

BAIL SLIP

The appellant/Accused namely 1) Muthulakshmi, W/o. Ganesan 2) Ramesh, S/o. Thangavel were released on bail as per order of this Court dated 09.11.2020 and made in CRL MP(MD).590 and 592 OF 2020 in CRL A(MD).82 OF 2019 on the file of this court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.02.2022

DELIVERED ON : 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)No.82 of 2019

1.Muthulakshmi, W/o. Ganesan
2.Ramesh, S/o. Thangavel

... Appellants / Accused 1 & 2

Vs.

The Inspector of Police,
Pattukkottai Police Station,
Thanjavur District.
(Crime No.364 of 2009)

... Respondent / complainant.

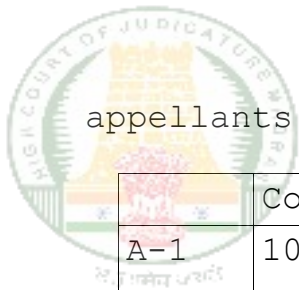
PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment of conviction and sentence passed by the learned III Additional District & Sessions Judge, Pattukottai, Thanjavur District made in S.C.No.74 of 2014 dated 14.08.2018.

For Appellants	: Mr.V.Kathirvelu, Senior Counsel for Mr.K.Prabhu
For Respondent	: Mr.T.Senthilkumar, Additional Public Prosecutor.

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The appellants 1 and 2 / A1 & A2 along with one Kumaresan and Suresh (A3 and A4 respectively) were tried before the learned III Additional District and Sessions Judge, Pattukottai, Thanjavur District in S.C.No.74 of 2014 for the offence under Sections 109 r/w 302 I.P.C. (against A1), 364 I.P.C. (against A2), 302 (against A2 & A3) and 201 r/w 302 I.P.C. (against A1, A3 & A4). The trial Court vide Judgment dated 14.08.2018, while acquitting A3 and A4 from the charges framed against them, found the appellants / A1 and A2 guilty of the offence. The conviction and sentence imposed on the



appellants / A1 & A2 are as follows:

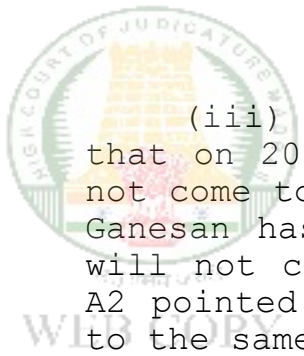
	Conviction U/s.	Sentence	Fine amount
A-1	109 r/w 302 IPC	To undergo life imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.
	201 r/w 302 IPC	To undergo three years rigorous imprisonment	To pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.
A-2	364 IPC	To undergo three years rigorous imprisonment	To pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.
	302 IPC	To undergo life imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.

(Both the sentences were directed to run concurrently.)

2. The brief facts of the prosecution is as follows:

(i) A1 is the wife of the deceased. A2 is the sister's husband of A1. A3 and A4 are the brothers of A2. P.W.2 is the brother of the deceased Ganesan. On 20.06.2009, one Dharmaraj, who is the brother of the father-in-law of the deceased died. As the deceased-Ganesan has not come to the funeral, P.W.2 asked A1 as to why, the deceased has not come to the funeral of said Dharmaraj. A1 told that the deceased left to Singapore. Since A1 has informed others that her husband already died, P.W.2 and others entertained a doubt. Thereafter, on hearing a news that some dead body was found within the jurisdiction of the Athirampattinam police station, they all went to the said place and however, found that the same was not the dead body of the deceased Ganesan. Thereafter, A1 confessed before P.W.2 and others that A1 and A2 along with others gave brandy to the deceased and murdered him and buried his body near the banks of Aswini river. Thereafter A1 was handed over to the police and gave a confession. Pursuant to the statement, the dead body was exhumed in the presence of Tahsildar and others.

(ii) P.W.1 is the VAO. On 25.06.2009, A2 appeared before him and confessed of killing the deceased. P.W.1 handed over the accused A2 to police station. As the police has requested a written statement, P.W.1 gave a complaint-Ex.P1 along with the confession statement of A2, which was marked as Ex.P2. P.W.4 also present, when A1 and A2 pointed out the place, where the dead body was buried.



(iii) P.W.5-Karuppiyah is the cousin of A1. He has also stated that on 20.06.2009 his father had died. However, A1's husband has not come to the funeral. When questioned, A1 as to why the deceased Ganesan has not come to the funeral, A1 stated that the deceased will not come hereafter. Thereafter on 27.06.2019, accused A1 and A2 pointed out the place where the dead body was buried. Pursuant to the same, the body was exhumed by the Tahsildar.

(iv) P.W.6-Sivakumar is the relative of the deceased Ganesan and he has stated that on 15.06.2009, the deceased Ganesan and A2 were travelling in a bus and when he enquired about them, A2 told that they are going to Aswini river side. Thereafter, at the instance of A1 and A2, dead body was recovered and P.W.7 also present, when the dead body was exhumed from the place pointed out by A1 and A2.

(v) P.W.8 was witnessed to the arrest of A4 and he has also signed the confession statement of A4. P.W.9 also signed in the confession statement of A4. The admissible portion of the confession statement of A4 was marked as Ex.P.14. P.W.13-Investigating Officer, after receipt of a complaint from P.W.1, registered a case in Crime No.364 of 2009 under Sections 364, 302 and 201 IPC under Ex.P12-FIR.

(vi) Pursuant to the admissible portion of the confession statement of A2, which was marked Ex.P13, the Investigating Officer arrested A1 on 27.06.2009 and recorded her confession. The admissible portion of the confession statement of A1 was marked as Ex.P4 and pursuant to the same, the body of the deceased was exhumed in the presence of P.W.2 and Thasildar. He has prepared inquest report under Ex.P11, seized material objects under Ex.P.15-Seizure Mahazar and drew a rough sketch under Ex.P17 and sent the body for post-mortem. P.W.10, Medical Officer conducted autopsy over the dead body, which was in a totally decomposed stage and issued Ex.P9-postmortem certificate.

(vii) P.W.11-Assistant Director of Forensic Department has issued Ex.P10 holding that DNA could not be extracted from the femur bone. In continuation of his investigation, the Investigation Officer examined the witnesses, took the custody of the other accused and examined them, recorded their confession statements and after collecting all the materials, finally laid a final report against the accused.

(viii) The prosecution, in order to bring home the guilt of the accused examined as many as 13 witnesses as P.W.1 to P.W.13, marked 17 documents as Ex.P1 to P17 and 4 material objects as M.O.1 to M.O.4. After analyzing the oral and documentary evidence, the trial Court found A1 guilty under Sections 109 r/w 302 IPC and 201 r/w 302 IPC and found A2 guilty under Sections 364 and 302 IPC. Assailing



3. Learned counsel appearing for the appellants submitted that the prosecution has miserably failed to prove the circumstances against the accused for grave charges. The extra-judicial confession given by A2 before P.W.1, in the presence of police officers, is highly improbable and the same is hit by Section 26 of the Indian Evidence Act, 1872. The evidence of P.W.1 itself indicates that extra-judicial confession was recorded in the presence of police. Therefore, Ex.P1 and Ex.P2 could not have been considered by the trial Court. Further, the evidence of P.W.13-Investigating Officer is also highly doubtful about the arrest of the accused and recovery of the dead body. The evidence of the Investigating Officer shows, as if on 25.06.2009, itself he arrested A2, recorded his confession and remanded him to judicial custody, whereas A1 said to have been arrested after two days i.e., on 27.06.2009 and pursuant to the same, the dead body was exhumed. Hence the theory of arrest and recovery itself is highly improbable and creates a serious doubt.

4. Further it is submitted by the learned counsel appearing for the appellants that the evidence of P.W.2, P.W.3, P.W.4, P.W.5, P.W.6 and P.W.7 also create serious doubt about the recovery of the dead body at the instance of the accused. Hence, it is his contention that the circumstances projected by the prosecution have not been clinchingly established. With regard to the motive aspect, absolutely there is no evidence available on record. Therefore, merely on the basis of extra-judicial confession and the alleged recovery of corpus, the trial Court without proper appreciation of evidence has imposed punishment as against A1 and A2. Hence, prayed for acquittal. In support of his submissions, he has relied upon the following judgments:

(i) ***Surendra Kumar Vs. State of UP*** reported in **2021 SAR (Cri) 768;**

(ii) ***Shivaji Chintappa Patil Vs. State of Maharashtra*** reported in **2021 SAR (Cri) 337;** and

(iii) ***Ganpat Singh Vs. State of Madhya Pradesh*** reported in **(2018) 2 Supreme Court Cases (Cri) 159.**

5. The learned Additional Public Prosecutor appearing for the respondent would submit that the conduct of A1 assumes significance. Though her husband was missing from 15.06.2009, she has not made any complaint and that itself go against her. It is further submitted by learned Additional Public Prosecutor that when she attended the funeral of the deceased's uncle, she gave a different story about the deceased, which made others to suspect her. These facts coupled with recovery of the dead body at the instance of the accused, the prosecution has clinchingly established the complicity of the accused with the crime. All the witnesses clearly spoken that the dead body was recovered only at the instance of the accused. Therefore, the trial Court has properly appreciated the above



evidence. Hence, prayed for dismissal of this appeal.

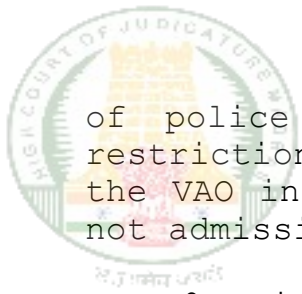
6. We have given our anxious consideration to the submissions made by the learned counsel on either side and perused the materials.

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7. The prosecution has mainly relied upon the following circumstances:

Extra-judicial confession of A2 given before P.W.1, recovery of dead body at the instance of A1 before the investigating officer and evidence of P.W.2, P.W.3, P.W.4 and P.W.6 who witnessed the recovery. The very charge of the prosecution is that on 14.06.2009, the deceased beaten A1 by suspecting her fidelity. Therefore, A1 decided to do away him and she sought a help of A2 to A4. Accordingly, on 15.06.2009, A2 took the deceased to the place of occurrence, thereby he committed the offence under Section 364 IPC. Thereafter A2 & A3 cut the deceased and caused his death and A4 caused the disappearance of the evidence, thereby he committed the offence under Section 201 r/w 302 IPC.

8. The prosecution mainly relied upon the extra-judicial confession said to have been given by A2 before P.W.1. The evidence of P.W.1, when carefully seen, he has stated that A2 appeared before him on 25.06.2009 at about 9.30 a.m and confessed of killing the deceased. P.W.1 immediately took him to the police station. Thereafter at the request of police, he recorded the confession statement of A2, which was marked as Ex.P2 and also gave a complaint-Ex.P1. Normally, the extra-judicial confession construed as a weak piece of evidence. Without proper corroborative materials, it is unsafe to base the conviction on such confession. But, at the same time if extra-judicial confession does not suffer from any infirmity and even if given before stranger, there is no bar in law to rely upon such extra-judicial confession. But, in the given case, the extra-judicial confession said to have been given before VAO by A2. However, the VAO has not even reduced the so called statement given by A2 into writing and he has just taken him to the police station. Only in the police station, at the request of police, he reduced the so called statement of A2 into writing, which was marked as Ex.P2. It is relevant to note that Ex.P2 so called statement of A2 cannot be given any importance, as the same has been reduced into writing in the presence of police officers and it is hit by Section 26 of the Indian Evidence Act, 1872. Though the first part of the evidence of P.W.1 that accused appeared and gave a confession may be admissible, the second part of the evidence that he reduced the confession into writing in the police station at the request of the police certainly makes such document inadmissible and hit by Section 26 of the Indian Evidence Act, 1872. Therefore, the confession made by any person, while he is in the custody of the police officer cannot be used against such a person. It is relevant to note that though A2 was produced before the police station, he

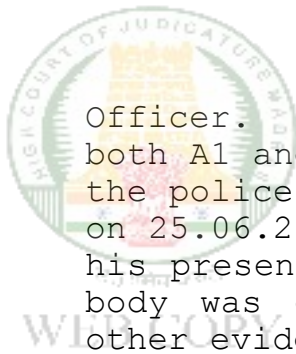


of police and at the relevant point of time, there was some restrictions on his movement. Therefore, any statement reduced by the VAO in the presence of police at the relevant point of time is not admissible as against A2.

9. With regard to the first part of the evidence of P.W.1 is concerned we are of the view that P.W.1 is not a layman, he is a VAO and if any such statement is given by a person who is resident of the particular village, as per the Village Administrative Officer's Manual he has to reduce the same into writing and prepare necessary copies, which has not been done in this case. Therefore, the statement that the accused gave a confession is highly unbelievable and improbable and the same cannot be the basis for relying upon such statement as extra-judicial confession.

10. P.W.2 is the brother of the deceased. In his evidence, he has stated that he entertained some doubt about A1's statement and on hearing the news that some dead body was found within the jurisdiction of Athirampattinam police station, they all went to the said place along with A1. However, found that the same was not the dead body of the deceased Ganesan and thereafter, they again searched. It is the case of the prosecution that both the accused had confessed of killing the deceased and handed over to the police. The entire evidence of P.W.2 both chief examination and cross examination creates a doubt about the arrest and recovery. The evidence of P.W.2 shows that the dead body was recovered from the place pointed out by A2. His evidence is totally contradictory to the evidence of the Investigating Officer-P.W.13. The Investigating Officer, P.W.13, in his evidence, has stated that the dead body was recovered and exhumed only on 27.06.2009, whereas A2 was remanded to the judicial custody on 25.06.2009 itself. Therefore, P.W.2's evidence that the dead body was recovered at the place pointed out by A2 on 27.06.2009 is also highly doubtful. The entire evidence of P.W.2 shows that after 20.06.2009, as the village members entertained some doubt, they handed over A1 and A2 to the police. Evidence of P.W.2 further shows that when they searched the dead body from the place pointed out by the accused, they did not find the dead body in the first instance. Thereafter, at the second instance only they seized the dead body.

11. P.W.3, in his evidence, has stated that on 22.06.2009 they all went to the police station to identify some other body and at the time, A1 was also present in the police station. P.W.4, in his chief examination, has stated that on 27.06.2009, the accused A2 to A4 took them to the place, where the dead body was exhumed. His evidence also creates some doubt about the presence of A2. According to the Investigating Officer, A2 was remanded to the judicial custody on 25.06.2009 itself. P.W.5 also stated that both the accused A1 and A2 have identified the dead body on 27.06.2009, which is also inconsistent to the evidence of P.W.13-Investigating



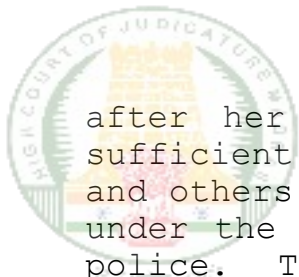
Officer. The evidence of P.W.6 indicates that on 25.06.2009 itself, both A1 and A2 were arrested and they were enquired by the police in the police station and according to him, the dead body was recovered on 25.06.2009 itself. P.W.7-VAO, in his evidence, has stated that in his presence A1 gave a confession and pursuant to the same the dead body was exhumed. His evidence is totally contradictory to the other evidence.

12. From the above discussion, it is clear that after 20.06.2009, as the villagers entertained doubts, the accused were handed over to the police. It is the evidence of the witnesses that some other dead body was also found. P.W.1 in his evidence, has stated that 24.06.2009 itself he has heard a news that a dead body was found near the place where the alleged recovery was made. Therefore, when the accused were already in the police station, even prior to the alleged date of arrest and A2 had also been remanded to the custody on 25.06.2009, the evidence of Investigating Officer that pursuant to the confession A2, the body of the deceased was exhumed is highly improbable. Further, the evidence of P.W.2, P.W.3 and P.W.4 clearly indicate that A1 was handed over to the police after 20.06.2009 and therefore, the alleged arrest of A1 on 27.09.2009 is also highly doubtful. Similarly, with regard to the motive aspect, as alleged by the prosecution, absolutely there is no evidence available on record. The deceased's daughter is aged about 16 years and she has also not been examined. All these facts as discussed above create a serious doubt about the circumstances relied upon by the prosecution. Though P.W.6 has stated that on 15.06.2009 he saw A2 and the deceased and they were travelling in a bus towards river bank. This one circumstances itself is not sufficient to conclusively establish the guilt of the accused. Circumstances relied upon by the prosecution in this case do not convincingly establish the guilt. The link has not been completed and the circumstances so relied upon by the prosecution suffer from lot of infirmities and inherent doubts attached with each of the circumstances.

13. In ***Ganpat Singh Vs. State of Madhya Pradesh*** reported in ***(2018) 2 Supreme Court Cases (Cri) 159***, the Hon'ble Supreme Court held as follows:

"...That circumstances taken cumulatively, should form a chain so complete, that there is no escape from the conclusion, that within all human probability, the crime was committed by accused and they should be incapable of explanation on any hypothesis other than that of guilt of accused and inconsistent with his innocence...."

14. In such view of the matter, it is difficult for us to sustain the conviction for the charges imposed by the trial Court. Therefore, mere fact that A1 has not made any complaint immediately



after her husband was missing, the above conduct itself is not sufficient to show that she is the culprit. The statement of P.W.2 and others clearly indicate that from 20.06.2009 itself she was also under the control of the villagers and she was produced before the police. Therefore, merely because she has not lodged any complaint with the police, guilt, on her part, cannot be presumed. May be such conduct is against the normal human conduct, but such conduct by itself may not be sufficient to prove all the links in the chain of the circumstances relied upon by the prosecution. Therefore, we find that the judgment of the trial Court deserves to be interfered and the same is set aside.

15. In the result, the Criminal Appeal stands allowed and the conviction and sentence imposed on the appellants/A1 and A2, by Judgment dated 14.08.2018, made in S.C.No.74 of 2014, on the file of the III Additional District & Sessions Judge, Pattukottai, Thanjavur District, are set aside and the appellants/A1 and A2 are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond, if any, executed by them and the sureties shall stand terminated.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal District & Sessions Judge,
The Principal District and Sessions Court,
Tanjavur.
- 2.The III Additional District and Sessions Judge,
Pattukottai, Thanjavur.
- 3.The Judicial Magistrate, Pattukottai.



4. Do Through The Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.
5. The Superintendent, Central Prison, Trichy.
6. The Superintendent, Special Prison for Women, Trichy.
7. The Inspector of Police,
Pattukkottai Police Station,
Thanjavur District.
8. 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)

+1 CC to M/s.K.PRABHU, Advocate (SR-10447[F] dated 07/03/2022)

Judgment in
Crl.A. (MD) No.82 of 2019
07.03.2022

kg(CO)

TR(30.03.2022) 9P 12C