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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.646 of 2018

Raman

Son of Selvaraj

... Appellant

-Versus-

State Rep by, The Inspector of Police,

Vennandhur Police Station,

Namakkal District.

[Crime No.22 of 2016]

... Respondent

Appeal filed under Section 374(2) of The Code of Criminal Procedure, 1973, against the Judgment dated 12.10.2018 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal, Namakkal District, in S.C.No.80 of 2016 convicting the appellant for offence u/s 341 and 302 of IPC and sentencing him to undergo Rigorous Imprisonment for 1 month for offence under Section 341 of IPC and to undergo Imprisonment for Life and to pay a fine of Rs.2,000/- for offence u/s 302 of IPC and in



default to pay fine to undergo rigorous imprisonment or a further period of six months.

For Appellant : Mr.S.Shanmugavelayutham, Sr.Counsel
for Mr.B.Vasudevan

For Respondent : Mr.Babu Muthumeeran, APP.

JUDGEMENT

S.VAIDYANATHAN, J.

AND

A.D.JAGADISH CHANDIRA, J.

This appeal is against the judgment dated 12.10.2018 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal, Namakkal District, in S.C.No.80 of 2016 convicting the appellant for offence u/s 341 and 302 of IPC and sentencing him to undergo Rigorous Imprisonment for 1 month for offence under Section 341 of IPC and to undergo Imprisonment for Life and to pay a fine of Rs.2,000/- for offence u/s 302 of IPC and in default to pay fine to undergo rigorous imprisonment or a further period of six months.

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

(i) The deceased Sakthivel, aged about 27 years, is the son of P.W.1-M.Manivel and P.W.2-Tmt.Pappu and brother of the deceased



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P.W.3-Dhanapal. P.W.4 is the brother of P.W.2 and brother-in-law of P.W.1. P.W.5 is the wife of P.W.4. P.W.12 is the sister of P.W.1 and P.W.13 is the son of P.W.12. P.W.15 is a neighbor of the accused.

(ii) The deceased graduated in B.Com. However, he was doing milk vending business. He used to leave his house at 06.00 a.m. every day for procuring milk and return between 10.00 or 11.00 a.m. and similarly, in the evening, he used to leave his house at 04.00 p.m. and return after the business was over. As usual, on 13.02.2016 at about 04.00 p.m. the deceased left the house and proceeded on his M80 motorcycle bearing TN 38 R 7537 with empty milk cans for procuring milk, but, he did not return till 06.00 a.m. on 14.02.2016. Sometimes the deceased used to stay at his maternal uncle's house after the business of the day was over and therefore, he was thinking that he would have stayed at his maternal uncle's house. On 14.02.2016 at 06.00a.m. his brother-in-law contacted him over phone and informed that his son Sakthivel was found killed at the field of one Natarajan of Thulakkankadu and asked him to come over there. He immediately rushed to the spot where he found his son's dead body with stab injuries. Immediately, he made a complaint (Ex.P.1) before Vennandhur P.S. P.W.28, the Sub Inspector of Police, who was on duty on 14.02.2016 at 08.00 a.m. on receipt of the complaint from P.W.1 registered



a case in Crime No.22 of 2016 for the alleged offences u/s 302 of IPC. He forwarded the original FIR (Ex.P.16) to the jurisdictional Magistrate through P.W.26-Head Constable and submitted the case file to the Inspector of Police for investigation. Accordingly, P.W.26 handed over the original FIR to the Judicial Magistrate, Rasipuram on 14.02.2016 itself.

(iii) P.W.30, the Inspector of Police took up the case on 14.02.2016 itself for investigation and summoned for scientific experts and sniffer dog. He visited the spot at 10.00 a.m. on the same day and prepared an observation mahazar and a rough sketch (Ex.P.18) in the presence of witnesses P.W.6 and one Thiagarajan. He also held an inquest in the presence of panchayatars and prepared an inquest report (Ex.P.19). At 01.00 p.m. he forwarded the body of the deceased to Mohan Kumaramangalam Medical College Hospital for post-mortem through P.W.27, the Head Constable attached to the police station. Thereafter, he examined the independent witnesses and also recorded their statements individually.

(iv) Thereafter, P.W.30, the investigating officer, recovered the blood stained earth and sample earth, M80 motorcycle TN 38 R 7537, a big aluminum milk can, a small aluminum milk can, a stainless steel tumbler, a small wire bag rose in colour, a wire bag green in colour, an one



liter milk measure jug, an half liter milk measure cup, a pair of slippers, a Micromax Cellphone without SIM card but with Memory Card, Two blood stained knives, another small aluminum can under a mahazar in the presence of witnesses. Thereafter, P.W.30 forwarded all the material objects that were recovered from the scene of occurrence for onward submission to the Forensic Department for chemical analysis.

(v) P.W.22, the Tutor in Forensic Medicine at Government Mohan Kumaramangalam College Hospital, Salem, conducted an autopsy on the body of the deceased Sakthivel on 14.02.2016. She commenced the autopsy at 03.35 p.m. On examination, she found the following external injuries :-

“(1) A dark reddish abrasion over superclavicular region measuring 3 x 0.5 c.m.

(2) Cut injury over the front and sides of neck measuring length M-13 c.m. width and 7 c.m. exposing cut ends of trachea. It is situated 7 c.m. from midchin, 5 c.m. above the supra sternal notch and 11 c.m. from right mastoid process, 10 c.m. from left mastoid process. O/D sevice of underlying neuro vascular bundle, trachea, oesophagus and cut fracture of hyoid and C3, C4 vertebra with extra vasation of blood.



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(3) Stab wound over the right side chest M-4 x 1.5 x 5 c.m. It is situated 13 cm lateral to the xiphisternum.

(4) Another stab wound over the right side of lower abdomen measuring 4 x 2 x cavity deep and it is situated 10 cm away from the umbilicus.

(5) Another stab wound over the left lower abdomen measuring 5 x 2 x cavity deep and it is situated 10 c.m. away from the umbilicus.

(6) Another stab wound 6 c.m. lateral to the previous stab wound measuring 2 x 1 x 2 c.m. Ant bite marks over right side shoulder left lower abdomen left fore head and around both eyes.

Other Findings:

O/D Head:- Scalp normal. Cranial vault intact. Brain C/S pale. Base of the skull in tact.

O/D Neck:- vide injuries column

O/D Thorax:- Ribs – cut cracture over the right side 6th, 7th and 8th Rib with surrounding para vertebral muscle contusion. Lungs C/S pale. Hear – Normal in size. Chambers empty. Valves intact. Coronaries patent.

O/D Abdomen:- Stomach 50 gms of partly digested food particles light yellow colour with no specific odour. Mucosa- C/S pale. Liver – Laceration right lobe of liver M-2.25x 2 x 2 c.m. This corresponds to



injury No.3. Laceration over the right side large bowel. This corresponds to injury No.4. Spleen and Kidneys – C/S pale. Bladder empty. Pelvis intact. Spinal Column – vide injury coloumn.”

She issued Post-mortem Certificate (Ex.P.13). She preserved the internal organs and forwarded the same for chemical analysis. According to P.W.22 Doctor, the death would have occurred 24 hours prior to autopsy.

(vi) P.W.20, the Scientific Officer, Regional Forensic Science Laboratory, Forensic Science Department, Salem, conducted chemical analysis on the internal organs of the deceased and gave a report to the effect that no alcohol or poisonous substances were found in any of the internal organs. Ex.P.10 is the chemical analysis report. Upon receipt of the chemical analysis report (Ex.P.10), P.W.22, the Doctor who conducted autopsy on the body of the deceased, gave her final opinion to the effect that the deceased would appear to have died of the effect of multiple stab wounds and cut throat injuries.

(vii) P.W.21, the Assistant Director, Regional Forensic Science Laboratory, Forensic Science Department, Salem, who conducted analysis on the material objects sent for chemical analysis, found blood on all objects except the sample earth.



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(ix) In the course of his further investigation, P.W.30 examined the few more witnesses and recorded their statements. He examined P.W.1 again and recorded his further statement and recovered a letter said to have been written by the deceased to Keerthana that was handed over P.W.1 under Form-95 and made arrangements for the examination of P.W.24 under Section 164 of Cr.P.C. by a Judicial Magistrate. P.W.23, the then Judicial Magistrate-II, Namakkal, recorded the statement from P.W.24 under Section 164 of Cr.P.C. The statement of P.W.24 recorded by the learned Magistrate is Ex.P.15.

(x) P.W.30, thereafter, examined P.W.20, P.W.20 and P.W.22 official witnesses recorded their statements. P.W.29, the Sub Inspector of Police, Vennandhur Police Station, on the direction of P.W.39, visited the Principal of Mahendra Arts & Science College, Kaliapatti, Namakkal District, on 21.03.2016 and obtained the letter (Ex.P.17) addressed to the college by the deceased requesting to issue a Transfer Certificate and handed it over to P.W.30, the investigating officer. P.W.30 on the basis of his investigation, altered the offence from Section 302 of IPC to Section 120-B, 341 and 302 of IPC and submitted an alteration report to the Magistrate concerned.



(xi) The investigation revealed that the deceased was in love with P.W.24 for more than two years prior to the occurrence. P.W.24 is a school drop out at her IX standard owing to her personal reasons besides want of money. It was the deceased who admitted P.W.24 in a tutorial college to prepare for her X Standard examinations. The accused in this case namely Raman and one Lakshmanan were brothers and the juvenile in conflict with law namely Gowtham (JCL) is their relative. The brother of the accused Lakshmanan also was studying in the same tutorial college and in that way the accused used to have a talk with P.W.24 and developed love with her for two years prior to the occurrence. The deceased warned the accused having come to know the contact that he developed with P.W.24. Since both the deceased and P.W.24 belonged to the same community, the deceased was of the thought that P.W.24 would possibly get married to the deceased and as such, he wanted the deceased to be eliminated in order to get married P.W.22. In that situation, the accused had approached the juvenile in conflict with law for help. About two weeks after the Pongal Festival 2016, the accused and JCL had entered into a criminal conspiracy at Vennandhur to do away with the deceased and in furtherance of the same, on 11.02.2016 at 07.00 p.m. the accused and JCL had purchased two knives in the utensils shop run by one Subramaniam, the father of P.W.11.



That on 13.02.2016 at about 07.00 p.m. both the accused and the JCL assembled together at Vennandhur Town and conspired to kill the deceased. The deceased was lastly seen by P.W.10 at 07.15 p.m. when he was proceeding through Thulukkankadu after parking his M80 motorcycle aside. On the same day, between 07.30 and 07.40 p.m. P.W.12 saw the accused and JCL proceeding towards Semmandapatty road.

(xii) In furtherance of the criminal conspiracy hatched between them, at 08.45 p.m. when the deceased was proceeding towards Vennandhur from Semmandapatty Road on his M80 motorcycle for procuring milk, the accused along with JCL wrongfully restrained the deceased and in furtherance of the conspiracy, the accused stabbed the deceased with knives and dragged him to the mud road at Natarajan's agricultural land and when the deceased was struggling for life, the JCL caught hold of his legs, while accused caught hold of mouth and face, and cut the throat and thereby caused his death.

(xiii) Concluding his investigation, P.W.30, the Inspector of Police, with the above allegations, laid the final report before the jurisdictional Magistrate for offence u/s 120-B, 341, and 302 of IPC against the accused.



3. After the appearance of the accused before the trial court, he was furnished with copies under Section 207 of Cr.P.C. and thereafter, the case was committed to the Court of Sessions, which, in turn, made over the case to the Sessions Judge, Fast Track Mahila Court, for trial.

4. Before the trial court, the appellant along with a Juvenile in Conflict with Law (JCL) stood charged for the offence u/s 120-B, 341 and 302 of IPC. In order to prove guilty of the accused, the prosecuting agency examined P.W.1 to P.W.30 and exhibited Ex.P.1 to Ex.P.20 apart from material objects M.Os.1 to 19.

5. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was a total denial. Therefore, the trial court proceeded to hear the arguments of the learned Special Public Prosecutor for the State and the learned counsel appeared for the defence.

6. Having considered the available materials and the arguments on either side, the trial court acquitted the Juvenile in Conflict with



Law(JCL) and convicted the appellant under sections 341 & 302 of IPC and accordingly punished him thereof as detailed in the first paragraph of this judgment. Assailing the judgment of conviction and sentence the appellant is now before this court with this criminal appeal.

7. Mr.S. Shanmuga Velayutham, the learned Senior Counsel appearing for the appellant would submit that the entire case of the prosecution is based on circumstantial evidence resting on motive of previous enmity on account of a love affair, last seen theory, recovery of knives from the scene of occurrence, extra-judicial confession leading to recovery of blood stained clothes and knives from the appellant. The prosecution case has not been able to prove the charges against the appellant beyond all reasonable doubts, by letting in cogent and convincing evidence established in the manner known to law. The entire case of the prosecution is cooked up, with full of discrepancies, infirmities, embellishments and self contradictory statements and the trial court without proper appreciation of evidence had convicted the appellant. The Learned Senior Counsel would project the following points:

- - The chain of events has not been proved and the evidence regarding recovery, arrest and extra judicial



confession cannot be believed.

- The motive suggested by the prosecution have not been proved beyond any reasonable doubt, the alleged love letters/Ex.P3 stated to be written by the deceased to PW24 and the sample letters/Ex.P17 (Application sent by the deceased) for confirming the hand writing have not been proved in the manner known to law.
- The absence of the name of the accused in the complaint Ex.P1, even as a suspect is fatal to the prosecution case thereby discrediting the evidence of PW.13 who is none other than the paternal aunt of the deceased and the sister of PW 1
- The non comparison of the blood group of the blood stains found in the clothes of the accused with that of the blood group of the blood stains in the clothes of the victim/deceased is fatal to the prosecution case.
- When all the other circumstances remain unproved conviction cannot be based on extra-judicial confession which is explicit and in detail thereby making it artificial, unnatural and unbelievable.



He would ultimately contend that the trial Court erred in not appreciating the evidence properly and committed error in convicting the appellant and thereby, he would seek for setting aside the order of conviction and sentence.

8. Per contra, Mr.Babu Muthumeeran, learned Additional Public Prosecutor would contend that the case of prosecution has been proved beyond all reasonable doubt. The PW10 and PW18 have seen the deceased and PW12 has seen the accused prior to the occurrence near the place of occurrence. On information, the accused were arrested during the vehicle check up and they have confessed to the offence based on which knives used by the accused and the clothes worn by them were recovered and PW11 had spoken about the accused purchasing knife/M.O.12 (series) from his shop, few days prior to the occurrence and it has been identified by PW11 in the Police station on 17.02.2016. PW24 has spoken about the enmity between the appellant and the deceased. However, he would fairly concede that as per Ex.P6 (Form 91), the knives used by the accused and recovered near the body at the place of occurrence (M.O.12) series have been sent to the Court as early as on 14.02.2016 and it is also the admitted case that none of the witnesses have seen the accused and deceased together prior to the occurrence.



9. We have heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

10. Now coming to the evidence of the prosecution in brief : -

PW1/Manivel and PW2/Pappu are the parents of the deceased Sakthivel. PW3/Dhanapal is the brother of deceased. PW4/Palaniappan is the brother in law of PW1/Manivel and PW5/Rani @ Bavani is the wife of PW4/Palaniappan. The deceased Sakthivel after completing his B.Com., degree was doing milk vending business and he was aged about 27years at the time of his death. The deceased Sakthivel usually goes out of his house at about 6.00am for collecting milk and returned to the house at about 10, 11.00am. Thereafter in the evening he goes out of the house at about 4.00pm and he does not come back on some of the days during night and on that occasion the deceased went to stay at the house of PW12/Mallika Aunt of the deceased and sister of PW1 . That on 13.02.2016, the deceased went out of his house in a moped bearing Registration No.TN38-R-7537 for collecting milk but on that day night he did not come back home. PW1 to PW3 were under the impression that the



deceased may have halted at his sister/PW12's house. But on the next day morning at about 6.00am the PW4/Palaniappan contacted PW1 over phone and had asked him to come to Thulukkankadu and he further conveyed that the son of PW1 was murdered at Thulukkankadu. PW1 to PW3 went to the place mentioned by PW4 where they had seen that the body of deceased Sakthivel. They had seen several stab injuries over his body. In this regard, PW1 preferred a complaint as per Ex.P1. The police came to the scene of occurrence and sent the body for postmortem. Thereafter, PW1 searched for the belonging of deceased and he traced out the lover letter Ex.P3 written by the Sakthivel to Keerthana. PW1 to PW3 came to know that on account of enmity between the accused and the deceased over the love affair of Keerthana, the accused had murdered PW 1 and 2's son Sakthivel. The moped of the deceased is M.O.1. The milk cans 3 in numbers are M.O.2 series and the chappals of deceased M.O.3. The broken cell phone of deceased is M.O.4 and the shirt of deceased is M.O.5. The jetty/brief worn by the deceased is M.O.6 and the pant is M.O.7. The silver tumbler is M.O.8 and the wire bag is M.O.9. Another wire bag green in colour is M.O.10 and milk measuring tumblers are M.O.11 and 12. Prior to few days to the death of Sakthivel he told to PW5/Rani @ Bavani and the PW4/Palaniappan that the accused Raman also loved



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Keerthana and that she did not speak with Sakthivel. PW6/Kulandaivel is a witness for observation mahazar Ex.P4 prepared by the police. PW6 is also a witness for the recoveries of above said material objects through Ex.P5 mahazar. The police recovered two knives M.O.13 series and blood stained soil M.O.14, non-blood stained soil M.O.15 in the presence of PW6/Kulandaivel under a mahazar. PW7/Natarajan and PW8/Visalakshi are the owners of the land where the above said occurrence took place. PW7 and PW8 are hearsay witnesses who heard about the murder committed by the accused. PW9/Kathirvel/VAO is a witness for arrest and confession of the accused. Further, PW9/Kathirvel is also a witness for recovery of M.O.1/moped from the accused under a mahazar/Ex.P7 and also a witness for recovery of shirt of the accused M.O.17 under a mahazar Ex.P8. The admissible portion of the confession of the accused is Ex.P9. PW10/Gobi who had last seen the deceased at about 7.15 P.M on the date of occurrence when the deceased went along with his moped near Devarajan's Workshop/ Pattarai in Thulukkankadu. PW10 then heard that the Sakthivel was murdered. PW11/Thangavel is the witness who sold the knives M.O.13 to the accused on 11.02.2016 from his shop and he had identified the accused and the knives M.O.13 at the Police station after their arrest on 17/02/2016. PW12/Mallika is the sister of PW1. The



deceased was having a habit of halting back at her house on few days during night time after his milk vending work. That on 13.02.2016 at about 7.30pm she had seen the the accused wandering here and there near the side of Semmandapatty road and on that day Sakthivel did not come to the house of PW12. On the same day night, the PW12 called the deceased over cell phone but there was no response. On the next day she heard that the Sakthivel was murdered in a love matter and that she was present along with her relatives when the body of the deceased was found near the place of occurrence. PW15/Perumal heard through deceased Sakthivel regarding the love affair of the accused with the girl who was also loved by the deceased. PW16 Vijayan is the Headmaster who had issued the date of birth certificate for JCL as his date of birth was 14.05.1999. PW19/Lakshmi Priya conducted a tution centre where the accused enquired about the tution details in the academic year 2013-14 and on the next day the father of the Keerthana admitted her in the tution centre. The brother of the accused Lakshmanan was also studying tution in the same centre run by PW19/Lakshmi Priya. PW20/Sangeetha forensic expert examined the viscera collected from the body of the deceased Sakthivel in which she did not find out any poisonous particles and her report to that effect is Ex.P10. PW21/Jeganathan forensic expert examined the chappals,



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cell phone, knives, soil collected from the scene of occurrence and shirt, jatty/brief, lungi and on examination he found human blood stains in items 1 to 5 and 7 to 13, but he did not find out human blood stain in item No.6. The report for his analysis is Ex.P11. PW22/Dr.Sangeetha conducted postmortem over the body of deceased Sakthivel on 14.02.2016. On chemical analysis of viscera, there was no any poisonous particles in it. The above person was stated to have died 24 hours prior to the time of postmortem due to injuries sustained by him. The post mortem report in Ex.P13 and her final opinion is Ex.P14. The above said injuries can be caused like a weapon M.O.13. PW23/Rajeshkannan-Judicial Magistrate deposed regarding statement recorded u/s.164 Cr.PC from PW24/Keerthana as per Ex.P15 on 11.03.2016. PW24 is a person who was stated to be loved by deceased Sakthivel and the accused. The deceased only admitted PW24 in Guru tutorial centre. The accused is the brother of Lakshmanan who was studying tuition along with PW24/Keerthana. The accused have threatened the Keerthana if she does not love him he will kill her and the person who is in love with her. PW24 conveyed this to her parents. The accused further told PW24/Keerthana as the Sakthivel told him as the conduct of PW24 is not good. Therefore, PW24 did not speak with Sakthivel for few days. PW24 further heard that



the accused murdered Sakthivel due to Sakthivel loving her.

PW25/Pavayee is the grant mother of PW24/Keerthana. The deceased only admit her grand daughter in a tutorial. PW25 decided to marry Keerthana to Sakthivel, but the accused told and threatened that how they can marry Keerthana to Sakthivel and accused only can marry her. Then PW25 also heard about the murder of Sakthivel by the accused. PW26/Periyasamy is the Head Constable who handed over the complaint and FIR of this case to the Judicial Magistrate, Rasipuram on 14.02.2016. PW27/Dhanasekarn-Head Constable who hand over the body of the deceased for Postmortem on 14.02.2016 as per directions of the Inspector. Then PW27 handed over the viscera collected from the deceased at the Government Forensic Lab, Salem. PW27 handed over the dresses of deceased for medical examination at Forensic Lab, Salem. PW28/Venkateswaran-SI registered this case after receiving the complaint from PW1 on 14.02.2016 at about 8.00am as per Ex.P16 u/s.302 IPC. Then the SI handed over the file for investigation to the Inspector. PW29/Srinivasan-SI got the letter written by Sakthivel/Ex.17 as per directions of the Inspector from the Mahendra Arts and Science College, Kalipatty. PW30/Sasikumar-Inspector had taken up the case for investigation on 14.02.2016 proceeded to the scene of occurrence and



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inspected the same in the presence of witnesses and prepared the rough sketch/Ex.P18. Then the Inspector conducted the inquest in the presence of Panchayatar as per Ex.P19. Then the Inspector recorded the statement of witnesses and then he send the body of deceased for postmortem and further he had taken steps for chemical examination of viscera collected from the deceased. Then the Inspector collected the material objects from the scene of occurrence in the presence of the witnesses under a mahazar. Then the Inspector secured the accused on 17.02.2016 at Athanur bus stop and recovered the moped involved in this case in the presence of witnesses and also recorded the confession statement of the accused. Then the Inspector took steps for recording statement from the PW 24 Keerthana u/s.164 Cr.PC and on the basis of his investigation the inspector altered the section as per Ex.P20. After concluding the investigation he had laid charge sheet against the accused.

11. Now what has to be seen is that whether the prosecution has proved the charges against the appellant beyond reasonable doubts and whether the trial court is right in appreciating the evidence on record and convicting the appellant for the charges.



12. From the evidence on record, there is no direct witness to the offence of murder and the case of the prosecution clings on circumstantial evidence, viz; i) motive; ii) last seen theory; iii) extra-judicial confession; and iv) recovery of blood stained clothes and knives from the appellant as being spoken by the witnesses. With regard to the principles regarding circumstantial evidence, it would be useful to refer to the following passage from the Constitutional Bench judgment of the Supreme Court in **"Govinda Reddy and another vs. State of Mysore reported in AIR 1960 SC 29"**,

"In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn would in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."



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13. Further in the context of Circumstantial evidence, it is also useful to refer to the five classic rules reiterated in **Shaik Mustan Vali vs. State of Andhra Pradesh** reported in **(2007) 9 SCC 942**, which is extracted hereunder:-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”



14. Bearing in mind the above principles enunciated by the Constitution Bench of the Supreme Court in the judgment referred to supra, we propose to deal with each of the circumstances in this case.

15. In this case, the motive for the offence is stated to be that the appellant and the deceased were interested in the very same girl PW24 and that the deceased had reprimanded the accused calling PW24 over phone and also the accused fearing that the deceased was moving closer to PW24, had committed the murder of the deceased. Though there is no eye witness to the occurrence, the prosecution has relied on the evidence of PW24, EX P3 (Love letter alleged to be written by the deceased to PW24, which was recovered 2 days after the occurrence) evidence of PW10/Gopi and PW18/Vasanth, having seen the deceased at the place of occurrence and PW13, having seen the accused near the place of occurrence on the previous evening of the occurrence. PW11 shop keeper having spoken about the accused purchasing knives from him few days prior to the occurrence and he having identified the accused and the knives at the Police Station on 17-02-2016 after the arrest of the accused. PW9/VAO having spoken about witnessing the arrest of the accused and the confession statements being recorded from the accused in his presence and



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recovery of the M.Os (Dresses worn by the accused at the time of occurrence) and he having attested the confession. PW10 has deposed that he had seen the victim/deceased parking his M80 motorcycle near the workshop (Pattarai) of one Devarajan at 7.45 pm on the previous night and thereafter he going along Thullukkankadu and on the next day, he having heard that the victim was murdered and he had gone to the place, where the body of the deceased was found and that he had seen the Police. PW12/Mallika, having seen A1/Raman and A2/A.Gowtham (JCL) on the previous night on 13-02-2016 between 7.30 to 7.45 p.m. going towards Semandapatti road from southern side of her house and thereafter, seen the accused wandering here and there around her house. PW18 has spoken that at about 8.30 p.m., the deceased took milk from her house and the next day she came to know that the deceased was murdered. Thus Pw 10 and PW 18 are the witnesses who are stated to have seen the deceased lastly and PW12 is the witnesses who has seen the accused lastly on the previous day. However none of the witness has spoken to have seen the deceased and the accused together. Now analysing the evidence of the witnesses who have separately seen the deceased and the accused viz PW 10, PW 12 and PW18, though PW10 admits that he was present at the scene of occurrence the next day morning, it is strange that did not inform



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the police about having seen the deceased on the previous day and it creates serious doubt regarding credibility of the witness PW10. Though PW18 speaks about the police coming to the scene of occurrence and she being present with the other witnesses, it is highly strange and unbelievable that she did not speak about the incident of having seen the deceased at about 8.30 pm on the previous night. PW12/Mallika, who is the sister of PW1 had deposed that on 13.02.2016 on the previous night between at about 7.30 to 7.45 p.m., she had seen A1/Raman and A2 AGowtham(JCL) going towards Semandapatti road from southern side of her house and thereafter, she had also spoken about the accused wandering here and there around her house. Though she speaks about seeing the body of the deceased on 14.02.2016, and being along with her brother PW1 and other relatives when the police was there, it is also strange that she had not spoken about the earlier day incident of having seen the accused wandering in the area. If she had seen the accused on the previous day wandering in a suspicious manner, she would have informed PW1 or to the police PW 30 about the same and the names of the accused could have appeared as suspects in the complaint. The version of PW10, PW12 and PW18 are falsified by the evidence of PW30 when he has stated that none of the witnesses have informed him about the presence



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of accused near to the scene of occurrence prior to the occurrence. PW30 had deposed that he had arrested the accused on 17.02.2016 and only thereafter, he had examined PW10, PW12, PW18. Further, it is the categorical evidence of PW12/Mallika that she went to see the body of the deceased and the police were there and that she had not disclosed about the earlier day incident to her brother PW1 or to the police, which creates the serious doubt regarding her credibility. To be precise, it is the admission of PW30/Investigation Officer, that none of the witnesses namely PW1 to PW19 have implicated the accused during the first examination, prior to arrest and that none of the witnesses have spoken about the presence of the accused near the scene of occurrence prior to the occurrence and it is the case that only after the arrest of the accused on 17.02.2016, the witnesses have spoken about the presence of the deceased and the accused near the scene of occurrence prior to the occurrence and the enmity. Further as stated above none of the witnesses have spoken about having seen the deceased and the accused together lastly prior to the occurrence. In view of the above, the prosecution has failed to prove the last seen theory.



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16. Yet another circumstance projected by the prosecution is that the PW11 had spoken about the appellant/A1 and A2/Gowtham (JCL) having come to his shop and having purchased two knives M.O.(13series) on 11.02.2016 and having identified the accused and the knives alleged to be used for murder. PW11 is a Teacher and the shop was run by his father during day time and that PW11 used to sit in the shop in the evening after school hours. It is the case of PW11 that after the arrest of the accused on 17.02.2016, he was called to the police station and he had seen the accused there and he was asked to identify the accused and the knives which were shown to him in the police station and he had confirmed that they were purchased from his shop. Whereas it is the case of the prosecution that the knife M.O.12 (series) were recovered on 14.02.2016 in the presence of witness along with other items and sent to Court through Form 91/Ex.P5 on 14.02.2016 itself and that they have been received by the Court on 15.02.2016. PW11 had admitted that he identified the knives in the police station on 17.02.2016 and if that is so 4 knives are stated to have been involved in the case and it creates serious doubts in the prosecution case. Further PW1 is stated to have been running the shop near police station and thereby, his evidence coupled with the anomaly regarding recovery of knives M.O.13 series and being sent to the court on 14.02.2016 makes his



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evidence not only suspicious but also doubtful. Further, PW6 and PW10 had deposed that two blood stained knives were seized from the place of occurrence in PW7/Natarajan land near the body. But as per the Ex.P1/Complaint, only one blood stained knife was found near the body of the deceased. Even in the inquest report/Ex.P19 one blood stained knife was found near the body of deceased in column 9 and 15. Thereby the prosecution case with regard to the accused having purchased the knives from PW11 and the knives and the accused having been identified by PW11 also fails.

17. Further, PW1 did not depose about having seen two knives near the body of the deceased and PW2 and PW3 have also deposed about only one knife. The contradictory versions of the witnesses create doubt with regard to the seizure of M.O.13 (series) and that two knives were alleged to have been used in the occurrence. PW.30/I.O in his evidence also speaks about of having seized two knives from the accused under mahazar at the time of their arrest and that mahazar and knives which were stated to be recovered at the time of arrest were not produced before the Court, thereby, creating serious doubts with regard to the recovery and identification of knives in the case.



18. With regard to the motive, the prosecution has examined PW24 and relied on Ex.P3, an undated love letter alleged to be written by the deceased to PW24 and Ex.P17, an application dated 15.11.2008 given by the deceased to the college Principal for comparison of handwriting. The letter Ex.P3 is stated to have been recovered two days after the occurrence and that the prosecution has also not proved Ex.P3 by comparing the hand writing with that of the hand writing in Ex.P17 by examining an expert. Further, though PW24 in her Statement under 164 Cr.P.C., had spoken about the enmity between the deceased and the accused, on account of the love affair she had during her examination in Court has not supported the case of prosecution and has denied that the deceased having given any love letter to her and has not spoken bad about the accused. She had also denied having spoken to the deceased and the accused in private. She had also admitted that she had not heard about the enmity between the deceased and the accused on account of the love affair with her. Thus the evidence regarding the motive is also remains very fludic. In such circumstances the suspicion regarding the alleged motive of enmity on account of the deceased and the accused being interested in PW24 has also not been proved legally.



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19. Now coming to the aspect of extra-judicial confession. As per the prosecution, the accused along with JCL was stated to be arrested on 17.02.2016, during a vehicle check, thereafter he was taken to the open space near his house where he has taken a full hand shirt/M.O.17 and Lungi/M.O.18 which was hidden inside the bush and it was recovered under mahazar and thereafter another two knives involved in Rasipuram case were recovered and later he was taken to the police station, where in the presence of PW9 a confession statement were recorded and attested by PW9.[The signature of PW9 is Ex.P6 and the admissible portion of the confession is Ex.P9]

20. Now coming to the confession, it is a four pages typewritten document which had been attested by PW9 and his assistant. The extra judicial confession is full of facts and graphically discloses family history of the accused and what happened prior to the incident in question and thereafter. As stated above, it is typewritten document nearly in four full pages in which the accused has not only spoken about the motive to kill, but had also given graphic details of how each of the accused attacked the deceased and how they disposed the body and some of the material objects



near the scene of occurrence. It is the evidence of PW9 that only after registration of the case and arrest of the accused, he and his assistant were summoned to be witness to the recording of confession. It is also the admitted evidence of PW9 that there were other 10 people from the general public were present when the arrest was effected and confession was recorded. Recording of confession and recovery seems to be doubtful.

21. In this context, the Hon'ble Apex Court in the case of ***Chakarai @ Chakaravarthi v. State rep by Inspector of Police*** reported in ***(2019) 14 SCC 254*** where in a case of similiar set of facts after refering to the observations made in ***Thangavelu v. State of T.N.***, reported in ***(2002) 6 SCC 498*** had disbelieved the confession statement and acquitted the accused. The relevant paragraphs are extracted hereunder:

"11. Thus, the only remaining circumstance, as rightly concluded by the High Court, is the extra-judicial confession. We have perused the extra-judicial confession (Ext. P-1) recorded by PW 12 (the Tahsildar, Salem), the translation in English of which was provided to us by the learned counsel for the appellant. The extra-judicial confession gives us an impression that the same has been generated to make the courts believe the case against the appellant. The extra-judicial



confession is suspiciously full of facts and graphically discloses the antecedents of Accused 1, the situation of his house and what happened prior to the incident in question and thereafter. It is recorded in nearly five full pages and not only speaks about the motive to kill, but also gives graphic details of how each of the accused attacked the deceased.

12. In this context, it would be relevant to refer to certain observations made by this Court in Thangavelu v. State of T.N. [Thangavelu v. State of T.N., (2002) 6 SCC 498 : 2002 SCC (Cri) 1382] Para 7 of the judgment is extracted below: (SCC pp. 505-06)

“7. At this juncture we may take note of the prosecution case that the appellant had made an extra-judicial confession to PW 12, another VAO on the day following the incident. Though the courts below have not placed any reliance on this confession, we take note of this document for the purpose of appreciating the genuineness of the prosecution case. A perusal of this confession Ext. P-14 gives us an indication of the attempt of the prosecution to build a case against this appellant. This extra-judicial confession is so full of facts starting from about 25 years prior to the date of the incident and graphically details what happened over these years to his sister and his family which actually



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is the motive suggested by the prosecution for the crime. Ext. P-14 is recorded in nearly 4 full pages, it not only speaks of his motive to kill D-1 and D-2 but also gives graphic details of the nature of the attack on the deceased and also mentions in detail the persons whom he saw during and after the incident. In a manner of speaking, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression, therefore, he was seeking to corroborate their future evidence. In our opinion, this would hardly be the natural conduct of an accused if he was voluntarily making a confession. We further notice the unimaginable similarity in Exts. P-14 and P-1 as also in the evidence of PW 1 which supports the theory of the defence that there was an attempt by the prosecution to create evidence in this case."

(emphasis supplied)

13. The facts of the present case are similar to the facts of the aforesaid case, insofar as the extra-judicial confession is concerned. All the observations made by this Court in Thangavelu [Thangavelu v. State of T.N., (2002) 6 SCC 498 : 2002 SCC (Cri) 1382] are aptly applicable to the case on hand. In the said matter, this Court disbelieved the detailed extra-judicial confession and acquitted the accused."



22. Another aspect which needs to be seen is with regard to the recovery of clothes worn by the deceased and the accused and they being sent for Chemical Analysis/Serological Report. As per the prosecution, the full hand shirt/M.O.17, Lungi/M.O.18 recovered from the accused were sent for serological examination/chemical analysis vide Ex.P12 along with the dresses worn by the deceased and the serologist was requested to give an opinion whether the blood stains along with M.O.5/full hand shirt, M.O.6/Jatty and M.O.7/Blue track pant (worn by the deceased) are one and the same and the serologist was requested to give an opinion as to whether the blood stains found on them were human blood and their grouping and whether they belong to the same blood group. Though a report has been received through Ex.P11 and it says that blood was detected in the items. In the report the Scientific Officer had stated that the serology and chemical analysis report would be sent separately. However, when EX P 11 was marked through PW.21/Deputy Director of Regional Forensic Laboratory no evidence has been let in by the prosecution with regard to the Blood Group to conclusively prove that the blood found on the articles were human blood and further no evidence was let in to prove that they were of one and the same group.



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23. In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in the case of ***Sonvir @ Somvir vs. State of NCT of Delhi*** reported in (2018) 8 SCC 24 where the Apex Court has held that even the mere matching of blood group itself would not be sufficient to convict the accused.

"3. Alleged recovery of bloodstained shirt

As per the prosecution, a bloodstained shirt was recovered at the instance of Sonvir alias Somvir (Appellant-Accused 2) from his room in the house of Teja Chaudhary, at the time of his arrest. The bloodstained shirt was sent for analysis to the FSL. As per the FSL report (Ext. PW 33/A), the shirt allegedly recovered from Sonvir alias Somvir (Appellant-Accused 2) was found to be stained with human blood of "B" group, which was the same "blood group" as that of the deceased.

In para 20, the High Court held the recovery of the bloodstained shirt from Sonvir alias Somvir (Appellant-Accused 2) to be incriminating against him, since the blood samples taken from the bedsheet at the scene of crime, were also found to be of the same blood group.



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It is relevant to note that as per the FSL report (Ext. PW 33/A), both the bloodstained shirt allegedly recovered from Sonvir alias Somvir (Appellant-Accused 2) and the blood samples taken from the bedsheet at the scene of crime were found to be stained with human blood of “B” group.

The mere matching of the blood group of the blood samples taken from the bedsheet at the scene of crime, and the bloodstained shirt recovered from Sonvir alias Somvir (Appellant-Accused 2) cannot lead to the conclusion that the appellant had been involved in the commission of the crime.

On this issue, reliance can be placed on two decisions of this Court in Prakash v. State of Karnataka [Prakash v. State of Karnataka, (2014) 12 SCC 133 : (2014) 6 SCC (Cri) 642] , paras 41 and 45 and Debapriya Pal v. State of W.B. [Debapriya Pal v. State of W.B., (2017) 11 SCC 31 : (2017) 3 SCC (Cri) 832] , para 8 wherein this Court while deciding cases based on circumstantial evidence had held that mere matching of the blood group cannot lead to the conclusion of the culpability of the accused, in the absence of a detailed serological comparison, since millions of people would have the same blood group.

In the present case, the prosecution has not proved that the room from where the bloodstained knife



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and bloodstained shirt were allegedly recovered, was in the exclusive possession of the appellant. The prosecution case is that the said room was in the house owned by one Teja Chaudhary. The prosecution did not examine the said Teja Chaudhary to prove that the said room was rented to Sonvir alias Somvir and/or was in the exclusive custody of the appellant.

Therefore, the recovery of the bloodstained shirt from Sonvir alias Somvir (Appellant-Accused 2) cannot be used as an incriminating piece of evidence."

24. In the case of circumstantial evidence, when two views are possible, one pointing to the guilt of the accused and the other his innocence the accused is indeed entitled to have the benefit of one which is favourable to him. Though, the materials on record holds some suspicious towards the appellant/accused the prosecution has failed to elevate its case from the realm of "may be true" to the place of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

25. Taking into consideration, the facts of the case and the law



regarding the case of circumstantial evidence, coupled with extra judicial confession and scientific evidence with regard to matching of blood group and in view of the discussions and reasons on the overall analysis of the evidence placed on record we come to the irresistible conclusion and opinion that the prosecution has failed to prove its case beyond all reasonable doubt. The appellant is entitled to the benefit of doubt and the appeal needs to be allowed and the appellant is entitled to acquittal.

26. In view of the above, this criminal appeal is allowed by setting aside the conviction and sentence imposed on the appellant in SC.No.80 of 2016 dated 12.10.2018 by the Sessions (Fast Track Mahila) Judge, Namakkal and the appellant is acquitted of all the charges. Fine amount, if any, paid by the appellant shall be refunded to him and bail bond ,if any, executed by the appellant shall stand cancelled.

(S.V.N.J.) (A.D.J.C.J.)

07.10.2022

Index : Yes/No

Internet : Yes/No

To



1. The Sessions (Fast Track Mahila) Judge, Namakkal, Namakkal District.
2. The Inspector of Police, Vennandhur Police Station, Namakkal District.
3. The Public Prosecutor, High Court, Madras.

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S.VAIDYANATHAN.J.,
and
A.D.JAGADISH CHANDIRA.J.,
tsh

Pre Delivery Judgment
in **Crl.A. No.646 of 2018**

07.10.2022