



Crl.A(MD)No.522 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.01.2026

PRONOUNCED ON : 21.01.2026

CORAM:

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

**Crl.A(MD)No.522 of 2022
and
Crl.M.P(MD)No.2332 of 2024**

Rathinaraj ... Appellant/Sole Accused

Vs.

State through,
The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.
(In Crime No.79 of 2020).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374 of Cr.P.C to call for the entire records connected to the Judgment in S.C.No.235 of 2020 dated 28.04.2022 on the file of the II Additional District and Sessions Court, Thoothukudi and set aside the conviction and sentence imposed against the appellant.

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For Appellant : Mr.R.Manikaraj
for Mr.R.Alagumani

For Respondent : Mr.R.Meenakshi Sundaram
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.235 of 2020 dated 28.04.2022 on the file of the II Additional District and Sessions Court, Thoothukudi.

CASE OF THE PROSECUTION:

2.The case of the prosecution is that the appellant (the accused herein) and the De-facto Complainant/P.W.1 are brothers. On 22.02.2020, at about 09:00 a.m., the appellant had allegedly taken the children of P.W.1 to the well for taking bath and for teaching them swimming, but the children did not return home that day. Allegedly, the appellant had pushed the two children into the

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well that belongs to one Vidyasekar, making them drown to death.

Thereafter, P.W.1 had searched for his children and subsequently lodged a complaint before the respondent for which an F.I.R was registered in Crime No.79 of 2020. Later the dead bodies of the two children were found and recovered from the well. The Charge sheet was filed in S.C.No.235 of 2020 before the learned Additional District and Sessions Judge, Thoothukudi District.

3.To bring the charges to home, the prosecution examined P.W.1 to P.W.27 and marked Ex.P.1 to Ex.P.31 and Material Objects M.O.1 to M.O.7. On the side of the accused, no witnesses were examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty for the offence punishable under Section 302 of IPC for two counts and sentenced him to undergo life imprisonment (2 counts) along with fine of Rs.200/-

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and in default of the same, to undergo three months simple imprisonment. Aggrieved by the same, the present appeal has been filed.

SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE APPELLANT:

5.The learned counsel for the appellant submitted various grounds to make his case before this Court. It was submitted that the prosecution failed to establish the motive for the alleged occurrence to hold the appellant guilty and that the Trial Court had convicted the appellant only on the basis of circumstantial evidences. It was pointed out that none of the witnesses who were examined by the prosecution had whispered about the actual motive of the appellant to do the alleged offence. It was stated that no eye witness was examined by the prosecution who witnessed the direct involvement of the appellant in this case despite the possible presence of number of people around the place of occurrence. Further, prosecution



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witnesses such as P.W.4, P.W.5 and P.W.10 have also turned hostile by not supporting the case of the prosecution.

6.P.W.1 is the father of the deceased children, P.W.2 is the first wife of P.W.1 and the mother of one of the deceased children and P.W.3 is second wife of P.W.1 and sister of P.W.2 and the mother of another deceased child. Even they did not directly see the alleged occurrence and P.W.2 and P.W.3 have only seen the appellant taking the children away.

7.It was further stated that P.W.9 who resides in the same village has deposed that he saw the appellant taking the deceased children towards the well while he was heading out to work but the said statement cannot be legitimate as the occurrence took place during the COVID-19 pandemic and all workplaces would have been shut down due to the lockdown. It was also pointed out that the statements of the witnesses under Section 161(3) of Cr.P.C did not

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reach the learned Judicial Magistrate right away and there was an undue delay of 4 months and the reason for delay was not properly explained by the respondent.

8.He submitted that P.W.17 is the fireman who recovered the two dead bodies of the deceased children. He has clearly stated in his cross examination that at the time of recovery both the bodies had no clothes. This will mean that the children would have voluntarily entered the well for taking bath. There are contradictions in the timings stated by P.W.17 and P.W.1. P.W.1 had stated that he went to the police station after 08.30 p.m., on the day of occurrence for lodging the complaint, but P.W.17 had already reached the place of occurrence at about 8.25 p.m., in search of the bodies. Therefore, he submitted that the prosecution has failed to prove the case beyond reasonable doubt and prays for this Court to set aside the sentence imposed by the Trial Court.



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**SUBMISSIONS MADE BY THE LEARNED ADDITIONAL
PUBLIC PROSECUTOR:**

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent submits that the appellant was the one who caused the death of deceased children by making them drown to death and the minor contradictions are not fatal to the case of the prosecution. The case of prosecution is based on a complete chain of highly incriminating circumstances which irrefutably point towards the guilt of the appellant and after scrutinizing the entire oral and documentary evidence on record, the Trial Court rightly convicted the appellant, and it does not warrant any interference of this Court.

10. He further stated that the delay in recording the 161 statements of the witnesses will not deplete the strength of the prosecution case if the reason for the delay is stated by the investigation officer. In this regard he relied upon the judgement of this Court in the case of *D. Sudhakar & Ors v. The State of Tamil*

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Nadu reported in **CDJ 2014 MHC 1123**, the relevant paragraph of the said judgement is extracted hereunder:

“23. The learned Senior Counsel for the appellants submitted that the statements of the witnesses had reached the Court only on 27.12.2010 and therefore, the evidence of these witnesses become suspect. We are unable to countenance this argument, because mere delay by the police in not sending the 161 statement to the Court cannot lead to any inference that the witnesses are not trustworthy. In fact, in Raman and Yadav vs. Prabhunath Jha [2004 MLJ Crl. 284 SC] even while dealing with the delay in recording the 161 statement of witnesses, the Supreme Court has said that unless the Investigating Officer is categorically asked as to why there was a delay in examination of the witnesses, the defence cannot gain any advantage therefrom. When that is the legal position, even with regard to the delay in recording the statement of witnesses, mere delay in sending the 161 statements to the Court cannot ipso facto make the evidence of the eye witnesses suspect. In any event the complaint



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and FIR given by the injured eyewitness, P.W.1, contained the entire prosecution version and it had reached the Court at 22.40 hrs on 26.07.2010 without delay.”

11. Heard the learned counsel for the appellant and the learned Public Prosecutor appearing for the respondent and also perused the materials available on record.

DECISION AND CONCLUSION:

12. The specific case of the prosecution is that the appellant and the de-facto complainant/P.W.1 are brothers. On 22.02.2020, at about 10:00 a.m., the appellant had allegedly taken the children of P.W.1 to the well for taking bath and for teaching them swimming, but the children did not return home that day. Allegedly, the appellant had pushed the two children into the well that belongs to one Vidyasekar, making them drown to death. Thereafter, P.W.1 had searched for his children and subsequently lodged a complaint

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before the Respondent for which an F.I.R was registered in Crime No.: 79/2020. Later the dead bodies of the two children were found and recovered from the well.

13. To move forward, this Court is inclined to form the following issues in furtherance of deciding the case on hand:

“i. Whether the prosecution proved the motive of the appellant to incriminate him in the said offence?

ii. Whether the evidences submitted by the prosecution irrefutably points towards the guilt of the appellant?”

14. On perusal of the evidences, it is seen that none of the prosecution witnesses have seen the appellant murdering the deceased children or pushing them into the well or even taking them into the well. Further, P.W.1 to P.W.3 have neither whispered anything about the motive of the appellant nor any previous

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incidents that could have led to this unfortunate incident. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. In the case on hand, the entire case of the prosecution is based only on circumstantial evidence.

15. There has been an extra judicial confession to the V.A.O after the alleged occurrence that the appellant and P.W.3 were in an illicit relationship but this statement was not proved during the course of trial. It is an accepted principal of law that an extra judicial confession cannot be used as sole evidence to convict an accused unless it is well corroborated with other strong evidences before the Court of Law. The same is held by the Hon'ble Supreme Court in the Case of *Kalinga @ Kushal v. State of Karnataka (2024 INSC 124)* and the relevant parts of the judgement are extracted hereunder:



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“So far as an extra judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record.”

16. Further, on perusal of the evidence of P.W.9, he has deposed that he saw the appellant and the deceased children together while he was heading out to work. As rightly pointed out by the learned counsel for the appellant, it is unbelievable that a person has gone to work during the lockdown amidst the COVID-19 pandemic.

The chief examination of P.W.9 is as follows:

“நான் அயன் பொம்மையாபுரம் காலனிதெருவில் குடியிருந்து வருகிறேன். நான் ஸ்வீட் கடையில் கையாளாக வேலை பார்த்து வருகிறேன். அ.சா.1 முதல் 3ஐ தெரியும். அவர்களது குழந்தைகளை தெரியும். இவ்வழக்கில் இறந்துபோன சிறுவர்கள் சீமோன் அல்போன்ஸ் மற்றும் எட்வின் ஜோசப் ஆகியோர்களை தெரியும். சாட்சி காளியம்மாளை தெரியும். 22 ஆம் தேதி மார்ச் மாதம் 2020 ஆம் வருடம் காலையில் சுமார்

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9, 9.30 மணியவில் இவ்வழக்கில் இறந்துபோன 2 சிறுவர்களும், ஆஜர் எதிரியுடன் அவர்கள் வீட்டிலிருந்து தெற்கே உள்ள எங்கள் ஊர் சத்திரத்து முதலாளி என்று சொல்லும் நபரின் தோட்டத்தில் உள்ள கிணற்றுக்கு குளிக்க போனார்கள். அதை நான் வேலைக்கு போகும்போது பார்த்தேன். பிறகு வேலைக்கு போய்விட்டு திரும்பி வந்தவுடன், மேற்படி சிறுவர்களை ஆஜர்எதிரி கிணற்றில் தள்ளி விட்டதாக கூட்டமாக பேசிக்கொண்டார்கள். அன்று இரவு கிணற்றுக் குள்ளிலிருந்து இளையவனான எட்வின் ஜோசப்பை பயர்சர்வீஸ்க்காரர்கள் மீட்டார்கள். மற்றொரு பையனான சீமோன் அல்போன்ஸை விடியற்காலம் கிணற்றிலிருந்து மீட்டார்கள். அதன்பிறகு ஆஜர்எதிரியை கைது செய்ததாக கேள்விப்பட்டேன். இது சம்பந்தமாக ஆய்வாளர் என்னை விசாரித்தார்.”

17. In this regard, *Section 106 of the Indian Evidence Act, 1872* clearly provides that when a fact lies especially within the knowledge of a person, the burden of proving that fact rests upon him. Accordingly, P.W.9 should have made an explanation of the scene clearly and the explanation so furnished must be reasonable,

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probable, and satisfactory in the opinion of the Court. In this present case, the statement of P.W.9 is nothing but vague and the prosecution also has miserably failed prove it by corroborating it with more credible evidences.

18. It is also a settled principle of law that the conviction cannot be based only on the fact that the appellant was last seen together with the deceased. In “*Arjun Marik v. State of Bihar*” [1994 Supp (2) SCC 372], the Hon’ble Supreme Court of India held as follows:

“31. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”



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19. Further, it is important to elaborate more on the credibility of the last seen theory evidences as the Trial Court had convicted the appellant predominantly based on the same. The Hon'ble Supreme Court in the case “*State of Goa Vs. Pandurang Mohite, AIR 2009 SC 1066*” and a plethora of other judgements has stated that the time gap between last seen alive and the recovery of dead body must be so small that the possibility of any person other than the accused being the author of the crime becomes impossible. The prosecution has definitely failed in this regard as the recovery of bodies has been made much time after P.W.9 last saw the appellant with the deceased. Therefore, this Court cannot entirely rule out the possibility that the children could have gone on their own inside the well for taking bath but drowned to death due to lack of assistance and swimming skills as the bodies were recovered without clothes as stated by P.W.17. It cannot be assumed that the appellant who was trying to kill the children would have removed and thrown the clothes away before pushing them inside.

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20. It is also crucial to note that, on perusal of the F.I.R/Ex. P22, it is revealed that the complaint was received by the respondent at about 08:30 p.m but P.W.17 had reached the place of occurrence at 08:25 p.m. This particular contradiction further adds up to the weakness of the case of the prosecution. Further, on perusal of the evidence of P.W.22/Investigation Officer, it is revealed that there was almost 6 months delay in submitting the 161 statements of the witnesses to the learned Judicial Magistrate. This delay in our view is also fatal to the case of the prosecution as there has been no reasoned explanation by the IO in this regard and hence, Judgment relied by the learned Additional Public Prosecutor is not applicable to the case on hand.

21. Therefore, the prosecution has failed to convince this Court beyond reasonable doubts as to why someone kill his own brother's sons.

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22. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to the benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the Trial Court had also failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the Trial Court in respect of all the charges against the appellant cannot be sustained and are liable to be set aside.



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23. In view of the above, the conviction and sentence passed in S.C.No. 235 of 2020 dated 28.04.2022 on the file of the Learned II Additional District and Sessions Judge, Thoothukudi, is hereby set aside. The appellant is acquitted of the charges under Section 302 of IPC. The appellant/accused is directed to be set at liberty forthwith, unless his custody is otherwise required in connection with any other case. The fine amount, if any paid, shall be refunded to the appellant forthwith. The bail bond, if any executed, shall stand cancelled. The appellant shall be set at liberty forthwith, if he is no longer required in connection with any other case.

24. In the result, this Criminal Appeal stands allowed. Consequently, connected Miscellaneous Petition is closed.

**[G.K.I.J.,] & [R.P.J.,]
21.01.2026**

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To

1.The II Additional District and Sessions Court,
Thoothukudi.

2.The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.

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



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AND
R. POORNIMA, J.

ps

**Pre-Delivery Judgment made in
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