

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM  
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.683 of 2017

1.Press Sekar @ Gunasekar  
S/o.Mohan

2.Ramu @ Raman  
S/o.Krishnan

... Appellants

Vs

State represented by  
The Inspector of Police,  
Annadanapatty Police Station.  
Crime No.695 of 2012

... Respondent

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned I Additional District and Sessions Judge, Salem, passed in S.C.No.254 of 2013 on the file of the Ist Additional District and Sessions Judge, Salem dated 19.09.2017.

For Appellants : Mr.R.Sankarasubbu  
for Dr.S.Manoharan

For Respondent : Mr.R.Prathap Kumar,  
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned I Additional District and Sessions Judge, Salem, passed in S.C.No.254 of 2013 on 19.09.2017.

2. Case of prosecution is that appellants/accused and deceased were best of friends. Deceased borrowed a sum of Rs.10,000/- from A1 and went to Bangalore. Despite repeated demands by A1, deceased did not effect repayment. Angered thereby, on 16.09.2012 at about 10.30 p.m., while the deceased was going to home along with his sister, accused, with an intent to commit murder, waylaid the deceased, A1 assaulted him on his chest and pushed him down and both accused assaulted the deceased using bricks and cement stones causing injuries to his face and head resulting in his death. Accused also threatened the sister of deceased and persons present of doing away with them if they intervened. PW-1, sister of deceased, preferred Ex.P1, complaint and a case was registered in Crime No.695 of 2012 on the file of respondent for offences u/s.341, 302 and 506 (ii) IPC. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.341, 302 and 506(ii) IPC, the case, on committal, was tried in S.C.No.254 of 2013 on the file of learned I Additional District and Sessions Judge, Salem.

3. Before trial Court, prosecution examined 13 witnesses and marked 24 exhibits and 13 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, sister of deceased, spoke to being on the way home with deceased on 16.09.2012 at about 10.00 p.m., of accused waylaying them, accused questioning deceased about non-repayment of Rs.10,000/-, argument between accused and deceased, accused assaulting deceased using bricks and cement stones, gathering of persons upon hearing her screams, accused threatening her and public of doing away with them if they intervened, shutting down of a furniture shop upon seeing the incident, accused running away upon arrival of others, PW-2 coming to the scene, calling for the services of 108 ambulance, taking the deceased to hospital where Doctor declared deceased had died and forwarding the body of deceased to mortuary and preference of Ex.P1, complaint. PW-1 identified MO.1 series (bricks and cement stones). PW-1, in cross, spoke to having been informed by police at about 01.00 a.m. that accused assaulted the deceased using bricks and cement stones, seeing the deceased at hospital, seeing the accused in Court for the first time and preferring Ex.P1, complaint between 03.00 and 04.00 a.m. PW-1 also spoke to having preferred the complaint on the information given by police and of not informing either in the complaint or in the enquiry that accused threatened, demanding a sum of Rs.10,000/-. PW-1 has been treated hostile.

3.2. PW-2 spoke to knowing the deceased over a period of 10 years. PW-2 has totally denied knowledge of the occurrence. PW-2 has been treated hostile.

3.3. PW-3, Village Administrative Officer, spoke to having been informed by his Assistant that a person was done to death near 'Prathap Signal', of visiting the scene of crime along with his assistant, attesting Ex.P2, observation mahazar, seizure of blood stained stones (MO-1) blood stained earth (MO-2) and sample earth (MO-3) under Ex.P3, seizure mahazar and attesting the same.

3.4. PW-4, Special Sub-Inspector of Police, spoke to submitting the First Information Report before Judicial Magistrate and of handing over copies thereof to the higher officials.

3.5. PW-5, Doctor, who conducted postmortem, stated that the deceased appeared to have died of shock and hemorrhage due to head injuries. Exs.P7 and P9 are Postmortem Certificate and Final Opinion.

3.6. PW-6, Village Administrative Officer, spoke to A1 tendering a voluntary confession on 17.09.2012 at about 11.00 a.m. stating that he and A2 assaulted the deceased using stones owing to money dispute, of recording the same in Ex.P10, submitting Ex.P11, report, to Inspector of Police, arrest of A1, attesting confession of A1, attesting Ex.P13, seizure mahazar for MOs.4 and 5, blood stained T-shirt and blood stained lungi, arrest of A2, attesting confession of A2 and Ex.P15, seizure mahazar, for MOs.6 and 7, Jeans Pant and T-shirt.

3.7. PW-7, Head Constable, spoke to handing over the body of deceased to Doctor towards conduct of postmortem, on completion thereof handing over the same to his relatives, forwarding seized articles to Court under Form-95 and submitting Ex.P16, report.

3.8. PW-8, Sub-Inspector of Police, spoke to registering a case in Crime No.695 of 2012 on the file of respondent for offences u/s.341, 302 and 506(ii) IPC and forwarding the same to Court and higher officials.

3.9. PW-9, Investigation Officer, spoke to visiting the scene of crime, preparation of mahazars, seizure of materials objects, conducting inquest in the presence of panchayatdars and witnesses, forwarding the body of deceased towards conduct of postmortem, examining witnesses and recording their statements, arrest of accused and recording their confessions, recording seized articles in Form-91, forwarding the same to Court and handing over the case papers to PW-11, Inspector of Police, for further investigation.

3.10. PW-10, Inspector of Police, spoke to obtaining

Ex.P19, Postmortem Certificate and chemical analysis report, examining PW-5, Doctor, recording his statement, altering the First Information Report to reflect offences u/s.341, 302 r/w 34 and 506(ii) IPC, forwarding the same to Court and higher officials, obtaining Ex.P22, biological report and Ex.P23, serology report and on completion of investigation, filing of charge sheet informing commission of offences u/s.341, 302 and 506(ii) IPC.

3.11. PW-11, Inspector of Police, spoke to examining PW-4, recording his statement, forwarding the articles (taken from the body of deceased) to Court, forwarding articles for chemical analysis and on his transfer, handing over further investigation to PW-10, Inspector of Police.

3.12. PWs.12 and 13 have been treated hostile as they denied knowledge of occurrence.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of materials before it, trial Court, convicted appellants/accused for offences u/s.341, 302 and 506 (ii) IPC and sentenced them to 1 month S.I. for offence u/s.341 IPC, life imprisonment and fine of Rs.5,000/- i/d 6 months S.I. for offence u/s.302 IPC and 2 years R.I. for offence u/s.506(ii) IPC under judgment dated 19.09.2017. Trial Court directed that sentences run concurrently.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor.

6. PW-1, sister of deceased, whom the prosecution has examined as an eye witness to the occurrence, has turned hostile. In cross, PW-1 specifically has deposed to learning of the death of her brother as also the manner in which he was done to death from the police. The prosecution is thus left with no more than the confession allegedly tendered by A1 to PW-6, Village Administrative Officer, on 17.09.2012 at about 11.00 a.m. The case in Crime No.695 of 2012 on the file of respondent has been registered on 17.09.2012 at 03.00 hours. Time and time again has this Court held that extra judicial confession recorded after the registration of the case is inadmissible in evidence, and for good reason. When permitted, they would have the effect of nullifying Sections 25 to 27 of the Indian Evidence Act. Further reason to discard the same is that it almost is an uniform practice that extra judicial confessions are recorded by the Village Administrative Officer, a revenue official and almost all the time, the Village Administrative Officer has been found to be an obliging witness. It is with some pain that we place on record the bitter truth of nexus,

legal and otherwise, between police and revenue officials. In the instant case, we find that as against PW-6, Village Administrative Officer's evidence in chief of A1 having appeared before him at 11.00 a.m. on 17.09.2012 at his office and confessing to the crime in the accompaniment of A2 and A3 and that he recorded the confession statement under Ex.P10 and forwarded the same along with his report Ex.P11 to the Inspector of Police and that he produced the accused along therewith at the police station by 01.30 p.m., in cross, PW-6 would have it that A1 appeared before him at 11.30 a.m. on 17.09.2012 and confessed, he then called the Inspector of Police over phone by about 11.45 a.m. and a police constable was at his office by 12.00 p.m. He would state that when he called the Inspector of Police at 11.45 a.m. he was not required by the Inspector to come immediately and that he was called for an enquiry at 03.00 p.m. What is above recorded is in itself sufficient to discard Ex.P10, Extra Judicial Confession.

The Criminal Appeal is allowed and the conviction and sentence imposed on appellants by learned I Additional District and Sessions Judge, Salem, in S.C.No.254 of 2013 dated 19.09.2017 are hereby set aside. Appellants are acquitted of all charges. Appellants are directed to be released forthwith unless their presence is required in connection with any other case. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

gm

To

- 1.The I Additional District and Sessions Judge, Salem.
- 2.The Inspector of Police, Annadanapatty Police Station.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Superintendent, Central Prison, Coimbatore.
5. The Principal Session Judge, Salem.

6. The Chief Judicial Magistrate, Salem.
7. The Judicial Magistrate IV, Salem.
8. The District Collector, Salem.
9. The Director General of Police, Mylapore, Chennai.
10. The Section Officer, Criminal Section, High Court, Madras.

Criminal Appeal No.683 of 2017

NA (CO)  
GMY (18/03/2019)