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Crl. A(MD)Nos.263 of 2019 & 259 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.A.(MD)Nos.263 of 2019 & 259 of 2021

1.Suresh @ Suresh Kumar

2.Murugesu Pandian : Appellants in CRL.A.(MD)No.263/19

Petchiammal : Appellants in CRL.A.(MD)No.259/21

Vs.

The State of Tamil Nadu represented by

The Inspector of Police,

Town Police Station,

Aruppukottai,

Virudhunagar District.

(Cr.No.108 of 2009) : Respondent in both Criminal Appeals



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COMMON PRAYER: Criminal Appeals filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment made in S.C.No.100 of 2009, by the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, dated 12.12.2018.

For Appellants	: Mr.R.Srinivas for Mr.N.Dilip Kumar [In CRL.A.(MD)No.263/19]
For Appellant	: Mr.R.Alagumani [In CRL.A.(MD)No.259/21]
For Respondent	: Mr.A.Thiruvadi Kumar Additional Public Prosecutor [In both Criminal Appeals]

COMMON JUDGMENT

[Delivered by P.N.PRAKASH, J.]

These criminal appeals are filed against the judgment and order dated 12.12.2018 in S.C.No.100 of 2009, on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.



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2.The prosecution story runs thus:

2.1.The deceased Paramasivam, who was 48 years old at the time of occurrence was living with his wife, Petchiammal [A1] and two sons viz., Muthukrishnan [P.W.3] and Eswaramoorthy [not examined] in a row house, with an open terrace, which is accessible from outside in Chinnapuliyampatti, Thottakaran street, Aruppukottai, Virudhunagar District. Paramasivam was a master in a parotta shop in that area.

2.2.Petchiammal [A1] was employed in a rice mill belonging to one Thiraviam, father of Suresh @ Suresh Kumar [A2] [for brevity, "Suresh"]. It is alleged that Petchiammal developed intimacy with Suresh [A2] and they used to meet frequently in the Mill. When Paramasivam came to know of it, he stopped his wife from going for work. Thereafter, in the absence of Paramasivam and his children, it is alleged that Suresh [A2] used to come to the house of Petchiammal [A1] for his amorous activities. Paramasivam came to know about this also and questioned her on 15.02.2009 and even assaulted her.



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2.3.It is further alleged that, Petchiammal [A1] and Suresh [A2] decided to eliminate Paramasivam, so that they could continue with their relationship without any hindrance. In execution of their plan, it is alleged that at around 11.30 p.m., on 17.02.2009, when Paramasivam returned home from work, Petchiammal [A1] took him to the terrace, where Suresh [A2] and his employee Murugesha Pandian [A3] smothered Paramasivam, with the assistance of Petchiammal [A1] and caused his death. When Paramasivam raised a hue and cry, it was heard by the neighbours Selvam [P.W.1] and Ramar. Selvam [P.W.1] is none other than the brother of Petchiammal [A1] and he was residing behind the house of Paramasivam. When Ramar and Selvam rushed to the terrace of Paramasivam's house, they found Paramasivam lying with blood oozing from his nose and also found a bottle of rogor pesticide beside his body. Information was sent to Shanmugampillai [P.W.2], the father of Petchiammal [A1], who also came to the place of occurrence and joined his son Selvam [P.W.1] and Ramar. After a little while, Petchiammal [A1] also went to the terrace and acted with shock and surprise.



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2.4.On 18.02.2009, Ramar and Selvam [P.W.1] went to Aruppukkottai Town Police Station and Ramar gave a statement, narrating the facts that he had seen on the previous night, based on which, a case in Aruppukkottai Town Police Station Crime No.108 of 2009, for the offence under Section 302 IPC against 'unknown persons' was registered on 18.02.2009 at 12.00 hours by S.Nagalakshmi [P.W.12], Sub-Inspector of Police, who prepared the printed FIR [Ex.P.20], which reached the jurisdictional Magistrate at 03.00 p.m. on the same day, as could be seen from the endorsement thereon.

2.5.Investigation of the case was taken over by K.Avudaiappan [P.W.14], Inspector of Police, who went to the place of occurrence and prepared an observation mahazar [Ex.P.8] and rough sketch [Ex.P.29]. From the place of occurrence, the I.O. seized a bottle of rogor pesticide [M.O.1] under the cover of a recovery mahazar [Ex.P.9], in the presence of witnesses Murugan [not examined] and Sundaravadivel [P.W.7]. Thereafter, the I.O. conducted inquest over the body of Paramasivam and the inquest report was marked as [Ex.P.30].



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2.6.While the police were clueless, Petchiammal [A1] surrendered before Iyyadurai [P.W.8], the Village Administrative Officer at about 08.00 a.m. on 19.02.2009 and gave an extra-judicial confession [Ex.P.10], stating that she conspired with her paramour Suresh [A2] and his employee Murugesu Pandian [A3], to eliminate her husband Paramasivam. Accordingly, when her husband returned home from work on 17.02.2009, she took him to the terrace, where they all smothered him by using a towel to close his mouth and caused his death. She has further stated in the confession statement that she held her husband's legs, Murugesu Pandian [A3] held his thighs and Suresh [A2] smothered her husband with hands and also used a towel to close his mouth. She also stated very clearly that though Suresh [A2] had purchased rogor pesticide, it was not administered to Paramasivam, as he died on account of smothering.

2.7.After recording the extra-judicial confession, Iyyadurai [P.W.8] took Petchiammal [A1] and produced her before Avudaiappan [P.W.14], the I.O., on the same day with a report [Ex.P.11]. The I.O. placed Petchiammal [A1] under arrest and recorded the police



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confession in the presence of Iyyadurai [P.W.8] and one Sundarapandian [not examined]. Since the involvement of Suresh [A2] and Murugesu Pandian [A3] came to light, they were arrested on 19.02.2009 at 12.00 noon and based on the police confession of Suresh [A2], a towel [M.O.2] was recovered under the cover of a recovery mahazar [Ex.P.14]. That apart, from the possession of Suresh [A2], a receipt [Ex.P.12] purported to have been issued by Shri Guru Agency, for having sold rogor pesticide to one Rajesh on 16.02.2009 was seized under a Mahazar [Ex.P.13]

2.8.Dr.Natchinarkiniyan [P.W.6], performed autopsy on the body of Paramasivam and issued the Postmortem Certificate [Ex.P.3], wherein he has noted 13 injuries around the neck region. The samples of visceral organs were sent for chemical examination and the viscera report, [Ex.P.6] disclosed that organophosphorus insecticide was detected in the contents of stomach, intestine and kidney. After obtaining the Viscera Report [Ex.P.6], Dr.Natchinarkiniyan [P.W.6] gave his final opinion [Ex.P.4] with regard to the cause of death of Paramasivam, which reads as under:



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“FINAL OPINION:

The deceased would have died of Asphyxia due to combined effects of smothering and compression of neck and the deceased would have ingested organophosphorus poisoning and death would occurred about 24 to 48 hours prior to autopsy.

2.9.In the extra-judicial confession [Ex.P.10], Petchiammal [A1] has stated that during the struggle, Paramasivam had bit the index finger of Suresh [A2] and hence, after the arrest of Suresh [A2], he was produced before Dr.Natchinarkiniyan [P.W.6] at 08.45 p.m. on 19.02.2009 and the copy of the Accident Register was marked as [Ex.P.7], which reads as under:

“A lacerated injury over left index finger in front about ½ x ½ cms skin depth with irregular edges and 'V' shaped black in colour on proximal phalanx area. Both injuries may be bite marks. Treated as OP.”



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2.10.After examining various witnesses and collecting various reports, the investigation was completed by Senthil Ilanthirayan [P.W.15], who succeeded Avudaiappan. A final report in P.R.C.No.28 of 2009, was filed by the I.O. in the Court of the Judicial Magistrate, Aruppukkottai, against Petchiammal [A1], Suresh [A2] and Muruges Pandian [A3], for the offences under Sections 120B and 302 r/w. 34 IPC.

3.On appearance of the three accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Virudhunagar, in S.C.No.100 of 2009, for trial. The trial Court initially framed charges under Sections 120B r/w. 34 IPC and 302 r/w. 34 IPC and when questioned, they pleaded “not guilty”. Finding a discrepancy in the charge, the charges were amended on 12.12.2018, on the date of delivery of the judgment, under Sections 120B and 302 r/w 34 IPC.

4.To prove the case, the prosecution examined 15 witnesses, marked 32 exhibits and 3 material objects. When the accused were



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questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. Petchiammal [A1], Suresh [A2] and Murugesu Pandian [A3] also gave written statements, giving various explanations for some of the incriminating circumstances appearing against them. No witness was examined nor any document marked from the side of the appellants.

5. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 12.12.2018, has convicted and sentenced the appellants as under:

Accused	Offence under Section	Conviction and Sentence
A1 to A3	120B	Life imprisonment and to pay a fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for three [3] years.
A2	302 IPC	Life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for three [3] years.
A1 & A3	302 r/w. 34 IPC	Life imprisonment and to pay a fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for three [3] years.



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6.Challenging the said conviction and sentence, Suresh [A2] and Muruges Pandian [A3] filed Crl.A.(MD)No.263 of 2019 and they were granted suspension of sentence and bail by this Court on 04.07.2019 in Crl.M.P.(MD)No.5321 of 2019. Petchiammal [A1] filed an appeal belatedly with a delay of 796 days, to condone which, Crl.M.P.(MD)No. 4001 of 2021, was filed under Section 5 of the Limitation Act, 1963, which was allowed by this Court on 16.06.2021 and thereafter, her appeal was taken on file as Crl.A.(MD)No.259 of 2021 and she was also granted suspension of sentence and bail by this Court on 03.09.2021 in Crl.M.P.(MD)No.4269 of 2021.

7.Heard Mr.R.Alagumani, learned Counsel appearing for Petchiammal [A1] in Crl.A.(MD)No.259 of 2021, Mr.R.Srinivas, for Mr.M.P.Senthil, learned Counsel appearing for Suresh [A2] and Muruges Pandian [A3] in Crl.A.(MD)No.263 of 2019 and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.



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8.The motive for this murder is the illicit intimacy between Petchiammal [A1] and Suresh [A2]. There is no ocular evidence in this case and the prosecution case rests on the extra-judicial confession [Ex.P.10] that was given by Petchiammal [A1] to Iyyadurai [P.W.8], the Village Administrative Officer and the recoveries effected by the police, based on the police confession of the arrested accused.

9.It will be pertinent to state here that Ramar who had given the complaint, died even before the trial commenced. Selvam [P.W.1], brother of Petchiammal [A1], Shanmugampillai [P.W.2], father of Petchiammal [A1] and Muthukrishnan [P.W.3], son of Petchiammal [A1] have stated that Petchiammal [A1] was in relationship with Suresh [A2], which came to the knowledge of Paramasivam, who objected to it and the couple used to quarrel very frequently. Muthukrishnan [P.W.3], son of Petchiammal [A1] has stated that on 17.02.2009, he returned from work and was sleeping in the house. On the next day, when he woke up, there was a big crowd before his house and when he went to the terrace, he found the dead body of his father Paramasivam, with injuries on his neck.



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10.Selvam [P.W.1], in his evidence has stated that on the night of 17.02.2009, he heard screams for help from his sister's house and so he along with Ramar, rushed to the terrace of his sister's house and found his brother-in-law lying on the floor with injuries on his neck. He has also stated that he found a Rogor pesticide bottle, besides the body of Paramasivam. Thereafter, information was sent to Shanmugampillai [P.W.2], father of Petchiammal [A1], who came within a short while to the place of occurrence and joined the others. The presence of Petchiammal [A1] has also been spoken to by these witnesses, when they had assembled in the terrace. Of course, these witnesses have stated that Petchiammal [A1], came only after their arrival.

11.As regards the motive, we are of the opinion that the prosecution has proved the case beyond a cavil via the evidences of Selvam [P.W.1], Shanmugampillai [P.W.2] and Muthukrishnan [P.W.3]. We are also convinced that the death of Paramasivam was a homicide, but the question is whether the accused were the perpetrators of the crime.



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12.It is the specific case of the prosecution that at the time of registration of the FIR, none knew as to who the offender was and the break-through came only after Petchiammal [A1] surrendered before Iyyadurai [P.W.8] on 19.02.2009 at 08.00 a.m. and gave the extra-judicial confession [Ex.P.10]. However, Selvam [P.W.1], in the cross examination has stated that on 19.02.2009, the police took Petchiammal [A1] into their custody. Shanmugampillai [P.W.2], has also stated that within half an hour of he reaching the place of occurrence [which would be the night of 17.02.2009], his daughter was taken into custody by the police. Muthukrishnan [P.W.3], son of Petchiammal [A1] has stated in the cross examination that on the next day at 06.00 p.m., he was examined by the police. Thus, from the evidence of Selvam [P.W.1] and Shanmugampillai [P.W.2], it is apparent that the police came to the place of occurrence even before the FIR was registered and Petchiammal [A1] was taken into custody. Therefore, the extra-judicial confession [Ex.P.10] that Petchiammal [A1] is alleged to have been given to Iyyadurai [P.W.8] on 19.02.2009 at 08.00 a.m. stands vitiated.



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13.That apart, even if we give the benefit of doubt to the prosecution in this regard and held that the extra-judicial confession [Ex.P.10] is not vitiated, the viscera report [Ex.P.6] is contrary to the averments in extra-judicial confession [Ex.P.10], inasmuch as, in the extra-judicial confession [Ex.P.10] , Petchiammal [A1] has stated that a Rogor insecticide was purchased, but it was not administered to her husband, whereas the viscera report [Ex.P.6] clearly shows the presence of organophosphorus insecticide in the visceral organs. Yet another important factor is that the alleged purchase of the rogor pesticide does not bear the name of any of the accused. Of course, dictates of common sense tells us that a person who wants to commit a crime with a poison, would not be buying it in his name. However, Varadharaj [P.W.9], the owner of Shri Guru Agency, has stated that he does not know who had purchased the rogor pesticide covered by recovery mahazar [Ex.P.12]. An extra-judicial confession can be treated as a substantive piece of evidence only as against the maker and not against the co-accused in the light of Section 30 of the Indian Evidence Act, 1872.



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14.As regards the recovery of a towel [M.O.2], based on the confession of Suresh [A2], Muthukrishnan [P.W.3], has stated that on 18.02.2009, itself he was shown the towel, undergarments of his father and the rogor pesticide bottle by the police in the police station, which runs counter to the case of the prosecution that the recovery of the towel [M.O.2] was effected after the arrest of Suresh [A2] on 19.02.2009.

15.As regards the bite injury on the index finger of Suresh [A2], Dr.Natchinarkkiniyan [P.W.6], has stated in the cross-examination that a fresh wound would be reddish brown and would become black in colour, only a week later. In this case, the two wounds noted on the index finger of Suresh [A2] vide Accident Register [Ex.P.7], shows that they were black in colour and therefore, the explanation given by Suresh [A2] in his written statement under Section 313 Cr.P.C., that those two wounds were sustained by him long back, appears probable.



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16.In the result, we hold that the evidence on record is insufficient to sustain the conviction of the appellants. In fine, these Criminal Appeals are allowed and the appellants are acquitted of the charges under Sections 120B and 302 r/w. 34 IPC. Fine amount, if any paid by them, shall be refunded to them. Bail bonds shall stand terminated.

[P.N.P., J.] & [R.H., J.]
17.08.2022

Index : Yes/No
Internet : Yes
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To

1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.

2.The Inspector of Police,
Town Police Station,
Aruppukottai,
Virudhunagar District.

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

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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P.N.PRAKASH, J.
and
R.HEMALATHA, J.

MR

COMMON JUDGMENT MADE IN
CRL.A.(MD)Nos.263 of 2019 & 259 of 2021

17.08.2022