

Bail Slip:- That the Appellant/Accused namely 1. Mayil, (A1) W/o. Thangaraj in M.P.1/13 in CrI.A.168/13 as per order of this Court dated 19.3.2013 and namely 2. Ravi (A2) S/o. Rajakannu, and 3. Nagaraj (A3) S/o. Raj and 4. Sankar (A4) S/o. Rajagopal and 5. Vijai (A5) S/o. Palanisamy and 6. Sangeetha (A6) W/o. Kunjan @ Mohan they are directed to be released on bail as per order of this court dated 5.3.2013 and made in M.P.1/13 in CrI.A.135/13 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRIMINAL APPEAL NOS. 135 and 168 OF 2013

1.Ravi
2.Nagaraj
3.Sankar
4.Vijai
5.Sangeetha

...Appellants/ Accused 2 to 6
in CrI.A.No.135/2013

Mayil

...Appellant/ Accused 1
in CrI.A.No.168/2013

Vs.

State rep. by

The Inspector of Police

Nangavalli Police Station

Mettur Taluk, Salem District.

(Crime No.205 of 2011) ...Respondent/ Complainant

in both appeals.

Prayer:- Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.109 of 2012 by the learned III Additional District and Sessions Judge, Salem, dated 04.02.2013.

For Appellants : Mr.R.Sankara Subbu
in CrI.A.No.135/2013

For Appellant : Mr.J.Pothiraj
in Crl.A.No.168/2013

For Respondent :Mr.M.Maharaja
in both appeals Additional Public Prosecutor

COMMON JUDGMENT

(The judgment of the Court was made by S.NAGAMUTHU,J.)

The appellant in Crl.A.No.168 of 2013 is the 1st accused and the appellants in Crl.A.No.135 of 2013 are the accused Nos.2 to 6 in S.C.No.109 of 2012 on the file of the III Additional District and Sessions Judge, Salem. The Trial Court framed charges against the appellants/accused Nos.1 to 6, as detailed below:-

Sl. No.	Charge No.	Rank of Accused	Charged for the offence
1	Charge No.1	Accused Nos.1 to 6	U/s. 120-B IPC
2	Charge No.2	Accused Nos.1&6 Accused Nos.2 to 5	U/s. 449 r/w. 120-B IPC U/s. 449 IPC
3	Charge No.3	Accused Nos.1&6 Accused No.2 to 5	U/s. 302 r/w.120-B IPC U/s. 302 IPC
4	Charge No.4	Accused Nos.1 to 5 Accused No.6	U/s. 201 r/w. 302 IPC U/s. 201 r/w. 302 r/w. 120-B IPC

All the accused denied the same. By judgment, dated 04.02.2013, the Trial Court convicted all the six accused for various offences and imposed sentence, as detailed below :-

Sl.No.	Rank of Accused	Conviction	Sentence
1	Accused Nos.1&6	U/s. 302 r/w.34 IPC	To undergo Imprisonment for Life and to pay a fine of Rs.1,000/- each, in default to undergo Rigorous Imprisonment for six months.

Sl.No.	Rank of Accused	Conviction	Sentence
2	Accused Nos.2 to 5	U/s.302 IPC	To undergo Imprisonment for Life and to pay a fine of Rs.1,000/- each, in default to undergo Rigorous Imprisonment for six months.
3	Accused Nos.1 to 6	U/s. 201 IPC	No separate sentence was passed.

The Trial Court acquitted the accused Nos.1 to 6 from the other charges. Challenging the said conviction and sentence, the appellants/ accused Nos. 1 to 6 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 Thangaraj. The 1st accused is his wife. The 6th accused, viz., Sangeetha is the daughter-in-law of one Kathamuthu. The deceased Thangaraj and Kathamuthu are brothers. There was an ill-feeling between Thangaraj and Kathamuthu in respect of a pathway dispute. The 6th accused was allegedly leading a wayward life. The deceased Thangaraj took exception to the said conduct of the 6th accused. This is stated to be the motive for the 6th accused. The accused Nos. 2 and 4 are the cousins of the 6th accused and the accused Nos.3 and 5 are the brothers of the 6th accused. The mother of the 1st accused is none else than the aunt of the 6th accused. Thus, all the six accused are closely related to each other.

(ii) The deceased was working in a local private mill. The deceased had suspicion over the fidelity of his wife. On account of the same, the deceased used to return home fully drunk to quarrel with the 1st accused and to assault her. She was physically as well as mentally harassed by the deceased. This is stated to be the motive for the 1st accused.

(iii) On 18.04.2011, at the house of the 6th accused, all these accused sat together and hatched a conspiracy to do away with the deceased. In pursuance of the said conspiracy, on 19.04.2011, at about 12.30 a.m., when the deceased was sleeping in his house, the accused Nos. 2 to 6 trespassed into the said house. The 1st accused was already there. The 1st accused gave a rope to the 2nd accused and with the said rope, the accused Nos.2 and 4 strangled the deceased. The accused Nos. 3 and 5 held the legs of the deceased. The deceased died on the spot. Immediately thereafter, in order to erase the evidence, they carried the dead body of the deceased to Malaiperumal Koil Karatu, poured kerosene on the same and also put sugar on the body and set fire. Without being noticed by any one, they left

the said place. Thus, the occurrence was not noticed by any one.

(iv) On 20.04.2011, at about 8.00 a.m., P.W.1-Lakshmanan, the then Village Administrative Officer, Kottaipatti Village, was informed by his Assistant that there was a dead body of a male, lying in half burnt condition. He went to the place of occurrence and verified the said information. He found injuries on the neck of the deceased indicating strangulation and traces of kerosene and sugar on the body of the deceased. Immediately, he went to the Nangavalli Police Station and made a complaint.

(v) P.W.24-Manickam, the then Sub-Inspector of Police, on receipt on the said complaint, registered a case in Crime No.205 of 2011 under Sections 302 and 201 IPC, on 20.04.2011, at 10.00 a.m. Ex.P.1 is the complaint and Ex.P.32 is the First Information Report. He forwarded both documents to the Court, which were received by the learned Magistrate, on 20.04.2011, at 11.30 p.m.

(vi) P.W.27-Neelakumar, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.33), in the presence of P.W.7-Chandraguru and another witness, by name, Mani. Then, he recovered certain Material Objects from the place of occurrence. He conducted inquest on the body of the deceased and then forwarded the same for post-mortem, through P.W.21, the then Head Constable. He arranged for a photographer (P.W.26-Manikandan), who took photographs at the place of occurrence. P.W.25-Dr.Paneerselvam conducted autopsy on the body of the deceased, at 4.10 p.m., on 20.04.2011. He found the following :-

"Injuries:

1. A transverse dark brown ligature mark seen over the left side of neck 5 cms long, 1.5-2 cms width and it is situated 8 cms below left mastoid process, on right side of neck, ligature mark merges with dermo-epidermal postmortem burns. O/D. the underlying skin of ligature mark is haemorrhagic and contused. O/D Neck:- Dark reddish brown contusion seen over front of neck 6 x 2 cms on left side and 4 x 2 cms on right side. Fracture of hyoid bone - Left greater horn with surrounding contusion 2 x 1 cms. Fracture of thyroid cartilage made out with both sternomastoid muscle contused. Fracture dislocation of C3-C4 cervical vertebrae made out with surrounding para-vertebral tissue contused (Antemortem Injuries).

2. Postmortem Dermo-epidermal burns seen over scalp, entire face, right side of front of neck, back of neck, front of chest and abdomen, right upper limb, both lower limbs and genitalia. The underlying areas appear yellowing with no signs of inflammation. Left upper limb missing. Left foot missing. Left tibia and fibula exposed outside with soft tissue completely burnt, scalp hair, eyebrows, eyelashes, axillary hair and public hair charred (postmortem burns).

Other Findings:

- General Findings:- Face congested and charred. Both eyes - conjunctival haemorrhage made out. Lips - swollen. Self-teeth bite marks seen over the inner mucous membrane of moth. Tongue bitten and protruded in between the teeth, finger toe nails found bluish.
- O/D Head: Cranial vault: Intact. Dura Membranes-Intact brain -liquefied. Base of skull intact.
- O/D Neck: Vide injury column.
- O/D Thorax: No ribs fracture. Ribs appeared burnt and bristled. Heart : Normal in size. Chambers-empty myocardium-cooked. Coronaries patent lungs C/S cooked. Multiple petechial haemorrhages seen over the visceral surface of pleura and pericardium.
- O/D Abdomen: Stomach :- 50 ml of mucus fluid with no specific smell. Mucosa-cooked. Liver spleen and kidneys C/S Cooked. Bladder empty. Genitalia - No other injuries made out. Pelvis-intact....."

Ex.P.34 is the Post-Mortem Certificate. Ex.P.36 is the final opinion as to the cause of death. The visceral organs were examined by the Analyst, which revealed that there was no poison. Ex.P.35 is the Toxilogical Report. P.W.25-Dr.Paneerselvam gave an opinion that the death of the deceased was due to manual strangulation. The burnt wounds were subjected to post-mortem.

(vii) When the investigation was in progress, on 22.04.2011, at about 4.00 p.m., the accused Nos. 2 to 5 appeared before P.W.8-Thangappan, the then Village Administrative Officer (Incharge) of Chinna Soragai Village, and made independent extra-judicial confessions. P.W.8 allowed accused Nos.2 to 5 to confess orally, which he reduced into writing. Exs.P.3 to P.6 are the independent extra-judicial confessions given by accused Nos.2 to 5 respectively. Then, P.W.8 took accused Nos.2 to 5 to the Nangavalli Police Station and produced them before P.W.27, the then Inspector of Police. P.W.27 arrested the accused Nos.2

to 5 and on such arrest, they again gave voluntary independent confessions. In his confession, the 2nd accused disclosed the place where he had hidden the rope (M.O.1). The 2nd accused in his confession disclosed the place where he had pledged the anklets (M.O.3). He further disclosed the place where he had hidden the receipt for the same. The 3rd accused in his disclosure statement, disclosed the place where he had hidden the kerosene can (M.O.2). The 4th accused produced Rs.300/- (M.O.4) from his possession. Similarly, the 5th accused produced Rs.500/- (M.O.5) from his possession. On 23.04.2011, at 3.00 p.m., P.W.27 arrested the accused Nos.1 and 6 near Nangavalli Bus Stand. On such arrest, they gave voluntary independent confessions, in which, accused No.1 disclosed the place, where she had burnt the bloodstained portion of the coir cot. In pursuance of the said confessions, each accused took the police and the witnesses to the place of hide and produced the Material Objects disclosed by them from their possession. P.W.27 recovered all these Material Objects under independent mahazars as produced by the respective accused. On completing the investigation, P.W.27 laid the chargesheet against all the accused.

(viii) Based on the above materials, the Trial Court framed the charges as detailed in paragraph No.1 of this judgment. The accused Nos.1 to 6 denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 27 witnesses were examined and 49 documents and 6 Material Objects were exhibited. Out of the said witnesses, P.W.1-Lakshmanan has stated that he saw the dead body of the deceased, at 10.00 a.m., on 20.04.2011 and then, he immediately made a complaint to the police. P.W.2-Manimegalai is the daughter of the deceased. She is the star witness for the prosecution. She has been examined as an eye witness. According to her, on the day of occurrence, when she was at home, all these five accused, in her very presence, killed the deceased, at around 12.00 to 12.30 a.m. When she was sleeping, she was awakened by the noise and thus, she witnessed the entire occurrence. She has further stated that she witnessed the body being carried by all the accused with a can containing kerosene and sugar. She has further stated that since the 1st accused, her mother, warned her not to disclose the occurrence to any one, she did not disclose the same immediately, she disclosed about the occurrence very belatedly. P.W.3-Pushpalatha has turned hostile and she has not supported the case of the prosecution in any manner. P.W.4-Govindan has stated that he found the dead body of the deceased, on 20.04.2011, at 8.00 a.m. He is the brother of the deceased. He has not stated anything incriminating against the accused Nos.1 to 6. P.W.5-Buvanesan has stated that on hearing the fact that the dead body was lying in Malaiperumal Koil Karatu, he went to the place of occurrence. P.W.6-Rajammal has also stated that he went to the place of

occurrence and identified the dead body as that of the deceased. P.W.7-Chandraguru is the relative of the deceased. He has stated that he identified the dead body as that of the deceased. P.W.8-Thangappan is the Village Administrative Officer, before whom, the accused Nos.2 to 5 surrendered and gave voluntary independent confessions under Exs.P.3 to P.6 respectively. He has further stated that he handed over the accused Nos.2 to 5 to P.W.27, the then Inspector of Police. P.W.9-Thangappan, is the Village Assistant, in whose presence, the accused Nos.2 to 5 appeared before P.W.8 and gave voluntary independent confessions. P.Ws. 10, 11 and 12 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.13-Murugavel, who is the owner of the jewellery shop, from whom the anklets were allegedly recovered, has stated that he could not identify the person, who pledged the anklets to him. P.Ws. 14 to 17 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.18-Dhanapal has stated about the land dispute between the deceased and Kathamuthu. P.Ws. 19 and 20 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.21-Rajamanickam, the then Head Constable, has stated that he handed over the dead body to the Doctor for post-mortem. P.W.22-Kathamuthu, was examined to speak about the motive, has turned hostile. P.W.23-Mohandas, the then Special Sub-Inspector of Police, has spoken about the confessions given by the accused Nos.2 to 5 to P.W.27. P.W.24-Manickam, the then Sub-Inspector of Police, has spoken about the registration of the case. P.W.25-Dr.Paneerselvam has spoken about the post-mortem conducted by him and his final opinion regarding the cause of death. P.W.26-Manikandan, Photographer, has spoken to the fact that he took photographs from various angles at the place of occurrence. P.W.27-Neelakumar, the then Inspector of Police, has spoken about the investigation done and the final report filed.

(ix) When the accused Nos.1 to 6 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied them as false. But, they have not chosen to examine any witness or to mark any document. Their defence was a total denial. Having considered all the above, the Trial Court convicted and sentenced them to undergo imprisonment as stated in paragraph No.1 of this judgment. That is how, the appellants/accused Nos.1 to 6 are now before this Court with these appeals.

3. We have heard Mr.R.Sankara Subbu, the learned counsel appearing for the appellants in CrI.A.No.135 of 2013; Mr.J.Pothiraj, the learned counsel appearing for the appellant in CrI.A.No.168 of 2013; Mr.M.Maharaja, the learned Additional Public Prosecutor appearing for the State; and we have also perused the records carefully.

4. In this case, though, number of witnesses have been examined by the prosecution, the star witness for the prosecution is P.W.2-Manimegalai, the daughter of the deceased. At the time of occurrence, she was 16 years old. As we have already narrated, according to her, when she was at her home along with the deceased and the 1st accused, the accused Nos. 2 to 6 came to the house and when her father was sleeping, the accused Nos. 2 to 6 killed him, by strangulating his neck. She has also spoken about the overt acts of the accused Nos.1 to 6.

5. The learned counsel for the appellants would submit that the evidence of P.W.2 cannot be believed for more than one reason. We find force in the said argument of the learned counsel. Had it been true that P.W.2 had witnessed the occurrence, by all means, going by the natural human conduct, she would have informed her other family members about the entire occurrence. But, she did not disclose the same. She kept silent. The explanation offered by the prosecution is that the 1st accused had warned her not to disclose the same to anybody. This explanation, in our considered view, is not believable and acceptable. It is not as if, P.W.2 was a young child, who could be threatened. She was fully grown up and she was more than 16 years old at the time of occurrence. In our considered view, such a grown up girl, at her teens, would not have kept silent, after having seen his father being killed by somebody. As a natural conduct, on seeing her father being killed, she would have raised alarm, but, she has stated that she kept mum. This evidence of P.W.2 that she kept silent, without raising any alarm as a natural conduct, creates enormous doubt about her very presence at the time of occurrence. When the dead body was removed from her house, she did not make any attempt to inform about the occurrence to anybody. The dead body of the deceased was found, on 20.04.2011 and the case was registered, at 10.00 a.m. Even after that, P.W.2 did not disclose about the occurrence to anybody. She continued to keep silent. According to the case of the prosecution, on 22.04.2011, the accused Nos.2 to 5 surrendered before P.W.8, the then Village Administrative Officer (Incharge) and made voluntary independent confessions. It was only thereafter, the case was altered into one of murder. According to her, as usual, she went to the private mill, where she was working. She has admitted during cross-examination that only via the Police Station, she went to the mill. Even then, she did not disclose about the occurrence to the police. She disclosed about the occurrence only, on 23.04.2011, for the first time. This unnatural conduct of P.W.2 makes her evidence highly suspicion.

6. Apart from the above eye witness account of P.W.2, the prosecution relies on the extra-judicial confession said to have been given by the accused Nos.2 to 5 to P.W.8. In this regard,

the learned counsel for the appellants would submit that it is highly unbelievable that these accused would have chosen P.W.8, who is a total stranger to confess. We find force in the said argument. It is not as though these accused had acquaintance with P.W.8. Therefore, it is highly doubtful whether these accused would have chosen P.W.8 to confess. Thus, the extra-judicial confession said to have been given by the accused Nos.2 to 5 is shrouded with suspicion. It is settled law that an extra-judicial confession, which is shrouded with suspicion, by its very nature, is a very weak piece of evidence and unless, it draws corroboration from any other independent sources, the same cannot be the sole foundation for conviction. Here in this case, the so called extra-judicial confessions said to have been given by accused Nos. 2 to 5, which is shrouded with suspicion, do not draw any corroboration from any other independent sources. Further, it is well settled that one tainted evidence cannot corroborate another tainted evidence, as in this case, the extra-judicial confession cannot corroborate the evidence of P.W.2.

7. Apart from these evidences, what remains is the recovery of anklets from the jewellery shop of P.W.13. But, P.W.13 has not identified that the anklets were pledged by any of these accused. Further, the anklets did not belong to the deceased. The case of the prosecution is that it belongs to the 1st accused. Assuming that the anklets were pledged by the 2nd accused, since the same belongs to the 1st accused, the recovery of the same is irrelevant, and the same would not advance the case of the prosecution in any manner. Thus, in our considered view, the appellants/accused Nos.1 to 6 are entitled for acquittal, as the prosecution has failed to prove the case beyond reasonable doubts. Therefore, we are unable to sustain the conviction and sentence imposed on the appellants/ accused Nos. 1 to 6 by the Trial Court.

8. In the result,

- i. these Appeals are allowed and the conviction and sentence imposed on the appellants/accused Nos.1 to 6 by the Trial Court in S.C.No.109 of 2012, dated 04.02.2013, are set aside and the appellants/accused Nos.1 to 6 are acquitted;
- ii. The fine amount, if any paid, shall be refunded to them.
- iii. The bail bond, if any executed by the appellants/accused Nos.1 to 6, shall stand discharged.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

paa

To

1. The III Additional District and Sessions Judge
Salem

2. The Chief Judicial Magistrate
Salem

3. The Judicial Magistrate No.1,
Mettur

4. The District Collector
Salem

5. The Director General of Police
Mylapore, Chennai

6. The Inspector of Police
Salem District, Mettur Taluk

7. The Superintendent
Central Prison,
Coimbatore

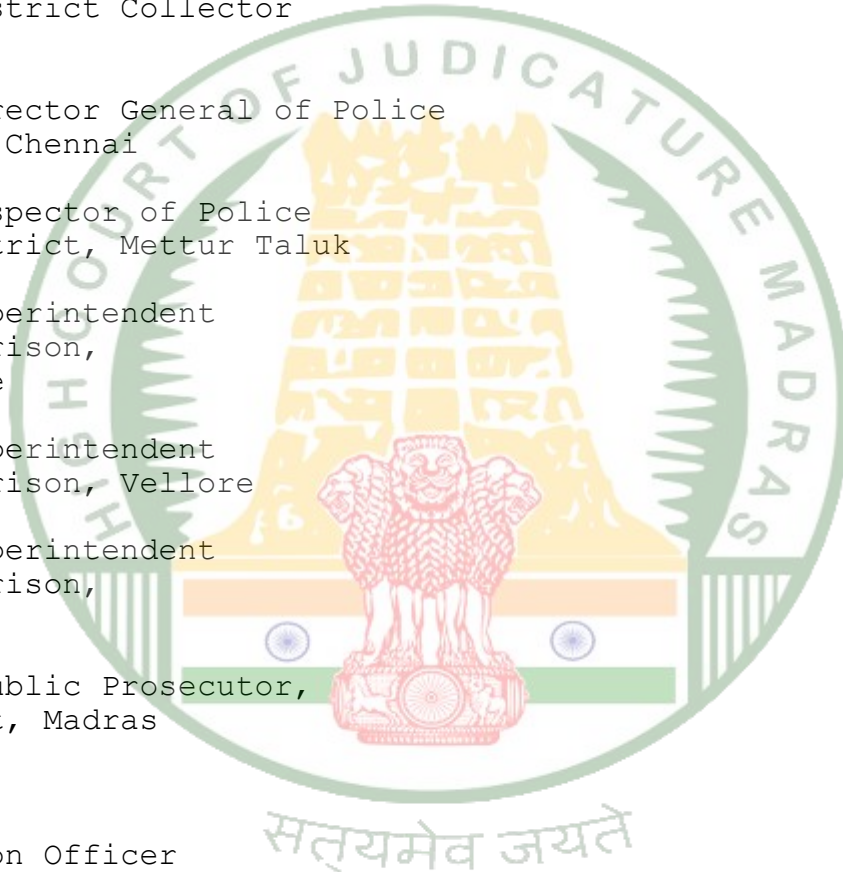
8. The Superintendent
Central Prison, Vellore

9. The Superintendent
Central Prison,
Salem

10. The Public Prosecutor,
High Court, Madras

Copy to

The Section Officer
Crl.Section, (Records)
High Court, Madras



WEB COPY

CRIMINAL APPEAL NOS. 135 and 168 OF 2013

AD (CO)
kk 30/6