



Crl.A.No.128 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2023  
PRONOUNCED ON : 09.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR  
AND  
THE HON'BLE MR.JUSTICE SUNDER MOHAN

**Crl.A.No.128 of 2020**

J.Eswaran .. Appellant / Accused

v.

State by the Inspector of Police,  
Puduchadram Police Station,  
Namakkal District.  
(Crl.No.690/2010) .. Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in connection with S.C.No.3 of 2016 on the file of the learned Principal Sessions Judge, Namakkal and set aside the conviction and sentence imposed in judgment dated 06.02.2020.

For Appellant : Mr.A.Padmanaban

For Respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor



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JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 06.02.2020 in S.C.No.3/2016 on the file of the learned Principal Sessions Judge, Namakkal.

2 (i) It is the case of the prosecution that PW1 is the wife of the deceased; that PW4 is the daughter of the deceased and PW1; that appellant/accused is the husband of PW4; that appellant/accused frequently used to quarrel with his wife for not bearing a male child and also for not bringing wedding gifts equivalent to that was given to the second daughter (the sister of PW4) of PW1; that on 24.10.2010 at about 8.45pm, the appellant/accused quarrelled with his wife and had beaten her; that PW4 called the deceased over phone and told that she was beaten and ill-treated by her husband/appellant; that her father (the deceased) rushed to the house of the appellant and picked up a quarrel; that the appellant took a stick and beaten the deceased and that after the deceased fell down, the accused had



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flung a stone on the deceased, resulting in the death of the deceased.

(ii) It is the further case of the prosecution that PW1 followed her husband and saw the occurrence viz., the act of the appellant beating the deceased and throwing a stone on his head after he fell down; that PW1 thereafter took the deceased to a private hospital and since no doctor was available in the said hospital, she took him to the Namakkal Government Hospital, where the deceased was declared dead; that thereafter PW1 lodged a complaint before the respondent police on 25.10.2010 at 08.00 hours. The said complaint was marked as Ex.P1.

(iii) On the basis of the said complaint, an FIR was registered by the Sub Inspector of Police attached to the respondent for the offence under Sections 302 and 506(ii) IPC in Cr.No.690 of 2010, marked as Ex.P17. The said FIR was despatched to the Magistrate on the same day.

(iv) PW11, the Inspector of Police visited the scene of occurrence and prepared observation mahazar-Ex.P18 and Rough Sketch-Ex.P19; then on the same day, PW11 seized the vehicle belonged to the deceased and his



bloodstained clothes [M.O.3 to M.O.6]. Thereafter, he seized the bloodstained mud [M.O.7] and mud without bloodstain [M.O.8] under seizure mahazar [Ex.P20]. Thereafter, he conducted inquest over the dead body of the deceased between 12.30 and 3.00pm. The inquest report was marked as Ex.P21. PW11 sent the body of the deceased for postmortem examination. PW8-Doctor, conducted postmortem and found the following external injuries and issued post-mortem certificate, [Ex.P16].

- “1. A lacerated wound in occipital area of front head 3 x 4 cm
2. A lacerated wound in right side of front side head
3. A lacerated wound in right eye brow bone
4. Right side eye contusions.”

The Doctor had opined that the deceased would appear to have died of severe head injuries about 18-24 hours prior to post-mortem. Thereafter, PW11 examined other witnesses on 25.10.2010.

(v) PW7-Village Administrative Officer went to the police station on 25.10.2010 at about 3.30pm and produced the appellant/accused and a special report stating that the accused voluntarily appeared before him at 12.30pm and gave extra-judicial confession. The extra-judicial confession was marked as Ex.P9 and the Special Report was marked Ex.P10. PW11 arrested the



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accused and the appellant is said to have given a confession and on the basis of the confession, the stick/wooden log used by the appellant for committing the offence was recovered. The admissible portion of the confession was marked as Ex.P14.

(vi) After examination of all the witnesses, since PW11 was transferred, PW12 took up the investigation and filed a final report before the learned Judicial Magistrate No.2, Namakkal, for the offences under Sections 302 and 506 (ii) IPC against the appellant/accused.

(vii) On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.3/2016 and was made over to the Principal Sessions Court, Namakkal, for trial. The trial Court framed charge u/s.302 and 506(ii) IPC as against the appellant and when questioned, the appellant pleaded 'not guilty'.

(viii) To prove the case, the prosecution examined 12 witnesses and marked 30 exhibits and 9 material objects. When the appellant was



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questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor any document marked. The arrest memo was marked as Ex.C1.

(ix) The Trial Court based on the extra judicial confession given before the Village Administrative Officer and the recoveries made pursuant to the confession given before the Police had convicted the appellant/accused under Section 302 IPC alone and sentenced him to undergo life imprisonment and pay fine of Rs.5,000/- in default to undergo Simple Imprisonment for four years. As regards the offence under Section 506(ii), the appellant/accused was acquitted by the trial Court. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.A.Padmanabhan, learned counsel for the appellant/accused and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

4. The learned counsel for the appellant submitted that all the witnesses



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viz., PW1, PW2, PW3, PW4, PW5 and PW6, turned hostile; that apart from the official witnesses, none of the witnesses supported the case of the prosecution; that motive for the occurrence has not been established through independent evidence; that the trial Court had erroneously relied upon the alleged extra-judicial confession to PW8-the Village Administrative Officer, which is not proved; that the recoveries made on the confession of the accused cannot be believed as there is suspicion with regard to the manner in which the arrest of the appellant was made; that the trial Court had erroneously relied upon the inquest report which is not substantive evidence; and that therefore, in the absence of any evidence, the judgment of conviction is unsustainable and liable to be set aside.

5. The learned Additional Public Prosecutor per contra submitted that though the witnesses have turned hostile, the other circumstances in the case established by the prosecution, coupled with extra-judicial confession given by the appellant/accused before the Village Administrative Officer, conclusively proved that the appellant is guilty of the offence alleged. He further submitted that the trial Court has elaborately discussed all the



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circumstances and therefore, there is no reason to interfere with the judgment of the trial Court.

6. On perusal of the records and on hearing the submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor, this Court finds that the prosecution has established through the evidence of PW8 (post-mortem Doctor) that the deceased sustained injuries on the head and died due to the said injuries. The Doctor had also opined that external injury Nos.2 and 3 referred to above could have been caused due to attack by M.O.1-wooden log.

7. We find that the occurrence had taken place on 24.10.2010 at about 8.45pm. The deceased was initially taken to a private hospital and thereafter to the Government Hospital at Namakkal. There is absolutely no evidence as to when the deceased was brought to the hospital and as to which Doctor first examined the deceased at the hospital. PW1, the wife of the deceased claimed to be an eyewitness and is said to have lodged the complaint Ex.P1 which was



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registered by PW10-the Special Sub Inspector of Police. The FIR was lodged on the next day i.e., on 25.10.2010 at 8.00am. There is no explanation for the said delay.

8. PW1, in her deposition before the Court would state that she came to know that her husband was injured and along with the appellant and PW4-her daughter, went to Thirumalaipatti Road at Chelliyapalayam where the deceased was found. She would also state that all the three of them viz., PW1, appellant and PW4, took the deceased to a private hospital and thereafter the deceased was taken to the Government Hospital at Namakkal and that she gave Ex.P1-complaint. However, the prosecution had not treated PW1 hostile at this stage. The appellant through his counsel cross examined PW1, wherein PW1 had stated that she did not know what was stated in the complaint; that she had affixed her left hand thumb impression on a blank paper and that she did not know the contents of Ex.P1. Thereafter, the prosecution treated her as hostile and brought to her notice her statement made before the police and PW1 denied having made such a statement. The Court had specifically put a question to PW1 as to why PW1 did not turn up



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for chief examination for a long time, after she was first examined on 23.07.2018 and the learned Judge has recorded that PW1 initially stated that she had not received any summons and thereafter, when the Court further asked as to why she did not come to Court for more than a year, she remained silent. From the above evidence, it is seen that PW1 in her deposition had not supported the prosecution case. She had disowned the complaint-Ex.P1. It is her specific version that on coming to know that the deceased was injured, the appellant and PW4 accompanied her to the place where the deceased was found injured.

9. PW2, is the brother of PW1, who said to have signed as a witness in the complaint [Ex.P1]. He was treated as hostile by the prosecution; however, he would state that Ex.P1 was recorded by the police on the information given by PW1. On all other aspects, he turned hostile to the prosecution case.

10. PW3, PW4, PW5 and PW6 also turned hostile. PW3, is the relative of the deceased; PW4, is the daughter of the deceased and wife of the appellant; PW5 and PW6 were mahazar witnesses.



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11. PW7 is the Village Administrative Officer before whom the accused is said to have given extra-judicial confession; PW8 is the post-mortem Doctor; PW9 is the constable; PW10, is the Special Sub-Inspector of Police, who had registered the FIR; and PW11 and PW12 are the investigation officers.

12. Thus, it could be seen from the above narration of facts that except for the extra-judicial confession of the accused and the recoveries made pursuant to the confession given to the police, the admissible portion of which marked as Ex.P9, there is no other evidence to link the accused with the crime. The question in this appeal is as to whether the conviction can be passed solely on the basis of the extra-judicial confession and the alleged recoveries of M.O.1.

13. This Court finds that the trial Court has relied upon certain inadmissible evidences and other evidences which are not substantive. The



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trial Court had relied upon PW2's admission in his deposition that the complaint was recorded and FIR was laid only on the information given by PW1. PW2, is not an eyewitness to the occurrence. Merely because PW2 had stated that PW1 had lodged the complaint, the contents of Ex.P1 complaint and Ex.P17-FIR cannot be the basis to arrive at a finding. It is trite that FIR is not substantive piece of evidence. That apart, PW1 herself has disowned the said complaint.

14. As regards the extra-judicial confession, PW7 admits that he is not the Village Administrative Officer, within whose jurisdiction, the place of occurrence is situated or the accused resides. PW7 is a stranger to the appellant. There is nothing in the evidence to show as to why the appellant chose PW7 to give the alleged extra-judicial confession. That apart, it is seen from the evidence of PW7 that after the accused surrendered before him and had given an extra-judicial confession, he produced the accused before the investigation officer-PW11. However, Ex.C1 the Arrest Memo shows that the accused was arrested in front of Puduchathiram Police Station on 25.10.2010 at 15.30 hours. There is no reference to the production of the



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accused by the Village Administrative Officer before the Investigation Officer in the Arrest Memo [Ex.C1]. Be that as it may, it is trite law that the extra-judicial confession can be the sole basis for conviction, provided it is trustworthy. However, this Court finds in the instant case that the extra-judicial confession does not inspire confidence.

15. The Hon'ble Apex Court in ***Sahadevan and another Vs. State of Tamil Nadu***, reported in **(2012) 6 SCC 403** had summarised the principles of appreciating a extra judicial confession and this has been reiterated by the Hon'ble Supreme Court at paragraph Nos.15 and 16 of the judgment in ***Nikhil Chandra Mondal Vs. State of West Bengal*** reported in **2023 Live Law (SC) 171**, which is extracted hereunder.

"15. It is settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial



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confession, but in the very nature of things, it is a weak piece of evidence. Reliance in this respect could be placed on the judgment of this Court in the case of Sahadevan and another V.State of Tamil Nadu. This Court in the said case, after referring to various earlier judgments on the point, observed thus:

“16.Upon proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extrajudicial confession and admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

(i) The extra – judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater



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credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

16. As stated earlier, the extra-judicial confession in the instant case does not inspire confidence and cannot be said to be made voluntarily. It is highly improbable that the appellant appeared voluntarily before the Village Administrative Officer, who was a total stranger and gave confession to him. That apart, it is PW1's version in the chief examination before she was treated as hostile (during the cross examination) that she along with the appellant and her daughter (PW4) took the deceased to the hospital. The prosecution has not challenged this version of PW1 in their cross examination of the said witness, though they have treated her as hostile after she disowned Ex.P1-Complaint, except for making some suggestions. Further, the hospital



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authorities or the Doctor, who first treated the deceased, according to the prosecution have not been examined to prove the earliest version made before the Doctor. The prosecution ought not to have suppressed the earliest version given by the witnesses to the Doctor, which would have also disclosed as to who brought the deceased to the hospital. All the above circumstances throws a doubt with regard to the truthfulness of the alleged extra-judicial confession. Therefore, we are of the view that it is highly unsafe to record a finding of guilt on the basis of this confession in the light of the unchallenged evidence contrary to the version stated in the alleged confession.

17. It is also seen that in the alleged extra-judicial confession, the appellant is said to have informed PW7 that he had kept the wooden log in a place outside his residence. Since even according to the prosecution, the extra-judicial confession of the accused was within the knowledge of PW11, as the appellant was produced by the Village Administrative Officer, along with the special Report, the recovery of M.O.1, wooden log cannot be said to be a discovery of fact pursuant to the confession made by the appellant. Therefore, this Court is of the view that the recovery also is highly doubtful



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and cannot be attributed to the appellant. Further this Court finds that though blood was found in M.O.1, it could not be linked to the blood group of the deceased, as could be seen from Ex.P28, the report of the Scientific Expert.

18. Therefore, this Court is of the view that though the circumstances and the evidence let in by the prosecution leads to a grave suspicion on the appellant, it is trite that suspicion howsoever high cannot be the basis to render a finding of guilt. Therefore, we are constrained to set aside the judgment of conviction and hold that the prosecution has failed to establish their case beyond reasonable doubt.

19. For the aforesaid reasons, we are of the view that the judgment of conviction and sentence passed in S.C.No.3 of 2016, dated 06.02.2020 on the file of Principal Sessions Judge, Namakkal, is liable to be set aside.

20. In the result, this Criminal Appeal is allowed and the appellant is acquitted of the charge u/s.302 IPC. The conviction and sentence passed in S.C.No.3 of 2016 on the file of the Principal Sessions Judge, Namakkal, *vide*



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judgment dated 06.02.2020, are set aside. Fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(S.S.S.R.,J.) (S.M.,J.)  
09.11.2023

Index : yes/no

Neutral citation : yes/no

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To

1. The Principal Sessions Judge,  
Namakkal.

2. The Inspector of Police,  
Puduchadram Police Station,  
Namakkal District.

3. The Superintendent,  
Central Prison, Coimbatore.

4. The Public Prosecutor,  
High Court, Madras



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

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Pre-delivery Judgment in  
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