
(2007) 12 MAD CK 0266
In the Madras High Court
Case No : Criminal A. No. 298 of 2005

Kandasamy Gounder

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302, 447

Citation : (2007) 12 MAD CK 0266

Hon'ble Judges : V. Periya Karupiah, J;D. Murugesan, J

Bench : Division Bench

Advocate : S.N. Arun Kumar, for the Appellant; V.R. Balasubramanian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The appellant is the sole accused in S.C. No. 340 of 2004 on the file of the I Additional Sessions Court, Coimbatore, where he was tried and convicted for the offences punishable under Sections 447, 302 and 201 I.P.C. and sentenced to undergo S.I. for three months with a fine of Rs. 100/-, in default to undergo R.I. for one week, life imprisonment with a fine of Rs. 500/-, in default six months R.I. and one year R.I. with a fine of Rs. 500/-, in default to undergo R.I. for three months respectively. All the sentences were ordered to run concurrently.

2. The charge against the accused is that due to the prior enmity with one Kaliappa Gounder en the false impression that the said Kaliappa Gounder was the reason for fencing the common pathway thereby preventing the accused from using the said pathway, the accused on 7.8.2003 at 10.00 p.m., criminally trespassed in to the Etty Tree Garden of Kaliappa Gounder; that on the same day, same place and time, with an intention to cause death, when the said Kaliappa Gounder was sleeping in a cot, the accused attacked him with "Nelinji Stick" on his chest and cut on his head and face indiscriminately with a billhook

and that with the intention of screening the offence in order to escape from legal punishment, threw the body of Kaliappa Gounder in a well situated in the garden and thereby caused disappearance of evidence of the offence.

3. The accused denied the charges and pleaded that it is a false case.

Therefore, the prosecution in order to prove the charges examined P.Ws. 1 to 11 and marked Exhibits FI to P27 and material objects 1 to 11.

4. The brief facts of the prosecution is as follows:

(a) P.Ws. 1 & 4 are the sons of the deceased and P.W. 3 is the son-in-law. The land of the accused is lying adjacent to the land of the deceased. To reach their lands in the shortest route, they have to come across the land of Subramania Gounder, P.W. 8. As the coconuts were in the ripening stage, P.W. 8 had closed the pathway in his garden, which caused inconvenience to others including the deceased and the accused. The accused was of the impression that the deceased was the cause for closing the pathway by P.W. 8. Therefore, he indulged in a quarrel with the deceased two days prior to the occurrence and the accused. At that time P.W. 1 was also present.

(b) A day prior to the occurrence, the deceased went to his garden at 8.00 p.m. to sleep after having a talk with P.W. 1. On the next day morning i.e. 8.8.2003, as usual when P.W. 1 went to the garden of his father to draw milk at 5.00 a.m., his father was not in his bed and he thought that his father would have gone elsewhere. Thereafter, he went to supply milk to a Society at Mullupadi and returned back at 9.00 a.m. At that time he noticed blood stains in the bed used by the deceased as well as in the blanket. He also noticed blood stains in the ground. Then he went and saw into the well and found his father's body floating. Immediately, he rushed to Velusamy, one of his brothers and informed about the incident. Thereafter, he went to Kinathukadavu Police Station and gave complaint Ex. P.1.

(c) P.W. 2 was treated hostile and P.W. 3 spoke to the effect that on 7.8.2003 at 7.00 pm., when he and his relative Velliangiri was talking with Kalimuthu, the accused came and reported that the deceased Kalliappan was giving trouble by obstructing pathway and he was refusing to heed anyone and that he should be done away. He has further stated that on the next day, he received an information about the death of Kalliappa Gounder.

(d) On receipt of the complaint at 11.00 a.m., P.W. 9 registered a case in Cr. No. 130 of 2003 for the offence u/s 302 I.P.C. The printed F.I.R. Is Ex. P.14. He sent the complaint and F.I.R. to the Judicial Magistrate No. 1, Pollachi. He also sent the copies to the higher officials and to the Inspector of Police, Pothanur Police Station P.W. 10 (In-charge of Kinathukadavu Police Station).

(e) P.W. 10 on receipt of the copies of the F.I.R. and the complaint, took up the investigation of the case. He Inspected the scene of crime at 12.30 p.m. on the same day and prepared observation mahazar Ex. P.2 in the presence of one

Sivakani and P.W. 5 and draw a rough sketch Ex. P.15. He also caused the scene of occurrence to be photographed and made arrangement to bring sniffer dog and its result was given under Ex. P.28-report. Then the body of the deceased was taken out from the well at 5.00 p.m. M.O. 1-a black blanket and a lungi M.O. 7 were also recovered in the presence of the same witnesses under the Mahazar Ex. P.4 He held inquest on the body of the deceased in the presence of witnesses and panchayatdars. The inquest report is Ex. P.16. Then he sent the body of the deceased to Pollachi Government Hospital for autopsy, with requisition-Ex. P.9.

(f) On receipt of the requisition, P.W.7 Dr. Kalaselvi conducted postmortem on 9.8.2003 at 11.30 a.m. and she found the following injuries on the body of the deceased:

1. Lacerated injury of 8 cm x 3 cm x bone depth of the left parietal region.
2. Lacerated injury of 3 x 1 x bone depth over right temporal region.
3. The lacerated injury of 7 x 3 x bone depth over the right side of forehead.
4. Lacerated injury of 6 cm x 2 cm x bone depth over the right eye brow.
5. Irregular lacerated injury of 6 cm x 4 cm x 2 cm over left upper lip extending to left nostril and exposing the upper gum.
6. Contusion of 3 x 2 cm over right parietal region.
7. Lacerated injury of 2 cm x 1 cm below the left elbow,
8. Abrasion over left side of medial aspect of elbow joint.
9. Contusion of 20 x 1 cm over the anterior aspect of chest extending from the right nipple to the left of the root of the neck.
10. Contusion of 8 cm x 3 cm over the right side of upper arm.
11. Contusion of 9 x 3 cm with an abrasion of 3 x 2 cm over the epigastrums.
12. Multiple linear abrasion over back of chest. An abrasion size about 9 x 3 cm over right shoulder.

She issued postmortem certificate Ex. P.10 and opined that the death would have occurred 24 hours prior to autopsy, reserving final opinion pending chemical analysis report.

(g) P.W. 10 in continuation of the investigation recovered blood stained earth-M.O. 3, sample earth-M.O. 4 and a white blood stained blanket M.O. 2 under the mahesar Ex. P.3 in the presence of Sivakami and P.W. 5. He examined the witnesses and recorded their statements.

(h) On 9.8.2003 at 10.00 a.m. the accused appeared before P.W. 6, the Village Administrative Officer and gave a confession statement Ex. P.5. Thereafter, P.W. 6 took the accused to the Police Station and produced before the Inspector along

with a report Ex. P.6. P.W. 10 arrested the accused and also recorded a confession statement of the accused. The admissible portion of the confession statement is Ex. P.7, pursuant to which, M.O. 5-blood stained Aruval and atick-M.O. 6 were recovered by P.W.10 under the cover of Mahazar Ex. P.8. P.W. 10 also recovered the blood stained lungi-M.O. 7 and half sleeves shirt-M.O.8 worn by the accused at the time of the occurrence and a green colour lungi under the same mahazar. Thereafter, he sent the accused and the recovered objects to the Court. On the same day, he examined P.W. 6 and his Assistant Indian and recorded their statements. He also recovered the personal apparels of the deceased viz., M.O.s. 10 and 11 produced by the constable with a special report-Ex. P.17, under Form 95-Ex. P.18. Thereafter he handed over the investigation to the Inspector of Police, Kinathukadavu Police Station.

(i) P.W. 11 also examined the witnesses and he gave requisition Exs. P.19 to P.21 to the Court to send for the material objects for chemical examination, which was complied with by the Court under Ex. P.22 and reports received from the Forensic Department were marked as Exs. P.23 to 26. P.27. He also examined the doctor P.W.7 who gave final opinion (Ex. P.13) that the deceased would have died of head injury on receipt of the viscera report-Ex. P. 11 and Serologist's report-Ex. P.12 Thus P.W. 11 completing the investigation has filed a final report against the accused for the offences under Sections 447, 302 and 201 I.P.C.

5. When the accused was questioned u/s 313 Cr.P.C. explaining the incriminating circumstances appearing in evidence, he denied the same and pleaded innocence.

6. The learned 1st Additional Sessions Judge, Coimbatore on evaluating the oral and documentary evidence in its proper perspective came to the conclusion of believing the extra judicial confession and placing much reliance on the same convicted and sentenced the accused as aforementioned. Hence the appeal by the accused.

7. Heard the learned Counsel appearing for the appellant, Mr. S.N. Arun Kumar and the learned Additional Public Prosecutor, Mr. V.R. Balasubramanian appearing for the State.

8. The learned Counsel for the appellant submitted that the entire case of the prosecution stands only on the extra judicial confession said to have been given by the accused to P.W. 6, the Village Administrative Officer. He would submit that according to P.W. 6, the said extra judicial confession-Ex. P.5 was given by the accused at 10.00 a.m. on 9.8.2003. However, according to P.W. 1, the accused was taken into custody by the police on 8.8.2003 as he saw the accused in the police station in the afternoon on 8.8.2003 and therefore, the extra judicial confession said to have been given by the accused was not voluntary and it would have been obtained under duress and conclusion. Such extra judicial confession is a weak piece of evidence and it is inadmissible. Except the said circumstance, there is no material to prove the case of the prosecution. Even the recovery of the billhook - M.O. 5 was said to have been recovered only on the

basis of the said extra judicial confession and therefore the said recovery also cannot be believed. That apart, the billhook which was recovered on 9.8.2003, though contains blood, the Serology report Ex. P.12 shows that the test was inconclusive. In the absence of other circumstances, the conviction of the accused solely on the basis of the above extra judicial confession is unsustainable.

9. We have also heard the learned Additional Public Prosecutor who would submit that the extra judicial confession was voluntary and there is no reason to disbelieve the same. The extra judicial confession was given to the Village Administrative Officer - P.W. 6, who has also enclosed his report, which was marked as Ex. P. 6 evidencing that the accused to came to his office and gave the extra judicial confession. The learned Additional Public Prosecutor would rely upon the recovery of M.O. 5 from the scene of occurrence, which is in tune with the extra judicial confession of the accused, while he stated that he left the billhook in the place of occurrence itself. Hence the learned Additional Public Prosecutor has submitted that the prosecution has established the case beyond all reasonable doubt and therefore, the conviction and sentence require no interference.

10. We have given our anxious consideration to the above contentions. The entire case of the prosecution stands only on Ex. P.5, the extra judicial confession. The extra judicial confession could be safely relied upon by the courts for conviction and sentence, provided if it is established and proved that such extra judicial confession was voluntary, true and made in a fit state of mind. The prosecution is further burdened to satisfy the Court that when such confession was made, the accused who made the confession was a free man or his movements are not controlled by the police either by themselves or some other agency employed by them for securing such confession. This position of law as held by the Apex Court is reported in 2003 SCC (Cri.) 1965. state of Rajaathan v. Raja Ram.

11. Applying the above ratio, the given facts and circumstances may be considered. The occurrence had taken place in between 9.00 p.m. on 7.8.2003 and 9.00 a.m. on 8.8.2003. Immediately after the body was found and identified by P.W. 1, the son of the deceased, a complaint was lodged on the same day at 11.00 a.m. Immediately after the receipt of the said complaint, P.W. 9, the Sub Inspector of Police visited the scene of occurrence and at that time, P.W. 6, the Village Administrative Officer, who has recorded the confession statement from the accused, also came to the scene of occurrence. He was enquired and a statement was also recorded from him as to the dispute between the accused and the deceased with reference to putting up a fence on the pathway. Hence on fact, P.W. 6 has already participated in the investigation and in these circumstances, the extra judicial confession was said to have been given to P.W. 6 should be still more cautiously considered.

12. One of the basic principles to accept the extra judicial confession is the

confidence of the accused over the person to whom such extra judicial confession is made. In this case as the Village Administrative Officer has already participated in the investigation and has also assisted the investigating officer by narrating the dispute between the accused and the deceased over the fencing of the land, the accused could not have gained any confidence in such person as he has already disclosed the enmity in regard to the dispute between both the accused and the deceased to the investigating officer. As the extra judicial confession is a weak piece of evidence, such extra judicial confession must be recorded by a person with an unbiased mind. Having regard to the fact which we have stated earlier as to the participation of the Village Administrative Officer, P.W.6 in the investigation, certainly it cannot be called that there was no bias while recording the statement from the accused which was later on treated as extra judicial confession.

13. There is yet another aspect for consideration of the credibility of such extra judicial confession. The evidence of P.W. 1 who is none other than the son of the deceased goes to show that on 8.6.2003 afternoon when he went to the police station to lodge complaint at 11.00 a.m. he saw the accused and his brother Palanisamy (P.W. 4) and his two sons in the police station. His evidence goes to show further that some time after enquiry, the said Palanisamy and his sons were left, but the accused alone was asked to stay back in the police station. In these circumstances, we are at a loss to understand how the accused could have been given an extra judicial confession in a free and uncontrolled state of mind as he was already under the cover of the police at least at the guise of an enquiry coupled with the participation of the Village Administrative Officer P.W. 6 in the investigation much prior to the extra judicial confession and the custody of the accused was taken over by the police even prior to the said extra judicial confession. If once the extra judicial confession is not believed as a necessary corollary, we must also disbelieve the recovery of M.O.5 billhook made pursuant to the admissible portion of the extra judicial confession. That apart, the serologist's report does not support the case of the prosecution as the blood test was inconclusive. It must be kept in mind that the bill hook was recovered just in two days of the occurrence and there is no contrary evidence to show that blood stains could have been erased by any other means. In these circumstances, we are of the considered view that the extra judicial confession and the consequent recovery made on the basis of the extra judicial confession cannot also be taken into consideration. The learned Additional Public Prosecutor is unable to draw our attention to any other circumstances to prove the prosecution case as to the involvement of the accused in the offence. In the absence of any other circumstances and in view of the other fact that the extra judicial confession, if it is admissible, it is only a weak piece of evidence and on facts we feel that the extra judicial confession cannot be relied upon. Therefore, the conviction and sentence imposed by the learned trial Judge are liable to be set aside.

14. In the result, the appeal is allowed setting aside the conviction and sentence passed by the learned 1st Addl. Sessions Judge, Coimbatore in S.C. No. 340 of

2004. The appellant is not found guilty of the charges and he is ordered to be set at liberty forthwith, if his custody is not required in any other case. Fine amount if any paid by the appellant shall be refunded. The bail bonds executed by the appellant shall stand cancelled.