

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL.A.No.691/2017 & CrI.MP.No.2536/2018

1.Samy @ Duraisamy

2.Selvan @ Selvaraj ...Appellants /
A-4 & A-5

Versus

The State rep.by
The Inspector of Police
Sathyamangalam Police Station
Erode District.

...Respondent /
Complainant

Prayer:- Appeal filed under section 374 [2] Cr.P.C., to set aside the conviction imposed in the judgment dated 06.10.2017 made in SC.No.46/2016 on the file of the learned III Additional District and Sessions Judge, Gobichettipalayam.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.R.Prathap Kumar, APP

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellants are A-4 and A-5 in SC.No.46/2016 on the file of the Court of III Additional District and Sessions Judge, Gobichettipalayam. There were three accused before the Trial Court, viz., A-1, A-4 and A-5. A-2 and A-3 were juvenile accused and it is represented that they are being tried separately and the case is pending. After framing of the charges and before commencement of trial, A-1 died and therefore, the charges framed against him got abated.

2 The appellants/A-4 and A-5 stood tried and charged for the offences u/s.120[B] r/w 302 IPC and 302 read with 109 IPC and vide impugned judgment dated 06.10.2017, they were found not

guilty of the offence u/s. 302 read with 109 IPC and however, convicted them for the commission of the offence u/s.120[B] read with 302 IPC and were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each, with a default sentence of one month simple imprisonment. The period of incarceration already undergone by the appellants/A-4 and A-5 were ordered to be given set off u/s.428 Cr.P.C. Aggrieved by the said conviction and sentence, the appellants/A-4 and A-5 are before this Court by preferring the above appeal.

3 Necessary and relevant facts for the disposal of this appeal, are as follows:-

[a] The deceased in this case is one Pandiyan is the son of one Chandra. The 1st appellant/A-4 is the second husband of the said Chandra. The 2nd appellant/A-5 had developed acquaintance with the 1st appellant/A-4. Juvenile accused, viz., Karthick @ Prabhu and Prabhu are friends of the 1st appellant/A-4.

[b] The deceased Pandiyan, was residing with his wife Thilakavathy and he also owned lands. The 1st appellant/A-4 by using the document of title relating to the said land, created a mortgage and by utilising the same, he took the land of Dr.Kathirvel on lease and was doing agricultural activities. There was a discontent and difference of opinion between the deceased Pandiyan, 1st appellant/A-4 and the mother of Pandiyan, viz., Chandra-wife of the 1st appellant/A-4, with regard to the said mortgage. The deceased Pandiyan was a drunkard and under the influence of alcohol, used to create nuisance and therefore, the 1st appellant/A-4 took a decision to finish him off and accordingly, contacted the 2nd appellant/A-5 and he in turn, had introduced A-1 to the 1st appellant/A-4. In order to execute the said act, one month prior to the commission of the offence on 26.08.2014, in the farm house of the 1st appellant/A-4, A-1, A-4 and A-5 hatched conspiracy to do away with the life of Pandiyan and for that purpose, A-1 demanded a sum of Rs.50,000/- from the 1st appellant/A-4 and the 1st appellant/A-4 agreed to pay a sum of Rs.30,000/- to A-1 and out of the said amount, paid an advance of Rs.10,000/-. A-1 engaged the services of the juvenile accused to do the said act and on 26.08.2014, at about 3.00 p.m., A-1 gave liquor and Non-vegetarian food to the juvenile accused and thereafter, contacted Pandiyan through phone and the deceased told him that he was coming from Gobichettipalayam. A-1 went to Nanjai Puliyampatti Bus Stand and took the deceased Pandiyan and gave him liquor and non-vegetarian food and all of them returned by 5.30 p.m., on that day. At about 7.00 p.m., on 26.08.2014, Pandiyan contacted A-1 through phone and told him that he is going to attend the marriage of the daughter of one Palanisamy, who is an agricultural labour employed by him in his leased land and asked

him where he is coming and A-1 took advantage of the same and thought fit to finish off Pandiyan and accordingly, asked him to come to Bungalow Pudur Bus Stand and he also took the juvenile accused and proceeded to the said place with M.O.7-knife and M.O.11-aruvai and all of them went to Bannari and on the western side of the temple near the tank, in a dark place assembled and started having alcohol drinks and administered the alcohol drink in large quantity to Pandiyan and as a consequence, he became highly intoxicated and swooned. At about 10.00 p.m., A-1 knew pretty well that on account of his act, he is likely to take away the life of Pandiyan and cut Pandiyan by using M.O.-7-knife on his neck and when he kicked his legs, the juvenile accused caught hold of the legs of the deceased and once again, A-1 cut him with M.O.7-knife on his face and Pandiyan sustained injuries on his face and another juvenile accused, viz., Karthick @ Prabhu, took M.O.11-aruvai from the back carried by A-1 and cut him on the head and on account of the injuries sustained, Pandiyan died on the spot and it was also confirmed by A-1, A-4 and A-5. Thereafter, all of them pushed the body inside the tank and washed their hands and went away.

[c] P.W.1 - Gopal, was the Forest Guard at the relevant point of time and when he was on beat along with his subordinates and at about 6.40 a.m., on 27.08.2014, they found the body of a male person found floating in the tank and checked the body and they found the driving license containing the name of Pandiyan, S/o.Duraisamy and also seen the injuries on the body and informed the said fact to his superior official through mobile phone and on their advise, proceeded to Sathyamangalam Police Station at about 10.00 a.m. and lodged a written complaint under Ex.P.1.

[d] P.W.18-Rabi, was the Special Sub Inspector of Police attached to the said Police Station and upon receipt of the written complaint from P.W.1, registered a case in Cr.no.386/2014 at about 10.00 a.m., on 27.08.2014 for the commission of the offence u/s.302 IPC. The Printed FIR is marked as Ex.P.21.

[e] P.W.20-Sundaramoorthy, was the Inspector of Police attached to Puliyampatti Police Station and he was in-charge Station House Officer of Sathyamangalam Police Station also. On receipt of FIR registered by P.W.18, he took up the investigation and proceeded to the scene of crime and recovered the body and also took photographs and in the presence of P.W.5 and one Palanisamy, he prepared the Observation Mahazar [Ex.P.2] and the Rough Sketch [Ex.P.24] and got the signatures of the said witnesses. P.W.20 also seized the sample earth [M.O.15] and blood stained earth [M.O.14] in the presence of the said witnesses. He also recovered the Driving License [M.O.1] of the

deceased under the cover of Mahazar [Ex.P.2]. He held inquest on the dead body of the deceased in the presence of panchayatdars and witnesses between 1.00 p.m. and 3.30 p.m., and prepared the Inquest Report [Ex.P.25]. P.W.20, for the purpose of finding out the cause of death medically, sent the dead body of the deceased along with a requisition to the Government Hospital, Sathyamangalam, through P.W.15-Head Constable.

[f] P.W.9 - Dr.Vijayan, was the Assistant Surgeon attached to the Government Hospital, Sathyamangalam and he received the requisition along with the body at about 3.45 p.m.. on 27.08.2014 and commenced the postmortem at about 4.00 p.m., on the same day and noted the following features:-

"EXTERNAL INJURIES:-

1. Laceration over right side of neck extending from right sterno clavicular joint goes the midline extend upto left thyroid cartilage measuring about 11x5x3 cm in size; loss of deep fascia and cut injury to external jugular vein and exposing internal structures.
2. Laceration over right scalp parieto occipital region measuring about 6x2x1 cm size.
3. Crush injury in right thumb.
4. Laceration over right eyebrow 3x2x1 cm size.
5. Laceration over left side chin 2x1x1 cm size.
6. Torn right ear.
7. Contusion over upper chest and right side face.
8. Contusion over right forearm.

Other findings:-

Opening of Thorax:- [1] No # ribs [2] Heart 250gms. 100 ml of blood [3] Lungs-[R]-400 g [L] 375g. [4] Hyoid Bone-intact. No blood in thoracic regions.

Opening of Abdomen:- [1] Stomach contain 50 ml of liquid [2] liver-1000g [3] Spleen-palge-90 g [4] Kidneys each 110 g pale [5] Intestine-pale [N] [6] Bladder- empty.

Opening of Skull:- [1] No # Vault of skull [2] No # base of skull [3] Brain 1000g solid. No haemorrhage.

Vertebral Column/Pelvis:- Intact. No #.''

P.W.9, reserved the cause of death pending chemical analysis report and upon receipt of the same, gave the Final Opinion under Ex.P.11 that "the deceased would appear to have died due to injury to great vessels of neck." The Postmortem Certificate is marked as Ex.P.10.

[g] P.W.20, sent the case properties under Form 91 to the jurisdictional Court and after conducting preliminary investigation, had handed over the same to P.W.21, who became the Station House Officer of Sathyamangalam Police Station. P.W.21-Muthusamy, on receipt of the Case Diary on 27.08.2014, proceeded with the further investigation and he received the Special Report from P.W.15 as to the death of Pandiyan and thereafter, examined Thilakavathi, wife of A-4, Chandra, Meena @ Thavamani [not examined] and recorded their statements.

[h] P.W.7-Sakthivel, Village Administrative Officer of Kannakampalayam Village and incharge VAO of Kondaiyampalayam Village and his Assistant Saleem Batcha, were on duty on 28.08.2014 at about 10.00 a.m., the 1st appellant/A-4 appeared before them and confessed about his involvement in the murder of the deceased Pandiyan. The extra-judicial confession of A-4 under Ex.P.4 was recorded in the Laptop and a printout was also taken in which the 1st appellant/A-4, P.W.7 and his Assistant had affixed their signatures. Subsequently, P.W.7 took A-4 to Sathyamangalam Police Station along with his Menial and handed over his custody at about 12.45 p.m. on the same day. He also gave the extra-judicial confession [Ex.P.4] to P.W.20-Investigating Officer. P.W.21 effected the arrest of the 1st appellant/A-4 and A-4 voluntarily came forward to give the confession statement to P.W.21, the admissible portion of which is marked as Ex.P.27. Pursuant to the same, a Carbon Cellphone with 2 SIM Cards [M.O.5] were seized under the cover of Mahazar [Ex.P.6]. Thereafter, A-4 took the Investigating Officer and others to Mano Kounder Garden at Varapallam and identified the 2nd appellant/A-5, viz., Selvan @ Selvaraj and A-5 was arrested at about 3.45 p.m., in the presence of P.W.10 and Kamalakannan and he came forward to give confession statement, the admissible portion of which is marked as Ex.P.17 and pursuant to the said confession statement, Micromax Cell Phone with SIM Car [M.O.8] was seized under the cover of Mahazar and thereafter, came back to the police station and altered the sections to one u/s.120[B]

read with 302 IPC and sent the Altered Report under Ex.P.31 to the jurisdictional Magistrate Court and also sent the seized articles to the said Court. P.W.21, on becoming aware of the fact that A-1-Mahendran surrendered before the Court and the juvenile accused, viz., Prabhu had surrendered on 09.09.2014, made a requisition to formally arrest A-1 on 10.09.2014 and accordingly, effected his arrest while he was confined at Central Prison, Coimbatore on 11.09.2014 and after obtaining necessary permission to take him to police custody, he was taken and he voluntarily came forward to give a confession statement and the same was recorded in the presence of P.W.8, the admissible portion of which is marked as Ex.P.29, in pursuant of which, half-sleeved shirt [M.O.6] and knife [M.O.7] were seized under the cover of Mahazar and also recovered gold chain as well as a two-wheeler and those articles were sent to the Court under Form 91. P.W.21 also examined P.W.9, the doctor who conducted autopsy and recorded his statement. On 24.10.2014, the Investigating Officer effected the arrest of the juvenile accused, viz., Karthick @ Prabhu and he came forward to give a confession statement and the admissible portion of the said confession statement is marked as Ex.P.30, pursuant to which, M.O.11-aruvai was recovered and he was produced before the Juvenile Court on 24.12.2014. P.W.21 recorded the statements of P.W.14, Kannan and after obtaining necessary permission, sent the articles for Chemical Analysis. He also examined P.Ws.11, 12, 13, Dr.Vijayaraj, P.Ws.15 and 16 and other witnesses and recorded their statements and after receipt of the Chemical Analysis Report, photographs, filed the Final Report, on 22.12.2014 charging A-1, A-4 and A-5 for the commission of the offences u/s.120-B and 302 IPC and filed a separate Final Report in respect of the juvenile accused.

[i] The Final Report was filed before the Court of Judicial Magistrate, Sathyamangalam, who took it on file in PRC.No.2/2015. The Committal Court had summoned the accused and furnished them with the copies of the documents u/s.207 Cr.P.C., and having found that the case is exclusively tried by the Court of Sessions, committed the same to the Principal District and Sessions Court, Erode and the said Court, in turn, had made over the case to the Court of III Additional District and Sessions Judge, Gobichettipalayam, who took it on file in SC.No.46/2016.

[j] The prosecution, in order to sustain their case, examined P.Ws.1 to 20 and marked Exs.P.1 to 39 as well as M.Os.1 to 15.

[k] The accused were questioned under section 313[1] [b] Cr.P.C., with regard to the incriminating circumstances made out against them in the evidences rendered by the prosecution and they denied it as false. The accused did not file any documents nor let in any oral evidence.

[1] The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, had convicted and sentenced the appellants/accused for the commission of the offences as stated above. Challenging the legality of the conviction and sentence of the Trial Court, the appellants/accused have preferred this appeal.

4 Mr.N.Manokaran, the learned counsel appearing for the appellants / accused has drawn the attention of this Court to the oral and documentary evidences and other materials and made the following submissions:-

- The case of the prosecution rests upon the circumstantial evidence and the following circumstances are projected by the prosecution to connect the accused with the crime, viz., [a] motive spoken to by P.Ws.2, 3 and 4 ; [b] conspiracy spoken to by P.W.6 as regards A-1, A-4 and A-5 ; [c] extra-judicial confession said to have been given by the 1st appellant/A-4 to P.W.7-VAO marked as Ex.P.4 ; [d] arrest and recovery effected from the appellants / A-4 and A5 ; and [e] scientific evidence.
- The motive aspect is spoken to by P.Ws.2, 3 and 4 cannot be believed for the reason that P.W.2 is the father-in-law of the deceased ; P.W.3 is the mother-in-law of the deceased Pandiyan and P.W.4 is also closely related to the 1st appellant/A-4 and that apart, the alleged motive is also very flimsy and cannot be believable even by applying common sense.
- Insofar as the conspiracy as spoken to by P.W.6 is concerned, his testimony is very much artificial and he would not have been present in the land of the first appellant/A-4 at the relevant point of time and he is said to have heard the conversation within the distance of four feet and yet, he was not noticed and that apart, he has not disclosed the said fact to anybody till he was examined by the police and the recording of the statement u/s.161[3] Cr.P.C. and the said statement recorded on 28.08.2014 also reached the Court along with the Final Report only on 13.02.2015 and no proper or tenable explanation has been adduced as to the belated despatch of the statement of the crucial witness.
- According to the prosecution, the 1st appellant/A-4 is said to have given extra-judicial confession to P.W.7-VAO of Kanakkampalayam and admittedly, P.W.7 was a total stranger and the purpose for which the 1st appellant/A-4 voluntarily went to the office of P.W.7 and gave the statement, has not

been properly explained. The extra-judicial confession should be considered and appreciated with great care and caution and unless it is corroborated through independent witnesses and material particulars, it cannot be relied upon and the prosecution in order to sustain their case, had introduced P.W.7 and also the alleged statement recorded by him, marked as Ex.P.4.

- Admittedly, the cellphones were also recovered in pursuant to the admissible portion of the confession statements of the appellants / A-4 and A-5 and no investigation has been done as to the call records and if it was done, it would have definitely strengthened the case of the prosecution and admittedly, no investigation has been carried out as to the said call records and as such, it cannot be said that the chain of circumstances projected by the prosecution is completed.
- Attention of this Court was also invited to Ex.P.4-extra-judicial confession and Ex.P.27-disclosure statement, in which, admissible portion of the confession statement made by the 1st appellant/A-4 after his arrest and it is the submission of the learned counsel for the appellants that the words found place in those two statements are almost verbatim reproduction of the statement and as such, the extra-judicial confession marked as Ex.P.4, through P.W.7 as well as the alleged recovery made in pursuant to the admissible portion of the confession statement, cannot be relief upon and if those materials/evidence are eschewed out of consideration, then there is a missing link in the chain of circumstances and the benefit of the same should enure in favour of the appellants/A-4 and A-5.
- It is also further pointed out that the extra-judicial confession as well as the confession given before the police, came to be recorded within a short span of time and the exact words recorded in the said statements also point out that the said evidence has been introduced to sustain/strengthen the case of the prosecution.
- It was also pointed out that in all material portion of the said statements, some corrections have also been made, for which no explanation has been offered by P.W.7 as well as the Investigating Officer-P.W.21. According to the prosecution, the 1st appellant/A-4 appeared before P.W.7 on 28.08.2014 and then only, the real worthwhile investigation commenced and if the extra-judicial confession is eschewed out of consideration, nothing remains for prosecution to connect the appellants to the commission of the crime.

5 In sum and substance, it is the submission of the learned counsel for the appellants/A-4 and A-5 that since the prosecution case is bristled with very many inconsistencies and infirmities and on account of the same, the chain of circumstances projected by the prosecution connecting the appellants with the commission of the crime is incomplete and that there are very many missing links and the Trial Court ought to have awarded benefit of doubt and acquitted them and hence, prays for setting aside of the conviction and sentence passed by the Trial Court in the impugned judgment and prays for acquittal of the appellants.

6 Per contra, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would contend that the motive aspect has been clearly spoken to by P.Ws.2, 3 and 4, especially, the evidence of P.W.4 and hence, the prosecution has proved the motive aspect. Insofar as the extra-judicial confession given by the 1st appellant/A-4 to P.W.7-VAO is concerned, it is the submission of the learned Additional Public Prosecutor that even in the chief examination, P.W.7 had deposed that A-4 appeared before him and stated that he was searched by police in connection with the commission of the offence and he wants some protection and therefore, requested P.W.7 to produce him before the police and as such, it cannot be said that the 1st appellant/A-4 appeared before a total stranger. It is also pointed out by the learned Additional Public Prosecutor that Ex.P.4-extra-judicial confession/statement of the 1st appellant/A-4 recorded by P.W.7, had also reached the Court on the very same day on 28.08.2014 and as such, it cannot be said that P.W.7 has been introduced and that his alleged recording of extra-judicial confession marked as Ex.P.4 has been introduced to strengthen the case of the prosecution. Insofar as the arrest and recovery is concerned, the 1st appellant/A-4 was produced by P.W.7 before the police and he voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement, marked as Ex.P.27, he undertook to identify Selvan @ Selvaraj [A-5] and also produced M.Os.4 and 5, which were recovered under the cover of Mahazar-Ex.P.6 . Though the call records pertaining to the cellphones were not subjected to scientific analysis, the fact remains that the 1st appellant/A-4 had identified one of the conspirators, viz., Selvan @ Selvaraj [A-5] and as such, it cannot be said that there was a missing link. It is also the submission of the learned Additional Public Prosecutor that as to the contradiction/improvement of the witnesses during the course of their oral testimonies, nothing has been put to the concerned witnesses as well as to the Investigating Officer [P.W.21] and for the first time before this Court, the said discrepancy is pointed out and if really questions are put to the Investigating Officer, it was open to him to come out with a plausible

explanation/answer which may enure in favour of the accused or in favour of the prosecution and admittedly, no specific questions as to the contradictions have been put to the investigating officer and as such, the submissions made in that regard, may not be considered by this Court. Thus, it is the submission of the learned Additional Public Prosecutor that the prosecution had amply proved its case beyond any reasonable doubt and the chain of circumstances connecting the accused with the commission of crime is also complete without any missing links and the Trial Court, on a proper consideration and appreciation of the oral and documentary evidences and other materials, had rightly reached the conclusion to convict and sentence the accused accordingly and hence, prays for dismissal of the appeal.

7 This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

8 The following questions arise for consideration:-

[a] Whether the prosecution has proved the chain of circumstances which connected the appellants/A-4 and A-5 with the commission of the crime? ; and

[b] Whether the impugned judgment of the Trial Court in convicting and sentencing the appellants/A-4 and A-5 is sustainable?

Question No.1:-

9 The motive aspect has been spoken to by P.Ws.2, 3 and 4. P.W.2-Mani is the father-in-law of the deceased Pandiyan and in the chief examination, had deposed among other things that his son-in-law Pandiyan [deceased] had purchased 10 cents of land in Madurai-Tirumangalam and from him, the 1st appellant/A-4 got the Title Deed relating to the said property and mortgaged the same and got money and his son-in-law used to contact the 1st appellant/A-4 [Samy @ Duraisamy] for getting the money. In the cross-examination, P.W.2 would depose that the said fact was said to him by his son-in-law and on account of the same, there used to be frequent quarrel between the 1st appellant/A-4 and Pandiyan [deceased] and specifically denied the suggestion as to the non-getting of the document of title and non-mortgaging of the said land by the 1st appellant/A-4.

10 P.W.3-Barani is the mother-in-law of the deceased Pandiyan and she corroborates the testimony of her husband-P.W.2 and in the cross-examination, she would state that the dispute had arose between the 1st appellant/A-4 and her son-in-

law/deceased on account of the mortgage of the land and obtaining money. P.W.4-Ram Pandiyan is the brother-in-law of the deceased and he would depose that the 1st appellant/A-4 is the father-in-law of his sister and his testimony corroborates with the testimonies of P.Ws.2 and 3 as to the mortgage of the land by the 1st appellant/A-4. In the cross-examination, he would depose that the said fact was known to him through his sister and denied the suggestion that the said fact was not known to him. A perusal, consideration and appraisal of the testimonies of the above said witnesses, in the considered opinion of the Court, had proved the motive projected by the prosecution and nothing useful has been elicited in the cross-examination of the said witnesses. Therefore, this Court hold that the prosecution has proved the motive aspect.

11 The prosecution has also projected conspiracy between A-1, A-4 and A-5 through the testimony of P.W.6-Pari @ Parthiban. P.W.6 was running a grocery shop at Main Road of Koundampalayam Village and he would also depose that the 1st appellant/A-4 took the land of Dr.Kathirvel on lease and was doing agricultural operations and the said fact was also known to him. He would further depose that 2nd appellant/A-5 used to come to the land of the 1st appellant/A-4 for the purpose of spraying pesticide and he knew all the accused and the land taken on lease by the 1st appellant/A-4 lies near to the house of P.W.6 and he used to go to the land for the purpose of buying onion and as such, the family of the 1st appellant/A-4 became acquainted to him. Pandiyan [deceased] - the son of the 1st appellant/A-4 also got acquainted with P.W.6 and he always used to be under the influence of alcohol and during that time, he used to pester the 1st appellant/A-4 to give money and also used to beat his wife and P.W.6 also given advise to the deceased Pandiyan. He also told him that the 1st appellant/A-4 refused to part with either the land or the money and P.W.6 used to pacify him. P.W.6 would further depose that about one month thereafter, he went to the land of the 1st appellant/A-4 for the purpose of purchasing onion and at that time, one Palanisamy was present and appellants/A-4 and A5 were also present and so also A-1 [Mahendran]. They conversed about the behaviour of the deceased Pandiyan under the influence of alcohol and frequent demand of money made by him and the problem created by him and the 1st appellant/A-4 told them that only when Pandiyan dies, all the problems would be solved and in response to the same, the 2nd appellant/A-5 identified a person, viz., A-1 - Mahendran, and told that he will look after the same and P.W.6 heard the said conversation and however, they have not seen P.W.6 and fearing about the nature of conversation, P.W.6 returned and one month later, he became aware of the death of the deceased Pandiyan and when police enquired him, he gave the statement. In the cross-examination P.W.6 would depose that if

any accident took place, he used to inform the police station and he was a witness in two accident cases and he would further state that after the 1st appellant/A-4 took the land on lease, twice or thrice he visited the said land to purchase onion and on one such occasion, he had seen all the accused as well as Mahendran [A-1]. P.W.6 was very categorical that when he went to the land of the 1st appellant/A-4 to purchase onion, he saw the accused/appellants with Mahendran [A-1] and he became aware of the identity of A-1 when A-5 told A-4 that he will take care of the needs and P.W.6 heard the conversation within the distance of four feet by hiding from there on the side. He would further depose that he did not disclose the fact of the said conversation either to the police or to somebody else and only after the murder of Pandiyan took place, he stated the same to the police and denied the suggestion that he is giving false evidence. P.W.21-Investigating Officer was also cross-examined on that aspect and nothing has been put as to the testimony of P.W.6 except the suggestion that the said witness along with the other accused were detained in the Police station and were examined.

12 This Court has also analysed the testimony of P.W.6 and he is neither related to the deceased nor to the 1st appellant/A-4 and his testimony appears to be natural and cogent and he has no axe to grind or having ill-motive against the appellants/A-4 and A-5 and therefore, his testimony is agreeable.

13 The prosecution has also projected the case connecting the appellants/A-4 and A-5 with the commission of the crime/offence in the form of extra-judicial confession given by the 1st appellant/A-4 to P.W.7-Village Administrative Officer, Kanakkampalayam Village.

14 P.W.7-Sakthivel, Village Administrative Officer, in the chief examination would depose among other things that on 28.08.2014 at about 10.00 a.m., when he along with his Village Menial Saleem Batcha were in the office, at that time, the 1st appellant/A-4 who was residing in the land of Dr.Kadirvel, came to his office and asked P.W.7 and his Menial to protect him and when P.W.7 made enquiries, the 1st appellant/A-4 told them that in connection with a murder case, he was searched by the police and asked them to give protection for his appearance and voluntarily gave the statement of extra-judicial confession marked as Ex.P.4. P.W.7 has recorded the extra-judicial confession of the 1st appellant/A-4 upto 11.30 a.m. on that day, through laptop and thereafter, took out the print out and got the signature of the 1st appellant/A-4 and his Village Menial, viz., Saleem Batcha, has also signed it as a witness and thereafter, he along with the 1st appellant/A-4 and his menial, went to Sathyamangalam Police Station and handed over his

custody at about 12.30 p.m. He would further depose that the Inspector of Police, Sathyamangalam Police Station had examined the 1st appellant/A-4 as well as Saleem Batcha and the 1st appellant/A-4 reiterated the very same statement given as Ex.P.4, to the said officer also and also voluntarily came forward to give a confession statement before the police and as per the admissible portion of the confession statement [Ex.P.27], he undertook to identify Selvan @ Selvaraj [A-5], the 2nd appellant herein, and Carbon Cellphone and SIM cards marked as M.O.5 were also seized. P.W.7 was cross-examined on behalf of the accused and he deposed that the 1st appellant/A-4 voluntarily came to his office at about 10.00 a.m., on 28.08.2014 and when a specific question was put to him as to the maintenance of Diary in that regard, P.W.7 gave an answer that as per the decision of their Association, they are not adopting such practice ; however informed the fact of surrender of the 1st appellant/A-4 to his higher officials and also gave it in writing. A specific question was put as to the difference in the signature put by the on each page of Ex.P.4 and it was answered by P.W.7 that it was the alone who had signed the said document. P.W.7 was also questioned as to why the 1st appellant/A-4 was not taken to Bungalapur Police Station which is nearby, it was answered by him by stating that since the scene of crime falls within the jurisdiction of Sathyamangalam Police Station, the 1st appellant/A-4 was taken to the said police station and denied the suggestion that he did not know the 1st appellant/A-4 at the earlier point of time and further denied the suggestion that he was summoned to the police station and thereafter, the said statement was recorded. It is also pertinent to point out at this juncture that Ex.P.4 which was recorded by P.W.7 on 28.08.2014 was sent to the jurisdictional Magistrate who also made an endorsement as to the receipt of the same on the same day on 28.08.2014 at about 10.00 p.m., and it was also to the Court on 01.10.2014, may be on account of intervening holidays. This Court has also gone through the testimony of P.W.21-Investigating Officer to find out as to whether any contradiction or specific question was put as to the testimony of P.W.7, especially, with regard to the extra-judicial confession marked as Ex.P.4 and nothing has been elicited and in fact, no specific question has been put as to the testimony of P.W.7 and the extra-judicial confession marked as Ex.P.4.

15 Learned counsel for the appellants/A-4 and A-5 has placed reliance upon the decision of the Hon'ble Apex Court reported in 2012 [6] SCC 403 [Sahadevan and Another Vs. State of Tamil Nadu], which dealt with the legal aspects as to the circumstantial evidence and extra-judicial confession and in paragraph No.14 of the said decision, it is observed as follows:-

"14 It is settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires the confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the Court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.'"

16 It is to be pointed out at this juncture that the case of the prosecution rests upon circumstantial evidence and the prosecution has also placed heavy reliance upon the extra-judicial confession marked as Ex.P.4 given by the 1st appellant/A-4 to P.W.7 and since it is a weak piece of evidence, it must ensure that the said extra-judicial confession inspires the confidence and whether it is corroborated by other evidence tendered by the prosecution\.

17 The 1st appellant/A-4 on his own volition, came and appeared before P.W.7-VAO and though it is the vehement and forceful submission of the learned counsel for the appellants/A-4 and A-5 that since P.W.7 was a total stranger to the 1st appellant/A-4 and till such time of his alleged appearance on 28.08.2014 before him, the prosecution was not able to identify and fix the accused and that there is a grave doubt as to the alleged voluntary appearance and his voluntary statement given before him and it is also not corroborated by any other witness/evidence.

18 This Court has already found that the motive aspect has been proved through the testimonies of P.Ws.2, 3 and 4 and also believed the testimony of P.W.6 as to the conspiracy and the extra-judicial confession recorded by P.W.7 marked as Ex.P.4 and despatching of the same to the jurisdictional Magistrate and receipt of the same by the Magistrate at about 10.00 p.m., on the very same day.

19 It is also the submission of the learned counsel for the appellants/A-4 and A-5 that though the statement of the witness to conspiracy, viz., P.W.6 who was examined on 28.12.2014, it however reached the jurisdictional Magistrate along with the Final Report only on 13.02.2015 and since the

said delay has not been properly explained, the prosecution case cannot be believed. It is to be pointed out at this juncture that with regard to the belated despatch of the statement of P.W.6, no specific question has been put to the Investigating Officer-P.W.21 and it was also open to the Investigating Officer to offer explanation as to the said delay and unfortunately, no such question was put to the Investigating Officer.

20 P.W.7 was also examined during investigation and his statement was recorded u/s.161[3] Cr.P.C. on 28.08.2014 and it reached the Magistrate Court along with Ex.P.4 at 10.00 p.m., on 28.08.2014. In the light of the said fact, it cannot be said that P.W.7 has been introduced and the extra-judicial confession [Ex.P.4] came into being only for the purpose of strengthening the case of the prosecution. Since there was no delay in despatching the said crucial and vital documents, it cannot be said that the said documents were introduced.

21 As regards certain corrections made in Ex.P.4-extra judicial confession as well as in Ex.P.27 and that as to the verbatim reproduction of the said statement, unfortunately no specific question has been put to the Investigating Officer and also to P.W.7 and as such, this Court is unable to draw any adverse inference against the prosecution. No doubt, the cellphones recovered from the admissible portions of the confession statements of the appellants/A-4 and A-5, have not been subjected to any scientific analysis. However, the same cannot be considered as a material defect for the reason that the testimony of the above cited witnesses had amply sustained the case of the prosecution. The Postmortem Certificate marked as Ex.P.10 through the testimony of P.W.9-doctor, would also establish the case of the prosecution that the deceased had died of homicidal violence.

22 The learned counsel for the appellants/A-4 and A-5 has also placed reliance upon the decision reported in 2017 [8] SCC 497 [Sathish Nirankari Vs. State of Rajasthan], to the proposition that the circumstantial evidence is to be fully established and it should exclude the possibility of any other person other than the accused and what is required is not quantitative but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof and in case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.

23 Insofar as the 2nd appellant/A-5 is concerned, P.W.6 specifically spoken to about his presence and in fact, he only pointed A-1 [Mahendran] and told the 1st appellant/A-4 that A-1 will do the needful as regards doing away with the life of the deceased Pandiyan. The 2nd appellant/A-5 in answering to the incriminating circumstances u/s.313 [1][b] Cr.P.C., had denied that he is an accused and he used to spray pesticide to the land of the 1st appellant/A-4 and therefore, he knew the 1st appellant/A-4 as well as Pandiyan [deceased] and however, he has no connection with them. He also knew Mahendran [A-1] and police had examined him and recorded his confession statement. In the considered opinion of the Court, that is also one of the circumstances connecting the 2nd appellant/A-5 with the commission of the offence.

24 This Court has also considered the facts and circumstances of the case and the evidences let in by the prosecution. In the light of the well settled legal position of law as enunciated by the Hon'ble Supreme Court of India in the above cited decisions, this Court is of the considered view that the prosecution was able to connect the chain of circumstances connecting the appellants/A-4 and A-5 with the commission of the crime and proved its case beyond any reasonable doubt.

25 It is once again pertinent to point out at this juncture that in the absence of any specific cross-examination as to the contradiction of the concerned witnesses as well as to the Investigating Officer, the arguments advanced for the first time before this Court cannot be considered, though it is unfortunate that this Court is unable to come to the aid of the appellants/A-4 and A5.

26 In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed on the appellants by the learned III Additional District and Sessions Court, Gobichettipalayam, in SC.No.46/2016 dated 06.10.2017, are hereby confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The III Additional District and Sessions Judge
Gobichettipalayam.
 2. The Principal District and Sessions Judge
Erode.
 3. The Judicial Magistrate
Sathyamangalam.
 4. The Chief Judicial Magistrate
Erode District.
 5. The Inspector of Police
Sathyamangalam Police Station
Erode District.
 6. The Superintendent
Central Prison, Coimbatore.
 7. The Director General of Police
Mylapore, Chennai-4.
 8. The District Collector,
Erode District.
 9. The Public Prosecutor
High Court, Madras.
- +2 ccs to Mr.N.Manokaran, Advocate, S.R.No.19479, 19480

PVS (CO)
SSM(26/03/2019) .

Cr1.A.No.691/2017

सत्यमेव जयते

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