

INSPECTOR OF POLICE, TAMIL NADU

v.

MUTHUSAMY AND ANR.

(Criminal Appeal No.655 of 2002)

SEPTEMBER 10, 2008

[DR. ARIJIT PASAYAT AND HARJIT SINGH BEDI, JJ.]

Criminal Trial – Conviction by Trial Court – Set aside by High Court – On grounds that extra judicial confessions were not reliable; that witnesses resiled from statements made during investigation and that there was manipulation in date of receipt of report by Magistrate from police station – Held: In view of these discrepancies, no case made out for interference in the judgment of High Court – Penal Code, 1860 – s.302 r/w s.34.

According to the prosecution, the deceased was throttled and poison was also administered to him. The accused-Respondents are the father and brother respectively of the deceased. As the report of Forensic Science Laboratory stated that the viscera of the deceased did not contain any poison, prosecution later on gave up its stand that the deceased was administered poison. Trial Court relied upon the extra-judicial confessions purportedly made by the accused-Respondents and accordingly convicted them under s.302 r/w s.34 IPC. On appeal, the High Court directed acquittal. Hence the present appeal.

Dismissing the appeal, the Court

HELD: The High Court referred to the extra-judicial confessions and found that they are not reliable. The witnesses gave varying version about the so called extra-judicial confessions. Apart from that, the persons who claimed to have witnessed the incident resiled from the statements made during investigation and there was prac-

A tically no evidence to implicate the accused persons. To
add to other factors, one more significant factor which
the High Court has noticed is that there was manipula-
tion done to show as if the Magistrate had received the
report from Police Station on 3.1.1990. In reality the date
B of seal found on Exh.P1 and Exh.P9 of the Court of
Keeranoor shows that the date was 5.1.1990. In view of
these discrepancies, the High Court's judgment does not
suffer from any infirmity to warrant any interference. [Para
3] [311-C-E]

C CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 655 of 2002

From the Judgment/Order dated 30.3.2001 of the High
Court of Judicature at Madras in Crl. Appeal No. 738 of 1992

D Shanmugasundaram, S. Thananjayan and V.G. Pragasam
for the Appellants.

V. Ramasubramanian for the Respondents.

The Judgment of the Court was delivered by

E Dr. ARIJIT PASAYAT, J. Heard.

1. Challenge in this appeal is to the judgment of acquittal
recorded by a Division Bench of the Madras High Court. The
accused persons are the father and brother respectively of the
deceased. The incident purportedly took place on 3.1.1990.
F Though the prosecution relied on the evidence of many per-
sons who supposedly witnessed the occurrence, while depos-
ing in Court, most of them resiled from the statements made
during investigation. The version projected by the prosecution
was that the deceased was throttled and also poison was ad-
G ministered to him. But the report of the Forensic Science Labo-
ratory stated that the viscera did not contain any poison. The
prosecution, therefore, gave up its stand that the deceased was
administered poison by the accused persons. There were pur-
portedly some extra-judicial confessions on which the Trial Court
H

relied. Accordingly, the accused persons were convicted for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). In appeal the High Court has, by the impugned judgment, directed acquittal. A

2. Learned counsel for the appellant-State submitted that the analysis made by the High Court to direct acquittal cannot be maintained as the High Court lost sight of several relevant factors. B

3. We find that the High Court has referred to the extra-judicial confessions and found that they are not reliable. The witnesses gave varying version about the manner in the so-called extra-judicial confessions. Apart from that the persons who claimed to have witnessed the incident resiled from the statements made during investigation and there was practically no evidence to implicate the accused persons. To add to other factors, one more significant factor which the High Court has noticed is that there was manipulation done to show as if the Magistrate had received the report from Police Station on 3.1.1990. In reality the date of seal found on Exh. P1 and Exh. P9 of the Court of Keeranoor shows that the date was 5.1.1990. In view of these discrepancies, we are of the opinion that the High Court's judgment does not suffer from any infirmity to warrant any interference. C D E

4. The appeal fails and is accordingly dismissed.

B.B.B.

Appeal dismissed. F