



BAIL SLIP

The Appellant/Accused No.I viz., Mayilraj @ Arockiyam, S/o.Selvaraj was released on bail granted as per order dated 01.09.2017 made in Crl MP(MD)No.6479 of 2017 in Crl A(MD)No.264 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 23.10.2019

JUDGMENT DELIVERED ON : 31.10.2019

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.A(MD)No.264 of 2017

Mayilraj @ Arockiyam

.. Appellant / Accused No.1

Vs.

The State represented by,
The Inspector of Police,
Varusanadu Police Station,
Theni District.

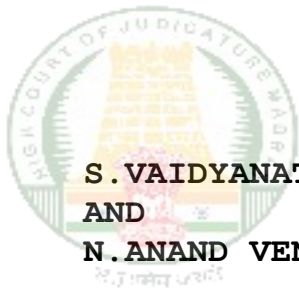
(Crime No.91 of 2011)

.. Respondent /Respondent

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment, dated 30.06.2016 passed in S.C.No.77 of 2012 by the learned Additional District and Sessions Judge, Theni at Periyakulam and to acquit the appellant from all the charges.

For Appellant : Mr.K.Govindarajan
for Mr.F.Deepak

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor
assisted by Mr.P.Andiraj
(vide Court order dated 2/8/2019)

**JUDGMENT**

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

This Criminal Appeal has been filed against the Judgment of the learned Additional District and Sessions Judge, Theni, at Periyakulam, made in S.C.No.77 of 2012, dated 30.06.2016, convicting and sentencing the appellant as follows:

Sl. No.	Offence for which convicted	Sentence of imprisonment	Fine amount
1.	Under Section 302 IPC	Life Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
	Under Section 404 IPC	3 years Rigorous Imprisonment	Rs.500/-, in default, to undergo three months Rigorous Imprisonment.
	Under Section 201 IPC	3 years Rigorous Imprisonment	Rs.500/-, in default, to undergo 3 months Rigorous Imprisonment

The case of the prosecution in brief:

2. The deceased Surulimuthu is a resident of Theni and he owned a coconut grove at a place called as Varushanadu. The appellant (A1) is the sister's son of the deceased and A2 is the cousin sister's son of the deceased. Both these accused persons are said to have taken care of the coconut grove belonging to the deceased. The deceased was a resident of Gandhipuram and he used to visit the coconut grove once in a month. It is further alleged that there used to be a grievance for the deceased against the accused persons for not maintaining the accounts properly and that they may be misappropriating money and also selling coconuts stealthily and preparing false accounts as if they are purchasing fertilizers for the coconut grove. The deceased had questioned the accused persons in this regard and warned them. On 29.08.2011, at about 6.30 a.m., the deceased came to the farm land along with the accused persons and at around 7.00 a.m., he is said to have been attacked by A1 with a chisel (M.O.5) on his head and thereafter, A2 also attacked him with the very same chisel in his head, right hand and fingers and thereby, caused the death of the deceased. They are said to have taken away a sum of Rs.2,500/- from the shirt pocket of the deceased



after the incident and thereafter, both of them with an intention to conceal the entire incident, placed the dead body under a coconut tree and had placed coconut leaf-stalk over his head to give an impression that he died because of the coconut branches falling on the head of the deceased and also spread a news to that effect.

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(2.1) The same day, at about 10.00 a.m., the appellant (A1) is said to have informed the wife of the deceased (PW1) about the death of the deceased and she was also told that he died due to the coconut leaf-stalk falling on his head. She came along with her two sons on 29.08.2011 at about 12.30 hours and saw the deceased kept in a freezer box with bandages over his head and hand. The elder son Balamurugan, who was studying medicine, entertained a doubt on the cause of death and on removing the bandages found that there were cut injuries both in the head and also the hand and therefore, the needle of suspicion pointed against the appellant.

3. Complaint and the materials collected during the course of investigation:

The appellant (A1) went to Varushanadu police station and gave a complaint to the Sub Inspector of Police (P.W.19) on 29.08.2014 at about 6.00 p.m. The statement was recorded (Ex.P.12) and an FIR was registered (Ex.P.13) under Section 174 of Cr.P.C. P.W.19 came to the scene of occurrence at about 06.30 p.m., and found that it was completely dark and therefore, he was not able to inspect the scene of crime. He however conducted an inquest over the body of the deceased and prepared an inquest report (Ex.P.14). At the time of conducting the inquest, he found the dead body of the deceased inside the freezer. The dead body was handed over to Grade-I constable (P.W.17), with a request to conduct a postmortem and the body was taken to the Government Hospital, Theni. He proceeded to record the statement of nearly six witnesses under Section 161(3) of Cr.P.C.

(3.1) The next day, on 30.08.2011, he visited the scene of crime at about 7.00 a.m., and prepared the observation mahazer (Ex.P.1) and the rough sketch (Ex.P.15) in the presence of witnesses (P.W.13). He also recovered material objects (M.Os.2 to 4) from the scene of crime. P.W.19 suspected that the deceased has been murdered and therefore, he handed over the investigation to the Inspector of Police (P.W.22) on 30.08.2011.

(3.2) In the meantime, the Doctor (P.W.15) conducted an autopsy over the body of the deceased and the injuries that were found in the body were recorded in the postmortem certificate (Ex.P.6) and the same is extracted hereunder:



" The following antemortem injuries were noted over the body:

1. An oblique deep cut injury seen on the upper part of center of forehead measuring, 6 cmsx2 cmsxbone deep. The wound is situated 7 cms, above the frontal eminence.

2.A cut injury seen on left fronto-parital area of scalp, measuring 5cmsx3cmsxbone deep.

3. A cut injury seen on centre of vertex, measuring 6cmsx2cmsxbone deep.

4. A cut injury seen 4cms below injury No.3, measuring 7cmsx2cmsxbone deep, about 15 cms from back of neck.

5.A cut injury seen on left temporal area of scalp, 6cms from the left ear, measuring 5 cmsx2cmsxbone deep.

6.A cut injury seen on dorsum of center of middle finger of right hand, measuring 4cmsx2cmsxbone deep.

7.A cut injury seen on dorsum of center of ring finger of right hand, measuring 2 cms x1cmxbone deep.

Note:The wound margins are regular.

On dissection of Scalp, Skull and Dura:

Contusion scalp 13cmsx10cms noted on the center of vertex of scalp Fissured fracture of length 12 cms seen on the vertex region, right parital bone, Subdural and Subarachnoid hemorrhage noted over both the both temporo-occipital region of brain. Linear fracture of length 15 cms noted extending from the right posterior cranial fossa to the left posterior cranial fossa.

On Dissection of Neck:

Contusion noted on the anterior and posterior paraspinal soft tissue Hematoma noted on the pre-vertebral area.

Other findings:

Peritoneal cavity-normal, pleural cavities-empty. Pericardium-contained about 15 ml of straw coloured fluid blood. Heart-chambers empty. Coronaries-patent. Larynx and trachea-normal. Lungs, Liver, Spleen and Kidneys-cut section pale.



Hyoid bone-intact. Stomach-contains 50 ml of dark brown coloured fluid, nnil specific smell, mucosa-normal. Small tentestine-contained about 20 ml of bile stained fluid, nil specific smell, mucosa-normal. Bladder-empty; Brain-described."

The final opinion (Ex.P.7) was given to the effect that the deceased died due to shock and hemorrhage due to external injuries Nos.1,2,3,4 and 5 and cumulative effect of all the external cut injuries.

(3.3) The investigation was taken up by the Inspector of Police (P.W.22) and he examined all the remaining witnesses and took their statements. In the meantime, A2 is said to have voluntarily appeared before the Village Administrative Officer(P.W.16) on 31.08.2011, at 8.00 a.m., and gave an extra judicial confession (Ex.P.8) and a report was prepared (Ex.P.9) and handed over to the Inspector of police (P.W.22). On receipt of Exs.P8 and P.9, P.W.22 altered the case from Section 174 Cr.P.C., to Section 302 and 379 of I.P.C., and forwarded the alteration report (Ex.P.18) to the jurisdictional Magistrate through P.W.17. A2 was arrested and based on his voluntary confession made in the presence of the witnesses (P.W.16) and the Revenue Inspector, M.O.8 to M.O.10 were recovered and the same were seized under mahazer Ex.P.10. A2 was thereafter remanded to judicial custody.

(3.4) In the course of investigation, the appellant (A1) was arrested on 01.09.2011, at about 09.00 a.m., and he voluntarily confessed in the presence of the witnesses (P.W.14), the weapon (M.O.5) was recovered near the scene of crime and M.O.6 and M.O.7 were recovered near the house of A1 under mahazer Ex.P.5. Thereafter, A1 was also remanded to judicial custody.

4. The investigation continued and the statements were taken from other witnesses and the postmortem report-Ex.P.6, Final opinion-Ex.P.7, serological report (Ex.P.17) were collected and the investigation was completed and the final report was filed before the Judicial Magistrate Court, Aandipatti on 25.11.2011.

5. The case was committed to the file of the Additional District and Sessions Judge, Theni at Periyakulam and charges were framed against the accused persons for offence under Section 302, 404 and 201 of I.P.C. The prosecution examined P.W.1 to P.W.22 and marked Ex.P1 to Ex.P.18 and M.O.1 to M.O.12. The incriminating materials collected during the course of trial were put to the accused persons by way of questioning them under Section 313 (1)(b) of Cr.P.C., and they denied the same as false.



6. The trial Court, after considering the facts and circumstances of the case and also after analysing the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and therefore, proceeded to convict and sentence the appellant in the manner indicated herein above.

7. It is brought to the notice of this Court that only A1 has preferred an appeal before this Court and A2 has not filed any appeal and he is serving the sentence imposed by the trial Court.

Submissions:

8. Mr.K.Govindarajan, learned counsel appearing on behalf of the appellant made the following submissions:

- The case of the prosecution hinges upon the circumstantial evidence. The prosecution had relied upon four circumstances, namely,
 - (a) motive for the crime,
 - (b) last seen theory,
 - (c) extra judicial confession of A2 and
 - (d) arrest and recovery.

None of the circumstances were proved and there was a serious infirmity in every link in the chain of circumstances.

- The prosecution had examined P.W.11 to prove that he is a cotton merchant, who purchased cotton and also paid money to the appellant and this was not accounted. There was nothing to show that this witness had purchased cotton and paid money and no account books were marked before the Court below. Similarly, P.W.20 was examined by the prosecution to prove that he had done coconut business and he had also paid money to the appellant, which was not accounted and this was questioned by the deceased and he was informed by the deceased not to make any payment to the appellant. Even for this witness, there was no material to show that business was conducted and no account books were marked.
- The prosecution had examined P.W.3 and P.W.4 to prove the last seen theory and these two witnesses were doing agricultural work and their presence is unnatural.
- The so called extra judicial confession made by A2 to P.W.16 is totally unnatural and there was no necessity for A2 to go and confess to a rank third party about the incident. That apart, Ex.P.8 and Ex.P.9 are inadmissible in evidence and no



such confession can be recorded by the Village Administrative Officer, under Rule 72 of the Criminal Rules of Practise, after the commencement of the investigation by the police.

- The recovery of the weapon and the mobile phone is totally unbelievable. The so called mobile phone was not proved to belong to the deceased and what was identified by the recovery witness-P.W.14 was not identified by P.W.2, who is the son of the deceased. Therefore, the recovery of the mobile phone does not have any significance in the present case.
- Immediately, after the occurrence, it was the appellant, who had given the complaint to the police and the investigation itself started only after the complaint. Therefore, if really the appellant had committed the murder, he would not have initiated a police investigation and he would have absconded from the place. However, he was present right through and he has been unnecessarily made as an accused.

9. Per contra, the learned Additional Public Prosecutor, appearing on behalf of the State made the following submissions:

- The motive for the crime has been proved by examination of P.W.1, P.W.2, P.W.9, P.W.11, P.W.12 and P.W.20.
- The last seen theory has been proved by examination of P.W.3 and P.W.4.
- The appellant has not given any explanation as to what happened after he was last seen with the deceased, in his explanation, while being questioned under Section 313 (1)(b) of Cr.P.C.
- The extra judicial confession made to P.W.16 is admissible in evidence under Section 24 of the Indian Evidence Act, even if Ex.P8 and Ex.P.9 are held to be inadmissible.
- The arrest and recovery has been clearly proved by the prosecution by examining P.W.14.
- The attempt made by the appellant to give a different colour for the entire incident has been clearly spoken to by P.W.5 and P.W.6 and their evidence further corroborates the case of the prosecution.
- The trial Court has considered the entire evidence and has rightly convicted and sentenced the appellant for offences under Section 302, 404 and 201 IPC, and there is absolutely no ground to interfere with the same.



Discussion:

10. This is a case based on circumstantial evidence. Therefore, this Court has to ensure that every circumstance is fully proved and those circumstances form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused.

11. In this case, the prosecution is broadly relying upon four circumstances in order to prove its case. They are,

- (a) the motive behind the incident,
- (b) the accused person's last seen before the incident in the company of the deceased,
- (c) the extra judicial confession made by A2 to P.W.16 and Ex.P8 and Ex.P.9, and
- (d) arrest and recovery.

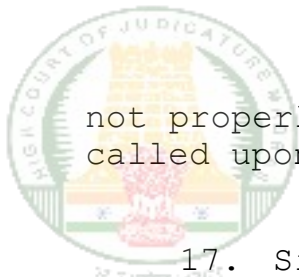
12. Insofar as the first circumstance is concerned, the prosecution has examined six witnesses, namely, P.W.1, P.W.2, P.W.9, P.W.11, P.W.12 and P.W.20.

13. P.W.1 is the wife of the deceased. She has stated in the evidence that the sisters of her husband wanted a share in the property. The property was already given to her husband by virtue of a Will and in spite of the same he has paid a sum of Rs.50,000/- to his sisters. The accused persons, who are nephews of the deceased were permitted to work in the farm land belonging to her husband. The deceased is said to have informed P.W.1 that the money is not being properly accounted and the appellant is selling the coconut without informing the deceased and he was insisting for giving the property to him and this was refused. That apart, the money received from the cotton business was retained by the appellant and was not given to the deceased. When this was questioned, the appellant is said to have become angry.

14. P.W.2, who is the son of the deceased has also almost repeated what was said by his mother (P.W.1).

15. P.W.9 is the owner of the neighbouring land and he has deposed to the effect that the deceased informed him that the appellant is not properly maintaining the farm land.

16. P.W.11 is doing cotton business and he is said to have <https://hcmcaonline.gov.in/services/> and paid some amount to the appellant and this was



not properly accounted and he informed the same to the deceased, who called upon him to settle the accounts.

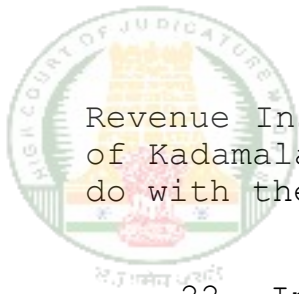
17. Similarly, P.W.12 is also a relative of the deceased to whom the deceased had complained about the misdeeds of the accused persons and they were warned and they undertook not to repeat the mistake in future.

18. The last witness, who was relied upon by the prosecution was P.W.20, who is the coconut merchant. He is said to have purchased coconut and paid the amount to the appellant and it was not properly accounted. He informed the deceased about the same and the deceased advised him not to make any payments to the appellant. Therefore, the appellant got angry about the same.

19. Eventhough, P.W.1 and P.W.2 complained about the so called misdeeds of the appellant, the fact remains that the appellant continued to work in the farm land belonging to the deceased. In fact, the appellant's son was also living there and he was also going to his school from the house of the deceased. The appellant is the nephew of the deceased. Therefore, if really, there was any serious misdeeds committed by the appellant, there was no reason for the deceased to continue to employ him in the farm land. Similarly, the evidence of P.W.11 and P.W.20 also does not seriously establish the motive since there was no material placed to show that they were doing business with the deceased and that they had made payments towards the goods supplied to them. If really there was a regular business, some account books would have been marked to *prima facie* establish the same.

20. The next important circumstance that has been relied upon by the prosecution is the so called extra judicial confession that was made by A2 to P.W.16. The confession was reduced to writing (Ex.P.8) and a report (Ex.P.9) was also sent to the investigating officer (P.W.22). In fact, this was the circumstance through which the FIR itself was altered and the investigating officer proceeded to arrest both the accused persons.

21. A close look at the evidence of P.W.16 shows that he was working as a Village Administrative Officer and while he along with the Revenue Inspector were present in the office, A2 is said to have voluntarily appeared before them and made a confession regarding the entire incident. The Village Administrative Officer and the Revenue Inspector belongs to Myladumparai village of Andipatti Taluk. It is very unnatural that A2 will make such a confession to a rank third party. It is even more curious that a report is prepared by the



Revenue Inspector and A2 is produced before the Inspector of Police of Kadamalaikundu Police Station. This police station has nothing to do with the present case.

22. In the present case, it was the appellant, who had given the complaint to P.W.19 on 29.08.2014, at about 6.00 p.m. The investigation was immediately commenced on the same day. The extra judicial confession is said to have been given by A2 to P.W.16 and the Revenue Inspector on 31.08.2011 at about 8.00 a.m. Apart from the fact that the so called extra judicial confession is totally unnatural, it has to be considered whether Ex.P8 and Ex.P.9 are admissible in evidence. The law on this issue is well settled.

23. This Court in ***Velraj and another v. State rep. by the Inspector of Police, Virudhunagar District***, reported in **2009 (1) MLJ (Cri) 331** has held as follows:

"15.The next leaf of contention of the learned counsel for the appellants is that the confession reportedly given by the second accused before P.W.6 is not all lawful in the eye of law. Even as per the prosecution version, it was recorded after the investigation was taken up in this case, and hence, it is not admissible in evidence by mischief of Rule 72 of Criminal Rules of Practice. The said contention deserves to be accepted. On 19.02.2006 itself, the complaint was lodged and police had taken up the investigation from that day and the second accused is said to have given Ex.P.3, confessional statement to P.W.6 only on 13.03.2006. Hence, as per the settled propositions of law, the extra judicial confession in the form of Ex.P.3 is not admissible in evidence. Further, in the said statement, it is stated that the second accused was willing to surrender before the police or before the Court. Had it been his intention, he might have surrendered before any of the fora, but there was no necessity for him to approach P.W.6 and request him to facilitate him to appear before the police. The said theory is incomprehensible."

24. This Court in ***Alagupandian v. State rep. by the Inspector of Police, Tuticorin District***, reported in **2014(2) LW (cri) 365** has held as follows:

"8. On consideration of the rival submissions, we would allow the appeal for the following reasons:



(ii)

(iii) The decision in Sivakumar v. State by Inspector of Police [2006 (1) SCC 714] makes acceptable a confession recorded by a Village Administrative Officer after the commencement of investigation and informs thus: '35. Criminal Rules of Practice and Orders, 1931 of the Madras High Court were issued by the High Court in exercise of its power conferred by Article 227 of the Constitution. Rule 72 of the Rules reads thus:

"72. Village Magistrates not to record confession.- Village Magistrates are absolutely prohibited from reducing or writing any confession or statement whatever made by an accused person after the police investigation has begun."

36. The said rule has lost all its significance in view of the fact that now under the Code of Criminal Procedure or any other statute or statutory regulations, the Village Headman is not a Village Magistrate. The post of a Village Magistrate since 1973 does not exist.

37. The Village Administrative Officer, it has not been shown, has been conferred with any power of a Magistrate by reason of the provisions of the Code of Criminal Procedure or otherwise. It has also not been shown that he exercises any judicial or quasi-judicial function. Indisputably, he has no role to play in the matter of an investigation in a criminal case.

38. The Village Magistrates evidently, under the new Code of Criminal Procedure, are not empowered to record any confession or statement either in terms of Section 162 or Section 164 of the Code of Criminal Procedure.

39. For all intent and purport, therefore, Rule 72 of the Criminal Rules of Practice has become redundant and nugatory, logical corollary whereof would be that there does not exist any embargo for an accused person to make an extra-judicial confession before a Village Administrative Officer.

40. We do not, thus, see any reason as to why such an extra-judicial confession could not be made before a Village Administrative Officer. With a view to exclude the admissibility of the confession made before a person, he must be a police officer. A Village Administrative Officer does not answer the description. While carrying out his duty to inform the



police or the Magistrate in terms of Section 40 of the Code, the Village Headman does not act as a public servant removable only by or with the sanction of the local government nor does he act in his capacity as Magistrate. (see *Pregada Balanagu v. Krosuru Kotayya* [AIR 1937 Mad 578].) In *State of Uttar Pradesh v. Deoman Upadhyaya* [AIR 1960 SC 1125], the Constitutional Bench was seized of the following questions:

(a) whether Section 27 of the Indian Evidence Act is void because it offends against the provisions of Article 14 of the Constitution?

(b) whether sub-section 2 of Section 162 of the Code of Criminal Procedure in so far as it relates to Section 27 of the Indian Evidence Act is void? By majority, answers were found in the negative. It would be appropriate, for our present purpose, to extract paragraphs 9 and 10 of such judgment: '(9) On an analysis of Ss.24 to 27 of the Indian Evidence Act, and S.162 of the Code of Criminal Procedure, the following material propositions emerge:

(a) Whether a person is in custody or outside, a confession made by him to a police officer or the making of which is procured by inducement, threat or promise having reference to the charge against him and proceeding from a person in authority, is not provable against him in any proceeding in which he is charged with the commission of an offence.

(b) A confession made by a person whilst he is in the custody of a police officer to a person other than a police officer is not provable in a proceeding in which he is charged with the commission of an offence unless it is made in the immediate presence of a Magistrate.

(c) That part of the information given by a person whilst in police custody whether the information is confessional or otherwise, which distinctly relates to the fact thereby discovered but no more, is provable in a proceeding in which he is charged with the commission of an offence.

(d) A statement whether it amounts to a confession or not made by a person when he is not in custody, to another person such latter person not being a police officer may be proved if it is otherwise relevant.

(e) A statement made by a person to a police officer in the course of an investigation of an offence under



Ch.14 of the Cr.P.C. cannot except to the extent permitted by S.27 of the Indian Evidence Act, be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when the statement was made in which he is concerned as a person accused of an offence.

(10) A confession made by a person not in custody is therefore admissible in evidence against him in a criminal proceeding unless it is procured in the manner described in S.24, or is made to a police officer. A statement made by a person, if it is not confessional is provable in all proceedings unless it is made to a police officer in the course of an investigation, & the proceeding in which it is sought to be proved is one for the trial of that person for the offence under investigation when he made that statement. Whereas information given by a person in custody is to the extent to which it distinctly relates to a fact thereby discovered is made provable, by S.162 of the Cr.P.C., such information given by a person not in custody to a police officer in the course of the investigation of an offence is not provable. This distinction may appear to be somewhat paradoxical. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. It is manifest that the class of persons who needed protection most were those in the custody of the police and persons not in the custody of police did not need the same degree of protection. But by the combined operation of S.27 of the Evidence Act and S.162 of the Code of Criminal Procedure, the admissibility in evidence against a person in a criminal proceeding of a statement made to a police officer leading to the discovery of a fact depends for its determination on the question whether he was in custody at the time of making the statement. It is provable if he was in custody at the time when he made it, otherwise it is not.' It may be noted that in stating the paradox between section 27 of the Indian Evidence Act which makes provable such part of information given by a person in custody as distinctly relates to a fact thereby discovered and Section 162 of the Code of Criminal Procedure which makes not provable any information given by a person not in custody to a police officer in the course of investigation, it was informed that Sections 25 and 26 of the Indian Evidence Act were enacted not



because the law presumes the statements to be untrue, but having regard to the tainted nature of the source of evidence, prohibited them from being received in evidence.

The decision in Sivakumar v. State by Inspector of Police [2006 (1) SCC 714] proceeds on the basis that the bar contained under Rule 72 of the Criminal Rules of Practice has become redundant since the post of Village Magistrate does not exist from 1973 and the Village Administrative Officer has not been conferred with any magisterial powers. Whether it would be safe to accept a confession made before a Village Administrative Officer - one who does not have any magisterial powers - when Rule 72 of the Code of Criminal Procedure considered tainted a confession made to one holding magisterial powers and whether in permitting so, the bar under Section 25 of the Indian Evidence Act easily wrongfully can be overcome, are questions that merit consideration. It would be useful to keep in mind the observations in the dissenting judgment in State of Uttar Pradesh v. Deoman Upadhyaya [AIR 1960 SC 1125] where in answer to the submission that number of persons not in custody making confession to the police is insignificant compared with those in custody and therefore, legislature may have left that category out of consideration, it was stated thus: 'when a statement made by accused not in the custody of police is statutorily made inadmissible in evidence, how can it be expected many such instances will fall with the ken of Courts. If the ban be removed for a short time it will be realized how many such instances will be pouring in the same way as confessions of admissible type have become the common feature of almost every criminal case involving grave offence.' Therefore, it may be seen that even as early as in 1960 'the introduction' of admissible types of confession was realised. Need we say anything at all about the augurs of the present day?

(iv) Admissibility of a confessional statement made to a Village Administrative Officer and its reliability altogether are two different things. In the facts and circumstances of the present case, this Court, without hesitation, would hold that Ex.P7, confession statement of the accused allegedly recorded by PW-5, Village Administrative Officer, is unreliable.

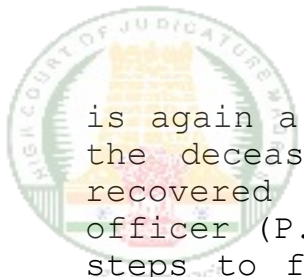


The conviction and sentence imposed on the appellant cannot be sustained."

25. An extra judicial confession, if it is voluntary, truthful, reliable and beyond reproach, is an efficacious piece of evidence. It is clear from the above judgments that even if such confession statements made to the Village Administrative Officer, after the investigation has commenced in a case may be admissible, if it is not falling within any of the contingencies pointed out under Section 24 of the Indian Evidence Act, its reliability can always be independently tested by Courts. An extra judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution, where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The Courts generally looks for independent reliable corroboration before placing reliance on extra judicial confession. This Court has already held that the so called statement and the confession recorded, is totally unnatural and it defies logic and common sense that A2 will go and confess such a serious crime to a rank third party and confess to the person, whom he has not even seen or met before.

26. The other circumstance that has been relied upon by the prosecution is the last seen theory, which is sought to be proved through P.W.3 and P.W.4. These two witnesses state that they saw A1, A2 and the deceased entering into the farm land at about 6.30 a.m., and only the appellant returned back at about 7.30 a.m. At about 9.30 a.m., when they went to attend the nature's call, they saw the deceased under the coconut tree with coconut leaf-stalk over his head. The appellant is said to have told them that he would have died due to fall of coconut leaf-stalk over the head of the deceased. A look at the rough sketch (Ex.P.15) shows that the place where P.W.3 and P.W.4 were sitting was hardly 150 metres from the farm land and there is no fencing or wall around the farm land. If such a fatal attack was made on the deceased by the accused persons, it is unbelievable that they would not have heard any sound from the place where they were sitting. That apart, they only talk about the appellant returning back and there is no whisper about A2 in their entire evidence.

27. The last circumstance that has been relied upon by the prosecution is the arrest and recovery made from the appellant. After the arrest of the appellant, the weapon (M.O.5) and the mobile phone belonging to the deceased is said to have been recovered. P.W.2, who is the son of the deceased has identified a mobile phone (M.O.1) to belong to the deceased. P.W.14, who has been examined on the side of the prosecution talks about the recovery of M.O.7, which



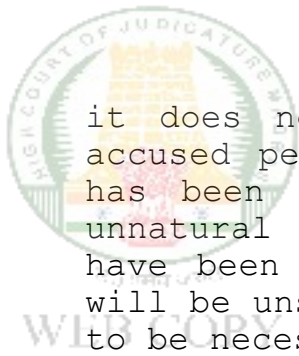
is again a mobile phone. There is absolutely no material connecting the deceased and this mobile phone, which is said to have been recovered after the arrest of the appellant. The investigating officer (P.W.22) has stated in his evidence that he did not take any steps to find out regarding the ownership of the mobile phone and whether the sim card in the mobile phone stood in the name of the deceased. Therefore, this recovery does not in any way help the case of the prosecution.

28. It is the clear evidence of P.W.1 and P.W.2 that the elder son Balamurugan, who is said to be a Doctor had suspected the death of the deceased to be a foul play. This witness has not been examined by the prosecution. That apart, the bandage, which was found in the head and the hand of the deceased was not recovered by the prosecution.

29. In this case, it is important to independently assess the conduct of the appellant in order to see if there is any needle of suspicion pointing at him.

30. The appellant was the first to inform P.W.1, who is the wife of the deceased regarding the death of the deceased on 29.08.2011 at about 10.00 a.m. That apart, it was the appellant, who had given the complaint to the Sub Inspector of Police (P.W.19) which resulted in an FIR being registered on 29.08.2014 at 6.00 p.m. The investigation commenced immediately and the dead body was also sent for postmortem. The appellant did not make any attempt to abscond and he was present throughout and in fact, he had made arrangements for the freezer box, putting shamiana, etc. If really, the appellant was involved in the crime, the appellant would not have volunteered for a police investigation in this case. In a case of this nature, this Court has to necessarily presume the existence of certain facts, only having regard to the common course of natural events and human conduct. A careful assessment of the conduct of the appellant clearly shows that he never attempted to abscond or dispose of the body of the deceased in a hasty manner and he was behaving in a very natural manner and to the extent of subjecting the dead body for postmortem by voluntarily giving a police complaint. If really, the appellant had murdered the deceased, there was no necessity for the appellant to have conducted himself in the manner stated supra. In fact, the case itself took a turn only after the alleged confession of A2 to the Village Administrative Officer, which has already been found by this Court to be totally unreliable and unnatural.

31. The chain of circumstances relied upon by the prosecution is not complete and each circumstance has not been fully proved and



it does not exclude the hypothesis other than the guilt of the accused persons. In other words, the manner in which the incident has been attempted to be projected by the prosecution is quite unnatural and not convincing and the murder of the deceased could have been committed by someone else. Under such circumstances, it will be unsafe to convict the appellant and the benefit of doubt has to be necessarily extended in favour of the appellant.

32. The Hon'ble Supreme Court in **Dandu Lakshmi Reddy v. State of A.P.**, reported in **1999 (7) SCC 69**, has held as follows:

"25. The mother of the appellant Narayannamma is languishing in jail at present pursuant to the conviction and sentence awarded to her in this case. Of course her conviction is not before us as she did not file any special leave petition. But this Court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. On the evaluation of a case, if this Court reaches the conclusion that no conviction of any accused is possible the benefit of that decision must be extended to his co-accused also though he has not challenged the order by means of an appeal petition to this Court, (vide Raja Ram and ors. v. State of M.P. {1994 (2) SCC 568})."

33. The above Judgment has been followed by this Court in **Basappa and others v. State rep. by the Inspector of Police, Krishnagiri District**, reported in **2017 (3) MLJ (Cri) 10** and this Court is held as follows:

"17. In view of the said settled position of law (vide Dandu Lakshmi Reddy v. State of A.P., AIR 1999 SC 3255:(1999)7SCC60:LNIND 1999 SC 707 : (2000) 1 MLJ (Crl)135, though, in the instant case, A5 to A8 have not made any appeal, against their conviction under Section 148 of IPC and sentence of fine imposed thereunder, they are also entitled for acquittal for the reasons stated supra."

34. In the present case, A2 has not preferred any appeal against the Judgment of conviction and sentence passed by the trial Court and is said to be languishing in jail. In view of the acquittal of the appellant, the same benefit of doubt must be extended to the



co-accused (A2) also. Though he has not filed any appeal, the conviction and sentence imposed against him is also liable to be interfered with and he is also entitled for acquittal for the very same reasons that have been given in favour of the appellant herein.

Conclusion:

35. In view of the above discussion, this Court has absolutely no hesitation to interfere with the conviction and sentence passed against the appellant as well as A2 and the same requires to be set aside by this Court.

36. In the result, the Judgment of the trial Court, dated 30.06.2016, made in S.C.No.77 of 2012, is hereby set aside and the appellant and A2 are acquitted from all the charges. The bail bond executed by the appellant shall stand cancelled and fine amount, if any, paid by him shall be refunded.

37. A2, who is said to be confined at Central Prison, Madurai, shall be released from the jail forthwith, unless his confinement is required in any other case.

38. In fine, the Criminal Appeal is allowed.

Sd/-

Assistant Registrar (Crl Side)

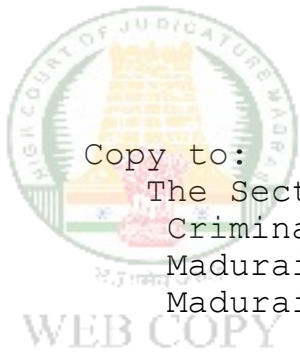
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Sub Assistant Registrar(CS)

PJL

To

1. The Additional District and Sessions Judge,
Theni at Periyakulam.
- 2.The Judicial Magistrate, Andipatty, Theni District
- 3.Do Thro The Chief Judicial Magistrate, Theni District.
- 4.The Superintendent, Central Prison, Madurai.
5. The Inspector of Police,
Varusanadu Police Station,
Theni District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to:
The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

Judgment made in
Cr1.A(MD)No.264 of 2017
31.10.2019

KK/SAR/31.10.2019/19P-9C/