

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T. SELVAM
and
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.A.Nos.256 and 570 of 2017

1. Murugan
2. Prabhu
3.Veeramani
4.Panneerselvam

... Appellants in
Crl.A.No.256 of 2017 /
Accused 2 to 5

Balan @ Balu @ Balakrishnan

... Appellant in
Crl.A.No.570 of 2017 /
Accused 6

-vs-

The Inspector of Police
Annadhanapatti Police Station
Salem District
(Cr.No.129 of 2014)

... Respondent / Complainant
[in both Crl. Appeals]

Criminal appeal is filed under Section 374(2) Cr.P.C., to call for the records and set aside the order of conviction and sentence passed in S.C.No.379 of 2014, dated 14.03.2017, on the file of the learned I Additional Sessions District Judge, Salem.

For Appellants : Mr.S. Anantha Narayanan
in Crl.A.256/2017 Senior Counsel for
Mr.E.C.Ramesh

For Appellant : Mr.R. John Sathyan for
in Crl.A.570/2017 Mr.E.C. Ramesh

For Respondent : Mr.V. Arul
in both Appeals Addl. Public Prosecutor

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by N. SATHISH KUMAR, J.,]

These criminal appeals have been filed by the appellants / accused 2 to 6 challenging the Judgment, dated 14.03.2017, passed in S.C.No.379 of 2014, by the learned I Additional District and Sessions Judge, Salem, convicting and sentencing them as follows:

Accused	Conviction	Sentence
A2, A3, A5 & A6	u/s. 148, u/s.302 r/w 149 I.P.C.	One year Rigorous Imprisonment each. Life Imprisonment each + Fine of Rs.5,000/- each i/d six months Simple Imprisonment each.
A4	u/s. 147, u/s.302 r/w 149 I.P.C.	Six months Rigorous Imprisonment Life Imprisonment + Fine of Rs.5,000/- i/d six months simple imprisonment.

Further, the sentences were directed to run concurrently and the period of imprisonment already undergone by the appellants / accused was directed to be set off under Section 428 Cr.P.C.,

2. The appellants in CrI.A.No.256 of 2017 have arrayed as Accused No.2 to 5 and the appellant in CrI.A.No.570 of 2017 has arrayed as Accused No.6. Since, the appeals are arising out of the same judgment, we are inclined to dispose of both the appeals in a common judgement.

3. case of the prosecution in brief is as follows:

3.a. Deceased Raje was a Traffic Police Constable, working in South traffic Wing of Salem Corporation. P.W.1 is his wife. He applied medical leave from 25.03.2014 to 09.04.2014. When the matter stood thus, on 09.04.2014 at about 7.00 p.m. he left the house and did not return. The next day i.e., on 10.04.2014 morning, P.W.2, the constable working alongwith the deceased informed P.W.1 over phone that her husband was lying dead near Seelanayakkanpatti Venus Weigh Bridge. Immediately, P.W.1 rushed to the place of occurrence and found the dead body of her husband. Thereafter, she lodged a report Ex.P.1 with the Annadhanapatty Police Station. The dresses of the deceased are M.Os.1 and 2; Watch is M.O.3 and Cheppals are M.O.4 and underwear is M.O.5. P.W.2, Head Constable of Annadhanapatty Police Station also visited the spot on the same day morning and found the dead body. P.W.10 Inspector of Police, was working as Sub-Inspector of Police of Annadhanapatty Police Station at the relevant point of time, received the report Ex.P.1 from P.W.1 and registered an F.I.R. (Ex.P.13) in Cr.No.120 of 2014 u/s 302 I.P.C., and forwarded the same to the Court and a copy to the higher officials through P.W.4 Head Constable. P.W.4 handed over the Express F.I.R. to the Judicial Magistrate and copy to the Inspector of Police. P.W.15 Inspector of Police, took up the investigation, visited the place of occurrence and prepared Observation

Mahazar Ex.P.2, Rough Sketch Ex.P.18 and also seized M.Os.1 to 6 and M.O.11 under Ex.P.3 Mahazar. He also conducted the Inquest over the dead body and prepared Inquest Report Ex.P.19 and sent the dead body for autopsy. The Medical Officer P.W.11 attached to Mohan Kumaramangalam Medical College Hospital, Salem, conducted autopsy over the dead body and found the following injuries:

"External Examination:

Injuries:

- 1) reddish brown abrasion on the left side forehead above left eyebrow M-2.5 x 2 cms.
- 2) 1 x 0.5 cms on the outer aspect of the left eye.
- 3) 0.5 x 0.5 cms above the right eye brow
- 4) Below right eye M-2.5 x 0.5 cms
- 5) Right cheek M-4.5 x 2.5 cms
- 6) Right side of nose M-0.5 x 0.2 cms
- 7) Left Cheek M-1.5 x 0.2 cms
- 8) Left side of neck at the level of thyroid cartilage M-1.5x0.5 cms.
- 9) Outer aspect of left shoulder M-2 x 0.5 cms
- 10) Middle 3rd of right side chest M-10 x 5.5 cms.
- 11) Left side of Chest M-1 x 0.5 cms.
- 12) On the lower 3rd of right side chest M-4.5 x 0.5 cms
- 13) Outer aspect of left thigh M-2 x 0.5 cms
- 14) Contusion on the outer aspect upper 3rd of left side chest M-9 x 8 x 0.5 cms.
- 15) Contusion on the middle 3rd of right arm M-8.5 x 7 x 0.5 cms.
- 16) Below the previous injury another contusion M-7 x 6 x 0.5 cms.
- 17) Contusion on the outer aspect of upper 3rd of left side chest M-9 x 6 x 0.5 cms
- 18) Laceration on the left parietal region of scalp M-4 x 0.5 cms.
- 19) Laceration on the mid parietal region M-2.5 x 0.5 x 0.5 cms.

Internal Examination:

O/D Head :- Scalp-diffused dark red contusion on the B1 fronto parieto temporo and right occipital region with both remporalis muscle contused. Dura membrane- intact. Cranial vault-intact. Brain- a thin layer of sub arachnoid haemorrhage on both the cerebral hemisphere edematous and c/s pale Base of skull- intact.

O/D Neck:-

Contusion on the left side strap muscles. Contusion on the sub cutaneous tissue on the left side of the neck. Fracture left side hyoid bone at the level of greater cornu with surrounding soft tissue contusion and extravasation of blood.

O/D thorax-right side thoracic cavity contains 400 ml of fluid blood. Incomplete fracture on the middle of sternum with surrounding soft tissue contusion and extravasation of blood. Ribs fracture on right side from 3 to 9 nos and left side 8 and 9 nos in the mid clavicular line with surrounding soft tissue contusion. Heart-normal in size. Chambers-empty. Valves and coronaries-normal. Both lungs normal in size c/s congested. Contusion on left lung M-5 x 4 x 0.5 cms.

O/D abdomen:-

Stomach-contained 10 ml of mucus fluid with fruity odour mucosa c/s congested liver, spleen, kidneys-normal in size. C/s congested Bladder-empty Pelvis-intact. Spinal column-intact."

She issued Ex.P.15 Post-mortem Certificate. Viscera Report is Ex.P.16 and opined that the deceased would appear to have died due to multiple injuries with evidence of consumption of Ethyl alcohol. This final opinion is marked as Ex.P.17.

3.b. Thereafter, he examined the witnesses, recorded their statements. He has also seized the underwear and blood stained cement floor piece and cement floor piece without bloodstain under Ex.s.P.20 and P.21 Form - 95. P.W.5 Head constable who handed over the dead body to the Government Hospital and collected the underwear from the dead body and handed over the same to the Inspector of Police under Ex.P.4 Special Report. In the meanwhile, P.W.12 and P.W.13 were returning from their daily cooly work in a two wheeler on 09.04.2014 at about 9.00 p.m., when they were proceeding towards their house near seelanayakkanpatti bypass, near Venus Weigh Bridge, 6,7 people were beating one person. When P.Ws.12 and 13 questioned those persons, they threatened them. Besides, they have also dragged the person to the nearby room. In view of the threat, P.Ws.12 and 13 left the place and thereafter on seeing the news papers on 11.4.2014 morning, they went to the police station and narrated the incident.

3.c. P.W.9 is the owner of Venus weigh bridge. A1 Senthilkumar was working with him. On 09.04.2014 while he was ready to leave to Thirupathi at about 11.30 p.m., he had received a phone call from A1 Senthilkumar from a mobile phone number 9629294248 and informed that they caught hold one person suspected to be a thief. P.W.9 informed A1 Senthilkumar to inform the police. Thereafter, P.W.9 had left to Thirupathi and came back to his native place on 13.04.2014. On seeing that his Weigh Bridge was locked, he enquired A1. A1 informed that he and one Murugan and 5, 6 other people murdered the police constable. Immediately, P.W.9 advised him to surrender before the police.

3.d. On 13.04.2014, at about 1.00 p.m. while P.W.8 Munusamy, Village Administrative Officer of Thathakaapatti and his Assistant Mathaian were in the office, A1 Senthilkumar surrendered before P.W.8 and confessed that he and his friends viz., A2 to A7 attacked the deceased constable. Since the deceased was the police constable, he surrendered before P.W.8. P.W.8 recored his extra judicial confession into writing under Ex.P.5 and handed over the accused along with his special report Ex.P.6 to the Inspector of Police. The Inspector of Police arrested the accused and examined him and recorded his voluntary confession in the presence of P.W.8. The admitted portion of confession statement of A1 is Ex.P.7. Pursuant to the same, he recovered the rock stone M.O.12 under Ex.P.8 Mahazar. Thereafter, the Investigating Officer arrested the other accused Murugan, Prabhu, Veeramani, Panneer Selvam. He recorded the confession of Murugan. The admissible portion of his confession is Ex.P.9. P.W.15 also recorded the confession of Prabhu; his admissible portion of confession is Ex.P.10. He seized the identity card of the deceased M.O.13 under Ex.P.11 Mahazar and recorded confession of other accused and also seized 4 wooden logs M.O.13 under Ex.P.12.

3.e. P.W.15, in continuation of his investigation, after arrested all the accused, sent them to remand and also altered the crime from 302 I.P.C. to 147, 148 and 302 I.P.C. and sent the alteration report Ex.P.22 to the Court. The Biological Report and Serology Report sent by the Forensic Sciences Department to the Court were marked as Exs.P.26 and P.27 respectively. After completed the investigation, he further altered the crime to u/s 147, 148, 302 r/w 149 I.P.C., and sent the alteration report Ex.P.25 along with the charge sheet to the Court.

3.f. The case had been taken on file by the learned Judicial Magistrate No.IV, Salem, in P.R.C.No.14 of 2014, who in turn committed the same to the file of the learned Principal District Judge, Salem, as the said case was exclusively triable by the Court of Sessions and thereafter, the said case was made over to the file of the learned I Additional District Judge, Salem.

4. Subsequently, charges were framed under Sections 148, 302 r/w 149 I.P.C. against the appellants / accused 2,3,5,6 and u/s 147, 302 r/w 149 I.P.C. against the appellant/accused 6. When the appellants / accused 2 to 6 were asked to explain about the charges framed against them, they denied the charges and sought for trial to prove their case and accordingly, trial was conducted.

5. During the course of trial, on the side of the prosecution, P.Ws.1 to 15 were examined and Exs.P.1 to P.27 and M.Os.1 and 14 were marked. On the side of the accused Exs.D.1 to D.4 were marked. when the incriminating materials and circumstances were put to the appellants / accused, under

Section 313 Cr.P.C., they denied the evidence of the prosecution side as false. No witness was examined on the side of the defence. After hearing both sides and perusing the oral and documentary evidence adduced, the learned Trial Judge, by Judgment dated 14.03.2017, found the appellants / accused 2 to 6 guilty and sentenced them as stated above. Challenging the said Judgment and order of conviction and sentence, the appellants / accused 2 to 6 have preferred the present criminal appeals.

6. Only A2 to A6 have filed two separate appeals. It was informed by the learned counsel appearing for the appellants/Accused 2 to 6 that due to poverty A1 and A7 have not preferred any appeal. The learned counsel appearing for the appellants submitted that the entire prosecution is vested on the evidence of P.W.8, P.W.12 and P.W.13. Their evidences are unreliable and very unnatural. P.W.12 and P.W.13, who said to have seen the occurrence on 09.04.2014, not even whispered the same to anybody, even though they were present at the funeral of the deceased. Therefore, their evidence that for the first time they have informed the police on 11.4.2014 is highly unnatural and cannot be reliable. Besides, P.W.12 and P.W.13 are not known persons to the accused. Therefore, P.W.12 and P.W.13 identifying the accused without any test Identification Parade is highly unbelievable. Further, their statements also reached to the Court with an inordinate delay, which clearly indicates that they are not the eye witnesses and only shown as eye witnesses, since they belong to the same village of P.W.1, wife of the deceased, their conduct is highly unnatural. Therefore, their evidence cannot be given much reliance.

7. The further contention of the learned Senior Counsel is that the evidence of P.W.9, the so called owner of A1 is also highly artificial, it cannot be relied upon. The extra judicial confession is also suffers from serious infirmity. The Village Administrative Officer has not followed the Village Manual and not prepared necessary copies. Village Administrative Officer totally unconnected with the accused. He is the Village Administrative Officer of different village. Therefore, A1 appearing before him and confessing the crime is highly unbelievable. Hence he submitted that the entire prosecution case is doubtful. Hence, the learned counsel for the appellant prayed for the acquittal of the appellants/accused 2 to 6.

8. Learned Additional Public Prosecutor submitted that P.W.9, owner of the Venus Weigh Bridge, in his evidence has clearly stated that A1 has confessed to him that the police constable was beaten by him and others. His evidence corroborates the evidence of P.W.8, V.A.O, who recorded the extra judicial confession of A1. He further submitted that P.W.12 and P.W.13 are the eye witnesses who seen the occurrence. From the above evidence, the prosecution is able

to prove the complicity of the accused with the crime. Hence the learned Additional Public Prosecutor has submitted that these appeals are liable to be dismissed.

9. In the light of the above submissions now the point that arises for consideration is that whether the prosecution has proved the guilt of the accused beyond all reasonable doubts?

10. On a perusal of the record, the law was set in motion on the basis of Ex.P.1, information lodged by P.W.1, wife of the deceased. P.W.1 in her evidence has stated that her husband was in Medical Leave from 25.03.2014 to 09.04.2014. On the date of occurrence, i.e., on 09.04.2014 at 7.00 p.m. he left the house. Thereafter, he did not return to home. However, she was informed by P.W.2 another police constable who was working with the husband of P.W.1, that her husband was lying dead near the Venus Weigh Bridge. Immediately, P.W.1 went to the place of occurrence and found the body of her husband with injuries and immediately, lodged Ex.P.1. In her evidence, she never whispered anything about the specific overt act of the accused. P.W.2 Head Constable, working with the deceased in his evidence has stated that he had reached the place of occurrence, found the body of the deceased and informed the same to P.W.1, wife of the deceased. His evidence clearly indicates that on seeing the dead body of the deceased, being a co-worker of the deceased, has not informed the police immediately. The conduct of P.W.2, who is the constable working with the deceased not informing about the incident, creates serious doubt about the origin of the occurrence. Further, P.W.1 evidence clearly indicates that at the time when she reached the place of occurrence, police also very much present in the place of occurrence. These facts clearly make the F.I.R. Insignificance.

11. The prosecution has relied upon the evidence of P.Ws.8, 9, 12 and 13 to clothe the liability of the accused. On a careful scanning of the evidence of P.W.9, said to be the owner of the Weigh Bridge, he has stated that on the date of occurrence i.e. on 09.04.2014 at 11.30 p.m., he received a call from A1 from phone number 9629294248. when P.W.9 asked A1 what happened to his phone, A1 appears to have told that since there was no charge in his cell phone, he was calling from the other phone number. Besides, A1 also informed that they caught hold one person suspected to be a thief. P.W.9 told A1 to inform the police about the occurrence. Thereafter P.W.9 had left to Thirupathi and came back on 13.04.2014. On seeing that his Weigh Bridge was locked, he enquired A1. A1 informed that he and one Murugan and 5, 6 other people murdered the police constable. Immediately, P.W.9 advised him to surrender before the police. It is to be noted that P.W.9 evidence attached with artificiality and against the normal human conduct. If really such a call is received from his employee on the date of occurrence, his immediate reaction

would be to inform the police, as he is the owner of the weigh bridge. But he casually went to Thirupathi. Therefore, his conduct has created serious doubt about his evidence. Further, on returning from Thirupathi on 13.04.2014, when he enquired about A1, A1 said to have confessed about the crime. Even then he remained silent and in that aspect he has not informed the police. His conduct creates serious doubt about his version. Further to strengthen his evidence that he has received a phone call from A1 in a particular cell phone, that too, immediately after the occurrence, the prosecution has not even to made any attempt to prove his alleged version by placing the call details. When the prosecution relied upon the circumstances to link the accused with a serious crime, it is the duty of the prosecution to bring forth each and every material with convincing evidence. But absolutely, no investigation was done by the prosecution even to find out the name to whom the cell phone number 9629294248 belongs to, at the relevant point of time. Therefore, we are unable to persuade ourselves to accept the prosecution version particularly the version of P.W.8 that A1 allegedly confessed to him.

12. Now coming to the evidence of P.W.12 and P.W.13 they have in unison voice stated that both of them were working under a railway contractor as coolies and as usual they went to Rasipuram for work on 9.4.2014. After completion of their duty, they were returning in a two wheeler at about 9.00 p.m. and found that about 6 to 7 people together were beating one person and dragged him to the nearby room. When they asked, they were threatened by those people. During their evidence, they had identified all the accused in the Court for the first time. it is to be noted that P.W.12 and P.W.13 are not closely connected to the accused. Since a group of people beating somebody near the place of occurrence and when they threatened P.W.12 and P.W.13, they immediately left the place. They have not whispered the same to anybody till 11.04.2014.

13. P.W.13 in his cross examination would also say that they all belong to P. W.1s village. It is the version of the P.W.12 and P.W.13 that only on seeing the news in the newspaper on 11.04.2014, they informed the police and gave statement on the same day. It is to be noted that admittedly the dead body was found on 10.04.2014 itself and Post Mortem was also conducted on the same day. Admittedly, the evidence of P.W.13 would show that he is also belongs to the Village of P.W.1. Therefore, their evidence that only on seeing the newspaper on 11.04.2014 and thereafter given a statement to the police, attached with serious artificiality. Though P.W.s.12 and 13 claimed to have seen the accused in the occurrence place when they were going in a two wheeler, none of them able to say the Registration number of the two wheeler in which they travelled. P.W.13 claimed to be the owner of the two wheeler, does not even to know the registration number of the vehicle, make of the vehicle and from whom he had

purchased the vehicle, except to state that he has purchased from a financier. His version creates serious doubt about the presence of P.W.12 and P.W.13 in the place of occurrence.

14. It is further to be noted that though P.W.12 and P.W.13 claimed to have given 161 Cr.P.C. statement to the police on 11.04.2014 the same were reached to the court only on 07.07.2014, i.e., almost after 3 months, which creates serious doubt about the prosecution version. The material objects, 161 Cr.P.C. statements of the witnesses and other materials collected during the investigation must be sent to the court then and there, only to remove the suspicion and ensure the fair investigation. Though this Court repeatedly emphasize in many matters about the importance of the despatching of 161 Cr.P.C. Statements to the courts without any delay, the prosecution is not adhered the same. In this case, the prosecution casually despatched the 161 Cr.P.C. Statements with an inordinate delay. There is no explanation for that. This fact clearly indicate the fact that the investigating agency has made the investigation in a shabby, slipshod and very lethargic manner. Such an attitude of the investigating officer clearly create a serious doubt about the so called witnesses version.

15. Further, as already stated the accused have not been produced for test identification parade. It is not established by P.W.12 and P.W.13 that they are known to the accused very well. Their evidence clearly indicate that they had seen a group of people were beating the deceased and when they asked why they are beating, they threatened them. But the Investigating Officer for the reasons best known to him had not taken any steps to conduct the test identification parade. Of course, test identification parade is not a substantive piece of evidence, at the least, it will be useful to show that the investigation is going on a right way, which has not been done by the Investigating Officer in this case. In these circumstances, we are not able to persuade with the evidences of P.W.12 and P.W.13 to prove the guilt of the accused.

16. Similarly, coming to the evidence of P.W.8, Village Administrative Officer, who recorded the so called extra judicial confession Ex.P.5, is the V.A.O. of Neikaarapatty village, which is unconnected to the place of occurrence and A1 is highly unconnected to P.W.8. Therefore, a person who is unconnected to him, reposing confidence on him, giving confession is also doubtful. Particularly, when Ex.P.5 Extra Judicial Confession statement seen, first two pages were written in different hand writing and the last page of the so called confession was written in a different hand writing. This defect has not been explained by the prosecution and the entire confession were written in a normal paper used in the police station. This fact cannot be ignored altogether. Further, P.W.8, V.A.O. while recording the confession, ought to have prepared necessary copies to the court, his superiors

and office file. None of the procedures have been followed. Further, P.W.8 has also stated in his evidence that in his presence, stone and other material objects were seized. It is to be noted that Ex.P.8 clearly shows that the place of occurrence surrounded by the police and many people. Therefore, seizure becomes insignificant. Though the Investigating Officer claimed to have seized the material objects from the place of occurrence under Mahazar, the same were sent to the Court only on 17.4.2014. The F.I.R. reached the Court only at 4.30 p.m. On 10.04.2014, though it was prepared and made ready at 10.00 a.m. on 10.4.2014. These delays have not been explained by the prosecution.

17. Post Mortem Certificate and Visera Report have also indicated that the deceased found intoxicated. Apart from sustaining injuries, the possibility of death caused by some other manner also cannot be ruled out in this case. The serology report also does not prove the blood group. All these facts clearly create serious doubt about the entire prosecution version. Particularly, the evidence of P.W.9, 12 and 13 and their conduct in remaining silent by not informing the occurrence to the police and delay in despatching 161 Cr.P.C. Statements to the Court creates serious doubt about the entire prosecution version.

18. We are aware of the fact that the extra judicial confession which inspires confidence and does not suffer from any infirmity, itself sufficient to base the conviction. But the above principle cannot be applied mechanically. Every case has to be decided on its own facts and circumstances. On a perusal of Ex.P.5, evidence of P.W.8 and other circumstances discussed above, we are unable to persuade ourselves to rely upon the extra judicial confession Ex.P.5 said to have given by A1 implicating other accused also. Such extra judicial confession is not at all sufficient to base the conviction, since the same is attached with artificiality. Hence, we have no other option except to hold that the prosecution has not established the complicity of the accused with the crime beyond all reasonable doubts. Therefore, we have no other option to extend the benefit of doubt to the appellants/accused 2 to 6. Accordingly, the appeals are allowed.

19. We are also told by the learned counsel for the appellants that A1 and A7 are also serving sentence, due to poverty they could not prefer appeal. Since the very prosecution version itself is doubtful, we also extend the same benefit to A1 Senthilkumar M/A 36 S/o Rajendran and A7 Kattan Raja (a) Raja M/A 35 s/o Palanisamy who have not filed any appeal.

20. Hence, we are of the view that A1 and A7 are also acquitted from the prosecution case by giving the benefit of doubt. Accordingly, we direct that the conviction against A1 and A7 is also set aside.

21. In the result, the criminal appeals are allowed and the Judgment, dated 14.03.2017, made in S.C.No.379 of 2014, by the learned I Additional District Judge, Salem, is hereby set aside and the appellants / accused 2 to 6 and A1 Senthilkumar M/A 36 S/o Rajendran and A7 Kattan Raja (a) Raja M/A 35 s/o Palanisamy are acquitted of all the charges. The fine amount, if any paid shall be refunded to the accused. The accused 1 to 7 shall be released forthwith from the prison, if they are no longer required in connection with any other case.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ggs

To:

- 1.The I Additional District- cum - Sessions Judge, Salem.
 - 2.-do- Thro' The Principal Sessions Judge, Salem.
 3. The District Collector, Salem.
 4. The Director General of Police,
Tamil Nadu, Mylapore, Chennai-4.
 5. The Superintendent of Police, Salem.
 - 6.The Inspector of Police
Annadhanapatti Police Station, Salem District
 - 7.The Public Prosecutor,
Madras High Court, Madras.(2-copies)
- + 1 cc to Mr. E.C. Ramesh, Advocate Sr.4175

CrI.A.Nos.256 and 570 of 2017

RR(CO)
EU(16/02/2018)