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Crl. A. (MD) No.365



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2022
DELIVERED ON : 22.07.2022

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MRS. JUSTICE R. HEMALATHA

Crl.A. (MD) No.365 of 2020

S. Charles

Appellant

v

State represented by
the Inspector of Police
Keeriparai Police Station
Kanyakumari District
(Cr.No.62 of 2009)

Respondent

Criminal Appeal filed under Section 374 Cr.P.C. seeking to call for the records and set aside the judgment and decree dated 26.08.2010 passed in S.C.No.6 of 2010 on the file of the Sessions Court, Kanyakumari Division at Nagerocil.

For appellant Ms. M. Krishnaveni
Legal Aid Counsel

For respondent Mr.A. Thiruvadi Kumar
Addl. Public Prosecutor

JUDGMENT

P.N. PRAKASH, J.

This criminal appeal has been preferred by the sole accused in Keeriparai

P.S.Cr.No.62 of 2009, calling into question the legality and validity of the judgment

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



and order dated 26.08.2010 passed in S.C. No.6 of 2010 on the file of the Sessions Court, Kanyakumari Division at Nagercoil.

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2 The prosecution story in a nutshell is as under:

2.1 This is a case in which a couple, viz., Rajendra Kumar and Leela, was said to have been murdered by the appellant, who is none other than their servant, since according to the latter, the deceased turned deaf ears to his advice that they should not go to church and worship evil spirits.

2.2 While Rajendra Kumar (D.1) and Leela (D.2) were living with their children in Door No.6-31/H-305, Kamarajapuram, Thadikarankonam, Kanyakumari District, the appellant was a resident of Kuttipothai Village in Thadikarankonam and was working under the deceased for eight years, residing in their outhouse and looking after their farm.

2.3 While so, on the evening of 08.08.2009, the deceased went with their children to partake in the chariot festival in the local Mother Mary's Church. They returned home around 9.30 p.m. without their children, after which, they both were found dead with multiple injuries on their bodies. Of course, none knew of it until the appellant surrendered to Marudanayagam (P.W.1), V.A.O. of Dharisanamkoppu Village at 7.00 a.m. on 09.08.2009 and gave an extrajudicial confession stating *inter alia* that he was a resident of Kuttipothai Village; his wife and children abandoned him eight years ago after which he joined as a farmhand under the deceased and was



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looking after their farm; on 08.08.2009, around 7.00 p.m., the deceased, along with their children, went to the chariot festival in the Mother Mary's Church, which was not to his liking, because, he was advising them to abstain from worshipping evil spirits, but, they were not listening to his words; Rajendra Kumar (D.1) was, for some time, suffering from mental illness; at that time, Leela (D.2) used to listen to his (appellant's) words; but, later, she ignored his words, which infuriated him; he (appellant) advised the deceased not to go to the church on that day, but, they ignored his advice and went to the church; therefore, he was very angry at them; when they returned home at 9.30 p.m., he belaboured Leela (D.2) with a knife and when Rajendra Kumar (D.1) came to her rescue, he attacked him also indiscriminately resulting in their death; thereafter, he went with the knife to an open field and spent the night there and hid the knife beneath a bush; since he did not know what to do, he surrendered before him (P.W.1) and confessed to the offence.

2.4 Marudanayagam (P.W.1) recorded the confession statement of the appellant and the same has been marked as Ex.P.1. Thereafter, Marudanayagam (P.W.1) took the appellant to the place of occurrence where he found two dead bodies. Thereafter, he took the appellant to the police station and produced him along with his report (Ex.P.2). The extrajudicial confession (Ex.P.1) was treated as a complaint and the police registered a case in Keeriparai P.S. Cr.No.62 of 2009 on 09.08.2009 at 9.00 a.m. under Section 302 IPC against the appellant and the printed FIR (Ex.P.13) was made ready.



2.5 Investigation of the case was taken over by Sudesan (P.W.12), Inspector of Police, who was holding additional charge of Keeriparai Police Station. Sudesan (P.W.12) went to the place of occurrence and prepared the observation mahazar (Ex.P.5) and rough sketches (Exs.P.14 and 15). He recorded the police confession of the appellant and based on the disclosure of the appellant, he recovered a knife (M.O.1) from beneath a bush under the cover of a mahazar (Ex.P.4). He conducted inquests over the bodies of the deceased and the inquest reports of Rajendra Kumar (D.1) and Leela (D.2) were marked as Exs.P.17 and 16 respectively.

2.6 The two bodies were sent for postmortem to the Government Hospital, Acharipallam, where Dr.Paramasivan (P.W.8) performed autopsies on the bodies of the deceased and issued postmortem certificate (Ex.P.8) and final opinion (Ex.P.9) *qua* Rajendra Kumar (D.1) and postmortem certificate (Ex.P.11) and final opinion (Ex.P.12) *qua* Leela (D.2).

2.7 Dr. Paramasivan (P.W.8) has noted 13 antemortem injuries each on the bodies of Rajendra Kumar (D.1) and Leela (D.2) and after obtaining the viscera report, has opined that they had died of complications due to multiple heavy cut injuries.

2.8 Investigation of the case was continued by Prakash (P.W.13), Inspector of Police, who examined various witnesses, collected various reports, completed the



investigation and filed a final report in P.R.C. No.14 of 2009 in the Court of the Judicial Magistrate, Boothapandi, against the appellant for the offences under Section 302 IPC (2 counts).

2.9 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Kanyakumari in S.C. No.6 of 2010 (for brevity “the trial Court”).

2.10 The trial Court framed a charge under Section 302 IPC against the appellant and when questioned, he pleaded ‘not guilty’.

2.11 Since the appellant did not have the means to defend himself, a counsel to defend him was nominated by the Legal Services Authority, Kanyakumari.

2.12 To prove the case, the prosecution examined 13 witnesses and marked 20 exhibits and 12 material objects.

2.13 When the appellant was questioned under Section 313 Cr.P.C., he denied the incriminating circumstances appearing against him. None was examined from the side of the appellant nor any document marked.

2.14 The trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 26.08.2010 in S.C. No.6 of 2010, convicted the appellant under Section 302 IPC (2 counts) and sentenced him to undergo life imprisonment concurrently for a period of not less than 20 years and pay a fine of Rs.



3,000/-, in default to undergo simple imprisonment for one month for each count.

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2.15 The appellant did not choose to assail the conviction and sentence recorded by the trial Court for a long time. Ultimately, an appeal was preferred belatedly by Ms. M. Krishnaveni, Legal Aid Counsel, with a delay of 3,587 days, to condone which, an application in CrI.M.P.(MD) No.4231 of 2020 was filed under Section 5 of the Limitation Act. This Court, *vide* order dated 04.12.2020, condoned the delay, after which, the present appeal was numbered and posted for hearing.

3 Heard Ms. M. Krishnaveni, Legal Aid Counsel, who appeared for the appellant and Mr. A. Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent State.

4 This is a case predicated on circumstantial evidence. With regard to circumstantial evidence, it is profitable to refer to the following passage from the Constitution Bench judgment of the Supreme Court in **Govinda Reddy and another vs. State of Mysore**¹:

"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."

¹ AIR 1960 SC 29
<https://www.mhc.tn.gov.in/judis>



5 The prosecution has proved the following facts beyond a peradventure.

✓ The deceased were with their children in Door No.6-31/H-305, Kamarajapuram, Thadikarankonam, Kanyakumari District.

✓ The deceased were murdered on the night of 08.08.2009.

6 The short question that falls for consideration of this Court is whether the appellant was the perpetrator of the offence.

7 To implicate the appellant with the crime, the prosecution placed strong reliance upon the extrajudicial confession (Ex.P.1) and the testimony of Noogukan (P.W.3), Kala (P.W.4), Selvan (P.W.5) and Paulraj (P.W.6).

8 What really bothers our judicial conscience is that surprisingly and shockingly, the prosecution has not placed any material giving details of the children of the deceased. The fact that the deceased had children finds a place in the extrajudicial confession (Ex.P.1) as well in the evidence of Noogukan (P.W.3) and Kala (P.W.4).

9 Now, let us examine the evidence of these witnesses. Noogukan (P.W. 3), in his evidence, has, *inter alia*, stated that he runs a tea shop in Kamarajarpuram; he knows the deceased as well the appellant; 35 days prior to the occurrence, Leela (D.2) came to his shop and told him that she is going to dispose of their properties and intends to settle in her native place; 2 days prior to the incident, the appellant came to his tea shop and at that time, when he told him as to what Leela (D.2) told



him, he (D.1) showed a sign of surprise and left the place; on 08.08.2009, around 9.30 p.m., while he was closing his tea shop, he found his neighbours Sulochana (not examined) and Kala (P.W.4) having a conversation; around that time, the deceased were walking towards their house; Sulochana asked Leela (D.2) whether she went to the church, for which, Leela (D.2) replied that she had left her children there and was returning; 10 minutes later, he saw the appellant going with a knife; thereafter, he heard a terrible noise from the house of the deceased; on the next day, around 8.30 a.m., he saw Marudanayagam (P.W.1) coming with the appellant to the house of the deceased and when he went, along with Marudanayagam (P.W.1) and the appellant, to the house of the deceased, he saw the two bodies.

10 Kala (P.W.4) has, *inter alia*, stated that on 08.08.2009, when she was engaged in a conversation with Sulochana near the tea shop of Noogukan (P.W.3), she saw the deceased returning from the church to their house; when she enquired Leela (D.2) about her children, she replied that they were still in the church and they would return by themselves; a little later, she saw the appellant going to the house of the deceased with a knife in hand; soon thereafter, she heard a terrible noise; she did not take it seriously as there used to be frequent quarrels; she came to know of the incident next day at 9.00 a.m.

11 Selvan (P.W.5), in his evidence, has stated that he was working as a



Watchman; he knows the deceased and the appellant; on 08.08.2009, around 10.30 p.m., he was on duty in Rangasamy Arch; at that time, he saw someone going and hence, he focused his torch light to find out who it was; he saw the appellant going towards the river channel with a knife in his hand; when he (P.W.5) enquired the appellant, the latter told him that he was going on a work; he saw bloodstains on the knife; on the next day, he learnt about the murder.

12 Paulraj (P.W.6), in his evidence, has, *inter alia*, stated that he knows the deceased; 6 months prior to the incident, there was a quarrel between the deceased and the appellant, in which, he held conciliatory talks with them; the appellant was looking after the properties of the deceased and was demanding a share in that; on 07.08.2009, while he was going by his vehicle, he was stopped by the appellant at the Thadikarankonam junction; the appellant told him (P.W.6) that since he (P.W.6) mediated between him and the deceased, he (P.W.6) should get him half share in the property, lest, he should get rid of the deceased; however, he (P.W.6) ignored the ranting of the appellant and proceeded with his work; later, on 09.08.2009, he came to know about the death of the deceased.

13 As stated above, there are materials to show that the deceased had children. There are also materials to show from the evidence of Noogukan (P.W.3) and Kala (P.W.4) that the deceased returned home from the church not accompanied by their children on the night of 08.08.2009, leading to the inference that the children must have been grown up for their parents to leave them alone during night hours in



the chariot festival. During the relevant point of time, Rajendra Kumar (D.1) was 46 years old and Leela (D.2) was 40 years old. There is absolutely no shred of evidence to show their name, sex, age and such other details as to what class they were studying, *etc.* There has also been no investigation by the police to show as to whether the children returned home from the church or not. Had they returned home from the church on the night of 08.08.2009, they would have definitely seen the dead bodies of their parents in the house and would have made a hue and cry, in which event, the attention of the neighbours could have been easily attracted.

14 We pored over the inquest reports (Exs.P.16 and P.17) and found that there is absolutely no reference to the details of the children therein. Strangely, Noogukan (P.W.3) has been cited as one of the panchayatdars (inquest witness), whereas, in column 4 of the inquest reports (Exs.P.16 and P.17) which relate to “the details of the person who had seen the deceased last alive”, the names of Noogukan (P.W.3) and Kala (P.W.4) do not figure and instead, the names of two Sulochanas figure, one Sulochana being W/o Thanga Nadar and the other Sulochana being W/o Sasi, figure. Whereas, these two witnesses, *viz.*, Noogukan (P.W.3) and Kala (P.W.4) have stated that they saw the deceased alive at 9.30 p.m. and the appellant was following them with a knife. According to these two witnesses, after they saw the appellant going behind the deceased with a knife in his hand, they heard a terrible noise from the house of the deceased, but, they did not care to find out what it was. This conduct of these two witnesses makes their testimony suspect. Selvan (P.W.5)



has stated that he saw the appellant with a knife going towards the water channel even after which he did nothing to relate it to the occurrence.

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15 The first motive for the murder, as allegedly disclosed by the appellant in the extrajudicial confession (Ex.P.1) is that the appellant was riled at the deceased for not giving heed to his advice that they should refrain from going to church and worshipping evil spirits. In other words, according to the extrajudicial confession (Ex.P.1), the appellant was advising the deceased not to go to the church and worship evil spirits. The fact remains that the appellant himself is a Christian. He being a Christian, his version that he advised the deceased not to go to church and worship evil spirits sounds a bit illogical. Supposing he is a person professing any other religion, this Court could find some substance in such a version of his. That is not the case here.

16 However, the second motive, as per the inquest reports (Exs.P.16 and P. 17), that is attributed for the murder is that the appellant feared that his services would be discontinued by the deceased if the farm which is looked after by him, is disposed of by them.

17 The third motive that has been projected through the evidence of Paulraj (P.W.6) is that the appellant was objecting to the idea of the deceased to dispose of their properties and was demanding a share in them.



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18 Be it noted, an extrajudicial confession has to be either believed *in toto* or rejected *in toto* and it cannot be both believed in part and rejected in part, in that, one cannot accept that part of the extrajudicial confession (Ex.P.1) in which the appellant has stated that he had attacked the deceased indiscriminately and eliminated them and however, reject the motive attributed therein. Hence, even on the own showing of the prosecution, there are conflicting versions galore, to be precise, three in number, with regard to the motive for the murder. Motive assumes significance in a case predicated on circumstantial evidence as the present one.

19 Finally, based merely on the recovery of the knife (M.O.1) on the alleged disclosure of the appellant in his police confession without anything more, the conviction and sentence imposed on the appellant cannot be sustained.

20 In view of the foregoing discussion, the judgment and order of conviction and sentence dated 26.08.2010 passed by the trial Court in S.C. No.6 of 2010 is set aside and the appellant is directed to be released forthwith, provided his presence is not required in connection with any other case. Fine amount, if any, paid by the appellant shall be refunded.

In the result, this criminal appeal stands allowed.



CrI. A. (MD) No.365

(P.N.P., J.) (R.H., J.)
22.07.2022

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To

- 1 The Inspector of Police
Keeriparai Police Station
Kanyakumari District
- 2 The Sessions Judge
Kanyakumari Division at Nagerocil
- 3 The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai
- 4 The Superintendent of Prisons
Palayamkkottai
Tirunelveli District
- 5 The Section Officer
V.R. Section
Madurai Bench of Madras High Court



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P.N. PRAKASH, J.

and

R. HEMALATHA, J.

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