

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.186 of 2017

Vaiyapuri

... Appellant/Accused

Vs

The State Rep. By Inspector of Police,
Eriyur Police Station,
Dharmapuri District.

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 24.01.2017 made in S.C.No.71 of 2016
on the file of the learned Additional Sessions Judge,
Dharmapuri.

For Appellant : Mr.R.John Sathyan

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

JUDGEMENT

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

The appellant is the first accused in S.C.No.71 of 2016 on the file of the learned Additional District & Sessions Judge, Dharmapuri. There were three other accused by name Sakthivel (A.2); Narayanan (A.3) and Ammaniyammal (A.4). The trial Court had framed as many as two charges against the accused. The first charge is against A.1 for offence under Section 302 I.P.C., and the second charge is against A.2 to A.4 for offence under Section 302 r/w.34 I.P.C. By judgment dated 24.01.2017, the trial Court acquitted A.2 to A.4. However, convicted A.1 alone for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for 10 months. Challenging the said conviction and sentence the appellant/A.1 is before this court with this appeal.

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

All the four accused were residing at Pallipattu Village, Dharmapuri District. A.1 & A.2 are the sons of A.4. A.3 is the uncle of A.1. The deceased in this case was one Mr.Kuppusami. P.W.1 Mr.Subramani is the brother of the deceased. He was also residing at Pallipattu Village. In respect of a landed property, there is a long standing enmity between the deceased and these accused. In respect of the said land dispute, on 26.03.2013, a complaint was made by the deceased at Eriyur Police Station. There was an enquiry held, in which, all the four accused participated and both the parties have agreed to settle the civil dispute before the Civil Court. The enquiry was over around 5.00 p.m on the same day. Thereafter, all the four accused were returned home.

3.It is further alleged that the deceased alone was going on by walk to Pallipattu Village. When he was passing through Pallipattu to Pudhukadu Road near the land of one Nanjappa, all the four accused suddenly emerged there. A.1 was armed with an Aruval. He mounted attack on him. In fact, he was lying in wait for the deceased and he started mounting attack on the deceased with Aruval. He cut the deceased on several parts of the body. The deceased fell down in a pool of blood and died instantaneously. A.1 fled away from the scene of occurrence. According to the case of the prosecution, A.3 and A.4 had instigated A.1 to commit murder of the deceased. The occurrence was not witnessed by any one.

4.P.W.1 heard around 10.30 pm on 26.03.2013, that the deceased was lying dead with cut injuries at the place of occurrence. Immediately, he rushed to the said place and thereafter, he went to Eriyur police station and made a complaint on 27.03.2013 at 6.30 am against all the four accused. On the said complaint, a case in Crime No.43 of 2013 was registered for offence u/s.302 I.P.C. Ex.P1 is the complaint and Ex.P.12 is the F.I.R. Both the documents were sent to Court which were received by the learned Judicial Magistrate on 27.03.2013 at 11.00 am.

5.The case for taken up for investigation by the then inspector of police (P.W.11). He went to the place of occurrence and prepared an observation mahazar and a rough sketch. He recovered blood strained earth; sample earth and other blood stained material objects found at the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same to the Doctor for postmortem.

6.P.W.7 Dr.Suresh, conducted autopsy on the body of the deceased on 27.03.2013 at 3.00 pm and found as many as seven cut injuries on the body of the deceased. He opined that the death

of the deceased was due to shock and hemorrhage due to the said multiple injuries found on the dead body. He further opined that the said injuries would have been caused by a weapon like Aruval. According to him, the death had occurred some time between 10 and 12 hours before the commencement of the postmortem.

7.P.W.11 recovered the blood stained cloth from the body of the deceased. When the investigation was in progress, it is stated that A.1 appeared before P.W.5, the then Village Administrative Officer (In charge) of Bathalahalli, on 27.03.2013 around 12.00 noon. P.W.5 allowed him to orally confess and he reduced the same into writing. Ex.P.5 is the said extra judicial confession. In which, A.1 has stated that he cut the deceased and killed him due to the civil dispute. From A.1, P.W.5 recovered M.O.5 - Shirt and M.O.2 - Lungi. Then, P.W.5 produced A.1 to P.W.11, the Inspector of Police, Eriyur Police Station at 2.00 pm on 27.03.2013.

8.On such production, P.W.11 arrested A.1. While in custody, A.1 made a voluntary confession, in which, he disclosed the place where he had hidden an Aruval. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the Aruval (MO.6). P.W.11 recovered the same under a mahazar then, he forwarded A.1 to Court for judicial remand. At his request, all the material objects were sent for chemical examination. The other accused in this case viz., A.2 to A.4 had secured anticipatory bail from this Court. Thereafter, the investigation was concluded by his successor P.W.13. P.W.13 laid charge sheet against A.1 to A.4.

9.Based on the above materials, the trial Court framed charges against the accused as stated in the first paragraph of this judgement. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 21 documents were exhibited, besides 7 Material Objects.

10.Out of the said witnesses, P.Ws.1 to 3 have stated that they heard that the dead body of the deceased was lying with cut injuries around 10.00 pm on 26.03.2013. They have further stated that they rushed to the place of occurrence and found the dead body of the deceased. They have further spoken about the motive between the accused and the deceased. P.W.1 has further stated about the complaint made by him to the Police. P.W.4 has spoken about the preparation of observation mahazar and rough sketch, at the place of occurrence. P.W.5, the then Village Administrative Officer has spoken about the extract judicial confession said to have been made by A.1 to him. P.W.6 has stated that 3 1/2 years before the date of occurrence, around

8.00 pm he found A.1 sitting at Kuthangal Village. P.W.7 has spoken about the postmortem conducted and his final opinion regarding the cause of death of the deceased. P.W.8 has stated that he received the F.I.R., and the complaint from the Sub-Inspector of Police (P.W.10) and handed over the same to the learned jurisdictional Magistrate at 11.00 am on 27.03.2013. P.W.9, yet another Constable has stated that he handed over the dead body of the deceased to the Doctor for postmortem as directed by P.W.11. P.W.10, the then Sub-Inspector of Police has spoken about the registration of the case. P.W.12 has spoken about the chemical analysis conducted by him on all the material objects. The report revealed that there were human blood stains on all the material objects. P.Ws.11 and 13 have spoken about the investigation done and the final report filed in this case.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

12. Having considered all the above materials, the trial Court convicted the appellant/A.1, as stated in the first paragraph of this judgment and acquitted the other accused. Challenging the same, the appellant/A.1 is before this Court with this Criminal Appeal.

13. We have heard the learned counsel for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. In this case, as we have already stated, there is no eye witness account. The prosecution has made an attempt to prove the charges against A.1 by circumstantial evidence. The foremost circumstantial evidence is that the deceased had left the Police Station at 5.00 pm on 26.03.2013 to go to his Village. His dead body was found around 10.30 pm on the same day at the place of occurrence. There were number of cut injuries found on the body of the deceased. According to the Doctor who conducted post mortem, these injuries would have been caused by a weapon like Aruval. Thus, the prosecution has clearly established that the death of the deceased had occurred some time between 5.30 pm and 10.00 pm on 26.03.2013 and the death of the deceased was a homicide.

15. Now, in order to prove that it was this accused/A.1 who cut the deceased and caused his death, the prosecution relies only on the alleged extra judicial confession said to have been made by A.1 to P.W.5. P.W.5, the then Village Administrative Officer has stated that around 12.00 noon on 27.03.2013, A.1 appeared before him and made a voluntary confession. But, P.W.5

during cross examination has stated that he received intimation about the lying of the dead body of the deceased at the place of occurrence around mid night on 26.03.2013. He has further admitted that at 3.00 am on 27.03.2013, he along with his Assistant, went to the place of occurrence. At that time, he did not found the dead body of the deceased at the place of occurrence and according to him, he was informed by the people there that the dead body was already taken by the Police from the place of occurrence. He has further stated that the distance between the Police Station and the place of occurrence is hardly 25 kilometer. He has further stated that immediately, he spoke to Perumpalai Police Station believing that the occurrence place falls within the jurisdiction of Perumpalai Police Station limits. However, they informed that the place of occurrence comes within the jurisdiction of Eriyur Police Station. Therefore, he went to Eriyur Police Station. At that time, the Inspector of Police, was very much present. He has further stated that in Ex.P.5, he did not affix his seal because, he had not taken the seal to the Police Station. This would give an indication that Ex.P.5 was prepared only at the Police Station.

16.Above all, absolutely there is no explanation as to why there was enormous delay in making the complaint and also in forwarding the F.I.R., to Court. For the occurrence which had taken place around 10.30 pm on 26.03.2013, the F.I.R., reached the hands of the learned Judicial Magistrate only at 11.00 am on 27.03.2013. Thus the F.I.R., would not have coming into being on 26.03.2013 which is evident from the fact that around 3.00 am on 27.03.2013, the Police had removed the dead body from the place of occurrence. Thus, there is something fishy about the case of the prosecution.

17.The learned Counsel for the appellant would submit that A.1 would not have chosen a total stranger (P.W.5) to make a voluntary confession. We find force in the said argument. The accused/A.1 had no reason to repose confidence on P.W.5 to make a voluntary confession. P.W.5 was a total stranger. In these circumstances, we find it difficult to believe that A.1 would have gone to P.W.5 and made the extra judicial confession. At any rate, Ex.P.5 the extra judicial confession is shrouded with lots of doubts.

18.Further, as per the settled law, since, an extra judicial confession is a very weak piece of evidence, unless, the same inspires the fullest confidence of the Court and there are evidences from other sources to corroborate the said extra judicial confession, it is not safe to rely on the doubtful extra judicial confession and to convict the maker of the confession. Since, there is no corroboration from any other

independent source, on material particulars, then, we cannot convict the accused solely based on the said extra judicial confession. Thus, the appellant/A.1 is entitled for acquittal.

19. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A.1 by the learned Additional District & Sessions Judge, Dharmapuri, in S.C.No.71 of 2016 by judgment dated 24.01.2017 are hereby set aside. The appellant/A.1 is acquitted from the charges levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant/A.1, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jbm

To

- 1.The Additional District & Sessions Judge,
Dharmapuri.
- 2.The District Munsif cum Judicial Magistrate at
Pennagram.
- 3.The Chief Judicial Magistrate,
Dharmapuri.
- 4.The Superintendent,
Central Prisons, Vellore.
- 5.State Rep. By Inspector of police
Eriyur police station,
Dharmapuri District.
Cr.No.43 of 2013.
- 6.The Director General of Police,
Mylapore, Madras-4.
- 7.The District Collector,
Dharmapuri.
- 8.The Public Prosecutor,
High Court, Madras.

9.The Principal District and Sessions Judge,
Dharmapuri.

+lcc to Mr.R.John Sathyan, Advocate in Sr.No.23320

Crl.A.No.186 of 2017

AD(CO)
NR(14/06/2017)



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