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Criminal Appeal No.801 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

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**THE HONOURABLE MR. JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Criminal Appeal No.801 of 2018

Palanisamy
S/o.Rangasamy Gounder

.. Appellant

Vs.

State represented by
Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
Crime No.48 of 2014

.. Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order of conviction passed in S.C.No.69 of 2015, dated 26.11.2018 on the file of Principal Sessions Judge, Namakkal.

For Appellant : Mr.C.Ramkumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

[Judgment of the Court was delivered by **SUNDER MOHAN, J**]

This criminal appeal is directed against the judgment of conviction and sentence dated 26.11.2018 passed by the Principal Sessions Judge, Namakkal, in S.C.No.69 of 2015.

2. The case of the prosecution runs as follows:

2.1. The appellant and deceased are cousin brothers; that the deceased had illegal intimacy with one Subbulakshmi, who is the wife of the appellant; that the appellant warned the deceased and asked him to desist from the relationship; that since the deceased ignored the warning of the appellant, on 21.01.2014 at about 05.30 p.m., in front of the house of the appellant's brother, the appellant attacked the deceased with a 'Kulavi Stone' which resulted in the death of the deceased.

2.2. PW-1, the father of the deceased, on coming to know that his son was lying dead in front of the house of the brother of the appellant went to



the place of occurrence and saw blood oozing out from the mouth of the deceased and the deceased was lying on his back in a pool of blood; PW-1 called his son-in-law and lodged a complaint before the police at about 07.00 p.m. on the same day, which was marked as Ex.P1. On the complaint given by PW-1, a First Information Report in Crime No.48 of 2014 on the file of Pallipalayam Police Station was registered for offence u/s.302 IPC, which was marked as Ex.P2.

2.3. It is the further case of the prosecution that the appellant at 06.00 p.m. on the same day appeared before PW-4, Village Administrative Officer and had given an extra judicial confession stating that he had caused the death of the deceased since the deceased had illicit relationship with his wife.

2.4. PW-10, Investigating Officer, took up investigation, visited the scene of occurrence and prepared observation mahazar [Ex.P16] and rough sketch [Ex.P17] and thereafter, he conducted inquest on the body of deceased in the presence of panchayatdhars and prepared inquest report



[Ex.P18]. Thereafter, PW-10 sent the body of the deceased for postmortem through Head Constable Murugesan to Pallipalayam Government Hospital.

PW-6, the Medical Officer attached to Pallipalayam Government Hospital conducted postmortem and found the following injuries:

"External Findings:

1. Lacerated injury 3x1 cm Right forehead.
2. Lacerated injury 2x1 Left Occipital region of the skull.
3. Abrasion - Centre of the upper lip - 2x1 cm.
4. Two Front Upper row teeth - Broken.
5. Fresh bleeding seen on left ear and nose.

Internal Findings:

Skull: 100kl of the fresh blood present in the cranial cavity. Fracture present on the right parital region of the skull. Base of the skull fractured. Brain torn and multiple blood clots seen on right side of the brain.

Thorax:

No fracture or blood or fluid present in the thorax cavity. Hyoid intact. Rib cage intact. Lungs appears congested & normal. Heart congested & chambers filled with blood. Abdomen: No fracture or blood or fluid present in the abdominal cavity. All the viscera appears normal & preserved for chemical examination along with blood. Both kidneys present and bladder empty. Stomach contains 200ml of partially digested food particles. The deceased appeared to have died 18-20 hrs prior to autopsy and concluded by 01.20 p.m. on 22.01.2014. Viscera examined but poison was not detected in any of them.

Final Opinion:

The deceased would appear to have died of shock and haemorrhage due to head trauma sustained."



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2.5. After examining the witnesses and collecting various reports of experts, the Investigating Officer [PW-10] completed the investigation and filed a final report before the Metropolitan Magistrate, Tiruchengode, for offence u/s.302 IPC against the appellant.

2.6. 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.69/2015 and was made over to the Principal Sessions Court, Namakkal, for trial. The trial Court framed a charge u/s.302 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

2.7. To prove the case, the prosecution examined 11 witnesses and marked 26 exhibits and 6 material objects. When the appellant was 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.

2.8. After considering the evidence on record and hearing either side,



the trial Court found that the prosecution had established the circumstances put forth by them to prove the guilt of the accused and found the accused guilty of offence of murder and by judgment and order dated 26.11.2018 in S.C.No.69 of 2015, convicted the appellant for offence u/s.302 IPC and sentenced him as follows :

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 302 IPC	Life imprisonment and fine of Rs.10,000/-, in default, to undergo four years simple imprisonment.

Challenging the conviction and sentence, the appellant has filed the present appeal.

3. Heard Mr.C.Ramkumar, learned counsel for the appellant and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent State.

4. The prosecution has established through the evidence of PW-6, the postmortem doctor and other evidence that the death of the deceased was due to homicidal violence. The appellant has not disputed the said fact.

5. The next question is whether the appellant is guilty of the offence of



murder. It is seen from the records that the prosecution relied upon the following circumstances to prove the guilt of the accused:

- (a) motive;
- (b) recovery of 'kulavi stone' [Grinding Stone] at the instance of the appellant by the investigating officer [PW-10];
- (c) the circumstances that the appellant was last seen with the deceased as spoken to by PW-2 and PW-3 during investigation.
- (d) the extra judicial confession given by the appellant to PW-4, Village Administrative Officer.

6. As regards motive, it is seen that PW-1, father of the deceased and PW-5, wife of the deceased had spoken about the illicit intimacy that the deceased had with the said Subbulakshmi, wife of the appellant.

7. The next circumstance relied upon by the prosecution is that the deceased was last seen with the appellant and they both had a wordy quarrel sometime prior to the alleged occurrence. PW-2 and PW-3 are said to have witnessed the said incident, according to the prosecution. However, both of them turned hostile and nothing has been elicited in the cross-examination to accept their evidence. Therefore, the prosecution has not established the fact



that there was a wordy quarrel between the appellant and the deceased prior to the occurrence.

8. The other circumstance relied upon by the prosecution is that recovery of bloodstained grinding stone (MO-3) on the confession of the accused, the admissible portion of which was marked as Ex.P9. The circumstances in the case reveal that it is highly doubtful that the recovery of the grinding stone was pursuant to a discovery on the basis of the alleged confession of the appellant. It is the case of the prosecution that the investigating officer PW10 and the Village Administrative Officer [PW-4] had visited the scene of occurrence in the morning on 22.01.2014 and prepared the observation mahazar. It is also the case of the prosecution that the grinding stone was found in an open place near the house of one Duraisamy (brother of the accused), where the occurrence is said to have taken place. Therefore, the prosecution case that they recovered the grinding stone (MO-3) only on the basis of the confession of the accused is improbable and unbelievable. Further, it is seen that the grinding stone though had bloodstains according to the prosecution, however, it could not



be linked to that of the deceased as per the reports of the Forensic Science

Laboratory viz., Ex.P25 and Ex.P26.

9. The last circumstance relied upon by the prosecution is the extra judicial confession given to PW-4, Village Administrative Officer at 06.00 p.m. on 22.01.2014. As rightly contended by learned counsel for appellant PW-4 had participated in the investigation even prior to the said alleged extra judicial confession given by the appellant. It is seen from the evidence of PW-4, Village Administrative Officer, that he participated and assisted the investigating officer in the investigation of the case and was accompanying the investigating officer from 6.00am and witnessed the observation mahazar and other seizures made by the investigating officer on 22.01.2014. That apart, it is seen that there is no reason why the appellant had to give confession to the Village Administrative Officer, who was a total stranger, to him. In the above said circumstances, it cannot be said that the alleged extra judicial confession of the appellant before PW-4, the Village Administrative Officer was voluntary.

10. That apart, it is seen from the alleged confession statement viz.,



Ex.P6 that the motive for the occurrence as spoken by the appellant is that deceased refused to repay the loan given by the appellant, although the appellant had stated about the illicit intimacy of his wife with the deceased. However, it is the prosecution case that the occurrence took place only because the appellant had a grudge due to the illicit intimacy which is contrary to the alleged extra judicial confession said to have been recorded by Village Administrative Officer [PW-4]. It is trite law that confession must be both voluntary and truthful. In the instant case, the extra judicial confession which is generally a weak piece of evidence cannot be said to be voluntary and truthful. It certainly does not inspire confidence. Hence it cannot be the basis for convicting the appellant.

11. 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.

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"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 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 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."

12. Therefore, it can be seen from the above principles laid down by the Hon'ble Supreme Court that an extra judicial confession can be the basis for conviction. However, it should not suffer from any material discrepancies or inherent improbabilities and it should inspire confidence besides being voluntary and truthful. On facts, as stated earlier, we find that there are material discrepancies and the extra judicial confession has not been made voluntarily and its truthfulness is also doubtful. Therefore, in the above said circumstances, this Court is of the view that the circumstances relied upon by the prosecution have not been conclusively established and in any case, they do not form a complete chain so as to rule out any other hypothesis, except pointing out to the guilt of the appellant.

13. For the aforesaid reasons, we are of the view that the judgment of conviction and sentence passed in S.C.No.69 of 2015, dated 26.11.2018 on



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the file of Principal Sessions Judge, Namakkal, is liable to be set aside.

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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.69 of 2015 on the file of the Principal Sessions Judge, Namakkal, *vide* judgment and order dated 26.11.2018, are set aside. Fine amount, if any, paid by the appellant shall be refunded. Bail bond executed shall stand discharged.

[S.S.S.R., J] [S.M., J]
13.10.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
gm/ars
To
1.The Principal Sessions Court, Namakkal.

2.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
Crime No.48 of 2014

3.The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J

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