

Bail Slip

The Appellant/Accused No.-2 namely Sukumar, Aged 23 Years S/o. Sundaravadivel was directed to be released on bail as per order of this Court dated 29.02.2016 made in CrI.MP.No.1692/2016 CrI.A.16/2016 on the file of this Court.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.16 & 87 of 2016

Sukumar (A2) .. Appellant in CrI.A.16 of 2016/Accused-2

Selvamani (A1) .. Appellant in CrI.A.87 of 2016/Accused-1

- Vs -

State rep by Inspector of Police,
T.Puzhur Police Station,
T.Puzhur, Ariyalur District.

(Cr.No.59 of 2012) .. Respondent in both the appeals/Complainant

Prayer in both the appeals:- Appeals filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Principal District and Sessions Judge, Ariyalur in S.C.No.10 of 2013 dated 22.12.2015.

For Appellant : Mr.S.Ananthanarayanan
in CrI.A.No.16/16 SC for Mr.G.Padmanapan

For Appellant : Mr.S.Ananthanarayanan
in CrI.A.No.87/16 SC for Mr.E.P.Senniyangiri

For Respondent : Mr.M.Maharaja
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 appellant in Crl.A.No.87 of 2016 is the first accused and the appellant in Crl.A.No.16 of 2016 is the second accused in S.C.No.10 of 2013 on the file of the learned Principal District and Sessions Judge, Ariyalur. They stood charged for offence under Section 302 I.P.C. By judgment dated 22.12.2015, the trial Court convicted the first accused under Section 302 I.P.C. and the second accused under Section 302 r/w 34 I.P.C. and sentenced them to undergo imprisonment for life and pay a fine of Rs.5,000/- each and in default to under simple imprisonment for three months. 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:

2.1. The deceased in this case was one Beemaraj. He was a resident of North Street in Annaikudam village. He was a graduate having B.Sc. Degree to his credit. P.W.1 is his sister. His mother was also residing with him. Mr.Beemaraj had some money transaction with these two accused. But he failed to repay the said amount to the accused. It is the further case of the prosecution that on account of the same, these two accused had developed grudges against the deceased.

2.2. On 17.03.2012, it is alleged that these two accused had come to the house of the deceased and demanded repayment of the said amount. The deceased was little evasive. The accused intimidated him that in the event he failed to repay the amount, they would not spare him alive. The deceased promised them that he would settle the issue soon. On the same day at around 09.00 a.m., these two accused again came to the house of the deceased and once again demanded the repayment of the amount. The deceased told them that he would sell his landed property and pay the amount to them. The accused replied that since the land belonged to a temple, the deceased could not sell the land and thus, according to them the assurance was a hollow one. The deceased however tried to convince them. Then, the first accused wanted him to come to the bus stand and assure his mother, who was waiting there that he would pay the amount soon. Believing the words of the first accused, the deceased went along with these two accused. The deceased went in a motorcycle ahead of these two accused who went along. It is alleged that P.W.1, the sister of the deceased and P.W.2, the mother of the deceased followed these two accused smelling some foul play.

2.3. It is further alleged that when the deceased had gone near the tea shop known as 'Gopal Tea shop', suddenly the first accused took out an aruval, which was already concealed and

started mounting attack on the deceased. The deceased run into the above tea shop. The first accused cut him repeatedly inside the shop. The second accused also was armed with an aruval and he also cut the deceased. The deceased died instantaneously. The dead body was lying in a pool of blood. The accused ran away from the scene of occurrence.

2.4. P.W.1 then went to T.Puzhur police station and made a complaint at 11.00 a.m. on 17.03.2012. P.W.21, the then Inspector of Police, on receipt of the said complaint registered a case in Crime No.59 of 2012 under Section 302 I.P.C. against both the accused. Ex.P14 is the F.I.R.

2.5. Taking up the case for investigation, P.W.21 proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.14 and another witness. He recovered the bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the body for postmortem. Then he examined P.Ws.1 to 4 and few more witnesses.

2.6. P.W.20 Dr.Ravisankar conducted autopsy on the body of the deceased on 17.03.2012 at 04.20 p.m. He found the following injuries:

"External injuries: (1) 33 cm x 10 cm x 10 cm lacerated cut injury with ragged edges on the right side of neck extending not right mandible towards the back of neck completely halved the muscle of neck, nerve and blood vessels of neck exposing tracheal inlet. (2) 6x10 cm x 3 cm deep cut injury on the back of the neck exposing occipital portion of skull. (3) 1cm x 0.5 cm x bone deep punctured wound over the centre of forehead. (4) 15 cm x 8 cm x bone deep cut injury on the right shoulder exposing scapula. (5) 8 cm x 5 cm x 5cm cut injury of right forearm exposing both bones of forearm. (6) 7cm x 4 cm x 3cm cut injury of right forearm below injury No.5. (7) 6 cm x 4 cm x 3 cm cut injury on the right forearm below injury No.6. (8) 5cm x 3cm x 2 cm cut injury on the right wrist. (9) 3 cm x 2 cm x 1 cm cut injury on the left middle finger. (10) 2cm x 1 cm cut injury on the left middle and ring finger. (11) 3 cm x 2 cm x 1 cm cut injury on the left wrist joint. (12) 5 cm x 2 cm x 15 cm stab injury on the right side of the abdomen. (13) 3 cm x 2 cm x 10 cm stab injury three in number near upper part of

navel. (14) 4cm x 3 cm x 10 cm stab injury on the left side rib region. (15) 6cm x 2 cm x 3 cm cut injury on right side of upper neck.

Internal examination: Neck: hyoid bone # into two pieces horizontally. Thorax: no # of ribs. Lungs: both congested. Heart: all chambers empty, Abdomen: stomach contains 150 gms of partially digested food particles. No specific odour. Liver, spleen, kidneys pale and congested. Peritoneal cavity filled with blood. Skull: 0.5 cm x 0.5 cm # of frontal bone. Brain : blood clot present in frontal area of cerebrum on right side."

Ex.P13 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the above injuries. He further opined that the said injuries could have been caused by a weapon like aruval.

2.7. It is further alleged that when the investigation was in progress, on 17.03.2012, both the accused surrendered before P.W.6 the Village Administrative Officer at 04.00 p.m. On such surrender, the first accused gave a voluntary confession. P.W.6 reduced the same into writing (vide Ex.P2). Then along with a special report in Ex.P3, he produced both the accused at the Jayamkondam Police Station.

2.8. P.W.21 was informed by the Jayamkondam police about the production of the accused at the said police station by P.W.6. Immediately, P.W.21 went to Jayamkondam police station and arrested both the accused at 07.45 p.m. While in custody, the first accused gave a voluntary confession. The second accused also gave a voluntary confession. From out of the said confession given by the first accused, a shirt and a pant (M.Os.9 and 10) were recovered and from the second accused, a shirt and a baniyan (M.Os.11 and 12) were recovered. A motorcycle bearing Registration No.PY-01-AE-3164 was recovered from the first accused. Then on returning to the police station, he forwarded both the accused to the Court for judicial remand and handed over the material objects also to the Court. At his request the material objects were sent for chemical examination. On completing the investigation, he laid chargesheet against both the accused.

2.9. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., which the accused denied. In order to prove the case, on the side of the prosecution as many as 21 witnesses, 17 documents and 13 material objects were marked.

2.10. Out of the said witnesses, P.W.1, the sister of the deceased, P.W.2 the mother of the deceased, P.W.3 a close friend of the deceased have spoken vividly about the entire occurrence as eyewitnesses. P.W.1 has further spoken about the complaint made by her at T.Puzhur police station. P.W.4 the tea shop owner has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 has also turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has spoken about the extra judicial confession given by the first accused. In his evidence he has stated that both the accused jointly gave voluntary confession and a joint statement was recorded as Ex.P2.

2.11. P.W.7 has spoken about the money transaction between the accused and the deceased. P.W.8 has also spoken about the same fact. P.W.9 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.10 who is running a petty shop has not spoken anything incriminating he has spoken only about the hearsay information. P.W.11 has stated that he found two middle aged persons travelling in a motorcycle at the place of occurrence at the crucial time. P.Ws.12 and 13 have spoken about the motive. P.W.14 has spoken about the preparation of the observation mahazar and a rough sketch and the recovery of material objects from the place of occurrence. P.W.15 has turned hostile and she has not supported the case of the prosecution in any manner.

2.12. P.W.16 the forensic expert has stated that she examined the material objects and found that there were human blood stains on all the material objects except item No.2. P.W.17 a constable attached to T.Puzhur police station has stated that he handed over the F.I.R. to the learned Magistrate at 04.00 p.m. P.W.18 yet another constable has stated that he handed over the dead body of the deceased to the doctor for postmortem. P.W.19 a Constable has stated that one Chellammal had earlier given a complaint against the deceased in respect of the above stated money transaction. P.W.20 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.21 has vividly spoken about the investigation done and the final report filed.

3. 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 to mark any document on their side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, they are before this Court with these appeals.

4. We have heard the learned senior counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. In this case, according to the prosecution, the alleged occurrence took place at 09.45 a.m. on 17.03.2012 in the tea shop of P.W.4. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.1, the sister of the deceased, P.W.2, the mother of the deceased and P.W.3, the friend of the deceased have stated that they witnessed the occurrence. The learned senior counsel for the appellants would submit that P.Ws.1 to 3 would not have been present at the place of occurrence at all and therefore their evidence should be rejected. In this regard, the learned senior counsel would take us through the evidence of P.W.13, yet another sister of the deceased, she has stated that on the day of occurrence, she was very much available at the house of the deceased along with P.Ws.1 and 2. During cross examination, she has stated that around 09.00 a.m. on the day of occurrence, they were informed that the deceased had been done to death. Immediately, P.Ws.1 and 2 went to the place of occurrence and after having seen the dead body of the deceased, they returned to their house at 11.00 a.m. and informed her about the above occurrence. She has further stated that P.Ws.1 and 2 after having heard about the occurrence, went to the place of occurrence and that is how they found the dead body of the deceased at 11.00 a.m. and returned to the house. As rightly pointed out by the learned senior counsel for the appellants, the evidence of P.W.13, clearly goes to falsify the evidences of P.Ws.1 to 3. We find no reason to reject the evidence of P.W.13, who has stated that only on hearing about the death of the deceased, P.Ws.1 and 2 went to the place of occurrence to verify the same. P.W.13 could not go because she had just given birth to a child. From the evidence of P.W.13, we find it difficult to give credence to the evidences of P.Ws.1 to 3.

6. P.W.13 has further stated that after P.Ws.1 and 2 had returned to their house at 11.00 a.m. they did not go anywhere, but the police came to their house shortly thereafter. But it is the evidence of P.W.1 that after having seeing the occurrence, she went straight to T.Puzhur police station and made a complaint at 11.00 a.m. on 17.03.2012. Though we cannot give meticulous importance to the time stated both by P.W.1 and P.W.13, the evidence of P.W.13 would go to show that P.W.1 would not have gone to the police station right from the place of occurrence instead she had returned to her house.

7. The learned senior counsel for the appellants would

submit that the F.I.R. in this case had reached the hands of the learned Magistrate only at 04.00 p.m. and the said delay has not been explained by the prosecution. It is seen from the records that the distance between the place of occurrence and the police station is hardly 4 kilometers and it is also brought to our notice that the distance between the police station and the Court is hardly around 20 kilometers. Absolutely there is no explanation as to why it took so much of time for the police to hand over the F.I.R. to the learned Magistrate. This also creates doubt in the case of the prosecution.

8. Then comes the extra judicial confession said to have been given by the first accused to P.W.6. It is the case of the prosecution that on 17.03.2012 at 04.00 p.m. both these accused surrendered before P.W.6 the Village Administrative Officer of Keelakudiirupu village. Though it is the case of the prosecution that the first accused gave a voluntary confession, which was reduced into writing by P.W.6., P.W.6 in his chief examination has himself stated that both the accused jointly made an extra judicial confession and the said joint statement was recorded by him. The above said joint statement is Ex.P2, which is contrary to the case of the prosecution.

9. The learned senior counsel would submit that these two accused would not have gone to the office of P.W.6 at all as it is stated. In order to strengthen this contention, he would take us through the evidence of P.W.1. P.W.1 during cross examination has stated that as soon as the complaint was made by P.W.1 accompanied by P.Ws.2 and 3, the Police took them in the same jeep straightaway to Jayamkondam police station from T.Puzhur police station. At Jayamkondam police station at 01.00 p.m., these two accused were kept in the custody of the police. P.Ws.1 to 3 saw these two accused in the police station at 01.00 p.m. for about one hour thereafter, they were in the Jayamkondam police station, where the accused were kept. P.W.2 has stated that she was taken along with P.W.1 to Jayamkondam police station in the police jeep. P.W.3 has stated during cross examination that around 12.00 noon on 17.03.2012, the Inspector of Police, T.Puzhur police station, took him along with P.Ws.1 and 2 to Jayamkondam police station. At Jayamkondam police station, the Inspector of Police examined P.Ws.1 and 2. When they were so examined in the Jayamkondam police station at 12.00 noon, about 10 relatives of the deceased had also come to the police station. He has further stated that when they reached Jayamkondam police station at 12.00 noon, these two accused were already kept in the Jayamkondam police station. From these evidences, it is crystal clear that these two accused were already in the police station from 12.00 noon onwards and therefore, the story of the prosecution that they surrendered

before P.W.6 at 04.00 p.m. and thereafter, the first accused made an extra judicial confession cannot not be believed.

10. The learned senior counsel appearing for the appellants would submit that the extra judicial confession recorded by P.W.6 deserved to be rejected for the sole reason that P.W.6 had failed to follow the procedure prescribed in the Village Administrative Officers Manual issued by the Government of Tamil Nadu. According to the learned senior counsel as per the said Manual, if any accused, makes any voluntary confession to the V.A.O, the said officer is required to prepare three copies of the statement and then, he has to send one to the Court, another to the police station and yet another copy to the Tahsildar. In the instant case, P.W.6 had not done so. Referring to the same, the learned senior counsel would rely on a judgment of a Division Bench of this Court in Thangaraj Vs. State rep by Inspector of Police, Kotampatti Police Station, reported in 1993 LW(Crl) 35, wherein, the Division Bench has held in paragraph 9 as follows:

"9....Learned counsel would also submit that Ex.P1 and P2 could not have come into existence in the normal course as is evident from the admission made by P.W.3 wherein he would admit that he had passed the Village Administration test and as per the village manual in respect of any report of an incident, he had to prepare 3 copies of the statement and has to send one to the Court, another to the Police Station and yet another to the Tahsildar. But, in this case he has not done so and not taken any copies and when he is asked whether there is any reason, he is unable to say any reason and suggestion is made that it is only because all these things were prepared at the Police Station at the instance of the Police, that procedure could not be followed and he could not prepare copies. All these things clearly show that no weight could be attached to the alleged extra judicial confession given by the accused. Further, this P.W.3 is the attestor to all the mahazars in this case, and he was assisting the police throughout the investigation and he is an interested witness. In the circumstances, we are of the view that no reliance could be placed to the alleged extra-judicial confession for convicting the accused....."

11. The learned senior counsel would then make reliance on yet another Division Bench judgment of this Court in Murugan Vs. State rep by Inspector of Police reported in 2008 2 MLJ (Crl)

1324, wherein, the Division Bench has held in paragraph 11 as follows:

"11.....If the evidence of P.W.2 is disbelieved as untrustworthy, then the only material which is left out is the evidence of P.W.1, Village Administrative Officer. A Village Administrative Officer is supposed to strictly follow the procedures which are adumbrated in the Manual for the Village Administrative Officers. On a careful perusal of his evidence, it appears that he simply recorded the extra judicial confession and handed over the accused to the police officer. It appears that the same has been done for the purpose of creating an extra judicial confession with the VAO and therefore his evidence suffers from infirmities and this material cannot be taken as corroborative material along with the evidence of P.W.2....."

12. The learned senior counsel would next place reliance on the judgment of the Hon'ble Supreme Court in State of Tamil Nadu Vs. Manmatharaj reported in (2009) 3 MLJ (Cr1) 496 (SC), wherein, in paragraph 7 of the judgment, the Hon'ble Supreme Court has held as follows:

"7. When an extra judicial confession is given to the Village Administrative Officer, he goes to the scene of occurrence; observes the dead body as well as the scene; satisfies himself about the truth of the statement given by the person concerned and then, prepares the material records. In this case, he did not do anything of that sort. Over and above all this PW1 has categorically admitted he knows that when an extra judicial confession statement is given to him, he should prepare not only a duplicate of the same but also prepare a duplicate of the Yadast which must be sent to the Court by him. He had categorically admitted that he neither sent Ex.P1 nor Ex.P3 to the Court. He had been a Village Administrative Officer of ten years standing. The purpose of sending documents like Exs.P1 and P3 to the Court and the copies of the same to the Police is to eliminate false implication and to add credibility to the extra judicial confession statement itself. The failure on the part of PW1 to send the material records to the Court, especially, when he was aware of his duty in that regard is yet another circumstance which is

sufficient to doubt the entire case of the prosecution put through PWs 1 and 7."

13. We have carefully gone through all these judgments. At the outset, in this regard, we would like to state that the Village Administrative Officer's Manual published by the Government of Tamil Nadu cannot have any statutory force. If the same is a statutory rule, and if it is also found that the procedure contemplated is mandatory, then, there can be no difficulty in holding that failure to follow such a statutory mandatory provisions would vitiate the extra judicial confession recorded in violation of the said provision. For any reason, if the said statutory provision prescribes only a procedure, which is not mandatory but only directory, in such an event, the Court may have to examine whether failure to follow the said procedure has caused any prejudice to the accused or the same has resulted in miscarriage of justice.

14. So far as the Village Administrative Officer's Manual, upon which reliance is now made by the learned senior counsel for the appellants is concerned, admittedly, it has got no statutory force. Therefore, it is not possible to hold that failure to follow the procedure contemplated therein by the V.A.O. in recording the extra judicial confession, whether the said procedure is mandatory or directive, would vitiate the extra judicial confession recorded by the V.A.O. on the ground of failure to follow the said procedure. Admittedly, it is only an administrative instruction given in order to guide the V.A.O. as to how an extra judicial confession has to be recorded. Of course, it prescribes three copies of the statement are to be prepared and one should be necessarily sent to the Court concerned directly by the V.A.O. As has been held by the Hon'ble Supreme Court in Manmatharaj case (cited supra), the object of introducing such a procedure by way of administrative instruction is to ensure that the extra judicial confession was really given and there is no false creation of such an extra judicial confession. The Hon'ble Supreme Court has categorically held that the purpose of sending documents to the Court and copies of the same to the police is to eliminate false implication and to add credibility to the extra judicial confession statement itself.

15. Thus, it is ultimately a question of fact as to whether an extra judicial confession was really made by the accused and whether it was voluntary. If a copy of the said extra judicial confession, as soon as it is recorded, is forwarded to the Court, then it will add strength to the conclusion that there is no false creation of the said document. In other words, simply because this procedure has not been followed, it can not be held

that either the extra judicial confession is inadmissible in evidence or that it is totally unbelievable.

16. In our considered view, it all depends upon the facts and circumstances of each case where the Court is required to analyse the entire facts and circumstances of the case to come to a conclusion as to whether the said extra judicial confession allegedly given by the accused was really made by him and that too voluntarily. While deciding the said question, the fact that the procedure contemplated in the Village Administrative Officer's Manual has not been followed will also be taken into account by the Court. But the extra judicial confession cannot be rejected on the sole ground that there is violation of the said guidelines issued under the Village Administrative Officer's Manual.

17. In the instant case, as pointed out by the Hon'ble Supreme Court, admittedly there is violation of the said procedure prescribed in the Village Administrative Officer's Manual. But on that score, we are not prepared to reject the extra judicial confession. We reject the extra judicial confession for other reasons about which we have already discussed elaborately. Thus, the failure of P.W.6 to follow the guidelines only adds further strength to our conclusion. At any rate, for the reasons which we have already discussed elaborately, we reject the evidence of P.W.6.

18. In view of the foregoing discussions, we are of the view that there is lot of reasonable doubts in the case of the prosecution and the prosecution has failed to prove the case beyond all reasonable doubts. In view of the above the appellants / accused 1 and 2 are acquitted.

19. In the result,

(i) The appeals are allowed, the conviction and sentence imposed on the appellants by the learned Principal District and Sessions Judge, Ariyalur in S.C.No.10 of 2013 dated 22.12.2015 is set aside and they are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bonds, if any executed, by them shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Tsi/kk

To

1. The Principal District and Sessions Judge,
Ariyalur.

2. The Inspector of Police,
T.Puzhur Police Station,
T.Puzhur, Ariyalur District.

3. The Public Prosecutor,
Madras High Court.

4 The Judicial Magistrate, Jayankondam

5 The Chief Judicial Magistrate, Perambalur
(for Information)

6 The Superintendent, Central Prison, Trichy

7 The District Collector, Trichy

8 The DIG of Police, Trichy

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

+1 CC to Mr. S. Ananthanarayanan, Advocate Sr.No.43503

+1 CC to Mr. E.P. Senniyangiri, Advocate Sr.No.43504

Cr1.A.Nos.16 & 87 of 2016

NM1 (CO)
MD : 2/11/2016

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