

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

&

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Crl.A.No.18 of 2017

Mahesh @ Maheswaran

.. Appellant

Vs

State, represented by

Inspector of Police,

Perundurai Police Station,

Erode District,

(Crime No.288 of 2011)

Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment of conviction and sentence dated 11.2.2014 made in S.C.No.99 of 2012 passed by the learned I Additional District and Sessions Judge, Erode.

For Appellant : Mr.S.N.Arunkumar

For Respondents: Mr.P.Govindarajan,  
Addl. Public Prosecutor

### **JUDGMENT**

**(Judgment of the Court was delivered by Dr.Anita Sumanth,J.)**

The appellant in this appeal is Mahesh @ Maheswaran, son of Selvaraj who has filed the present appeal challenging the judgment of the I Addl. District and Sessions Judge, Erode in S.C.No.99 of 2012

dated 11.2.2014. The charge against the appellant was under section 302 IPC and he was convicted and sentenced to undergo life imprisonment and no fine was imposed. Challenging, which the present appeal is filed.

2. At the outset, Sri. B. NambiSelvan, appearing for the appellant and Sri.P.Govindarajan, Additional Public Prosecutor appearing for the respondent would point out that the case originally related to four accused as against which the case was split up in relation to three accused. The impugned common judgement addresses both cases, relating to this appellant in S.C.No. 99 of 2012 as well as three others in S.C.No.20 of 2013. The accused in S.C.No.20 of 2013 were A1-Gopi, A2-Manigandan and A3-Viji @ Vijayakumar, of which, Vijayakumar A3 had filed Criminal Appeal before this Court in Crl.A.563 of 2014. A Division Bench of this Court after detailed consideration of this case had acquitted him.

3. The case of the prosecution in brief is that the deceased Rajendran is alleged to have been murdered by the appellant along with the three other accused on 10.4.2011 at about 5.30 p.m. There were no eye witnesses to the commission of the crime and the case is based entirely on circumstantial evidence.

4. The thrust of the case of the prosecution is the testimony of PW5 and PW6 who had also not witnessed the murder. They were interested parties belonging to the same auto stand as the deceased. A confession was recorded from Viji @ Vijayakumar on 18.4.2011 at about 4 p.m. confessing to the commission of the crime along with the other accused. Based on the said confession, recovery of a blood stained shirt had been effected from Mahesh, the present appellant. On the basis of the aforesaid material, a charge sheet was laid against the present appellant along with the three co-accused that was confirmed in trial.

5. We may in this connection, refer to the decision of this Court in C.A.563 of 2014 , an appeal filed by the aforesaid Vijayakumar, challenging the very same order of conviction as is impugned in the present appeal. In the context of the confession recorded from him, this court holds at paragraphs .... as follows:

*‘16. The learned counsel for the appellant would submit that there was delay in lodging the complaint; that there is no material to connect the appellant with the crime; that the trial Court erred in placing reliance on the statement of the accused to the police to render a finding as against the appellant and that therefore, the judgment of the trial Court is liable to be set aside.*

*17. The learned Additional Public Prosecutor supported the judgment of the trial Court. According to him, there are*

enough 12 materials to convict the appellant.

18. The case of the prosecution is that the appellant and two other accused immobilised the deceased and that the accused Mahesh @ Maheswaran stabbed the deceased using the knife, resulting in his death.

19. It is not in dispute that the deceased was an auto driver. P.Ws.1 to 6 were also autorickshaw drivers and they belonged to Vijayamangalam autostand. Maiyarasu (P.W.1) is the son of the deceased.

20. The evidence of the doctor (P.W.16) and his reports (Exs.P.17 to P.20), who conducted autopsy on the body of the deceased, reveal that the deceased Rajendran had been subjected to homicidal violence and there is no dispute over it. The death was due to shock and haemorrhage due to multiple injuries sustained by him.

21. It is to be seen whether the accused has been responsible in causing the above said injuries on Rajendran and thereby brought 13 about his death. Admittedly, there is no eyewitness account of the occurrence. In a case of this nature, where the prosecution relies on circumstances alone to bring home the guilt of the accused, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and the offence must be brought home beyond reasonable doubt. The chain of circumstances must be so complete as to leave no room for doubt about the guilt of the accused.

22. The prosecution alleged that the accused due to previous enmity over hiring the autorickshaw of the deceased took him to Rasankulam and committed the murder. However, the prosecution has not been able to point out any evidence to prove the motive attributed to the accused to commit the murder. The motive may not also be the guiding factor in determining the guilt or otherwise of the accused in a murder case.

23. It is evidence of P.W.5 that he knew the appellant and on the date of occurrence at about 2.00p.m. he contacted him over phone for hiring his autorickshaw to

go to Vijayamangalam from K.P.Kalyana Mandapam. His further evidence is that he saw the accused and the deceased together near a liquor shop at about 2.45p.m. P.W.2 would state that he spotted the autorickshaw of the deceased at the road side near Rasankulam lake. However, the driver of autorickshaw was not to be seen in the autorickshaw. P.W.5 would further state that he saw the appellant along with other accused at about 5.00p.m. near Harijan Colony. P.W.6 would state that the appellant hired his autorickshaw to go to Perundurai bus stand. He dropped them at the bus stand.

24. The circumstance of last seen together can be taken into account, when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together and when the deceased was found dead is so small that the possibility of any other person being with the deceased could be ruled out completely. In the case on hand, according to P.W.5, he saw the accused with the deceased at about 2.45 p.m. near a wine shop. However, the dead body of the deceased was found in the lake by P.W.1 and others at 7.15p.m. on 10.04.2011. Therefore, the time gap is not so small to rule out the possibility of any other person being with the deceased. The accused and the deceased were not seen together near the place of occurrence. In the total absence of ocular evidence connecting the accused with the crime, it would not be appropriate to record a conviction on the basis of last seen theory.

25. The next piece of circumstantial evidence relates to the arrest of the appellant and the recovery of incriminating articles in pursuance of the alleged statement Ex.P.3. The articles M.Os.2 and 3 were said to have been recovered on 19.04.2011 in the presence of Village Administrative Officer (P.W.7) and the Village Assistant (P.W.8). The recoveries of M.Os.2 and 3 by themselves in the absence of any other material could not be considered as a ground for coming to the conclusion of the guilt of the accused.

*26. The Trial Court would appear to have relied on the statement of the accused to the police which has led to the recovery of material objects. It is important to note that only the admissible portion leading to recovery has been marked as Ex.P.3. But quite significantly the Trial Court placed reliance on the entirety of the statement which is inadmissible in evidence.*

*27. The whole evidence of the prosecution is infested with infirmity. The prosecution has not placed any reliable materials to connect the accused with the commission of the crime. The evidence attempted to establish the nexus between the accused and the crime is deficient. Therefore, we hold that the prosecution has failed to establish the case beyond reasonable doubt. The accused is certainly entitled to the benefit of doubt. The trial Court did not appear to have analysed the case in its proper perspective. Therefore, the judgment of the trial court cannot be supported.'*

6. It is thus clear that the confession has been disbelieved by this Court even in the case of the confessor on the ground that it was violative of the mandate of section 24 of the Indian Evidence Act and does not inspire the confidence of the Court. In such an event, it does not stand to reason that the confession is made the basis of conviction in the case of the co accused, the appellant herein.

7. In these circumstances, we have no hesitation in allowing the present appeal. The judgment of conviction and sentence imposed by the I Addl. District and Sessions Judge, Erode, in S.C.No.19 of 2012 dated 11.2.2014 is set aside and the appellant acquitted of charge.

[S.N.,J] & [A.S.M.J]

23.2.2017

msr

Speaking order./non speaking order

index:Yes/No

To

1. The I Additional District and Sessions Judge, Erode.
2. The Public Prosecutor, High Court, Madras.

**S.NAGAMUTHU,J.**  
**&**  
**DR. ANITA SUMANTH,J.**  
msr

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