



Crl.A(MD)No.496 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 14.12.2022

Pronounced on : 21.12.2022

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.A.(MD).No.496 of 2019

M.Velchami

....Appellant/ Accused No.1

vs.

State through
The Inspector of Police,
Achanpudhur Police Station,
Tirunelveli District.
(In Crime No.64 of 2009).

....Respondent / Complainant

Prayer : Criminal Appeal filed under Sections 374 of Criminal Procedure Code to call for the entire records connected with the Judgment dated 18.02.2015 in S.C.No.38 of 2013 on the file of the Hon'ble III Additional Sessions Court, Thirunelveli and set aside the conviction and sentence imposed against the Appellant and acquit the appellant from all charges.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



CrI.A(MD)No.496 of 2019

WEB COPY

JUDGMENT

SUNDER MOHAN, J.

The appellant has challenged the judgment of the III Additional Sessions Court, Tirunelveli in S.C.No.38 of 2013, convicting him for the offence under Section 302 and 201 IPC and sentencing him to life imprisonment. The appellant was tried along with five others. The accused Nos.2 to 6 were acquitted by the Trial Court. The Prosecution has not preferred any appeal challenging their acquittal.

2. The case of the prosecution is that on 12.03.2009, P.W.1, Village Assistant, found a dead body of a woman near the Hanuman river bridge. P.W.1 gave a complaint to the respondent and an FIR in Crime No.64 of 2009 on the file of the respondent Police was registered for the offence under Section 302 and 201 IPC. The case of the prosecution is that the deceased is the second wife of the appellant. They were both working as coolie workers in Kerala. Difference of opinion arose between them, since the appellant suspected the character of the deceased. The appellant decided to do away with the deceased and for the purpose of executing his



CrI.A(MD)No.496 of 2019

plan, the appellant brought the deceased to his native village at Panpozhi.

He took the deceased to the bus stand on 09.03.2009 at 11.00 PM and while nearing an agricultural field, he pushed the deceased and caused her death by cutting her neck with aruval and setting her on fire. On 11.03.2009, the fifth accused found the body of the deceased in his field and he took the help of A2 to A4 and A6 to dispose the body by throwing it in a river nearby. A2 surrendered before the Village Administrative Officer, P.W.5 and gave a confession. Meanwhile, on 12.03.2009, postmortem was conducted. A2 and A5 were arrested on 25.03.2009 at about 7.30 PM. Thereafter, on 15.03.2010, the appellant, who was away in Kerala, returned to his native village. On 18.03.2010, he gave a confession to the Village Administrative Officer, P.W.7. The Village Administrative Officer, P.W.7 produced the appellant before the respondent Police. M.O.1 Aruval was recovered on the basis of confession made to the Police officer. The admissible portion was marked as Ex.P16. On 19.03.2010, the Investigating Officer requested the learned Chief Judicial Magistrate for recording the judicial confession of the appellant. The appellant was produced before the learned Judicial Magistrate, Sankarankovil on 25.03.2010. Thereafter, the appellant was directed to be produced on 26.03.2010 to give him time for



Crl.A(MD)No.496 of 2019

reflection. On 26.03.2010, the appellant gave a confession before the learned Judicial Magistrate, marked as Ex.P18. The investigation was thereafter conducted and a final report was filed and the case was committed to the III Additional Sessions Court, Tirunelveli. The appellant was charged for the offence under Section 302 IPC and for the offence under Section 302 read with 201 IPC along with the other accused.

3. Before the Trial Court, the prosecution examined 22 witnesses and marked Exhibits P1 to P40 and material objects M.O.1 to M.O.33. P.W.1 is the Village Assistant, who first saw the dead body of the deceased. P.W.2 is the neighbour of the deceased, who turned hostile. P.W.3 is another neighbour, who was examined to establish that the appellant was last seen with the deceased. He also turned hostile. P.W.4 is the first wife of the appellant, who turned hostile. P.W.5 is the Village Administrative Officer, who recorded the confession of the second accused and he turned hostile. P.W.6 is the Village Assistant, who turned hostile. P.W.7 recorded the extra judicial confession of the appellant and was a witness to the recovery of M.O.1 and M.O.2. P.W.8 is the Judicial Magistrate, Sankarankovil, who recorded the confession of the appellant. P.W.9 is the postmortem Doctor.



CrI.A(MD)No.496 of 2019

P.W.10 and 11 are the Deputy Directors in the forensic laboratory. P.W.12 is the Head Constable, who handed over the express FIR to the Judicial Magistrate, Senkottai. P.W.13 and 14 are Constables, who had aided the investigation. P.W.15 is the witness examined to establish the appellant's marriage with the deceased. He turned hostile. P.W.16 is the Head Clerk. P.W.17 is the Village Administrative Officer, who gave the complaint on the information given by his Assistant, P.W.1 and which led to the registration of FIR. P.W.18 is the employer of the appellant, who turned hostile. P.W.19 is the photographer. P.W.20 to P.W.22 are the Sub Inspector and Inspectors, who registered the FIR and conducted investigation.

4. The Trial Court found that the witnesses, who were examined to establish motive, circumstance of last seen, had turned hostile. The only available material to connect the appellant with the crime was his extra judicial confession marked as Ex.P14 and judicial confession Ex.P18. The Trial Court found that the fact of giving extra judicial confession appeared to be artificial and disbelieved the said confession. The Trial Court however believed the judicial confession and convicted the appellant. The



Crl.A(MD)No.496 of 2019

Trial Court also found that the appellant and the other accused had no connection whatsoever. The Accused Nos.2 to 6 had not disposed the body with intent to screen the offence and hence acquitted them.

5. Mr.R.Alagumani, learned counsel for the appellant submitted that the conviction based on the judicial confession in the absence of any material corroborating the confession is erroneous and liable to be set aside. The attempt made by the prosecution to establish the circumstances against the accused ended in vain in view of the witnesses turning hostile to the prosecution case. The Trial Court having rightly disbelieved the extra judicial confession given by the appellant to P.W.7, ought to have rejected the judicial confession as well. The learned Judicial Magistrate who recorded the judicial confession had not followed the safeguards and guidelines to ensure the voluntariness of the confession. The appellant was not questioned as to why he chose to give a confession before the Judicial Magistrate. Further, there was no necessity for the appellant to give the second confession when he had allegedly made a confession to the Village Administrative Officer earlier. That apart, the Investigating Officer in his letter addressed to the learned Chief Judicial Magistrate, Tirunelveli,



Crl.A(MD)No.496 of 2019

requesting him for recording the confession of the appellant had not stated that the appellant wanted to give a confession. On the other hand, he had stated that recording of confession would be in the interest of the case. For the above reasons, the learned counsel submitted that the judgment of conviction has to be set aside. He relied upon the following judgments of the Hon'ble Supreme Court, Calcutta High Court and this Court:

- (I) Bhagwan Singh and others Vs. State of M.P. [2003 SCC (Cri) 712]
- (II) Rabindra Kumar Pal @ Dara Singh Vs. Republic of India [(2011) 1 SCC (Cri) 706]
- (III) Smt.Jyotsna Mal Vs. The State of West Bengal [1996 SCC OnLine Cal 384]
- (IV) Chandran and others Vs. State rep. by the Inspector of Police [2007 (2) MLJ (Crl) 168]
- (V) Shivappa Vs. State of Karnataka [1995 (2) SCC 76]

6. Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent submitted that a conviction can be solely based on the judicial confession of the accused. The Trial Court did not commit any error in believing the judicial confession of the appellant. The learned



CrI.A(MD)No.496 of 2019

Judicial Magistrate, P.W.8 had followed all the procedures and ensured the voluntariness of the confession. He submitted that the Hon'ble Supreme Court in the case of ***Rabindra Kumar Pal @ Dara Singh Vs. Republic of India*** reported in ***(2011) 2 SCC 490***, held that a conviction can be based on the judicial confession found to be true and voluntary.

7. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

8. We find that in the instant case, none of the circumstances sought to be established by the prosecution has been proved. The prosecution had not established the relationship of the deceased with the appellant, the alleged motive of the appellant and the circumstance of last seen together. The entire case rests on the extra judicial confession and the judicial confession made by the appellant. It is well settled that an extra judicial confession is a weak piece of evidence. In any event, one confession cannot corroborate another confession. Further, we find that the alleged extra judicial confession was given nearly one year after the occurrence and we do not see as to how the appellant could have approached the Village Administrative Officer to give his extra judicial confession after one year.



CrI.A(MD)No.496 of 2019

The Trial Court therefore rightly disbelieved the extra judicial confession.

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9. As regards the judicial confession, we may note that the Investigating Officer made a request in letter, marked as Ex.P17, to the learned Chief Judicial Magistrate, Tirunelveli for recording the confession of the appellant. In this request, the Investigating Officer has not stated that the accused intended to give a confession and has stated that a confession recorded under 164 CrPC would help the prosecution. We may also note that the Investigating Officer had stated in cross-examination that the accused had not made any written request to him to give confession. We also note that when he made the request on 19.03.2010 to the Chief Judicial Magistrate, the accused was in the custody of the Police.

10. Be that as it may. We find that the learned Chief Judicial Magistrate had put certain questions, which, according to him was to ensure voluntariness of the confession. The Hon'ble Supreme Court and this Court time and again reiterated that the questioning must not only comply with the guidelines in form but also in substance. While holding so, the Hon'ble Supreme Court in the case of ***Rabindra Kumar Pal @ Dara Singh v.***



Crl.A(MD)No.496 of 2019

Republic of India, reported in **(2011) 2 SCC 490**, held that the accused who wants to make a confession statement must be asked as to why he wants to make a statement. The Hon'ble Apex Court had considered various earlier judgments of the Apex Court and laid down the following principles:

"64. The following principles emerge with regard to Section 164 CrPC:

- (i) The provisions of Section 164 CrPC must be complied with not only in form, but in essence.*
- (ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.*
- (iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.*
- (iv) The maker should be granted sufficient time for reflection.*
- (v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.*
- (vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.*



CrI.A(MD)No.496 of 2019

(vii) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement.”

We find that the Principle No.(iii) namely that a Magistrate should ask the accused as to why he wants to make a confession has not been complied with in the instant case. That apart, the questioning of the learned Magistrate must be in the nature of a searching enquiry as to the custody from which the accused was produced and whether there was scope for any sort of extraneous influence. In this case, we find that apart from the fact



Crl.A(MD)No.496 of 2019

that there was no necessity for the appellant for giving another confession when he had allegedly given an extra judicial confession to the Village Administrative Officer earlier, the learned Magistrate had failed to question the accused on this aspect, it is doubtful whether the appellant made this confession voluntarily. Further, since the other circumstances have not been established by the prosecution, there is no means to verify the veracity of this confession as well. It is well settled that in order to accept the confession, it has to be both true and voluntary. As stated earlier, the other circumstances such as motive, last seen together have not been established by the prosecution.

11. Further, we find that the identity of the deceased has also not been established conclusively. P.W.21, the Investigating Officer has admitted that the face of the deceased was burnt. Attempts made to establish identity through DNA comparison also failed. The identity of the deceased also is in doubt.

12. Therefore, we are of the view that the conviction in the facts and circumstances of this case cannot be based only on the judicial confession



CrI.A(MD)No.496 of 2019

made by the appellant. Hence, the judgment of conviction is liable to be set aside.

13. For the above reasons, we set aside the judgment of conviction and sentence passed by the III Additional Sessions Court, Thirunelveli in S.C.No.38 of 2013. The accused is set at liberty. Bail bonds, if any shall stand cancelled. Accordingly, the Criminal Appeal is allowed. There shall be no order as to costs.

[G.J.,J.] [S.M.,J]
21.12.2022

Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional District and Sessions Judge,
III Additional District and Sessions Court,
Tirunelveli.
- 2.The Inspector of Police,
Achanpudhur Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A(MD)No.496 of 2019

Dr.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

Lm

Judgment made in
Crl.A.(MD).No.496 of 2019

21.12.2022