

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2018

CORAM

**THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

**Crl.A.Nos.680 & 698 of 2017
and
Crl.M.P.No.13655 of 2017**

1.Suresh,
S/o.Manoharan. ... Appellant/A1 in
Crl.A.No.680 of 2017
2.Brindha,
W/o.Madaiyan. ... Appellant/A2 in
Crl.A.No.698 of 2017

-VS-

State represented by,
The Inspector of Police,
Papparapatti Police Station,
Dharmapuri District.
[Cr.No.262 of 2015]

... Respondent/Complainant
in both the Crl.A.Nos.

COMMON PRAYER: Criminal Appeals are filed under Section 374(2) of the Code of Criminal Procedure, praying to call for the records and set aside the conviction and sentence imposed by the learned Additional District and Sessions Judge, Dharmapuri by Judgment dated 06.02.2017 in S.C.No.16 of 2016 and acquit the appellants by allowing these appeals.

For Appellant :: Mr.R.Thirugnanam
[in Crl.A.No.680 of 2017]

For Appellant :: Mr.R.Thirugnanam for
[in Crl.A.No.698 of 2017] Mr.P.Palanikumar

For Respondent :: Mr.R.Prathap Kumar
[in both the Crl.A.Nos.] Additional Public Prosecutor

* * * * *

COMMON ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.]

These appeals arise against the judgment of learned Additional District and Sessions Judge, Dharmapuri, passed in S.C.No.16 of 2006 on 06.02.2017. Appellants were convicted and sentenced as follows:

Rank of Accused	Offences	Sentence
A1	302 IPC	Life imprisonment and fine of Rs.1000/- i/d 10 months R.I. separately.
	120(B) r/w 302 IPC	Life imprisonment and fine of Rs.1000/- i/d 10 months R.I. separately.
A2	120(B) r/w 302 IPC	Life imprisonment and fine of Rs.1000/- i/d 10 months R.I. separately.

3.The sentences of imprisonment imposed against accused Nos.1 and 2 are to run concurrently.

4.It is found through perusal of the records that A.1 was absent and no representation was made on 18.07.2016 due to boycott of Court an NBW against A.1 was issued and case was split up and new number S.C.No.96 of 2016 was assigned for the split up case of A.1 on 19.07.2016. Thereafter, on 07.09.2016 S.C.No.96 of 2016 (A.1 split up case) and S.C.No.16 of 2016 were clubbed together on 07.09.2016, which seeks to have caused some confusion in marking and assigning of Exhibit numbers of the Exhibits. Unfortunately, the trial court had not made any mention of the same.

5.The case of the prosecution is that A.2 was the wife of deceased Madhaiyan. A.1 and A.2 worked in a garments shop at Papparapatti and developed illicit intimacy and lived together at Papparapatti Rajapettaikhan Colony. When the deceased came to know of the illicit intimacy of his wife with A1, he advised A.1 against the relationship. Not taking to it kindly, A1 decided to commit murder of Madhaiyan with the aid of A.2 and A.3.

6.On 24.07.2015 at 4.00 pm. A.1 went to Papparapatti from Rajapettaikhan Colony on his Yamaha motor cycle and asked A.3 to do away with Madhaiyan. A.1 invited deceased Madhaiyan to consume liquor along with him. Madhaiyan came on his TVS 50 at 8.00 pm. to Onnappagoundanahalli Taraf, Thattarapatti village. There deceased,

A.1 and A.3 consumed alcohol. A.1 and A.3 strangled the deceased with rope. As the rope gave way, A.1 and A.3 assaulted Madhaiyan by throwing a stone of 10 kg. on his head. Madhaiyan died due to asphyxia and fatal head injury. The Village Administrative Officer Onnappagoundanhalli Village ascertained the identity of the deceased as Madhaiyan S/o.Raman and gave complaint to Police. A1 and A3 appeared before the Village Administrative Officer, Papparapatti and admitted to the offence. The confession was recorded leading to preference of complaint and registration of FIR. The Inspector of Police took up investigation, arrested the accused, effected recovery and filed the charge sheet. Hence the accused A.1 and A.3 committed offences punishable under Section 120-B and 302 of the Indian Penal Code. A.2 was charged under Section 120-B, 302 r/w 109 of the Indian Penal Code.

7.The prosecution in the above case had examined PW.1 to PW.15 and marked Ex.P.1 to Ex.P.29. PW.1 is the Village Administrative Officer of Onnappagoundanhalli Village, who lodged complaint Ex.P.1. PW.2 and PW.3 are relatives of the deceased, who had seen A.1 and A.3 consuming alcohol on the fateful day. PW.4 is the Village Administrative Officer of Papparapatti before whom A.3 is said to have given a confession. PW.5 is the house owner, where A.1 and A.2 used to stay. PW.6, PW.7, PW.8 are the father, mother and

sister of the deceased Madhaiyan, and have spoken to the death of the said Madhaiyan and about the illicit relationship between A.1 and A.2. PW.9 hails from the same village of the deceased, in whose presence M.O.1 to M.O.4 the rope and articles found in the scene of occurrence had been seized. This witness admits that he has signed mahazar but does not know its contents. PW.10, Head Constable produced M.O.5 to M.O.7 the apparels of the deceased. PW.11, Postmortem doctor, issued the Viscera report and the postmortem certificate Ex.P.8 and Ex.P.9. PW.12, Sub-Inspector of Police registered the FIR. PW.13, Investigating Officer conducted the major portion of the investigation. PW.14 had completed the investigation and filed the final report. PW.15, Judicial Magistrate recorded the 164 Cr.P.C. statement of A.2.

8.PW.13, Investigating Officer on coming to know about the death and the likely involvement of the accused searched for them. He received information from PW.4/Village Administrative Officer of Papparapatti Village that Suresh A.1 and A.3 Mahadevan have surrendered on 26.07.2015 at about 11.00 am. and had confessed to the crime. Ex.P.2 is the confession of A.3 and Ex.P.3 is the report. The confession of A.1 Suresh is marked as Ex.P.22. On coming to know about A.2's involvement, A2 was arrested. All the accused were sent to judicial custody. A.2 was inclined to give confession statement before the Magistrate PW.15. The confession statement is marked as

Ex.P.29. The Material Objects were subjected to chemical and biological examination. The Postmortem was conducted by PW.11 and the Postmortem Certificate Ex.P9 was issued on 25.07.2015. Thereafter, on transfer of PW.13, PW.14 the successor had continued with the investigation and filed the charge sheet against A.1 to A.3.

9.The prosecution in order to sustain their case examined PW.1 to PW.15, marked Ex.P.1 to Ex.P.29 and M.O.1 to M.O.13. The accused were questioned under 313 of the Code of Criminal Procedure. They denied the allegation against them as false. No witnesses on the side of the accused were examined. On conviction they prayed for leniency. The Trial Court on consideration and appreciation of oral and documentary evidence sentenced all the accused to imprisonment for life, against which A1 and A2 have filed these Criminal Appeals. This Court had allowed the appeal of A.3 in Crl.A.No.216 of 2017 by judgment dated 23.10.2017 setting aside his conviction passed by the Trial Court.

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10.The case of the prosecution is based on the last seen theory of A.1 and A.3 being seen in company of deceased by PW.2 and PW.3, extra-judicial confession given by A.1 Ex.P.20, recovery of Mobile phone, M.O.8 and TVS 50 mobike M.O.10 based on the confession of A.1, Ex.P.22 and seizure mahazar Ex.P.23, illicit

relationship between A.1 and A.2, spoken to by PW.5 Manickam house owner at Rajapettaikhan colony, PW.6, 7 and 8 father, mother and sister of the deceased and Ex.P.26, love letters said to have been written by A.2 to A.1.

11.The prosecution, for proving last seen theory had placed reliance on PW.2 and PW.3 as though they had seen A.1 and A.3 and the deceased on 24.07.2015 at about 8.00 pm when they were consuming alcohol and there was a heated argument between them. Though, PW.2 and PW.3 claimed to have seen the incident, they didn't bother to inform the same to the police, when the police had reached the scene of occurrence on 25.07.2015 and were making enquiries though, PW.2 and PW.3 were present then. This fact has been informed to the police only two days thereafter, when their statements were recorded under Section 161 (3) of the Code of Criminal Procedure. Their statements reach the Court only on 01.12.2015. The evidence of PW.2 and PW.3 are contradictory and both witnesses admit that they are relatives of the deceased Madhaiyan. One important factor stated is that they had seen the TVS 50 mobike of the deceased on 24.07.2015 at 8.30 pm. Further, PW.2 admits that at the time of examination by the police he did not state anything about the heated argument. The TVS 50 mobike has been marked as M.O.10 and the witness to the seizure mahazar is PW.4 Sankar and his menial one

Ravi. This document has not been marked through PW.4 and it has been marked through the Investigating Officer as Ex.P.23. PW.8 Sister of the deceased categorically asserted that M.O.10 was there in the scene of occurrence on 25.07.2015. The prosecution had placed reliance on extra judicial confession of A.1 Ex.P.20, which is said to have been given before PW.4. PW.4 has recorded the said statement in his own handwriting. Looking at Ex.P.2 and Ex.P.20 the extra judicial confession of A.3 and A.1, it is found that both the statements have been written by PW.4 the Village Administrative Officer wherein at the end of the statement is written "படிக்க கேட்டேன் சரி". PW.4 admits that he had written Ex.P.2, Ex.P.20 and Ex.P.3. He admits that the handwriting found in Ex.P.3 differs with that in Ex.P.2 and Ex.P.20, though, all the statements were written and the mahazars prepared at the same time by the same witnesses. Form 95 has been sent to Court without properties, which casts a doubt about the seizures. No explanation has been given for the same. Further, Ex.P.20 has been marked through PW.13, the Investigating Officer. Hence Ex.P.2 and Ex.P.3 become doubtful. Further, A.1 is a total stranger to PW.4 and there is no necessity on the part of A.1 to go to the office of PW.4 and give a statement incriminating himself. Thus the extra judicial confession does not inspire confidence to be acted upon. In any event it is a weak piece of evidence which has to be corroborated with other material and circumstances. In this case there is no such

corroboration. As regards A.2 she had been roped in this case on the strength of Section 120-B and 109 of the Indian Penal Code. The only material is that Ex.P.26, the alleged love letters. These letters have been marked through the Investigating Officer PW.13, though, it is said to be seized in the Home and in presence of PW5. The prosecution had failed to take specimen hand writings and send it to handwriting experts to connect A.2 with the writings in Ex.P.26.

12.This Court on the above discussion is of the view that the evidence of PW.2, PW.3 for last seen theory is unreliable. The extra judicial confession Ex.P.2 and Ex.P.20 given to PW.4 does not pass the test of credibility and does not inspire confidence of the Court with other cogent circumstances. Ex.P.26 has not been marked and proved in the manner known to law.

13.In the considered opinion of the Court the prosecution has failed to prove the circumstances pointing to the guilt of the appellants through a cogent chain of circumstances. Therefore, the benefit of doubt enure in favour of the Appellants. In view of the reasons assigned above, the conviction recorded is unsustainable.

14.In the result, these Criminal Appeals are allowed and the conviction and sentence imposed on them by the learned Additional

District and Sessions Judge, Dharmapuri by Judgment dated 06.02.2017 in S.C.No.16 of 2016 is set aside and the appellants A.1 and A.2 are acquitted of the charges. Fine amount paid, if any, is directed to be refunded to the appellants. Bail bonds, if any, executed shall stand cancelled. Consequently, the connected Miscellaneous Petition is closed.

[C.T.S.J.]

[M.N.K.J.]

10.09.2018

Speaking order/Non-speaking order

Index : Yes/No

Internet: Yes/No

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To

1.The Additional District and
Sessions Judge,
Dharmapuri.

2.The Inspector of Police,
Pappalapatti Police Station,
Dharmapuri District.
[Cr.No.262 of 2015]

3.The Public Prosecutor,
High Court, Madras.

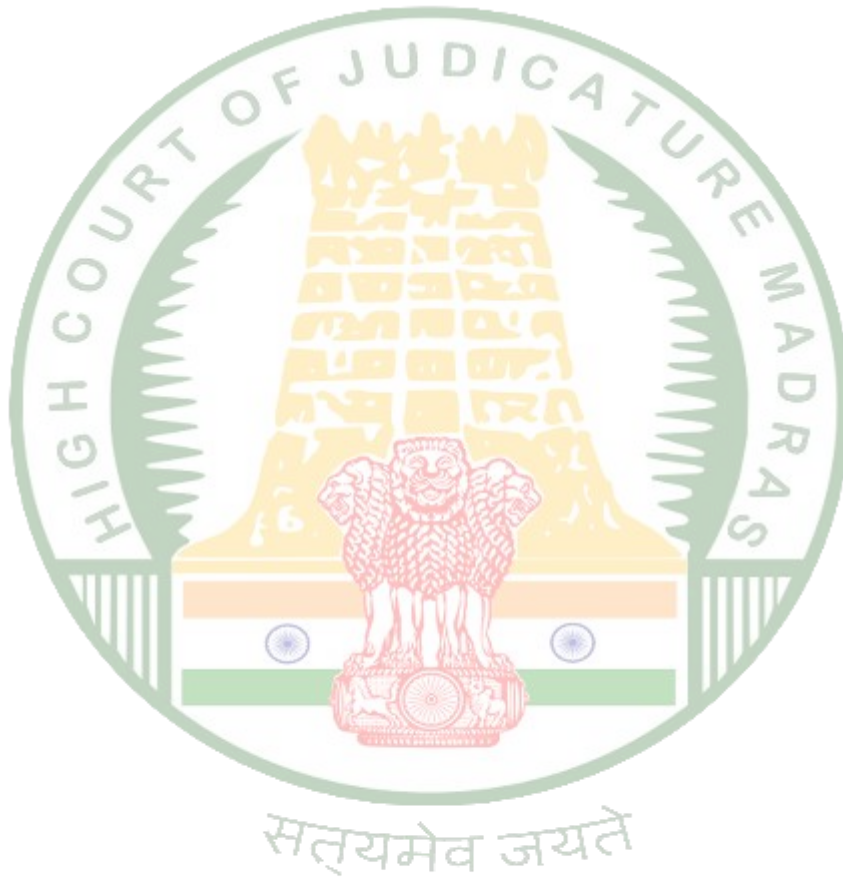
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