



Crl.A.No.805 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Crl.A.No.805 of 2019

1.Anbarasan

2.Suganthi

... Appellants

Vs.

State represented by
The Inspector of Police,
Bhuvanagir Police Station
Cuddalore District
(Cr.No.202 of 2012)

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of learned II Additional District and Sessions Judge, Chidambaram, Cuddalore District in S.C.No.101 of 2013 dated 05.09.2017.

For Appellants	:	Mr.P.Pugalenth
For Respondent	:	Mr.M.Mohamed Riyaz Government Advocate (Crl.Side)

JUDGMENT

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Aggrieved over the judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Chidambaram, Cuddalore in S.C.No.101 of 2013 dated 05.09.2017, the instant appeal has been filed by the appellants. The



Crl.A.No.000012017

accused /appellants were convicted Section 302 and sentenced to undergo life imprisonment each and to pay a fine of Rs.1000/- each and in default of payment of fine, shall undergo further sentence of six months simple imprisonment each.

2.The case of the prosecution is as follows :

2.1. A1 and deceased are friends. A2 is the wife of A1. The deceased had developed one side love with A2 and requested A2 to have sexual intercourse many times and on coming to know about the same, A1 developed enmity against the deceased. On 10.05.2012, when the deceased and A2 went to collect wages of 100 days scheme, at that time, A1 requested the deceased to accompany his wife. Accordingly, deceased took A2 towards the Vellaru/meeting point. At about 6.30 pm, deceased and A2 together went to the place of occurrence, the same has been seen by PW2, PW3/relatives and PW4/wife of the deceased and PW5, PW6 & PW7. PW7 suspecting their movement followed A2 and the deceased for some time and since there was heavy rain, both A2 and the deceased went to the temple to take shelter and thereafter, he has also heard voice of A1 and altercation, since A1 and deceased were friends, PW7 did not take it seriously and left the place. PW1, VAO of Tiruvakulam Village on 11.05.2012 after hearing from his assistant about the dead body lying near Vellaru, he rushed to the spot at 10 am and found the deceased body, later, he went to the police at 12 noon and gave a complaint under Ex.P1. PW16, Sub Inspector of Police received Ex.P1 from



Crl.A.No. 1000 of 2012

PW1 and registered an FIR in Cr.No.202/2012 for the offence under Section 302 of IPC under Ex.P20 and forwarded the same to the Court and a copy to Investigating Officer/PW17.

2.2. PW17 took up the investigation and went to the place of occurrence and in the presence of PW1 and his assistant, he prepared observation mahazar under Ex.P2, rough sketch under Ex.P21 and also collected M.O.1 to M.O.7 material objects under Ex.P3 mahazar and he also conducted inquest over the dead body in the presence of villagers and prepared inquest report under Ex.P22 and later sent the dead body to the hospital through the Constable and recorded the statement of witnesses. PW15, Medical Officer attached to the Chidambaram Government Hospital conducted autopsy over the body of the deceased and found the following injuries:-

“External injuries: 1.Contusion present around the Neck, Skin preserved, on cutting the skin and subcutaneous appears congested 10x2 cm skin peeled of all over the body, entire back shoulders both thighs, Legs, hands.

2. Cut injury Left forehead red in colour 4x1/2x1cm

Internal Examination: Ribs-Intact, heart-empty, Lungs, Kidney, Liver, Spleen-congested, Hyoid-preserved, Stomach-undigested food particles, Intestine-Distended with gas, Pelvis-Intact, Skull-No fracture, Brain-Congested.

and opined that the deceased appeared to have died of Asphyxia 48 hours prior to the autopsy and issued Ex.P19. In the meanwhile, PW9/VAO of Orathur Village while he was in the office at about 10am on 12.05.2012, both the accused appeared



CrI.A.No.000 01 2013

before him and confessed in killing the accused. PW9 recorded the confession of accused under Ex.P5 and handed over the same to the PW17 along with the accused. PW17 also arrested the accused and recorded their confession. The admitted portion in the confession statement of A1 is Ex.P6 and A2 is Ex.P7. Pursuant to the same, he seized shirt from A1 under M.O.8 and saree from A2 under M.O.9 under Ex.P8 mahazar and forwarded the material objects through Court to the forensic examination and remanded the accused to the judicial custody. PW14, Scientific Officer examined the hair samples and other materials and issued Exs.P11 to P18. According to him, hair samples collected from A1 and A2 and other materials collected from the place of occurrence are similar to each other. PW17 in continuation of the investigation and after examining the reports of the medical officer, scientific officer and recording the statement of the witnesses under Section 161 CrPC finally laid the final report against the accused 1 and 2 under Section 302 of IPC in P.R.C.No.2 of 2013 before the learned District Munsif cum Judicial Magistrate, Parangipettai.

2.4. On the appearance of A1 & A2, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Principal District Sessions Court. The Principal District Sessions Court had made over this case to the learned II Additional District and Sessions Judge, Chidambaram, Cuddalore in S.C.No.101 of 2013, for trial.



WEB COPY

2.5. The trial Court framed the charges against the accused 1 and 2 for the offences under Section 302 of IPC. When questioned, the accused pleaded “not guilty”.

2.6. To prove the guilt of the accused, the prosecution examined P.W.1 to P.W.17, marked Exs.P1 to P25 and produced M.Os.1 to 9. When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, DW1 was examined and no exhibit was marked.

2.7. The trial Court, on appreciation of oral and documentary evidence on record, by judgment dated 05.09.2017, convicted and sentenced the accused as stated supra. Challenging the conviction and sentence under Section 302, the accused have preferred the present appeal.

3. The learned counsel for the appellant submits that the entire case rests on the circumstantial evidence. None of the circumstances have been clinchingly established, and the evidence of PW2 to PW7 is not believable. If they had truly seen A2 and the deceased together at 6:30 PM on the previous day, then upon seeing the dead body the next morning at 9 am, a complaint would normally have been lodged by them. Instead, PW1/Village Administrative Officer had lodged the complaint under Ex.P1. Even at the time, they were present in the place of occurrence, they never whispered about seeing the A2 and deceased together on the previous day. These facts creates



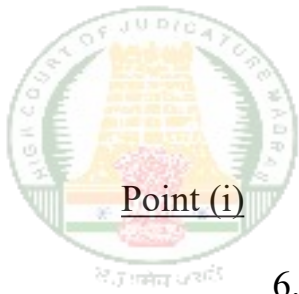
Crl.A.No. 1000 of 2017

serious doubt. That apart, alleged extra judicial confession relied upon by the prosecution recorded by the PW9, is totally artificial and cannot be given any importance. The signature of the accused is also not found in the so-called extra judicial confession under Ex.P5. Therefore, the entire prosecution case is highly doubtful and the learned counsel seeks for allowing this criminal appeal.

4. The learned Government Advocate (Crl.Side) would submit that the PW2 to PW7 have seen A2 and the deceased together and there was no explanation from the accused in this regard. DW1, examined on behalf of the accused, clearly establishes the prosecution theory that on 10.05.2012, all persons were assembled for collecting wages; therefore, the last seen theory has been clearly established. The failure of the accused to offer an explanation is also one of the circumstances against him. That apart, the extra-judicial confession recorded by PW9 also clearly establishes the occurrence. Similarly, hair samples collected from the place of occurrence tally with the samples collected from the accused, which has been clearly spoken by PW14. All these factors, cumulatively taken into consideration, prove the complicity of the accused in the crime. .

5. In light of the above, the point that arises for consideration in this appeal is:-

- (i) whether the prosecution has proved its case beyond all reasonable doubts?



Point (i)

WEB COPY

6. The case is based on circumstantial evidences. In the case of circumstantial evidence, the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion that is the guilt of the accused.

7. In the light of the above settled propositions, let us proceed with the findings rendered by the Trial Court. The following are the circumstances which are relied upon by the prosecution.

(a) Motive- deceased is alleged to have repeatedly requested A2/wife of A1 for sexual intercourse repeatedly and this has developed to have enmity against the deceased.

(b) Last Seen Theory- Since A2 and the deceased were seen together on the previous day and the A2 did not discharge the burden of proof, an adverse inference must be drawn against the accused.

(c) Extra Judicial Confession- Since the accused voluntarily confessed the crime to the VAO/PW9, it should be relied upon.



WEB COPY

conduct is also against the normal human conduct. When a husband fails to return home and the wife is also aware that he accompanied someone, normal conduct for any human is to enquire the person with whom her husband accompanied in the previous day; however, no such attempt was made. Similarly, PW5/brother of deceased also made no attempt to inquire and in fact, he has spoken in his evidence that they were not interested in lodging a complaint, only after VAO visited the place of occurrence, VAO has given the complaint, his conduct is also against the normal human conduct.

10. Although PW7 claims to have seen A2 and the deceased alive together at 6:30 PM proceeding to the place of occurrence, his evidence is highly artificial in nature. According to PW7, he was disbursing wages. Normally, when a person disbursing wages of 100 day employment scheme, he could not leave the place until all payments are completed; whereas, PW7's evidence is that suspecting the movement of A2 and deceased, he followed them to certain extent. At that time, heavy rain started, and A2 and the deceased had taken shelter in a temple, till such time, PW7 has followed them. Thereafter, according to PW7, he heard the noise of altercation and also he also heard the voice of A1. Even after hearing such altercationss, he showed no interest and casually left the place. This evidence of PW7, in fact, creates serious doubt about his evidence itself. There was no reason for him to follow A2 and deceased and without any reasons suspecting them for their movement is also artificial in nature. Furthermore,



WEB COPY

PW7's evidence shows that he followed them because they were moving very closely together in a particular place, this evidence also militate against the prosecution's theory of motive. If the deceased had one side love towards A2, there was no reason for the A2 to accompany him closely, and this is against the prosecution theory of motive. According to PW7, he heard the altercation at the relevant point of time and he also heard the voice of A1 is unbelievable for the simple reason that his evidence itself clearly show that there was heavy rain, and A2 and the deceased took shelter to avoid the rain. Such being the case, hearing an altercation is also highly unbelievable.

11. At any event, prosecution's last seen theory and the statements allegedly said to have been given to PW17/Investigating Officer is also highly unbelievable for the simple reason that if the Investigating Officer had examined all these witnesses on the very next day, i.e., 11.05.2012, their 161 statements would have been forwarded to the Court within a reasonable time, atleast within a week, whereas, their 161 statements were sent to the Court for the first time only on 10.01.2013. The seal and signature of the Judicial Magistrate on the statements clearly points out that the statement have been reached to the Courts only on 10.01.2013 with an inordinate delay. These facts coupled with the evidences of PW1 that he reached spot on the next day at 10 am and none have complained about seeing the deceased with A2, the entire evidence of the so-called last



seen theory is highly improbable and unbelievable.

12. Furthermore, even assuming that all the witnesses have seen A2 and the deceased together at 6.30 pm, the dead body was found only on the next day at 9 am. The time gap between the deceased being seen alive with A2 and the dead body being found is more than 12 hours, therefore, during such a long interval gap, many events could have transpired. It is relevant to note that to complete the chain of the last seen theory, the time gap between the point of time when accused and deceased seen alive and dead body must be short and there should not be any long time gap. A long time gap weakens the theory because it allows for other people to have intervened. Therefore, when the time gap between the deceased seen alive with A2 and the dead body found in the morning is more than 12 hours, it is unsafe to rely upon such evidences of last seen theory to sustain a conviction. In this regard, it is relevant to note that the Hon'ble Supreme Court in the case of Rambraksh vs. State of Chhattisgarh reported in (2016) 12 SCC 251 has reiterated that last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. The relevant portion of the judgment reads as follows:-

" 12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the



deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

13. Similarly, this Court in the case of *N.Prasath vs. State represented by Inspector of Police E-1, Coimbatore District* reported in 2025 (2) TNLJ 395 (Criminal) with regard to the chain of the last seen theory has also held as follows:-

" 18. Further, to complete the chain of the last seen theory, the time gap between the point of time when accused and deceased seen alive and dead body must be short and there should not be any long time gap. A long time gap weakens the theory because it allows for other people to have intervened; therefore, the prosecution must supplement the "last seen" evidence with other pieces of evidence, such as motive, forensic reports, and witness testimony, to create an unbroken chain of circumstantial evidence that points exclusively to the accused's guilt. PW8 and PW9 evidences clearly falsify the prosecution story and further, no CCTV footages whatsoever recovered which is admittedly available as per the evidence of PW7. "

14. Another circumstances relied upon is the extra judicial confession said to have been allegedly given before the PW9/VAO, Orathur. According to PW9, on 12.05.2012 at about 10 am while he was in his office, both accused appeared and confessed to the crime and the same has been recorded by him. No doubt, an extra-judicial confession, if it transpires confidence, that can also be relied upon to convict an



accused. However, on perusal of the evidence of PW9, particularly, the so-called extra judicial confession under Ex.P5, we are not inclined to accept it for the following reasons:-

a. Extra judicial confession was written continuously on paper of the type normally used in police stations.

b. Normal prudence demands that when any person gives confession, particularly, in a extra judicial confession, their signature should be obtained. However, the signature of the accused was not obtained

c. According to PW9, A1 and A2 appeared before him on 12.05.2012. However, when his evidence carefully scanned indicates that the law was set in motion under Ex.P1 on 11.05.2012, we have no other option except to disbelieve the evidence of PW9 and the so-called extra judicial confession for the simple reason that PW1 had admitted in his evidence that immediately after giving complaint at the police station on 11.05.2012, on the same day, he had seen the the accused in the police station. Therefore, the accused appearing before the PW9 on 12.05.2012 to voluntarily confess is nothing but a later invention by the prosecution.

15. The other circumstance relied upon by the prosecution is the so-called recovery of the material objects namely shirt and saree from the accused on the basis of the alleged confession, along with hair samples collected from the place of occurrence.



WEB COPY

In this regard, the prosecution's specific case is that there was a struggle ensued during the violence and hair was violently plucked out by the deceased and the same was also found lying in the place of occurrence. Although hair samples were collected from A1 and A2 by doctors, PW14 in his evidence has clearly stated that hair samples examined by him are naturally fallen hair strands with no evidence of violent plucking. This aspect also creates serious doubts on the entire prosecution theory. Furthermore, the shirt and saree seized from the accused did not tally with human blood and the blood grouping remained inconclusive. It is well settled that when the blood grouping on seized articles remains inconclusive or doesn't match the deceased, it loses its evidentiary value as an incriminating circumstance against the accused. In this regard, the Hon'ble Supreme Court in the case of **Kanssa Behera vs. State of Orissa** reported in (1987) 3 SCC 480 has reiterated that if the blood grouping of the blood-stained articles recovered from the accused does not match with the blood group of the deceased or remains inconclusive, the circumstance cannot be used as a valid link by the prosecution to prove the guilt of the accused. The relevant paragraphs reads as follows:-

" 12. As regards the recovery of a shirt or a dhoti with bloodstains which according to the serologist's report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small bloodstains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and



living in villages. The evidence about the blood group is only conclusive to connect the bloodstains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn. "

16. When the case is based on circumstantial evidence, each one of the circumstances has to be established, and there should not be any gap among the circumstances. As held by the Hon'ble Supreme Court in the landmark case of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, the cumulative effect of the proved circumstances must be such as to exclude every reasonable hypothesis except the guilt of the accused. Even if one link of the chain gets snapped, a conviction cannot be sustained (*See Hanumant v. State of M.P., 1952 SCR 1091*). All these facts clearly indicate that the prosecution has not established any of the circumstances. All these facts clearly indicate that the prosecution has not established any of the circumstances. In view of the above, we are of the opinion that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt and the accused are entitled to benefit of doubt. Therefore, this Court does not find any merits in this appeal.

17. In such view of the matter, this Criminal Appeal stands allowed and the judgment of the trial Court dated 27.01.2020 in S.C.No.69 of 2017 is set aside, and the accused are acquitted of all the charges framed against them. Fine amount, if any, paid by the appellants/accused, shall be refunded to them. Bail bond executed by the



Crl.A.No.00000000000000000000

appellants shall stand discharged.

WEB COPY

dhk

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

1.The II Additional District and Sessions Judge,
Chidambaram, Cuddalore

2.The Inspector of Police,
Bhuvanagir Police Station
Cuddalore District

3.The Public Prosecutor,
High Court, Madras.

(N.S.K., J.) (K.R.S., J.)
13.08.2026

N. SATHISH KUMAR, J.
and
K.RAJASEKAR, J.

dhk



WEB COPY



Crl.A.No.805 of 2019

Crl.A.No.805 of 2019

13.08.2026