

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.661 of 2017

Karthick @ Karthikeyan ... Appellant/Sole Accused

Vs

State represented by Inspector Police
Melpatti Police Station, Melpatti,
Vellore ... Respondent /
Complainant

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 20.04.2017, made in SC.No.173 of 2015, on the file of the I Additional District and Sessions Judge, Vellore, thereby convicting and sentencing the Appellant, for the offence under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Simple Imprisonment.

For Appellant : Mr.G.Vinodh Kumar

For Respondent : Mr.M.Mohammed Riyaz, APP

JUDGEMENT

(Judgement of the Court was made by A.D.JAGADISH CHANDIRA)

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 20.04.2017, made in SC.No.173 of 2015, on the file of the I Additional District and Sessions Judge, Vellore, thereby convicting and sentencing the Appellant/

accused, for the offence under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Simple Imprisonment.

2. The case of the Prosecution is as follows:-

a. The Appellant/accused was residing at Valathur Village. On 15.08.2014 (Friday) at 11.00 p.m., the deceased Selvakumar left his house, informing his parents that he will return back to home within half an hour, but he did not return and his phone was found to be switched off. On the next day, i.e. on 16.08.2014 (Saturday), at about 11.00 p.m., PW.1, who is the father of the deceased, received a missed call from the phone of the accused and on 17.08.2014 (Sunday), PW.1 and PW.2, who is the mother of the deceased, went to the house of the accused and enquired about the deceased. At that time, PW.3, who is the wife of the accused, informed them that the accused and the deceased consumed liquor on 15.08.2014 and that there were quarrels between them. On 18.08.2014 also, the accused did not return back. On 19.08.2014, the Villagers informed PW.1 that a dead body found inside a well near the village and PW.1 went and saw inside the well. Since he could not see anything in the night hours, on 20.08.2014, PW.1 went and saw inside the well and found that the dead body was that of his son. Hence, on 20.08.2014 at 6.30 a.m. PW.1, gave a complaint to PW.13, Sub Inspector of Police, Melpatti Police Station. On receipt of the complaint, a case was registered in Cr.No.100 of 2014 under Section 174(3) of Cr.PC(Suspicious Death) and PW.13 prepared a First Information Report, Ex.P12 and sent the same to the Higher Officials concerned.

b. PW.14, Inspector of Police, Melpatti Police Station, took up the case for further investigation and went to the scene of occurrence and prepared Ex.P2, observation mahazar, in the presence of PW.7 and also prepared a rough sketch, Ex.P13. PW.13 conducted inquest in the presence of the witnesses and prepared a inquest report under Ex.P14 and sent the body to the Vellore Government Hospital, for conducting post-mortem, under a request, Ex.P8. PW.10, Doctor, attached to the said Hospital conducted autopsy and given a post-mortem report, under Ex.P10, opining that the deceased died 5 to 7 days prior to autopsy. On 25.08.2014, at 11.00, before PW.8, the Village Administrative Officer, the accused appeared and gave a confession statement, under Ex.P5. On 25.08.2014, PW.14 arrested the accused and sent him to judicial custody and after completing investigation, filed a final report, under Section 302 of IPC, stating that due to previous enmity, the Appellant cunningly taken the deceased and made him to consume alcohol heavily and pushed him inside the well in the Mango Groove of PW.6, due to which the deceased

sustained severe injuries on his chest and died.

3. The case was taken on file in SC.No.173 of 2015 by the learned I Additional District and Sessions Judge, Vellore and necessary charges were framed. In order to bring home the charges against the accused, the prosecution examined as many as fourteen witnesses as PW.1 to PW.14 and also marked Exs.P1 to P15 and MO.1. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.

4. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

5. This court heard the submissions of the learned counsel on either side.

6. The learned counsel for the Appellant would submit that the Prosecution has not been able to prove the charges levelled against the Appellant beyond all reasonable doubts, by letting in cogent and convincing evidence and that the entire case of the Prosecution is cooked up, with full of discrepancies, infirmities, embellishments and self-contradictory. He would further submit that the conviction of the Appellant, as recorded by the Trial Court, is based only on the alleged confessional statement, Ex.P5, stated to have been made by the Appellant to PW.8, the Village Administrative Officer on 25.08.2014, after the complaint, Ex.P1 and registration of the First Information Report Ex.P12 on 20.08.2014 and after the First Information Report reaching the Court concerned, on 22.08.2014 and that the facts and circumstances surrounding the making of a confession appear to cast a great doubt on the veracity or voluntariness of the confession.

7. The learned counsel for the Appellant would also submit that there is absolutely no material to prove the motive on the part of the accused to commit the crime in question. He vehemently contended that the case of the accidental death has been converted into a culpable homicide by the investigating agency, which is revealed from the chemical analysis report, Ex.P9, post-mortem report, Ex.P10 and opinion of PW.10, Doctor, under Ex.P11.

8. The learned counsel for the Appellant would further contend that the Prosecution has to fall also on the ground of unexplained delay in making the complaint to the Police by PW.1 and the First Information Report, Ex.P12, reaching the Court concerned. Further, all the statements recorded from the witnesses under Sec 161 Cr.P.C had been sent to the court on

27.02.2015 after about six months.

9. On the other hand, the learned Additional Public Prosecutor would submit that the deceased is none other than the sister's son of the Appellant and the Respondent has proved the circumstances, by the evidence of PW.6 and PW.8, Village Administrative Officer, to whom the Appellant/ accused had made an extra judicial confession and that the motive part of the case of the Prosecution has been established by the extra judicial confession. The learned Additional Public Prosecutor would further contend that the Trial Court has rightly come to the conclusion based on the testimony available on record that it was only the accused, who committed the murder.

10. We have given our careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and sentence.

11. As rightly pointed out by the learned counsel for the Appellant, the whole case of the Prosecution rests on the extra judicial confession, alleged to have been given by the accused to PW.8, Village Administrative Officer, on 25.08.2014, after five days from making the complaint by PW.1 on 20.08.2014. and also after three days from the First Information Report reaching the concerned Court on 22.08.2014. Hence, the extra judicial confession made to PW.8 about the occurrence is highly unnatural and unbelievable, inasmuch as number of persons including PW.3, the accused and 20 other persons, were taken to the Police Station on 20.8.2014, and this aspect shatters the entire case of the Prosecution, thereby falsifying the alleged confession. Further, a vain attempt had been made in the confession to bring in witnesses from the Village who were stated to have seen the offence said to have been committed by the accused and strangely, they have not been examined by the Prosecution.

12. Further, as per the complaint, Ex.P1, though it has been stated that there was a serious suspicion against the accused on 19.8.2014 itself, the Respondent had strangely waited till the extra judicial confession i.e. On 25.08.2014, and thereafter, introduced a new story and arrested the accused. On this aspect, it is crystal clear that the Prosecution was unaware whether it was due to homicide or due to an accident. Only in order to give a quietus, a new story of extra judicial confession was introduced to make a case of an accidental death to a case of murder due to enmity, PW.1 and PW.2 had towards the Appellant/ accused. Hence, the extra judicial confessional statement is unreliable and to be excluded from consideration. Once the confessional statement is excluded, this Court finds no other evidence to establish that the Appellant committed the offence as alleged by the Prosecution and the Trial Court has failed to see the extra judicial confession in its proper

perspective and proceeded to accept the same and record a judgement of conviction as against the accused, erroneously.

13. It is the admitted case of PW.1 that the Police Personnel and Fire Service Personnel were present at the scene of occurrence much earlier to the registration of the case. As per the case of the Prosecution, only after lodging the complaint by PW.1 on 20.8.2014 at 6.30 a.m., they came to know about the occurrence. Whereas, PW.2, in her cross examination, has categorically stated that on 19.8.2014, by evening itself, Fire Service Officials were present at the scene of occurrence. PW.1, in his cross examination, has stated that on 19.8.2014, at about 7.30 a.m. when they had been to the Village of the accused, the Police were already present there and Fire Service Officials were to come on the next day. PW.1 and PW.2 admitted that on 19.8.2014 itself, they had been informed by the Villagers that there was a dead body lying inside the well. Further, it is clear that PW.6 had been introduced at a later point of time to substantiate the extra judicial confession, which is also concocted in nature. Further, in his evidence, he had stated that when he had gone to the scene of occurrence, he had seen the dead body of the deceased with a brandy bottle on his hand. It should probabalise the case that it was an accidental death due to excess inebriation. Further, no evidence has been let in as to how PW.6 was enquired by the Respondent Police and thereby making the case of the Prosecution relating to the evidence of P.W.6 as highly suspicious.

14. Now, coming to the ground raised by the learned counsel for the Appellant, relating to the discrepancies, infirmities and contradictions in the evidence, relied on by the Prosecution, it is seen that in the cross examination, PW.1 has stated that he had buried his son on 20.0.2014 and that thereafter, the Respondent Police had examined him only after three days and that he had admitted that only at that time, he had informed the Police that the Appellant had committed the murder due to previous enmity. He had also admitted that his grand daughter was aged about 13 years and that his elder daughter was given in marriage 15 years earlier and that enmity between him and the Appellant/ accused was only for five years and thereby, makes the alleged motive as false.

15. Further, PW.2, who is the wife of PW.1 has also corroborated the evidence of PW.1. In her cross examination, PW.2, had stated that she was not aware as to whom his son was going to meet on 15.8.2014 and she was not aware of her husband, speaking with the Appellant/ accused over phone. She had also stated that she was aware about a body lying in the well of PW.6. She had admitted that she had not spoken anything about the enmity between her family and the Appellant, at the time of

enquiry to the Police. Since PW.3 and PW.5 did not support the case of the Prosecution, they were treated as hostile witnesses.

16. Moreover, the deceased was said to have left his house on 15.08.2014 and his cell phone was found to be switched off and the complaint had been made only on 20.8.2014. The statement of PW.1 is not only contradictory, but also highly unnatural. PW.1 had stated that when he had come to the Village of the Appellant/ accused on the evening of 19.8.2014, he had been informed that there was a dead body lying inside the well in the Mango Grove, belonged to PW.6. If it had been true, a complaint would have been made on the same day itself, but whereas, the complaint was said to have been given only on 20.08.2014 and strangely, it had reached the Court concerned only on 22.08.2014 at 10.30 a.m. Further, the conduct of PW.1 and PW.2 to have not gone and visited the well on 18.08.2014, despite the information given by the Villagers that there was a dead body in the well, seems highly unnatural. Hence, it can be safely held that it is a clear case of false implication due to personal enmity.

17. With regard to the ground raised by the learned counsel for the Appellant that the case of the accidental death due to fall into the well had been projected as a case of culpable homicide by the investigating agency, it is relevant to refer to the medical evidence, namely, Ex.P9, chemical analysis report, Ex.P10, post-mortem report and Ex.P11, opinion of PW.10, who had conducted autopsy. The said exhibits clearly shows that the examination of the internal organs of the deceased showed that ethyl alcohol was found in excess quantity in the internal organs and the death was due to the injury on the chest due to fall inside the well. The above aspect was also corroborated by PW.11, Chemical Analyst, who had stated that the viscera contained ethyl alcohol in high level. In view of the said evidence, it is clear that the case of the accidental death had been converted into one of case of murder, due to previous enmity.

18. Further, Trial Court failed to note that the investigation was not properly done in this case and it is done in a biased manner to conclude the case in a hasty manner and no scientific investigation had been done. Neither the phone of the accused nor the phones of PW.1 and PW.6 and the deceased were seized and subjected to scrutiny. Failure to examine the Officials of the Fire Service Department also creates a dent in the investigation.

19. Further, as discussed above, the motive as stated by the Prosecution, does not seems to be plausible especially

when the daughter of PW.1 was given in marriage 15 years earlier and admittedly, it has been stated that there was enmity only for the past five years. Hence, it can also be safely held that the so called motive has not been proved, by letting in cogent and reliable evidence, by the Prosecution and it can be inferred that the Prosecution has attempted to introduce a false motive to show that there was previous enmity between the Appellant and PW.1 and PW.2.

20. Now coming to yet another ground, on which, the impugned judgement of conviction and sentence is assailed by the learned counsel for the Appellant that there was an unexplained delay in giving the complaint to the Respondent as well further unexplained delay in the FIR reaching the concerned Court, on perusal of the evidence, it is seen that it is highly unnatural that PW.1 and PW.2, who had been in search of their son from 15.8.2014, did not go and looked into the well despite the Villagers, informing them about a dead body lying inside the well in the Mango Grove of PW.6. PW.1 had made the complaint, Ex.P1 only on 20.08.2014. Further, the complainant, which had been made to the Respondent, had reached the court only after two days, i.e. on 22.08.2014 and there is no explanation for such a delay, and further all the statements recorded under Sec 161 Cr.P.C had been sent to the court after about six months thereby creating a grave suspicion over the case of the Prosecution, which is fatal to the case of the Prosecution. On this ground also, the case of the Prosecution fails.

21. Now coming to the reliability of the Extra Judicial Confession stated to have been given by the Appellant, we have to look into these principles. The principles for deciding, whether an extra judicial confession can be looked into and can form basis of conviction of an accused, are enumerated in Sahadevan Vs. State of Tamil Nadu (2012-Cr1.LJ-3014) as given below:-

- (i) The extra judicial confession is a weak evidence by itself. It has to be examined by the court with greater and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other Prosecution evidence.

(v) For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

22. In S.K.Yusuf Vs. State of WB (2011-11-SCC-754), the Honourable Supreme Court has held that the extra judicial confession is a weak piece of evidence. It must be established to be true and made voluntarily. The extra judicial confession can be accepted and can be the basis of a conviction, if it passes the test of credibility. On this aspect, a reference can be made to the decision of the Honourable Supreme Court, rendered in the case of State of Rajasthan Vs. Rajaram (2003-8-SCC-180).

23. If the facts and circumstances, surrounding the making of confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with, is whether when the accused made the confession, he was a free man or his movements were controlled by the Police, either by themselves or through some other agency employed by them for the purpose of securing such a confession.

24. In the instant case, it is incredible to believe that the Appellant made a confession to PW.8 on 25.08.2014, after sending the First Information Report to the Court and after making the complaint, Ex.P1 on 20.08.2014. Nothing prevented the Investigating Officer to take the Appellant to a Judicial Magistrate and had his confession recorded as provided under Section 164 of Cr.PC which possesses great probative value and affords an unerring assurance to the court. It is too incredulous to believe that for mere asking to tell the truth, the Appellant made voluntarily confession to PW.8, Village Administrative Officer and that too, after the First Information Report was sent to the Court concerned. It is not known under what circumstances, the accused gave the confessional statement Ex.P5 on 25.8.2014. There is no explanation as to why the accused had come out with such a confession only on 25.8.2014. It is quite unnatural for a person not to reveal to anybody such information for five days, after making the complaint on 20.08.2014.

25. Admittedly, as discussed above, there is no direct evidence of the eye witnesses. The case of the Prosecution is primarily based upon the Extra Judicial Confession of the

Appellant, which is stated to have been voluntarily given before PW. 8, the Village Administrative Officer and recorded by him and marked as Ex P5. On a perusal of Ex 5th Petitioner, it contained full of facts in six full pages, in which the appellant not only speaks of the relationship between him and his sister's family and the motive to kill the deceased, but also gives a graphic description of what happened in his life all the years and to the nature of his act on the day of occurrence and also mentioned about names of persons in his Village, whom the appellant feared would have seen him during the occurrence so as to say, if the confession is true, the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression that the prosecution was seeking to corroborate their future evidence. The extra judicial confession allegedly made by the Appellant could hardly be the natural conduct of an accused if he is voluntarily making such a confession and thereby makes the extra judicial confession unbelievable.

26. At this juncture, it would be beneficial to refer to a very recent decision of the Honble Apex Court reported in 2019 SCC OnLine SC 90 (Chakarai @ Chakaravarthi V State Rep .by Inspector of Police), which is a case with facts similar to the facts of the present case on hand, regarding Extra Judicial Confession. In the decision referred supra, the Honourable Supreme Court, following its earlier decision rendered in the case of Thangavelu V. State of Tamil Nadu reported in ((2002) 6 SCC 498), has held (paragraphs 12 and 13) as follows:-

"12. In this context, it would be relevant to refer to certain observations made by this Court in Thangavelu v. State of Tamil Nadu, (2002) 6 SCC 498. Paragraph 7 of the judgement is extracted below:-

"At this juncture we may take note of the prosecution case that the appellant had made an extra-judicial confession to PW 12, another VAO on the day following the incident. Though the courts below have not placed any reliance on this confession, we take note of this document for the purpose of appreciating the genuineness of the prosecution case. A perusal of this confession Ext. P-14 gives us an indication of the attempt of the prosecution to build a case against this appellant. This extra-judicial confession is so full of facts starting from about 25 years prior to the date of the incident and graphically details what happened over these years to his sister and his family which actually is the motive suggested by the prosecution for the crime. Ext. P-14 is recorded in nearly 4 full pages, it not only

speaks of his motive to kill D-1 and D-2 but also gives graphic details of the nature of the attack on the deceased and also mentions in detail the persons whom he saw during and after the incident. In a manner of speaking, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression, therefore, he was seeking to corroborate their future evidence. In our opinion, this would hardly be the natural conduct of an accused if he was voluntarily making a confession. We further notice the unimaginable similarity in Exts. P-14 and P-1 as also in the evidence of PW 1 which supports the theory of the defence that there was an attempt by the prosecution to create evidence in this case." (emphasis supplied).

13. The facts of the present case are similar to the facts of the aforesaid case, in so far as the extra-judicial confession is concerned. All the observations made by this Court in the case of Thangavelu (supra) are aptly applicable to the case on hand. In the said matter, this Court disbelieved the detailed extra-judicial confession and acquitted the accused.

14. Hence, we are of the opinion that the extra judicial confession placed on record cannot be relied upon. However, even if the extra judicial confession is to be believed, it would be unsafe to convict the accused and award life imprisonment to him based on the sole circumstance of an extra judicial confession, more particularly, since all the other circumstances remain unproved, and since the Investigating Officer and PW.12 have not acted impartially, which is evident from the manner of recording the alleged extra judicial confession as discussed supra."

27. As stated above, in this case also, the extra judicial confession is full of facts which graphically discloses the antecedents of the Appellant and what happened prior to the occurrence and thereafter and mentions about the persons whom the appellant feared would have noticed him during the occurrence. It is recorded in six pages giving vivid details and thereby, making the alleged Extra Judicial Confession suspicious. In the light of the above facts and circumstances, we are of the opinion that the Trial Court erred in believing the extra judicial confession against the Appellant.

28. For the foregoing reasons, we are of the firm opinion that the Prosecution has not established the guilt of

the Appellant/ accused beyond all reasonable doubt and the trial court had erred in convicting the Appellant/Accused and thereby, the Appellant/ accused is entitled to be acquitted.

29 . In the result, this Criminal Appeal is allowed. The impugned judgment of conviction and sentence, dated, 20.04.2017, made in SC.No.173 of 2015, on the file of the I Additional District and Sessions Judge, Vellore, is set aside. The Appellant is acquitted of all the charges levelled against him. The concerned Jail Authority is directed to release the Appellant forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant is ordered to be refunded to him.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1. The Inspector Police,
Melpatti Police Station, Melpatti, Vellore
2. The I Additional District and Sessions Judge,
Vellore.
3. The Public Prosecutor, High Court, Madras.
4. The Deputy Director of Prosecution,
Vellore Range.
5. The District Collector, Vellore.
6. The Superintendent of Police, Vellore.
7. The Judicial Magistrate, Gudiyatham.
8. The Superintendent, Central Prison, Vellore.

+1 cc to Mr.G.Vinodh Kumar, Advocate Sr.No.9580

Cr1.A.No.661 of 2017

VBA(CO)
CSL/22.02.2019