16. Thus, the accused are entitled to get the benefit of doubt and are entitled to be acquitted.

17. Accordingly, the appeal is allowed, and the judgment dated 29.08.2001 passed by the First Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Madurai in S.C.No.250 of 2000 as affirmed by the High Court is set aside, and the appellants are acquitted of the charges levelled against them. The appellants are directed to be released forthwith if not required in any other case.

***Result*:-** Appeal allowed.

ABC 2019 (I) 238 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Mohan M Shantanagoudar & Dinesh Maheshwari, JJ.)

Criminal Appeal No. 1016 of 2010

(From Madras High Court)

Decided On 24 January, 2019

CHAKARAI @ CHAKARAVARTHI ***- Appellant(s).***

Versus

STATE REP. BY INSPECTOR OF POLICE ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Sections 302 — Indian Evidence Act, 1872 — Section 24 — Conviction on the basis of extra judicial confession made to Tehsildar — extra-judicial confession is full of facts & very long — graphically discloses the antecedents of the accused, motive & gives graphic details of how each of the accused attacked the deceased other facts — held suspicious giving an impression that the same has been generated to make the courts believe the case against the appellant —Conviction set aside. (Para 7)

(B) Indian Evidence Act, 1872 — Section 24 — Detailed extra-judicial confession — Conduct of the accused — Held, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be — therefore, he was seeking to corroborate their future evidence — this would hardly be the natural conduct of an accused if he was voluntarily making a confession —cannot be relied upon — Thangavelu v. State of Tamil Nadu — relied upon. (Para 7)

(C) Indian Evidence Act, 1872 — Section 24 — Extra-judicial confession — basing conviction solely on — Held, even if the extra-judicial confession is to be believed, it would be unsafe to convict the accused and award life imprisonment to him based on the sole circumstance of an extra-judicial confession — more particularly since all the other circumstances remain unproved. (Para 8)

(D) Indian Evidence Act, 1872 — Section 24 — Extra-judicial confession — Conduct of person recording extra-judicial confession — did not acted impartially — fatal to prosecution. (Para 8)

Facts:- *As per the facts of the case the deceased was working as a Collection Agent in a Bank. Accused Nos. 1 and 2 had availed vehicle loans from the said Bank to purchase two motor cycles. However, such loans were not repaid on time. The deceased used to pressurise both the accused to repay the loans. About six months prior to the incident in question, the deceased had taken away both the vehicles in order to pressurise them to repay their loans. Accused Nos. 1 and 2 approached the deceased for the return of these vehicles, but he refused to oblige, saying that he would return the vehicles only once they repaid the loans. Accused Nos. 1 and 2 were inimically disposed towards the deceased in that regard. They sought the help of the other accused and conspired with them to do away with the life of the deceased. On the relevant day Accused No.1, along with the other accused, called the deceased over phone to the place of the incident on the pretext of repaying the loans. The deceased reached the place and immediately thereafter, all the accused pushed the deceased inside the Maruti van owned by one of the accused, took him away and killed him. Thereafter, the dead body was thrown. The Trial Court convicted all the accused, whereas the basing on extra-judicial confession the High Court retained the conviction of the appellant herein u/s 302, IPC and acquitted all the other accused persons, as well as the appellant of all other charges. The honourable Apex Court acquitted the accused disbelieving extra judicial confession.*

Law of relief:- ***If the person recording extra-judicial confession has not acted impartially the extra-judicial confession cannot be relied upon.***

Held:- We have perused the extra-judicial confession (Ext. P-1) recorded by P.W.12 (the Tahsildar, Salem), the translation in English of which was provided to us by the learned counsel for the appellant. The extra-judicial confession gives us an impression that the same has been generated to make the courts believe the case against the appellant. The extra-judicial confession is suspiciously full

of facts, and graphically discloses the antecedents of Accused No.1, the situation of his house and what happened prior to the incident in question and thereafter. It is recorded in nearly five full pages, and not only speaks about the motive to kill, but also gives graphic details of how each of the accused attacked the deceased. (Para-7)

Hence, we are of the opinion that the extra-judicial confession placed on record cannot be relied upon. However, even if the extra-judicial confession is to be believed, it would be unsafe to convict the accused and award life imprisonment to him based on the sole circumstance of an extra-judicial confession, more particularly since all the other circumstances remain unproved, and since the Investigation Officer and P.W. 12 have not acted impartially, which is evident from the manner of recording the alleged extra-judicial confession as discussed supra. (Para-8)

Counsel:- ***For Appellant(s):*** *Mr. A. Radhakrishnan, Adv.*

For Respondent(s): *Mr. M. Yogesh Kanna, Adv.*

Cases Referred:-

Thangavelu v. State of Tamil Nadu, (2002) 6 SCC 498, (Para-7)

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.: - We have heard Mr. Jayanth Muthuraj, learned counsel for the appellant as well as Mr. S. Raja Rajeshwaran, learned counsel appearing on behalf of the respondent – State.

2. This appeal by special leave is directed against the common judgment and order dated 16.06.2009 passed by the High Court of Judicature at Madras in a batch of Criminal Appeals filed by the accused, confirming the judgment dated 07.02.2007 passed by the Additional District Judge, FTC 2, Salem, Tamil Nadu in S.C. No. 5 of 2006 to the extent that it convicted the appellant/Accused No.1 for the offence under Section 302 of the Indian Penal Code (in short, "the IPC") and sentenced him to life imprisonment.

3. The brief facts relating to this appeal are as under:-

The deceased Ramamurthy was working as a Collection Agent in New Centurion Bank at Salem. Accused Nos. 1 and 2 had availed vehicle loans from the said Bank to purchase two motor cycles. However, such loans were not repaid on time. The deceased Ramamurthy used to pressurise both the accused to repay the loans.

Despite the same, Accused Nos. 1 and 2 failed to repay the same and started avoiding him. About six months prior to the incident in question, the deceased Ramamurthy had taken away both the vehicles of Accused Nos. 1 and 2 without informing them, in order to pressurise them to repay their loans. Accused Nos. 1 and 2 approached the deceased for the return of these vehicles, but he refused to oblige, saying that he would return the vehicles only once they repaid the loans. Accused Nos. 1 and 2 were inimically disposed towards the deceased Ramamurthy in that regard. They sought the help of the other accused and conspired with them to do away with the life of the deceased Ramamurthy.

On 14.5.2005, Accused No.1, along with the other accused, called the deceased Ramamurthy over phone to the place of the incident on the pretext of repaying the loans. The deceased reached the place and immediately thereafter, all the accused pushed the deceased inside the Maruti van owned by one of the accused, took him away and killed him. Thereafter, the dead body was thrown near the house of an advocate at Salem.

4. On the next day, P.W.18, the Village Administrative Officer, upon receiving information about an unidentified dead body, went to the location, saw the dead body and lodged the first information report.

The Trial Court convicted all the accused, whereas the High Court retained the conviction of the appellant herein under Section 302 of the IPC and acquitted all the other accused persons, as well as the appellant of all other charges.

5. The case of the prosecution is mainly based on the extra-judicial confession of the accused. Both P.W.8, who had allegedly seen the accused abducting the deceased Ramamurthy, and P.W. 11, who spoke about the alleged conspiracy, turned hostile. The circumstances relied upon by the prosecution are as under:-

a) Motive for commission of the offence, as deposed to by P.W.2.

b) Accused were seen abducting the deceased by P.W.8.

c) Conspiracy amongst the accused, deposed to by P.W.11.

d) Recovery of the Maruti van, weapon and the blood stained clothes of Accused No.1, based on the confession made by Accused

No.1 before the police. The circumstance of recovery is deposed to by P.W.18.

e) The extra-judicial confession spoken to and recorded by P.W.12.

It is noteworthy to mention that the High Court has disbelieved all the circumstances except the extra- judicial confession.

6. To satisfy our conscience, we have gone through the entire material. We do not find any reason to disagree with the High Court, inasmuch as it has rightly concluded that the circumstances of motive, abduction by accused, conspiracy and recovery are not proved beyond reasonable doubt.

As mentioned supra, P.W.8, who had allegedly seen the abduction, and P.W.11, who initially deposed with respect to the conspiracy, turned hostile. The High Court has also rightly disbelieved the aspect on motive inasmuch as the grievance of Accused Nos. 1 and 2 against the deceased was six months prior to the incident, to the degree that the deceased had allegedly taken away the vehicles of the accused without informing them. Though P.W.2, the mother of the deceased, deposed about the motive, it is clear that the same had not been disclosed by her to the police during the investigation. Additionally, although P.W.18 deposed about the recovery of certain articles which were blood stained, the prosecution failed to place the chemical analysis report on record even though the material objects recovered from Accused No.1 had been sent for such analysis. Moreover, though the serological report found that the blood groups found on the clothes of the deceased and the recovered material objects tallied, the same cannot be relied upon since the serial number of the requisition sent does not tally with that of the report. Therefore, in the absence of reliable matching of blood groups, the evidence of P.W.18 loses its importance.

7. Thus, the only remaining circumstance, as rightly concluded by the High Court, is the extra-judicial confession.

We have perused the extra-judicial confession (Ext. P-1) recorded by P.W.12 (the Tahsildar, Salem), the translation in English of which was provided to us by the learned counsel for the appellant. The extra-judicial confession gives us an impression that the same has been generated to make the courts believe the case against the appellant. The extra-judicial confession is suspiciously full of facts,

and graphically discloses the antecedents of Accused No.1, the situation of his house and what happened prior to the incident in question and thereafter. It is recorded in nearly five full pages, and not only speaks about the motive to kill, but also gives graphic details of how each of the accused attacked the deceased.

In this context, it would be relevant to refer to certain observations made by this Court in ***Thangavelu v. State of Tamil Nadu, (2002) 6 SCC 498***. Paragraph 7 of the judgment is extracted below:-

> "At this juncture we may take note of the prosecution case that the appellant had made an extra-judicial confession to PW 12, another VAO on the day following the incident. Though the courts below have not placed any reliance on this confession, we take note of this document for the purpose of appreciating the genuineness of the prosecution case. A perusal of this confession Ext. P-14 gives us an indication of the attempt of the prosecution to build a case against this appellant. This extra-judicial confession is so full of facts starting from about 25 years prior to the date of the incident and graphically details what happened over these years to his sister and his family which actually is the motive suggested by the prosecution for the crime. Ext. P-14 is recorded in nearly 4 full pages, it not only speaks of his motive to kill D-1 and D-2 but also gives graphic details of the nature of the attack on the deceased and also mentions in detail the persons whom he saw during and after the incident. In a manner of speaking, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression, therefore, he was seeking to corroborate their future evidence. In our opinion, this would hardly be the natural conduct of an accused if he was voluntarily making a confession. We further notice the unimaginable similarity in Exts. P-14 and P-1 as also in the evidence of PW 1 which supports the theory of the defence that there was an attempt by the prosecution to create evidence in this case." (emphasis supplied)

The facts of the present case are similar to the facts of the aforesaid case, in so far as the extra-judicial confession is concerned. All the observations made by this Court in the case of *Thangavelu*

(supra) are aptly applicable to the case on hand. In the said matter, this Court disbelieved the detailed extra-judicial confession and acquitted the accused.

8. Hence, we are of the opinion that the extra-judicial confession placed on record cannot be relied upon. However, even if the extra-judicial confession is to be believed, it would be unsafe to convict the accused and award life imprisonment to him based on the sole circumstance of an extra-judicial confession, more particularly since all the other circumstances remain unproved, and since the Investigation Officer and P.W. 12 have not acted impartially, which is evident from the manner of recording the alleged extra-judicial confession as discussed supra.

9. In our considered opinion, the High Court was not justified in convicting the accused based on the sole circumstance of the extra-judicial confession under the facts and circumstances of this case.

10. Accordingly, the judgment passed by the High Court convicting the Accused No.1/Appellant stands set aside. The appellant is acquitted of all the charges levelled against him. He shall be released forthwith, if he is not required in any other case.

The appeal is, accordingly, allowed.

***Result*:-** Appeal allowed.

ABC 2019 (I) 244 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(R. Banumathi & R. Subhash Reddy, JJ.)

Criminal Appeal No(s). 146 of 2019
(Arising out of SLP (CRL.) No.10418 of 2018)
(From Punjab & Haryana High Court)
Decided On 25 January, 2019

SURAJ PAL ***- Appellant(s).***

Versus

STATE OF HARYANA ***- Respondent(s).***

Law Covered*:-** ***Indian Penal Code, 1860 — Section 379-A — Conviction under — Snatching of mobile phone —No Test Identification Parade was held — First time identification in the