



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2019

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CORAM:

**THE HONOURABLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CRL.A. [MD] .No.230 of 2017

Kuppapitchai : Appellant/Sole Accused

Vs.

State,
Rep by the Inspector,
Kottaipattinam,
Jegathapattinam Police Station,
Pudukkottai District,
Crime No.87 of 2012

: Respondent/Respondent

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment dated 21.12.2016 made in S.C.No.133 of 2013, on the file of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Cases, Pudukkottai.

For Appellant : Mr.T.Senthilkumar

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

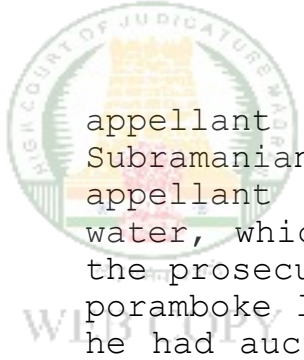
[Judgment of the Court was delivered by **The Hon'ble Chief Justice**]

This appeal is directed by the appellant - original accused against the Judgment and order dated 21st December 2016 passed by the learned Additional District and Sessions Judge, Pudukkottai in Sessions Case No.133 of 2013. By the said Judgment and order, the learned Additional District and Sessions Judge convicted the appellant under Section 302 IPC. For the offence under Section 302 IPC, the learned Additional District and Sessions Judge sentenced the appellant to undergo life imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for a further period of three months.

2. The case of the prosecution, briefly stated, is as under:-

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2.1. The appellant and deceased - Subramanian were residents of Vadakku Manjakudi, Jegadhapattinam Village. The land of the



appellant is situated adjacent to the land of deceased - Subramanian. There used to be frequent quarrels between the appellant and deceased - Subramanian in relation to sharing of water, which was used to irrigate the land. It is also the case of the prosecution that deceased - Subramanian had cut the trees in the poramboke land, which was adjacent to the land of the appellant and he had auctioned the wood and remitted the proceeds to the village temple, which was not liked by the appellant, hence, there was a further enmity between the appellant and deceased - Subramanian.

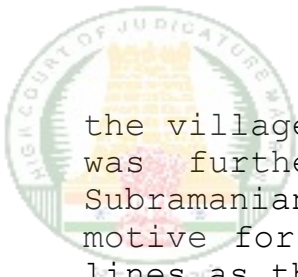
2.2. It is the further case of the prosecution that on 19.11.2012, at about 09.30, p.m., deceased - Subramanian went to his field to irrigate the land. Little after that, the appellant was seen proceeding in the same direction. On the next day at about 05.00 a.m., PW-1 - Vellaiammal went to her field and saw that her husband was lying dead in the land with an injury on the head. She, then, went to the Police Station and lodged the complaint [EX-P1] and it was registered, which is at EX-P11. Thereafter, the investigation commenced. The dead body was sent for postmortem.

2.3. PW-12 - Dr.Kalimuthu conducted postmortem on the dead body of Subramanian. He found one cut injury over the scalp exposing bone and brain and there was fracture of skull. Thus, it is the prosecution case that the appellant, on account of previous enmity, assaulted Subramanian on the head with a sickle, which led to the death of Subramanian. After completion of investigation, charge sheet was filed. In due course, the case was committed to the Court of Session.

3. Charge came to be framed against the appellant under Section 302 IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence is of total denial and false implication. To support their case, the prosecution examined PW-1 to PW-14 and marked EX-P1 to EX-P13 and six material objects. After going through the evidence adduced in this case, the learned Additional District and Sessions Judge convicted and sentenced the appellant, as stated in Paragraph No.1, above, hence, this appeal.

4. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State. After giving our anxious consideration to the facts and circumstances of the case, the arguments advanced by the learned counsel for both sides, the evidence on record and the judgment delivered by the learned Sessions Judge, for the reasons stated hereinbelow, we are of the opinion that the prosecution has not proved beyond reasonable doubt that the appellant caused the death of Subramanian.

5. This case is entirely based on circumstantial evidence. In order to prove its case, the prosecution has relied on the evidence of PW-1 to PW-14. The evidence of PW-1 - Vellaiammal, the wife of the deceased, shows the motive for the appellant to commit the crime. The motive is about the sharing of water, which was used to irrigate the land. Moreover, deceased - Subramanian had cut the trees in the poramboke land, which was adjacent to the land of the appellant and he had auctioned the wood and remitted the proceeds to



the village temple, which was opposed by the appellant, hence, there was further enmity between the appellant and the deceased - Subramanian. PW-3 Vellaisamy and PW-4 Veeraiah also state the motive for the appellant to commit the crime, which is on the same lines as that of PW-1 Vellaiammal.

6. In addition to the motive, the prosecution is relying on the evidence of PW-4 Veeraiah to establish that on 19.11.2012, at 10.30 p.m., the appellant and deceased - Subramanian were standing near sluice of the channel, from which water was supplied to the land of the appellant and deceased - Subramanian. However, in the cross-examination, this witness admitted that he did not inform this fact to the police. Thus, this is an important omission in the evidence of this witness. Hence, no reliance can be placed on this aspect of the testimony of PW-4 Veeraiah.

7. It is the case of the prosecution that the appellant has assaulted deceased - Subramanian with the sickle, which led to the death of deceased - Subramanian. The prosecution has relied on the evidence of PW-10 Raja, who has deposed about the recovery of sickle at the instance of the appellant. The said sickle is MO-6. However, in relation to the circumstances of recovery of sickle, we would like to advert to the evidence of PW-4 Veeraiah. According to PW-4 Veeraiah, at the time when he saw the appellant on 19.11.2012 at about 10.30 p.m., the appellant was holding a sickle. However, it is pertinent to note that PW-4 Veeraiah states that the sickle, which was shown to him in the Court, was not the sickle which was in the hand of the appellant, when PW-4 Veeraiah saw the appellant on 19.11.2012 at 10.30 p.m. Thus, this circumstance of recovery of sickle, does not help the prosecution, in any manner. Moreover, it has also come on record that all the mahazer witnesses are related to deceased - Subramanian. In view of all the above, we are not inclined to place reliance on the recovery.

8. Thus, from the analysis of the evidence, it is clear that the only circumstance, which is proved against the appellant, is motive. As stated earlier, PW-1, PW-3 and PW-4 had deposed about the motive. In our opinion, it would be dangerous to confirm a conviction, based on the sole circumstance of motive.

9. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or *factum probandum*. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on the mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. The Supreme Court

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the decision in the case of **Sheila Sebastian v. R. Jawaharaj and another**, reported in (2018) 7 SCC 581, has observed as under :



"Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof."

10. The Supreme Court in **Jaharlal Das v. State of Orissa**, reported in **(1991) 3 SCC 27**, has observed in para 9 that caution must be borne in mind that in cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however strong cannot be allowed to take the place of proof.

11. As stated earlier, the only circumstance proved against the appellant is motive. The Supreme Court, in **Sampath Kumar vs. Inspector of Police, Krishnagiri, (2012) 4 SCC 124**, has observed that motive alone can hardly be a ground for conviction and in absence of any other circumstantial evidence, motive would not be sufficient to convict an accused. The Supreme Court further observed that from the material on record, there may arise some suspicion against an accused, but suspicion however strong, cannot take the place of proof. Thus, looking to the evidence in this case, we are of the opinion that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt. In this view of the matter, the judgment of conviction cannot be sustained.

12. In the result,

- this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Additional District and Sessions Judge, Pudukkottai, in S.C.No.133 of 2013, dated 21.12.2016 is set aside and the appellant/accused is acquitted of the charge framed against him.
- The appellant is directed to be released forthwith, if his detention is not required in connection with any other case.
- Fine amount, if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar ()

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To

1.The Principal District Judge, Pudukkottai.

2.The Additional District and Sessions Judge/Presiding Officer,
Special Court for EC and NDPS Cases, Pudukkottai.

3.The Judicial Magistrate, Pudukkottai.

4.The Chief Judicial Magistrate, Pudukkottai.

5.The District Collector, Pudukkottai.

6.The District General of Police, Mylapore, Chennai-4.

7.The Superintendent of Police, Pudukkottai.

8.The Inspector,
Kottaipattinam,
Jegathapattinam Police Station,
Pudukkottai District.

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

Copy to: The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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NB/RSB

TK/16.05.2019 : 5P/12C