

(2001) 02 MAD CK 0020

In the Madras High Court

Case No : Criminal APP. No. 478 of 1992

Edrin and Welvin

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Citation : (2001) 2 LW(Cri) 515

Hon'ble Judges : R. Balasubramaniam, J;Bakthavatsalu V, J

Bench : Division Bench

Advocate : S. Shanmugavelayutham, for the Appellant; R. Karthikeyan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R. Balasubramanian, J.—The Appellants in this appeal are A-1. and A-2 in S.C. No. 239 of 1991 on the file of Court of Sessions.

Coimbatore. They were tried along with two more accused, arrayed as A-3 and A-4. A-3 and A-4 were acquitted of all the offences for which

they were charged and tried The State had not filed any appeal challenging that judgment as far as A-3 and A-4 are concerned. There is also no

revision against acquittal before this Court. A-1 and A-2 were found guilty for the offence u/s 302 read with 34 IPC, for which each of them were

sentenced to life imprisonment. They are before this Court challenging the correctness of the same.

2. Heard Mr. S. Shanmugavelayutham, learned Counsel appearing for the appellants and Mr. R. Karthikeyan, learned Government Advocate for

the Respondent/State.

3. We briefly state hereunder the case of the prosecution: A-4 is a widow

residing in the Railway Colony at Pothanur. The deceased in this case is a male by name Balan (a). Balachandran. A-4 and the deceased had developed intimacy between themselves. Since one year prior to the occurrence, the deceased had been residing in the house of A-4. A-4 is the mother of two female children through her deceased/husband. Shameen is the elder among the two and she was aged 17. The deceased was pestering A-4 to give Shameen in marriage to him. As a result thereof, A-4 induced the other accused to kill the deceased. The occurrence had taken place on 8.6.90. A-1 and A-2 attacked the deceased with fire wood and knife. No persons have seen the occurrence. In other words, there is no direct eye witness to the occurrence and the prosecution rests their case only upon the circumstantial evidence as well as the extra judicial confession stated to be given by A-1 to P.W.9. P. W. 1 is the younger sister of the deceased. She is residing at the Railway Colony at Pothanur along with her parents. When she was in her house at 1.30 p.m. on 8.6.90. she saw her elder brother/deceased being beaten by Easwaran. John Aruchamy, Selvamani and James, west of their house. Five persons were beating the deceased with sticks. P.W.1 ran towards the place and falling upon her brother prevented he being further attacked. P.W.1 also abused those five persons. All of them threatening ran for safety. When P. W. 1 ran towards that place, where the deceased was being beaten, her parents as well as P.W.2 also went there. Balan was given some water and he was enquired as to who are the assailants. Balan told them that in the morning on that day. he went near the cemetery for taking arrack and at that time, he picked up a quarrel with one Selvamani and as a sequel to that quarrel at 1.30 p.m. on that day. Eswaran, John, Aruchany, Selvamani and James were beating him. Balan had abrasion on his fore head, hands and legs. P.W.1 offered to take Balan to the hospital. But, however, Balan declined stating that as he has suffered only minor injuries, there was no need. Saying so. he went to the house of A-4, P.W.2 had witnessed Balan going towards the house of A-4. A-4 having illicit intimacy with Balan is known to one and all including P.W.1 and her parents. Any amount of reprimand by the parents of P. W. 1 did not yield any response from Balan. Balan continued to stay permanently in the house of A-4.

4. P.W.1 was seated outside her house at 3.30 p.m. on 8.6.90 feeding her child

with milk. A-2 is the younger brother of A-4 A-3 is the wife of A-

2. A-2, A-3 and their children were coming that side. P.W.1 saw them. At 6.10 p.m. in the same evening when P.W.1 was in the house A-4 came

and called P.W.1. A-4 told P.W.1 that on her returning from work she found the front door of her house was closed and when she tapped the

door nobody opened it. She also told her that when she went into the house from the rear side entrance, she found Balan with his left hand cut lying

dead in a pool of blood. Immediately, P.W. 1 and her parents came there and observed. The neighbours also went and observed. They found

injuries on the head of Balan. P.W.1 suspected that only those persons, who beat the deceased in that evening ,could have repeated that act even

at that time. Immediately. P.W. 1. in the company of her father, went to the police station and lodged the information with the Sub-Inspector of

police. The Sub-Inspector of police reduced the oral statement into writing and after reading it over to her took her signature in it. Ex.P-1 is that

complaint.P.W.1 has also informed the Sub-Inspector of police that she has suspicion against A-4 as well. P.W.3 is a small time vendor in the

railway colony. At 10.00.a.m. on 8.6.90. she saw all the four accused in the house of A-4. A-3 at that time purchased butter milk from P.W.3 to

the value of one rupee. Balan who was inside the house wanted A-3 to buy some more butter milk. Then A-1 came and purchased butter milk.

P.W.5 is the friend of the deceased. At 1.30 p.m. on 8.6.90 he came to know that Balan was beaten by four or five persons and therefore, he

went to enquire him. He went to the house of A-4. At that time, he found the front door of the house of A-4 locked from outside. Music was being

played on the tape recorder from inside the house. He also heard noise of a male quarreling inside the house. P.W.5 went to the rear side of the

house of A-4, A-3 was standing there at that time with the child in her arms. On seeing. P.W.5. A-3 leaving the child on the ground, drew the

attention of P.W.5 to inside the house. When P.W.5 asked A-3 about Balan, A-3 stated that Balan is sleeping under the influence of liquor. P.W.5

thereafter went to the bazaar, went for the evening movie and when returned home later in the night he came to know that Balan was dead.

5. P.W. 13 is the Sub-Inspector of police. On 8.6.90, P.W.1 appeared before him and orally gave the information which was reduced into writing

by him. Ex.P-1 is that complaint. He registered it in Crime No. 438 of 90 for the offence u/s 302 IPC. Ex.P-16 is the printed First Information

Report. Exs.P-1 and P-16 were sent to the Court as well as to the higher officials. P.W.14 the Investigating Officer on receipt of the material

records, reached the scene of occurrence. At 4.00 a.m. on 9 6.90 in the presence of witnesses, he prepared Ex.P-17. the Observation Mahazar

and Ex.P-18. the plan. From the scene of occurrence, he recovered the incriminating materials namely, M. Os 9 to 26 under Ex.P-19 in the

presence of the witnesses. Between 6.00 a.m. and 10.00 a.m. he conducted inquest over the dead body of the deceased. Ex.P-20 is the inquest

report. Through P.W.7. police constable, he sent Ex.P-8 requisition to conduct post mortem.

6. P.W.8 is the Doctor who did post mortem on the body of the deceased on receipt of Ex.P-8 at 10.30 a.m. on 9.6.90. During post mortem, he

found the following symptoms:

Abrasions:

- (1) 1-1/2 cms x 1 cm over the right side of forehead.
- (2) 3 cms x 2 cms over the right eyebrow.
- (3) 3 cms x 2 cms over the left side of forehead.
- (4) 1 cm x 1/4 cm over the bridge of the nose.
- (5) 4cms x 1-1/2 cms below the right lower eyelid.
- (6) 1/2 cm x 1/4cm over the right side of upper lip.
- (7) 1 cm x 1/4 cm over the right side angle of the mouth.
- (8) 13 cms x 6 cms over the left cheek and the neck.
- (9) 1/4 cm x 1/4 cm over the back of right hand with diffuse bruising and fracture of 2nd metacarpal bone.
- (10) 20 cms x 13 cms over the outer aspect of left chest.
- (11) 3 cms x 2-1/2 cms over the back of right shoulder.
- (12) 20 cms x 4 cms over the back of left chest.
- (13) 2-1/2 cms x 1/4 cms over the inner aspect of right knee.
- (14) 3 cms x 1/4 cm below the right knee.
- (15) 3cms x 2-1/2 cm over the outer aspect of right knee.

(16) 13 cms x 6 cms over the front of left thigh.

(17) 4 cms x 1-1/2cms over the left knee.

(18) 6 cms x 3-1/2 cms over the front of left knee.

(19) 6 cms x 3 cms over the back of left ankle.

Oblique patterned bruising :

(20) 26 cms x 2-1/2 cms over the back of the chest in the middle.

(21) 17 cms x 2-1/2 cms below the above wound.

(22) 10 cms x 2-1/2 cms below the above wound.

(23) 16 cms x 2-1/2 cms below the above wound.

Contused lacerations:

(24) 1/2 cm x 1/4 above the right eyebrow.

(25) 3 cms x 2 cms over the outer aspect of right eyebrow.

(26) 1 cm x 1/2 cm over the left side of forehead.

(27) An oblique incised gaping wound of 8 cms x 1-1/2 cms over the left occipital area of the head.

(28) A transverse incised gaping wound of 2 cms x 1/2 cm over the lower aspect of left occipital area of the head.

(29) An oblique incised gaping wound of 21 cms x 10 cms bone deep, on front and back of left shoulder, exposing the upper aspect of left

humerus. which showed 6 oblique chip fracture. The entire muscle mass, blood vessels and the nerves found completely severed.

(30) Four linear oblique incised gaping wound of 6 cms x 1/4 cm. 9 cms x 1/2 cm. 8 cms x 1/4 cm and 19 cms x 1/4 cm adjacent to each other,

over the back of left shoulder behind the wound No. 29.

Other Findings:

Brain: Surface vessels congested and oede-matous. Bilateral diffuse subdural and subarachnoid haemorrhage seen.

Heart: Flabby and empty Lungs:Both pale.

Stomach: Contained 60 cc of brownish fluid. Mucosa: pale. All the other internal organs were found pale

Ex.P-10 is the Post Mortem Certificate. The Doctor is of the opinion that the deceased would appear to have died of hemorrhagic shock, as a

result of cut injuries over the left shoulder about 12 to 18 hours prior to autopsy. After receiving the injuries, the victim should have been alive for 15 to 30 minutes.

7. Meanwhile ,P.W. 14 continued the investigation. He gave Ex.P-2 requisition to the Court to send the viscera of the deceased for chemical

examination. He sent the case properties to the Court. P.W.16 is the Magisterial clerk who speaks about it. Exs.P-4 and P-5 are the chemical

examiner's report and the serologist report. P.W.9 is a resident of Pothanur. At 6.30 a.m. on 21.6.90, he went to the hotel called ""Lakshmi Vilas

Hotel"" to buy some breakfast for him. A-1 arrived there at that time and he was indicating as though he wanted to say something P.W.9 asked him

and A-1 at that time gave an extra judicial confession, stating as follows:

You know my sister A-4 is living with the deceased. The deceased had been pestering A-4 and her daughter very often. On the 8th after noon

there was a considerable problem in the house: A-2 and A-3 were in the house at that time: A-4 told me that the deceased created lot of problems

on that day On her inducement we. with firewood, attacked the deceased and then killed him by cutting him with kuduval: all of us left for Madras

thereafter: only today morning we have arrived and we do not know what to do: you must do something and help us.

P.W.9 took A-1 to P.W.14. At 7.15 a.m. on 21.6.90 P.W. 14 arrested A-1 when he was so produced before him by P.W.9. He recorded the

statement of P.W.9. A-1 was examined in the presence of P.W. 10. At that time he gave a statement, the admissible portion of which is Ex.P.11.

Pursuant to that statement. M Os 3 and 4 were recovered by P.W. 14 under Ex.P-12 attested by witnesses. On the same day. A-2 to A-4 were

arrested near a cinema theatre at Pothanur. A-2 gave a confession statement, the admissible portion of which is Ex.P-21. A-2 pursuant to that

statement, took the police and the witnesses to a nearby place and produced M.O.2 which was recovered under Ex.P-22 attested by P.W.14 and

other witnesses. P.W.11 is the police constable in Pothanur police station. A-4 gave a complaint on 19.1.90 before him stating that her daughter

Shameen is missing. The said complaint was registered in Crime No. 40 of 90. On 8.3.90. A-4 gave a complaint before him stating that the

deceased in this case was beating her often. Ex.P-14 is that complaint. P.W. 12 is

the Sub-Inspector of police. On 2.2.90 A-4 appeared before him and gave a complaint against the deceased. In that complaint, it is stated that the deceased in this case was pestering her daughter. It was registered in petition Enquiry No. 9 of 90. P.W. 14 continued the investigation and he was succeeded by P.W. 15. P.W. 15 after completing the investigation filed the final report against the accused in Court for the offence as stated above.

8. When the accused were questioned u/s 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against them, they denied each and even circumstances put up against them as false and contrary to facts. A-1 would state that a false complaint has been foisted upon him: he was taken to the police station on 13.6.91) where he was detained and he was produced before the Court only on 21.6.90.

He had not seen Mohanasundarraaj. The second accused would state that he knows nothing about the case. The third accused would state that

from 13.6.90. he was not in Coimbatore and he was in Madras with his mother at that time. He would state that he did not inform P.W.5 anything.

A-4 would state that on 8.6.90 she went for her work and she did not inform anything to P.W. 1. He was in the police station on 9.6.90. She

would state that she came home from work on 8.6.90 and she found Balan dead and that immediately she locked the door and went to the. police

station to give a complaint. She orally gave the information before the police which had been kept in the police station itself. Thereafter, two

constables were sent to her house where Balan was found dead and A-4 was sent for judicial remand on 21.6.90. Two witnesses were examined

on the side of the defence as D. Ws. 1 and 2. D. W.1 in his evidence would state that during the relevant time he was working in the

Telecommunication Division of Southern Railway Signal at Pothanur. A-4 is working there as a last grade servant. Ex.D-1 is the letter sent from

the Chief Workshop Manager to the Police Authority at Pothanur on 11.6.90. D.W.2 is the Reporter of the Evening Daily called Malai Murasu

published from Coimbatore. The copy of the said publication is not available with them. Ex.D-3 is page 5 of the evening publication of the daily for

14.6.90.

9. Mr. Shanmugavelayutham, learned Counsel for the Appellants would contend

that the prosecution has only the evidence of P.W. 5 and 9 to sustain their case. Though P.W.5 is examined as an eye witness to the occurrence, yet his statement recorded u/s 161 Cr.P.C having reached the Court only on 8.4.91 would enable this Court to disbelieve his entire evidence. The importance of sending the statement of eye witnesses is reiterated before us by the learned Counsel for the Appellants, Learned Counsel would also attack the evidence of P.W.9 as unbelievable, since he was not examined during inquest. So far as P.W.9 is concerned, learned Counsel would also contend that he is a stranger to the accused and that the accused therefore, giving the extra judicial confession to him. is highly improbable When the evidence in the nature of extra judicial confession is very weak, it will not be safe to act upon it unless it is found that the evidence of the witnesses is reliable, and it stands the test of trustworthiness. Except the evidence of P. Ws.5 and 9. the prosecution has not let in any other evidence to connect the accused with the crime is the reiteration made by the learned Counsel for the Appellants. Learned Government Advocate would also fairly state that except the oral evidence of P.Ws 5 and 9. there are no other evidence to connect the accused with the crime.

10. Having regard to the arguments advanced by the learned Counsel on either side we perused the records. There is no dispute that P. Ws.1 to

4 are not the eye witnesses to the occurrence. P.W.5 is examined as an eye witness to the occurrence and P.W.9 is examined to speak about the

extra judicial confession stated to have been given by A-1 to him on 21.6 90. Under these circumstances. We applied our mind with care and

caution to the two piece of evidence as referred to above. We perused the evidence of P.W.5. He is shown to have been examined by the police

during investigation on 9.6.90. The records show that the statement recorded from him during investigation, had reached the Court only on 8.4.91.

As early as in the year 1974. the Division Bench of this Court in the judgment reported in Karunakaran Jabamani Nadar Inre {1974 L.W.(Cri)

190} emphasised the importance of sending the material documents to the Court without any waste of time. The documents referred to in the

judgment include the statement of witnesses. P.W.5 is not even examined during inquest and it is all the more worse to state. According to P.W.12

the inquest was done between 6.00 am. and 10.00 a.m. on 9.6.90. P.W.5 is shown to have been examined on 9.6.90. But. however. P.W.5 was

not examined during inquest. As we have already noticed, the statement recorded during the investigation had reached the Court on 8.4.91.

Therefore, we are of the firm opinion that it would not be safe to accept the evidence of P.W.5 as an eye witness to the occurrence. Even

otherwise, we tried to find out whether his evidence in any way supported the case of the prosecution. However, we find that his evidence is of no

use at all in projecting the case of the prosecution. We are, therefore. left with the oral evidence of P.W.9.

11. P.W.9 is a resident of Nachan-pelayam in Coimbatore District.

A-4 is a resident of Pothanur in Coimbatore. A-1 was arrested on 21.6.90. According to P.W.9. A-1 had given the extra judicial confession to

him when he had gone to Lakshmi Vilas Hotel. P.W.9 had stated that the police station is very close to the said hotel. Under these circumstances,

we have every reason to doubt as to whether the extra judicial confession could have been given in the manner spoken to by P.W.9. P.W.9 was

also examined on 21.6.90 i.e.. immediately after the arrest of A-1 The extra judicial confession is oral. To find out the truth of the extra judicial

confession stated to have been given by A-1 to P.W.9 we applied our mind to the said extra judicial confession given by A-1 to P.W.9. We do

not find any corroboration for this material from the other evidence available. P.W.9 is a total stranger We see no reason at all as to why the first

accused should choose a stranger to confess to him his guilty conduct. The evidence of P.W.9 do not inspire any confidence at all in our mind to

be acted upon as a safe piece of evidence Expect the evidence of P.W.9 there is no other evidence to connect the accused with the crime. Though

the prosecution has established that the deceased died due to homicidal violence, yet we are of the opinion that the proof that the deceased died

due to homicidal violence cannot lead to the conclusion that it is the accused who are responsible for the murder of the deceased. The

circumstances that are available in the case which could be taken into account in favour of the accused are as follows:

P.W.1 would state in her evidence about the time and manner in which the deceased was beaten by five named persons. Those five named person

are not the accused in this case. P.W.1 ran towards the scene to save her brother after those five named aggressors left the scene. P.W.1 asked

A-1 as to how he came to be assaulted. One among five named aggressors is Selvamani. The deceased told P.W.1 at that time that in the morning

on that day, he went near the cemetery for taking arrack and at that time, he picked up a quarrel with one Selvamani and as a sequel to that he was

beaten by those five persons at 1.30 p.m. on 8.6.90. P.W.1 in her evidence would also state that when she saw her brother lying dead, she

entertained suspicion that it is only those five person who attacked his brother earlier in the day are responsible for murdering him. This piece of

evidence of P.W.1 do not run inconsistent with the innocence of the accused. Therefore, there is every probability that persons, other than the

accused in this case, could have been responsible for the death of the deceased. What exactly is the nature of the injuries, which the deceased

sustained in the incident in which he was beaten by five other unknown aggressors, is not clear before the Court. It is not possible to rule out totally

that the deceased could have sustained more grievous injuries even in that occurrence itself, which might have resulted in death Going by the

materials noticed above, we have no doubt in our mind that there is no legal evidence to connect the accused with the crime Therefore, the

judgment under challenge is bad in law and it is liable to be set aside. Accordingly, the appeal is allowed and the accused are acquitted. The

accused are directed to be released forthwith, unless their presence is required in any other case The bail bonds if any executed by the accused

shall stand terminated forthwith.