



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2020

CORAM:

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Crl. A. (MD)No.477 of 2018

Kumar @ Vijayakumar

... Appellant/Accused No.2

Vs.

State,
rep. by Inspector of Police,
Pasupathipalayam Police Station,
Karur.
(Crime No.283 of 2007).

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction passed by the learned Sessions Judge, Mahalir Fast Track Court, Karur, in S.C.No.59 of 2013, dated 12.06.2015.

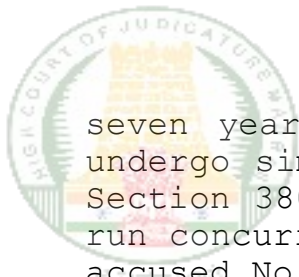
For Petitioner : Mr.S.Deenadhayan

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **T.RAJA, J.**)

The appellant is the second accused in S.C.No.59 of 2013 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Karur. The first accused in this case was Pandi @ Thangapandi and the second accused was one Murali @ Thiyagarajan. The Trial Court framed as many as two charges against all the three accused. The first charge was under Section 302 read with 34 (2 counts) IPC and the second charge was under Section 380 read with 34 IPC. By Judgment, dated 12.06.2015, the Trial Court convicted all the three accused under both the charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each for each count (totally two counts), in default to undergo simple imprisonment for three months for the offence under Section 302 read with 34 (2 counts) I.P.C. and to undergo rigorous imprisonment for



seven years and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for three months, for the offence under Section 380 read with 34 I.P.C. The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the accused No.2 has come up with this Criminal Appeal.

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

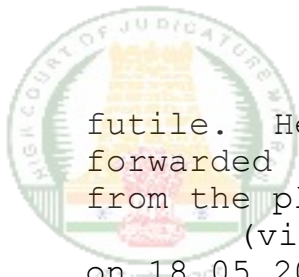
(i)P.W.1, Mr.Karthikeyan, is a resident of G.R.V.Nagar, North Gandhi Gramam, Pasupathipalayam. P.W.2, Mrs.Jeyanthi is his wife. They had a son by name Ramprakash, aged 12 years and a daughter by name, Deepika, aged 7 years. All the four of them were residing together. P.W.1 was working as a Field Officer in the Life Insurance Corporation of India in Karur. P.W.2 was working in a local school, as a teacher. The two children were studying in two different schools. 17.05.2007 was a holiday for the schools. Therefore, the children (hereinafter referred to as D.1 and D.2) were in the house. Around 08.30 a.m., P.W.2 on account of her turn duty in her school, had left for the school. P.W.1, around 11.00 a.m. had gone to his office. Thus, D.1 Ramprakash and D.2 Deepika alone were in the house.

(ii)P.W.6 is a resident of Third Cross of G.R.V.Nagar, Gandhi Gramam. She was a student, doing M.Com. degree course in a local college. P.W.5 is her younger brother. He was also a student, studying engineering course in a local college. They were residing as neighbours of P.W.1 and P.W.2.

(iii)On 17.05.2007, when P.W.5 and P.W.6 were in their house, around 12.30 p.m., D.1 came to their house and enquired whether the key of their house was available with them. Around 02.15 p.m., when P.W.5 and P.W.6 came out of their house, one Aswini, a girl, who was residing in the first floor of the house of P.W.5 and P.W.6, was found in front of the house of the deceased. She was found weeping. P.W.5, therefore, went to the house of P.W.1 and P.W.2. He found D.1 lying dead inside the house in a pool of blood in the dining hall. P.W.5 cried for help. Immediately, P.W.6 and others rushed to the house of the deceased. They found D.2 also lying dead inside the house in a pool of blood. Immediately, P.W.6 called P.W.1 over phone, who was at his office and informed him about the incident.

(iv)P.W.1 immediately rushed to his house. He found both the children lying dead with multiple injuries at two different places in the house, in a pool of blood. P.W.1 immediately went to Pasupathipalayam Police Station and made a complaint at 03.00 p.m. on 17.05.2007. P.W.36, on receipt of the said complaint, registered a case in Crime No.283 of 2007, under Section 302 IPC. Ex.P.1 is the complaint and Ex.P.22 is the First Information Report.

(v)P.W.37 took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazer and a Rough Sketch in the presence of witnesses. He summoned the police photographer and took photographs. Finger Print Expert also came to the place of occurrence. Police sniffer dog was brought to the place of occurrence at the request of P.W.37. These attempts proved



futile. He conducted inquest on the bodies of both the deceased and forwarded them for postmortem. He recovered bloodstained articles from the place of occurrence.

(vi) P.W.35, Dr. Geetha, conducted autopsy on the body of D.1 on 18.05.2007 at 06.15 a.m. She found the following injuries:

"External injuries:

1) A cut injury in front of the neck extending from right side 20x10x7 cms towards left below hyoid with injured neck vessels.

2) A cut injury back of the neck on left side 8x7x muscle depth.

3) An incised wound 5x1/2x1/2 cm over the left back of the forearm.

O/D: Skull : Intact meninges intact.

Brain: Pale. Hyoid bone : Intact. Trachea : cut off.

Thorax : no fluid. Lungs: Pale. Heart : Empty. Liver :

Pale. Stomach : contains 300 gms semisolid food particles present. Kidneys : Pale. Spleen : Pale. Bladder :

Empty. All the internal organs are pale".

Ex.P.20 is the Postmortem Certificate. She gave opinion that the injuries found on the body of D.1 would have been caused by a sharp edged weapon and the death of the deceased was due to shock and haemorrhage due to the said injuries.

(vii) On the same day at 07.15 a.m., she conducted autopsy on the body of D.2. She found the following injuries:

"External injuries : A cut injury over the in front of the neck below hyoid level extending upto right mastoid to left mastoid 20 x 17 x 8 cms with injury to the both sides of the neck vessels.

O/D: Skull : Intact. Meninges : Intact. Brain : Pale.

Hyoid bone : Intact. Trachea : cut off. Ribs : Intact.

Lungs : Pale. Heart : Empty. Liver : Pale. Stomach :

contains 250 gms semisolid food particles. Kidneys : Pale. Spleen : Pale. Bladder : Empty. All the internal organs are pale".

Ex.P.21 is the Postmortem Certificate. She gave opinion that the death was due to shock and haemorrhage due to the injuries found on the body of D.2.

(viii) P.W.37 recovered bloodstained clothes from the bodies of the deceased and forwarded them to the Court. He examined many more witnesses. But, there was no clue. He made a request to the Court to send the material objects for chemical examination. Accordingly, they were sent. The Chemical Examination Report revealed that there was human bloodstain on all the material objects. Since he was, at that juncture, transferred, the investigation was taken over by P.W.38, his successor. P.W.38 again examined the same witnesses examined by P.W.37. He was also not able to make any break through.

(ix) P.W.23 was the then Tahsildar of Karur, during the year 2010. On 25.02.2010, while he was on duty at his office, around



01.30 p.m., the Revenue Inspector of Velliyanai was also present with him. From the office, P.W.24, along with the Revenue Inspector, Mr.Rajasekar went to the Refugee Camp at Rayanoor Village, near Karur. At that time, the first accused, who was a refugee, staying in the camp, met P.W.24 and the Revenue Inspector, Mr.Rajasekar. He volunteered to make a confession to him. After having ascertained that the first accused was in a voluntary mood to make a confession, P.W.24 allowed him to confess orally. The Revenue Inspector, Mr.Rajasekar, reduced the said confession into writing. In that confession, the first accused disclosed that he, along with accused Nos.2 and 3, went to the house of the deceased with a view to steal the properties and when they trespassed into the house, since D.1 and D.2 intercepted, they killed D.1 and D.2, but nothing could be taken from the house, except a silver coin. Ex.P.35 is the said extra-judicial confession. P.W.24, then produced the first accused, along with the confession, before P.W.38.

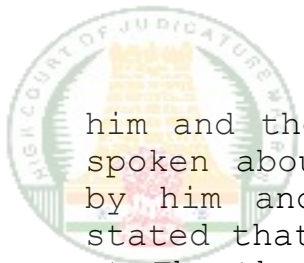
(x)P.W.38, at 04.00 p.m. on 25.02.2010, arrested the first accused. On such arrest, in the presence of the same witnesses, the first accused made a voluntary confession. In the said confession, he disclosed that he had pledged a silver coin at Karur Abirami Jewellery Shop. In pursuance of the said disclosure statement, the first accused took the police and the witnesses to the said shop at Karur and identified one Mr.Seenivasan, the owner of the jewellery shop (Mr.Seenivasan is now no more and therefore he could not be examined). From Mr.Seenivasan, M.O.1, the silver coin was recovered by P.W.38 under a mahazer. Then, he returned to the police station along with the first accused. On the same day, at 08.45 p.m., based on the confession of the first accused, he arrested the third accused. On such arrest, the third accused made a voluntary confession, in which, he disclosed that he was keeping Rs.500/-. P.W.38 recovered the same. Then, P.W.38 altered the case into one under Sections 380 and 302 IPC and sent the Alteration Report.

(xi)On 26.02.2010, at 09.00 a.m., P.W.38 arrested the second accused. On such arrest, the second accused made a voluntary confession, in which, he disclosed the place, where he had hidden a knife. In pursuance of the said disclosure statement, he took the police and witnesses to the hide out and produced M.O.15, knife. P.W.38 recovered the same under a mahazer. He forwarded all the accused to the Court for judicial remand. P.W.38 took blood samples from the accused and forwarded the same through the learned Magistrate for D.N.A. Examination. He examined many more witnesses. The investigation was thereafter continued by P.W.39. P.W.39 examined few more witnesses, collected connected documents and on completing the investigation, laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 39 witnesses were examined and 35 documents were exhibited, besides 18 Material Objects.



4. Out of the said witnesses, P.W.1 and P.W.2, the father and mother, respectively, of the deceased, have stated that on the crucial date of occurrence, both the deceased were alone in their house. They have further stated that at 02.30 p.m., they heard about the occurrence and they reached the place of occurrence and found the dead bodies. P.W.1 has spoken about the complaint made by him to the police. P.W.3 is the brother-in-law of P.W.1. He has spoken only on hearsay information about the occurrence. P.W.4 is a neighbour of the deceased. He has also stated that he heard about the occurrence, rushed to the place of occurrence and found the dead bodies of the deceased. P.W.5 and P.W.6 have stated that around 02.15 p.m., one Aswini, a girl, who was residing in the first floor of the house, was found in front of the house of the deceased and she was weeping, P.W.5 went to the house of the deceased and found both the deceased lying dead in a pool of blood with multiple injuries and he raised alarm and then, P.W.6 along with others, went to the house and found the dead bodies and thereafter, P.W.6 informed P.W.1 over phone. P.W.7, yet another neighbour, has stated that he heard about the occurrence and went to the place of occurrence and found the dead bodies. P.W.8, a resident of G.R.V. Nagar, Gandhigramam in Karur, has also stated that on hearing the alarm raised from the place of occurrence, he went to the place of occurrence and found the dead bodies of both the deceased. P.W.9, yet another resident of North Gandhigramam, has stated that on hearing about the occurrence, she went to the place of occurrence and found the dead bodies. P.W.10, the then Village Administrative Officer, has spoken about the preparation of Observation Mahazer and the Rough Sketch and recovery of bloodstained material objects from the place of occurrence. P.W.11 is the brother of P.W.1. He has also stated that he heard about the occurrence on 17.05.2007 at 02.00 p.m. P.W.12 is the yet another brother of P.W.1. He has also stated that he heard about the occurrence on 17.05.2007, went to the house of the deceased and found the dead bodies of the deceased. P.W.13 has stated that she heard about the occurrence. P.W.14 has stated that on 17.05.2007, she was in the school, along with P.W.2 and at that time, P.W.2 was informed about the occurrence and then, she heard about the occurrence. P.W.15 has stated about the recovery of material objects, including a knife from the place of occurrence. P.W.16 has stated that on 17.05.2007, around 02.00 p.m., he was working in a building near the place of occurrence, around 02.45 p.m., he heard the alarm raised from the house of the deceased and upon hearing the same, he went to the house of the deceased and found the dead bodies. P.W.17 has also stated that he went to the place of occurrence and found the dead bodies. P.W.18, yet another neighbour of the deceased, has stated that he heard about the occurrence and went to the place of occurrence. P.W.18 has further stated that around 11.00 a.m. on 21.05.2007, somebody was moving in a motor cycle near the place of occurrence. P.W.19 has spoken about the arrest of the third accused, the confession made by



him and the recovery of Rs.500/- from his possession. P.W.20, has spoken about the arrest of the second accused, the confession made by him and the consequential recovery of a knife. P.W.21, has stated that on 24.02.2010, around 08.30 p.m., when he was in a hotel at Thanthonimalai, three persons were eating in the hotel and they were discussing among themselves about the murder of the deceased, but, they have not stated anything about the accused. P.W.22, the Head of the Refugee Camp, at Rayanoor, near Karur, has stated that one Kanakeswaran, one of the refugees, left the Refugee Camp during the month of December, 2004 without informing anybody and he did not return. P.W.23, the Tahsildar, Karur, has stated that as per the records maintained in the Refugee Camp, Kanakeswaran, inmates, who left the camp without informing anyone, had not returned. P.W.24, has spoken about the extra-judicial confession made by the first accused, on 25.02.2010. He has stated about the arrest of the first accused, on being produced by him and the confession made by him and the consequential recovery of silver coin, in pursuance of the disclosure statement made by the first accused. P.W.25, a Forensic Expert, has stated that he examined the material objects sent to him for chemical examination and he found human blood on the same. P.W.26, has spoken about the photographs taken in the place of occurrence, on the request made by P.W.36. P.W.27 has spoken about the disclosure statement made by the first accused and the consequential recovery of the silver coin. P.W.28, a constable, has stated that he handed over the First Information Report to the learned Magistrate. P.W.29 has stated that he took the dead bodies of both the deceased and handed over the same to the doctor, for postmortem. P.W.30 has also spoken about the same fact. P.W.31, yet another constable, has stated that he handed over the material objects to the Forensic Lab for Chemical Examination. P.W.32, has spoken about the fact that he handed over some more material objects to the Forensic Lab for Chemical Examination, as per the direction of the learned Magistrate. P.W.33 has stated that he collected blood samples of the accused for the purpose of comparison, as directed by the learned Magistrate and forwarded the same to the Court. P.W.34, has spoken about the chemical examination conducted in the blood samples and he has also spoken about the examination of the footprints with bloodstains found at the place of occurrence. But, since they were smudged, he is not able to compare the same. P.W.35 has spoken about the postmortem conducted on the bodies of the both the deceased and her final opinion regarding cause of death. P.W.36 has spoken about the registration of the case, on the complaint of P.W.1. P.W.37 to P.W.39 have spoken about the investigation done and filing of final report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false.

6. On the side of the accused, one Mr. Purusothaman was examined as D.W.1. He has stated that he was running a jewellery shop under the name and style of Ravi Jewellers at Karur. He was



also the President of Jewellery Shop Owners Association. He has further stated that between 17.05.2007 to 31.07.2007, the market rate of silver per gram at Karur was somewhere between Rs.19.50 and Rs.20.00.

7.Having considered all the above materials, the Trial Court convicted all the three accused, as detailed in the first paragraph of this Judgment, and sentenced them accordingly. That is how, the accused No.2 is before this Court with the Criminal Appeal.

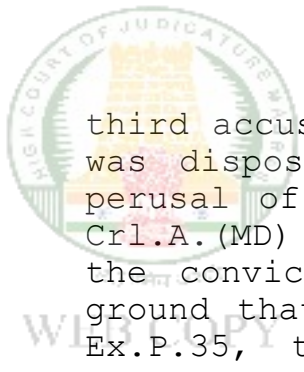
8.We have heard the learned counsel appearing for the appellants, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9.This is an unfortunate case, where two young children, were brutally killed by using dangerous weapons. It is alleged that all the three accused were perpetrators of the crime. But, there was no eye witness to the occurrence. Though the prosecution has examined as many as 39 witnesses, most of the witnesses examined have spoken only about the hearsay information, whose evidences are not at all relevant, except to the extent that they have spoken about the fact that the dead bodies of both the deceased were found inside the house with multiple injuries.

10.Though the occurrence had taken place on 17.05.2007, for nearly three years, there was no clue. The police officers, who were investigating the case, could not make any breakthrough. Thus, P.W.37, Investigating Officer, was not able to get any clue about the assailants. P.W.38, took up the case for investigation on 28.06.2009. For about one year, he was also not able to make any breakthrough. Even then, it is unfortunate that the investigation was not transferred to any specialised agency, though it was a very sensational case, which had sent shock waves across the State, since two young children were killed.

11.It is stated that on 25.02.2010, when P.W.24, the Tahsildar and the Revenue Inspector had gone to the Refugee Camp at Rayanoor, near Karur, the first accused made a voluntary confession, vide Ex.P.35. Until such voluntary confession was made by the first accused, the police officers could not collect any material, indicating the assailants. Along with the said extra-judicial confession made by the first accused, the first accused was produced before P.W.38. P.W.38 arrested him and while in custody, he made a voluntary confession, out of which, a silver coin was recovered from a jewellery shop. Except these two pieces of evidence against the first accused, absolutely there is no other evidence available.

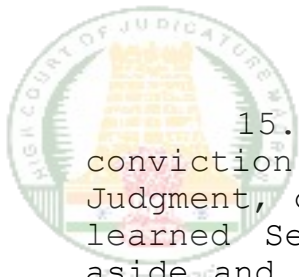
12.It is brought to our notice by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State that the first accused and the



third accused filed Crl.A.(MD) Nos.148 and 210 of 2015 and the same was disposed of by this Court vide judgment dated 30.09.2016. A perusal of the said judgment would show that this Court dismissed Crl.A.(MD) No.210 of 2015 filed by the first accused and confirmed the conviction and sentence imposed on the first accused on the ground that from the evidence of P.W.24, it is crystal clear that Ex.P.35, the extra-judicial confession, was made by the first accused, voluntarily. As regards the third accused/appellant in Crl.A.(MD) No.148 of 2015, this Court held as follows:

"13.Now, turning to the third accused, except the evidence that he was arrested and on such arrest, a sum of Rs.500/- was recovered from him, there is no other evidence against him. The extra judicial confession given by the first accused, cannot be used against the third accused as a substantive evidence. In this regard, we may refer to the decision of the **Hon'ble Supreme Court** in **Kashmira Singh v. State of Madhya Pradesh** reported in **1952 AIR 159**, wherein the **Hon'ble Supreme Court** has held that the proper approach towards the extra judicial confession of a co-accused is to keep the said extra judicial confession aside, marshall all other evidences available and in the event, on such marshalling of the other evidences, if the Court is able to come to the conclusion that the accused has committed the crime, then as a last resort to lend assurance to the said conclusion, the Court may consider the extra judicial confession of the co-accused. In other words, the extra judicial confession of the co-accused cannot be treated as a substantive evidence. In this case, as we have already stated that there is no other evidence against the third accused, the said extra judicial confession given by the first accused cannot be treated as a substantive evidence against the third accused. Thus, absolutely there is no evidence against the third accused and therefore he is entitled for acquittal.

14.The appellant/accused No.2 is on a similar footing as that of the third accused. As per the decision of the Hon'ble Supreme Court in **Kashmira Singh** (supra), the proper approach towards the extra judicial confession of a co-accused is to keep the said extra judicial confession aside, marshall all other evidences available and in the event, on such marshalling of the other evidences, if the Court is able to come to the conclusion that the accused has committed the crime, then as a last resort to lend assurance to the said conclusion, the Court may consider the extra judicial confession of the co-accused. However, in this case similar to that of the third accused, absolutely, there is no other evidence against the second accused. Hence, the said extra judicial confession given by the first accused cannot be treated as a substantive evidence against the second accused also. Since, absolutely there is no evidence against the second accused, he is also entitled for the benefit of acquittal.



15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/third accused, by Judgment, dated 12.06.2015, made in S.C.No.59 of 2013, passed by the learned Sessions Judge, Mahalir Fast Track Court, Karur, is set aside and the appellant/accused No.2, is acquitted from the charges levelled against him. Fine amount, if any, paid by him, shall be refunded. The appellant/accused No.2, is directed to be released forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

1. The Sessions Judge,
Mahalir Fast Track Court,
Karur.
2. The Judicial Magistrate No.1,
Karur.
3. The Inspector of Police,
Pasupathipalayam Police Station,
Karur.
4. The Superintendent,
Central Prison,
Puzhal.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-8371[F] dated
26/02/2020)

CrI. A. (MD)No.477 of 2018

25.02.2020

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