

BAIL SLIP

The Appellant/Accused namely Rani @ Ravichandran S/o.Narayanasamy be and hereby was directed to be released on bail vide Court order dated 22/2/13 in MP.No.1/13 in Crl.A.No.867/2012.

The Appellant/Accused namely Sundaram S/o.Kandasamy be and hereby was directed to be released on bail vide court order dated 12/03/2013 in MP.NO.1/13 in Crl.A.No.889/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CRL.A.Nos.867 & 889/2012

Ravi @ Ravichandran ... Appellant/A2
in Crl.A.No.867/2012

Sundaram ... Appellant/A1
in Crl.A.No.889/2012

Versus

State of Tamil Nadu rep.by
The Inspector of Police
Magudanchavadi Police Station
Salem.

... Respondent in
both the appeals

Appeals filed under section 374 Cr.P.C., against the judgment of conviction passed by the learned III Additional Sessions Judge, Salem in SC.No.385/2010 dated 04.12.2012.

For Appellant in
Crl.A.No.867/2012 : Mr.D.Veerasekaran for
Mr.M.Devaraj

For Appellant in
Crl.A.No.889/2012 : Mr.N.Manoharan

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

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The second accused [Ravi @ Ravichandran] is the appellant in CrI.A.No.867/2012 and the first accused [Sundaram] is the appellant in CrI.A.No.889/2012. The first accused stood charged and tried for the commission of the offences u/s.120[B], 302 IPC and 3[1] TNPPDL Act and the second accused stood charged and tried for the commission of the offences u/s.120[B], 302 r/w 120 [B] IPC and 3[1] of TNPPDL Act r/w 120[B] IPC.

2 Vide Judgment dated 04.12.2012, the Court of III Additional Sessions Judge, Salem, in SC.No.385/2010, convicted and sentenced the accused as follows:-

Accused	Conviction	Sentence
A1	120[B] IPC	To undergo six months rigorous imprisonment
	302 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- and in default, to undergo 3 months rigorous imprisonment.
	3[1] TNPPDL Act	To undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- and in default, to undergo 1 month rigorous imprisonment.
A2	120[B] IPC	To undergo six months rigorous imprisonment
	3[1] TNPPDL Act r/w 120[B] IPC	To undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- and in default, to undergo 1 month rigorous imprisonment.
	302 r/w 120[B] IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,00,000/- and in default, to undergo 6 years rigorous imprisonment.

The said fine amount of Rs.10,00,000/- was directed to be paid as compensation to the family of the deceased u/s.351 Cr.P.C. The Trial Court further ordered the sentences awarded to both the accused to run concurrently and granted set-off to the period of sentence already undergone by them u/s.428 Cr.P.C.

3 The facts leading to these appeals are as follows:-

[A] Dhanapal [P.W.1], Ravi @ Ravichandran [A2] / the appellant in CrI.A.No.867/2012 ; Seenivasan [P.W.8] and Rajendran [P.W.9] are brothers and they were jointly doing business by running power looms under the control of Dhanapal [P.W.1] and A2. A2 was not inclined to partition the family properties and therefore, prevented any such attempt. On 03.01.2010 at about 19.30 hours, A2 has hatched conspiracy with A1, who was employed in a power loom to damage the thread used for spinning and in further development of conspiracy, A1 took the key from A2 and at about 02.30 hours on 05.01.2010, went inside "Narayasamy power loom Factory" and damaged the thread used for manufacturing cloth and on hearing the sound, the watchman, namely, Abdul Aziz [since deceased] came there and A1, by using nylon rope [tape], strangled him and also with a spade, attacked him on the head and as a consequence, the deceased died.

[B] The further case of the prosecution is that P.W.1 is having a power loom and also immovable properties situated at Ilampillai and Idangalai villages and there is no partition between P.W.1 and his brothers. The brothers of P.W.1 are also running power looms and also employed the services of the watchman, viz., Abdul Aziz [since deceased]. P.W.1, at about 04.30 hours on 05.01.2010, received an information that somebody attacked the watchman, viz., Abdul Aziz, and the said information was given by P.W.7, an employee of the power loom. P.W.1 proceeded to the spot and when he went inside the room in which the watchman was sleeping, he found that the deceased Abdul Aziz was strangled by using a nylon tape as well found head injury on account of using of spade and he further found the thread used for running the spindle, got damaged. P.W.1 having found that somebody, for some reason, has damaged the thread and murdered his watchman, proceeded to Magudanchavadi Police Station and lodged a complaint [Ex.P.1] to P.W.21 [Selvaraj] - the then Inspector of Police attached to Magudanchavadi Police Station.

[C] On receipt of the complaint from P.W.1, P.W.21 registered a case in Cr.No.09/2010 at about 06.30 hours on 05.01.2010 for the commission of the offence u/s.302 IPC. The printed First Information Report was marked as Ex.P.27. P.W.21 dispatched the originals of the complaint [Ex.P.1] and the FIR [Ex.P.27] to the Court of Judicial Magistrate No.2, Sangagiri.

Thereafter, he proceeded to the scene of occurrence and in the presence of Sivashanmugam [P.W.14], Village Administrative Officer and one Sengodan, he prepared the Observation Mahazar [Ex.P.3] and a Rough Sketch [Ex.P.28] respectively. P.W.21 summoned the services of Sadhiq Basha [P.W.19], photographer, and took photographs, which were marked as Ex.P.25 series and the negatives are marked as Ex.P.26. The foot-prints found on the scene of occurrence were also photographed and were marked as Exs.P.17, 18, 19 and 20. Kozhinjiyappan [P.W.18], the Scientific Officer attached to the Regional Forensic Lab, collected the blood stained articles. P.W.21 seized blood-stained handle of the spade [M.O.1] ; blood-stained spade [M.O.2] ; blood-stained white colour nylon tape [M.O.3] ; blood-stained green colour nylon tape [M.O.4] ; cut portion of cement floor which contained blood-stained left foot-print [M.O.5] ; cut portion of cement floor which contained blood-stained right foot-print [M.O.6] ; cut portion of the blood-stained cement floor [M.O.7] and the sample cement floor [M.O.8] under the cover of Mahazar [Ex.P.2] in the presence of the very same witnesses, viz., P.W.14 and Sengodan.

[D] P.W.21, the investigating officer, conducted inquest on the dead body of the deceased in the presence of Panchayatdars between 10.00 hours and 13.00 hours on the same day and prepared the Inquest Report [Ex.P.29]. Through P.W.20 [Rajamanickam], Head Constable, P.W.21 sent the dead body to the Government Hospital, Salem, for conducting the postmortem along a requisition, [Ex.P.10].

[E] P.W.16 [Dr.Angayarkanni], was the Tutor in the Department of Forensic Medicine, Government Mohan Kumaramangalam Medical College and Hospital, Salem at the relevant point of time and on receipt of the requisition and the body of the deceased, commenced the postmortem at about 15.10 hours on 05.01.2010 and noted the following features:-

"Identification marks:-

[1] A wound scar over left thigh.

[2] A wound scar over right ankle.

The body was first seen by the undersigned on 05.01.2010 at 3.10 p.m. Its condition then was rigor mortis present all over the body. Postmortem commenced on 05.01.2010 at 3.10 p.m.

Following antemortem injuries are noted:-

[1] An oblique lacerated wound over right temporo-parietal scalp 8x1.5cmsxbone deep. On dissection, the wound found cutting the right parietal bone 6x0.2cms entering into cranial cavity.

[2] A transverse lacerated injury over right forehead 3.5 cms above middle of right eyebrow measuring 2x1cmsxbone deep.

[3] An oblique lacerated injury over lateral end of left eye measuring 3.5x1.5cmsxbone deep.

[4] A vertical lacerated injury 1cm above the lateral end of left eye measuring 1x0.5cmsxbone deep.

[5] Dark reddish brown abrasions noted ones:-

[a] lateral aspect of right knee 1x1 cms.

[b] first below right knee 0.5x0.5 cms.

[c] lateral aspect of left knee 4x3 cms.

[d] lateral aspect of left elbow 1.5x1cms.

[e] right cheek 4x2cms.

[6] Three punctured wounds antero-posteriorly placed one being the other one left cheek 1cm in front of left ear each measuring 2x1x2cms, 1.5x1 cm, 2x1.5x2cms separately by 0.5 and 0.75 cm respectively. On dissection, the underlying left mandible found to be fractured with surrounding bruising, surrounding area contains full of extravasated blood clot.

[7] A white coloured plastic nylon tape was found around the neck in 4 rounds, loosely placed with irregular overlapping. A linear, faint interrupted ligature mark seen encircling the entire neck 39cmsx3cms.

Other findings:-

Finger and Toe nails pale. Face asymmetrical. Teeth 0/0 [4/5].

O/D Hea: vide injury column + subscalpular contusion noted over the entire scalp with both temporalis, muscle contusion.

Brain:Subdural and subarachnoid hemorrhage over both cerebral hemispheres. Heamatoma in a region of 8x2 cm over right temperoparietal lobes. C/S-pale. Base of the skull-intact.

O/D Neck:vide injury column+all neck structures are normal. Hyoid Bone : Intact.

O/D Thorax:No rib fracture. Heart-normal in size chambers contained fluid blood. Valves, coronaries and great vessels patent. Lungs c/s pale.

O/D Abdomen: Stomach contains about 50 l of straw colored fluid with no specific odour. Mucosa c/s pale. Liver, spleen and kidneys c/s.pale. Bladder-empty. External genitalia-no injuries made out. Pelvis and spinal column-intact. Multiple superficial incisions made all over the body. No other contusions note. Viscera preserved and sent for toxicological analysis."

P.W.16 reserved the opinion regarding death pending chemical analysis report and on receipt of the same, opined that the deceased died on account of the injuries sustained on his head. The Toxicological Report was marked as Ex.P.14.

[F] P.W.21 examined P.Ws.1, 2, 3, 4, 14 and one Sengodan and Sikkandar Basha and recorded their statements. On 06.01.2010, he examined P.Ws.5, 6, 7, 8, 9 and A2 and recorded their statements. Subsequently, he collected the foot-prints [right foot and left foot] of 64 persons, which were marked as Ex.P.22 and as per the opinion of the Scientific Expert, the foot-prints of A1 [Sundaram] tallied with the foot-prints collected from the scene of occurrence [M.Os.5 and 6]. The left foot impression of A1 was marked as Ex.P.31 and the right foot impression was marked as Ex.P.32. Continuing with the investigation, P.W.21 examined P.W.10 on 08.01.2010 and on 10.01.2010, he examined P.W.11, one Arumugam, P.Ws.18 and 19 and recorded their statements and on 13.01.2010, he recorded the statements of P.Ws.12 and 13 and on 22.01.2010, received the Postmortem Certificate of the deceased [Ex.P.11] and recorded the statement of P.W.16-the doctor, who conducted autopsy. P.W.21 also made a requisition under Ex.P.33 to the jurisdictional Magistrate Court, to compare the foot impression of the suspects and on 24.03.2010, he recorded the statement of the Head Constable [Arasu] and on 25.03.2010, he made a requisition to the Court for the receipt of a copy of the Forensic Lab Report and on coming to know that the left foot impression had tallied with A1, a search was made and on 29.03.2010, at about 11.00 hours, while he was on duty, the Village Administrative Officer of Thappakuttai village, along with his Assistant, came and handed over A1 to P.W.21 along with the extra-judicial confession [Ex.P.7]. A1 also came forward to give a voluntary confession statement in the Police Station in

the presence of P.W.15 [VAO-Sivashanmugam] and another and as per the admissible portion of the confession statement [marked as Ex.P.8], blood-stained cloth worn by him were recovered under the cover of Mahazar [Ex.P.9], pursuant to which, M.Os.10, 11 and 12 [blood-stained lungi, shirt and a knife]. Thereafter, A1 was arrested on 29.03.2010 at 11.45 a.m. and was sent for judicial custody and also the material objects to the jurisdictional Magistrate Court for chemical examination.

[G] On 01.04.2010, P.W.21 arrested A2 [Ravi @ Ravichandran] in the presence of P.W.15 and Sengodan and he came forward to give a confession statement, the admissible portion of which is marked as Ex.P.4. The keys of the power loom numbering 6, were also seized and were marked as M.O.9. Thereafter, A2 was brought to the Police Station and subsequently, sent for judicial custody. P.W.21 also recorded the statements of Sengodan, P.W. 15, 6 and 7. On 02.04.2010, he examined P.Ws.1 to 4, 8 and 9 and Sikkandar Basha and recorded their further statements and on 12.04.2010, he examined P.W.20 and recorded his statement and after completion of investigation, he filed charge sheet against both the accused on 30.05.2010 on the file of the Court of Judicial Magistrate, Sangagiri, charging the accused persons for the commission of the offences u/s.120[B] IPC and 3[1] of TNPPDL Act, 1992 read with 120[B], 302 read with 120[B] IPC.

4 The Court of Judicial Magistrate, Sangagiri [Committal Court], on receipt of the charge sheet, took the same on file in PRC No.5/2010 and had issued summons to both the accused and on their appearance, furnished them copies of the documents u/s.207 Cr.P.C. The Committal Court, having found that the case is exclusively tried by the Sessions Court, committed the same to the Principal Sessions Judge, Salem, who in turn, made over the case to the Court of III Additional Sessions Judge, Salem [Trial Court], who took it on file in SC.No.385/2010.

5 The Trial Court, on appearance of the accused, had framed charges u/s.120[B], 302 IPC and section 3[1] of TNPPDL Act against A1 and framed charges u/s.120[B], 302 r/w 120[B] IPC and 3[1] of TNPPDL Act r/w 120[B] IPC and questioned them. Both the accused pleaded not guilty to the charges framed against them.

6 The prosecution in order to sustain their case, examined P.Ws.1 to 21 ; marked Exs.P.1 to 39 and M.Os.1 to 16. When the accused were questioned u/s.313 Cr.P.C. with regard to the incriminating circumstances made out against them in the evidence rendered by the prosecution, they denied it as false. On behalf of the accused, Exs.D.1 to 6 were marked no oral evidence was let in. The Trial Court, on appreciation of oral and documentary evidence and other materials, convicted and

sentenced both the accused as stated above and hence, these appeals.

7 Mr.M.Devaraj, learned counsel appearing for the appellant/A2 in CrI.A.No.867/2012 and Mr.N.Manoharan, learned counsel appearing for the appellant/A2 in CrI.A.No.889/2012 respectively, made the following submissions:-

[i] The case of the prosecution rests upon the circumstantial evidence. Since there are glaring holes and inconsistencies found in the case of the prosecution and further, that the chain of events is not complete, the Trial Court has committed a grave error in convicting and sentencing both the accused.

[ii] P.W.5 went to the factory at about 04.00 hours on 05.01.2010 for the purpose of running power loom and he found the gate locked and since it was his usual practice to climb the gate and get the key from the watchman from inside the factory, he climbed the gate at that early hours and went inside and at that time, he saw A2 going out through the rear door and when he went inside the room of the watchman, he found him murdered and thereafter, he informed his father, viz., P.W.6, who came there and saw the body and P.W.7 was also aware of the same. P.Ws.6 and 7 went to the house of A2, who in turn, asked them to inform his brother, viz., P.W.1 and accordingly, they informed P.W.1 who came to the spot and saw the body. However, in Ex.P.1 [complaint] given by P.W.1, a case was registered at 06.30 hours on 05.01.2010 ; but, nothing has been stated about A2 going out of the power loom factory through the rear gate and therefore, the complaint would not have been lodged at 06.30 hours on 05.01.2010. The material witness, viz., the first informant, P.W.1, has turned hostile and the testimonies of the brothers of A2, viz., P.Ws.8 and 9 did not help or advance the prosecution in any manner.

[iii] According to P.Ws.5 and 6, they were detained by the police for nearly one week and they were also harassed by the police. In this regard, P.W.6, father of P.W.5 has lodged against the police and P.W.5 has also been detained in the Police Station for nearly 60 days and he was not allowed to go and his father and brother were also detained and therefore, the testimonies of the said witnesses, cannot be relied upon for the reason, fearing police harassment and torture only, they have deposed as if they saw A2 leaving the factory through the rear door at the relevant point of time. Similarly, P.W.7 has also deposed that he was regularly summoned to the Police Station on suspicion and he reported before them for 23 days and therefore, the evidence of P.W.7 cannot be relied upon to sustain the case of the prosecution against both the accused.

[iv] P.W.21, who obtained the foot-prints of 64 persons, did not get the permission of the jurisdictional Magistrate for obtaining such foot-prints and even otherwise, Ex.P.24 [Report] is a very weak piece of evidence.

[v] P.Ws.12 and 13, who were examined to prove the motive, have also turned hostile and the prosecution has failed to prove the motive aspect on the part of A2, who utilised the services of A1 to damage the power loom.

[vi] The extra-judicial confession given by A1 to P.W.15 [VAO], cannot be relied upon for the reason that A1 is a stranger to P.W.15-VAO and it is not as if, A1, to avoid the third degree methods at the hands of police, had come to P.W.15 and voluntarily gave a confession statement and therefore, it cannot be relied upon.

In sum and substance, it is the submission of the learned respective counsel appearing for the appellants/A1 and A2, that since there are loose ends in the case of the prosecution, which is based on circumstantial evidence and that the prosecution has miserably failed to prove its case beyond reasonable doubt, the accused ought to have been acquitted by the Trial Court and hence, pray for allowing of these appeals and acquittal of both the accused.

8 Per contra, the learned Additional Public Prosecutor appearing for the State would contend that the prosecution, through the testimonies of P.Ws.5 to 7 coupled with scientific evidence in the form of Postmortem Certificate [Ex.P.11] ; Chemical Analysis Report [Ex.P.14] and the Finger Print Expert Report [Ex.P.24], had established its case beyond any reasonable doubt. He also invited the attention of this Court to the testimonies of the concerned witnesses and submitted that since the prosecution through the oral and documentary evidences, had proved its case beyond doubt, the Trial Court was right in convicting and sentencing both the accused and prays for dismissal of these appeals.

9 This Court paid its best attention to the rival submissions and also perused the oral and documentary evidences and other materials as well as the original records and the impugned Judgment.

10 The following circumstances are projected by the prosecution:-

[I] The deceased Abdul Aziz was employed as a Watchman in "Narayanasamy Power Loom". He was found murdered at about 02.30 hours on 05.01.2010 by the use of nylon tape and cut injuries were inflicted by the use of spade. The opinion given under

Ex.P.11 [Postmortem Certificate] coupled with the testimony of P.W.16 [the doctor who conducted autopsy] established the fact that the deceased died on account of homicidal violence.

[II] The blood-stained foot-prints found on the scene of occurrence tallied with that of A1, as per the evidence of P.W.24.

[III] The motive aspect on the part of A2 has been proved through the testimonies of P.Ws.6 to 9 and 11.

[IV] P.W.5 saw A2 leaving at the relevant point of time through the rear entrance.

11 It is a well settled position of law that the following conditions must be fulfilled before a case against the accused can said to be fully established:-

[1] Circumstances from which, the conclusion of guilt is to be drawn, should be fully established ;

[2] Facts so established, should be consistent only with the hypothesis of the guilt of the accused and should not be explainable on any other hypothesis, except the accused is guilty ;

[3] The circumstances should be of a conclusive nature ;

[4] There must be a chain of evidence so complete, as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused on preponderance of probability.

12 The brothers of A2 [Ravi @ Ravichandran], who were examined as P.Ws.8 and 9 [Seenivasan and Rajendran], apart from P.W.1 [Dhanapal], did not support the case of the prosecution, as there was no difference of opinion between A2 and P.W.1. In fact, P.W.9 has deposed that P.W.6 [Selvam], who was in possession of their premises, did not pay the rent for three years and therefore, a case is also pending and P.W.6, on four or five occasions, had also lodged a complaint against them. P.W.11 [Ganesan] has spoken about the partition of the property between P.W.1 and A2. P.Ws.12 and 13 [Gopal and Nagaraj], who were examined to prove the motive, have turned hostile. It is the specific case of the prosecution that since A2 was not inclined for partition, there was a difference of opinion between him and his brother, P.W.1. Therefore, in connivance with A1, he decided to damage the Power Loom and accordingly,

when A1 went there, he was seen by the watchman [deceased] and therefore, A1 committed the murder. As already pointed out, none of the witnesses examined by the prosecution, would prove the motive and had spoken anything with regard to the difference of opinion/dispute between P.W.1 and A2 and hence, the prosecution has failed to prove the motive for the commission of the offence.

13 P.W.5 [Karthik] was employed in Narayanasamy Power Loom and in the chief examination, he has deposed that for the purpose of running Power Loom, on 05.01.2010, early morning at about 04.00 hours, he went there and since it was found locked and that the key would be usually with the watchman, he jumped over the gate and when he was climbing the gate, he saw A2 leaving the factory through the rear gate and when he went inside the room of the watchman, he found him dead with a nylon tape around his neck and the blood-stained spade was found nearby and immediately, he went and informed his father [P.W.6], who tried to contact A2 twice and at that time, P.W.7 came to the spot and P.Ws.6 and 7, proceeded to the house of P.W.1 to inform the same and P.W.5 came back at about 06.00 hours to the scene of occurrence. In the cross-examination, P.W.5 would depose that totally there are eight keys available and it is a usual practice for the persons going for duty at the early morning hours, to jump over the gate and get the keys from the watchman. P.W.5 would further depose that in connection with the case, the police have secured him and his brothers and were taken to the police station, kept there for one week and were harassed and in this regard, his father P.W.6 has lodged a complaint against the police and thereafter, they were not summoned by the police. P.W.5 would also depose that when P.Ws.6 and 7 proceeded to the house of P.W.1, it was about 04.15 hours and he would further depose that he was detained in the police station for 60 days and so also his brother and father, were also detained for 83 days.

14 P.W.6 [Selvam] / father of P.W.5, has deposed that the fact of murder was informed by his son at about 04.00 hours on 05.01.2010 and he went to the spot and saw the body and at that time, P.W.7 came and immediately contacted A2 over phone. He did not attend the call and thereafter, he and P.W.7 went to the house of A2 and found A2 in the house and informed the fact of the murder of the watchman and A2 instructed them to inform his brother, P.W.1. Retaining P.W.7, P.W.6 proceeded to the house of P.W.1 and informed the same. Thereafter, P.W.1 came to the Power Loom and saw the body and at that time, P.W.7 and A2 were also present. Thereafter, P.W.1 proceeded to the Police Station and gave a complaint. In the cross-examination, P.W.6 would depose that on 05.01.2010, he was taken to the Police Station and he and his son [P.W.5] were detained in the Police Station for 83 days and he was tortured and in this regard, he has also

lodged a complaint to the State Human Rights Commission and his son Ganesan was also secured from Chennai and he was also detained along with them. P.W.6 would further depose that with regard to the difference of opinion between him and P.W.1, he has lodged complaints on three occasions against P.W.1 in Magudanchavada Police Station and for the occurrence that had taken place on 05.01.2010, sniffer dog came and at that time, P.W.1 and all his brothers were also present outside the gate.

15 P.W.7 [Kumar] would depose that on 05.01.2010 at about 04.15 hours, he went to the Power Loom Factory to attend the duty and he found P.Ws.5 and 6 and his wife were present and they informed about the murder of watchman to him and they tried to contact A2 over phone and since A2 did not respond, he went to the house of A2 and thereafter, informed A2, who in turn, asked them to inform P.W.1 and A2 also went to the house of P.W.1 and subsequently, A2 took the key and opened the lock and went inside the room and found the body of the deceased.

16 The testimonies of the above cited witnesses, are bristled with contradictions and inconsistencies. As per the oral evidence of the above cited witnesses, P.Ws.6 and 7 went to the house of A2 and informed him about the murder of the watchman and A2, in turn, had asked them to inform his brother, P.W.1 and accordingly, they went to the house of P.W.1 and informed him and P.W.1 came to the scene of occurrence much prior to the lodging of the complaint and saw the body of the deceased and at that time, A2 was also present and thereafter, P.W.1 proceeded to the Police Station and lodged the complaint. If it was so, nothing has been stated in Ex.P.1 about the presence of A2, as spoken to by P.W.5. It is pertinent to point out at this juncture that after getting the information about the murder, A2 was very much present in the scene of occurrence and if he was a conspirator, he would not have been present in the scene of crime. It is also to be pointed out at this stage, that the first informant/defacto complainant, viz., P.W.1, has turned hostile. It is the categorical evidence of P.Ws.5 and 6 that they were detained in the police station for nearly 83 days and P.W.6 was also subjected to third degree method and in this regard, a complaint was also lodged before the State Human Rights Commission and further that P.W.6 was enmical towards P.W.1 and had complained of the same thrice against P.W.6 on the file of the Magudanchavadi Police Station, the respondent herein.

17 According to P.Ws.5 and 6, they were illegally detained by the respondent police for quite a long time and coupled with the inconsistencies pointed out in their testimonies, it is not safe to rely on it to sustain the case of the prosecution. The normal conduct of a person, who is said to have been involved in

the commission of the heinous crime/offence, is to escape from the place and however, the conduct of A2 was normal from the evidence of P.Ws.5 , 6 and 7 and therefore, the prosecution has failed to prove the role of A2 in the commission of the offences.

18 Insofar as A1 is concerned, the prosecution connects the commission of the crime through P.W.17. P.W.21, in the course of the cross-examination, would admit that he did not obtain any permission from the jurisdictional Magistrate to lift the foot-prints of the suspected persons numbering 64 and one among them was A1, whose foot-prints were also taken. Even for the sake of arguments, the opinion of the Expert, viz., P.W.17, can be accepted, it may not be sufficient to sustain conviction against A1. The Hon'ble Apex Court in the decision reported in 1978 [3] SCC 435 [Shankaria Vs. State of Rajasthan] in paragraph 88, has dealt that

"88.Although the science of identification of foot-prints and foot-moulds is not a developed science, and track evidence, by itself, may not be deemed sufficient to carry conviction in a criminal trial, yet it is a relevant circumstance which taken into account along with the other evidence, may reinforce the conclusion as to the identity of the culprit."

In the instant case, the other evidence, per se, was sufficient to fix the identity of the culprit with the crime. According to the prosecution, A2 hatched a conspiracy with A1 for damaging the Power Loom and that is why, A1 went there for that purpose and since he was seen by the Watchman, he committed his murder. However, the prosecution miserably failed to let in any evidence as to the conspiracy and except the foot-prints alleged to be that of A1, no other incriminating materials in the form of evidence, were adduced by the prosecution to sustain their case against A1. Even in the Observation Mahazar, marked as Ex.P.3, nothing has been noted about the blood-stained foot-prints available in the scene of occurrence.

19 The yet another contention of the learned respective counsel was the extra-judicial confession said to have been given by A1 to P.W.15 [VAO] and heavy reliance has been placed on it by the prosecution to sustain their case. In State of Punjab Vs. Bhajan Singh reported in AIR 1975 SC 258, it is held that the extra-judicial confession by itself, is a very weak piece of evidence and when the Court takes into consideration, surrounding circumstances, entertains doubt about its voluntary nature, it would not be safe to rely upon it.

20 It is also well settled position of law that as a rule of caution, the Court would generally look for an

independent, reliable corroboration before placing reliance upon the extra-judicial confession. The extra-judicial confession, by its nature, is rather a weak type of evidence and it is for the reason that a duty is cast upon the Court to look for corroboration from other reliable evidence available. As pointed out, A1 was a stranger and it is not case of the prosecution that in order to avoid torture and third degree methods at the hands of the respondent police, he went to P.W.15 [VAO] and voluntarily gave the confession statement and even otherwise, there was no corroboration from other reliable sources, so as to enable this Court to rely upon the extra-judicial confession.

21 This Court, on a careful appraisal and scrutiny of entire materials is of the view that the prosecution has miserably failed to prove its case on circumstantial evidence and the chain of events projected by the prosecution, is not complete. Therefore, the appellants/A1 and A2 are to be acquitted.

22 In the result, the criminal appeals are allowed and the conviction and sentence imposed on the appellants/A1 and A2 by the learned III Additional Sessions Judge, Salem in SC.N.385/2010 dated 04.12.2012, are hereby set aside.

23 The appellants/A1 and A2 are acquitted of all the charges levelled against them and fine amounts, if any paid, shall be refunded to them and the bail bonds executed by them, stand discharged.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

AP

To

1.The III Additional Sessions Judge
Salem.

2.The Judicial Magistrate No.2,
Sangagiri.

3.The Inspector of Police
Magudanchavadi Police Station
Salem District.

4.The Public Prosecutor
High Court, Madras.

5.The Chief Judicial Magistrate
Salem

6.The Superintendent Central Prison,
Salem

7.The Superintendent Central Prison,
Coimbatore

8.The Section Officer, Criminal Section
High Court,Madras

+2 ccs to Mr.M.Devaraj Advocate sr.18169,18172

+1 cc to Mr.N.Manokaran Advocate sr.18268

Common Judgment in
Crl.A.Nos.867 & 889/2012

aa15/04/2016



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