WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 10..11..2022**

**PRONOUNCED ON: 14..12..2022**

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

**Crl.A.No.515 of 2018**

Mayandi ...Appellant

..Vs..

State Rep.by
Inspector of Police,
D1, Tiruttani Police Station,
Crime No.31/2015. ...Respondent

**Prayer:** Criminal Appeal filed under Section 374(2) of Cr.P.C, against the judgment passed by the learned 1st Additional District & Sessions Judge, Thiruvallur in S.C.No.237 of 2016 dated 23.01.2018, convicting the appellant for the offence under Section 364 of I.P.C and sentencing him to undergo 10 years R.I and to pay a fine of Rs.5,000/- and for the offence under Section 302 of I.P.C., sentencing him to undergo life imprisonment and to pay a fine of Rs.5,000/-.

For Appellant : Mr.K.Balasubramanian

For Respondent : Mr. M.Babu Muthumeeran
Additional Public Prosecutor

https://www.mhc.tn.gov.in/judis

WEB COPY



# JUDGMENT

RMT.TEEKAA RAMAN, J.

The convicted sole accused is the appellant herein.

2. The appellant has preferred the above Criminal Appeal before this Court against the conviction and sentence passed by the learned 1st Additional District and Sessions Judge, Thiruvallur by the judgment dated 23.01.2018 made in S.C.No.237 of 2016. The appellant is sentenced as follows:

| *Sl. No.* | *Offence under Section* | *Sentence* |
|---|---|---|
| 1 | 364 IPC | to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 2 months Rigorous Imprisonment. |
| 2 | 302 IPC | to undergo Life Imprisonment and also to pay a fine of Rs.5000/-, in default to undergo 2 months Rigorous Imprisonment. |

The sentences are directed to run concurrently and the period of sentence already undergone by appellant/accused is directed to be set off under Section 428 Cr.P.C.

3. Shorts facts leading to the filing of the appeal, are as follows:

(i). One Nadhaswara Vidhwan-Rajendran (deceased) and Mayandi are the cousin brothers. Wife of Mayandi is Sivakami and the said Sivakami has committed suicide and hence it is alleged that their existed previous enmity between the accused Mayandi and deceased Rajendran.

https://www.mhc.tn.gov.in/judis

WEB COPY



(ii). One Punniyakodi [PW3] who is an organizer of music party in the Tirutani Murugan temple festival procession has arranged for Nathaswara music party on 11.01.2015 between 6.00am and 11.30 a.m for which he has engaged the services of the Rajendran (deceased), one M.G.R alias Gunasekaran - Tavil Master (P.W.4) and the accused and on the said day , during the temple festival procession, the deceased Rajendran, accused Mayandi and P.W.4 M.G.R. alias Gunasekaran have participated in the function and also received the balance of Rs.1,900/- and the procession has concluded at 10.30p.m. The said M.G.R. alias Gunasekaran (P.W.4) along with the deceased and the accused went to the procession and after completion of the temple procession, around 12.00 midnight they returned and the accused Mayandi has handed over his house keys and asked the P.W.4-M.G.R alias Gunasekaran to go and stay in his house and Mayandi and the deceased Rajendran has left the place.

(iii). Ramadoss (P.W.2) on 11.01.2015 when he was about to go Tirutani he came to know from the general public that some dead body is lying near the Pudhur junction and went and saw and identified it as Rajendran and in the dead body he also found that the Rajendran was cut in the throat and also have punctured wound in the stomach and conveyed the message to the family.

https://www.mhc.tn.gov.in/judis

WEB COPY



(iv) Anusuya (P.W.1) widow of the deceased had received the information from the P.W.2 and went and saw the dead body of her husband and according to her version, on 11.01.2015 at 5.00pm he left the home for the Nathaswara music concert in the temple function and he left along with the accused.

4. Based upon the Ex.P1-complaint given by the P.W.1 Anusuya the P.W.19 Annadurai Inspector of Police have received the Ex.P1-complaint and registered Ex.P10 F.I.R and sent the same to the Judicial Magistrate and the Magistrate has received the F.I.R on 12.01.2015 at 10.00 a.m as could be seen from the endorsement made in Ex.P10-F.I.R wherein in column 7, it is mentioned as accused 'unknown'.

5. The Investigation Officer P.W.19, based upon the station F.I.R recorded by the Sub Inspector-Thirukumar for offence under Section 302 of I.P.C in Crime No.31/2015, has informed the sniffer dog squad and also finger print experts and went to the scene of the crime at around 8.00a.m and prepared an observation mahazar-Ex.P.2 and also prepared a rough sketch-Ex.P13. The Dog squad Inspector Rajan [PW7] came along with the sniffer dog squad and could not make any breakthrough in the investigation and the finger print expert-Shankar [PW8] also looked for the samples and also could not find anything. From the scene of the crime, PW19 has seized a sword measuring 115cm-length and 2cm-breadth and

https://www.mhc.tn.gov.in/judis

WEB COPY



size No.7 sonic plastic chappal from the scene along with the seizure mahazar in the scene of the crime and thereafter, conducted a inquest report-Ex.P14 and concluded that the deceased was last seen with the one Mayandi and subsequently, the Mayandi was found absconding.

6. Based upon the investigation, he came to know that the deceased had videographed the wife of the accused and with that threatened the wife of the accused and had sexual intercourse on several times. When it came to the knowledge of Mayandi, the wife of the accused namely Sivakami has committed suicide by jumping into the well on 13.01.2012 and hence, there was a motive for the Mayandi, as a grudge against the deceased.

7. On 20.01.2015 P.W.9 K.Munikrishnan V.A.O has produced the accused Mayandi along with the complaint-Ex.P1 and the alleged confession statement of the accused said to have been given by the accused to the V.A.O in the police station and based upon the confession statement, a Jolna Bag-M.O.5, knife-M.O.6, cycle-M.O.7 sweater-M.O.8, shirt-M.O.9 and Lungi M.O.10 was recovered from the shop of the accused and these material objects have been seized under Form-91 [3 Nos.] in Ex.P15.

https://www.mhc.tn.gov.in/judis

WEB COPY



8. In the meanwhile, on 12.01.2015 P.W.19-Annadurai has sent the dead body through Chandrasekaran, Constable attached to the highway police patrol for sending the dead body to the postmortem and handing over the same to the relative, after the postmortem.

9. P.W.17 Dr.Sulthanabegam has conducted the postmortem and noticed that is as follows:-

> Body of male named as Rajendran lying on its back in supine position in GH mortuary thiruthani with eyes partially opened and mouth closed. Both upper limbs flexed at elbows both lower limbs extended. Left hand closed. Right hand opened. Nail pits empty.
>
> Appearance: scalp - 1)Right side of forehead 2cm lateral to glabella lacerated wound around 4cmx2cmxbone depth 2) Right forehead - lacerated wound around 4cmx2cmxbone depth 3) Near right lateral canthus around 2cm away a lacerated wound 5cmx2cmxbone depth (+) 4) Throat : Left occipital region a skin flap of around 5cmx2cmxbone depth incised wound Borders irregular around extending in front of right side one cm below the mastoid process extending in oblique shape till to the left side around 4cm before the mastoid process. wound dimension - 26x20x10cmxbone depth cutting all the major blood vessels carotid and jugular veins on both sides, starp muscles stere hyoid and thyroid all incised exposing the thyroid cartilage. Hyoid bone missing spinal tubercles palpated. Chest : Normal left side of abdomen just above 1.5cm lateral umbilicus 4x3x2cm stab wound seen exposing the peristonial tissues both lungs congested

https://www.mhc.tn.gov.in/judis

WEB COPY



and blood clots.

Liver- cut section pale in colour spleen - pale in colour

stomach- punctured wound around 2x2x2cm and blood clots partially digested food material around 2.50ml, yellow colour

Intestine - small intestine punctured wound around 2x2x2cms

extension of superficial - abdominal stab wound around 8cm distile to deno deno - sejunal jnction

spleen - cut section pale

kidney - both kidneys cut section pale in colour

Abdominal cavity contains blood of around 50ml

Heart - blood clots contains around 75ml of blood

Brain - left and right side cut section pale in colour

and given a final opinion that the deceased would appear to have died of hypotermic shock due to haemorrage cost by injury to major blood vessels-carotid vessels (arteries) on both sides.

10. The following items sent to Forensic Science Department on 03.02.2015 through Women Head Constable No.251 Ms.M.Kavitha under unbroken seals, for chemical analysis and it was stated in the report as follows:

https://www.mhc.tn.gov.in/judis

WEB COPY

| | | |
|---|---|---|
| *Item No1* | : | *Earth mixed with vegetative matter and small stones on which were dark brown stains.* |
| Item No.2 | : | Earth mixed with vegetative matter and small stones. |
| Item No.3 | : | A ragged white silken shirt on which were profuse dark brown stains. |
| Item No.4 | : | A white dhoti with brown borders on which were dark brown stains. |
| Item No.5 | : | A ragged brown jatti. |
| Item No.6 | : | A rusty metal billhook without handle and measuring about 44 cm in length on which were dark brown stains. |
| Item No.7 | : | A broken bamboo handle having rusty metal bands on both sides and measuring about 18 cm in length on which were dark brown stains. |
| Item No.8 | : | A red fullsleeved silken sweater with a hood and having white printed letters "GREAT OAK" in the front on which were dark brown stains. |
| Item No.9 | : | A greyish silken shirt with white, yellow, grey and violet stripes on which were dark brown stains. |
| Item No.10 | : | A torn white lungi with green, grey and blue cross stripes and designs on which were dark brown stains. |

Report: Detected blood on each of items 1,3,4 and 6 to 10 (both inclusive) but not on either of items 2 or 5.

Note: 1. Serology report will be sent separately

2. The unexpended portions of the above ten items have been marked/labelled as "BIOL 48/2015" for identification.

11. In the toxicology report, the scientific officer has opined that the blood found in the dress and billhook are human origin, however the grouping is inconclusive and in the viscera report, poison was not deducted.

https://www.mhc.tn.gov.in/judis

WEB COPY



12. After completion of the investigation and collection of the materials and recording of the statement, the Investigation Officer P.W.19 has laid the charge sheet for offence under Sections 302 and 364 of I.P.C. And on committal, the case was taken on S.C.No.237 of 2016 and made over to the learned Additional District and Sessions Judge, Tiruvallur and charges were framed in the above said stated sections and when explained to the accused in Tamil, he had denied the charges and claims to be tried. In the trial P.W.1 to P.W.19 were examined and Exs.P1 to Ex.P15 were marked besides Material Objects M.O.1 to M.O.10.

13. On the conclusion, the accused was examined under Section 313 of Cr.P.C with regard to incriminating circumstances wherein the accused has replied that the investigation officer has taken the custody of the son and the son-in-law and threatened him that a false case will be foisted against both his son and son-in-law and he was beaten up in the police station for more than few days and hence, in order to avoid a false case being launched upon his son and son-in-law, he has accepted the confession statement however, it is not voluntary and accordingly, he has retracted from the confession statement on the above lines. No defence witness or documents have been filed.

14. On conclusion of the arguments the learned Additional District and Sessions Judge has held that the charges are proved beyond

https://www.mhc.tn.gov.in/judis

WEB COPY



reasonable doubt and accordingly, laid the conviction and sentence as stated in the paragraph 2 of the judgment and hence, the appeal.

15. The learned counsel for the appellant/accused could contend that prosecution has not proved the motive for the crime and last seen theory in the manner known to law.

16. The learned Additional Public Prosecutor has made submissions in support of the judgment of the trial Court.

17. On a combined reading of the oral evidence and medical witness of P.W.17-Dr.Sulthana Begum coupled with Ex.P11-Postmortem certificate and Ex.P12-Scientific report, we come to the conclusion that the deceased Nathaswaram Vidhwan Rajendran has died due to homicidal violence.

18. The general public saw the dead body in the scene of the crime and P.W.2 is the first person to identify the dead body as 'Rajendran' and informed the P.W.1-widow of the deceased and who inturn visited the dead body in the scene of the crime and lodged Ex.P1-complaint resulted in registration of Ex.P10-F.I.R by P.W.15-Sub Inspector of Police.

https://www.mhc.tn.gov.in/judis

WEB COPY



19. The case of the prosecution is that the deceased one Rajendran was working as Nathaswara Vidhwan at Tirutani Subramaniyaswami Temple and deceased who is the cousin brother of the accused was running a barber shop in Tirutani. It is the further case of the prosecution that the deceased had compelled the wife of the accused/appellant to have illicit relationship with him and clandestinely, the deceased Rajendran recorded the photographs in his mobile and by showing the photographs, threatened Sivakami, wife of the accused/appellant and had sexual intercourse several times. The wife of the accused/appellant was unable to bear the torture and had committed suicide by jumping into the well in the house on 13.01.2012 and hence the prosecution attributed the said incident as a motive for the accused/appellant to commit the murder of the deceased.

20. In this connection, one P.W.16-Sankar was examined by the prosecution, however, he has turned hostile. Even Anusuya, the widow of the deceased P.W.1 has not spoken about the alleged illicit relationship said to have been had by the deceased with the wife of the appellant.

21. In the cross examination, she had categorically admitted that P.W.1 has no knowledge of illicit relationship of the deceased with the accused/appellant's wife and she only heard from the police station and hence, we find that the alleged motive attributed for the murder of the

https://www.mhc.tn.gov.in/judis

WEB COPY



accused is not proved in the manner known to law, as there is no positive evidence in support of the same.

22. P.W.13- Ravi deposed regarding renting of cycle at 8.00p.m on the previous day and the cycle was recovered from the shop of the accused. However, the same could not lead to the conclusion that the accused was involved in the crime. The P.W.7 and P.W.8 Smearing Dog and Trainer and and finger print expert, respectively, does not give any clue for the investigation.

23. As stated supra, the prosecution case is based on two circumstances namely a) motive and b) last seen together. In respect of the last seen theory projected by the prosecution, it is relied upon by the P.W.3, P.W.4 and P.W.13-cycle shop owner Ravi and the confession statement of the accused to the P.W.9-V.A.O and subsequent alleged recovery of the material objects based upon the admissible portion of the said confession statement, the evidence of the P.W.4 M.G.R alias Gunasekaran, P.W.9 V.A.O Munikrishnan and P.W.19 Investigation Officer and recovery of the knife with wooden handle. The trial Court has believed the evidence and convicted the accused based on the circumstantial evidence and last seen theory. The said finding is under challenge in this appeal.

https://www.mhc.tn.gov.in/judis

WEB COPY



24. P.W.3-Punniyakodi in his version has stated that the function has started at 6.00p.m and ended at 10.30 p.m. Further, after the programme, the appellant (accused), P.W.4 M.G.R alias Gunasekaran and deceased (Rajendran) had dinner and left by 11.00p.m, while, P.W.4 could say that they didn't had the dinner and function was completed only at 12.00 midnight. It is also the specific evidence of the P.W.4-M.G.R alias Gunasekaran that the accused/appellant has given the keys of his house to P.W.4 and asked to sleep in the house and he slept there and he didn't see how they left.

25. At this juncture, the postmortem report, which is conducted on 12.01.2015 at 14.00 hours the Postmortem Doctor could state that the deceased could have died two days before the post mortem and P.W.18-forensic expert has deposed that there was no foreign substance found in the body of the deceased. Hence, the time of the death does not match with the case of the prosecution.

26. Coming back to the last seen theory, the version of the P.W.3 and P.W.4 as to whether they had a dinner or not and the time of the conclusion of the Nathaswara music party in the temple is also at variance. Further that when the prosecution is relying upon the last seen evidence of P.W.4, it must establish the time when the accused and the deceased were

https://www.mhc.tn.gov.in/judis

WEB COPY



last seen together, in relation to the time of death of the deceased and therefore, to establish the last seen theory, the possible link with proximity of time is required to be established by the prosecution.

27. At the outset, we find that the version of the P.W.3 Punniyakodi and P.W.4 M.G.R. alias Gunasekaran as to the timing and factum of the events are at variance. The postmortem though was conducted 16 hours later the P.W.17-post mortem Doctor has approximately fixed the time of the death as more than 2 days, also does not match with the timing of the alleged attack, said to have been made by the accused and thus, the evidence of P.W.17 that based on the condition of the body of the deceased that the death could have been caused two days prior to the postmortem, when the postmortem was conducted at 4.00p.m on 12.01.2015 and therefore, the prosecution case regarding the time and date of the occurrence, is found to be doubtful.

28. P.W.4 has seen both the deceased and the accused and he is the last person to see the deceased as alive. P.W.3 is the first person to identify the dead body as that of the Rajendran and he is the first person to see Rajendran as dead. The time gap between this two is more than 10 hours and in the postmortem, the approximate time of death also does not match with the time of events spoken to by P.W.2, P.W.3 and P.W.4. The principles governing the acceptance of evidence on circumstantial evidence are kept in mind.

https://www.mhc.tn.gov.in/judis

WEB COPY



29. The prosecution has relied upon the recovery made based upon the confession statement of the accused before the P.W.9-V.A.O. The evidence of P.W.9-V.A.O is that he met the accused for the first time in the police station on 20.01.2015. On the contrary, the evidence of the Investigation Officer-P.W.19 is that the accused appeared before the V.A.O and gave extra judicial confession and V.A.O gave the complaint on 21.01.2015 and thereupon the accused was arrested by the Investigation Officer.

30. In the cross-examination, the P.W.9 V.A.O has categorically admitted that he met the accused for the first time in the police station and the confession statement of the accused was recorded in the police station and hence, we have no hesitation in our mind to hold that the said confession statement alleged to have been given by the accused cannot be acted upon and hence, the consequential recovery cannot be believed, as the evidence of the P.W.9-V.A.O does not inspire the confidence of this Court.

31. For the reasons stated that the evidence of P.W.4 who has last seen both the accused and deceased together, does not inspire the confidence of this Court, since he could depose that he has not seen whether the accused/appellant and deceased went together in the night of the 11.01.2015.

https://www.mhc.tn.gov.in/judis

WEB COPY



32. In the presiding paragraphs, we have considered the alleged motive. Though it is projected by the prosecution that the appellant was enemical towards the deceased because the deceased had illicit relationship with the wife of the accused/appellant, the same has not been established by the prosecution. Even P.W.1 the wife of the deceased had no direct knowledge, as admitted by her in the cross examination and therefore, all the 3 ingredients projected by the prosecution namely motive, last seen theory and recovery, for the reasons discussed in the presiding paragraphs, are held to be not proved by the prosecution in the manner known to law and hence we have no hesitation to hold that the prosecution has miserably failed to prove the charge under Section 302 I.P.C beyond reasonable doubt. By operation of law, benefit of doubt goes to the accused and accordingly, we hold that the prosecution having not proved the charges against the accused, giving benefit of doubt he is acquitted of the charges, which he stands charged by the trial Court and consequently, the conviction and the sentence are set aside.

33. In the result, the conviction and sentence imposed upon the appellant vide judgment dated 23.01.2018 by the 1st Additional District and Sessions Judge, Thiruvallur in S.C.No.237 of 2016, is set aside and **the Criminal Appeal is allowed**. Fine amount is ordered to be refunded. Bail bond stands cancelled.

**(P.N.P.,J.) (TKR,J.)**
**14..12.2022**

nvi

https://www.mhc.tn.gov.in/judis

WEB COPY



To

1. The 1st Additional and District Sessions Judge,
   Chengalpet

2. The Inspector of Police,
   Chengalpet Town Police Station,
   Chengalpet

3. The Public Prosecutor,
   Madras High Court, Chennai – 600 104.

https://www.mhc.tn.gov.in/judis

WEB COPY



P.N.PRAKASH, J.
and
RMT.TEEKAA RAMAN, J.

nvi

Judgment in
Crl.A.No.515 of 2018

14..12..2022

https://www.mhc.tn.gov.in/judis