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Crl.A.No.47 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

**Crl.A.No.47 of 2021**

1.Arulselvam

2.Palpandi

... Appellants/A1 & A2

v.

The State by Inspector of Police,  
Attaiyampatti Police Station,  
Salem District.

(Crime No.26/2018)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.133 of 2019 dated 11.01.2021, on the file of the learned I Additional District and Sessions Judge, Salem, and set aside the conviction and sentence imposed in judgment dated 11.01.2021 and acquit the appellants.

For Appellants

: Mr.R.Nalliyappan

For Respondent

: Mr.A.Gokulakrishnan



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Additional Public Prosecutor



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**JUDGMENT**

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(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the accused 1 and 2 challenging the conviction and sentence imposed upon them vide judgment dated 11.01.2021 in S.C.No.133 of 2019 on the file of the learned I Additional District and Sessions Judge, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3(a). It is the case of the prosecution that the the deceased was married to PW2 for about 13 years and they had two children out of the wedlock; that PW6 was the son of the deceased and PW2; that since the deceased was an alcoholic and did not take care of PW2 and the children, they had differences of opinion and were living separately; that PW2 became friendly with A1 and both of them were running a tailoring shop and that A1 was taking care of PW2 and the children; that thereafter, the



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deceased wanted to join PW2, which was not liked by A1 and hence, A1 decided to do away with the deceased with the help of A2; that on 13.01.2018, A1 called the deceased at about 10.00 p.m., to consume alcohol together and that the deceased came in his two-wheeler bearing Regn.No.TN37CL 0553; that the deceased and A1 consumed alcohol in the house of A1; that when the deceased was in an inebriated condition, A1 stabbed the deceased with the knife; and that thereafter, with the help of A2, removed his dress and tied stones around the body of the deceased and threw the body in a lake.

(b) It is the further case of the prosecution that on 14.01.2018, the accused burnt the dress materials of the deceased and parked the vehicle of the deceased, in a Cycle Stand which was run by PW4. On 16.01.2018, PW1, the Village Administrative Officer, on information that an unidentified body was found in the lake, went to the place and found a body of a male aged between 30 and 40, floating in the lake. He also found that there was a cut injury on the neck, the lips were swollen, and the body was tied with a nylon rope. He therefore gave a complaint [Ex.P1] to PW21,



who registered an FIR [Ex.P24] in Cr.No.26 of 2018 for the offence under Section 302 of the IPC.

(c) PW21, the investigating officer went to the scene of occurrence and prepared the Observation Mahazar [Ex.P11] and Rough Sketch [Ex.P25]; he also sought the help of the dog squad, however, the Dog Squad would not be of any help, since the body was in a decomposed stage; thereafter, he examined the witnesses and in order to fix the identity of the deceased, he deputed the Sub Inspectors of Police Vishwanthan [PW20] and one Madheswarn. He thereafter examined the other witnesses.

(d) PW21 conducted the inquest over the dead body at the hospital on 19.01.2018 and prepared an inquest report Ex.P26. He made a requisition for conducting postmortem, which was done by PW18-Doctor, who issued the postmortem certificate [Ex.P21]. Thereafter, the investigating officer made a request to the Doctor to preserve the skull and the femur bone of the deceased and cremated the dead body. He seized the underwear of the deceased [M.O.13], the waist thread [M.O.14], and a nylon rope [M.O.15]



and sent the same under Form-91 to the Court. Though, efforts were taken by PW21, he could neither ascertain the identity of the deceased nor the accused.

(e) On 24.05.2018, PW2, the wife of the deceased made a complaint and the same was registered as FIR [Ex.P17] in Cr.No.205 of 2018, for 'man missing'. He thereafter examined the other witnesses and found that the unidentified body relating to Cr.No.26 of 2018 relates to the missing person in relation to the complaint given by PW2. On suspicion that A1 could be responsible for the offence, PW21 was in search of A1. On 28.05.2018, A1 surrendered before the learned Judicial Magistrate, Paramakudi.

(f) On 01.06.2018, PW21 made an application to take A1 into police custody and took him into police custody for three days. On the confession of A1, the admissible portion of which is marked as Ex.P2, PW21 seized the dress materials of the accused and identified the place i.e., the Cycle Stand, where the bike was kept and seized the knife [M.O.1] under Seizure Mahazar [Ex.P3], and the mobile phone of PW2 [M.O.4] from the Provision Shop belonging to PW3.



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(g) PW21 arrested A2 on 06.06.2018 and on the confession of A2, the admissible portion of which is marked as Ex.P8, PW21 seized the bike key [M.O.5], Cycle Stand Token [M.O.9], the RC Book Xerox [M.O.6], Insurance Policy Xerox [M.O.7] and the driving licence [M.O.8] of the deceased which were found in a polythene cover, under Seizure Mahazar [Ex.P9]. He thereafter took steps to conduct DNA Test and Superimposition to ascertain the identity of the deceased and after obtaining the results, filed the final report against the accused for the offence under Sections 302, 201 r/w 302 of the IPC, before the learned Judicial Magistrate No.IV, Salem.

(h) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.133 of 2019 and was made over to the learned I Additional District and Sessions Judge, Salem, for trial. The trial Court framed charges under Sections 302 and 201 r/w 302 of the IPC against A1 and under Section 201 r/w 302 of the IPC against A2 and when questioned,



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the accused pleaded 'not guilty'.

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(i) To prove the case, the prosecution examined 21 witnesses as P.W.1 to P.W.21, marked 37 exhibits as Exs.P1 to P37, and marked 17 Material Objects as M.O.1 and M.O.17. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witnesses on their side, however, they marked two documents, viz., Ex.D1 and Ex.D2.

(j) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt, held the accused guilty of the charges levelled against them, and accordingly convicted and sentenced the accused as follows:

| Accused No. | Offence under Section                      | Sentenced to                                                                                                                              |
|-------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| A1          | 302 IPC                                    | To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months.                    |
|             | 201 r/w 302 IPC                            | To undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month. |
|             | Sentences are ordered to run concurrently. |                                                                                                                                           |



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|    |                 |                                                                                                                                           |
|----|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| A2 | 201 r/w 302 IPC | To undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month. |
|----|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------|

Hence, the accused have preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.R.Nalliyappan, learned counsel appearing for the appellants/accused, and Mr. A. Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

5. Mr.R.Nalliyappan, the learned counsel for the appellants submitted that the identity of the deceased has not been conclusively established; that the femur bone of the deceased was compared with the blood samples of one Rukmani, the mother of the deceased, however, the said Rukmani has not been examined by the prosecution; that the motive has not been established; and that the only other circumstance relied upon by the prosecution is the evidence of PW2-wife of the deceased and the child witness-PW6 (son of the deceased), who had deposed that the deceased went out on 13.01.2018 to meet the appellant and thereafter, did not return.



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The learned counsel further submitted that both of these witnesses have not stated the said fact before the investigating officer and their deposition in Court, is an improvement. Thus, the circumstances have not been fully established and hence, he prayed for acquittal of the appellants.

6. The learned Additional Public Prosecutor *per contra* submitted that the evidence of PW15, the Forensic Science Officer, who compared the DNA profile of the mother of the deceased with the femur bone of the deceased and the evidence of PW17, who conducted a superimposition test confirmed the identity of the deceased. The evidence of PW2 and PW6 that the deceased went to the house of A1 on 13.01.2018 and thereafter did not return home and the fact that A1 had stated to PW2 that the deceased would never come back, besides the motive and the recovery of the material objects, would all go to show that the prosecution has established the circumstances beyond reasonable doubt and prayed for dismissal of the appeal.

7. We have carefully considered the rival submissions and perused all



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the relevant materials available on record.

8. (i) PW1 is the Village Administrative Officer, who found the dead body of the deceased in the lake. He made a complaint, based on which an FIR in Cr.No.26 of 2018 was registered. He is also a witness to the confession of A1 and the recovery of articles M.O.1 to M.O.10; PW2 is the wife of the deceased, who gave a complaint in Cr.No.205 of 2018, registered for 'Man Missing' and she speaks about her relationship with A1 and about the motive; PW3 speaks about the recovery of mobile phone, which was pledged with him by A1; PW4 is running a Cycle Stand and speaks about the recovery of motorcycle belonging to the deceased from his shop; PW5 is the sister of PW2 and corroborates the evidence of PW2; PW6 is the child witness/son of PW2 and also corroborates PW2's evidence; PW7 is the witness to the Observation Mahazar and the Rough Sketch; PW8 is working in a Petrol Bunk and speaks about A1 purchasing petrol twice from the petrol bunk in two ½ litre bottles; PW9 is the landlord of the house, where PW2 live and has heard about the relationship of A2 with PW2; PW10 is the Manager of an underwear company and he speaks about



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giving the underwear, which was found in the body of the deceased, as sample to PW2 and A1; PW11 is the fisherman, who assisted the police in removing the dead body from the lake; and PW12 is the neighbour, who speaks about the relationship between the PW2 and A1.

(ii) PW13, is the constable who had handed over the FIR to the learned Judicial Magistrate; PW14 is the Doctor, who had collected the blood samples of the mother of the deceased and PW6, son of the deceased; PW15, is the Forensic Science Officer, who conducted the DNA Test and issued the reports [Ex.P15 and Ex.P16]; PW16 is the Sub-Inspector of Police, who registered the FIR in Cr.No.205 of 2018; PW17, is the Scientific Officer, in Anthropology Division and she speaks about the superimposition test conducted by him and the report-Ex.P19, issued by her; PW18 is the Doctor, who conducted postmortem; PW19 is the Sub-Inspector of Police, who collected the femur bone and skull from the hospital and handed over for scientific examination before PW15 and P17, respectively; PW20, is the Sub-Inspector of Police, who registered the FIR in Cr.No.26 of 2018, on the complaint made by the Village Administrative



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Officer [PW1]; and PW21 is the investigating officer.

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9. The evidence reveals that PW21 made a request to preserve the skull and femur bone of the deceased for conducting the DNA tests later. The skull was sent for a superimposition test by PW17 for comparison with the photographs of the deceased. PW17 issued Ex.P19-Report and opined that the skull belongs to the individual in the photographs. PW2, the wife of the deceased had handed over the photographs during the investigation and identified the photographs in Court. That apart, the femur bone was compared by PW15, Forensic Science officer, with the blood samples of the mother of the deceased one Rukmani and that of PW6, the son of the deceased and he had had opined that the blood sample of Rukmani reveals that she was the biological mother of the person, whose femur bone was compared. He also opined that the femur bone belonged to a male. From the evidence of PW17 and PW15, we are of the view that the prosecution has established the identity of the deceased.

10. PW18 conducted postmortem of the deceased and issued a



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postmortem certificate, Ex.P21. He found the following injuries:

“Wide open cut injury over front and sides of neck M-16x2.5x2cms at the level of thyroid cartilage O/D severance of neuro vascular bundle and larynx at the middle.”

In his opinion [Ex.P23], PW18 had opined as follows:

“The deceased would appear to have died of cut injury over the neck with evidence of consumption of ethyl alcohol.”

Thus, the prosecution has established that the deceased died due to homicidal violence.

11. In order to connect the appellants with the said homicidal violence, the prosecution relies upon the following circumstances:-

(a) motive;

(b) the evidence of PW2 and PW6 to the effect that the deceased went to the house of A1 and never returned; and

(c) the recovery of the bike of the deceased, the mobile phone of PW2 and other material objects pursuant to the arrest and confession of the accused.



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12. (a) As regards the motive, it is the prosecution case, that the appellant was aggrieved by the fact that PW2 had rejoined her husband, the deceased. The evidence of witnesses only suggests that A1 and PW2 had a relationship. PW12 confirms that A1 used to frequently visit the house of PW2 and that he came to know that they both had a relationship. PW2 herself confirms that she had a relationship with A1. However, she would state that A1 had no enmity with the deceased. In fact, she had stated that A1 was happy that the deceased had joined PW2. The relevant portion of her cross-examination is extracted hereunder for better understanding.

“என் கணவர் திரும்பி வந்ததிலிருந்து கடைசியாக என் வீட்டிலிருந்து என் கணவர் சென்றவரை என் கணவருக்கும் 1ம் எதரிக்குமிடையே எந்த விரோதமும் இல்லை என்றால் - சரிதான். கணவர் வந்தபிறகு நானும் என் கணவரும் சந்தோஷமாக இருப்பதாக 1வது எதிரியிடம் சொன்னபிறகு சந்தோஷமாக வாழுங்கள் என்றுதான் 1வது எதிரி சொன்னார். எனக்கும் என் கணவருக்கும் கடைசி நாளில் என் கணவர் சென்றது வரை நாங்கள் சேர்ந்து வாழ்ந்த அந்த 3 மாத காலத்தில் எத்தகைய சண்டை சச்சரவு எதுவுமில்லை. கணவர்



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என்னிடமிருந்து கடைசியாக சென்ற தேதியன்று 1வது  
எதிரிக்கும் எனக்கும் என் கணவருக்குமிடையே எந்த  
பிரச்சனையும் இல்லை என்றால் -சரிதான்”

The investigating officer further confirms that none of the witnesses have spoken about the motive. Thus, the prosecution has not established the motive.

(b) (i) PW2 had stated in her deposition that the deceased went to meet A1 on 13.01.2018 and never returned. PW6, the son of the deceased would also state that the deceased told them that he is going to A1's house for drinking and never returned. However, strangely, PW2 had not made any complaint regarding the missing of her husband till 24.05.2018 for more than four months. Even in the FIR [Ex.P17], which was registered based on PW2's complaint, she does not refer to the deceased going to A1's house on 13.01.2018.

(ii) PW2 would further state that the accused who was with her in the month of May 2018 had beaten her son and when PW2 questioned A1 and stated that even her husband, would not do so, A1 is said to have told her



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that her husband would not return as he had gone to the place, where he deserved to go; and that therefore, she suspected the involvement of the accused. However, we find that these facts are not stated in the complaint given on 24.05.2018 to the police. The above version is therefore an afterthought and the evidence of PW2, is not credible.

(iii) That apart, the investigating officer, PW21 had admitted that PW6 during the investigation did not tell him that the deceased informed PW6 that he was going to meet A1. Therefore, we are of the view that from the evidence of PW2 and PW6, we cannot safely conclude that the deceased went to the house of A1 on 13.01.2018. Even otherwise, there is no other evidence let in by the prosecution to show that A1 and the deceased were seen together at or about the time of occurrence, which is confirmed by the investigating officer.

(c) (i) The other aspect relied upon by the prosecution is the recovery of material objects on the confession of the accused. The recovery of mobile phone belonging to PW2 from the shop of PW3 is another



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circumstance relied upon by the prosecution. On a reading of PW3's evidence we find that he is not a Pawn Broker. No evidence has been let in by the prosecution to show that the deceased took the phone of PW2 on 13.01.2018 and that the phone recovered from PW3 belonged to PW2. PW2 in fact had deposed in her evidence that when her husband was found missing she called A1, as the deceased did not carry any mobile phone. This version is contrary to the prosecution's case that the deceased carried PW2's mobile phone. For the first time PW2 deposes about the phone and she identifies the phone. In the absence of any evidence to show the ownership of the mobile phone, the circumstance of the recovery of the mobile phone, cannot be used against the appellants.

(ii) Similarly, the recovery of bike from the Cycle Stand run by PW4 also appears to be artificial. Token is said to have been recovered from A2's possession on his confession. However, PW4 had admitted that there is no mark or other indication in the token to denote that it belonged to their shop.



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The prosecution had also not produced the register maintained by PW4 to compare it with the token said to have been seized. The recovery of bike also therefore would not be of any avail to the prosecution.

13. In view of the above, we are of the opinion that the circumstances have not been fully established by the prosecution, and there is no chain of circumstances, pointing out only to the guilt of the appellants. Therefore, the conviction and sentence imposed on the appellants, are liable to be set aside.

14. Accordingly, the Criminal Appeal is allowed and the appellants are acquitted of the charges. The conviction and sentence imposed upon the appellants in S.C. No.133 of 2019 dated 11.01.2021, on the file of the learned I Additional District and Sessions Judge, Salem, are set aside. The fine amount, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged.



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(M.S.R.,J.) (S.M.,J.)

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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

To

1. The I Additional District and Sessions Judge,  
Salem.

2. The Inspector of Police,  
Attaiyampatti Police Station,  
Salem District.

3. The Superintendent,  
Central Prison, Coimbatore.

4. The Public Prosecutor,  
High Court, Madras

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