



Bail Slip

Appellants in CrI.A. Nos.30, 69, 99, 118, 121 & 134 of 2013 (Accused 3, 4, 6, 4, 8, 7, 10 & 11 and A1 in S.C.NO.370/2008 dated 20.12.2012 on the file of the III Additional Sessions Judge, at Salem) were released on Bail as per order of this court dt.18.12.2013 in MP.1/13 in CA.30/13 (A3), 26.02.2013 in MP.1/13 in CA.118/13 (A4), 6.3.2013 in MP.1/13 in CA.69/13 (A6&8), 6.3.2013 in MP.1/13 in CA.99/13 (A7), 6.3.2013 in MP.1/13 in 121/13 (A10&11), 6.3.2013 in MP.1/13 in CA.134/13 (A1)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 23-03-2016

JUDGMENT PRONOUNCED ON : 21-04-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CRIMINAL APPEAL Nos.30, 69, 99, 118, 121 and
134 of 2013

Gopalakannan @ Mohanakannan	.. Appellant/Accused 3 in CA 30/2013
1.Arjunan 2.Murugesan	.. Appellants/Accused 6 & 8 in CA 69/2013
M.Arivazhagan	.. Appellant/Accused 7 in CA 99/2013
Pachaiyappan	.. Appellant/Accused 4 in CA 118/2013
1.Mahendran 2.Mayilsamy	.. Appellants/Accused 10 & 11 in CA 121/2013
Anbu Selvam	.. Appellant/Accused 1 in CA 134/2013

vs

State rep. By
The Inspector of Police
Karumalaikoodal Police Station
Mettur Taluk, Salem District
(Crime No.100 of 2005)

.. Respondent/Complainant
in all appeals



Criminal appeals preferred under Section 374(2) of Code of Criminal Procedure against the judgment dated 20.12.2012, made in S.C.No.370 of 2008, on the file of the Court of III Additional District and Sessions Judge, Salem.

For Appellants : Mr.V.Gopinath
Senior Counsel
for Mr.K.Selvarangan
in CA 30/2013

Mr.N.R.Elango
Senior Counsel
for Mr.R.Nalliyappan
in CA 69/2013
Mr.R.Sankarasubbu
for Mr.P.Kannan Kumar
in CA 99/2013

Mr.Dalit Tiger C.Ponnusamy
in CA 118/2013

Mr.R.Sankarasubbu
for Mr.M.R.Senthilkumar
in CA 121/2013

Mr.R.C.Paul Kanagaraaj
for Mr.K.Selvarangan
in C.A.134/2013

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

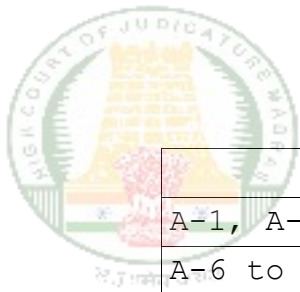
COMMON JUDGMENT

M.SATHYANARAYANAN, J.

The appellant in C.A.No.134/2013, is A-1; the appellant in C.A.No.30/2013, is A-3; the appellant in C.A.No.118/2013, is A-4; the appellants in C.A.No.69/2013, are A-6 and A-8 respectively; the appellant in C.A.No.99/2013, is A-7 and the appellants in C.A.No.121/2013, are A-10 and A-11 respectively, in S.C.No.370 of 2008, on the file of the Court of III Additional District and Sessions Judge, Salem.

2.The appellant in C.A.No.98/2013 viz. A-5, is no more and the appeal as against him, came to be dismissed as abated vide order dated 21.3.2016.

3.There were totally 13 accused in the above said Sessions Case, and they were charged and tried for the commission of offences, the details of which are given as under:-



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ACCUSED	CHARGES
A-1, A-3 to A-8, A-10 and A-11	Section 120(B) (1) IPC
A-6 to A-8, A-10 and A-11	Section 148 IPC
A-12 and A-13	Section 147 IPC
A-4 to A-8, A-10 and A-11	Sections 341 and 302 IPC
A-12 and A-13	Sections 341 and 302 read with 149 IPC
A-1 and A-3	Section 302 read with 109 IPC

4.The charges against A-2 and A-9 were abated as they died pending trial.

5.The trial Court vide impugned judgment dated 20.12.2012, has convicted and sentenced the concerned accused as follows:-

ACCUSED	CONVICTION	SENTENCE
A-1, A-3 to A-8, A-10 and A-11	Section 120(B) IPC	One year Rigorous Imprisonment and a fine of Rs.1,000/- each with a default sentence of 3 months Rigorous Imprisonment
A-1, A-3, A-4 and A-5	Section 302 read with 120(B) IPC	Life Imprisonment and a fine of Rs.25,000/- each, with a default sentence of 1 year Rigorous Imprisonment
A-6 to A-8, A-10 and A-11	Section 148 IPC Section 341 IPC Section 302 IPC	No separate sentence Fine of Rs.500/- each with a default sentence of one week Simple Imprisonment Life Imprisonment and a fine of Rs.25,000/- each, with a default sentence of 1 year Rigorous Imprisonment

6.The sentences of imprisonment awarded against the above said accused, are ordered to run concurrently and set-off was also granted under Section 428 of Cr.P.C.

7.The trial Court had acquitted A-12 and A-13 for the commission of offences under Sections 147, 341 and 302 read with 149 IPC and A-4 and A-5 for the offence under Section 341 IPC. As already pointed out, charges against A-2 and A-9 got abated as they died during trial.



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8.The appellants in these appeals, aggrieved by the conviction and sentence, awarded to them, had filed these respective appeals.

9.The factual matrix of the case is as follows:-

9(i) The deceased Munusamy is the brother of P.W.1 Rangasamy, and P.W.2 Chellappan. Munusamy was engaged in the occupation of deputing contract labourers to MALCO company and Thermal Power Unit run by the Tamil Nadu Electricity Board at Mettur. Munusamy had contested in the Local Body Election twice, for election of elected representatives of P.N.Patty Town Panchayat and was also owning a land and superstructure at Chinnakavur near Railway Gate. Brother of Munsamy viz. P.W.2, was doing contract work at Goya Company and the said company was manufacturing iron pipes with a cement covering and one Nehru - the friend of P.W.2, was also associated in the said business.

9(ii) Accused No.6 to 11 were working under P.W.2 and wanted to do the contract work being done by Munusamy, and informed the same to P.W.2, who, in turn, informed his brother Munusamy. However, Munusamy asked his brother P.W.2 to suspend A-6 to A-11 and the said fact coupled with the factum of previous enmity due to conducting of temple festival, developed into enmity.

9(iii) Originally, 56 persons were employed in Mettur Plant of MALCO and they were retrenched on account of modernization, and however, no Government retrenchment compensation was given to the retrenched workers. In this regard, A-4 and A-5 had questioned Munusamy on account of not getting the compensation amount payable to the retrenched employees.

9(iv) One Sridhar (P.W.7) was doing sub-contract work at Sea Pol Company at Mettur and A-1 expressed his interest in getting contract work in the name of A-2 and A-3, and all of them met Munusamy in a room at MLA Hostel at Chennai, about 20 days prior to 8.4.2005, and Munusamy did not yield to their request, which resulted in quarrel.

9(v) On account of the above said reasons, a conspiracy was hatched to do away with the life of Munusamy and the above said reasons were also motive for commission of crime.

9(vi) On 8.4.2005, at about 5.00 A.M., Munusamy was proceeding to his place of work by riding his Enfield Bullet Motorcycle (M.O.9), bearing Registration No.TN-27 T 1269, and some time thereafter, the brother of Munusamy viz. P.W.1, heard the alarm/high voice/loud voice of his brother. Immediately, P.W.1 and another brother of Munusamy viz. P.W.2, along with one Saravanan went to the spot, which is near the Railway Gate, and they saw the motorcycle of his brother lying with headlight burning, and they witnessed A-6, A-7, A-8 and A-9 indiscriminately attacking Munusamy with lethal weapons, and A-10 and A-11 attacking Munusamy with iron rods repeatedly.



P.Ws.1 and 2 and Saravanan tried to catch the assailants; but, they fled away from the scene of occurrence and they saw Munusamy lying in a pool of blood. Immediately, Munusamy was taken to the Hospital in a Car driven by P.W.3 Driver of Munusamy, accompanied by P.W.2 and Saravanan. At about 6.45 A.M. on 8.4.2005, P.W.2 telephonically informed his brother P.W.1 that Munusamy died on the way to the hospital.

9(vii) P.W.1 proceeded to Karumalaikoodal Police Station and lodged a complaint under Ex.P1, at about 6.45 A.M. on 8.4.2005, to P.W.29, the Inspector of Police, attached to the said Police Station, who registered a case in Crime No.100/2005, for the commission of offences under Sections 147, 148, 341 and 302 IPC. Ex.P49 is the printed First Information Report and P.W.29 despatched the original of Ex.P1 and FIR to the Court of Judicial Magistrate No.II, Mettur, who received the same at 9.30 A.M.

9(viii) P.W.29 on registration of the FIR, proceeded to the scene of occurrence and also arranged a Photographer (P.W.24) to take photographs and P.W.1 identified the occurrence place. P.W.29 prepared an Observation Mahazar and a Rough Sketch marked as Exs.P4 and P50 respectively, in the presence of P.W.4 and Senthilkumar. The photographs taken by P.W.24 - Photographer, were marked as Ex.P36 series. P.W.29 from the scene of occurrence, collected bloodstained earth (M.O.7), sample earth (M.O.8) and Enfield Motorcycle bearing Registration No.TN-27 T 1269, driven by deceased Munusamy, (M.O.9) under a cover of mahazar Ex.P5, in the presence of P.W.4 and another. He went to Mohan Kumaramangalam Government Medical College and Hospital at Salem and obtained death intimation of Munusamy and a copy of the Accident Register (Ex.P52) and conducted inquest over the body of the deceased between 11.45 A.M. and 3.30 P.M. on 8.4.2005, and the inquest report prepared by him, was marked as Ex.P51.

9(ix) P.W.29 also examined P.Ws.1 to 4, 9 and others and recorded their statements and gave a requisition under Ex.P43 to conduct postmortem on the body of the deceased. P.W.23 Constable, at about 3.35 P.M. on 8.4.2005, handed over the body along with the requisition - Ex.P43, to P.W.27 - the Professor of Forensic Medicine, Government Mohan Kumaramangalam Medical College, Salem.

9(x) P.W.27 commenced the postmortem at about 3.45 A.M. on 8.4.2005, and noted the following features:-

"INJURIES

- (1) Abrasions seen over (a) Right cheek 1 x 1 cm; (b) Right temporal region 1 x 1 cm; (c) Right shoulder 3 x 2 cms. 1.5 x 0.5 cms.
- (d) Linear abrasion right elbow 4 cms.
- (2) Contusion on right cheek 8 x 6 cms.
- (3) An oblique gaping cut injury present at the right ear 2 cms measuring 5 cms x 1 cm x bone deep margin of clear cut angles sharp.



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It extended into the right side of occipital region of scalp.

(4) A cut injury of right ear. On its upper part (right pinna - absent upper part of) 5 x 1 cms bone deep.

(5) An oblique gaping cut injury at right side forehead. 4 cms x 1 cm bone deep. On dissection communitted fracture of right frontal bone.

(6) An oblique cut injury and punctured wound on right cheek 2 cms x 1 cm bone deep.

(7) A gaping cut injury on outer canthus of right 1 x 5 x 0.5 cms bone deep.

(8) An oblique gaping cut injury on the right chin 5 x 2 x 5 cms bone deep. On dissection communitted fracture of right side mandibles.

(9) Contusion on right side fronto parietal and temporal region of scalp 20 x 15 x 0.5 cms dark red.

(10) Sub-dural and sub arachnoid haemorrhage over the both cerebral hemispheres of brain.

(11) Contusion on left parieto occipital region of scalp 8 x 4 x 0.5 cms dark red.

(12) Communitted fracture of right frontal and temporal bone. 7 x 4 cms with extensive fissured fracture of right fronto parietal bone upto the middle of suture line. Left parietal bone 15 cms in length. (Antimortem) Heart chambers and valves normal. Cavities empty.

Coronary Vessels Patent, Great Vessels: Normal, Lungs: Both on c/s pale. Hyoid bone: Intact, Stomach: Empty. No specific smell, mucosa - pale. Small Intestine: Yellowish chyme. No specific smell. Mucosa - pale. Liver, Spleen and Kidneys: All are c/s pale. Bladder: Empty. Pelvis, Membranes and Spinal Column: All are intact. Brain Pale."

9(xi) P.W.27 after conclusion of postmortem, opined that the deceased died of shock and haemorrhage due to multiple injuries and the time of death was 8 to 12 hours prior to autopsy, and also issued postmortem certificate marked as Ex.P44.

9(xii) P.W.23 Constable, who took the body to the hospital for postmortem, seized the clothes worn by the deceased, marked as M.Os.10, 11 and 12, under Form 95 marked as Ex.P61.

9(xiii) P.W.29 submitted a requisition to record the statements of P.Ws.1 to 3 and one Kadhirvelu under Section 164 (5) of Cr.P.C., on 9.4.2005, and also gave a similar requisition to record the statements of P.Ws.5 and 6. On 10.4.2005, P.W.29 recorded the statements of P.Ws.5 and 6 and further recorded the statement of P.W.2. The statements of witnesses recorded under



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Section 164(5) of Cr.P.C., were marked as Exs.P37, P38, P39 and P40 respectively. P.W.29 also received information about the surrender of A-6 to A-11 before the Court of Judicial Magistrate, Gobichettipalayam, and took necessary steps to get their custody.

9(xiv) A-4 and A-5 had surrendered before P.W.12 - Village Administrative Officer of P.N.Patti Village, at about 7.00 A.M. on 12.4.2005, and gave oral confessions that they have murdered Munusamy. P.W.12 informed P.W.14 Tahsildar, who in turn, recorded the statement of A-4 (Ex.P9) at his Camp Office on 12.4.2005, at about 8.00 A.M., and also recorded the statement of A-5 (Ex.P8) at about 8.45 A.M. on the same day. P.W.14 handed over custody of A-4 and A-5 to P.W.29, the Investigation Officer, on 12.4.2005, along with Exs.P8 and P9.

9(xv) P.W.29 effected the arrest of A-4 and A-5 and in the presence of P.Ws.15 and 16, they voluntarily came forward to give confession statements, which were recorded in the presence of the above said witnesses, at about 12.15 P.M. on 12.4.2005. As per the admissible portion of the confession of A-4, marked as Ex.P54, P.W.29 seized his shirt and dhoties marked as M.Os.13 and 14 respectively, under Ex.P56, mahazar, and pursuant to the admissible portion of the confession of A-5, he seized M.Os.15 and 16, shirt and pant respectively, worn by him, under a cover of mahazar Ex.P57. Both accused also produced iron rods, which were seized under a cover of mahazar Ex.P58. P.W.29 produced A-4 and A-5 before the Sub Divisional Magistrate and Revenue Divisional Officer, Mettur at about 6.00 P.M., to find out whether any violation of human rights took place.

9(xvi) P.W.29 altered the offences to Sections 147, 148, 341, 120(B), 109 and 302 read with 149 of IPC on 12.4.2005, and the alteration report was marked as Ex.P59. He took police custody of A-4 to A-11 on 18.4.2005, and A-6 and A-7 voluntarily came forward to give confession statements, which were recorded in the presence of P.Ws.17 and 18. As per the admissible portion of the confessions of A-6 and A-7 marked as Exs.P62 and P63 respectively, M.Os.1 and 2 were recovered. P.Ws.17 and 18 did not support the case of the prosecution and their signatures in the seizure mahazars, were marked as Exs.P21, P23, P24 and P26 respectively.

9(xvii) A-8 and A-9 also voluntarily came forward to give confession statements, which were recorded in the presence of P.W.19 and another, on 20.4.2005, and the admissible portions of their confessions were marked as Exs.P64 and P65 respectively and M.Os.3 and 4 were recovered near a bush at Poolampatti, on 21.4.2005, under a cover of mahazar Ex.P69. P.W.19 did not support the case of the prosecution and his signatures in the mahazars were marked as Exs.P27 to P29.

9(xviii) A-10 and A-11 voluntarily came forward to give confession statements, which were recorded in the presence of P.Ws.20 and 21, and as per the admissible portions of their confessions marked as Exs.P66 and P67 respectively, M.Os.5 and 6



were seized. P.Ws.20 and 21 did not support the case of the prosecution and their signatures in the mahazars, were marked as Exs.P30 to P34 respectively.

9(xix) P.W.29 sent the material objects to the jurisdictional Magistrate under Ex.P71 Form 95. The Judicial Magistrate No.4, Salem, was deputed by the Chief Judicial Magistrate, Salem to record the statements of P.Ws.1, 2, 3, 5, 6 and 9, Saravanan and Kadhirvelu and the statements of the said prosecution witnesses were marked as Exs.P2, P3, P37, P40, P6 and P7 respectively and the statements of Saravanan and Khadhirvelu were marked as Exs.P38 and P39 respectively.

9(xx) P.W.28, Scientific Assistant, attached to Forensic Lab, Salem, received a requisition under Ex.P47, to conduct chemical analysis and the chemical analysis report given by him, was marked as Ex.P48. As per the said report, blood was detected in M.Os.1 and 3 to 17 and M.Os.3 to 6 contained "B" Group human blood relating to the deceased.

9(xxi) P.W.29 examined P.Ws.1, 10, 11, 22, 23 and 27 and on 5.7.2005, recorded the further statement of P.W.1 and after completing the investigation, filed the final report/charge sheet on 15.9.2005, before the Court of Judicial Magistrate No.II, Mettur, which took it on file in PRC No.41/2005.

10.The committal Court issued summons to the accused and on their appearance, furnished to them, copies of documents under Section 207 of Cr.P.C., and having found that the case is exclusively triable by the Sessions Court, committed it to the Principal Sessions Court, Salem, which took it on file in S.C.No.370 of 2008 and made over it to the III Additional Sessions Judge, Salem.

11.The trial Court, on appearance of the accused, had framed the charges as stated above, and questioned them and all of them pleaded not guilty to the charges framed against them. Pendency of trial, A-2 and A-9 died and therefore, charges framed against them, got abated.

12.The prosecution in order to sustain the case, examined P.Ws.1 to 29 and marked Exs.P1 to P72 and M.Os.1 to 18. The accused were questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances made out against them in the evidence, tendered by the prosecution, and they denied it as false. They further stated that a false case has been foisted against them and on their behalf, D.Ws.1 and 2 were examined and no exhibits have been marked. The trial Court on a consideration of oral and documentary evidences and other materials, convicted and sentenced the accused as stated above. Challenging the legality of conviction and sentence, the present appeals are filed. Pendency of the appeals, the appellant/A-5 in C.A.No.98/2013, died and the said appeal was dismissed as abated.



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13.Mr.V.Gopinath, learned Senior Counsel, assisted by Mr.K.Selvarangan, learned Counsel appearing for the appellant/A-3 in C.A.No.30/2013, made the following submissions:-

(a) The case of the prosecution against A-3 is that A-1 to A-11 had hatched a conspiracy to kill Munusamy, two weeks prior to 8.4.2005, and to prove conspiracy, P.Ws.10 and 11 were examined and they are said to have peeped through the door of the hotel owned by A-4, and they also heard the conversation of A-1 to A-11, who were there, and A-1 informed A-6 to A-11 to kill Munusamy so that he can get the contract to his contract labourers, in MALCO. However, P.Ws.10 and 11 did not support the case of the prosecution as they became hostile, and the only evidence put against the appellant/A-3, is the extra-judicial confession said to have been given by A-4 and A-5, and it cannot be the sole basis to implicate A-3 in the commission of offence.

(b) The legal position is that if the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused, and if the evidence appears to be satisfactory and the Court is inclined to hold that the evidence may sustain the charges framed against the concerned accused, then, the Court turns to the confession of the co-accused with a view to assure itself about the role played by the concerned accused in the commission of crime. However, in the case on hand, except the extra-judicial confessions of A-4 and A-5, no other tenable evidence has been adduced by the prosecution to sustain the case against the appellant/A-3.

(c) It is further alleged by the prosecution that A-1 to A-3 met deceased Munusamy at MLA Hostel, Chennai before the occurrence and threatened him to get the contract of MALCO company in their favour. However, the witnesses to the said meeting viz. P.Ws.5 and 7, did not support the case of the prosecution, and therefore, except the extra-judicial confessions of A-4 and A-5, no other incriminating materials have been produced by the prosecution in the form of evidence to sustain the charges framed against the appellant/A-3.

(d) There is a discrepancy with regard to the alleged extra-judicial confessions of A-4 and A-5 marked as Exs.P8 and P9 respectively, said to have been recorded by P.W.14,



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especially with regard to the time of their surrender, and giving their statements and therefore, it is wholly unsafe to sustain the conviction and sentence against A-3, based on such a feeble and unreliable evidence, and A-3 is entitled for acquittal.

14.Mr.N.R.Elango, learned Senior Counsel, assisted by Mr.R.Nalliyappan, learned Counsel appearing for the appellants/A-6 and A-8 in C.A.No.69/2013, made the following submissions:-

(a) The conviction of A-6 and A-8 was based on the evidence of alleged eyewitnesses viz. P.Ws.1 and 2, who are closely related to the deceased, and their testimonies bristle with embellishments and contradictions and it cannot be believed at all.

(b) The alleged occurrence took place at about 5.00 A.M. on 8.4.2005, and at such an early hour, it was not possible for P.Ws.1 and 2 to hear the alarm raised by the deceased Munusamy, and reaching the spot immediately and such evidence cannot be believed at all.

(c) The identification of the alleged assailants viz. A-6 to A-11, through the light emanating from the headlight of the motorcycle, which was driven by the deceased, cannot be believed and but for the fact, could not have been possible for P.Ws.1 and 2 to identify the assailants.

(d) The medical evidence did not tally with the overt act attributed to the assailants, and the injuries could not have been caused with the weapons said to have been used by them.

(e) The evidence of P.W.2 is that he identified the weapons before the Court, after seeing it in the police station, and therefore, he could not have seen the attack inflicted by the assailants with lethal weapons.

(f) The extra-judicial confession statements given by A-4 and A-5 before P.W.14, are not at all valid and sustainable.

15.In sum and substance, it is the submission of the learned Senior Counsel appearing for the appellants in C.A.No.69/2013, that in the light of the infirmities pointed out, the trial Court ought to have ordered benefit of doubt to A-6 and A-8 and acquitted them and he prays for allowing the appeal.



16.Mr.R.Sankarasubbu, learned Counsel, assisted by Mr.P.Kannan Kumar, learned Counsel appearing for the appellant/A-7 in C.A.No.99/2013, and assisted by Mr.M.R.Senthilkumar, learned Counsel appearing for the appellants/A-10 and A-11 in C.A.No.121/2013, while adopting the arguments of the learned Senior Counsel appearing for the appellants/A-6 and A-8 in C.A.No.69/2013, would submit that apart from P.Ws.1 and 2, two other witnesses viz. Saravanan and Kathirvelu, are said to have witnessed the murder; but, they have not been examined, and P.W.13 - driver of the car, in which Munusamy was taken to the hospital by P.W.2, also did not support the case of the prosecution and a grave doubt has been created as to whether P.Ws.1 and 2 could have seen the occurrence at all, at the early morning hours on 8.4.2005. He would further submit that it was impossible for P.Ws.1 and 2 to speak about the exact overt act on the part of the assailants; but, according to them, they have seen the occurrence in the light that emanated from the headlight of the motorcycle, which was lying near Munusamy, and further that even according to them, the occurrence was over within five minutes and therefore, the parrot-like version given by them, would clearly imply that they have been tutored to give evidence supporting the case of the prosecution, and the appellants/A-7, A-10 and A-11 are entitled for acquittal.

17.Mr.Dalit Tiger C.Ponnusamy, learned Counsel appearing for the appellant/A-4 in C.A.No.118/2013, would submit that the alleged extra-judicial confessions given by A-4 and A-5 before P.Ws.12 and 14, cannot be believed at all and it cannot be the basis to record conviction and sentence and admittedly, P.Ws.12 and 14 turned hostile and therefore, the trial Court has committed a grave error in convicting A-4 and prays for his acquittal.

18.Mr.R.C.Paul Kanagaraj, learned Counsel, assisted by Mr.K.Selvarangan, learned Counsel appearing for the appellant/A-1 in C.A.No.134/2013, apart from adopting the arguments of the learned Senior Counsel, has drawn the attention of this Court to Ex.P52 accident register, and would submit that the death of Munusamy was known only at about 10.50 A.M. on 8.4.2005, and while he was admitted in the hospital, P.W.2, who admitted him, would state that Munusamy died on the way to hospital, and therefore, it ought not have been possible for P.W.1 on receipt of information from P.W.2, to lodge a complaint at about 6.45 A.M. on 8.4.2005, and since the witnesses to conspiracy viz. P.Ws.10 and 11, turned hostile, A-1 ought not to have been convicted under Section 120(B) IPC and in view of the same coupled with the infirmities pointed out by the other learned Senior Counsel/Counsel appearing for the other appellants/accused, the trial Court ought not to have convicted the appellant/A-1 and prays for his honourable acquittal.

19.Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor, appearing for the State, would contend that the testimonies of P.Ws.1 and 2 corroborate with each other on all material particulars and through their evidence, the prosecution



has established the motive for commission of offence as well as the conspiracy hatched by A-1, A-3 to A-8, A-10 and A-11 and the specific overt acts on the part of A-6 to A-13 and though some of the accused were acquitted, the same would not take away the core of the prosecution case and the trial Court on thorough and proper consideration of both oral and documentary evidences and other materials, had rightly reached the conclusion of guilt on the part of the appellants herein, and sentenced them adequately and prays for dismissal of these appeals.

20. This Court has carefully scrutinized and analyzed the submissions made by the respective learned Senior Counsel/Counsel appearing for the appellants, and perused oral and documentary evidences as well as material records.

21. The primordial question that arises for consideration, is whether the prosecution had proved its case against the appellants/accused beyond any reasonable doubt and the impugned judgment convicting and sentencing the appellants, is sustainable?

22. P.W.1 is one of the younger brothers of the deceased viz. Munusamy, and in his chief examination, he stated that on 8.4.2005, at about 5.00 A.M., near Chinnakavur railway cross, he heard an alarm raised by his elder brother Munusamy, and immediately, from his house, he proceeded to the said spot and at that time, he saw his brother being attacked by A-6 to A-11 with lethal weapons. He also identified them in Court. P.W.1 would further depose that he chased them and also warned them not to inflict injuries to his brother or cut him and however, they ran away on the western side and some of them ran away towards eastern direction and some of them towards northern direction. P.W.1 also identified the weapons used by A-6 to A-13.

23. P.W.1 would further depose that he proceeded to Karumalaikoodal Police Station and about 6.30 A.M., he received a phone call from his younger brother (P.W.2) stating that Munusamy died near Five Road, Salem and accordingly, he lodged a complaint under Ex.P1, and he was examined by the Judicial Magistrate on 20.4.2005, and his statement was recorded under Section 164 of Cr.P.C., and it was marked as Ex.P2.

24. In the cross-examination done on behalf of A-6 to A-12, P.W.1 would depose that the place of occurrence was about 40 feet away from the railway track and he was ready by 4.30 A.M. on 8.4.2005, for the morning walking exercise and at about 5.00 A.M., he heard the alarm raised by his brother Munusamy and ran to the place and would state that he did not state before the police, as to his preparation to go for morning walking exercise and also before the Magistrate at the time of recording his statement under Section 164 Cr.P.C. P.W.1 would further depose in the cross-examination, that the incident was over within five minutes and his brother was missing and he was not sure whether he was alive or not and pleaded ignorance as to whether he was taken to Dr. Muthusamy Hospital initially and would state that he also sent him to Salem Hospital in a car and thereafter, he



directly proceeded to the police station and he was not accompanied by anyone and the distance between the place of occurrence and police station, is about 2 kilometers and when he reached the police station, a policeman was present and he informed the same to him and the policeman told him to tell it before the Inspector of Police and the Inspector of Police came about half an hour later and he has written the complaint and read over the same to him and thereafter, he along with the Inspector of Police proceeded to the scene of occurrence.

25.P.W.1 would admit that at the time of lodging the complaint under Ex.P1, he did not state the names of A-2 and A-13 and so also, at the time of recording the statement by the police. P.W.1 would further state that he was employed as a Contractor and used to undertake painting work and transportation of waste products as well as overhauling machineries and the police did not ask for any documents from him and denied the suggestion that he did not witness the commission of crime.

26.In the cross-examination done on behalf of A-1, A-4 and A-5, P.W.1 would depose that his brother was found about 3 feet away from the railway post and he was lying beneath the motorcycle and he was retrieved by P.W.2 and one Saravanan and he was present in the spot for about 15 to 20 minutes and during that time, nobody has lodged the complaint to the police and he was not aware whether anybody has lodged the complaint. P.W.1 would further depose that he was not aware whether A-5 and A-4 attended the funeral ceremony of his brother.

27.P.W.2 is the younger brother of the deceased as well as P.W.1 and in the chief-examination, has spoken about the motive aspect and would depose that his older brother Munusamy for the purpose of attending first shift, proceeded to Chemplast in his bullet motorcycle and some time thereafter, he heard the alarm raised by his brother, and he along with his brother-in-law Saravanan came out of the house and when he went to the scene of occurrence, he found the bullet motorcycle lying on the ground with headlight burning and saw A-6, A-7, A-8 and A-9 armed with veechu aruvals; A-10 armed with iron rod; A-11 armed with crowbar, were attacking his older brother and he chased them by stating that "do not cut him" and they ran away and at that time, P.W.2 saw his elder brother P.W.1 coming to the spot and all of them chased the assailants; but, they ran away. P.W.2 also identified the weapons handled by A-1, A-2, A-3, A-4, A-5 and A-6.

28.It was further deposed by P.W.2 that when he lifted his brother, he found injuries on the head and right side of the jaw and he asked Saravanan to go to the field of his older brother and ask the driver to bring the car and accordingly, P.W.3 along with Kathirvelu came to the spot and injured Munusamy was taken in the car driven by P.W.3, and he along with Saravanan and Kathirvelu had also gone to Salem Hospital and when they were nearing Five Roads, his brother breathed his last and thereafter, brought him to the Government Hospital and



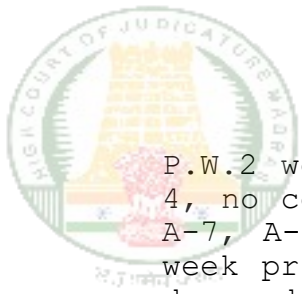
immediately, when his brother breathed his last, he informed his brother P.W.1 through phone. P.W.2 would further depose in the chief-examination, that about one week prior to the occurrence, he saw A-7, A-2, A-5, A-6, A-7, A-8, A-9, A-10 and A-11 conversing with each other and they hatched a conspiracy and he also gave a statement before the Magistrate marked as Ex.P3.

29.P.W.2 was cross-examined on behalf of A-6 to A-13, and he deposed that the distance between his house and the scene of occurrence is about 120 feet and from the field of his older brother to the scene of occurrence, the distance is about 50 feet and his brother was an important person in that locality, and solved various disputes and therefore, he has got lot of enemies. P.W.2 would further depose that with regard to the employment of six accused, there are no records and when his brother went out on the morning hours on 8.4.2005, within two or three minutes, he heard the alarm raised by his brother, and immediately, he rushed to the spot and saw the accused attacking him and when he went there, somebody ran away and some of them were attacking his brother. When a specific question was put, P.W.2 deposed that five persons ran away and six persons continued the attack and when he went near, they also ran away.

30.P.W.2 would further depose that after seeing the weapons at the time of occurrence, he has identified them in the Court and the weapons were shown by the Inspector of Police in the police station and he identified the same in the Court and in the scene of occurrence, the bike was lying above his brother. P.W.2 would depose in the cross-examination, that the injured brother was not taken to Muthusamy Hospital and they took him to Salem on the pretext that if he was taken to the said hospital, they would advise them to do so and so, did not take his brother to Gokulam Hospital and after reaching Salem, he informed the factum of admission of his brother, to P.W.1 through cellphone and did not remember whether the cellphone belongs to him or to his older brother. P.W.2 would further depose that on the date of occurrence itself, his statement was recorded by the Investigation Officer P.W.29 and denied the suggestion that six accused persons were never employed by his brother.

31.In the cross-examination, done on behalf of A-1 and A-4, P.W.2 would depose that when his brother raised alarm, he was going for walking; but, he did not state the same before the police, and his brother was found along with the bike near the railway post. It was further deposed by P.W.2, that when he met Dr.Viswanathan, attached to Salem Government Hospital, he has stated about the factum of demise of his brother on the way to hospital and denied the suggestion that no such occurrence took place and also deposed that he is employed in Electricity Board. P.W.2 would further depose that his first statement was typed at the Government Hospital itself and his further statement was recorded in the Court.

32.In the cross-examination done on behalf of A-4,



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P.W.2 would depose that with regard to the threat exerted by A-4, no complaint was given and with regard to the conversation of A-7, A-2, A-5, A-6, A-8, A-9, A-10 and A-11 with each other, a week prior to the occurrence, he has not specified the date and day and for the first time, he is deposing so in the Court.

33. According to the prosecution, P.Ws.1 and 2, the younger brothers of deceased Munusamy, had witnessed the occurrence. According to P.W.1, he saw A-6 to A-11 repeatedly attacking his brother Munusamy with lethal weapons and the incident was over within five minutes and he proceeded to Karumalaikoodal Police Station for the purpose of lodging complaint and at about 6.30 A.M., on that day, he received the phone call from his brother P.W.2 about the demise of his brother Munusamy and accordingly, he lodged the complaint in his own handwriting, under Ex.P1 to P.W.29. According to P.W.2, he saw A-6 to A-9 armed with veechu aruval; A-10 armed with iron rod and A-10 armed with crowbar were repeatedly attacking his brother. P.W.2 further deposed in the chief-examination, that he also asked them not to attack his brother and some of them ran away and at that time, he saw his elder brother P.W.1 was coming to the spot and with the help of P.W.3, who has driven the car, he along with Saravanan and Kathirvelu (both not examined) took him to the hospital and on the way, he died. It was further deposed by P.W.2 that he saw A-6 armed with M.O.1, A-7 armed with M.O.2, A-8 armed with M.O.3 and A-9 (died) armed with M.O.4, A-10 armed with M.O.5 and A-11 armed with M.O.6. He has also spoken about A-2 and A-5 to A-11 talking with each other just one week prior to the commission of offence and he saw them at the time of occurrence and in the cross-examination, would depose that when he went there, somebody ran away and some persons were attacking his brother and five persons ran away from the scene of occurrence and the remaining six persons attacked his brother.

34. The Investigation Officer/P.W.29 in the cross-examination, would depose that he received information with regard to the commission of offence at about 6.45 A.M. on 8.4.2005, and P.W.1 alone came there to lodge the complaint and it was written by him in the police station and in Ex.P1 complaint, P.W.1 has stated about the weapons used, but has not given the description of weapons and he despatched the FIR through P.W.22, and P.W.1 also accompanied him to the scene of occurrence. P.W.29 would further depose that in Ex.P1, P.W.1 did not state anything against A-4 and A-5 and denied the suggestion that he examined the Watchman in the Thermal Station as well as the employee in the Railway Gate and recorded their statements and nobody, who passed through the Railway Cross, has informed about the commission of offence. It is further deposed by P.W.29 that P.W.1 in Ex.P1 complaint, as well as in his statement recorded during investigation, did not state that on hearing the alarm raised by his brother, he rushed to the spot/railway gate and P.Ws.1 and 2 during the course of investigation, had stated that their brother Munusamy had lot of enemies and further that P.Ws.1 and 2 and their deceased brother Munusamy did not lodge any complaint against the accused as to



the altercation/quarrel with regard to the award of contract and no materials have been produced before him as to the employment of Munusamy as well as his occupation as contractor. P.W.29 has also deposed that there is no evidence to show that two years prior to the occurrence, A-6, A-7, A-8, A-9 and A-11 had any altercation/quarrel with them as well as their employment under the deceased Munusamy and also the termination of 56 persons. P.W.29 would further state that there is no complaint or evidence to show that under the leadership of A-4, demonstration was conducted and that P.W.1 during the course of investigation, did not state anything about the walking exercise and P.Ws.1 and 2 did not state that they were present together in the scene of occurrence.

35.A careful analysis of the evidence of the eyewitnesses coupled with the testimony of the Investigation Officer would disclose that with regard to the motive aspect, no evidence is forthcoming and it is a settled position of law that if the case of the prosecution is based on ocular testimony, motive does not assume significance. It is also the evidence of P.W.1 that on hearing the alarm raised by his brother, he went to the spot and saw A-6 and A-13 repeatedly attacking his brother with lethal weapons and the incident was over within five minutes. It is to be pointed out at this juncture, P.W.1 did not state about the presence of his younger brother P.W.2. As per the oral evidence of P.W.2, he saw A-6, A-7, A-8, A-9, A-10 and A-11 attacking his brother with veechu aruval, iron rod and crowbar respectively and he asked them not to attack his brother and on seeing them, they ran towards western side and he saw his elder brother P.W.1 coming.

36.In Ex.P1, P.W.1 stated that on hearing the alarm raised by his brother Munusamy, his brother-in-law Saravanan and his younger brother Chellappan P.W.2 rushed there and he also proceeded from his house to the scene of occurrence and through the headlight of the motorbike, they saw the attack inflicted by A-6 to A-11. Thus, there is a clear contradiction as to the presence of both P.Ws.1 and 2 in the scene of occurrence, at the time of commission of offence.

37.The presence of P.W.1 at the time of occurrence, is also doubtful for the reason that though he deposed that the attack was over within five minutes, he was able to spell out clearly as to the individual overt acts on the part of A-6 to A-11, and it is also fortified by the fact that as per the evidence of P.W.2, he saw the attack by the above said accused and he ran near them and asked them not to do so and some of them fled away on the western side and at that time, he saw his elder brother P.W.1 coming. The brother-in-law of P.W.1 was not examined to corroborate the testimonies of P.Ws.1 and 2.

38.According to P.Ws.1 and 2, they summoned the services of the driver P.W.3 and he came there with the car and Munusamy was taken in the car, accompanied by Saravanan, Kathirvelu and P.W.2. P.W.3 was treated as a hostile witness. The evidence of P.W.4 would read that he became aware of the



death of Munusamy at about 7.00 A.M., and at that time, the Inspector (P.W.29) and police were present and the body of Munusamy was also found there and they only sent Munusamy in a vehicle and he would further depose that he did not know the contents of Ex.P4 observation mahazar, as well as the seizure mahazar. The evidence of P.W.4 is in quite contradiction with the evidence of P.Ws.1 and 2, who would state that P.W.2 along with Saravanan and Kathirvelu took Munusamy in the car driven by P.W.3 (hostile witness), to the hospital. Therefore, a grave doubt has been created as to when the deceased Munusamy was attacked and by whom.

39.The witnesses examined to speak about the motive as well as the previous enmity, had turned hostile and so also P.Ws.10 and 11, who have spoken about the conspiracy.

40.Therefore, the conviction of A-1, A-3, A-8, A-10 and A-11 under Section 120(B) of IPC, is wholly unsustainable.

41.The prosecution placed reliance upon the testimony of P.W.14 as to the extra-judicial confessions given by A-4 and A-5, to convict them along with A-1 and A-3 under Section 302 read with 120(B) IPC. P.W.14 was the Tahsildar of Mettur at the relevant point of time and in the cross-examination, would admit that he did not follow the procedures contemplated under the Village Manual, and did not record the statements of the said accused in questionnaire form and both statements were typed by the Typist and the details of the person who typed the statements of A-4 and A-5, have not been found place as well as their signatures.

42.In (2008) 2 MLJ (CRI.) 1324 (MURUGAN V. STATE BY ITS INSPECTOR OF POLICE, PENNAGARAM), it has been held that "If the Village Administrative Officer proceeds to record the confession of an accused before he hand over the accused to the police, he has to strictly follow the procedures prescribed in the Manual provided to him; otherwise, the extra-judicial confession recorded by him, loses it's value."

43.It is a well-settled position of law that the evidence on extra-judicial confession in the very nature of things, is a weak piece of evidence and the value of evidence as to the confession, depends upon the veracity of the person to whom it is made, and the circumstances in which, it came to be made, and the actual words used by the accused.

44.In (2001) 2 SCC 205 (GURA SINGH V. STATE OF RAJASTHAN), it has been held that the extra-judicial confession, if true and voluntary, can be relied upon by the Court to convict the accused for the commission of the crime alleged. In AIR 1986 SC 593 (PALANISAMY V. STATE OF TAMIL NADU), it has been held that it is not safe to base a conviction solely on the extra-judicial confession without any independent corroboration.

45.Even as per the version of the prosecution, A-1, A-



3, A-4 and A-5 have not been attributed with any overt act. This Court has already held that the witnesses to the conspiracy, have turned hostile. Therefore, absolutely there is no evidence with regard to conspiracy. Except the extra-judicial confessions said to have been given by A-4 and A-5 to P.W.14, no other tenable evidence in the form of corroboration, is available and in the light of the discrepancy pointed out in the testimonies of P.Ws.1 and 2, as to their presence and witnessing the occurrence, it is not safe to sustain the conviction. Apart from that, the witnesses to the motive had also turned hostile and the evidence of P.W.29 Investigation Officer, would also reveal that there is absolutely no evidence as to previous enmity and altercation on the part of A-6, A-7, A-8, A-11 and (A-9), who died pending trial, and the relevant records relating to their employment under the deceased, have also been not seized/not available and no complaint has been lodged either by the deceased Munusamy or by P.Ws.1 and 2. P.W.1 had deposed, the attack on Munusamy was over within five minutes. However, he has given parrot like version as to the weapons possessed by the assailants, and their individual overt acts.

46.In 1993 CRI. L.J. 150 (DHARAM SINGH AND OTHERS V. STATE OF PUNJAB), it has been held that several improbabilities in the prosecution version as well as the FIR giving in minute details resulted in false implication adversely affecting the veracity of the interested witnesses and therefore, the appellants/accused therein were acquitted.

47.In 1971 SCC (CRI.) 684 (YUDHISHTIR V. STATE OF MADHYA PRADESH), it has been held that "(i) Corroboration for any evidence given by a witness may be found necessary when a court is not inclined to reject the evidence of the witness to be false, but when the evidence of a witness has been rejected as unacceptable, there is no scope for attempting to find corroboration by other independent evidence or other circumstances and (ii) When a particular fact deposed to by witnesses does not find mention both in the F.I.R. and in statements recorded under Section 161, Cr.P.C., it is an improvement and it cannot be considered."

48.In the case on hand, in the light of the infirmities pointed out by this Court in the earlier paragraphs, the presence of P.Ws.1 and 2 at the time of commission of offence, is highly doubtful coupled with the fact that the witnesses to motive for commission of crime and conspiracy had turned hostile. P.Ws.1 and 2 also made improvements from that of their statements recorded during investigation, at the time of giving evidence.

49.The trial Court primarily placed reliance upon the extra-judicial confessions given by A-4 and A-5, and the recovery of weapons as per the admissible portions of the confessions of the concerned accused, to convict and sentence them. In the considered opinion of the Court, the said approach of the trial Court is not in accordance with the settled legal



principles. The case of the prosecution bristles with very many infirmities and therefore, it is not safe to sustain the conviction and sentence passed by the trial Court.

50. In the result, the criminal appeals are allowed and the judgment of the Court of III Additional District and Sessions Judge, Salem, passed in S.C.No.370 of 2008 convicting and sentencing appellants/A-1, A-3, A-4, A-6, A-7, A-8, A-10 and A-11, is set aside and they are acquitted of the charges levelled against them. The fine amounts if any paid by them, shall be refunded to them. The bail bonds executed by them at the time of suspension of sentence, shall stand discharged/terminated.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

nsv

To:

1. The Judicial Magistrate No.II, Mettur
2. -do- Thro' The Chief Judicial Magistrate, Salem.
3. The III Additional District and Sessions Judge, Salem
4. -do- Thro' The Principal District Sessions Judge, Salem.
5. The Inspector of Police, Karumalaikoodal Police Station
Mettur Taluk, Salem District (Crime No.100 of 2005)
6. The Superintendent Central Prison, Coimbatore.
7. The District Collector Salem.
8. The Director General of Police Mylapore Chennai.
9. The Public Prosecutor, High Court, Madras.

+ 7 ccs to Mr.K. Selvarangan, Advocate 24914, 24686
+ 1 cc to Mr.M.R. Senthil Kumar, Advocate Sr.24649
+ 1 cc to Mr. R. Nalliyappan, Advocate Sr.25241
+1cc to Mr.P.Kannan Kumar, Advocate, S.R.No.25309 (13.06.2016)

CRL.A.Nos.30, 69, 99,
118, 121 and 134/2013

TEJ(CO)
Eu 25.04.16