



Crl.A(MD) No.471 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	11.08.2026
PRONOUNCED ON	.08.2026

CORAM:

**THE HONOURABLE MR JUSTICE A. D. JAGADISH CHANDIRA
AND
THE HONOURABLE MR JUSTICE B. MURUGESAN**

Crl.A. (MD) No.471 of 2024

Pradeep

...Appellant

Vs.

The State rep. by
The Inspector of Police
K.Paramathi Police Station,
Karur District
(Crime No.140 of 2018)

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records connected with the judgment in Spl. S.C. No. 32 of 2018 dated 31.01.2020 on the file of the learned Additional Sessions Judge, Karur and set aside the conviction and sentence imposed against the appellant.

For appellant

: Mr.R.Manickaraj
for Dr.R.Alagumani

For respondent

: Mr.G.Karuppasamy Pandian
Counsel for State of Tamil Nadu
(Criminal Side)



JUDGMENT

A.D.JAGADISH CHANDIRA, J.

The instant criminal appeal is filed by the accused (hereinafter referred to as “the appellant”) seeking to set aside the judgment of conviction and sentence passed by the learned Additional Sessions Judge, Karur, (hereinafter referred to as “the Trial Court”) in Spl. S.C. No. 32 of 2018 dated 31.01.2020 (hereinafter referred to as “the impugned judgment”).

2. *Vide* the impugned judgment, the Trial Court convicted and sentenced the appellant as tabulated below:-

Penal Provision	Imprisonment	Fine Amount
302 of IPC	Life Imprisonment	Rs.1,000/-, in default of which to undergo one month simple imprisonment.
5(l) r/w.6 of POCSO Act, 2012	Rigorous Imprisonment for the reminder of natural life	Rs.1,000/-, in default of which to undergo one month simple imprisonment.

Period of detention already undergone by the appellant was ordered to be set off and the sentence was ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that on 07.08.2018, at about 5.00 pm., while the deceased child was returning from his school to his house, the appellant took him to Viswanathapuri MGR Nagar and allegedly committed sodomy



and later killed the deceased child by smothering him with a yellow color nylon saree (M.O.2).

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4. The sequence of events as ascertained from the evidence on record is as follows:

4.1. On 08.08.2018 at about 2.30 hrs, the mother (hereinafter referred to as “the defacto complainant (P.W.1)”) of the deceased child preferred a complaint (Ex.P1) with the Sub Inspector of Police (P.W.13). In the complaint (Ex.P1), the defacto complainant (P.W.1) has alleged that she has two school going sons, of which, one of them is the deceased child and that on 07.08.2018 at about 6.30 pm., when she returned from work, the deceased child had not returned from his school. Hence, she went in search of the deceased child. Whilst she was in search thereof, one Neelakandan (P.W.2) informed her that he had seen the appellant take the deceased child along with him. Similarly, on her way towards ‘Natesan Garden’, her nephews [i.e. Ragu (P.W.3) and Malayappan (not examined)] have informed her that they had seen the appellant take the deceased child along with him at around 4.40 p.m., and when they had enquired the appellant as to the same, he had informed them that he was taking deceased child to his uncle’s house and that they would soon return.



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4.2. Further, in the complaint (Ex.P1), the defacto complainant (P.W.1) has alleged that thereafter, her husband came and she along with her husband and her other relatives continued to search for the deceased child. At about 1.10 a.m. on 08.08.2018 they had found the deceased child lying dead on his back to the west of the water channel situated near MGR Nagar. The body of the deceased child was found lying in his school uniform with an open pant zipper and his mouth was also open. On finding the deceased child, her relatives had sent the deceased child to the Government hospital in an ambulance. When, they searched for the appellant, they heard that the appellant was not be found at his house or even within the village and thereby suspecting that the appellant may have murdered the deceased child, they gave the complaint (Ex.P.1). Based on the complaint (Ex.P.1), the Sub Inspector of Police (P.W.13) registered a FIR (Ex.P.10) in Crime No. 140 of 2018 for the offence under Sections 302 of IPC at about 2.30 hrs on 03.08.2018. Upon registration, the Sub Inspector of Police (P.W.13) forwarded the complaint (Ex.P.1) and FIR (Ex.P.10) to the Court and thereafter handed over the case to the Inspector of Police (P.W.15) for investigation in Crime No. 140 of 2018.

4.3. On the same day, at about 6.30 a.m., the Inspector of Police (P.W.15) took the case for investigation and visited the place of occurrence and in the presence of the independent witnesses [i.e. Jeevavanthan (P.W.6) and Dhanarajan (not examined)] prepared an observation mahazar (Ex.P.2) and a rough sketch (Ex.P.



11) of the place of occurrence. Following which, the Inspector of Police (P.W.15) examined one Viswanathan, Rathinam, Prabakaran, Sivakumar, Malayappan, Dhanarajan, Neelakandan (P.W.2), Raghu (P.W.3), Jeevanantham (PW6) and recorded their statements. Thereafter at about 9.00.am., the Inspector of Police (P.W. 15) conducted an inquest in the presence of the panchayatars and prepared an inquest report (Ex.P.12).

4.4. Upon completion of the inquest, the body of the deceased child was handed over to the Police Constable (P.W.11) who along with a requisition (Ex.P7) for the postmortem examination took the body of the deceased to the Karur Government Hospital. Dr. Santhi (PW.10) conducted the postmortem examination of the body of the deceased and issued a postmortem certificate (Ex.P8) observing (1) bleeding from both ears and nostrils (2) upper lip and lower lip edematous (3) contusion about 4 cm x 1 cm x 0.5 cm just below the lower lip (4) abrasions of varying size and shape present over the posterior input of both arms, the lower aspect of the back of the chest, the inner aspect of the upper and lower lip (5) skull - intact (6) brain - pale (7) hyoid bone - intact (8) ribs – intact (9) lungs – congested (10) heart contains 50 ml of liquid blood (11) liver – congested (12) stomach contains 50 gms of yellow color food particles (13) kidneys – congested (14) spleen – congested (15) bladder empty. Further, Dr. Santhi (P.W.10) had preserved the viscera i.e. internal organs and sent the same for chemical analysis. Dr. Santhi (P.W.10) also



obtained a smear from the mouth and anal region and sent the same for sperm detection.

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4.5. On the other hand, based on information received, at about 3:30 PM on 08.08.2018, the Inspector of Police (P.W.15) arrested the appellant near the junction on the east of 'Shobika Tex' and during the enquiry, the appellant voluntarily confessed to having murdered the deceased child. Hence, the Inspector of Police (P.W.15) summoned the Village Administrative Officer (P.W.7) and his Village Assistant (not examined) and in their presence recorded the appellant's voluntarily confession statement (Ex.P3). Based on the confession, at 5:15 PM on the same day, the Inspector of Police (P.W.15) recovered the deceased child's school bag (M.O.1) and the yellow color nylon saree (M.O.2) used by the appellant to smother the deceased child under a seizure mahazar (Ex.P4) from the almirah of the house of the appellant. Thereafter, the Inspector of Police (P.W.15) recorded the statements of Alagirisamy (P.W.7) and Arumugam (P.W.14) and sent the appellant for remand. On return of the Police Constable (P.W.11) from the Karur Government Hospital, he recovered the deceased child's shirt (M.O.3) and deceased child's pant (M.O.4). Following which the Inspector of Police (P.W.15) sent deceased child's shirt (M.O.3) and deceased child's pant (M.O.4) to Court under Form 91 (Ex.P13) and further sent the deceased child's school bag (M.O.1) and the yellow color nylon saree (M.O.2) to the Court under Form 91 (Ex.P14).



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4.6. On 09.08.2018, the viscera i.e. internal organs preserved from the deceased child and the smear samples obtained from the deceased child were forwarded by the Inspector of Police (P.W.15) to the Court and later to the Regional Forensic Science Lab for forensic analysis under requisitions (Ex.P16 & Ex.P17). Thereafter, the Inspector of Police (P.W.15) examined Elangovan the defacto complainant (P.W.1), Elangovan (P.W.4), Arumugam (P.W.14) and one Viswanathan and recorded their further statements. Following which the Inspector of Police (P.W. 15) altered the offences from Section 302 of IPC to include Section 302 of IPC and Section 5(l) r/w. Section 6 of POCSO Act through an alteration report (Ex.P.15).

4.7. On 13.08.2018, the Inspector of Police (P.W.15) sent a requisition (Ex.P. 16) to the court to send the appellant for medical examination. Pursuant to which, on 14.08.2018 the Inspector of Police (P.W.15) produced the appellant for medical examination and upon which Dr. Deepa (P.W.9) examined him and opined in her accident register (Ex.P6) that there was nothing to suggest that the appellant was either impotent or was incapable of having sexual intercourse. Further, on 16.08.2018 the Inspector of Police (P.W.15) examined Dr. Shanthi (P.W.10) and Dr. Deepa (P.W.9).



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4.8. Thereafter, since the Inspector of Police (P.W.15) went on transfer, he handed over the investigation to the Inspector of Police (P.W.16). After taking up the case for investigation, the Inspector of Police (P.W.16) examined the Headmistress (PW.8) of Viswanathapuri Government School and recorded her statement. On various occasions, Inspector of Police (P.W.16) examined various witnesses including the forensic experts, recorded their statements and obtained a toxicology report (Ex.P18), biology report (Ex.P19), serology report (Ex.20), DNA results (Ex.P21) & DNA results (Ex.P22). The toxicology report (Ex.P18) concluded that no poison was detected in the internal organs and the biology report (Ex.P19) concluded that no sperms cells were found either in the smears taken from the mouth or from the anal region.

4.9. Based on the said reports (Ex.P18 to Ex.P22), the Inspector of Police (P.W.16) once again reexamined Dr. Santhi (PW10) and obtained a final opinion on the postmortem report (Ex.P8) wherein she opined that the deceased child would appear to have died due to asphyxia from smothering. Lastly, upon completion of the investigation, the Inspector of Police (P.W.16) filed a final report against the appellant for the offences under Section 302 of IPC and Section 5(l) r/w. Section 6 of POCSO Act before the learned Judicial Magistrate.



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5. The learned Judicial Magistrate took cognisance of the said final report and on appearance of the appellants, after complying with the provisions of 207 CrPC, the learned Judicial Magistrate committed the case to the Court of Sessions. The case was taken up as Spl. S.C. No. 32 of 2018 and made over to the trial Court. After hearing the appellants, the Trial Court framed charges against the appellants for having committed the offences under Section 302 of IPC and Section 5(l) r/w. Section 6 of POCSO Act. When the charges were read over and explained to the appellants, they pleaded not guilty and sought to be tried.

6. In order to prove the case, the prosecution examined 16 witnesses as P.W.1 to P.W.10 and marked 22 exhibits as Ex.P.1 to P.22 and four material objects as M.O.1 to M.O.4.

7. After examination of the prosecution witnesses, when the appellant was questioned under Section 313 of Cr.P.C. on the incriminating circumstances appearing against him, he denied the same as false without offering any explanation whatsoever and he did not examine any witness or mark any document on his side.

8. The Trial Court, after hearing the arguments on both sides, found the appellants guilty and convicted and sentenced them as tabulated at paragraph 2,



supra, vide the impugned judgment and challenging his conviction and sentence, the instant criminal appeal has been filed by the accused i.e. appellant.

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9. The learned counsel for the appellant submitted as follows:

9.1. It is a case of circumstantial evidence and the prosecution has failed to establish its case beyond reasonable doubts. Further, the prosecution has also failed to establish the material circumstances to complete the chain of circumstances entitling them to draw the inference of guilt of the appellant.

9.2. The evidence of the crucial prosecution witnesses suffers from various infirmities and contradictions. More specifically, the evidence of prosecutions witnesses examined to establish the prosecution's last seen theory are highly doubtful and hence unreliable. Further, the conduct of the prosecution witnesses Neelagandan (P.W.2), Raghu (P.W.3), Elangovan (P.W.4) and Arumugam (P.W.14) is also highly doubtful and hence their evidence is also highly unbelievable.

9.3. There has also occasioned a delay in forwarding the statement of the prosecution witnesses examined to establish the prosecution's last seen theory. The delay in this regard creates a grave doubt over the case of the prosecution.



9.4. The trial Court has failed to take into consideration the fact that the medical evidence and scientific evidence does not go on to support the prosecution case in so far as the charge of penetrative sexual assault under Section 5(l) r/w. Section 6 of the POCSO Act. Without there being any materials in this regard, the Inspector of Police (P.W.15) has mechanically filed an alteration report based on the appellant's confession statement (Ex.P3) which in itself is not admissible before a court of law.

9.5. The arrest of the appellant and the consequent confession and recovery thereof are shrouded with suspicion and hence can not be relied to form a link in the chain of circumstance projected by the prosecution.

9.6. The trial Court by ignoring the suspicious circumstances and by ignoring the fact that the prosecution has failed to prove its case beyond reasonable doubt has erred in convicting the appellant. Hence, the appeal may be allowed and the impugned judgment of conviction and sentence of the appellants may be set aside.

10. *Per contra*, the learned counsel appearing for the respondent police submitted that the prosecution has proved its case beyond all reasonable doubt. The defacto complainant (P.W.1) on noticing that the deceased child did not return from



his school, went in search of the deceased child and her relative, Neelgandan (P.W.

2) informed her that he had seen the appellant take the deceased child along with him, Raghu (P.W.3) and Elangovan (P.W.4) have also seen the deceased child in the company of the appellant. Therefore, it has been clearly and cogently established by the prosecution that the appellant was last seen with the deceased prior to finding the murdered body of the deceased child. Further, the appellant was arrested and based on his confession the deceased child's school bag (M.O.1) and the yellow color nylon saree (M.O.2) used by the appellant to smother the deceased child have been recovered from the appellant. Therefore, the chain of circumstances put forth by the prosecution are consistent with the guilt of the appellant and thereby, the trial Court has correctly appreciated the evidence to convict the appellant. Lastly, the case for the offences under the POCSO Act, was altered during the investigation based on the statement recorded from Elangovan (P.W.4) and Arumugam (P.W.14) and further based on the confession statement (Ex.P3) of the appellant. However, the medical evidence and the scientific evidence does not go on to establish the case of prosecution in so far as the charge of penetrative sexual assault under Section 5(1) r/w. Section 6 of the POCSO Act.

11. This Court has given its careful and anxious consideration to the rival contentions and has thoroughly scanned through the entire evidence available on record, including the impugned judgment.



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12. Now coming to the evidence on record, the evidence of the prosecution witnesses are as follows;

12.1. The defacto complainant (P.W.1) is mother of the deceased child. She deposed that nine months ago, on one day the deceased child did not return from his school and hence she searched for the deceased child at his school and he was not there. While she was returning back Neelagandan (P.W.2) informed her that he had seen the appellant take the deceased child to the water channel near the MGR Nagar, Natesan Garden. Later, she had also informed Raghu (P.W.3) and one Malayappan (not examined) about her missing son. Raghu (P.W.3) and one Malayappan (not examined) informed her that they had seen the appellant take the deceased child to his uncle houses and that when they had enquired with the appellant, he said he would bring the deceased child back soon. Thereafter, since the deceased child was still not be found, all of them searched for the deceased child and at about 1.10 a.m., they found the body of the deceased child in a Julifera bush near Natesan Garden. The deceased child was lying on his back and was found with an open pant zipper, The deceased child's school bag (M.O.1) and the deceased child's chapels were found lying near him. Her husband, her relatives (P.W.2 & P.W.3) and the others from her village were there and someone among them had called the ambulance and the body of the deceased child was taken to the Karur Government Hospital. Later,



her relatives Elangovan (P.W.4) and Arumugam (P.W.14) had informed her that when they went to the fields they saw the appellant naked along with two boys and that they were unable to identify the boys. Hence, based on her information the police have written the complaint (Ex.P1).

12.2. Neelagnadan (P.W.2), the relative of the defacto complainant (P.W.1) deposed that on 07.08.2019 when he was returning from the hospital he had seen the appellant take the deceased child to the water channel near the MGR Nagar, Natesan Garden by beating him on his head. After some time when he was standing near the primary health centre, the defacto complainant (P.W.1) and her husband came in search of the deceased child and at about 07.00 p.m., he had informed them that the appellant had taken the deceased child near the MGR Nagar Natesan Garden. Later, Raghu (P.W.3) and one Malayappan (not examined) had told him that the deceased child was missing. He along with the defacto complainant (P.W.1) and her husband went in search of the deceased child and they were searching for them from 07.00 pm. onwards and later they have found the body of the deceased child in a Julifera bush near Natesan Garden.

12.3. Raghu (P.W.3), the nephew of the defacto complainant (P.W.1) had deposed that around 07.00 pm when the defacto complainant (P.W.1) was searching for the deceased child, he informed her about seeing the appellant along with the



deceased child at about 05.00 pm., and that thereby he along with the defacto complainant (P.W.1) and her husband went to the house of the appellant of which was locked. At about 08.00 pm., they had seen the appellant return alone from the water channel near the MGR Nagar, Natesan Garden. When, they enquired about the deceased child, the appellant ran away and they attempted to catch him. However, they were unable to catch him and thereafter they were not aware as to where the appellant went. Hence, they continued to search for the deceased child and eventually found the body of the deceased child.

12.4. Elangovan (P.W.4) had deposed that around 9 months ago at about 6.30 pm., he along with Arumugam (P.W.14) had went to the fields and when they were returning along the banks of the water channel near the MGR Nagar, Natesan Garden they had seen the appellant standing naked within the julifera bush. Later, he along with Arumugam (PW.14) went to Trichy and when they returned on the next day, he heard about the death of the deceased child and thereafter immediately, he informed the defacto complainant (P.W.1) about having seen the appellant near the said water channel. However, during the cross examination, he categorically admitted that it was dark and he had not seen the appellant with any one else.

12.5. Rathinam (PW.5), the relative of defacto complainant deposed about having searched for the deceased child and having seen the deceased child along



with the appellant. However, during the cross examination, he has deposed that the defacto complainant (P.W.1) had informed him about the deceased child being missing at about 7.00 pm., and that the police arrived immediately after the incident and obtained the signatures of ten individuals including his. On the same day itself, the police have taken the body to the hospital and the police didn't enquire him in the hospital.

12.6. Jeevanatham (P.W.6) was the independent witness to the observation mahazhar (Ex.P2) and the rough sketch (Ex.P11). He had in his cross examination admitted that when he went to the place of occurrence, the police were present there and in his presence the police recovered the deceased child's school bag (M.O.1), cloth i.e. yellow color nylon saree (M.O.2) and the deceased child's slippers from near the deceased child's body.

12.7. Alagirisami, the Village Administrative Officer (P.W.7) was the independent witness to the arrest of the appellant, and the consequent confession and recovery thereof. He had deposed that on 08.08.2018 at about 3.30 pm., when he was on duty the police summoned him and hence he along with his Village Assistant (not examined) had went near the junction to the east of 'Shobika Tex' and had seen the appellant in the custody of the police. In their presence, the appellant had given a confession statement (Ex.P3) and thereafter, the appellant had taken them to his



house from where he handed over the deceased's school bag (M.O.1) and the blood stained yellow colour nylon saree (M.O.2) used by him to smother the deceased child.

12.8. The Headmistress (P.W.8) of the deceased child's school deposed that the deceased child attended school on the day of the occurrence.

12.9. Dr Deepa (P.W.9) who had examined the appellant deposed that she issued an accident register (Ex.P6) opining that the appellant was either impotent or was incapable of having sexual intercourse.

12.10. Dr. Santhi (PW.10) who had conducted a postmortem examination of the body of the deceased deposed that she issued a postmortem certificate (Ex.P8) observing multiple injuries as stated in paragraph 5.4, *supra*. She had preserved the viscera i.e. internal organs and had obtained swabs from the mouth and anal region of the deceased child and that based on the toxicology report (Ex.P18), biology report (Ex.P19), serology report (Ex.20), DNA results (Ex.P21) & DNA results (Ex.P22) obtained thereof, she opined that the deceased child would appear to have died due to asphyxia from smothering.



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12.11. The Head Constable (P.W.11) deposed that he had taken the material objects to the forensic department and the Police Constable (P.W.12) deposed that he had taken the FIR (Ex.P10) to the Court. Further, the Sub Inspector of Police (PW. 13) deposed that she received the Complaint (Ex.P1) and registered the case and forwarded the same for investigation to the Inspector of Police (P.W.15).

12.12. Arumugam (P.W.14) is the neighbor of the defacto complainant (P.W.1). He had deposed that around nine months ago he along with Elangovan (P.W.4) went to the water channel near MGR Nagar, Natesan Garden and at that time, he saw a young boy lying face down without his clothes and further saw the appellant lying over body of the young boy. On seeing the same, they expressed their disapproval and left to Trichy on the the same night. When they returned to their village on the very next day, they heard from the villagers that the appellant had misbehaved with the deceased child and thereafter murdered him. Hence, they informed the defacto complainant (PW.1) about having seen the incident on the previous day.

12.13. The Inspector of Police (PW.15) deposed about the investigation of the case, the arrest of the appellant and the consequent confession and recovery thereof as detailed in paragraph 5.3 to 5.7, *supra*. Thereafter, he deposed that he was transferred and thereby he handed over the case for further investigation to the



Inspector of Police (P.W16). The Inspector of Police (P.W16) further deposed as to completing the investigation and filing a final report.

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13. Now what is to be seen is that whether the prosecution has proved the charges beyond reasonable doubt and whether the trial Court is right in appreciating the evidence on record to convict and sentence the appellant for the charged offences.

14. From the evidence on record, there are no eye witnesses to the offence of murder and the case of the prosecution admittedly clinches on the circumstantial evidence namely the prosecution's last seen theory, the appellant's extra judicial confession (Ex.P3) and the recovery of deceased's school bag (M.O.1) and the yellow color nylon saree (M.O.2) alleged to have been used by the appellant to smother the deceased child.

15. Since, it is an admitted case of circumstantial evidence, it is useful to turn to the principles regarding the appreciation of circumstantial evidence as determined by a Constitutional Bench of the Supreme Court in **Govinda Reddy and another v. State of Mysore [AIR 1960 SC 29]**. The relevant extract of **Govinda Reddy, Supra** is as follows:

“In cases where the evidence is of a circumstantial nature,



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the circumstances from which the conclusion of guilt is to be drawn would in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

16. Further, it would also be beneficial to turn to the five classic rules categorically enumerated by the Supreme Court in **Shaik Mustan Vali v. State of Andhra Pradesh [(2007) 9 SCC 942]**. The relevant extract of **Shaik Mustan Vali**, *Supra* is as follows:

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

17. Bearing in mind the said principles, we propose to deal with each of the circumstances projected by the prosecution to establish it's case.



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18. In the present case, Neelakandan (P.W..2), Raghu (P.W.3), Elangovan (P.W.4) and Arumugam (P.W.14) are the witnesses who have been examined by the prosecution to establish that the appellant was last seen with the deceased child prior to the finding of the deceased child's body from a Julifera bush near Natesan Garden.

19. Therefore, what is to be seen, is that whether the evidence of Neelakandan (P.W..2), Raghu (P.W.3), Elangovan (P.W.4) and Arumugam (P.W.14) is reliable and can be believed. Neelakandan (P.W..2) deposed that he saw the appellant taking the deceased child along with him to the place of occurrence by beating him on his head. Whereas, Neelakandan (P.W..2) has not taken any steps to rescue the deceased child from the appellant. Further, Neelakandan (P.W..2) being a close relative of the deceased child and him having not questioned the appellant as to same, renders his conduct unnatural and thereby his conduct seems to be highly doubtful. Likewise, Raghu (P.W.3), the nephew of the defacto complainant (P.W.1) deposed that the defacto complainant (P.W.1) was searching for the deceased child and that thereby he informed her of having seen the deceased child being in the company of the appellant at about 05.00 pm. Raghu (P.W.3) also deposed that later they went to the house of the appellant where the appellant was not be found and that at about 08.00 pm., on the same day he had seen the appellant returning alone from the water channel near the MGR Nagar, Natesan Garden. Moreso, Raghu (P.W.3) deposed that when they enquired the appellant, he ran away and though, they chased him, they



were unable to catch him and thereby they continued to search for the deceased child. Hence, the conduct of Raghu (P.W.3) is also highly suspicious and doubtful.

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20. Now coming to the evidence of Elangovan (PW.4) and Arumugam (P.W.14), their evidence are drastically in contrast with one another. Though, both Elangovan (PW.4) and Arumugam (P.W.14) claim to have seen the appellant in the company of the deceased child while they were together, Elangovan (PW.4) deposed as to having seen the appellant alone and naked and whereas, Arumugam (P.W.14) in contrast deposed as to having seen the appellant lying naked over a young boy who was also stark naked. Further, Arumugam (P.W.14) also deposed that they expressed their disapproval towards what they had seen and thereby drifted away from the place of occurrence. Hence, the conduct of Elangovan (PW.4) and Arumugam (P.W.14) in drifting away from the place of occurrence is highly unnatural. Moreover, Elangovan (PW.4) deposed that he has witnessed the occurrence at about 06.30 pm and whereas in contrast, Arumugam (P.W.14) deposed that he had seen the occurrence at about 04.15 pm.

21. Further, the statements of the Elangovan (PW.4) and Arumugam (P.W.14) have been forwarded to the Court after a delay of two days from the occurrence. Hence, in their statement, in order to explain the delay, they have stated that after seeing the appellant in the company of the deceased child, they have gone to Trichy



and since there was a stoppage of bus facilities due to the death of the former Chief Minister, i.e. Kalaingar. However, they had strangely deposed before the trial Court that they returned to their village on the next day and thereby immediately informed the police about having seen the appellant and the deceased together. Hence, upon the overall analysis of the evidence on record, the prosecution's last seen theory is totally unbelievable on account of the evidence of the Neelakandan (P.W..2), Raghu (P.W.3), Elangovan (P.W.4) and Arumugam (P.W.14) being wholly unreliable.

22. Now coming to the arrest of the appellant and the consequent confession and recovery thereof, it is the case of the prosecution that based on an information, the Inspector of Police (P.W.15) arrested the appellant and in the presence of the Village Administrative Officer (P.W.7) the appellant gave a voluntary confession statement (Ex.P3). Upon which, the deceased child's school bag (M.O1) and the yellow color nylon saree (M.O.1) used by the appellant to smother the deceased child were alleged to have been recovered from the almirah of the house of the appellant. Whereas, it is the evidence of the defacto complainant (P.W.1) that when she found the body of the deceased child, his school bag (M.O.1) and his chappal were lying near his body. Likewise, Jeevanantham (P.W.6), the independent witness to the observation mahazhar (Ex.P2) and the rough sketch (Ex.P11) deposed that when the police prepared the observation mahazhar (Ex.P2) and the rough sketch (Ex.P11) he saw the deceased child's school bag (M.O.1), the yellow color nylon saree (M.O.2)



and the deceased child's chappals lying near the deceased child's body. Therefore, the case of the prosecution that the deceased child's school bag (M.O.1) and the yellow color nylon saree (M.O.2) were recovered from the almirah of the house of the appellant is totally unbelievable.

23. Further, turning to the appellant's confession statement (Ex.P3), it is a written confession consisting of five long pages attested by the Village Administrative Officer (PW.7) and his Village Assistant. The said extra judicial confession is full of facts and it graphically discloses the family history of the appellant and what has happened prior to and after the occurrence in question. The appellant's conduct in disclosing the graphic details of the occurrence is highly unbelievable and hence the appellant's confession also seems highly doubtful.

24. In this context, the Apex Court in **Chakarai @ Chakaravarthi v. State rep by Inspector of Police [(2019) 14 SCC 254]** where it dealt with a case involving a similar set of facts, referred to the observations in **Thangavelu v. State of T.N. [(2002) 6 SCC 498]** and had disbelieved the confession statement therein and acquitted the accused therein. The relevant extract of **Chakarai @ Chakaravarthi, Supra** is as follows:

"11. Thus, the only remaining circumstance, as rightly concluded by the High Court, is the extra-judicial confession. We have perused the extrajudicial confession (Ext. P-1) recorded by



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PW 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 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.

12. In this context, it would be relevant to refer to certain observations made by this Court in Thangavelu v. State of T.N. [Thangavelu v. State of T.N., (2002) 6 SCC 498 : 2002 SCC (Cri) 1382] Para 7 of the judgment is extracted below: (SCC pp. 505-06)

“7. 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.”

13. The facts of the present case are similar to the facts of the aforesaid case, insofar as the extra-judicial confession is concerned. All the observations made by this Court in Thangavelu [Thangavelu v. State of T.N., (2002) 6 SCC 498 : 2002 SCC (Cri) 1382] are aptly applicable to the case on hand. In the said matter, this Court disbelieved the detailed extra-judicial confession and acquitted the accused."

emphasis supplied by us



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25. With regards to the charge of penetrative sexual assault under Section 5(l) r/w. Section 6 of the POCSO Act, as rightly point out by the learned counsel for the appellant, the medical evidence and the scientific evidence does not go on to support the case of the prosecution. Further, the evidence of Elangovan (P.W.4) and Arumugam (P.W.14) are also doubtful. Therefore, when the arrest, confession and recovery are suspicious, the conviction for the offence under Section 5(l) r/w. Section 6 of the POCSO Act can not be sustained.

26. Hence, in our opinion, the case of the prosecution is highly doubtful and it has not been proved beyond reasonable doubt. In a case of circumstantial evidence, when two views are possible, [i.e. one pointing to the guilt of the accused and the other pointing towards his innocence] the accused is indeed entitled to have the benefit of the one which points towards his innocence. Though, the evidence on record suggests some suspicious circumstances towards the guilt of the appellant, the prosecution has failed to elevate its case from the realm of "may be true" to the stand point of "must be true". It is an indispensable requirement of law that for a conviction on a criminal charge the case "must be true". Hence, it is trite in law to state that in a criminal trial, suspicion, howsoever grave, cannot substitute the standard of proof required.



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27. Taking into consideration, the facts and circumstances of the case, the law involved and in view of the discussions and reasons stated above on the overall analysis of the evidence on record, we have come to the irresistible conclusion that the prosecution has failed to prove its case beyond all reasonable doubt. Therefore, the appellant is entitled to the benefit of doubt and the present appeal deserves to be allowed acquitting the appellant of all charges.

28. In view of the above, this criminal appeal is allowed by setting aside the conviction and sentence imposed on the appellant in Spl. S.C. No.32 of 2018 dated 31.01.2020 by the Additional Sessions Judge, Karur and the appellant is acquitted of all the charges. Fine amount, if any, paid by the appellant shall be refunded to him and bail bond if any, executed by the appellant shall stand canceled.

[A.D.J.C., J.] [B.M., J.]
.08.2026

Index: Yes/No
Internet: Yes/No
aav



Crl.A(MD) No.471 of

To

1. The Additional Sessions Judge, Karur
2. The Inspector of Police
K.Paramathi Police Station,
Karur District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai
4. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court
Madurai



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Crl.A(MD) No.471 of

A.D.JAGADISH CHANDIRA, J.
AND
B.MURUGESAN, J.
aav

Pre-delivery judgment in
Crl.A. (MD) No.471 of 2024

.08.2026