



Crl.A(MD)No.329 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Ajith @ Nalla Mohamed

... Appellant/A1

Vs.

The State rep. by the
Inspector of Police,
Soolakkarai Police Station,
Virudhunagar District.
(Cr.No.42 of 2017)

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment dated 11.04.2023 made in S.C.No.157 of 2017, on the file of the Additional District and Sessions Judge, Virudhunagar and set aside the conviction and sentence imposed on the appellant and allow the above appeal by acquitting the appellant.



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For Appellant : Mr.R.Gandhi
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This appeal is directed as against the Judgment passed in S.C.No.157 of 2017, dated 11.04.2023, on the file of the learned Additional District and Sessions Judge, Virudhunagar.

2. The case of the prosecution is that the third accused is the wife of the deceased and the first accused is her paramour. P.W.11 is a friend of the deceased, who helped him to go for job in abroad. Thereafter, P.W.11 assisted the third accused and the deceased with their family expenses. During

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this time, the deceased persuaded the third accused to speak with P.W.11 and maintain a close relationship with him, as he was providing financial support to their family. Subsequently, while he was abroad, the third accused developed an illicit relationship with P.W.11. During this time, the third accused became acquainted with the first accused and developed an intimate relationship with him as well. In December 2016, the deceased returned to India and was working in Virudhunagar. Even at that time, the third accused continued her relationship with both the first accused and P.W.11. In fact, P.W.11 gifted a cellphone to the third accused and frequently spoke with her. However, the third accused was more closely intimate with the first accused than with P.W.11. Therefore, once again, the deceased compelled the third accused to continue her relationship with P.W.11 in order to receive monetary assistance. It was informed to the first accused, and therefore all the accused conspired together to do away with the life of



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the deceased. On 18.01.2017, when the deceased went to work, P.W.11 went to the house of the third accused, and at the same time, the first accused also went there. Therefore, P.W.11 quarreled with the third accused. On the same day night, when the deceased returned home, there was a wordy quarrel between the third accused and the deceased. On the next day, i.e., on 19.01.2017 at about 2:15 a.m., the first accused went to his workplace and took an iron pipe from there. Thereafter, at about 3:00 a.m., the first accused, along with the second accused and another juvenile accused, went to the house of the deceased on their motorcycle and informed him that the sister of the third accused had eloped with someone and was in Kulloorsandai and the third accused directed the deceased to go to that place. Believing their words, the deceased went along with the first accused and others on their motorcycle. They took him to Mathunaickenpatti on Soolakkarai Road, where they scolded him using filthy language. Thereafter, the first



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accused covered the deceased's face with a towel, and the juvenile accused assaulted him with an iron pipe. When the deceased attempted to block the blow, the first and second accused pushed him down. Thereafter, the juvenile accused struck him on the back of the head with an iron pipe. As a result, he sustained grievous injuries and died. The accused then damaged the deceased's two-wheeler with the iron pipe and fled from the scene of occurrence. The next day, Kalidhass, the pump operator of Sollakkarai Panchayat, found the body of the deceased and informed the Panchayat President. The President, in turn, informed the Village Administrative Officer and lodged a complaint.

3. Based on the complaint, an FIR was registered by the Inspector of Police, Soolakkarai Police Station in Cr.No.42 of 2017 for the offences punishable under Section 302 of IPC. After completion of investigation, a final report was filed and

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the same has been taken cognizance by the trial Court. The trial Court framed the charge under Sections 120-B r/w 302 of IPC, 294, 302 of IPC and Section 3 of Tamil Nadu Public Property (Damages and Loss) Act, 1992.

4. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.27 and marked Ex.P.1 to Ex.P.25. On the side of the accused, no witness was examined and no document was marked. Material Objects M.O.1 to M.O.18 were marked.

5. On perusal of oral and documentary evidence, the trial Court found the first accused guilty for the offence punishable under Section 302 of IPC and acquitted the accused Nos.2 & 3 of all the charges. The first accused was sentenced to undergo Life Imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo six months Rigorous Imprisonment for

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the offence punishable under Section 302 of IPC. Aggrieved by the same, the appellant has preferred the present appeal.

6. The learned counsel for the appellant contends that this is a case based on circumstantial evidence. The prosecution has examined P.W.3 to prove the last seen theory, however, P.W.3's deposition is entirely contradictory to both the inquest report and the statement of the third accused. Therefore, since the prosecution has failed to prove the last-seen theory and the chain of circumstances connecting the accused, and the trial court acquitted accused Nos. 2 and 3, the first accused is also liable to be acquitted, as he stands on the same footing. The prosecution had examined P.W.20 and P.W.21 as eyewitnesses, however, they turned hostile and did not support the case of the prosecution. Though P.W.3 established the last seen theory by stating that she saw the accused along with the deceased on their motorcycle and her statement under Section 161(3) of



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and M.O.13 (pant). Although it was recorded on 21.01.2017, it was sent to the Court only on 12.04.2017. In the other Panchanamas, the signature of the Village Administrative Officer is absent, whereas only in Ex.P9 is the signature of the Village Administrative Officer found, and that too without any date. Therefore, it appears that after implicating the accused, the blood-stained shirt of the deceased was planted and later marked before the trial court as Ex.P9. Therefore, the prosecution failed to establish a chain of circumstances linking the accused to the commission of the offence. Hence, the conviction and sentence imposed on the accused cannot be sustained and it is liable to be set aside.

7. On the other hand, the learned Additional Public Prosecutor appearing for the respondent submitted P.W.3 categorically deposed about the last seen theory of the deceased in connection with the accused. Further, the M.O.9

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shirt worn by the accused was recovered from him and produced before the trial court as M.O.12. The bloodstains on the shirt were found to match the blood of the deceased. Although there is no direct evidence proving the circumstances of the crime, the prosecution has clearly established the last seen theory and the recovery of the incriminating shirt. Therefore, the trial Court rightly convicted the accused and it does not warrant any interference of this Court.

8. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

9. There are three accused in this case. The appellant is the first accused, while the other two were acquitted by the trial court. The first accused is the paramour of the third accused, whose husband is the deceased. While committing the

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act, the third accused also engaged in illegal intimacy with P.W. 11 at the instigation of the deceased. When the third accused became more intimate with the first accused, the deceased compelled him to continue the intimacy with P.W.11 in order to extract money from him. There was a quarrel between the first accused and the third accused, and it was alleged that all the accused conspired together to do away the life of the deceased. However, the prosecution failed to prove the conspiracy against the first accused, and the other accused, Nos. 2 to 4, were acquitted of the charges. Insofar as the first accused is concerned, he was convicted and sentenced for the offence punishable under Section 302 of IPC. It is a case of circumstantial evidence.

10. The only point for consideration in this appeal is whether the prosecution proved the chain of circumstances,

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pointing the accused alone and whether the chain of circumstances completed or not.

11. The prosecution had examined P.W.20 and P.W.21 as eye-witnesses to the occurrence, however, they turned hostile and did not support the case of the prosecution. Therefore, the prosecution had examined P.W.3 to establish the last seen theory. According to the prosecution, P.W.3 had lastly seen the accused along with deceased leaving the house on separate motorcycles at around 03.00 a.m., on 19.01.2017. On perusal of her evidence, it is revealed that on 18.01.2017 at about 03.30 p.m., the accused was sitting in the house of the third accused, while the deceased had gone for his job. P.W.11 was also present and there was a quarrel between the first accused, the third accused and P.W.11. On the same day night, there was a quarrel between the accused Nos.1 and 3 regarding intimacy with A1 and P.W.11. On the next day early morning

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i.e., 19.01.2017 at about 03.00 a.m., P.W.3 heard the calling bell sound and came out from her room on the first floor. She saw the accused and the deceased talking together, after which they left the house by their respective motorcycle. Thereafter, she heard that the deceased was murdered by some one. She immediately went to the hospital to identify the body and examined by the police on the same day. The relevant portion of her deposition is as follows:-

□.....18.01.2017ம் தேதி நாள் எனது குழந்தைகளை பள்ளியிலிருந்து அழைத்து வரும் நேரம் மாலை சுமார் 03.30 மணிக்கு பாபு நான் மாடியிலிருந்து படி இறங்கி வரும் போது படியில் உட்கார்ந்திருந்தார். 1வது எதிரி அஜித் அப்போது 3வது எதிரியின் வீட்டிற்குள் உட்கார்ந்திருந்தார். இளங்கோவன் அப்போது வேலைக்கு சென்றிருந்தார். பாபு, முதல் எதிரி அஜித், 3வது எதிரி இந்துமதி ஆகியோருக்கு வாக்குவாதம் நடந்து கொண்டிருந்தது. நான் பள்ளிக்கு சென்றுவிட்டு திரும்பி வந்த போது பாபுவும், முதல் எதிரியும், 3வது எதிரியை அவர்கள் கூட வண்டியில் பள்ளிக்கு வா



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என்று அழைத்து சண்டை போட்டதாக 3வது எதிரி சொன்னார். பாபு 3வது எதிரியிடம் அவர் பாபுவுடன் வண்டியில் செல்லவில்லை என்றால் அவரது கணவரிடம் சொல்லிக் கொடுப்பதாக மிரட்டினார் என்று 3வது எதிரி என்னிடம் சொன்னார். அதற்கு அஜித் “நான் பார்த்து கொள்கிறேன் என்று சொல்லியுள்ளார். பின்பு நான் வீட்டிற்கு சென்றுவிட்டேன். அன்று இரவு 3வது எதிரிக்கும், அவரது கணவருக்குமிடையே சண்டை நடந்தது. நான் சமாதானபடுத்த சென்ற போது இளங்கோவன் 3வது எதிரியிடம் டீ பாபு கூட போயிருக்க வேண்டியது தானே என்று சொன்னார். நான் சமாதானப்படுத்திவிட்டு மாடிக்கு சென்றேன். அடுத்த நாள் விடியற்காலை சுமார் 03.00 மணிக்கு வீட்டின் காலிங் பெல் அடிக்கும் சத்தம் கேட்டது. நான் வெளியே மாடியில் நின்று பார்த்த போது அஜித்தும், இளங்கோவும் சுமார் 10 நிமிடம் கீழே பேசிக்கொண்டிருந்தார்கள். அதன்பின்பு இரண்டு பேரும் தனித்தனி பைக்குகளில் கிளம்பி சென்றுவிட்டார்கள். காலையில் சுமார் 10.00 மணிக்கு நான் பிள்ளைகளை பள்ளியில்விட்டு திரும்பி வந்த போது போலீசார் வந்து என்னையும், 3வது எதிரியையும் அழைத்து அல்லம்பட்டி காவல் நிலையத்திற்கு கொண்டு சென்றார்கள். அங்கு வைத்து இளங்கோவை யாரோ



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விரோதம் கொண்டு அடித்துக் கொலை செய்துவிட்டதாக தெரிந்து கொண்டேன். என்னிடம் விசாரித்த போது நான் நடந்த விபரத்தை சொன்னேன். பின்பு நானும், எனது உறவினர் வினோத் என்பவர் விருதுநகர் அரசு மருத்துவமனைக்கு சென்று இளங்கோவின் பிரேதத்தை அடையாளம் காட்டினோம். அவருக்கு தலையில் அடிபட்டு இருந்தது. 2வது எதிரியும், முதல் எதிரியுடன் 3வது எதிரியின் வீட்டிற்கு வருவார். 2வது எதிரி அவரது நண்பர்களை அந்த வீட்டிற்கு அழைத்து வருவார். போலீசார் என்னை விசாரித்தார்கள்.□

12. Thus, it is clear that she saw the accused and the deceased on the night of 19.01.2017, as they were leaving their house on a motorcycle. On the same day, she went to the police station and also identified the body of the deceased at the hospital. Therefore, she was present at the police station while the investigating officer conducted the inquest on the deceased's body. On perusal of Ex.P18, column No. 4, it is revealed that on 18.01.2017 at about 10:30 a.m., the deceased

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went to Moolakarai to borrow money. This was witnessed by the third accused, namely his wife, indicating that the accused was also present in the house of the deceased on the date of the occurrence. It is completely contradictory to the evidence of P.W.3. Though the statement of P.W.3 was recorded on 21.01.2017, it reached the Court only on 15.02.2017. It is quite unnatural that the statements of P.W.1 and P.W.2, recorded on 21.01.2017, were sent to the Court on the same day, whereas the statement of P.W.3, recorded on the same date, was sent to the Court only on 15.02.2017, for which there is absolutely no explanation from the prosecution. Further, the prosecution recovered the blood-stained shirt of the accused under the Panchanama dated 21.01.2017, which was produced as Material Object No.12. The Panchanama was marked as Ex. P9. On perusal of Ex. P9, it was revealed that the Panchanama was attested by the Village Administrative Officer without any date. Though the M.O.12 revealed the blood report as that of

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the deceased, Ex.P9 was sent to the Court only on 12.04.2017 that too, with the signature of Village Administrative Officer. The other Panchanama namely Ex.P5 to Ex.P8 which were prepared for other recoveries on 21.01.2017. All the panchanamaas were sent to the Court on 21.01.2017 itself. Panchanama Ex.P9 was also prepared on 21.01.2017, but it was reached to the Court only on 12.04.2017. The said delay was not properly explained by the prosecution. It shows that after fixing the accused, the prosecution planted P.W.3 as if she had lastly seen the accused and the deceased. Further, the prosecution planted the bloodstained shirt which was produced as M.O.12 by the Panchanamaa dated 21.01.2017, which was marked as Ex.P9. If at all M.O.12 was recovered from the accused on 21.01.2017, the Panchanama Ex.P9 would have reached the Court on the same day. The other panchanama which was marked as Ex.P5 to Ex.P7 reached to the Court on the same day. Therefore, the prosecution failed to prove the

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last seen theory as well as the recovery of bloodstained shirt, which was produced as M.O.12.

13. Therefore, in the absence of any other corroborative evidence, it cannot be said that the chain of circumstances points conclusively to the guilt of the accused. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. It would be unsafe to sustain the conviction of the appellant on such evidence, where the chain is clearly incomplete.

14. In order to prove the circumstances, the Hon'ble Supreme Court of India in the case of ***Ravi Sharma vs. State (Government of NCT of Delhi) reported in (2022) 8 Supreme Court Cases 536***, held as follows:-

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“15. We do find that there is no sufficient link to come to the irresistible conclusion pointing the guilt only to the appellant. We do not wish to multiply the settled position of law regarding the circumstantial evidence, except to quote the following decision in [Padala Veera Reddy v. State of A.P.](#), 1989 Supp (2) SCC 706:

“10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;



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(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See [Gambhir v. State of Maharashtra \[\(1982\) 2 SCC 351\]](#).)”

15. Unfortunately, the prosecution failed to prove the circumstances to connect the accused. Further the classic enunciation of law pertaining to circumstantial evidence, its

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relevance and decisiveness, as a proof of charge of a criminal offence. In the case of circumstantial evidence, two views are possible on the case of records, one pointing to the guilt of the accused and the other his innocence. Hence, the accused is indeed entitled to have the benefit of one which is favourable to him. When the prosecution failed to prove the chain link to connect the accused, the accused cannot be convicted.

16. In view of the above, the conviction and sentence imposed on the appellant in S.C.No.157 of 2017, dated 11.04.2023, on the file of the Additional District and Sessions Court, Virudhunagar cannot be sustained and are liable to be set aside.

17. In the result, this Criminal Appeal is allowed and the judgment made in S.C.No.157 of 2017, dated 11.04.2023, on the file of the Additional District and Sessions Court,

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Virudhunagar, is hereby set aside and the appellant is acquitted of all the charges. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellant. The appellant shall be set at liberty forthwith, if he is no longer required in connection with any other case.

[G.K.I.J.,] & [R.P.J.,]
25.02.2026

NCC :Yes/No
Index :Yes/No
am

To

1.The Inspector of Police,
Soolakkarai Police Station,
Virudhunagar District.

2.The Additional District and Sessions Court,
Virudhunagar

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,

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