



Crl.A.(MD)Nos.503 of 2019 and 52 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.A.(MD)Nos.503 of 2019 and 52 of 2020

A.Jeyakumar

... Appellant / Accused No.1

in Crl.A.(MD)No.503 of 2019

P.Ganesan

.. Appellant /Accuse No.2

in Crl.A.(MD)No.52 of 2020

Vs.

The State Represented by
The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi District.
(Crime No.189 of 2014)

... Respondent/Complainant
in both cases

Common Prayer: Criminal Appeals filed under Section 374 of Criminal
Procedure Code, 1973, against the judgment and order dated 20.08.2019



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in S.C.No.460 of 2015 on the file of the learned Sessions Judge, Mahalir
Neethimandram, Fast Track Mahila Court, Thoothukudi District.

For Appellant : Ms.A.Victoria
for Mr.I.Pinaygash
(in both cases)

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
(in both cases)

JUDGMENT

J.NISHA BANU, J.
and
N.ANAND VENKATESH, J.

These Criminal appeals have been filed by A1 and A2 against the judgment and order of the learned Sessions Judge, Mahalir Neethimandram, Fastrack Mahila Court, Thoothukudi, made in S.C.No. 460 of 2015, dated 20.08.2019, convicting and sentencing the appellants in the following manner:

Sl. No	Rank	Conviction for offence under	Sentence/Punishment
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1.	A1	Section 302 IPC	Life Imprisonment and a fine of Rs.5000/-, in default, to undergo 6 months Simple Imprisonment.
2.	A2	Section 342 IPC	1 year Rigorous Imprisonment and a fine of Rs.1000/-, in default, to undergo 3 months Simple Imprisonment.
	A2	Section 302 IPC	Life Imprisonment and a fine of Rs.5000/-, in default, to undergo 6 months Simple Imprisonment.

2. The case of the prosecution is that the deceased and A1 had an affair and the deceased had separated from her husband and was living with her daughter (P.W-2). A2 is the friend of A1. A1 developed suspicion against the deceased and used to fight with her. Hence, the deceased informed A1 not to come to her house and a complaint was also given by her to P.W-14 based on which, a CSR receipt was given, which was marked as Ex.P9.



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3. The further case of the prosecution is that this resulted in a strong motive for A1 and he, along with A2, is said to have attacked the deceased on 29.04.2014 at about 6.00 a.m. with aruval(M.O.2 and M.O.3).

4. The dead body was found in a lake and the news came to P.W-1, who was the VAO, on 29.04.2014 at about 06.30 a.m. The news was immediately conveyed to the police and a complaint(Ex.P1) was given by P.W-1. The body was identified to be that of the deceased Subbammal.

5. An FIR (Ex.P14) came to be registered by P.W-18 on 29.4.2014 at 9.30 a.m. The investigation was taken up by P.W-20 and on completion of the investigation, a final report was laid before the Judicial Magistrate No.1, Thoothukudi. The case was committed and thereafter made over to the Court below. The Court below framed the charges against A1 for offence under Section 302 IPC and as against A2 for



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offence under Sections 342 and 302 IPC. The prosecution examined P.W-1 to P.W-20 and marked Ex.P1 to Ex.P19 and identified and marked M.O.1 to M.O.9. The incriminating materials collected during the course of trial was put to the accused persons while questioning them under Section 313(1)(b) of Cr.P.C and they denied the same as false.

6. The Court below, on considering the facts and circumstances of the case and after appreciating the evidence available on record, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and consequently, convicted and sentenced the accused persons in the manner stated supra. Aggrieved by the same, two separate appeals have been filed by A1 and A2.

7. Heard Mrs.A.Victoria for Mr.I.Pinaygash, learned counsel for the appellants and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State.

8. In the present case, the prosecution is relying upon circumstantial evidence to establish the guilt of the accused. The



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circumstances that were relied upon by the prosecution are:

- (i) The deceased died due to homicide and the same was established by the evidence of the doctor examined as P.W-15 through whom the postmortem report was marked as Ex.P11.
- (ii) Motive to the crime spoken by P.W-2 and P.W-14 through whom the earlier CSR was marked as Ex.P9.
- (iii) The extra judicial confession given by A2 to P.W-12 and the recovery of M.O.1 and M.O.2 under Ex.P2 to Ex.P5.
- (iv) Confession and recovery from A1 spoken by P.W-13 with respect to recovery of M.O.3 under Ex.P7 and Ex.P8.
- (v) Last seen theory spoken by P.W-7 to P.W-11 and
- (vi) The non-explanation by the accused persons on the incriminating materials put against them.

9. The entire case of the prosecution hinges upon the so called extra judicial confession given by A2 before P.W-12. This was the basis on which A1 and A2 were roped into this case. P.W-12 is the VAO



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who, at the relevant point of time, was working at Korapallam, Phase-1, Village Administrative Office. A2, who was a resident of Perungulam, is said to have voluntarily appeared before P.W-12 at 10.00 p.m., on 30.04.2014 and confessed to the crime. The confession that was recorded was marked as Ex.P2 and the report that was submitted by P.W-12 to the police was marked as Ex.P3.

10. It is now a settled law that extra judicial confession is a very weak piece of evidence. When this confession is made to a rank third person whom the accused does not even know, the very confession becomes highly improbable and it cannot be relied upon. Useful reference can be made to the Judgment of this Court in ***K.Dhanavel v. Inspector of Police*** reported in **(2011) 1 MLJ (Crl) 609**. An extra judicial confession can be made as the basis for proceeding against the accused only if it is voluntary and true and it inspires the confidence of the Court. The principles governing the extra judicial confession has been explained in detail by the Apex Court in ***Sahadevan and Another v. State of Tamil Nadu*** reported in **(2012) 6 SCC 403**.



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11. In the instant case, A2 belongs to a different place and P.W-12 was working as VAO at a different place and A2 is not known to P.W-12 and it is very unnatural that A2 would have gone to the VAO office at 10.00 p.m. in the night and caught hold of P.W-12, much beyond the working hours and made such a confession. The so called extra judicial confession of A2 is highly improbable and it cannot be relied upon by this Court.

12. In view of the above finding, the so called arrest and recovery of M.O.1 and M.O.2 from A2 at 03.10 a.m. in the morning, also becomes completely unbelievable and it cannot be acted upon.

13. The arrest of A2 on 30.04.2014, resulted in A1 apprehending arrest and he had surrendered before the Magistrate Court and he was taken into police custody and based on his confession, M.O.3 was recovered.

14. The prosecution has not established the last seen theory since P.W-9, P.W-10 and P.W-11 did not support the case of the



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prosecution and were treated as hostile witnesses.

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15. M.O.2 to M.O.9 contained bloodstains and it is not known as to why these material objects were not sent for chemical analysis for correlation of the bloodstains with the blood group of the deceased.

16. The prosecution has relied upon the evidence of P.W-2 and P.W-14 to establish the motive behind the crime. However, the fact that there was some misunderstanding between A1 and the deceased, by itself, cannot form the basis for convicting the accused persons without the other links in the chain of circumstances being proved by the prosecution.

17. In a case involving circumstantial evidence, the prosecution must fully prove every circumstance and each circumstance must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. In the instant case, the most important circumstance, viz. the extra judicial confession is totally



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unbelievable and that completely snaps the chain of circumstances relied upon by the prosecution.

18. In view of the above discussion, this Court holds that the prosecution has not proved the case beyond reasonable doubts and the accused persons are entitled for the benefit of doubt.

19. In the result,

(i) These criminal appeals are allowed.

(ii) The judgment and order of the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi, made in S.C.No.460 of 2015, dated 20.08.2019, is hereby set aside and the appellants/accused persons are acquitted of all charges.

(iii) The bail bond executed by the appellants shall stand cancelled and fine amount, if any paid by them shall be refunded to them.

[J.N.B, J.] & [N.A.V., J.]
18.10.2022

Index : Yes/No
Internet : Yes



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To

1.The Sessions Judge,
Mahalir Neethimandram,
Fast Track Mahila Court,
Thoothukudi District.

2.The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and

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