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Crl.A.Nos.1106 and 1160 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.1106 and 1160 of 2022

and

Crl.M.P.Nos.17957 and 16706 of 2023

Crl.A.No.1106 of 2022

Naveen Kumar

... Appellant/Accused No.5

VS.

State by the Inspector of Police,
Thally Police Station,
Krishnagiri District.
(Crime No.240/2016)

... Respondent / Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the S.C.No.105/2018 on the file of the Learned Additional District and Sessions Judge, Hosur, Krishnagiri District and set aside the judgment dated 22.08.2022.



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For Appellant

: Mr.V.Parthiban
for
Mr.E.Kannadasan

For Respondent

: Mr.M.Babu Muthumeeran
Additional Public Prosecutor

CrI.A.No.1160 of 2022

1.Suresh
2.Venkatalakshmi
3.Gopal
4.Shanthi

...Appellants/Accused 1 to 4

VS.

State Rep. by
The Inspector of Police,
Thally Police Station,
Krishnagiri District.
(Crime No. 240 of 2016)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records pertaining to the Judgment passed in S.C.No.105 of 2018 dated 22.08.2022 by the Learned Additional District and Sessions Judge, Hosur, set aside the same.

For Appellants

: Mr.K.Selvakumaraswami
for
Mr.A.Balamurugan

For Respondent

: Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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COMMON JUDGMENT

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

These appeals have been filed by accused/A1 to A5 challenging the conviction and sentence imposed upon them vide judgment dated 22.08.2022 in S.C.No.105 of 2018 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3(i). It is the case of the prosecution that A2/Venkatalakshmi was in a live in relationship with A1/Suresh; that A3/Gopal is the younger brother of A1, A4/Shanthi is the wife of A3 and A5/Naveen Kumar is the distant relative of A1 to A4; that the deceased are the children of A2 through her first husband one Srinivasan (not examined); that A2's father/P.W.14, refused to give a share in the property to A2 and told A2 that he would give the share of the property only to his grand-children, who are the deceased



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Muthappa and Manjula; that in order to get the property of P.W.14, A2 along with the other accused conspired to do away with both the deceased and for that purpose went to the children's home where the deceased were staying on 06.10.2016, and took them on the pretext of admitting them in some other home; and that all the accused caused the death of the deceased.

(ii). It is the further case of the prosecution that A4 caught hold of the deceased Manjula, A3 beat the deceased with a rod on her head, A2 gagged the mouth of the deceased Manjula, and A1 threw a stone on the deceased Manjula; that A1 strangled the neck of the deceased Muthappa and thereafter threw a stone on his head and took both the deceased in the TATA Sumo car driven by A5 and threw the dead body of the deceased Manjula in Mathoppu situated in Periamenagaram, and threw the dead body of the deceased Muthappa in Pallapalli village.

(iii). It is the further case of the prosecution that on 07.10.2016, P.W.3 found the body of a boy in his land and informed the Village Assistant/P.W.2, who in turn informed P.W.1/the



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Village Administrative Officer; that P.W.1 gave a complaint to P.W.20/the Sub Inspector of Police attached to the Thalli Police Station and an FIR in Cr.No.240/2016 was registered under Section 174 of Cr.P.C (Ex.P18). On the same day, the dead body of a female was found by P.W.8/the Village Administrative Officer of Komananahalli village; P.W.8 gave a complaint to P.W.13/the Sub Inspector of Police attached to Mathigiri Police Station, who in turn registered the FIR in Crime No.442 of 2016 under Section 174 of Cr.P.C [Ex.P12]. The investigation was conducted by the Inspector of Police [P.W.23] on receipt of the FIR in Ex.P.12. P.W.24 conducted the investigation in respect of the FIR, which was registered as Ex.P18.

(iv) The Inspector of Police made arrangements to conduct the post-mortem of the deceased/unidentified male, and P.W.17/Post-mortem doctor conducted a post-mortem on the boy and found the following three external injuries:

External Injuries:

- (1) B/L Ear bleed (clotted).
- (2) Loss of Lower Incisor teeth with fracture. Right lower mandible region.
- (3) Contusion right forehead of 6 X 3 cms with multiples, crush



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communated fracture near frontal, parietal, occipital bones and got depressed to one side with fracture Nasal bone.

The Doctor opined that the deceased could have died due to the injuries sustained by him.

(v). P.W.22/Doctor conducted a post-mortem on an unknown female body and found the following external injuries on the deceased.

External Injuries:

- 1.Laceration – 6 x 4 x 3 cm forehead with maggots.*
- 2. Laceration 6 x 2 x 1 cm over nose.*
- 3.Loosening of all teeth both upper and lower jaw with aversion of both gingivae.*
- 4.A Mandible.*
- 5. A frontal bone.*
- 6. Both eyes crushed.*
- 7. Contusion present @ right side of neck.*

and opined that the “death could have occurred due to facial and head injury following poly trauma.”

(vi). P.W.23 and P.W.24 conducted inquest in the presence of Panchayatadars and prepared the inquest report. Ex.P21 in respect of the female deceased and Ex.P25 in respect of the male deceased respectively.



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(vii). It is the further case of the prosecution that A5 appeared before the Village Administrative Officer/P.W.6 on 28.10.2016, and voluntarily gave an extra judicial confession (Ex.P4); that on the basis of the extra judicial confession, P.W.6 produced the accused/A5 along with the Special Report/Ex.P5, to the Inspector of Police, Mathigiri Police Station; that thereafter, the offence in the FIR was altered to Section 302 of the Indian Penal Code; and that the investigation conducted by P.W.23 was also transferred to the Inspector of Police [P.W.24] Thalli Police Station.

(viii) On 28.11.2016, P.W.24 [Investigating Officer] examined P.W.18, the person in charge of the home in which the two deceased were admitted, and after the examination of all other witnesses, P.W.24 filed a Final Report against the accused for the offences under Sections 302 r/w 149, 201 r/w 302, and 364 of the IPC.

(ix) On the appearance of the appellants, 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.105 of 2018 and was made over to the learned



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Additional District and Sessions Judge Hosur, Krishnagiri District, for trial.

The trial Court framed seven charges against the accused/appellants for the offences under Sections 364, 302, 302 r/w 149 (2 counts), 201 (2 counts) of the IPC, and when questioned, the appellant pleaded 'not guilty.

(x) To prove the case, the prosecution examined 24 witnesses as P.W.1 to P.W.24, and marked 31 exhibits as Exs.P1 to P31, and marked 8 Material Objects as M.O.1 to M.O.8. When the appellants were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The appellants/accused neither examined any witnesses nor marked any documents.

(xi) The trial Court, acquitted the accused/A1 to A5, for the offences u/s 364 of the IPC and convicted them for the offences u/s. 302 r/w 34 IPC, and u/s. 201 r/w. 302 IPC, and sentenced to life imprisonment and to pay a fine of Rs.2,000/- each, in default to undergo 6 months simple imprisonment, for the offence u/s. 302 r/w. 34 IPC, and to rigorous imprisonment for 3 years and to pay a fine of Rs.2,000/- each in default to



undergo 6 months simple imprisonment, for the offence u/s. 201 r/w. 302 IPC. Hence, the accused/appellants have preferred the appeal challenging the said conviction and sentence.

4(i). Mr.K.Selvakumaraswami and Mr.V.Parthiban, the learned counsels for the appellants, submitted that the prosecution has not established the circumstances to prove the guilt of the accused; that the prosecution has not established the identity of the deceased and the motive for the occurrence.

(ii) The learned counsels also pointed out that the only piece of evidence relied upon by the prosecution is an extra judicial confession of A5, which does not inspire confidence and is uncorroborated; and that in any case, an extra judicial confession, being a weak piece of evidence, cannot be the basis for holding that the appellants are guilty of the offence.

(iii) The learned counsels pointed out that P.W.14 and P.W.15, who are the grandparents of the deceased, did not support the prosecution case



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with regard to the motive; that the evidence of P.W.18 and P.W.19 also cannot be believed, and therefore prayed for the acquittal.

5. Mr.M.Babu Muthumeeran, the learned Additional Public Prosecutor, per contra, submitted that P.W.18 had no axe to grind and there is no reason to disbelieve her evidence; that her evidence corroborates the extra judicial confession given by A5; that the conviction can be based on the extra judicial confession if it inspires confidence; and from the facts, it is revealed that P.W.6, who recorded the confession, is a reliable witness and the confession given by A5 is truthful and voluntary.

6. We have carefully considered the rival submissions and perused the evidence on record.

7. Admittedly, a male unidentified body was found in a land belonging to P.W.3 and on his information to P.W.2, P.W.1/Village Administrative Officer lodged the FIR in Cr.No.240 of 2016/(Ex.P18). Likewise, an unidentified female body was found by P.W.8/Village



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Administrative Officer, and on his complaint, Ex.P.12/FIR in Cr.No.442 of 2016, was registered by P.W.13. Both of these cases were investigated separately as the bodies could not be identified. The post-mortem reports issued by P.W.22 in respect of the female unidentified body and P.W.17 for the unidentified boy suggest that both the deceased suffered homicidal violence. There is no dispute with regard to the said fact.

8. It is the case of the prosecution that the deceased were the children of A2 and were aged between 16 and 20 years. However, the age of the unidentified male body found by the Police was shown as 30 years. Ex.P26/the Police Notice, issued by the Inspector of Police, Thalli Police Station, refers to the age of the unidentified male body as nearly 30 years. Similarly, in the inquest report [Ex.P25], the age of the male body is shown as 30 years. In the post-mortem certificate [Ex.P17], also the age of the male was shown as 30 years.

9. Be that as it may. P.W.14 and P.W.15 were the grandparents of the deceased. The prosecution had not marked the photographs of the deceased



persons and confirmed the identity of the deceased through them. The evidence of P.W.14 reveals that photographs were attempted to be marked by the prosecution, which was not originally part of the Final Report filed by the Police but was found in the C.D. file of the Investigating Officer. The defence objected to the same, and therefore, the photographs were not marked by the prosecution. The prosecution thereafter had not taken any steps to mark the photographs and prove the identity of the deceased. The prosecution had not examined any other relatives who were known to the deceased except for P.W.14 and P.W.15. From the age difference recorded in the various documents referred to above with regard to the unidentified male body, it is evident that the prosecution has failed to prove the identity of the deceased. Even after the alleged extra judicial confession given by A5, no steps were taken by the prosecution to exhume the bodies of the deceased to conduct other scientific tests to establish their identity.

10. The prosecution case rests on the circumstances, namely the motive and the evidence of P.W.18, who said to have last seen the accused along with the deceased. The motive has not been established by the



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prosecution through any witnesses. The only evidence available to establish motive is the alleged extra judicial confession of A5, which we will deal with a little later. The next circumstance is the act of the appellants taking both the deceased from the Ashram on 06.10.2016. P.W.18 is said to be the person running the Ashram called “Amma Ashram at Ramahalli in Karnataka. As per her evidence, about eight months before the occurrence, A1 and A2 admitted the children to the Ashram, and on 06.10.2016, A1 and A2, along with the other accused, came to the Ashram and took the children, stating that they intended to admit the children to some other Ashram. In the cross-examination, P.W.18 admitted that the Ashram maintained the registers to show the admission and discharge of the inmates and that she had handed over the said register to the Police. However, we find that the Investigating Officer has not filed the said document along with his Final Report and no steps were taken by the prosecution to produce the said register to establish that the accused took the children from the Ashram on 06.10.2016. We may also note here that, though P.W.18 claims that she knew A1 and A2, and she was not known to the other accused. No identification parade was conducted to identify the other accused.



Further, P.W.24, who came to know of the offence committed by the appellants after the extra judicial confession of A5, would state in his deposition that he examined P.W.18 only on 28.11.2016 (i.e. more than a month later). The prosecution as to why there was such a huge delay in examining P.W.18. Therefore, in our view, the evidence of P.W.18 that all the accused took the children from the Ashram on 06.10.2016 also appears to be highly doubtful.

11. As regards the extra judicial confession allegedly given by A5, it is no doubt true that if the extra judicial confession inspires confidence and is found to be truthful, and voluntary reliance can be placed on the same, and the Courts need not look for any corroboration. However, in this case, we find that the Village Administrative Officer (P.W.6) is a total stranger to A5, and there was no reason for A5 to have reposed confidence in P.W.6 to give an extra judicial confession. The extra judicial confession is said to have been given on 28.10.2016 (22 days after the occurrence). In our view, the evidence of P.W.6/the Village Administrative Officer, does not inspire confidence, and the confession said to have been given by A5 does not



appear to be truthful and voluntary. Therefore, it is highly unsafe to rely on the extra judicial confession alone to record a finding of guilt against the appellants.

12. Further, even assuming that the confession of A5 can be relied upon, the same can be used against the other accused in terms of Section 30 of the Indian Evidence Act, 1872, which reads as follows:

"30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession."

It is well settled that the confession of the co-accused can only be used to lend assurance to the other evidence on record. We may refer to the observations of the Hon'ble Supreme Court in ***Pancho Vs. State of***



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Haryana reported in (2011) 10 SCC 165, which read as follows:

"26. In Haricharan Kurmiv. State of Bihar [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] the Constitution Bench of this Court was again considering the same question. The Constitution Bench referred to Section 3 of the Evidence Act, 1872 and observed that confession of a co-accused is not evidence within the meaning of Section 3 of the Evidence Act. It is neither oral statement which the court permits or requires to be made before it as per Section 3(1) of the Evidence Act nor does it fall in the category of evidence referred to in Section 3(2) of the Evidence Act which covers all documents produced for the inspection of the court. This Court observed that even then Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused. Thus, though such a confession may not be evidence as strictly defined by Section 3 of the Evidence Act, "it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way". (Haricharan case [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] , AIR p. 1188, para 11a.)



27. This Court in Haricharan case [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] further observed that Section 30 merely enables the court to take the confession into account. It is not obligatory on the court to take the confession into account. This Court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right.

28. This Court in Haricharan case [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other



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evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence."

The prosecution, as stated earlier, has not let in any other reliable evidence against the accused so that the alleged extra judicial confession of A5 can be used to lend assurance. Therefore, in such circumstances, the extra judicial confession of A5 would be of no avail as against A1 to A4. In any case, we have held that the extra judicial confession, even as against A5, does not inspire confidence.

13. For the aforesaid reasons, we are of the view that the prosecution has failed to establish the charges against the appellants and that the Judgment of conviction and sentence passed in S.C.No.105 of 2018, dated 22.08.2022 on the file of the learned Additional District and Sessions Judge, Hosur, is liable to be set aside.



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14. As a result, both the Criminal Appeals are allowed. The conviction and sentence passed in S.C.No.105 of 2018 on the file of the learned Additional District and Sessions Judge, Hosur, vide Judgment dated 22.08.2022 are set aside. The appellants [A1 to A5], are acquitted of all charges, and they are directed to be released forthwith unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petitions are closed.

(M.S.R.,J.) (S.M.,J.)
22.01.2024

Index : yes/no
Neutral citation : yes/no
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To

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1. The Additional District and Sessions Judge
Hosur,
Krishnagiri District.
2. The Inspector of Police
Thally Police Station,
Krishnagiri District.
3. The Superintendent
Central Prison (Men), Vellore.
4. The Superintendent
Central Prison (Women), Vellore.
5. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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