

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

CrI.A.No.137 of 2017

1.Moliselvam
2.Chellakannu

....Appellants/Accused 1,2

vs.

State, through
The Inspector of Police,
Gowthapadi Police Station,
Erode District,
(Cr.No.13/2016)

.... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 08.11.2016 passed by the III
Additional District and Sessions Judge, Gobichettipalayam, in
S.C.No.79 of 2016.

For Appellant : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellants are the accused 1 and 2 in Sessions Case No.79 of 2016, on the file of the III Additional District and Sessions Court, Gobichettipalayam. They stood charged for offence under Sections 302 read with Section 120-B and Section 302 IPC. By judgement dated 8.11.2016, the trial Court convicted them only under Section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1000/- each, in default, to undergo simple imprisonment for four weeks. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

(a) The accused are brothers. They were residing at Anna Nagar, Salangapalayam Village in Erode District. They were

empty bottle pickers by profession. From out of the meagre income from the said profession, they used to have their food in hotels and to stay overnight in a shed in the graveyard at Ammam Koil, Gowthapadi Bhavani Road. On the East of the said shed, the deceased Mr.Paattaiyan had his coconut grove. On noticing these two accused sleeping in the shed during night hours, the deceased shouted at them and objected to their sleeping in the shed. But the accused did not stop sleeping there during night hours. On 8.1.2016, as usual, after having their dinner, these two accused were sleeping in the said shed. At around 1.00 a.m., the deceased came to the shed and shouted at the accused. He questioned them as to why they were sleeping in the shed, despite his objection. This resulted in a quarrel. The deceased pushed the second accused down. This again resulted in a scuffle. In that scuffle, both the accused took out one wooden log each lying there in the cremation ground and attacked the deceased. The deceased fell down and died instantaneously. The occurrence was not witnessed by any one. Both the accused then fled away from the scene of occurrence.

(b) P.W.1, the wife of the deceased, was informed that the dead body of the deceased was found in the cremation ground at around 8.00 a.m. on 9.1.2016. Then she went to Gowthapadi Police Station and made a complaint at 10.00 a.m. Since the assailants were not known, the FIR was registered as against unknown assailants. Ex.P1 is the complaint. Ex.P.20 is the FIR. Both the documents were sent to the Court, which were received by the learned Magistrate at 11.30 a.m. on 9.1.2016.

(c) The case was taken up for investigation by P.W.16. He visited the place of occurrence at 11.00 a.m. on 9.1.2016, prepared an observation mahazar and a rough sketch and also recovered blood stained earth, sample earth, blood stained clothes and other blood stained material objects from the place of occurrence. Then he forwarded the body for post-mortem. P.W.8, Dr.Sivasankar, held autopsy on the body of the deceased on 9.1.2016 at 4.30 p.m. He found the following injuries.

"External injuries: 1) Deep laceration over (Lt) temporal region 2) Laceration over the (Lt) Ear lobe 3 x 2 x 1 cm 3) Laceration over (Rt) parietal region 5 x 2 x 1 cm (4) Abrasion over the root of penis 4 x 2 cm (5) Abrasion over (lt) leg 2 x 2 cm. Eye lids closed. Blood stained discharge seen over nose and mouth. Tongue kept inside the mouth. Teeth. No fracture of ribs. Heart 270 gms (Rt) chamber - fluid blood. Lungs - pale (Rt) 400gms (Lt) 350 gms. Hyoid Bone - intact. Stomach - 1000 gms of partially digested food particles present. Liver - pale, wt-1100 gms. Spleen - pale wt-90 gms. Kidneys - pale -

Each 130 gms. Intestine - distended with gas. Bladder - Empty. Skull: Depressed fracture of skull seen over (Lt) temporal. Laceration seen over left temporal region of brain. Extensive haemorrhage seen over entire brain surface. Base of skull fracture seen."

Ex.P5 is the postmortem certificate. He opined that the said injuries on the body of the deceased could have been caused by a weapon like wooden log. He further opined that the death of the deceased was due to shock and haemorrhage due to multiple injuries.

(d) P.W.16 recovered the blood stained clothe from the body of the deceased and he forwarded all the material objects to the Court. He examined many more witnesses. But no breakthrough could be made in the case. While so, it is alleged that the first accused on his own went to the office of P.W.9, the then Village Administrative Officer of Gowthapadi Village at 7.00 a.m. on 12.01.2016 and made a voluntary confession. P.W.9 reduced into writing the said confession made by the first accused. Ex.P7 is the confession. Then along with the said report under Ex.P6, he took the accused and produced him before P.W.16. P.W.16 arrested the first accused. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden a wooden log, a blood stained lungi and a blood stained shirt. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced the said materials. On the same day, at 11.30 a.m., he arrested the second accused. While in custody, he made a voluntary confession, in which, he disclosed the place where he had hidden the wooden log, lungi and shirt. In pursuance of the same, he took the police and witnesses to the hide-out and produced said material objects. Then, P.W.16 forwarded the accused to the Court and also forwarded the material objects to the Court. At his request, the material objects were sent for chemical examination. The investigation was thereafter continued by his successor-P.W.17. On completing investigation, P.W.17 laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses have been examined, 31 documents and 23 material objects were marked. Out of the said witnesses, P.W.1, the wife of the deceased, P.W.2, the daughter-in-law of the deceased, P.W.3, a neighbour have all stated that they found the dead body of the deceased at 8.00 a.m. on 09.01.2016, in the cremation ground. P.W.4 has stated that on 8.1.2016, at around 12.30 p.m., he found these accused somewhere near the cremation ground. P.W.5 has stated that at around 12.00 mid night, on 8.1.2016, he found these two accused

near the cremation ground. P.W.6, the daughter of the deceased, has stated that she found the dead body of the deceased in the graveyard on 9.1.2016. P.W.7 has spoken about the preparation of observation mahazar and a rough sketch and the recovery of material objects. P.W.8, the Doctor, has spoken about the post-mortem conducted and the final opinion regarding the cause of death. P.W.9, the Village Administrative Officer, has spoken about the extra judicial confession said to have been made by the first accused. He has further stated about the arrest of both the accused, the confession made by them and the recoveries of wooden logs, the lungies and shirts, from out of their disclosure statements. P.W.11, a Constable, has stated that he handed over the dead body to the Doctor for post-mortem, as directed by P.W.16. P.W.13, a scientists from the Regional Forensic and Science Laboratory, has stated that he examined the material objects sent to him and on examining them, he found human blood stains on all the material objects, except item No.7. P.W.15 has stated that he took photographs of the dead body, as directed by P.W.16. P.Ws.16 and 17 have spoken about the investigation done and the final report filed.

4. When the above materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side nor mark any document. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement. That is how they are is before this Court.

5. We have heard the learned counsel for the appellants and also the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

6. This is a case based on circumstantial evidence. The foremost circumstance is that the dead body of the deceased was found in a graveyard near the coconut grove, belonging to the deceased, on 9.1.2016 at around 8.00 a.m. There were a number of injuries on the body of the deceased. The doctor, who conducted post-mortem on the body of the deceased, has opined that the death of the deceased was due to multiple injuries found on the dead body and the said injuries could have been caused by weapons like wooden logs. From these evidences, the prosecution has succeeded in establishing that the death of the deceased has occurred some time before 8.00 a.m. on 9.1.2016 and that it was a homicide.

7. Now the question is as to who were the perpetrators of the crime?. In order to prove that these accused had attacked the deceased with wooden logs and killed him, the prosecution relies on the extra judicial confession said to have been made by the first accused to P.W.9, on 12.01.2016. Assuming that the

first accused had made such an extra judicial confession, in view of Section 30 of the Indian Evidence Act, the said confession cannot be used as a substantive evidence as against the second accused. As has been held by the Hon'ble Supreme Court in *Kashmira Singh vs. State of M.P.* (AIR 1952 SC 159) the proper course to be adopted is to keep the extra judicial confession of the co-accused aside, marshal all the other evidences and if the Court finds from such evidences that the accused has committed the crime, then in order to lend assurance to the said conclusion, as a last resort, the extra judicial confession of the co-accused can be looked into with a view to add further strength to the said conclusion arrived at. In other words, the extra judicial confession of a co-accused cannot be the sole foundation for the conviction and in this case, except the so called extra judicial confession of A1, there is no evidence against the second accused and therefore, the second accused is straight away entitled for acquittal.

8. Now turning to the case against the first accused, here again the prosecution relies only on the alleged extra judicial confession made by him to P.W.9. It is the law that if the extra judicial confession inspires the confidence of the Court, even in the absence of any corroboration from any other independent sources on material particulars, the Court could act upon the said extra judicial confession and convict the accused. But at the same time, if the confession is shrouded with any doubt, as a rule of prudence, the Court should look for corroboration from some other independent sources on material particulars. In the instant case, according to the learned counsel for the appellants, the first accused would not have made such confession at all to P.W.9. We find force in the said argument of the learned counsel for the appellants. P.W.9, even in chief-examination, has stated that the first accused was not previously known to him at all. Thus, P.W.9 was a total stranger to the first accused. If that be so, it is doubtful as to whether the first accused would have chosen a total stranger to make a confession. This creates initial doubt about the said confession.

9. Secondly, no motive had been attributed to the accused. After all they were all poor people living out of rag picking (bottle picking), whereas, the deceased owned a land near the cremation shed. There is absolutely no evidence to show that on any previous occasion, there was any quarrel between the accused and the deceased. In the light of the said fact, in our considered view, it is too difficult to believe that the first accused would have chosen a total stranger to make an extra judicial confession. When such doubt is there, in respect of the said extra judicial confession, we should look for corroboration from independent sources, at least, on material particulars. In this case, there is no other evidence available

on record to corroborate the so called extra judicial confession made by the first accused. Thus, we hold that it would not be safe to rely on the evidence of P.W.9 and to convict the first accused. The recovery of the material objects, on the confession made by these accused, would not in any manner go to improve the case of the prosecution. In view of the foregoing discussion we hold that the prosecution has failed to prove the case against A1 as well as A2. Therefore, both the accused are entitled for acquittal.

10. In the result, this criminal appeal is allowed; the conviction and sentence imposed as against the appellants are set aside. The appellants/accused are acquitted. Fine amounts, if any, paid by them shall be refunded to them forthwith.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

msk
To

1.The Judicial Magistrate No.2 Gobichettipalayam
Erode District

2.-do- Thro The chief Judicial Magistrate Erode

3.The III Additional District and Sessions Judge,
Gobichettipalayam

4.-do- Thro The Principal Sessions Judge, Erode

5.The Inspector of Police,
Gowthapadi Police Station,
Erode District.

6.The District Collector Erode District

7.The Director General of Police,
Mylapore Chennai-4

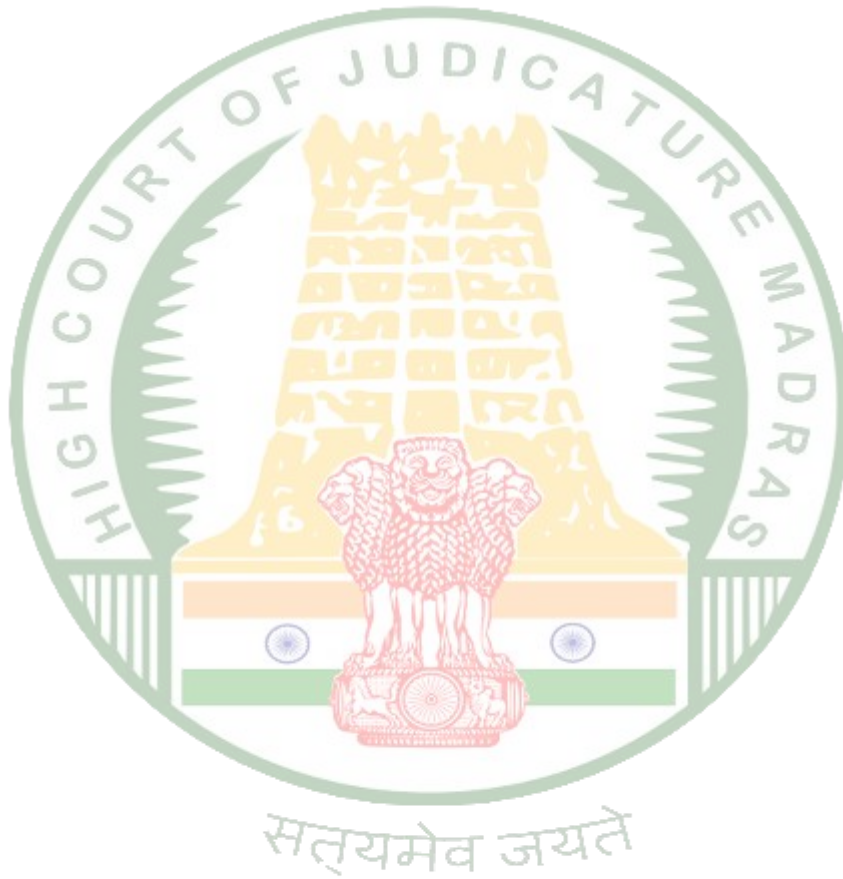
8.The Superintendent Central Prison Coimbatore

9.The Public Prosecutor,
High Court, Madras

+1 cc to M/s.Philip Ravindran Jesudoss sr 17544

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