

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2020

Pronounced on : 27.02.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal Nos.679 of 2017 & 4 of 2020

1. Saravanan @ ATM.Saravanan ... Appellant in
Crl.A.679/17-A1
2. Selvan @ Karuppu Selvan @ Selvaraj ... Appellant in
Crl.A.4/20-A2

-vs-

State rep. By
The Inspector of Police,
Bangalapudhur Police Station,
Erode District. ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Sessions Judge Mahila Court (Mahila Fast Track Court), Erode dated 25.01.2017 in S.C.No.48 of 2014.

For Appellants : Mr.A.Abdul Lathief

For Respondent : Mrs.M.Prabhavathi,
Additional Public Prosecutor.

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C O M M O N J U D G M E N T

R.PONGIAPPAN, J.

The appellant in Crl.A.No.679 of 2017 is the first accused and the appellant in Crl.A.No.4 of 2020 is the 2nd accused in S.C.No.48 of 2014 on the file of the learned Sessions Judge, Mahila Court [Fast Track Court], Erode. Since both the appeals arose out of the common judgment dated 25.01.2017 in the above referred sessions case, they are disposed of by the following common judgment.

2. For the sake of convenience, hereinafter, the appellant in Crl.A.No.679 of 2017 is called as '1st accused' and the appellant in Crl.A.No.4 of 2020 is called as '2nd accused'.

3. Before the trial Court, 1st accused stood charged for the offences under Sections 120(B) r/w 302, 449, 302 (2 counts), 392 and 397 IPC. Similarly, the 2nd accused was charged for the offences under Sections 120(B) r/w 302, 449 r/w 34, 302 r/w 34 (2 counts), 392 r/w 34 and 397 r/w 34 IPC. Both the accused denied all the charges and opted for trial. Therefore, they were put on trial of the charges.

4. After full fledged trial, the learned Sessions Judge, Mahila Court, Erode, found the 1st accused guilty of the offences under Sections 120(B) r/w 302, 449, 302 (2 counts), 392 and 397 IPC. Similarly, he came to the conclusion that the 2nd accused was guilty of the offences under Sections 120(B) r/w 302, 449 r/w 34, 302 r/w 34 (2 counts) 392 r/w 34 and 397 r/w 34 IPC. Accordingly, both the accused were convicted and sentenced as follows:

Offence	Sentence
1 st Accused	
Under Section 120(B) r/w 302 IPC	sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, and in default to pay the fine amount, to undergo two years simple imprisonment.
Under Section 449 IPC	sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, and in default to pay the fine amount, to undergo two years simple imprisonment.
Under Section 302 (2 counts) IPC	sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, for each offence and in default to pay the fine amount, to undergo two years simple imprisonment.

Offence	Sentence
Under Section 392 IPC	sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/-, and in default to pay the fine amount, to undergo two years simple imprisonment.
Under Section 397 IPC	sentenced to undergo rigorous imprisonment for 7 years.
2 nd Accused	
Under Section 120(B) r/w 302 IPC	sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, and in default to pay the fine amount, to undergo two years simple imprisonment.
Under Section 449 r/w 34 IPC	sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, and in default to pay the fine amount, to undergo two years simple imprisonment.
Under Section 302 (2 counts) r/w 34 IPC	sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, for each offence and in default to pay the fine amount, to undergo two years simple imprisonment.
Under Section 392 r/w 34 IPC	sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/-, and in default to pay the fine amount, to undergo two years simple imprisonment.
Under Section 397r/w 34 IPC	sentenced to undergo rigorous imprisonment for 7 years.

The trial Court ordered the sentences to run concurrently.

5. Challenging the abovesaid conviction and sentence, both the accused are before this Court, with the present criminal appeal.

6. The case of the prosecution, in brief, is as follows:

(i) PW1-Anand is the resident of Chinnakaliyur. He is the Board President of Kanakampalayam Panchayat. On 26.11.2012 at about 8.30pm, one Sekar from Chinnakaliyur, called PW1 through telephone and informed that some unknown persons assaulted the deceased Aandavar @ Sennimalai. After hearing the same, PW1 informed the same to one Dhanapal and thereafter, alongwith the said Dhanapal and one Raja, he went to the scene of occurrence. In the occurrence place, the dead body of Aandavar @ Sennimalai was found with multiple incised wound. Further, the dead body was found in a pool of blood. Near to the dead body, two cots were present with blood stains. After seeing the same, he informed the occurrence to Bhargalapur police station.

(ii) On receipt of the information given by PW1, the Sub Inspector of police, Bhangalpudur Police Station came there and found that the house belonging to Aandavar @ Sennimalai was locked inside. Hence, the said Sub Inspector of Police, broke the window situated near to the door, and found the dead body of Kannayal @ Nallammal, who is the wife of the deceased Aandavar @ Sennimalai. In the meantime, the Inspector of Police, Bhangalapudur, came there and instructed police people to break open the asbestos sheet in the roof. Accordingly, after breaking the asbestos sheet, some police men entered into the house and opened the lock and thereafter they found that the deceased Kannayal @ Nallammal was in a pool of blood with multiple injuries.

(iii) After seeing the same, PW1 gave an oral complaint to the police and the same was reduced in writing. After recording the said oral complaint PW1 signed and thereafter, on receipt of the same, on the same day, at about 23.00 hours PW18-Mr.Palanisamy, the then Sub Inspector of Police, Bhangalapudur Police Station, registered a case in Cr.No.439 of 2012 under Section 302 IPC. The copy of the complaint given by PW1, and the printed FIR were marked as Ex.P1 and Ex.P13, respectively. After the registration of the case, PW18 handed over the case records to PW21-Mr.Kathirvel, for investigation.

(iv) On receipt of FIR, PW21, the then Inspector of Police, Bhangalapudur took the same for investigation and made arrangements for taking photographs in the occurrence place. He invited the scientific assistants from the forensic science department and the sniffer dog expert. Thereafter, in the presence of PW14-Kamalakaran and one Thangaraj, he prepared an observation Mahazar under Ex.P9. He had drawn the rough sketch under Ex.P22. In the presence of the same witnesses, he recovered (i) Meroon Colour Bedsheet [M.O.7], (ii) cotton bedsheet [M.O.8], (iii) Towel-2 Nos. [M.O.9], (iv) a striped scarf [M.O.10], (v) sample soil from the place [M.O.15], where the dead body of Aandavar @ Sennimalai is found, and the blood stained sample soil [M.O.16] (vi) blood stained sample soil [M.O.13] and the sample soil [M.O.14] from the place, where the dead body of Kannayal @ Nallammal was found, under the cover of mahazar Ex.P10.

(v) Thereafter, he conducted enquiry in respect to the deceased Aandavar @ Sennimalai and prepared an inquest report under Ex.P23. Similarly, he prepared the inquest report, in respect to the death of Kannayal @ Nallammal under Ex.P24. After the preparation of inquest report, he entrusted the dead body of Aandavar @ Sennimalai to PW15-Mr.Vasu and the dead body of Kannayal @ Nallammal to PW20-Tmt.Amudha, the Head Constables, attached with Bhangalapudur Police Station to hand over the same

for post mortem. He had given requisition letters to the Doctors, for conducting autopsy over two dead bodies under Ex.P2 & P4.

(vi) On receipt of requisition, PW6-Dr.Balamurugan, attached to Government Medical Hospital, Gobi, on 27.11.2012 at about 9.00AM, conducted post mortem over the dead body of Kannayal @ Nallammal and found the following injuries.

"(1)Incised wound above (L) wrist 5 x 1 bone depth. (2)Two incised wounds over right thigh 4 x 1 x 3 cm (3)Incised wound (L) axilla 4 x 1 x bone depth (4)incised wound @ side of chest 3 x 1 (5)Incised wound on back between both scapula 2x1xbone depth (6) Incised wound @ leg 3 x 1 x bone depth (7) Incised wound @ lower abdomen 3 x 2 with intestine seen coming out through the wound. No fracture on ribs. Heart ½ x ½ cm punctured wound on left ventricle. 500 ml hemo-flowing seen. clotted. Both chambers empty. Lungs: Incised wound (L) lower lobe 1 x 1 cm. Stomach:600 gm partially digested rice particle seen.

After the completion of post mortem, PW6 issued a postmortem certificate under Ex.P3, stating that the death could have occurred due to shock and haemorrhage, due to the injuries sustained in the vital organs of the deceased Kannayal @ Nallammal.

(vii) Similarly, PW7-Dr.Sivakumar, on the same day at about 10.15am, conducted the postmortem over the dead body of Aandavar @ Sennimalai and found the following external and internal injuries.

"(1)Lacerated Injury (Lt) side of Chest 4x3 cm x bone depth (2) Lacerated injury (Lt) side of chest 2x1 x bone depth (3) Lacerated injury (Lt) side of chest 1x1x bone depth (4) Lacerated Injury (Rt) side of cheek 3x2x opening in to the mouth (5) Lacerated injury (rt) side of chest lateral side 4x3x8 cm (6) Incised wound above the umbilicus 3x2 x omentum is coming out (7) incised wound below the umbilicus 2x2 cm x omentum is coming out (8) incised wound (Lt) forearm 3x3x1 cm (9) Lacerated injury (Rt) chin 3x2x bone depth (10) incised wound below (Rt) ear 2 X 2 X muscle depth (11)Incised wound (Rt) side of X bone depth. Death would appear 8 to 24 hours prior to autopsy. Tongue: Inside the mouth. Teeth intact. Bleeding from (lt) ear. Thorax:contains 100 ml of blood below (Rt) side. No fracture of ribs. Heart (Rt) Chambers and (lt) chambers empty. Lungs: Pale (Rt) 450 g (Lt) 350 gm. Incised wound 1 x 1 cm (Rt) upper lobe of lung. Hyoid bone: Intact. Stomach-contains 1200 gms of partially digested rice."

After completion of postmortem, he has also issued a postmortem certificate under Ex.P5, stating that the deceased would have appeared to have died of shock and haemorrhage due to the injury in vital organs viz., liver and lungs and multiple injuries.

(viii) In continuation of investigation, PW21 examined the witnesses and recorded the 161 Cr.P.C statement. He submitted an application before the Judicial Magistrate for sending the material objects, which were recovered earlier, for chemical examination.

(ix) On 28.11.2012, while at the time of examining PW4, Shanmugamurthy, who is the son of the deceased, he has stated that during the time of occurrence, a gold ring weighing about ½ sovereign, torch light, emergency light, old cellphone and Rs.1,000/- were stolen away from his house. Immediately, after recording the said statement, PW21 altered the Section of law as 302 and 380 IPC and prepared an alteration report under Ex.P25. Thereafter, he examined the witnesses and recorded their statements on various dates.

(x) In the meantime, on 10.12.2012, when PW19-Mr.Murugesan, the then Village Administrative Officer, Kettisamuthram, was in his office along with his Assistant Saleem Basha, one Ganesan/3rd accused surrendered before him and made a voluntary statement in which he admitted as he and other accused in this case alone committed the offence. The said statement given by the 3rd accused-Ganesan was recorded by PW19 under Ex.P14. After recording the same, he brought the 3rd accused to the police station and handed over to the investigation officer.

(xi) After receiving the said accused [A3], PW21 arrested him and recorded the confession statement, given by him. In the said statement both PW19 and his assistant, have signed as witnesses. In the said statement, Ganesan/3rd accused, has stated that he is willing to identify the other accused who were all involved in this case. Thereafter, near to Kadambadur Bus Stand he identified other three accused and thereafter, PW21 arrested the remaining accused. After arresting the other accused [A1-Saravanan @ ATM.Saravanan, A2-Selvan @ Karuppu Selvan @ Selvaraj and A4-Vijayan @ Putttusamy], PW21 recorded their respective confession statements. Thereafter, in the presence of PW19 and his Assistant, Saleem Basha, he recovered the vehicle bearing Regn. No.TN39Q4173, in which they were travelling before the arrest. The Mahazar prepared for the recovery of the said vehicle was marked as Ex.P28.

(xii) In the confession statement, 2nd accused-Selvan @ Karuppu Selvan @ Selvaraj, admitted the offence and was willing to identify the gold ring, which was stolen away from the

occurrence place and now hidden in the house belonging to the mother of A4. Accordingly, he brought the investigation team to the house belonging to the said accused [A4] and identified the gold ring. Thereafter, based on the disclosure statement, the same was recovered under the cover of Mahazar, Ex.P15. The admitted portion of the confession statement given by the 2nd accused is Ex.P16.

(xiii) Similarly, based on the disclosure statement given by the 1st accused, the investigation team went to the house of A4 and recovered the motorcycle, knife and blood stained baniyan, under the cover of mahazar Ex.P17. The admitted portion of the confession statement given by the 1st accused was marked as Ex.P18.

(xiv) In continuation of investigation, based on the disclosure statement given by A4, the motorcycle bearing Regn.No.TN37X8874 and one emergency light were recovered from the house of A4 under the cover of mahazar Ex.P19. The admitted portion of the confession statement given by A4 was marked as Ex.P20. Finally, the 3rd accused-Ganesan brought the investigation team alongwith the other accused to the occurrence place and identified the torch light saying that the same was stolen away from the scene of occurrence. Therefore, the said torch light was recovered in the presence of witnesses under the cover of Mahazar, Ex.P27. The admitted portion of the confession statement given by 3rd accused-Ganesan was marked as Ex.P26. After arresting all the accused, PW21 made arrangements for sending them to judicial custody.

(xv) Thereafter, PW21 collected the chemical examination report from Forensic Science Department, he examined PW9-Mr.Dharmaraj, Junior Engineer, TNEB, in respect to the presence of electricity at the time of occurrence. He recorded the statement from him and thereafter, he came to the positive conclusion that the present appellants and other two accused [A3 & A4] alone have committed the alleged occurrence and filed a final report against all the accused.

7. Based on the materials available, the trial Court framed the charges under Sections 120(B) r/w 302, 449, 449 r/w 34, 302 (2) counts, 302 r/w 34 (2 counts) 392, 392 r/w 34, 397 and 397 r/w 34 IPC. All the accused denied the charges and opted for trial. Therefore all the accused were put on trial.

8. During the course of trial proceedings, in order to prove the case of the prosecution, on the side of prosecution, 21 witnesses have been examined as PW1 to PW21 and 29 documents were exhibited as Ex.P1 to Ex.P29. Besides, 26 material objects are marked as M.O.1 to M.O.26.

9. Out of the abovesaid witnesses, PW1-Anand is the neighbouring land owner to the deceased. He has spoken about the information received from one Sekar about the occurrence and about the seeing of the dead bodies in the pool of blood. According to him, he lodged a complaint before the police.

10. PW2-Sekar and PW3-Dhanapal are also residing in the neighbouring house of the deceased. Both of them went to the scene of occurrence only after hearing the news. PW4-Shanmugamurthy, is the son of the deceased. He has spoken about the information received about the death of his parents and about the identification of the stolen properties before the police officers. PW5-Nachimuthu, is the son-in-law to the deceased. He has also reached the scene of occurrence after hearing the news from some other persons.

11. PW6-Dr.Balamurugan and PW7-Dr.Sivakumar, are the doctors and they have spoken about the details of injuries found in the dead bodies of the deceased. According to them, both the deceased would appear to have died of shock and haemorrhage, due to multiple injuries sustained all over the body.

12. PW8-Mohammed Isaac, is the Head Clerk working in Judicial Magistrate Court No.I, Gobi. He has spoken about the details in respect to sending of material objects to Forensic Science Department, for chemical examination. PW9-Dharmaraj, is the Junior Engineer, working in TNEB, Thookanayakkanpalayam. He had spoken about the presence of electricity during the time of occurrence. PW10-Chinnasamy, is related to the deceased. He has reached the scene of occurrence only after hearing the news about the occurrence. PW11-Kailasam is the resident of Erangkattur. He has spoken about the information given to the police officer in respect to the identity of the accused.

13. PW12-Selvaraj, is the driver by profession. According to him, on 26.11.2012 at about 12.00 to 1.00pm, the appellants 1 and 2 and other two accused were found together near to Kondayampayalam. PW13-Murthy, is a resident of Kalipatti. He had stated before the trial Court that on 26.11.2012 all the accused assembled and made preparation for committing the alleged occurrence. PW14-Kamalakannan is also a neighbour to the deceased. He has spoken about the recovery made by the investigation officer in the occurrence place.

14. PW15-Vasu and PW20-Amudha are the Head Constables, attached with Bangalapudur Police Station. They have spoken about the entrustment of dead bodies for post mortem and about the receiving of dresses worn by the deceased. PW16-Kumaresan, is also a Head constable in Bangalapudur Police Station. He has spoken about the handing over of the FIR to the Judicial

Magistrate. PW17-Selvan, is the Head constable attached with Sniffer Dog Wing, Erode. The findings made out by the sniffer dog is no way helpful for securing the accused.

15. PW18-Palanisamy, is the Sub Inspector of Police, Bangalapudur Police Station. He has spoken about the receiving of complaint and about the registration of the case. PW19-Murugesan, is the Village Administrative Officer, Kettisamuthuram. He has spoken about the arrest of accused and recovery of material objects. PW21-Kathirvel, is the Inspector of Police, he has spoken about the details of investigation, arrest of accused, recovery of material objects and about the filing of final report.

16. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., both the accused/appellants hereindenied the same as false. On their side, one Head Constable viz., Suresh was examined as RW1. According to him, during the time of investigation, he typed the statement given by the witnesses as dictated by the investigation officer, through computer, in the place when the investigation officer examined the witnesses. Further, the photographs related to occurrence place were marked as Ex.R1 series.

17. Having considered all the above, the learned Sessions Judge, Mahila Court, Erode, found the 1st appellant guilty for the offence under Sections 120(B) r/w 302, 449, 302 (2 counts), 392 and 397 IPC. Further, he came to the conclusion that the 2nd appellant was found guilty of the offences under Sections 120(B) r/w 302, 449 r/w 34, 302 r/w 34 (2 counts) 392 r/w 34 and 397 r/w 34 IPC. Accordingly, both the accused/appellant were convicted and sentenced, as stated in the 4th paragraph of this judgment.

18. Aggrieved over the above conviction and sentence, 1st and 2nd accused/appellants are before this Court with the present appeals.

19. We have heard Mr.A.Abdul Lathief, learned counsel appearing on behalf of the appellants/accused 1 & 2 and Ms.M.Prabhavathi, learned Additional Public Prosecutor. We have also perused the records carefully.

20. The learned counsel appearing on behalf of the appellants/accused 1 and 2 have raised the following points:

(i) The specific case of the prosecution is that the occurrence has taken place on 26.11.2012, whereas, without any reason, the son of the deceased (P.W.4) has been examined very belatedly and only on the basis of his 2nd statement, the investigating officer has come to know that some valuables and non-valuables have been stolen. Therefore, the delay in

referring the stolen properties by PW4 is fatal to prosecution.

(ii) The prosecution has developed its case only on the basis of an extra judicial confession, alleged to have been given by the third accused, viz., Ganesan, to PW19-Village Administrative Officer and the same has been marked as Ex.P14. Since, PW19 is totally an unknown person to 3rd accused, it is highly impossible on the part of the 3rd accused to approach PW19, for giving such kind of extra judicial confession and the same is nothing but a concocted one and the trial Court, without considering the genuineness of Ex.P14-extra judicial confession, has erroneously invited convictions and sentences against the appellants/accused 1 and 2.

(iii) Even though most of the witnesses have been examined immediately after occurrence, the specific evidence given by PW21-investigating officer is that statements of all witnesses have been sent to Court only on 10.06.2013. In this regard, no explanation has been given on the side of the prosecution for such delay.

(iv) The prosecution has also utilized the services of PWs.11 to 13 to the effect that they have seen all the accused prior to occurrence. The evidence given by them cannot be accepted.

21. To controvert the arguments put forth on the side of the appellants/accused 1 and 2, the learned Additional Public Prosecutor has contended to the effect that in the instant case, on the side of the prosecution, proper recoveries have been made in pursuance of Ex.P14, an extra judicial confession, given by the 3rd accused and further, PWs.11 to 13 have seen all the accused in the village prior to occurrence. The trial Court, on the basis of recoveries, coupled with the evidence given by PWs.11 to 13, has rightly invited convictions and sentences against all the accused and therefore, the convictions and sentences passed by the trial Court do not require interference.

22. Now, on considering the rival submissions made by the learned counsel on either side, it is an admitted fact that in the complaint and before the police officer, the name and other particulars with regard to the accused were not mentioned. In fact, the prosecution has roped the accused in the present case only on the basis of Ex.P14, the extra judicial confession statement, alleged to have been given by the 3rd accused-Ganesan. Under the above circumstances, we have to meticulously analyse the available evidence on record.

23. As rightly observed by the learned counsel appearing for the appellants, PW19, who is the person recorded the extra

judicial confession statement from 3rd accused, prior to occurrence is not known to the accused. In the said circumstances, it is relevant and useful to see the following judgments of our Hon'ble Apex Court and this Court.

(i) In Anumuthu Vs. Inspector of Police, reported in 2003 (1) MNW (Cr.) (DB) 259, has held as follows:

"17... It is noticed that P.W.4 would admit in cross-examination that he is utter stranger to the accused. Under those circumstances, we are unable to believe the version of P.W.4 that the accused had gone to P.W.4's place and given extra-judicial confession."

(ii) In SK. Yusuf Vs. State of West Bengal, reported in 2012(1) MLJ (Cr.) 127, our Hon'ble Apex Court has held as follows:

" 22.... The Court while dealing with a circumstance of extra-judicial confession must keep in mind that it is a very weak type of evidence and require appreciation with great caution.

Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witness must be clear, unambiguous and clearly convey that accused is the perpetrator of the crime. The "extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility". See: State of Rajasthan v. Raja Ram, (2003) 8 SCC 180; and Kulvinder Singh @ Anr. v. State of Haryana, (2011) 5 SCC 258).

(iii) In Sakthivel Vs. State by the Inspector of Police, Papparapatty Police Station, Dharmapuri District, reported in 2017 (4) MLJ (Cr.) 715, this Court has held as follows:

"It is well settled that extra-judicial confession can be the basis of conviction, provided it passes the test of credibility and unless and until it inspires the confidence of the Court with other cogent circumstances, it cannot be the basis to record conviction."

24. Therefore, applying the principles set out in the judgments referred above, herein also the extra-judicial confession statement recorded by PW19 who is a stranger to A3-Ganesan, creates a doubt whether the story put forth by the prosecution in respect to the extra-judicial confession statement, is true or not. In fact during the time of cross examination, PW19 has clearly admitted that before 10.12.2012, he did not know A3-Ganesan. Hence, we are of the considered

opinion that the extra-judicial confession statement which is the material evidence for the case of prosecution has also not been proved in the manner known to law.

25. Secondly, it is seen from the evidence of PW4-Shanmugamurthy, son of the deceased that he has been examined twice by the investigation officer. Initially, on 26.11.2012 when at the time investigation officer examined, he has not stated about the stolen properties. Only on 28.11.2012, he has stated before the investigation officer, about the stolen properties. The said circumstances creates doubt, because being the son of the deceased, on the day of occurrence itself, it is easy for him to identify the valuable properties which were stolen away from the place of occurrence. Moreover, PW211 has clearly admitted the fact that statements of all witnesses have been sent to the Court only on 10.06.2013, after long gap of six months from the date of occurrence. Therefore, it is needless to say that PW21 has recorded the statement from PW4, only after getting Ex.P14, an extra judicial confession statement alleged to have been given by A3-Ganesan on 10.12.2012.

26. Therefore, it is clear that in the instant case the material objects have been introduced subsequently, so as to point the accused towards crime. Except the extra judicial confession statement and the alleged recovery made through the accused/appellants, no other evidence are available in the instant case to connect the nexus of crime with the accused. The prosecution has examined PW11 to PW13 and their specific evidence is that they have seen all the accused on different dates in different places and that itself cannot be a basis for coming into the conclusion that the accused have involved in the present crime. As already stated, the statements of all the witnesses have been sent to the Court on 10.06.2013 and no explanation has been given on the side of the prosecution.

27. Further, in the instant case, the 3rd accused-Ganesan surrendered before the PW19 for the first time on 10.12.2012. Therefore, after 15 days, from the date of occurrence, the extra judicial confession statement was recorded by PW19. So it is necessary to consider the value of the extra judicial confession since the same has been made after nearly 15 days from the date of occurrence. In the judgment reported in S.Palani Vs. State rep. By Inspector of Police, Dusi Police Station, Tiruvannamalai District, reported in 2005 (1) LW Cr1. 258, this Court has held as follows:

"27. Section 3 of the Indian Evidence Act, 1872 defines "Evidence" as follows:

"Evidence means and includes-

- (1) all statements which the Court permits or required to be made before it by witnesses, in relation to matters of

facts under inquiry; such statements are called oral evidence;

(2)....."

Section 24 of the Indian Evidence Act says, that a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession, appears to the Court, to have been caused by any inducement, threat or promise having reference to the charge against the accused person. Whether the confession is a judicial or extra judicial, to appreciate the confession in this case, we should always remember, that it came into light, after 25 days, from the date of the incident. It is not the case of the prosecution, that the accused disappeared, apprehending action against him. It is not the case of the prosecution also, that they had some suspicion against the accused, which prompted him to surrender before the Village Administrative Officer. As spoken by PW1, he is not known to the accused and utter stranger. The position being so, we are unable to digest that the accused could have given the confession to PW1 voluntarily and if at all, it is to be the confession involving the hands of the police, thereby bringing this confession as inadmissible. Even if the confession is admissible, it alone cannot be the sole basis for conviction, as held by the Apex Court."

28. So, applying the abovesaid principle to the case in hand, herein also the basic document which connect the accused with the nexus of crime is not having any vital value to accept the case of the prosecution. Further, as spoken by PW19, the Village Administrative Officer, accused is not known to him and the accused is an utter stranger. The said position create a doubt as under what faith, the accused surrendered before PW19 and gave extra judicial confession statement. It is the case of the prosecution that the extra judicial confession statement has been recorded by PW19 only after the commencement of the investigation. As rightly pointed out by the learned counsel appearing on behalf of the appellants/accused 1 and 2, the said circumstances also falsifies the validity of the said document. In the judgment reported in Arumugam Vs. State by Inspector of Police, Namakkal Police Station, reported in 2004 (2) LW (Crl.) 830, this Court has held as follows:

"25...The Criminal Rules of Practice are framed by the High Court, in exercise of the powers conferred by Article 227 of the Constitution of India, with the previous approval of the Governor and therefore, generally it should have the enforcing effect. Rule 78 says,

"Village Magistrates are absolutely prohibited from reducing to writing any confession or statement whatever made by an accused person after the police investigation has begun." Thus it is seen, a prohibition is imposed upon the Village Magistrates from recording any statement that too, confession also. Admittedly in this case as spoken by PW7 the extra judicial confession was recorded on 30.9.91 at about 6 am, that is, after the investigation has begun.

29. Therefore, in all aspects, in the instant case, the prime document viz., Extra judicial confession statement recorded by PW19 is not having much value to connect the appellants with the alleged crime. Therefore, we are of the firm view that all the circumstances, found in respect to the recording of extra judicial confession statement create a doubt and also the same cannot be solely reliable for accepting the case of the prosecution.

30. In respect to the recovery made, the learned Additional Public Prosecutor, would contend that the recovery made from accused is within the purview of Section 27 of the Indian Evidence Act. Only because of the reason that the accused 1 and 2 stolen away the valuable items, the same were recovered after identifying the same by the said persons. Accordingly, she prayed to dismiss the appeals.

31. As already observed, in the instant case, only after identification by A3, the present appellants/accused 1 and 2 were arrested and through him, a gold ring weighing about ½ sovereign, torch light and emergency light were recovered. Even assuming those material objects are recovered within the Section 27 of the Indian Evidence Act, the said objects do not connect the accused with the crime. More than that, the evidence given by the investigation officer and PW19, in respect to the recovery made from A1 to A3, is not in the form of realistic.

32. In this regard, it is necessary to see the judgment in Arup Bhuyan Vs. State of Assam, reported in 2011 (3) SCC 377, in which our Hon'ble Apex Court has held as follows

"5. Confession is a very weak kind of evidence. As is well known, the wide spread and rampant practice in the police in India is to use third degree methods for extracting confessions from the alleged accused. Hence, the courts have to be cautious in accepting confessions made to the police by the alleged accused.

6. Unfortunately, the police in our country are not trained in scientific investigation (as is the

police in Western countries) nor are they provided the technical equipments for scientific investigation, hence to obtain a conviction they often rely on the easy short cut of procuring a confession under torture."

33. Further, in the judgment reported in Ishwari Lal Yadav and Another Vs. State of Chhattisgarh reported in 2019 (10) SCC 437, our Hon'ble Apex Court has held as follows:

"24. The Learned counsel also relied on the judgment of this Court in the case of Shambu Nath Mehra v. State of Ajmer (AIR 1956 SC 404). In the aforesaid judgment this Court has held that in a criminal case burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. It is held that on the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. In this case on hand it is proved by cogent evidence that the body of Chirag was found in the house of Ishwari Lal Yadav. By applying the provision under Section 106 of the Indian Evidence Act definitely it is the burden of the accused to explain the fact within the knowledge of them how the body of Chirag came to be buried in their house."

34. It is also relevant to see the judgment of our Hon'ble Apex Court in SK. Yusuf's case [quoted supra], wherein our Hon'ble Apex Court has held as follows:

"27....The nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 Indian Evidence Act, 1872 is very limited. If an accused deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, and as a result of such disclosure, recovery of the weapon is made, no inference can be drawn against the accused, if there is no evidence connecting the weapon with the crime alleged to have been committed by the accused."

35. So, applying the principles laid down in the above referred judgments to the case in hand, herein also the material objects which are all collected during the course of investigation, is not in the form of connecting the accused with the crime.

36. Therefore, in the light of the above discussion, we are

of the considered opinion that the prosecution has failed to prove their case beyond reasonable doubt. Accordingly, both the Criminal Appeals are allowed. The conviction and sentence imposed upon the appellants/accused 1 and 2, by the learned Sessions Judge, Mahila Court, Erode in S.C.No.48 of 2014 dated 25.01.2017, is set aside. The accused are acquitted of the charges. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars

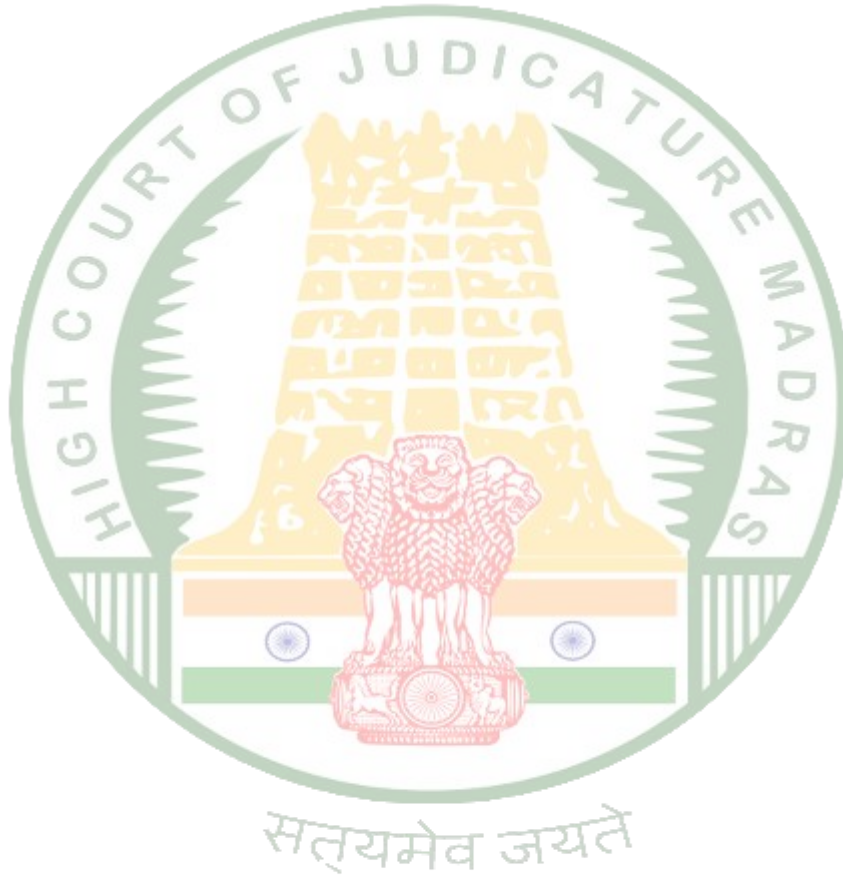
To

1. The Sessions Judge,
Mahila Court, Erode.
2. The Judicial Magistrate I,
Gobichettipalayam.
3. The chief Judicial Magistrate,
Erode.
4. The Inspector of Police,
Bangalapudur Police Station.
5. The Principle Sessions Court,
Erode.
6. The Superintendent,
Central Prison, Coimbatore.
7. The Director General of Police,
Chennai 600 004
8. The District Collector,
Erode.
9. The Public Prosecutor,
High Court, Madras.

+3cc to Mr.A. Abdullathif, Advocate, Sr.Nos. 17148, 18318

Pre-delivery common judgment in
Criminal Appeal No.679 of 2017 & 4 of 2020

RGN (CO)
NSP (21/5/2020)



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