

A

KAVITA

v

STATE OF TAMIL NADU

JULY 23, 1998

B

[M.M. PUNCHHI C.J.I. AND M. SRINIVASAN, J.]

*Criminal Law :*

*Evidence Act, 1872 : Section 24.*

C

*Extra-judicial confession—Value of—Held : Depends upon the Veracity of the witness to whom it is made—Witness need not give actual words used by the accused—In the circumstances of the case, discrepancies in the evidence of the witnesses to whom the confessional statement was made renders the extra-judicial confession not acceptable.*

D

*Penal Code, 1860 : Sections 302 and 309.*

*Appreciation of evidence—Accused jumped into well after throwing her two children in it—Evidence of the doctor who performed the post-mortem not clear as to how the body of the son instantly floated while that of the daughter fully sunk in the water—Held : In the circumstances of the case, it is not possible to accept the evidence of the witness that he saw the body of the son instantly floating when immediately after the incident he looked into the well—Criminal Trial.*

E

*Medical Jurisprudence :*

F

*Drowning—Body usually sinks and starts floating only after some hours.*

**The appellant-accused was convicted for offences under Sections 302 and 309 of the Penal Code, 1860 and sentenced to undergo imprisonment for life. The High Court, placing reliance on the extra-judicial confession of the accused, confirmed the conviction and sentence. Hence this appeal.**

G

**According to the prosecution PW-1 saw the accused jumping into a well after throwing her two children in it. PW-1 also saw the body of the son floating while that of the daughter fully sunk in the water. PWs 1 to 3 went**

H

down the well and brought out the accused. When questioned by them the accused replied that she could not withstand the daily torture at the hands of her husband and decided to bring an end to her life along with that of her children. The accused was conscious when she was taken out of the well and became unconscious immediately after making the statement of confession. A

Allowing the appeal, this Court B

**HELD :** 1.1 Convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the witness must give the actual words used by the accused but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses. [904-H; 905-A] C

1.2. In the instant case it is somewhat difficult to believe that the appellant was conscious when she was taken out of the well and she became unconscious immediately after making a statement of confession. On the other hand, the version of the appellant is that she was unconscious after she slipped into the well and she regained consciousness only in the hospital. That appears to be more probable. [906-D-E] D

2. The evidence of the doctor who performed the post-mortem is not very clear as to how the body of the son could instantly float while the body of the daughter was fully sunk in the water. After drowning a body usually sinks and only after some hours it would start floating. Therefore, it is not possible to accept the evidence of the witness that he saw the body of the son floating when immediately he looked into the well. [908-G; 907-B] E

*Taylor; "Principles and Practice of Medical Jurisprudence" 13th Edn. p. 300 and Modi's Textbook of Medical Jurisprudence and Toxicology, 21st Edn. p. 226, referred to.* F

**CRIMINAL APPELLATE JURISDICTION :** Criminal Appeal No. 695 of 1992. G

From the Judgment and Order dated 27.2.92 of the Madras High Court in Crl. A. No. 342 of 1986.

M.A. Chinnaswamy, M.A. Krishnamoorthy and J.B. Ravi for the Appellant. H

A V.G. Pragasam for the Respondent.

The Judgment of the Court was delivered by

B SRINIVASAN, J. The appellant was convicted by the Sessions Judge, Tirunelveli for offences under Section 302 and Section 309 IPC and sentenced to life imprisonment for the former and one year rigorous imprisonment for the latter. The conviction and sentence were confirmed on appeal by the High Court and aggrieved thereby, the appellant has preferred this appeal.

2. The case of the prosecution is as follows:

C On 13.1.85 at about 8.00 AM when PW 1 went to answer call of nature, he saw the appellant jumping into a well situated nearby and when he ran to the well and looked down, he saw that the appellant was struggling for her life and a male child's body was floating. he went to the village nearby and brought PW-2, PW-3 and one Meera to the place of occurrence. The three men went down the well and brought out the appellant. When questioned by D them she replied that she could not withstand the daily torture at the hands of her husband and decided to bring an end to her life alongwith that of her children. The fire service people came and took out the body of the male child from the well. The appellant was taken to the hospital. PW1 went to the police station and gave a complaint referring to the confession made by the appellant. E The body of the daughter of the appellant was removed from the well next day. It was found that the two children died on account of asphyxia caused by drowning. The appellant and her husband were prosecuted. The latter was charged with an offence under Section 306 IPC.

F 3. The trial court acquitted the appellant's husband and convicted the appellant. The evidence of PWs 1 to 3 was relied on as proving the extra judicial confession alleged to have been made by the appellant. The case of the appellant that herself and her son slipped into the well when they were trying to wash their feet and her daughter got frightened and fell into the well was rejected. On appeal, the High Court has also placed strong reliance on G the alleged extra judicial confession of the appellant and confirmed the conviction and sentence.

H 4. There is no doubt that convictions can be based on extra judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may

not be necessary that the actual words used by the accused must be given A  
by the witness but it is for the Court to decide on the acceptability of the  
evidence having regard to the credibility of the witnesses.

5. In the present case the Courts below have proceeded on the footing B  
that PWs 1 to 3 had no motive to speak falsehood and their version that the  
appellant made a confession as soon as she was taken out of the well should  
be accepted as gospel truth. Unfortunately, both the courts have failed to take  
note of various circumstances which have a bearing on the acceptability of  
the evidence of PWs 1 to 3. The material discrepancies in their depositions  
and the inherent improbabilities have been completely ignored. C

6. PW1 who claims to have witnessed the jumping of the appellant into  
the well did not inform the people in the village that he saw the act of jumping.  
He had only informed them that he saw the body of a woman inside the well.  
In the Chief-Examination he deposed that he knew the appellant and her D  
husband but in the cross-examination he admitted that he did not know either  
of them before the occurrence. In the statement given by PW1 at the police  
station which is marked as Ex. P-1 he had stated that as soon as the appellant  
was taken out of the well, he enquired from her as to where her daughter was.  
It is not known how he could have put that question to her when in the cross-  
examination he admitted that he did not know the appellant and her husband E  
and he did not know as to how many children they had. PW3 stated that he  
himself as well as PWs 1 & 2 were at the place of occurrence till the evening.  
If that was so, PW1 could not have given the statement of complaint at the  
police station at about 9 AM. In the statement, Ex. P-1 the signature of PW1  
is on the same line as the last sentence therein. It was suggested to PW-11, F  
the additional Sub-Inspector of Police, who recorded the statement, that the  
signature of PW1 had been taken on blank paper and it was filled up later.  
PW-11 has admitted that normally the signature of the person who makes the  
statement will be taken only below the actual statement and there was no  
reason why it was taken on the same line as the last sentence in the statement  
in the present case. This circumstance read along with the deposition of PW3 G  
that PWs 1 to 3 were there at the place of occurrence till the evening lead  
to the inference that PW-1 did not go to the Police Station at 9 AM as claimed  
by him and gave the complaint. At any rate, the above facts give rise to a  
serious suspicion that there is something other than what appears on the  
surface. H

A 7. PW-1 and PW-2 deposed that from the village, PW-2, PW-3 and a woman by name Meera were the only persons to come to the place of occurrence when PW1 informed the villagers that a woman's body was found in the well. But PW-3 stated that several residents of the village went to the place of occurrence along with them. In Ex. P-1 also it was averred that several persons from the village went to the place of occurrence. If there were number of women at that place, normally the appellant would have been questioned by the women intimately and not by PWs 1 to 3 only. It is significant that no other person from the village or even Meera whose presence was admitted has been examined as a witness to prove the alleged extra judicial confession.

C 8. According to PWs2 and 3, the appellant fainted immediately after making a confession and she was taken to the hospital by the Fire Fighting Squad which came a little later. No witness is in a position to say as to who informed the Fire Fighting Squad about the incident and as to how they reached the place of occurrence within a short time. It is somewhat difficult to believe that the appellant was conscious when she was taken out of the well and she became unconscious immediately after making a statement of confession. On the other hand, the version of the appellant is that she was unconscious after she slipped into the well and she regained consciousness only in the hospital. That appears to be more probable.

E 9. According to PW-2 the appellant pleaded with PWs 1 to 3 with folded hands not to save her or take her out of the water. According to PW-3 they told her to come out of the water but she refused to do so. PW1 had not said anything about this in his evidence or in his statement Ex. P- 1 . A perusal of the evidence of PW1 along with the statement in Ex. P-1 will lead to the inference that the appellant was unconscious when she was drawn out of the water.

G 10. There is no witness who had seen the appellant throwing her children into the well. The jumping of the appellant into the well is spoken to by PW-1 only and his versions are inconsistent. Thus there is nothing on record which will clinch that the appellant jumped into the well after throwing her children therein.

H 11. The aforesaid circumstances are sufficient to shake the credibility of PWs 1 to 3 and the acceptability of their depositions. It follows that the

so called extra judicial confession is not proved satisfactorily. The courts below are in error in accepting the same. A

12. There is yet another relevant circumstance which has been overlooked by both the Courts. It is the evidence of PW-1 that he saw the body of the appellant's son floating when he looked down into the well after seeing her jumping into it. According to the evidence, the body of the daughter of the appellant was not available till the next day. According to the prosecution the two children were thrown into the well and immediately thereafter the appellant jumped therein to commit suicide. If that is so, the body of the boy would also have sunk and it would not be floating when PW-1 looked into the well. It would have taken some hours before the body of the boy started floating. As regards the buoyancy of the human body, Taylor says thus, in his "Principles and Practice of Medical Jurisprudence" 13th E. at page 300: B C

The recovery of an immersed body: D

After drowning has occurred the body usually sinks and then may re-appear after a variable period of time. The time interval depends on:

- 1: the nature of the water -salt or fresh;
2. the specific gravity of the body: E
3. the rate of putrefactive change. F

It may be recalled that according to the principle of Archimedes a body in water will experience a buoyant force equal to the weight of water it displaces. Also the specific gravity of the body relates the weight and volume of the body to that of the water. The specific gravity of the human body is very close to that of water. Small variations, therefore, have considerable effect on the buoyancy. F

In a study in which the specific gravity and buoyancy were calculated related to specific volume of air in the lungs of each subject Donoghue and Minnigerode concluded that all subjects would be capable of floating in either fresh water or sea water at total lung capacity. At functional residual capacity (the approximate lung volume of the dead body), 69% of the subjects would float in sea water whereas only 7% would float in fresh water. G H

A In addition to the amount of air in the lungs, the specific gravity of the human body varies with the size and composition of that body. The weight of the skeleton is balance against the amount of fat present. Thus women generally have a lower specific, gravity than men while infants and young children appear to float more readily than adults.

B Clothing will tend to support the body initially with natural buoyancy and later perhaps assist in sinking because of its weight. The addition of weights to the body will also assist the process.

C Thus, as a general rule the body with water in the lungs and stomach will sink. It will go down to the bottom because hydrostatic pressure which increases with depth will compress but gas is present and thus increase specific gravity. There it may remain until, if it is free to move, the formation of the gases of putrefaction will decrease the specific gravity. It will then rise to the surface and float.

D 13. In Modi's Text book of Medical Jurisprudence and Toxicology, 21st E. at page 220 it is stated as follows:

Length of time the body was in water:

E Normally the human body is slightly heavier than fresh water and immediately the person becomes unconscious, sinks and goes down to the bottom unless there is some obstruction in between or there is a strong upward current in the water. Owing to putrefaction and formation of gases all bodies sooner or later again come up to the surface, it is much quicker in warm water than cold. Usually the sunk body comes to the surface a little distance away from the site of drowning, however, the current, its speed and the tide in sea water are some of the factors.

G 14. Though the body of the son of the appellant was sent to the hospital on 13.1.85, the post mortem was admittedly done only on the next day. The reason for the delay is not available on record. The evidence of the doctor who performed the post mortem is not very clear as to how the body of the son could instantly float while the body of the daughter was fully sunk in the water.

H 15. In the facts and circumstances set out above, we are unable to

uphold the conviction and sentence awarded to the appellant. We are of the opinion that the prosecution has not prove its case beyond reasonable doubt. The appellant is entitled to the benefit of doubt and consequently we set aside the judgments of both the Courts. The appeal is allowed and the appellant is acquitted. A

V.S.S.

Appeal allowed. B