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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	04.11.2019
DELIVERED ON	06.11.2019

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

**Crl.A.(MD)No.12 of 2018
and
Crl.M.P.(MD) No.131 of 2018**

Ranjith Kumar @ Ranjith ... Appellant/ Sole Accused

Vs.

State through
The Inspector of Police
Koodankulam Police Station
Tirunelveli District,
(In Crime No.57/2009

... Respondent/ Complainant

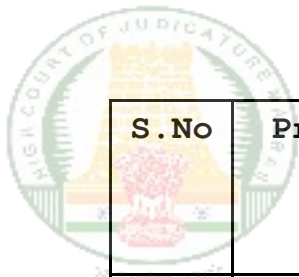
PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure to call for the entire records connected to the judgment in S.C.No.30 of 2010 on the file of the Principal Sessions Court, Tirunelveli dated 27.01.2014 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

J U D G M E N T

**S.VAIDYANATHAN, J.
AND
N.ANAND VENKATESH, J.**

The sole accused being aggrieved by the judgment of the Principal Sessions Court, Tirunelveli, made in S.C.No.30 of 2010, dated 27.01.2014, has preferred this Appeal before this Court. The appellant was convicted and sentenced by the trial Court as follows:-



S.No	Provisions under which the appellant was convicted	Imprisonment	Fine
1	302 of I.P.C.	Life imprisonment	Rs.1,000/- in default, to undergo Rigorous Imprisonment for a further period of 1 year
2	397 of I.P.C.	Seven(7) years Rigorous Imprisonment	Rs.1,000/- in default, to undergo Rigorous Imprisonment for a further period of 1 year
3	201 of I.P.C.	Three(3) Years Rigorous Imprisonment	Rs.500/- in default, to undergo Rigorous Imprisonment for a further period of six months

2. The brief facts of this case is that the appellant was an Astrologer in Mutharasi Jothida Nilayam, which was run by his uncle (P.W.9). The appellant is said to have informed the deceased that, he is in love with a lady called Vellankanni and he wanted Rs.10,000/- as loan to arrange for the marriage. The deceased was not able to make this payment. He was made to come to the Jothida Nilayam and stay over night on 19.03.2009 and between the midnight and early hours on 20.03.2009, while the deceased was sleeping, the appellant is said to have taken a chisel (M.O.14 and M.O.17) and stabbed on the neck of the deceased and he had severed the head portion from the body and buried it in a nearby burial ground. Thereafter, he has cut and removed his right hand and placed the same over the body of the deceased. Thereafter, he is said to have stolen gold jewelry (M.O.12 & M.O.13), watch (M.O.11) and also a mobile phone (M.O.10) from the deceased. He had set fire by pouring kerosene over the clothes of the deceased and thereafter, the appellant is said to have escaped from the place of occurrence.

3. P.W.5, who was having a shop nearby and P.W.6, who is a distant relative and P.W.7, who was informed by P.W.5, saw smoke emanating from the Jothida Nilayam. They have poured water to stop the smoke. In the meantime, the Village Assistant (P.W.2) got a news that there is a body without the head portion, lying at the Jothida Nilayam and he informed this to the Village Administrative Officer (P.W.1) at about 8:45 a.m. on 20.03.2009 and both of them visited the said place at about 9:00 a.m. The Village Administrative Officer (P.W.1) returned back to his office and had sent a report(Ex.P.1) to the police station. This report was received by the Sub Inspector of



Police (P.W.23) and he immediately registered an F.I.R.(Ex.P.24) in Crime No.57 of 2009 for the offense under Sections 302 and 201 of I.P.C.

4. The Sub Inspector of Police (P.W.23) informed the Inspector of Police (P.W.24) over phone and the express F.I.R. was despatched to the Judicial Magistrate Court, Valliyoor by the Head Constable (P.W.21) on 20.03.2009 at about 1:30 p.m. The investigation was taken up by P.W.24 and he came to the scene of occurrence at about 10:45 a.m. and he prepared the observation mahazar (Ex.P.5) and the rough sketch(Ex.P.25). He also got the place and dead body photographed by P.W.10. He recovered the material objects in the presence of witnesses (M.O.2 to M.O.6). Thereafter, he proceeded to conduct the inquest over the dead body without the head portion and he completed the inquest at about 1:30 p.m. and prepared the inquest report (Ex.P.26). He had also sent the body of the deceased through the Head Constable (P.W.22) with a requisition for postmortem at Government College Hospital, Tirunelveli. He also proceeded to record the statements under Section 161(3) of Cr.P.C. from the witnesses.

5. In the meantime, the appellant is said to have appeared before the Village Administrative Officer (P.W.1) at about 12:00 noon on 21.03.2009 and had given an extra judicial confession, explaining the motive and also the manner in which he had committed the murder and taken away the stolen articles. This confession was recorded by P.W.1 (Ex.P.2) and the said report (Ex.P.3) was sent by P.W.1 to the Inspector of Police, Koodankulam Police Station.

6. On 21.03.2009 at about 1:30 p.m., P.W.1 produced the appellant before P.W.24 and placed the said report. The appellant was arrested and based on his voluntary confession, in the presence of P.W.15 and one Selvam, the appellant is said to have stated about the stealing of the gold jewelry, watch and cell phone and handing over the same to one Shankar, (who was not examined). He is said to have further confessed that he will show the place where the head of the deceased has been buried.

7. The Investigating Officer (P.W.24) gave a requisition to the Tahsildar (P.W.20). In the meantime, he recovered the material objects(M.O.14 to M.O.16) under seizure mahazar (Ex.P.28). The appellant is said to have taken the Investigating Officer to the place where the head of the deceased was buried. The head of the deceased was recovered in the presence of P.W.20, P.W.11, P.W.12 and P.W.13. After the head was exhumed, P.W.20 conducted the inquest between 5:00 p.m. to 5:30 p.m. and prepared the inquest report (Ex.P.21). The head was sent for postmortem with a requisition (Ex.P.14) to the postmortem doctor (P.W.18). The Doctor matched the head and the trunk of the dead body in the hospital and found them to be matching. After noting down the injuries, the postmortem certificate (Ex.P.15) was issued.



8. Thereafter, the appellant was taken to Palayamkottai and he identified Shankar from whom the gold jewelry, watch and cell phone were recovered (M.O.12, M.O.13, M.O.11 & M.O.10). This was recovered under seizure mahazar (Ex.P.30). Thereafter, he returned back to the police station and on 21.03.2009, an alteration report was prepared by adding Section 397 of I.P.C. and the same was sent to the Court (Ex.P.31). The appellant was produced before the Court and he was remanded to judicial custody.

9. The properties were sent for chemical analysis along with a requisition (Ex.P.16 and Ex.P.17). The Investigating Officer (P.W.24) continued to examine other witnesses, doctors and recorded their statements and he laid the final report before the learned Judicial Magistrate, Valliyoor for offense under Sections 302, 201 and 397 of I.P.C.

10. The case was committed to the file of the Principal Sessions Court, Tirunelveli and charges were framed against the appellant for the offenses under Sections 302, 397 and 201 of I.P.C.

11. The prosecution examined P.W.1 to P.W.24 and marked Ex.P1 to Ex.P.32 and exhibited M.O.1 to M.O.19. The trial Court questioned the appellant under Section 313 (1)(b) of Cr.P.C. by putting all the incriminating materials collected during the course of the trial and the appellant denied the same as false.

12. The trial Court after considering the facts and circumstances of the case and after analyzing the oral and documentary evidence, found that the prosecution has proved the case beyond reasonable doubt and convicted and sentenced the appellant in the manner stated supra.

13. Mr.R.Alagumani, learned counsel appearing for the appellant made the following submissions:

- The entire case of the prosecution is based on circumstantial evidence and the prosecution has failed to prove each circumstance and the chain of evidence relied on by the prosecution is not complete;
- The prosecution has projected the motive behind the incident to the effect that the appellant was having a relationship with one Vellankanni and he wanted to marry her and for that purpose, he required money and since the money was not given by the deceased, he was killed. However, the prosecution did not examine Vellankanni in this case and therefore, the motive has not been proved;

- The so-called extra judicial confession given to the Village

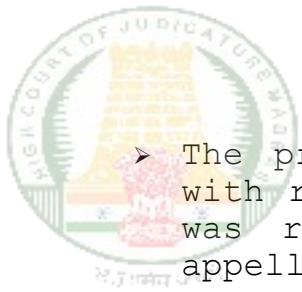


artificial and the appellant could not have made such a confession to a rank stranger;

- The witnesses who have been examined to prove the last seen theory are completely unreliable and no one has identified the deceased in this case;
- Even though the involvement of the appellant in the incident came to be known to the Investigating Officer (P.W.24), only after 1:30 p.m. when he was produced before him by P.W.1, in the inquest report (ExP.26), which was prepared even before that, there was a clear mention about the name of the appellant. Therefore, a false case has been foisted against the appellant;
- It is the evidence of P.W.1 that on 21.03.2009 at about 12:00 noon, the appellant voluntarily appeared before him and gave a confession and thereafter, he was taken to the police station. However, the evidence of P.W.13 and P.W.16 shows that the appellant was seen in the police station much before that and therefore, their evidence falsifies the theory of extra judicial confession;
- The stolen articles are said to have been handed over to one Shankar and it was recovered from him. However, Shankar was neither made as an accused nor as a witness in this case. That apart, the recovery was not supported by P.W.15 and therefore, the very recovery becomes doubtful;
- The Doctor was examined as P.W.17, who gave treatment to the appellant for the injuries sustained by him, clearly shows that the appellant sustained injuries after being beaten by the police who forced him to admit the crime. That apart, even while giving the reply under Section 313 of Cr.P.C., the appellant had clearly taken a stand that a false case has been foisted against him and he was forced by the police, who had beaten him, to admit the crime which he has not committed;
- The recovery of M.O.2, M.O.3, M.O.6 and M.O.7 were never correlated to neither the appellant nor the deceased; and
- The prosecution has not proved the case beyond reasonable doubts and the trial Court went wrong in convicting and sentencing the appellant and appellant is innocent.

14. Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing on behalf of the respondent police made the following submissions:

- The prosecution had examined P.W.1 and P.W.2 in order to substantiate the extra judicial confession;
- The prosecution had examined P.W.3 and P.W.8 in order to substantiate the last seen theory;



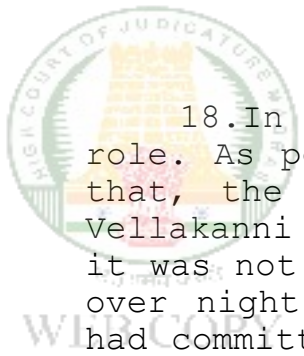
- The prosecution had examined P.W.20, P.W.11, P.W.12 & P.W.13 with regard to the recovery of the head of the deceased and it was recovered only after the place was identified by the appellant;
- The torso and head that was recovered correctly matched and the same is clear from the evidence of the postmortem doctor (P.W.18) and the postmortem certificate was marked as Ex.P.12 and Ex.P.15;
- The prosecution had examined P.W.5 and P.W.6, who had seen the fire from the place of occurrence and extinguished the same;
- There was absolutely no delay at any stage in the investigation and the investigation has been conducted in a very cogent manner and the entire chain of circumstances clearly points out to the hypothesis that it was only the appellant who had committed this gruesome crime;
- There is absolutely no ground to interfere with the judgment of the Court below and the criminal appeal is liable to be dismissed.

15. This Court has carefully considered the submission made on either side and the oral and documentary evidence available on record.

16. The prosecution case hinges upon the circumstantial evidence. The prosecution has broadly relied upon the following circumstances:

- (a) Motive being that the appellant was in need of money to marry one Vellakanni and since the deceased did not give money, he was done to death;
- (b) The extra judicial confession said to have made by the appellant to P.W.1 and P.W.2;
- (c) The last seen theory spoken to by P.W.3 and P.W.8;
- (d) The recovery of the head of the deceased on the basis of the confession of the appellant in the presence of P.W.20, Tahsildar and also the evidence of P.W.11, P.W.12 and P.W.13; and
- (e) The recovery of stolen articles and also the weapon and other incriminating materials in the presence of P.W.15.

17. This Court has to remind itself that, in a case of circumstantial evidence, every circumstance must be fully proved and the circumstance must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused.

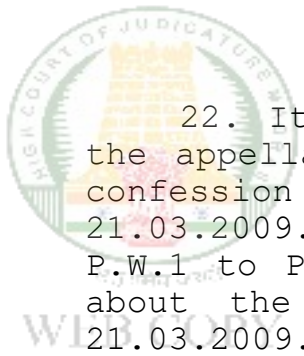


18. In cases of this nature, the motive assumes a significant role. As per the prosecution case, the motive behind this crime is that, the appellant was in need of money to get married to one Vellakanni and he requested the deceased to pay the money and since it was not paid, he made him to come to the Jothida Nilayam to stay over night and on 19.03.2009, while the deceased was sleeping, he had committed the murder. In order to substantiate this motive, the basic minimum requirement on the part of the prosecution was to have first examined the said Vellankanni in order to *prima facie* establish that there was actually a relationship between the appellant and Vellankanni. This was not done in this case. The learned Additional Public Prosecutor wants this Court to rely upon the evidence of P.W.1 and the confession statement (Ex.P2) and come to a conclusion regarding the motive behind the crime.

19. It is the clear evidence of the Village Administrative Officer (P.W.1) that he does not know the appellant and the only occasion he saw the appellant was the day when the appellant appeared before him and gave the so-called extra judicial confession. The learned Additional Public Prosecutor relied upon some judgments of this Court and also the judgments of the Hon'ble Supreme Court to substantiate his submission that extra judicial confession made before the Village Administrative Officer(P.W.1) is admissible and it can be relied upon.

20. We did not have any quarrel upon this proposition of law. If the extra judicial confession inspires the confidence of the Court and it has been given voluntarily and without the various disqualifications provided under Section 24 of the Indian Evidence Act, the same can always be acted upon. The extra judicial confession is always considered to be a weak piece of evidence and it depends upon the facts and circumstances of each case and no fixed universal rule regarding its reliability can be stipulated.

21. In this case, the appellant does not know P.W.1 from adam and this fact has been admitted by P.W1 in his evidence. Normally, it is a basic human conduct, where a person confides a very private matter or a serious crime only to some person he already knows or some person for whom he has respect or reverence or to some elders in the area or local panchayatars. In the course of natural events, after a person commits a serious crime, he does not go and talk about it to a rank stranger. By doing so, he is not put to any advantage and it looks very artificial and unnatural for the appellant to have voluntarily gone before P.W.1 and confessed about the entire incident. In other words, the so-called extra judicial confession made by the appellant, does not inspire the confidence of this Court. Therefore, this Court is not in a position to presume that the prosecution has proved the motive in this case through the evidence of P.W.2 and Ex.P.2.



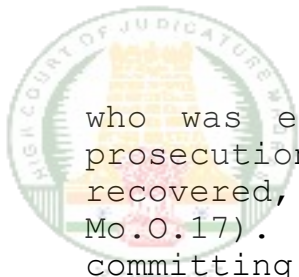
22. It is the case of the prosecution that the involvement of the appellant came to light only after the alleged extra judicial confession which was made before P.W.1 at about 12:00 noon on 21.03.2009. Thereafter, the appellant is said to have been taken by P.W.1 to P.W.24 at about 1:30 p.m. Therefore, P.W.24 came to know about the involvement of the appellant only at 1:30 p.m. on 21.03.2009.

23. At this juncture, it is relevant to place reliance upon the evidence of P.W.13. This witness was examined by the prosecution in order to prove the recovery of the head of the deceased on the confession made by the appellant. This witness categorically stated in his cross examination that he went to Koodangulam Police Station on 21.03.2009 at about 10:00 to 10:15 a.m. and he saw the appellant in the police station. Similarly, P.W.16 who is the father of the deceased also stated that the appellant was apprehended by the police on 20.03.2009 itself.

24. It is also relevant to carefully consider the inquest report (Ex.P.26), which was prepared by P.W.24 on 20.03.2009 between 10:45 a.m. and 1:30 p.m. In this inquest report, curiously P.W.24 has mentioned about the name of the appellant as if he was the one who committed the murder. Till that point of time, P.W.24 did not know about the involvement of the appellant and no witness has spoken to P.W.24 about the involvement of the appellant. Therefore, it is very strange that P.W.24 mentions the name of the appellant in the inquest report even before the appellant was produced by P.W.1 before him on 21.03.2009. This evidence coupled with the evidence of P.W.13 and P.W.16 which has been referred herein above, clearly shows that the appellant was very much in the custody of the police even before the so-called extra judicial confession made before P.W.1 on 21.03.2009 at 12:00 noon. This therefore makes the very extra judicial confession questionable and doubtful.

25. The other circumstance that has been relied upon by the prosecution is the Last Seen theory. For this purpose, the prosecution relied upon the evidence of P.W.3 and P.W.8. These two witnesses, even though had spoken about seeing the appellant with some other person prior to the incident, no one has identified the deceased and therefore, it is not clear from their evidence as to whether they actually last saw the appellant with the deceased or with somebody else.

26. The other circumstance that has been relied upon by the prosecution is the recovery. The stolen articles viz. the gold jewelry, watch and mobile phone is said to have been given by the appellant to one Shankar and it was also recovered from the said Shankar as per P.W.24 evidence. This Shankar was neither made as an accused nor as a witness. Therefore, the very recovery itself becomes doubtful. The other recovery made by the prosecution (M.O.14 Ex.P.16) also becomes doubtful since P.W.15, mahazar Ex.P.8 also becomes doubtful since P.W.15,



who was examined as a witness did not support the case of the prosecution. Curiously in this case, two chisles have been recovered, one with handle and another without handle (M.O.14 and Mo.O.17). It is not known as to which chisle was actually used for committing the crime.

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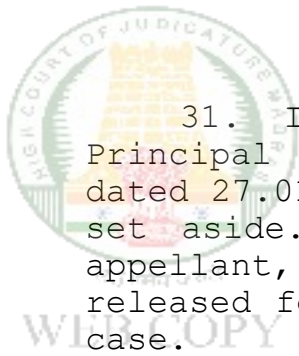
27. The other recovery that has been made by the prosecution are M.O.2, M.O.3, M.O.6 and M.O.7. These material objects were neither traced to the appellant nor to the deceased and therefore, nothing comes out of the recovery of these material objects.

28. One more interesting factor that is seen in this case is the examination of the Doctor/ P.W.17 in this case. He is said to be doctor who had given treatment to the accused for the injuries sustained by him and from whom Ex.P.10 has been marked. This exhibit is the Accident Register and it reveals the following injuries in the body of the appellant.

"Injuries: 1) Horizontal Abrasion with black stab and dried stage of size 4 X 0.2 cm over upper later part of left knee 2) Horizontal abrasion 5 X 0.4 cm upper part of front of left knee. 0.8 cm below first injury. 3) Abrasion 2 X 0.5 cm over lower lateral part of right knee. Similar in (NC) to first two injuries. 4) Abrasion 1 X 0.5 cm obliquely outwards over lower medical part of right knee. Similar in (NC) to previous three injuries. Patient treated as O.P."

29. The appellant has taken a clear stand that he was beaten by the police and he was forced to admit the crime, which he did not commit. This has been specifically spoken by the appellant when he was questioned under Section 313 of Cr.P.C. An attempt has been made to project these injuries as if he sustained the same by falling down in the burial ground. There was no reason for the prosecution to examine P.W.17 and mark the AR register, since it had no impact on the case that was projected by the prosecution. It therefore gives an impression to this Court that the prosecution wanted to preempt the stand of the appellant in this case by bringing in the evidence of P.W.17 and mark the A.R. Register. This move made by the prosecution is rather unusual and creates a clear doubt in the mind of this Court.

30. The above discussion, based on the appreciation of evidence clearly points out to the fact that the prosecution has failed to prove every link in the chain of circumstances. In fact, the chain of circumstances relied upon by the prosecution does not exclude every hypothesis other than the guilt of the appellant. There are many fatal discrepancies found in the case of the prosecution and it will not be safe to rely upon the theory of circumstantial evidence projected by the prosecution and therefore, the benefit of doubt must be given to the appellant.



31. In the result, the judgment passed by the learned Principal Sessions Judge, Tirunelveli made in S.C.No.30 of 2010, dated 27.01.2014, requires interference and accordingly, the same is set aside. The appellant is acquitted from all charges and the appellant, who is now serving the sentence, is directed to be released forthwith, if his confinement is not required in any other case.

32. Accordingly, this Criminal Appeal is allowed. Consequently, connected Crl.M.P.(MD) No.131 of 2018 is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Principal Sessions Court,
Tirunelveli.
2. The Chief Judicial Magistrate,
Tirunelveli
3. The Judicial Magistrate,
Tirunelveli
4. The Inspector of Police
Koodankulam Police Station
Tirunelveli District,
(In Crime No.57/2009)
5. The Superintendent,
Central Prison, Palayamkottai
6. The Commissioner of Police,
Tirunelveli
7. The District Collector,
Tirunelveli
8. The Director General of Police,
Mylapore, Chennai



9. The Record Keeper,
Criminal Section, (2 Copies)
Madurai Bench Of Madras High Court, Madurai

10. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.ALAGUMANI, Advocate (SR-96531[F] dated 06/11/2019)

Judgment made in
Crl.A. (MD)No.12 of 2018
Dated:06.11.2019

MK (26.11.2019) 11P 13C