

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**  
**and**  
THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.664 of 2014

Thamilasaran ... Appellant

vs.

State,by  
The Inspector of Police,  
Paravakottai Police Station,  
Thiruvarur District.  
(Crime No.134 of 2009) ... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,  
against the judgement dated 12.12.2013 passed by the Principal  
District and Sessions Judge, Thiruvarur, in S.C.No.132 of 2012.

For Appellant : Mr.S.Madhusudanan

For Respondent : Mr.M.Maharaja,Addl.P.P.

**JUDGMENT**

(Judgement of the Court was delivered by **V.Bharathidasan, J.**)

The appellant/accused in this appeal is sole accused in  
Sessions Case No.132 of 2012, on the file of the learned Principal  
District and Sessions Judge, Thiruvarur. He stood charged for an

offence under Section 302 of IPC. The Trial Court by judgement dated 12.12.2013 convicted the appellant/accused for the offence under Section 302 of IPC, and sentenced him to undergo life imprisonment and also to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

(i) The deceased in this case one Elavarasan was a friend of the accused, they are homosexuals. The deceased already got married to P.W.1 and marriage arrangement was going on for the accused. The deceased objected to it stating that if the accused got married, he may lose his company, hence, the accused decided to murder him. On 08.05.2009, the accused took the deceased near the riverbank of Vadavar, pushed him down and attacked him over the head with wooden reaper and caused his death. On 09.05.2005 morning, P.W.1 found her husband dead and immediately at about 8.00 a.m, she lodged a complaint before the respondent police.

(ii) P.W.18, the Inspector of Police, working in Paravakottai Police Station, on receipt of the complaint, registered a case in Crime No.134 of 2009 for the offence under Section 302 IPC and prepared FIR Ex.P14. Immediately, he visited the scene of

occurrence and prepared Observation Mahazar Ex.P2 and a Rough Sketch Ex.P.15 in the presence of witnesses. He examined the witnesses and recorded their statements. Thereafter, he sent the dead body to the Government Hospital, Mannargudi through a Head Constable, namely, Gunasekaran. In the Government Hospital, he conducted inquest over the dead body in the presence of panchayatars and prepared Inquest Report Ex.P16. Then, he sent the dead body for post mortem and examined other witnesses and recorded their statements. During the course of investigation, he came to know that the accused only committed the murder, and arrested the accused at Ullikottai Bus stop and on such arrest, he has given voluntary confession, based on the disclosure statement, he recovered M.O.1 wooden reaper, M.O.4 blood stained soil, M.O.5 sample soil in the presence of witnesses.

(iii) P.W.1, the Doctor, working in the Government Hospital, Mannargudi, conducted post mortem autopsy on the dead body and he found the following injuries:

External Injury:

1) Laceration Right fronted, Temporal region, size 10 x 5 cm. Brain membrane protrude. Both fronted temporal region. 2) Both frontal temporal bone # and depressed. Brain laceration size 5 x 2 cm.

Internal Injury:

Thorax rib cage are intact, stomach empty, intestine, spleen, liver, kidney are pale clue to haemorrhage, Hyoid bone intact. spinal cord intact.

He has issued post mortem certificate Ex.P.10. Further, P.W.18 examined the post mortem Doctor and other witnesses and recorded their statements and after completion of investigation, he filed the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 18 witnesses were examined and 17 documents and 8 material objects were marked.

4. Out of the said witnesses, P.W.1 is the wife of the deceased. According to her, on 08.05.2009 at about 9.30 p.m., the accused took her husband in a bicycle and he did not return home. On the next day morning i.e., on 09.05.2009, at about 6.00 a.m., she saw the body of the deceased near the riverbank and immediately she lodged the complaint before the respondent police. P.Ws.2 to 8 are villagers of Ullikottai, all of them saw the accused has taken the deceased in a bicycle at about 10.00 pm.

P.W.2 has spoken about the earlier quarrel between the accused and deceased and panchayat conducted between them. P.W.9 is the witness to the mahazar Ex.P2. P.W.10, the Village Administrative Officer, witness to the arrest of the accused and recovery of material objects. P.W.11 is the photographer, he has taken the photo of the dead body. P.W.12 is the Head Constable, working in the Paravakottai Police Station, on receipt of the information, he visited the scene of occurrence and saw the dead body. P.W.13, the Doctor, working in the Government Hospital, Mannargudi, conducted post mortem autopsy on the dead body and issued post mortem certificate Ex.P10. P.W.14, Assistant Scientific Officer, working in the Forensic Department, Thanjavur, he examined the material objects and issued Chemical Analysis Report Ex.P12. P.W.15, Assistant Scientific Officer, working in the Forensic Department, Thiruvarur, examined the material objects, namely, M.O.4 blood stained soil and M.O.5 sample soil. P.W.16 has turned hostile. P.W.17, Head Constable, submitted the FIR to the Judicial Magistrate Court. P.W.18, the Inspector of Police, conducted investigation, examined the witnesses and recorded their statements and after completion of investigation, filed the charge sheet.

5. When the above incriminating materials were put to

the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.S.Madhusudanan, learned counsel for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. It is a case of circumstantial evidence. We are conscious of the legal position that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principles in mind, we analyse the facts of the present case. In the instant case, the only

circumstance established by the prosecution was that the accused and deceased together before the occurrence. In their evidence, P.Ws.1 to 8 have stated that the accused took the deceased in a bicycle. Except that no other evidence available to prove the guilt of the accused. The appellant cannot be convicted solely on the basis of the last seen together. Hence a lone circumstance of last seen together alone is not sufficient to found the guilt of the accused.

9. The Hon'ble Supreme Court Judgment reported in **KRISHNAN v STATE OF TAMILNADU in (2014) 12 SCC 279**, has held as follows:-

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. *In Arjun Malik v. State of Bihar*(994) Supp (2) SCC 372)

31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19.07.1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. 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 circumstances 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."

10. Hence, we are of the considered opinion that the prosecution failed to prove the chain of circumstance pointing unerringly to the guilt of the accused. Hence, it is unsafe to convict the accused based on the above circumstances alone. Hence, the appellant is entitled for acquittal.

11. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned Principal District and Sessions Judge, Thiruvarur, in Sessions Case No.132 of 2012 is set aside and the appellant/accused is acquitted and bail bond if any executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

**(S.N.J.,)**

**(V.B.D.J.,)**

**21.06.2016**

To

- 1.The Principal District and Sessions Judge,  
Thiruvarur.
- 2.The Inspector of Police,  
Paravakottai Police Station,  
Thiruvarur District.
- 3.The Public Prosecutor,  
High Court, Madras.

**S.NAGAMUTHU.J.,**  
**and**  
**V.BHARATHIDASAN.J.,**

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