30 a.m., P.W.2 informed P.W.1 about the above occurrence. Then, P.W.1 went to the Pothanur Police Station and made a complaint [Ex.P.1].

[e] P.W.21, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Cr.No.302/2010 u/s.302 IPC against all the three accused. Ex.P.1 is the complaint and Ex.P.2 is the printed FIR. He forwarded both the documents to the Court and handed over the Case Diary to P.W.22-Inspector of Police, for investigation.

[f] P.W.22, the then Inspector of Police attached to Pothanur Police Station, took up the case for investigation and he proceeded to the scene of occurrence and prepared Observation Mahazar [Ex.P.3] and a Rough Sketch [Ex.P.4] in the presence of P.W.5 and another witness. He recovered blood stained earth [M.O.13] and sample earth [M.O.14] from the place of occurrence under the Mahazar. He conducted inquest on the dead body of the deceased on 13.03.2010 between 11.15 a.m. and 1.45 p.m., in the presence of the witnesses. Then he forwarded the body of the deceased for postmortem.

[g] P.W.16, Dr.J.Jayasingh, conducted autopsy on the body of the deceased on 13.03.2010 at 4.45 p.m. He found the following injuries:-

"External Injuries:-

[1] Abrasions noted on the following regions:-

- 8x5 cm noted on outer aspect of right eye and right cheek.
- 5x2 cm noted on outer ankle of right cornered mouth.
- 2x1 cm, 2x2 cm noted on left forehead.
- 11x6 cm noted on right shoulder.
- 6x5 cm noted on right supra scapular region.
- 5x3 cm noted on outer aspect of right arm.
- 5x3 cm, 3x1 cm noted on right knee
- 6x3 cm noted on right upper leg.
- 6x5 cm noted on right lower leg.
- 3x2 cm, 3x2 cm noted on left knee
- 3x2 cm, 3x1 cm noted on left leg.
- 10x3 cm noted on left outer thigh.

[2] Lacerations noted on following regions:-

- 6x2 cm x bone deep noted on right

forehead with surrounding abrasions over the area of 5x3 cm.

- 2x1 cm x bone deep noted on right side cheek with surrounding abrasion over the area of 4x3 cm, on dissection the underlying upper jaw, maxilla and zygomatic bones found fractured with surrounding tissue contused and upper incisor found missing with the underlying alveolar pulp found crushed.
- 3x1 cm x bone deep noted on mid chin with surrounding abrasion over the area of 3x2 cm, on dissection, the underlying mandible found fractured with surrounding tissue contused and lower incisor teeth found loosened.
- Vertical laceration 4x2 cm x bone deep noted on left parietal region. The lower end 8 cm above to left ear lobe. The upper end 6 cm left to midline.

[3] Nose found deformed, on dissection, the underlying nasal bones found fractured with surrounding tissue contusion.

[4] Contusion 5x4x1 cm noted on front of left shoulder and 10x4x1 cm noted on front of left arm. On dissection of scalp, skull and Dura sub scalp contusion, 10x6 cm noted on right frontal parieto temporal region. 10x4 cm noted on left temporal region and 6x4 cm noted on mid occipital region. Depressed fracture 9x4x0.5 cm noted on right temporal fronto parietal bone. Crack fracture starting from the middle of the above fracture and passes upto mid line 10 cm in length. Crack fracture 8 cm in length noted on left temporo occipital bone. Diffuse sub dural and sub arachnoid haemorrhages noted on entire brain. Laceration 6x5x0.5 cm noted on right fronto temporo parietal region of brain. Skull base fracture noted on entire middle cranial fossa and right antero cranial fossa.

OTHER FINDINGS:-

- Peritoneal and pleural cavities-empty
- Heart:All chambers empty. Coronaries patent
- Hyoid bone intact
- Stomach contains about 200 grams of partially digested cooked rice particles, no specific smell, mucosa congested.

- Small intestine: contains 10 ml of bile stained fluid, no specific smell, mucosa congested.
- Liver, spleen, lungs, brain and kidneys: cut section congested.
- Urinary bladder empty."

Ex.P.17 is the Postmortem Certificate. He gave his final opinion that the deceased would appear to have died of shock and haemorrhage due to injuries.

[f] Continuing the investigation, P.W.22, examined P.Ws.1 and 2 and two more witnesses and recorded their statements. While so, on 13.03.2010, at 9.00 a.m. all the three accused surrendered before P.W.10 - Village Administrative Officer of Vellalur village. On such surrender, all the three accused gave independent, voluntary confessions [extra-judicial confessions] one after the other. P.W.10 recorded the same vide Exs.P.5 to 7. Then, he took all the accused to the police station and handed over them to P.W.22 along with their respective confession statements. Then P.W.22 arrested the accused and on such arrest, they again made voluntary disclosure statements, in which they disclosed the place where they had hidden the blood stained dress materials. All were recovered under independent Mahazars. Then, on returning to the Police Station, he sent the accused to Court and handed over the material objects to the Court. He made a request to the learned Magistrate for conducting Identification Parade. Accordingly, P.W.19, conducted Test Identification Parade on 17.03.2010, in which P.Ws.8 and 20 identified the accused. He also made a request to the Court to forward the material objects for chemical examination. The Analyst Report revealed that there were blood stains on all the material objects. On completion of the investigation, he laid the charge-sheet against the accused.

[g] Based on the above materials, the Trial Court framed charges against the accused persons as detailed in the first paragraph of the Judgment. The accused denied the same as false. In order to prove the case on the side of the prosecution, as many as 22 witnesses were examined, 30 documents and 22 material objects were also marked. On the side of the accused, Ex.D.1 was marked.

[h] Out of the said witnesses, P.Ws.2, 8 and 20 claimed to be the eyewitnesses to the occurrence. P.W.8 is the Taxi Driver, who has stated that at the time of occurrence, by chance, he was present and he had witnessed the occurrence. P.W.20 has also stated so. P.Ws.3 and 4 are the neighbours of the deceased, who have spoken about the earlier occurrence, which is stated to be the motive for the occurrence, in which the deceased was killed. P.W.5 has spoken about the preparation of the Observation Mahazar

and the Rough Sketch and recovery of M.Os.7 to 14. P.Ws.6 and 7 have spoken about the earlier occurrence. P.w.9 is the mother of P.W.2, who has spoken about the occurrence which took place at the house of the deceased. P.W.10, Village Administrative Officer, has spoken about the extra-judicial confessions given by all the accused under Exs.P.5 to 7. P.W.11, Forensic Expert, has stated that he visited the place of occurrence, but he could not lift any incriminating material. P.W.12 is the Sniffer Dog Squad Head, who has stated that the sniffer dog was brought to the place of occurrence but the same was not materialised. P.W.16 has spoken about the Postmortem conducted on the dead body of the deceased and his final opinion regarding cause of death. P.W.17, learned Magistrate has spoken about the statements u/s.164 Cr.P.C., recorded by him from P.Ws.2 and 20. 19 has spoken about the Test Identification Parade conducted, in which P.Ws.8 and 20 identified the accused. P.W.21 has spoken about the registration of the case. P.W.22 has spoken about the registration of the case and the investigation done.

3 When the above incriminating materials were put to the accused under section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not chose to examine any witness on their side.

4 Having considered all the above, the Trial Court convicted the appellants herein. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

5 We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record.

6 Learned counsel for the appellants would submit that P.Ws.2, 8 and 20 could not have seen the occurrence at all, which is evident from their conduct. He would submit that the so-called extra-judicial confessions said to have been given by the accused to P.W.10-VAO cannot be true because it has been stated by P.W.2 that the accused persons were in custody of police even on the day of occurrence. He would further submit that there was no reason for these accused to repose confidence in P.W.10 since they had no previous acquaintance with him. Apart from that, according to the learned counsel, there is no other evidence worth considering. Thus, according to him, the appellants are entitled for acquittal.

7 Learned Additional Public Prosecutor, however opposed the appeal vehemently. According to him, P.Ws.2, 8 and 20 have vividly spoken about the entire occurrence, more particularly, about the participation of these accused and their individual overt acts. He would further submit that the evidence of these

ocular witnesses have been duly corroborated by the medical evidence. It is his further submission that the eyewitnesses' version is vividly corroborated by the extra-judicial confessions given by the accused to P.W.10 also. Thus, according to him, the prosecution has proved its case beyond reasonable doubt and therefore, the conviction and sentence imposed on the accused/appellants deserve to be sustained.

8 We have considered the rival submissions.

9 The alleged occurrence was at 00 00 hours midnight on 12/13.03.2010 near a pond at Kurichi village. The house of P.W.2 was nowhere near the pond. He has stated that the deceased had gone to answer the nature's call. He has further stated that he followed the deceased. Had it been true that he followed the deceased, it can be presumed that it was only to protect him. Had it been true that he had witnessed the entire occurrence in which the deceased was done to death by the accused by dropping stones on him, by all means of natural human conduct, he would have rushed to his house which is about a distance of half-a-kilometre and informed his family members. But he did not do so. It was only on the next day morning at 7.30 a.m. he has stated that he informed P.W.1 about the occurrence. P.W.2 is not a stranger to the deceased or to P.W.1. He is after all, the sister's son of the deceased and P.W.1. Thus, the conduct of P.W.2 that he did not disclose about the occurrence from 12.00 midnight till 7.30 a.m. on 13.03.2010 to any of his family members, would go to show that he is not believable.

10 Similarly, P.Ws.8 and 20 claimed to have been present at the time of occurrence by chance. It is too well settled that if a witness claims to have been present by chance at the scene of occurrence, it is necessary that he should explain to the satisfaction of the Court, the reasons for his being present at the time of the occurrence. In the instant case, P.Ws.8 and 20 have not at all stated the reasons as to why during midnight, they were near the pond. Above, all their conduct is also highly suspicious. Had it been true that they had seen the occurrence, they would have informed about the same to the family members of the deceased. But, they have admitted in their evidence that for more than 2 days, they did not say anything about the occurrence to anybody. After having seen a news item in a newspaper about the death of the deceased, they have stated that they went to the Police Station and informed. Thus, the conduct of P.Ws.8 and 20 make their evidence highly unbelievable. Thus, we are of the view that no reliance could be made on the evidence of P.Ws.2, 8 and 20.

11 Now what remains for the prosecution is only the so-called extra-judicial confessions said to have been given by the

accused to P.W.10-VAO. In our considered view, these extra-judicial confessions cannot be true. It is the evidence of P.W.2 that on the day when the dead body was found, these three accused were in the Police Station under interrogation. When that be so, it is highly impossible that the accused would have gone to P.W.10 on 13.03.2010 and made extra-judicial confessions. Further, it is not as though that P.W.10 was known to the accused. There are no acceptable reasons for them to repose confidence in P.W.10. Therefore, it is highly unbelievable that these three accused would have chosen a total stranger to confess. Thus, we are of the view that the so-called extra-judicial confessions said to have been given by the accused to the Village Administrative Officer [P.W.10], cannot be accepted. It is settled law that the extra-judicial confession by its very nature, is a weak piece of evidence and unless the same inspires the fullest confidence of the Court, it cannot be the foundation for conviction. Here, in the instant case, these extra-judicial confessions are doubtful and the same cannot be acted upon. Though the prosecution has succeeded in establishing that the deceased has been manually killed, it has failed to prove that these accused had killed the deceased. Thus, the accused are entitled for acquittal.

12 In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants herein are set aside and they are acquitted of all charges levelled against them. Fine amount, if any paid, shall be refunded to them.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

AP

To

1. The Inspector of Police
B13 Pathanur Police Station
Coimbatore

2. The Additional District and sessions Judge
Fast Track Court No.III
Coimbatore

3. do thro the Principal Sessions Judge,
Coimbatore

4. The Superintendent
Central Prison, Coimbatore

5. The District Collector
Coimbatore

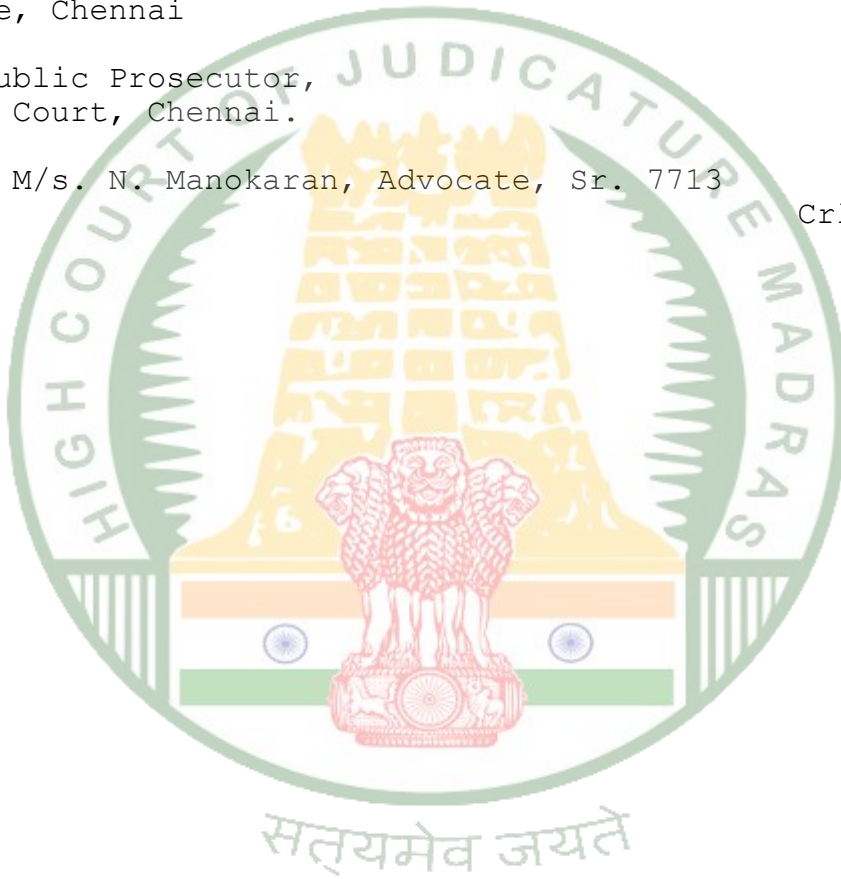
6. The Director General of Police
Mylapore, Chennai

7. The Public Prosecutor,
High Court, Chennai.

1 cc to M/s. N. Manokaran, Advocate, Sr. 7713

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