

A INSPECTOR OF POLICE, T.N.
v.
PALANISAMY @ SELVAN
(Criminal Appeal No. 177 of 2003)

OCTOBER 1, 2008

B [DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

C *Evidence Act, 1872 – Circumstantial evidence – Con-*
viction under s.302 IPC on the basis of circumstance that wit-
nesses last saw deceased in company of accused before the
incident and extra judicial confession made by accused be-
fore the village head – Acquittal by High Court disbelieving
evidence of prosecution witnesses – Correctness of – Held:
Correct – The incident took place at night – Witnesses claimed
to have identified accused from his voice but such identifica-
tion was not possible as there was no evidence to show that
witnesses were closely acquainted with the accused – Rea-
sons given by High Court to discard evidence of witness re-
garding extra judicial confession also did not suffer from any
infirmity – Penal Code, 1860 – s.302 – Extra judicial confes-
sion.

F The trial court convicted the accused under s.302 IPC
on the basis of circumstantial evidence. The first circum-
stance was that PWs1 and 2 saw the deceased in the com-
pany of the accused around 11 O'clock in the night of
5.6.1991 and second was an alleged extra judicial con-
fession made by accused on 12.6.1991 at 9 A.M. before
PW-3, the village head. On appeal, the High Court held
G that the evidence of PWs-1 and 2 was not reliable. It also
did not accept the extra judicial confession made before
PW-3 on the ground that PW-3 was the former President
of Village Panchayat Board and being responsible wit-
ness ought to have surrendered the accused to police or

advised him to surrender at the police station immediately after the extra judicial confession was made before him. The High Court accordingly ordered acquittal. Hence the appeal.

Dismissing the appeal, the Court

HELD: The High Court found the possibility of identification of the accused, as claimed by PWs1 and 2, an impossibility. Undisputedly it was a dark night. They claimed to have identified the accused from his voice. Though such identification in some cases is possible, in the instant case, no evidence was adduced to show that the witnesses were closely acquainted with the accused to even identify him from his voice, that too from a very short replies, purported to have been given. This fact was lost sight of by the trial court. So far as the purported extra judicial confession is concerned, the High Court found that the same also has not established through the evidence of PW3. The reasons given by the High Court to discard the evidence of PW3 did not suffer from any infirmity. [Para 4] [128-E,F,G]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 177 of 2003

From the final Judgment and Order dated 15.3.2001 of the High Court of Judicature at Madras in Criminal Appeal No. 697 of 1992

S. Thananjayan and Revathy Raghavan for the Appellant.

K. Sarada Devi for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT ASAYAT, J. Heard.

The State of Tamil Nadu questions the correctness of the judgment rendered by a Division Bench of the Madras High Court directing acquittal of the respondent. Learned Addiitonal

A Sessions Judge, Erode had found the respondent guilty of offence punishable under Section 302, Indian Penal Code (in short ,IPC') and convicted him accordingly and sentenced him to undergo imprisonment for life. The case at hand rests on circumstantial evidence. The first circumstance which was highlighted by the prosecution was that Pws. 1 and 2 allegedly saw the deceased in the company of the accused around 11 O' clock in the night. The second was an alleged extra judicial confession before PW3 the village head. Though the trial Court placed reliance on these factors to find the accused guilty the High Court found the evidence of Pws. 1 and 2 to be unreliable so far as the claim to have seen accused and the deceased together around 11 O'clock in the night. Similarly the High Court found that the so-called extra judicial confession has not been established by PW3. Learned counsel for the appellant-State submitted that the High Court should not have discarded the evidencne of Pws 1 and 2 so far as the last seen aspect is concerned. Similarly, the High Court should not have disbelieved PW3 about the alleged extra judicial confession. Learned counsel for the respondent supported the judgment of the High Court.

E We find that the High Court has analysed the evidence in great detail and we find that the evidence of Pws 1 and 2 is not truthful so far identification aspect is concerned. Undisputedly it was a dark night. They claimed to have identified them from their voice. Though such identification in some cases is possible in the instant case no evidence was adduced to show that the witnesses were closely acquainted with the accused to even identify him from his voice, that too from a very short replies, purported to have been given. This fact was lost sight of by the Trial court. The High Court found the possibility of identification as claimed by Pws 1 and 2 an impossibility. So far the purported extra judicial confession is concerned the High Court found that the same also has not been established through the evidence of PW3. The reasons given by the High Court to discard the evidence of PW3 do not suffer from any infirmity. The High Court after analysing the evidence concluded as follows:

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, First we analysed the evidence of PW3 to find out whether the prosecution had established that the accused had given the extra judicial confession to him. PW 3 would state that the accused appeared before him on 12.6.1991 around 9.00 a.m. and confessed. The occurrence was on 5.6.1991 and Nagarajan was found dead in the early morning on 6.6.1991. PW3 is the former President of the Village Panchayat Board of Kalangapalayam. If really the accused appeared before him and gave the extra judicial confession, then prudence on his part demands that he should have surrendered the accused at the police station. He being responsible witness and on that day not holding any office, nothing prevented him to reduce into writing the extra judicial confession given by the accused. But, he would state that he only advised the accused to go and surrender at the police station for which the accused was not willing. Thereafter, he claims to have advised the accused to surrender in court with the help of a lawyer. These two advises as stated above which was given by PW3 shows without any doubt that he is a man who knows what to be done when an offender appears before him. In spite of the accused appearing before him, he had not chosen to reduce into writing the extra judicial confession of the accused or produce him at the police station. On the contrary, he would state that on 12.6.1991 in the night he went to the police station and informed the police officer about the extra judicial confession given by the accused. What PW3 was doing right from 9.00 a.m. on 12.6.1991, at which point of time the accused appeared before him and gave the extra judicial confession, till late in the night is a suspicious circumstances which make us to disbelieve his oral evidence.'

The appeal is dismissed.

D.G.

Appeal dismissed.

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