



CRL A No.915 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16-06-2026

PRONOUNCED ON: 30-06-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 915 of 2019

1. Govindaraj
S/o.Maruthamuthu.

2. Raja
S/o.Govindaraj,

Both are residing at
Keelatheru,
Thuraiyur Post, Tittakudi Taluk,
Virudhachalam District.

...Appellants/A1 and A2

Vs

State Rep. by
The Inspector of Police,
Pennadam Police Station,
Virudhachalam District.
(Cr.No.120 of 2018).

...Respondent/
Respondent



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Prayer : Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment of conviction and sentence dated 17.10.2019 passed in S.C.No.331 of 2018 by the learned III Additional District and Sessions Judge, Cuddalore, and acquit the appellants from all charges.

For Appellants:	Mr.K.Gandhi Kumar M/s.D.Shobana
For Respondent:	Mr.C.R.Malarvannan Counsel for Government of Tamil Nadu (Criminal Side)

JUDGMENT

(Judgment of the Court was delivered by Sunder Mohan J.)

This Criminal Appeal has been filed by Accused 1 and 2, who have been convicted for the offence under Section 302 r/w 34 of the Indian Penal Code (hereinafter referred to as “*the IPC*”) and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for three months.

2(i) It is the case of the prosecution that A4, who was a juvenile at the time of occurrence, had married against the wishes of her parents; that hence, the deceased had scolded A4 for her friendship with his daughter,



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who was 14 years old; and that A4 had reported this to her father-in-law (A1), brother-in-law (A2) and mother-in-law (A3) and all of them went to the house of the deceased on 30.05.2018 at about 7.00 p.m., questioned him, abused him in filthy language, attacked him with bricks and granite stones and thus caused his death.

(ii) On the complaint [Ex.P1] given by the son of the deceased [PW1] on 31.05.2018 at about 11.30 a.m., an FIR [Ex.P6] was registered by PW16, the Sub-Inspector of Police, under Section 174 of the Cr.P.C. in Cr.No.120 of 2018, as PW1 had only stated in the complaint that he suspected that the death of his father could be due to the attack of the accused.

(iii) PW20, the Inspector of Police, commenced the investigation, visited the scene of occurrence, prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P8] and also conducted the inquest. On 03.06.2018 at about 11.30 a.m., A1 and A2 appeared along with PW15, the Village Administrative Officer, who informed PW20 that A1 and A2 had given an extra-judicial confession [Ex.P11] to him. Hence, the FIR



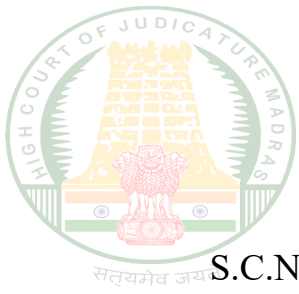
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was altered to Section 302 of the IPC and the alteration report [Ex.P13] was sent to the Magistrate on 04.06.2018.

(iv) Thereafter, PW20 arrested A1 and A2 and recorded their confessions and seized the brick [M.O.1], which contained the letters 'SKA' near a bridge in Emineri water channel. The brick was said to have been concealed in the sand by the accused. The investigating officer examined the witnesses, obtained the postmortem report [Ex.P7] and filed the final report on 06.08.2018 against the accused for the offences under Sections 294(b) and 302 r/w 34 of the IPC before the learned District Munsif cum Judicial Magistrate, Tittagudi.

(v) Since A4 was a juvenile, she was tried separately before the Juvenile Justice Board.

(vi) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. The case was committed to the Court of Sessions and was made over to the learned III Additional District and Sessions Judge, Cuddalore, for trial, which was taken on file as



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S.C.No.331 of 2018. The trial Court framed charges against the accused for the offences under Sections 294(b) and 302 r/w 34 of the IPC and when questioned, the accused pleaded 'not guilty'.

(vii) To prove its case, the prosecution had examined 20 witnesses as P.W.1 to P.W.20 and marked 13 exhibits as Ex.P1 to Ex.P13, besides 5 material objects, viz., M.O.1 to M.O.5. When the accused were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(viii) The trial Court found A3 not guilty and acquitted her of all the charges. Since the offences against A1 and A2 were proved, they were convicted under Section 302 r/w 34 of the IPC and sentenced as stated above. Hence, the accused have preferred the instant appeal challenging the said conviction and sentence.

3. Mr.K.Gandhi Kumar, learned counsel for the appellants, would submit that the occurrence could not have taken place in the manner



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alleged by the prosecution; that there are several vital contradictions between the FIR and the depositions of the witnesses who are said to be eyewitnesses; that PW1 to PW3 have not spoken about the presence of PW4 to PW6 and likewise PW4 to PW6 have not spoken about the presence of PW1 to PW3; that the deceased was taken to the hospital by one Raj, along with Devaraj [PW8], who was not an eyewitness and the said Raj was not examined; that the Doctor [PW12] to whom the deceased was first taken for treatment had deposed that the deceased had not stated about any alleged attack on him; that neither the said Devaraj [PW8] nor Raj have stated about the attack; that even to the next doctor [PW14], to whom the deceased was taken, they had not mentioned about the attack; that the complaint was lodged only on the next day at about 11.30 a.m., and the FIR reached the learned Magistrate only on 07.06.2018 i.e., seven days later; that since the genesis and origin of the occurrence have been suppressed, the evidence of eyewitnesses cannot be believed; and that therefore, the accused are entitled for acquittal.

4. Mr.C.R.Malarvannan, the learned counsel for the Government of Tamil Nadu (Crl.Side) for the respondent, *per contra*, submitted that the



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postmortem doctor [PW18] had opined that the deceased died due to blunt injuries sustained by him over the chest and neck; that merely because the witnesses had not referred to the attack either to PW12, the first doctor or PW14, the second doctor, who had examined the deceased, the witnesses cannot be disbelieved; that the fact that PW1 did not state about the attack by a brick in the complaint is not fatal to the prosecution and there is no reason to disbelieve the cogent evidence of the eyewitnesses; that the accused have given an extra-judicial confession to PW15, which corroborates the evidence of eyewitnesses; and that therefore, the impugned judgment is justified and does not call for interference and prayed for dismissal of the appeal.

5. As stated above, the prosecution has examined 20 witnesses. PW1, PW2 and PW3 are the son, wife and daughter of the deceased, respectively. PW4 is the brother's wife of the deceased and PW5 is the daughter of PW4. PW6 is a neighbour. P.W.1 to P.W.6 have been examined as eyewitnesses. PW7 is a hearsay witness who offered water to the deceased after the attack. PW8 is another relative of the deceased who, along with one Raj, took the deceased to the hospital in which



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PW12 was a Doctor. PW9, is the car driver who took the deceased from PW12's hospital to PW14's hospital in his car. PW10 is the brother of the deceased and is a hearsay witness. PW11 is the observation mahazar witness. PW12 is the doctor, who first examined the deceased when he was alive. PW13 is the Scientific Officer, who had issued the VISCERA report and who had opined that the death was not due to poisoning. PW14 is the second doctor who declared the deceased dead. PW15 is the Village Administrative Officer, who is said to have recorded the joint extra-judicial confession of A1 and A2. PW16 is the Sub-Inspector of Police, who registered the FIR. PW17 is the Special Sub-Inspector of Police, who had sent the body for postmortem. PW18 is the postmortem doctor. PW19 and PW20 are the investigating officers.

6. From the above narration, it could be seen that the prosecution rests on the evidence of PW1 to PW6, the eyewitnesses. According to the prosecution, the appellants/A1 & A2 had also made an extra-judicial confession to the Village Administrative Officer [PW15]. Thus, the prosecution relies upon the above evidence along with the opinion of the postmortem doctor [PW18], who had opined that the deceased had died due to the blunt injuries sustained on the chest and the neck.



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7. All the eyewitness, i.e., PW1 to PW6 have, in a parrot like manner stated that A1 had punched the deceased in his chest with a granite stone and A2 punched him with a brick, though PW2 contradicts the other witnesses as regards who punched the deceased with the brick and the stone. If these witnesses are believed, then the question would be as to what is the offence committed by the accused. In the light of the other evidence, we have to examine whether these witnesses can be relied upon.

8. As stated above, the complaint was lodged by PW1, the son of the deceased. PW1 to PW3 claim to be eyewitnesses to the occurrence. Strangely, none of them accompanied the deceased to the hospital run by PW12. It is the case of the prosecution that the deceased was alive till about 10.00 p.m. on the same day. PW8 is said to have accompanied the deceased to the hospital. He is a neighbour and known to the family of the deceased. There is no reason why a neighbour had to take him to the hospital along with another stranger, viz., Raj (Not examined by the prosecution for the reasons best known to them) when the son was available at the residence.



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9. Be that as it may. Neither the deceased nor the two persons who accompanied him, i.e., PW8 and the said Raj, had stated about the alleged attack. The prosecution had also failed to produce any records maintained at P.W.12's hospital. Moreover, we find that PW14, the doctor who was working in a Primary Health Centre at Nallur and also running a private hospital, viz., Ezhil Hospital, was also not informed about any alleged attack by the persons who had brought the deceased to him.

10. According to the prosecution, the deceased died around 10.00 p.m. on the same day. If the accused had attacked the deceased and the death was due to the said attack, there is no valid reason why no complaint was lodged on the same day. PW1 sought to justify the delay by stating that they were waiting for the relatives to arrive and since the police station was at a distance they gave the complaint only at 11.30 a.m. the next day. This explanation is far from satisfactory and does not merit acceptance.

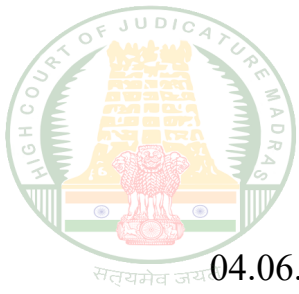
11. Even in the complaint, PW1 only states that he had suspected that his father could have died due to an attack by the aforesaid accused.



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If it is the case of the prosecution that PW1 to PW6 were eyewitnesses to an occurrence of attack by brick and stones, the tenor of the complaint would certainly be different. Above all, PW1 had stated that the accused had attacked the deceased only with hands. However, an improvement was made in the Court that the accused was attacked with stones and bricks. There is no explanation by the prosecution as regards this improvement made by the witnesses in Court. In fact, there is an admission by PW1 in the cross-examination that the stone and the brick shown to him were not the ones used by the accused. No clarification was obtained by the prosecution as regards this portion of the evidence also. PW1 to PW3 did not speak about the presence of PW4 to PW6. Likewise, PW4 to PW6 did not speak about the presence of PW1 to PW3.

12. We also may note that PW4 to PW6 were not examined by the investigating officer immediately after the occurrence. They were examined only on 04.06.2018, after the arrest of the accused. In fact, the investigating officer had admitted in the cross-examination that witnesses PW1 and PW2, during his investigation on 03.06.2018, had not stated about the presence of either PW4 or PW5 at the occurrence and only on



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04.06.2018, had they stated about the presence of PW4 and PW5. This also throws serious doubt as regards the presence of PW4 to PW6 and even as regards whether PW1 to PW3 can be believed as eyewitnesses.

13. From the above discussion, it would be clear that the genesis and origin of the occurrence have been suppressed by the prosecution and in any case, the earliest version of the witnesses either does not suggest any attack or suggests an attack which is quite contrary to the one stated in their depositions. There have been improvements in the versions at every stage and the explanation offered for the belated complaint is far from satisfactory. In this regard, we rely upon the following observations of the Hon'ble Supreme Court in ***Marudanal Augusti vs State Of Kerala*** reported in ***(1980) 4 SCC 425***.

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their evidence.”



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14. Thus, since the FIR has been brought into existence long after the occurrence, i.e., nearly after 14 hours of the occurrence and it has been despatched to the learned Magistrate with substantial delay and there are vital contradictions as stated above, besides the fact that the doctors who first examined the deceased were not informed about any alleged occurrence, we are of the view that it would be highly unsafe to believe the witnesses and sustain the conviction on the basis of their evidence, which is parrot like in nature. That apart, the presence of the witnesses PW1 to PW6 is highly doubtful also because none of them accompanied the deceased to the hospital.

15. Even as regards the alleged extra-judicial confession said to have been given to PW15, the Village Administrative Officer, we find that the said confession, which was marked as Ex.P11 through the investigating officer, was not marked through P.W.15. In fact, PW15 in his cross-examination would state that the statements were recorded at the police station and he had signed in that. Further, we find that in the evidence of the investigating officer [PW20], he has deposed that an admissible portion of the confession is marked as Ex.P11. When it is the

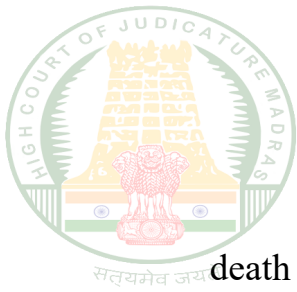


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prosecution case that Ex.P11 is the confession given to the Village Administrative Officer [PW15], we fail to understand why only a portion of it was marked. This also suggests that there is no clarity as to what is the nature of statement that was recorded from the accused at the police station. Though an attempt has been made by the learned counsel for the Government of Tamil Nadu (Crl.Side) that PW15 would have probably referred to the police confessions, we are of the view that in the absence of any clarification obtained in this regard by the prosecution, we cannot give the benefit of the doubt to the prosecution.

16. In any event, it is well settled that an extra-judicial confession is a weak piece of evidence and requires corroboration, even if it is believed. As stated above, the extra-judicial confession does not inspire confidence. That apart, there is no reason why these two accused have given a joint confession to a stranger. Therefore, no reliance can be placed upon the extra-judicial confession, i.e., Ex.P11.

17. For all the aforesaid reasons, we are of the view that the prosecution has failed to establish that the deceased sustained a homicidal



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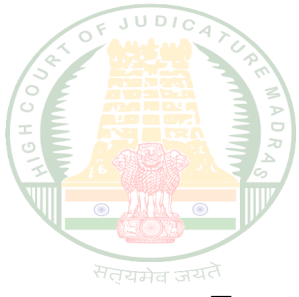
death caused by the appellants. Hence, the appellants are not found guilty and the impugned judgment of conviction and sentence is liable to be set aside.

18. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants/accused vide judgment dated 17.10.2019 in S.C.No.331 of 2018, on the file of the learned III Additional District and Sessions Judge, Cuddalore, are set aside. The appellants/accused are acquitted of the charge. Bail bond, if any, executed shall stand discharged.

(A.S.M.,J.) (S.M.,J.)
30-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The III Additional District and Sessions Judge,
Cuddalore,
2. The Inspector of Police,
Pennadam Police Station,
Virudhachalam District.
3. The Public Prosecutor,
High Court, Madras.



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**DR.ANITA SUMANTH, J.
AND
SUNDER MOHAN, J.**

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**Pre-delivery Judgment in
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