

Thyagarajan Vs. State

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Court : Chennai

Decided On : Oct-30-1992

Reported in : 1993CriLJ1933

Judge : K.M. Natarajan and;N. Arumugham, JJ.

Appeal No. : Crl. Appl. No. 531 of 1986

Appellant : Thyagarajan

Respondent : State

Advocate for Def. : S. Shanmughavelayutham, Addl. Public Prosecutor

Advocate for Pet/Ap. : K.V. Sridharan, Adv.

Judgement :

Arumugham, J.

1. This appeal is directed against the judgment of the learned principal Sessions Judge, Salem, rendered in Sessions Case No. 189 of 1988, dated 30th April, 1986, convicting the appellant/accused under S. 302 of the Indian Penal Code and sentencing him to undergo life imprisonment, for having murdered his father Arunachalam, by attacking with a crowbar on his head at about 11.00 p.m., on 5-4-1985, at his residence in Rasipuram, Salem District, within the limits of Rasipuram police station, as committed to by the Judicial II Class Magistrate, Rasipuram, in

P.R.C. No. 9 of 1985, on 13-9-1985.

2. The case of the prosecution as held out from the recorded and documentary evidence before the Sessions Judge are briefly stated as follows :-

The deceased is the father of the appellant/accused. Both were residing jointly in a house situate in Thiruvencatavilas Palli Street, in Rasipuram Town. The appellant/accused was employed in a soda factory at Rasipuram, belonged to one Sundaram, on a daily wage of Rs. 10/-. As the earnings by the appellant/accused was not adequate, proposing to start a soda factory of his own, the appellant wanted to raise a loan on his house and thereby the insisted his father, the deceased, to get a loan for him.

3. On 5-4-1985, at about 11.30 p.m., when PW 1, Rajendran, the Village Administrative Officer at Koneripatti village, was in this office, the appellant/accused appeared before him with the crowbar MO 1 and gave the confessional statement Ex. P. 1 PW 1 recorded Ex. P. 1 wherein the appellant/accused had stated that he had been working in a soda factory on daily wages, that he intended to start a soda factory of his own and therefore he insisted his father, the deceased, to get a loan for him on their residential house for which the deceased refused, that thereupon on 5-4-1985 at about 11.00 p.m., when his wife and children were sleeping inside their house and his father was sleeping outside the house in a cot, he forcibly beat his father on his head with crowbar MO 1 and that he had rushed to PW 1, along with the crowbar MO 1.

4. On the basis of the said statement recorded by him Ex. P. 1 PW 1 had prepared his report Ex. P. 2 and took the accused to the Rasipuram Police Station, where he handed over the appellant/accused to the Sub-Inspector of Police, along with Exs. P. 1 and P. 2, at about 12.30 a.m. on 6-4-1985. PW 11, the Sub-Inspector of Police who received the appellant/accused and Exs. P. 1 and P. 2 registered a case under S. 307 of the Indian Penal Code, in Rasipuram Police Station Crime No. 156 of 1985, prepared the First Information Report Ex. P. 16, sent it to the Court and it copies to the higher officials for taking further action. He also seized MO 1 under Form-95, Ex. P. 3, attested by PW 1 and took the custody of the accused.

5. In the meanwhile, at about 11.45 p.m. on 5-4-1985, the injured Arunachalam was taken to Rasipuram Government Hospital by one of his relatives, where PW 5 Dr. Narasimhan, attended to him for the injuries found on his person, stated to have been caused by a known person with crowbar at about 11.00 p.m. on that day. At that time, the injured Arunachalam was semi-conscious. On examination, PW 5 found the following external injuries on the person of Arunachalam :-

1. A lacerated wound 3 cm. x 2 cm. x bone deep over the right side of occipital region, clinically depressed fracture of occipital bone.
2. Deformity of right arm. Perla; Abnormal mobility. Suspected fracture of right humer.

After examination, PW 5 referred the patient to the Government Headquarters Hospital at Salem for further treatment. Ex. P. 6 is the copy of the Accident Register recorded by PW 5. Thereafter, PW 5 sent the Accident Intimation Ex. P. 7 to the Rasipuram Police Station. According to PW 5, the injuries found on the person of Arunachalam could have been caused by beating with a crowbar like MO 1.

6. On 6-4-1985, at 1.00 a.m., PW 6 Dr. Murugesan, attached to the Government Headquarters Hospital, Salem, admitted the injured Arunachalam as an in-patient. At that time, the injured was semi-conscious, but was in a position to answer questions, Ex. P. 8 is the case sheet, relating to Arunachalam when he was an in-patient in the Government Hospital at Salem. Ex. P. 9 is the death intimation relating to the death of Arunachalam sent by PW 7, Dr. Singaravel, attached to the Government Hospital, Salem. As per these Ex. P. 8 and P. 9, it appears that from 2.30 p.m. on 6-4-1985 onwards, the patient never regained consciousness and he expired at about 4.30 a.m., on 11-4-1985, in the hospital and that, thereupon, the doctor had sent the death intimation to the police.

7. On 6-4-1985, at about 1.00 a.m. when PW 12 Mr. Rajendran, the Inspector of Police, was in his house, he received the copy of the First Information Report in this case and proceeded to the scene of occurrence at about 1.30 a.m., visited the scene and prepared Ex. P. 4, the Observation Mahazar, and Ex. P. 17, the rough

sketch, attested by PW 1, the Village Administrative Officer. At about 2.00 a.m. on 6-4-1985, he recovered the blood-stained cot, MO 2, blood-stained bed-sheet MO 3, a dhoti MO 4, a pillow with cover MO 5, blood-stained earth from under the cot MO 6 and the sample earth MO 7, under the cover of mahazar Ex. P. 5, attested by PW 1. He also examined PWs 2 and 3 and the doctor attached to the Government Hospital at Rasipuram, on the same day. In the evening at about 3.00 p.m., he visited the Government Hospital, Salem, where the injured Arunachalam had been admitted for treatment. He could not record any statement from the patient as he was unconscious. However, he examined the doctor PW 6 and one Gurusamy, PW 4. From 7-4-1985 till 9-4-1985, as the deceased Arunachalam was unconscious, he could not record any statement from him. Then, on receipt of the death intimation Ex. P. 9 on 11-4-1985, at about 8.15 a.m. he altered the Section registered in the First Information Report into Section 302 of the Indian Penal Code and prepared the Express Report Ex. P. 18 and sent it to the Court. He proceeded to the Government Hospital, Salem, where the dead body of the deceased Arunachalam was being kept and conducted inquest on it, in the presence of Panchayatdars from 9.15 a.m. to 12.15 p.m. and prepared the Inquest Report Ex. P. 19. Then, he sent the dead body for autopsy with a requisition Ex. P. 10, through a police constable PW 9. He examined the doctors PWs 7 and 8 on the same day.

8. PW 8, Dr. Viswanathan, attached to the Government Headquarters Hospital, Salem, on receipt of Ex. P. 10 requisition at about 12.25 p.m. on 11-4-1985, started conducting autopsy over the dead body of Arunachalam as identified by the police constable PW 9, at 1.00 p.m. During post-mortem examination, PW 8 found the followings external injuries :-

1. A contusion 3 cm x 1 cm over the middle of 1/3 of the right upper arm. On opening the wound, fracture of middle 1/3 of right humerus was present.
2. A sutured wound of about 8' in length over the right frontal parietal area, oblique in direction 4' above the right earlobe.

INTERNAL EXAMINATION :- On opening the skull fracture line extended from right temporal bone to frontal and occipital bones for about 8' (not legible). There

was blood clots of 4 ounces. The underlying brain was lacerated.

According to the doctor, this injury was corresponding to injury No. 2 referred to supra. The doctor would opine that the deceased would appear to have died of shock and haemorrhage as a result of the head injury sustained by him, about 8 to 10 hours prior to post-mortem examination. Ex. P. 11 is the post-mortem certificate issued by him. The doctor would, further, opine that the head injury found on the person of the deceased is likely to cause death in the ordinary course of nature.

9. PW 9, the post-mortem constable, after having escorted the deadbody during autopsy, recovered the dhoti MO 8 from the deadbody, handed over the same in the police station and the deadbody to its relatives.

10. After examining PW 8 on 12-4-1985, PW 12 gave a requisition Ex. P. 12, to the Magistrate's Court, to send all the case Magistrate's Court, to send all the case properties for chemical examination. PW 10, the head-clerk, attached to the Judicial II Class Magistrate's Court, Rasipuram spoke to the fact that with the permission of the Magistrate, he sent the case properties for chemical examination under the original of Ex. P. 13 and that whereupon, Chemical Examiner's Report Ex. P. 14 and Serologist's Report Ex. P. 15 were received in Court. As per these reports, human blood-stains were found on MOs. 2 to 6 and 8.

11. On completing the investigation, PW 12, filed charge-sheet against the accused on 17-6-1985, for an offence under S. 302 of the Indian Penal Code.

12. When the accused was questioned under S. 313 of the Code of Criminal Procedure, on the basis of the incriminating circumstances found against him on the tender recorded and documentary evidence, he filed a written statement, in which he has stated that he had been to his father-in-law's house at Omalur on 5-4-1985 and returned to his house only at about 7.00 a.m. on 6-4-1985 and heard about the occurrence, that when he was about to leave for the hospital to visit his father, police came and took him to the police station, where his signatures were obtained by threat by PW 1 and PW 11 in a blank paper and that he never gave any confessional statement before PW 1. The accused had no evidence on his side.

13. On assessing the entire tendered oral and documentary evidence by the prosecution and the statement of the accused/appellant the rival contentions and other attendant circumstances, the learned trial Judge has found the accused/appellant guilty of the offence under S. 302 of the Indian Penal Code and accordingly he has convicted and sentenced him as stated above.

14. We have heard the arguments of Mr. K. V. Sridharan, learned counsel appearing for the appellant herein. Though number of grounds were raised in the grounds of appeal, the learned counsel has confined his attack mainly on the following points :

(i) Adverting to the very contents of Ex. P. 2, the report claimed to have been prepared by PW 1, the Village Administrative Officer, on the basis of the confessional statement given by the accused and sent to the Rasipuram Police Station, it was contended that Ex. P. 2 and P. 1 were manifest that the same had been prepared in the police station and as such, both of these documents were inadmissible in evidence and cannot be relied on by the prosecution;

(ii) the evidence of PW 1 could not be believed, in the context of the very contents of Ex. P. 2;

(iii) there was an inordinate delay in sending Ex. P. 16 along with Exs. P. 1 and 2 to the Court and the delay remains unexplained by the prosecution;

(iv) the non-examination of the police constable who entrusted Exs. P. 1, P. 2 and P. 16 to the Court clinchingly belies the prosecution case pertaining to the sending of the said documents to the Court;

(v) the prosecution has failed to prove the motive of the accused to do away with his father; and

(vi) considering the nature of weapon alleged to have been used by the appellant, MO 1 would clearly run counter to the claim of the prosecution in the context of the medical evidence projected by the prosecution against the appellant, in the sense that it was not a heavy weapon to cause such fatal injuries as said to have been found on the deceased.

15. Yet another contention raised by the learned counsel for the appellant was that there was no eye-witness in this case, nor was there any circumstances to prove the case against the appellant and to sustain the charge of murder of his own father. He further contends that the so-called voluntary confessional statement of the accused, Ex. P. 1, is highly suspicious and that no independent corroboration is available in this case. According to him the entire prosecution case has to be rejected in toto.

16. Per contra, Mr. Shanmughavelayutham, learned Additional Public Prosecutor counters every one of the above contentions projected on behalf of the appellant by submitting that with no waste of time Ex. P. 1 had been given by the appellant voluntarily to PW 1 which had been reduced into writing by PW 1 followed by the preparation of Ex. P. 2 and that consequently the appellant, along with MO 1 and Exs. P. 1 and P. 2 had been taken to Rasipuram Police Station and handed over to PW 11, who in turn registered the case against the appellant in Rasipuram Police Station Cr. No. 156 of 1985, prepared First Information Report Ex. P. 16 and set the law in motion and that therefore, nothing could be attributed against the credibility of the evidence of PWs 1 and 11 Exs. P. 1, 2 and 16. He also contended that the evidence of the medicos PWs 5 to 8 totally provides full corroboration for the prosecution case and that the investigation done in this case bears no laches. He finally submitted that the learned trial Judge was perfectly right in convicting the accused under S. 302, I.P.C. and sentencing him for life and hence the conviction and sentence had to be sustained.

17. In the light of the above rival contentions canvassed in this appeal the only point that has arisen for our consideration is whether the prosecution has established the guilt of the appellant beyond all reasonable doubts upon the charge tried against him.

18. It is not disputed that the deceased Arunachalam, aged about 50, was residing along with the accused and his family in a house situate in Thiruvengada Vilas Palli Street in Rasipuram, that the wife of the deceased died 6 years prior to the occurrence and that the appellant was employed in a soda factory in Rasipuram on a daily wage of Rs. 10/-.

19. Let us now analyse the evidence of the medicos available in this case. PW 5 is the doctor attached to the Government Hospital, Rasipuram who admitted the deceased Arunachalam at about 11.45 p.m. on 5-4-1985, as brought up by one of his relatives, as is evidence from Ex. P. 6, the copy of the Accident Register and Ex. P. 7, the intimation sent to the police by PW. 5.

20. According to PW 6 Dr. Murugesan, attached to the Government Hospital, Salem, he admitted the deceased Arunachalam in the hospital as an in-patient at about 1.00 a.m. on 6-4-1985, as referred to PW 5 for further treatment, as evident from Ex. P. 8, the case sheet regarding the treatment of the deceased. PW 7, Dr. Singaravelu, Assistant Surgeon, attached to the Government Hospital, Salem has deposed to the fact that he had given treatment to the deceased as per Ex. P. 8 and that the deceased died on 11-4-1985, at about 4.30 a.m. without receiving consciousness and that he had sent the dead intimation Ex. P. 9 to the police. PW 8, Dr. Viswanathan, has spoken to the fact that he conducted autopsy on the dead body of the deceased at about 1.00 p.m. on 11-4-1985 as per the requisition Ex. P. 10, given by PW 12, the Inspector of Police, Rasipuram and issued Post-mortem Certificate Ex. P. 11. All these witnesses and exhibits would clearly demonstrate the fact that the deceased Arunachalam had been attached at about 11.00 p.m. on 5-4-1985 with a weapon like M.O. 1 and that whereupon he had been firstly taken to the Government Hospital, Rasipuram and then he had been referred to the Government Hospital, Salem at about 1.00 a.m. on 6-4-1985, admitted therein as an in-patient and on 11-4-1985 at about 4.30 a.m. he succumbed to the head injury caused upon his person which was likely to cause death in the ordinary course of nature, as opined by the doctor. The deceased Arunachalam died due to homicidal violence perpetrated by the assailant, whoever it may be, at about 11.00 a.m. on 5-4-1985.

21. We may at this stage, refer to the injuries noted by PW 5, when he saw the deceased at about 11.45 p.m. on 5-4-1985, in Ex. P. 6, the copy of the Accident Register, in which it has been stated that the deceased was alleged to have been assaulted with crowbar by a known person at about 11.00 p.m. on 5-4-1985. PW 5 has noted the condition of the patient at the time of his admission, as the patient was semiconscious with bleeding in the nostrils. He has noted the following

injuries :-

1. A lacerated wound 3 cm x 2 cm x bone deep over the right side of occipital region. Clinically depressed fracture of occipital bone.
2. Deformity of right arm. Perla; abnormal mobility. Suspected fracture of right humer.

PW 5 would opine that the injuries found on the person of the deceased Arunachalam could have been caused by beating with a weapon like MO 1. In the above said condition the patient had been referred to the Salem Government Hospital for further treatment. According to PW 5, at the time of his medical examination, the deceased was semiconscious, but was able to answer questions.

22. PW 8 is the doctor, who conducted autopsy over the dead body of the deceased Arunachalam at about 1.00 p.m. on 11-4-1985. He had noted the following injuries on the dead body :-

1. A contusion 3 cm x 1 cm over the middle of 1/3 of the right upper arm. On opening the wound, fracture of middle 1/3 of right humerus was present.
2. A sutured wound of about 8' in length over the right frontal parietal area, oblique in direction 4' above the right earlobe.'

On opening the skull it was found that the fracture line of the skull extended from right temporal bone to frontal and occipital bones for about 8' with the presence of four ounces of blood clots and the underlying brain was found lacerated. According to the autopsy doctor, this injury was corresponding to injury No. 2 referred to above. PW 8, has further opined that the deceased would appear to have died of shock and haemorrhage as a result of the head injury sustained by him, about 8 to 10 hours prior to post-mortem examination. Ex. P. 11 is the post-mortem certificate issued by the doctor PW 8. According to PW 8, the head injury found on the person of the deceased would suffice to cause death in the ordinary course of nature.

23. We have carefully examined the evidence of the medicos PWs 5 to 8. We find that though the medicos were cross-examined on behalf of the accused/appellant, nothing was brought out to differ from the opinion of these witnesses and as such we are fully satisfied to accept the evidence of the medicos PWs 5 to 8 in this case. This clearly fortifies our view that the deceased Arunachalam was attacked with a weapon like MO 1 at about 11.00 p.m. on 5-4-1985 at his residence and that in spite of the medical attention and treatment given to him, he succumbed to the injuries as stated above.

24. In this case, there are no eye-witnesses to the occurrence to speak about the complicity of the accused/appellant herein. The whole of the prosecution case is based on the alleged voluntary confessional statement given by the appellant. That apart, the prosecution dwells its case on the circumstances alone to mulct the appellant with criminal liability for the offence under S. 302 of the Indian Penal Code. Therefore, we have proposed to consider, first, the truth and credibility of Exs. P. 1 and P. 2 in the context of the evidence given by PW 1. It is settled law that the evidence of extra-judicial confession in the very nature of things is a very weak piece of evidence and that when all evidence fails and there are no materials on record to prove the guilt of the person charged with murder, then it is highly unsafe to sustain a conviction for an offence under S. 302 of the Indian Penal Code, only on the basis of the extra-judicial confession and that even so an extra-judicial confession can be made acceptable, only if it is proved that it has passed the rigorous test on the touchstone of credibility by means of acceptable evidence with referred to its truthfulness and genuineness. Basing upon the above legal ratio and probing the circumstances and credibility of Exs. P. 1 and P. 2, coupled with the evidence of PW 1, we may observe straightway that the prosecution has miserably failed to succeed in passing the test aforesaid, to accept the alleged extra-judicial confession, said to have been given by the appellant herein to PW 1 for the simple reason that we find that it was not voluntary and not on par with the voluntary truthfulness. It is seen that PW 1 claims that while he was in his office at about 11.30 p.m. on 5-4-1985, the appellant appeared before him with MO 1 and confessed his guilt and gave a statement which was reduced into writing to his narration and that at that time his 'Thalaiyari' by name Pichamuthu was present there. It assumes significance in the sense that though his menial was present he

had not attested Ex. P. 1. That apart, the contents of Ex. P. 1 claimed to have been narrated by the appellant provides every suspicion to the extent that the appellant decided to kill his father and chose that time to be the convenient one and in prosecuting the said object, he beat him with the crowbar and therefore out of fear for the police, he rushed to PW 1 along with the crowbar MO 1 is contradictory. Again, on perusing the contents of Ex. P. 2, the report prepared by PW 1 on the basis of Ex. P. 1, it cannot be relied on for the simple reason that in the report itself it has been stated that he brought the appellant as well as his statement along with crowbar MO 1, at about 12.30 p.m. and produced them before the Sub-Inspector of Police, PW 11. If really the appellant had produced MO 1 at about 11.30 p.m. on 5-4-1985 at the office of PW 1, then the very fact would have been stated in Ex. P. 2. But, instead, there was no reason why it has been stated in Ex. P. 2 that PW 1 produced the appellant, Ex. P. 1 statement and the crowbar MO 1 to the Sub-Inspector of Police by referring to the time as 12.30 p.m. It has to be seen that the appellant/accused has retracted and denied the very contents of the statement and even the very giving of any statement to PW 1 at any point of time and that it was his further statement that in the police station PW 1 and PW 11 obtained his signature in blank paper out of threat and coercion and that he never gave any statement as claimed by the prosecution, much less, voluntary, at any point of time. Perhaps on the basis of the above aspects and latches the learned counsel for the appellant strenuously contended before us that the very claim of PW 1 and PW 11 that Ex. P. 1 confessional statement was given by the appellant and that Exs. P. 2 and P. 16 were prepared on that basis is false. According to him, these documents had been prepared only on the next day, just to implicate the appellant in this case falsely. Of course nothing was brought about against the claim of PWs 1 and 11. But, however, we have to test the genuineness and credibility of Exs. P. 1 and P. 2 in the context of the oral claim made by PW 1 in which, on the facts above referred to, there are number of unexplained serious laches by the prosecution and as long as such laches remain unexplained, we are not inclined to accept the genuineness and truthfulness of Ex. P. 1 on the basis of which Ex. P. 2 report was prepared by PW 1.

25. One another significant aspect, in our view, cannot at all be avoided, is the main flank of attack projected by the learned counsel for the appellant that there

was an inordinate delay in sending Ex. P. 16 along with Exs. P. 1 and P. 2 to the Court and this delay had not been properly explained by the prosecution. In this regard, we have seen that Ex. P. 1 had been recorded by PW 1 at about 11.30 p.m. on 5-4-1985 to the narration of the appellant and that thereafter PW 1 had prepared Ex. P. 2 and took the appellant along with MO 1 and Exs. P. 1 and P. 2 to the Rasipuram Police Station within an hour covering a walkable short distance of one kilometer and whereupon, PW 11, the Sub-Inspector of Police, Rasipuram Police Station received Exs. P. 1 and P. 2 and the accused and put the appellant in the lock up by registering a case under Rasipuram Police Station Cr. No. 156 of 1985 against the appellant and recovering the crowbar MO 1 under Form-95. The First Information Report prepared by PW 11 was marked as Ex. P. 16. PW 11 claims that he has sent the F.I.R. Ex. P. 16 along with Exs. P. 1 and P. 2 to the Rasipuram Court immediately. But, it is seen that those documents have reached the Magistrate's Court at Rasipuram by 12.00 Noon on 6-4-1985. The evidence of PW 11 is that his police station was at a distance of 500 feet from the Magistrate's Court which distance can be crossed by two minutes by walk and that further the Government Hospital, Rasipuram was also within a walkable distance from his place. On a question put by the learned trial Judge, PW 1 has answered that on 6-4-1985, as the Magistrate at Rasipuram was on leave, for handing over Exs. P. 1, 2 and 16 to the Magistrate in charge it took 12 noon on 6-4-1985. Basing upon the above said factual aspects, the learned counsel for the appellant projected the above attack upon Exs. P. 1, 2 and 16 as there is an unexplained inordinate delay rendering the prosecution case as highly suspicious and that delay was attributed to PWs 1 and 11, who prepared Exs. P. 1 and P. 2 by obtaining the signature of the appellant on blank papers and created the same on the next day viz., on 6-4-1985 and that was the reason why the delay has happened.

26. The learned trial Judge has elaborately discussed the above said aspect of the delay in sending the First Information Report to the Court in paragraph 26 of his judgment. We have perused Exs. P-1, P-2 and P-15. We find the initials of the learned Magistrate on the left side column of Exs. P-1 and P-2 putting the date as 6-4-1985. Underneath the initial of the Magistrate the seal of the rubber stamp depicting the name of the Judicial II Class Magistrate's Court, Rasipuram, dated 6th April, 1985 has been affixed. In Ex. P. 2. we find the date as 6-4-1984 put up in

the beginning of the 4th line from the last in the bottom corrected as 5-4-1984. There was no evidence to explain the correction of the date 6-4-1984 into 5-4-1984 or its vice versa by the prosecution and more particularly the year depicts 1984 instead of 1985. Above all, the learned Magistrate while putting his signature on Ex. P-1 and P-2 on 6-4-1985 has not noted the time at which the said documents were received in Court. But the seal of the rubber stamp bears the date as 6-4-1985. The above correction of the date found in Ex. P-2 assumes a very predominant role in causing serious suspicion upon the prosecution case for the reason that P.W. 1 has put his signature at the bottom of the writing portion in English with the date as 5-4-1985 along with the endorsement made by P.W. 1 and P.W. 11 on the left hand side of the said document, amounting to the registering of the case in Crime Number and so on. But, however, we find that Ex. P-16 prepared by P.W. 11 has reached the Court by 12-00 noon on 6-4-1985 as evident from the initials with the date and time put by the learned Magistrate with the date seal of his Court as 6-4-1985. From the dates put up by the learned Magistrate in Exs. P-1, 2 and 16 as 6-4-1985 coupled with the date seal, affixed by the rubber stamp of the Judicial Magistrate's Court, Resipuram depicting the date as 6-4-1985 it was made clear that Ex. P. 16 alone reached the Court by 12.00 noon on 6-4-1985 and Exs. P-1 and P-2 reached the Court after 12.00 Noon and that was the reason why the learned Magistrate has not put the time of receipt of the Exs. P-1 and P-2, while affixing the date seal.

27. Even otherwise, in the context of the evidence given by P.W. 11 that the F.I.R. Ex. P. 16 reached the Court by 12.00 Noon, on 6-4-1985 because the learned regular Magistrate was on leave and that therefore, the same was handed over to the Magistrate in charge by 12.00 Noon on the date. There is no evidence let in by the prosecution in this case significantly. If the claim of P.W. 11 was true, then normally we will expect that the learned Magistrate in charge while putting the signature and noting the time of receipt of the F.I.R. and its connected documents must have necessarily referred to the time, and also, put his designation as Magistrate in charge. But, the very absence of the same in Exs. P-1 and P-2 and P-16 clearly runs count or to the claim by P.W. 11 and that therefore on this score alone there is every serious doubt about the prosecution case, particularly about the credibility and genuineness of Exs. P-1, P-2 and P-16.

Even so, as claimed by P.W. 11, the learned Magistrate's Court at Rasipuram was at a distance of about one kilometer from the police station and one can cover the said distance by two minutes' walk and that if it was so, in the absence of any initial of the deceased to in charge in the above documents, in the context of the date seal belonging to the Magistrate's Court, Rasipuram it clinchingly proves that the delay in sending the Exs. P-1, 2 and 16 from the police station to the Court to cover a distance of one K.M. at a span of nearly about 11 hours, demolishes the very fabric of the prosecution case in its entirety. We find that there was no iota of evidence let in by the prosecution with regard to the delay in sending the F.I.R. and as such the delay remains unexplained.

28. Considering the above important aspects meticulously, we are of the definite view that Exs. P-1 and P-2 were the documents prepared subsequently, on 6-4-1985 in the police station and the so-called statement recorded by P.W. 1, Ex. P-1, would not at all have come into existence at about 11.30 p.m. on 5-4-1985 at the office of P.W. 1 as claimed by him and that there is every lack of genuineness and credibility in Exs. P-1 and P-2. That apart, there was an inordinate delay in sending the said Ex. P-1 and P-2 to the Court along with the F.I.R. Ex. P-16 by more than 11 1/2 hours to cover a distance of about 1 Km. as claimed by PW 1. Above all, the prosecution has not examined any witness to show as to how, in what manner and mode and through whom the said documents were despatched to the Court and with regard to the said aspect the prosecution is conveniently silent for the reason is obvious.

29. In this regard, it has been decided by the Supreme Court in Shankaria v. State of Rajasthan reported in : 1978 CriLJ1251 as follows (at page 1255 of Cri LJ) :-

'It is well settled that a confession, if voluntarily and truthfully made is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused primarily on the basis of his confession recorded under S. 164, Cr.P.C., the Court must apply a double test :

(i) Whether the confession was perfectly voluntary

(ii) If so, whether it is true and trustworthy

Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in S. 24, Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must, before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession or for the matter of any substantive piece of evidence, there is no rigid cannon on universal application. Even so one broad method which may be useful in most cases for evaluating a confession may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.'

30. Keeping in view the legal ratio laid down in the above case law and applying the same to the facts of the present case, we are fully constrained to hold that Ex. P. 1 is not a true and genuine statement nor does it bear any trustworthiness and credibility as claimed by PW 1 and, therefore, it is highly unsafe to place any reliance upon the said document. Moreover, there had been an inordinate delay of more than 11 1/2 hours in sending Ex. P. 16 along with Exs. P. 1 and P. 2 from the police station to the Court and that delay remains unexplained. The prosecution has not taken any attempts to examine any witness in this regard to explain the said delay and prove the case against the appellant.

31. Before proceeding to consider the other evidence relied on by the prosecution, to prove the complicity of the accused/appellant we may refer to a case law reported in *Kashmira Singh v. State of M.P.*, : 1952 CriLJ839 , in which the Supreme Court has held as follows :-

'The confession of an accused person is not evidence in the ordinary sense of the term as defined in S. 31. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the

evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise whether the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.'

32. The above legal ratio enunciated was followed by the Apex Court in a case held between Chandrakant Chimanlal Desai v. State of Gujarat, reported in : [1992]2SCR862 . Applying the above legal ratio to the facts of the instant case, we hardly find any evidence let in or relied on by the prosecution apart from the so called extra-judicial confession claimed to have been made by the appellant. In this context it has to be noticed that PWs 2 to 4 were examined, but were treated hostile. We can expect the wife of the appellant turning hostile for the obvious reason of rescuing her husband from the legal clutches. But, significantly, PWs 3 and 4 who are neighbours and third parties had not supported the prosecution case. Therefore, it is seen that except the evidence of PW 1, coupled with the so called, unbelievable extra-judicial confessional statement Ex. P. 1 nothing has been made available to prove the complicity of the accused/appellant or no circumstances have been brought down with regard to the guilt of the appellant herein.

33. Of course, the medical evidence let in by the prosecution witnesses, PWs 5 to 8 are available. But, towards the proof of the complicity of the accused with the crime there is absolutely no evidence in this case and the prosecution has virtually failed to prove the case against the appellant/accused herein beyond reasonable doubts. The learned trial Judge, while considering the trustworthiness and genuineness of Ex. P. 1 and the aspects which we considered above and the delay of more than 11 1/2 hours in sending Ex. P. 16 along with Exs. P. 1 and P. 2 to the Court, has taken the issue very lightly and recorded the judgment of conviction and sentence against the appellant as stated above, which is incorrect

and erroneous in our view.

34. True, there was no reason for PW 1 to speak contrary to the real facts and against the appellant herein. But however, it does not mean that inadequate evidence with every suspicion has to be accepted for the purpose of convicting the accused in a murder case. It is well settled that in a murder case there can be no reason to explain why witnesses are telling lie against an accused person. The circumstances brought out by the evidence may show that in fact their evidence cannot be safely relied upon. Accordingly, perhaps, as was rightly observed by the learned trial Judge, some Village Administrative Officer mostly used to oblige the police to support their case in seeing that the accused gets convicted in a criminal case. However, that may not be a deciding factor to be taken to any extent by a Court of law as a basis to sustain a conviction. Thus, having considered the entire evidence on record, both oral and documentary, the circumstances claimed therein, the other attendant factors of the prosecution case and the rival contentions advanced on behalf of the parties, we are fully satisfied to hold that the prosecution has virtually and miserably failed to bring home the guilt of the appellant/accused beyond the realm of any doubt for the homicidal death of his father Arunachalam and therefore, we are inclined to give the benefit of doubt arising out of the prosecution case to the appellant/accused herein.

35. In the result, this appeal is allowed. The conviction and sentence recorded by the learned trial Judge in S.C. No. 189 of 1985 are hereby set aside. The appellant/accused is set at liberty forthwith.

36. Appeal allowed.