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Crl.A.No.162 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	03.10.2024
<i>Pronounced on</i>	27.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

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Murugan

...Appellant

Vs.

State rep. by
 The Inspector of Police,
 Peerankaranai Police Station,
 Peerankaranai,
 Chengalpet District.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment and conviction passed by the learned Additional District and Sessions Judge, Chengalpet, Chengalpet District, dated 31.07.2018 in S.C.No.144 of 2009.

For Appellant : Mr.T.R.Ravi
 for Mr.R.Rajan

For Respondent : Mr.A.Gokulakrishnan,
 Additional Public Prosecutor



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JUDGMENT

M.S.RAMESH, J.

The appellant herein has been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of one year for the offence under Section 302 of the Indian Penal Code (IPC) and to undergo seven years rigorous imprisonment, together with a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of three months for the offence under Section 201 r/w Section 302 IPC, through the judgment of the learned Additional District and Sessions Judge, Chengalpet, dated 31.07.2018 passed in S.C.No.144 of 2009. Both the sentences were ordered to run concurrently. This judgment is put under challenge in the present appeal.

2. For the sake of convenience, the parties in the appeal are referred according to their ranks before the trial Court.

3. The case of the prosecution as per the charge sheet is that the deceased Palanivel and the sole accused Murugan were involved in the business of land brokerage and there were frequent quarrels between



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them in connection with the land dealings, owing to which, the accused carried a grudge against the deceased. On 31.08.2008 at around 12.30A.M. in the midnight, the accused had assaulted the deceased with a clay stove and a hollow block in the front of Pachaiyammal's (P.W.11) house at No.3, Kakkanji 2nd Street, Rajiv Gandhi Nagar, Vengambakkam Village, which resulted in the instant death of the deceased and therefore, he was charged for the offence under Section 302 of the Indian Penal Code (IPC). Thereafter, with the intention of concealing the evidence, the accused had dragged the body of the deceased to Palanivel's house and thereafter dragged and dumped it in the front of one Durairaj's house, for which, he was charged for the offence under Section 201 r/w. Section 302 IPC.

4. In order to substantiate the charges, the prosecution had examined 18 witnesses P.W.1 to P.W.18 and marked 18 documents Ex.P.1 to Ex.P.18, apart from the material objects M.O.1 to M.O.3.

5.1. The evidences let in by the prosecution before the trial Court are as follows:-

5.2. The motive attributed by the prosecution against the accused



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for having committed the offences is that both the accused and the deceased were involved in land brokerage and had frequent quarrels in this regard. To substantiate motive against the accused, the prosecution had examined P.W.2, namely Muthulakshmi, who is the wife of the deceased. In her oral testimony, she had stated that, about ten days prior to the incident, her husband had told her that the accused had threatened to kill him. Insofar as the incident is concerned, P.W.2 was staying at her sister-in-law's house, four days prior to the incident and she had heard about the incident from others.

5.3. P.W.6 and P.W.7 were also examined by the prosecution to substantiate motive. According to P.W.6, there was a rival competition between the accused and the deceased with regard to land dealings. P.W.7 claims that he had seen the accused and the deceased the earlier day of the incident at about 06.00P.M. to 07.00P.M., when he had remarked that they were fighting all along and now are together. Both P.W.6 and P.W.7 were also projected as having seen both the accused and the deceased together on 31.08.2008. According to P.W.7, he had last seen both of them together between 06.00P.M. and 07.00P.M. on 31.08.2008, while P.W.6 had last seen them together at about 09.30P.M. on the same day.

5.4. Insofar as the occurrence is concerned, the prosecution had



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examined P.W.9, namely Kanagarathinam, as an eye witness. According to his statement, he knows both the accused, as well as the deceased and they used to work together. On 30.08.2008, all the three of them, together with one Harikrishnan (not examined), were working at Chennai. Since there was a temple festival and a music concert at the deceased's village, all the four of them had gone there. Around 12.00 in the midnight, P.W.9, along with Harikrishnan, the accused and the deceased, started from the music concert in the Village and went to the deceased's house for sleeping. He would state that after he and Harikrishnan had entered the house of the deceased, the accused had locked the house from outside. Thereafter, there was a wordy quarrel between the accused and the deceased, which was witnessed by P.W.9 and Harikrishnan through the window of the deceased's house. At that time, he claims that the accused had attacked the deceased with a clay stove and thereafter with a hollow block on his head. When the deceased fell down, P.W.9 claims to have seen the accused pulling the body towards the road and thereafter, he could not see any further from the window. After sometime, the accused had come to the deceased's house and after opening the door, had threatened P.W.9 and Harikrishnan not to reveal the incident to anyone, failing which, he would kill them also. In view of the threat, they claimed



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to have left the Village and returned only on the next Monday, when the Police had examined them. The hollow block was marked through P.W.9 as M.O.3.

5.5. The independent witnesses, namely, P.W.1, P.W.3, P.W.4 and P.W.5 are hearsay witnesses, who did not support the case of the prosecution and were treated as hostile witnesses.

5.6. The other independent witness was P.W.11, who is the house owner of Door No.3, in front of whose house, the prosecution alleges that the assault had taken place. However, P.W.11 claims that she did not know about the incident and hence she was also treated as an hostile witness.

5.7. P.W.8 is a witness and signatory to the observation mahazar (Ex.P.2) and seizure mahazar (Ex.P.3), through which the blood stained shirt (M.O.1) and blood stained lungi (M.O.2) were seized.

5.8. P.W.10, is the Village Administrative Officer, who had witnessed the voluntary confession statement given by the accused, after his arrest on 03.09.2008 at 06.00A.M. The admitted portion of the voluntary statement was marked as Ex.P.4. After the confession, the Investigating Officer had gone to the scene of occurrence and prepared the observation mahazar (Ex.P.5). On the basis of the confession



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statement, the Investigating Officer had also recovered the hollow block stone used by the accused to assault the deceased and the seizure mahazar was marked as Ex.P.6. The first witness to the seizure mahazar was marked through P.W.12 as Ex.P.7.

5.9. P.W.13, who was the other witness to the observation mahazar and rough sketch, was treated as an hostile witness.

5.10. P.W.14 is the Doctor, who conducted postmortem on the body of the deceased. According to him, the postmortem had commenced at 01.00P.M. on 02.09.2008 and on completion, he had prepared the postmortem report (Ex.P.8). In the said report, he had recorded that the body was in the initial stage of decomposition. He had also found that there was a cut injury near the left eye, swelling near the right eye and oozing of blood from both the ears. This apart, he also recorded the fracture of the frontal bone of the skull and the tearing of the upper portion of brain.

5.11. P.W.15 is the Forensic Scientific Expert, who had received the blood stained clothes and hollow block and confirmed that it was 'A Group' human blood, through her report (Ex.P.9).

5.12. P.W.16 is the Scientific Expert, who had submitted the biological report (Ex.P.10) and who had deducted blood on item Nos.1, 3,



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4 and 5, but not on item No.2.

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5.13. P.W.17 is the Toxicologist, who had certified in his report (Ex.P.11) that the human parts examined by her, did not contain alcohol or any other poison in them.

5.14. P.W.18 is the Investigating Officer. According to him, on 01.09.2008 at about 08.00A.M., P.W.1 had given a written complaint (Ex.P.12), which was registered in Crime No.734 of 2008 and the FIR was marked as Ex.P.13. He states that after registration of the case, he had went to the place of occurrence at 09.00 A.M. and prepared the observation mahazar (Ex.P.2) and rough sketch (Ex.P.14). Thereafter, he had collected the samples of grasses, with and without blood stains, a blood stained shirt and a blood stained lungi, under a seizure mahazar (Ex.P.3). Between 10.00 A.M.and 12.00P.M., he had conducted inquest over the body of the deceased and prepared the inquest report (Ex.P.15). He had then sent the body for postmortem and thereafter recorded the statements of the witnesses. He also prepared a rough sketch (Ex.P.16). Thereafter, on 03.09.2008 at about 06.00A.M., he had arrested the accused based on some secret information, in the presence of P.W.10. Based on the confession statement, the accused had taken him to the place where the offence was committed, wherein he had prepared an



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observation mahazar and also seized the hollow block (M.O.1). He prepared the rough sketch of the material object (M.O.1), marked as Ex.P.17. He then prepared another rough sketch (Ex.P.18) in the scene where the crime had taken place. Thereafter, he had sent the seized articles under Form-91 to the Judicial Magistrate's Court with requisition for scientific analysis. On completion of investigation, he had filed the final report on 31.10.2008.

6. The Trial Court, after considering the oral and documentary evidences before it, had come to the conclusion that the accused was found guilty of having committed the offences under Section 302 IPC and Section 201 r/w. 302 IPC and had sentenced him to imprisonment, as recorded herein before, which is assailed in the present appeal.

7. The learned counsel appearing for the accused submitted that there are serious contradictions in the evidence of the eye witness-P.W.9. According to him, the statement of this witness was unnatural, since even though he claims to have witnessed the occurrence, along with one Harikrishnan, he did not give the complaint though he was a friend of the deceased. He further submitted that the other eye witness Harikrishnan



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ought to have been examined by the prosecution to corroborate the evidence of P.W.9. He also raised serious doubts with regard to the actual place of occurrence. According to him, the prosecution claims that the occurrence was witnessed by P.W.9 from the house of the deceased, whereas P.W.9 claims to have seen the occurrence from the house of P.W.11. In view of this serious discrepancy, the evidence of P.W.9 cannot be given due credence. The learned counsel also submitted that the statements of P.W.6 and P.W.7, who were projected as witnesses who had last seen the accused and the deceased together, also cannot be relied upon. With regard to the medical evidence, the learned counsel submitted that though the prosecution claims that the occurrence had taken place in the midnight on 31.08.2008/01.09.2008, the Doctor (P.W.14), who had conducted the postmortem and submitted the postmortem report (Ex.P.8), had clearly recorded that the body had already started to decompose. By referring to the postmortem conducted at 01.00P.M. of 02.09.2008 and also since the prosecution claim that the occurrence had taken place in the midnight of 31.08.2008/01.09.2008, there was no possibility for decomposition and therefore, there is a serious doubt with regard to the time and date of the alleged occurrence. With such submissions, the learned counsel for the accused sought for setting aside the judgment of



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the Trial Court.

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8. Per contra, the learned Additional Public Prosecutor submitted that the entire occurrence was witnessed by P.W.9, who is an independent witness and was also accompanying the accused from the previous day night. By drawing our attention to the oral testimony of P.W.9, he submitted that the incident was narrated in a cogent manner, whereby the accused had locked P.W.9 inside the house of P.W.11 and when he had assaulted the deceased with a clay stove and hollow block (M.O.1), he had witnessed the same from the window inside the house. He also placed reliance on the evidences of P.W.6 and P.W.7, who had last seen the accused on the evening hours of 31.08.2008 at about 09.30P.M. and 06.00P.M to 07.00P.M. respectively. By drawing our attention to the injuries on the skull of the deceased, the learned Additional Public Prosecutor would submit that the medical evidence corroborates with the statements made by P.W.9. According to the learned Additional Public Prosecutor, since P.W.2, who is the wife of the deceased, has clearly spoken about the threat made by the accused to the deceased about ten days prior to the occurrence that he would kill him, he urged that motive has also been clearly established in this case and therefore sought for



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dismissal of this appeal.

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9. We have given our careful consideration to the submissions made by the respective counsels.

10. From the submissions made by the learned counsel for the accused, a serious doubt has been raised with regard to the place where the accused had assaulted and murdered the deceased. According to the prosecution, P.W.9 was in the company of the deceased and the accused on 31.08.2008 along with one Harikrishnan, who was not examined. All the four of them had attended a music concert in the Village and when they felt sleepy, they had returned to the deceased's house. In his statement, he had made a categorical assertion that all the four of them had returned to the deceased's house only and when P.W.9 and Harikrishnan entered the house of the deceased, the accused had bolted the house from outside and thereafter indulged in the crime. The relevant portion of his statement reads as follows:-

“நான், அரிகிருஷ்ணன், முருகன், இறந்த
பழனிவேல் ஆகியோர் பாட்டு கச்சேரிக்கு
போனோம். இரவு 12 மணியளவில் தூக்கம்
வந்ததால் நான், அரிகிருஷ்ணன், முருகன்,



இறந்த பழனிவேல் ஆகியோர் பழனிவேல் வீட்டிற்கு வந்து படுக்க போனோம். நாங்கள் உள்ளே போனவுடன் முருகன் வீட்டு கதவை வெளிப்பக்கமாக தாழ்பாள் போட்டு விட்டார். அந்த சமயத்தில் பழனிவேலிற்கும் முருகனுக்கும் வாய் தகராறு ஏற்பட்டு, அந்த சத்தம் கேட்டது. நானும் அரிகிருஷ்ணனும் அதனை அங்கிருந்த ஜன்னல் வழியாக பார்த்தோம்.”

11. However, the prosecution's categorical case as per the charge sheet is that this occurrence had taken place in the front of Door No.3, Kakkanji Second Street, Rajiv Gandhi Nagar, Vengambakkam Village, which is the house of P.W.11 and the same was witnessed by P.W.9 from inside the house of P.W.11. P.W.11, however, had not supported the case of the prosecution and was treated as a hostile witness.

12. The Investigating Officer (P.W.18), in his oral testimony, had stated that after he had arrested the accused on 03.09.2008 at about 06.00A.M. and recorded his voluntary confession statement, he had gone to the scene where the crime was committed and prepared the observation mahazar (Ex.P.5) and rough sketch (Ex.P.18). In Ex.P.18, the scene of occurrence is also marked in front of the Door No.3, which is the house



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belonging to P.W.11. Door No.1, which is the house of the deceased, is two houses away from the house of P.W.11. From the sketch, no windows have been shown in Door No.1. Ex.P.18 also shows the route through which the accused had dragged the body of the deceased, first to the deceased's house i.e. Door No.1 and then had dragged it for quite a long distance and dumped it in front of the house of one Durairaj, who was not examined. Incidentally, Ex.P.18 also records the presence of two persons inside the locked house and a large window through which the occurrence could be seen by the two persons inside.

13. The only witness, who speaks of having seen the occurrence, is P.W.9, whose categorical statement is that he along with Harikrishnan was locked in the house of the deceased and not in the house of P.W.11. There is also no clarity as to how P.W.9 or the deceased and the accused may have access to the house of P.W.11 and there is not a single piece of evidence let in by the prosecution to substantiate this fact.

14. Ex.P.18 also evidences that the body has been dragged for quite a long distance, which crosses about three streets. However, the medical evidence does not record any injuries of abrasion on the body and



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therefore, the claim of the prosecution that the accused had dragged the body for quite a long distance itself, creates a serious doubt.

15. In the light of these discussions, a serious suspicion arise in our minds as to whether P.W.9 had actually witnessed the crime, since the prosecution has not established the house from which P.W.9 had seen the occurrence.

16. It is the case of the prosecution that P.W.1, who is a Villager, had received a phone call from a boy working in a shop at Rajiv Gandhi Nagar at about 06.30A.M. on 01.09.2008 that the body of the deceased was found and that all the Villagers were going to that place. It is claimed in the complaint (Ex.P.12) that P.W.1 and his wife had gone to the place and seen the body. The Investigating Officer (P.W.18), in his oral testimony, had stated that P.W.1 had given a written complaint to him on 01.09.2008 at 08.00A.M. His oral statement in this regard is as follows:-

“கடந்த 01.09.2008 அன்று காலை 8.00 மணிக்கு நான் நிலையத்தில் ஆஜரில் இருந்த போது வெங்கம்பாக்கத்தை சேர்ந்த சங்கர் என்பவர் நிலையம் ஆஜராகி கொடுத்த எழுத்து மூலமான புகாரை பெற்று பீர்க்கண்கரணை காவல் நிலைய குற்ற எண்



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734/2008 இதச பிரிவு 302ன் கீழ் வழக்கு
பதிவு செய்தேன்.”

17. However, P.W.1, in his oral testimony, would state that after seeing the body, he had passed on the information to the Police. When the complaint (Ex.P.1) was shown to P.W.1, he claims that only the signature in the complaint belongs to him and that he became aware of the averments in the complaint, only at the time of trial. After this statement, P.W.1 was treated as a hostile witness. Thus, the very inception of this case, that commences from the registration of the complaint, itself is on a very shaky ground with regard to the time at which the body was found, since it is not backed by any concrete evidence.

18. To ascertain as to whether the accused had actually committed the crime at the scene alleged by the prosecution and dragged the body to a long distance and concealed it, we have looked into the evidence of the doctor (P.W.14), who had conducted the postmortem. According to him, he had conducted the postmortem on 02.09.2008 at 01.00 P.M., when he had recorded that the body had already started decomposing. In the cross examination, he had clearly stated that if a body is dragged for more than 100 meters, there would be abrasions on the body, but during



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postmortem, he did not find any abrasions.

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19. The prosecution has not let in any other evidence to establish that the scene had taken place in the front of P.W.11's house and the accused had dragged the body of the deceased to a very long distance and dumped it in front of Durairaj's house. When the evidence of P.W.9, who is the eye witness, is read along with the evidences of the Investigating Officer (P.W.18) and the Doctor (P.W.14), it would be highly unsafe to hold that the occurrence did take place in front of P.W.11's house and the body was dragged all along to Durairaj's house.

20. Incidentally, the said Durairaj was also not examined nor had any other witness supported the case of the prosecution that the body was found lying in front of Durairaj's house. In the absence of the same, the entire evidence relating to the time when the occurrence had taken place, the place of occurrence and the place where the body was found, has not been clearly established. Thus, the oral testimony of P.W.9, who is claimed to be an eye witness, does not inspire the confidence of this Court and therefore, it would be highly unsafe to place reliance on his statements.



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21. P.W.6 and P.W.7 claim to have seen the accused along with the deceased in the late evening hours of 31.08.2008. Apart from that, we do not find any other evidence to corroborate the statements of the last seen theory put forth by P.W.6 and P.W.7 to establish the culpability of the crime on the accused.

22. P.W.2, the deceased's wife, speaks about the statement made by the deceased about the threat caused by the accused to kill him ten days prior to the incident. With mere motive and last seen theory, it would be very difficult for us to come to the conclusion and hold that the deceased had committed the crime, more particularly when the prosecution rests their case on direct evidence, which does not inspire confidence.

23. In the light of all the above discussions, we are unable to clearly point out the involvement of the accused in having assaulted the deceased with M.O.1 and dragged the body all the way and dumped it.

24. The trial Court, however, had failed to appreciate all these aspects, which are glaring from the oral testimonies and other evidences referred above. Thus, the conclusion arrived at by the trial Court, holding



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the accused guilty of having committed the offence punishable under Sections 302 and 201 r/w. 302 IPC, cannot be legally sustained.

25. For all the foregoing reasons, the judgment passed by the learned Additional District and Sessions Judge, Chengalpet, dated 31.07.2018 in S.C.No.144 of 2009, is set aside. Consequently, the appellant/accused is acquitted of all the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded and the bail bonds, if any, executed shall stand discharged. The Criminal Appeal thus stands allowed. No costs.

[M.S.R., J] [M.J.R., J]
27 .11.2024

Index:Yes
Neutral Citation:Yes
Speaking order

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Note: Issue order copy on 28.11.2024



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M.S.RAMESH, J.
and
M.JOTHIRAMAN, J.

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To

- 1.The Additional District and Sessions Judge,
Chengalpet District.
- 2.The Officer in-charge
Sub Jail, Chengalpet.
- 3.The Inspector of Police,
Peerankaranai Police Station,
Peerankaranai,
Chengalpet District.
- 4.The Public Prosecutor,
High Court of Madras.

judgment made in
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27.11.2024