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Crl.A(MD)No.335 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.07.2022

DELIVERED ON : 22.07.2022

CORAM :

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

Crl.A(MD)No.335 of 2019

Ravi @ Nagarajan

.. Appellant/Accused

Vs.

State represented by,
The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
(Crime No.29/2012)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order dated 02.07.2015 in S.C.No.97 of 2012 passed by the learned Principal District and



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Sessions Judge, Virudhunagar at Srivilliputhur.

For Appellant : Ms.C.Jaya Indra Patel
Legal Aid Counsel

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

The appellant has filed the present appeal against the judgment and order dated 02.07.2015 passed by the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur, in S.C.No.97 of 2012, wherein the appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo Life Imprisonment. He filed the appeal along with a petition to condone the delay of 1341 days in filing the appeal, in Crl.M.P(MD)No.6142 of 2019. The delay was



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condoned by this Court vide, orders dated 22.07.2019.

2. The prosecution theory as could be discerned from the oral and documentary evidence is as follows:

- i. The deceased Rajamani was working as a Cashier in 'Arthi Hotel', Srivilliputhur, owned by one Ranganathan [P.W-1]. The appellant was also employed as a daily wager in the same hotel. The appellant, victim Rajamani and one Kumar [P.W-15] used to stay in the Hotel. The case of the prosecution is that the appellant was often demanding money from the Cashier Rajamani (deceased) and this was informed by the latter to the owner of the Hotel [P.W-1]. P.W-1 had reprimanded the appellant. Infuriated over this issue, the appellant had apparently threatened the victim with dire consequences. Since the appellant could not get money from the victim, he planned to eliminate him. On 17.01.2012 at



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about 4.00 a.m., when Rajamani was sleeping near the cash-box in the ground floor of the Hotel, the appellant took a Coir rope used for drying clothes and made a tight knot in the rope. When Rajamani got up and was sitting on his bed, the appellant strangled him from behind with the rope and also tightened the rope by rotating it three times around his neck.

- ii. At about 5.00 a.m., Kumar [P.W-15] heard some one knocking on the door of the hotel and when he came down, he saw the lock of the grill gate open, and Rajamani lying dead near cash box with a noose around his neck and blood oozing from his nose. P.W-15 tried to go near Rajamani, but was prevented by Velmurugan [P.W-6], the person, who knocked the door for supplying cashew nut shells. P.W-15 immediately called Ranganathan [P.W-1], the owner of the hotel, and informed him about the incident. The appellant, who was sleeping in the same room in the first floor with P.W-15 was



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found missing. P.W-1, who visited the hotel also searched for the appellant and he was not found anywhere in the hotel. Thereafter P.W-1 went to Srivilliputhur Town Police Station and lodged a complaint [Ex.P1] on the same day.

iii. Thiru.S.Gnanasoundarai[P.W-13], Sub Inspector of Police, Srivilliputhur Town Police Station received the complaint Ex.P1 from P.W-1 at about 8.00 a.m., and registered an FIR [Ex.P7] in Crime No.29 of 2012 under Section 174 Cr.P.C. (suspicious death) and placed the records before the Inspector of Police for further investigation.

iv. Thiru.Sivasankaran[P.W-16], Inspector of Police, Srivilliputhur Town Police Station, took up investigation in Crime No.29 of 2012, went to the scene of occurrence at about 8.45 a.m., and prepared an observation mahazar [Ex.P-2] and also a Rough Sketch [Ex.P-9] in the presence of the witnesses, Annamalai Selvan[P.W-5] Village



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Administrative Officer and his assistant Jayasankar [not examined]. The employees and the owner of the Hotel [P.W1, P.W3, P.W4 and P.W15] informed the Investigation Officer that the appellant was demanding money from the victim, Rajamani and since Rajamani refused to pay, he was threatened with dire consequences by the appellant. It was also found that from the date of occurrence the appellant went missing.

- v. P.W-16 conducted inquest [Ex.P-10] on the body of the deceased at the scene of occurrence at about 9.30 a.m. in the presence of panchayatdhars. Thereafter, the body of the deceased was sent to Government Hospital, Srivilliputhur, for postmortem through Thiru.Balamurugan [P.W-10], Police Constable, along with a requisition letter.
- vi. Dr.Ganesan [P.W-14] conducted autopsy on the body of the deceased. In his evidence as well as in the postmortem



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certificate, he has stated that a 15 feet long Coir rope with a diameter of 1.5 c.m. with a slip knot was tightened around the neck of the deceased by rotating it three times around his neck. He cut the rope and found ligature marks around the neck of the deceased. In the opinion of Dr.Ganesan[P.W-14] *“the deceased appeared to have died of strangulation causing blockage to the windpipe and veins carrying blood to the brain leading to asphyxia, which resulted heart and lungs failure, 8 - 14 hours prior to autopsy”*.

Postmortem certificate was marked as Ex.P-8.

vii. Thereafter, Balamurugan[P.W-10] Police Constable handed over the body of the deceased to his relatives and submitted the Coir rope[M.O1] and a white Dhoti [M.O2] removed from the body of the deceased to Thiru.Sivasankaran [P.W-16], the Investigation Officer. The Investigation Officer received the same under the cover of a mahazar [Ex.P11] in the presence



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of Thirumalai Muthu and Gopalakrishnan (both not examined) and sent the same to the concerned jurisdictional Magistrate.

viii. On 29.01.2012, at about 4.00 p.m., the appellant appeared before Thiru.Veeraraghavan [P.W-11] Tahsildar, in his office and voluntarily gave an extra-judicial confession [Ex.P4], and the same was reduced into writing by P.W-11 in the presence of Gomathi Nayagam, the Revenue Inspector. He then produced the appellant before the Inspector of Police, Srivilliputhur Town Police Station. He also submitted the extra-judicial confession [Ex.P4] with his covering letter[Ex.P-5].

ix. P.W.11 sent the FIR and other connected records to the Judicial Magistrate No.II, Srivilliputhur along with a letter [Ex.P6]. P.W-16 altered the FIR from Section 174 Cr.P.C. to Section 302 IPC and the alteration report was marked as



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Ex.P12.

- x. P.W-16, thereafter arrested the appellant and produced him before the Judicial Magistrate No.II, Srivilliputhur, for judicial custody.
- xi. After completing investigation, P.W-16 filed a final report against the appellant for an offence punishable under Section 302 IPC, before the learned Judicial Magistrate No.II, Srivilliputhur in P.R.C.No.XV of 2012, who in turn committed the case to the Court of Sessions, after furnishing copies of records to the appellant under Section 207 of the Code of Criminal Procedure. The learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur, took up the case on file in S.C.No.97 of 2012 and framed a charge under Section 302 IPC against the appellant. Since the appellant pleaded not guilty, the case was posted for trial.
- xii. In order to establish the guilt of the appellant, the



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prosecution examined sixteen witnesses and marked twelve documents and two material objects.

xiii. When the appellant was questioned under Section 313 of the Criminal Procedure Code with regard to the circumstances appearing in evidence against him, he denied of having committed any offence. However, no witness was examined on his side.

xiv. The learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur after analysing the oral and documentary evidence adduced on both sides, held that the prosecution had established the guilt of the appellant beyond reasonable doubt and convicted the appellant for an offence under Section 302 IPC and sentenced him to undergo Life Imprisonment. Challenging the same, present appeal is filed by the appellant.



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3. This is a case based on circumstantial evidence. In such cases, the proof has to be stricter. It is well settled that the following conditions have to be fully satisfied.

a) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

b) that facts must be consistent only with the hypothesis of the guilt of the accused.

c) The circumstances should be of a conclusive nature and tendency.

d) That the circumstances should, to a moral certainty, actually exclude every hypothesis except the one proposed to be proved.

4. Besides these well settled guidelines, the Apex Court also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. Considering the position of law as sealed by the Apex Court, let us go into the weight of



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evidence produced by the prosecution.

5. The appellant was employed by Thiru.Ranganathan[P.W-1], the Hotel owner as a daily wager. The evidence of Kumar[P.W-15] who was the first to see the victim dead is that on the previous night of the fateful day, ie., on 16.01.2012, he as well as the appellant were sleeping in the first floor of the hotel, whereas the Cashier Rajamani was sleeping downstairs near the cash-box. P.W-15, woke up at about 5.00 a.m. on 17-01-2012 after hearing some one knocking on the entrance door downstairs and when he came down, he saw Rajamani lying on the floor with a rope tied around his neck and blood oozing out from his nose. The appellant was not found in the first floor room where he was sleeping. What followed was also narrated by the prosecution.

6.Thiru.Muthuselvam [P.W-7], a resident of Srivilliputhur and who knows the appellant, had seen the appellant at about 4.15 a.m., on



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17.01.2012 coming out of 'Arthi Hotel' opening the Grill gate door. According to Muthuselvan, he and his friend Marimuthu had come to a tea shop near 'Arthi Hotel'. Thiru.David Sankaran [P.W-8], working as a Supervisor in 'Arthi Hotel', had deposed that the appellant was employed for cutting vegetables in the hotel and that the appellant, Kumar [P.W-15] and cashier Rajamani used to stay in the hotel itself. On 17.01.2012, when he and Thavasivaraman [P.W-9] went to a public toilet in the bus stand around 4.30 a.m., they saw the appellant boarding a bus which was proceeding to Madurai. Thus, P.W-7 to P.W-9 have seen the appellant coming out of the hotel after opening the Grill gate and boarding a bus in the early morning of 17.01.2012. Nothing useful was suggested to these witnesses to counter their versions during the course of cross-examination. Moreover, it is not also the case of the defence that the appellant and P.W-7 to P.W-9 had previous enmity. Infact, to the suggestion put to P.W-7 and P.W-8 as to why they did not use the toilet in 'Arthi Hotel', they stated that the said toilet was under renovation and



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that there was no water supply. P.W-7 to P.W-9 are not also related to the victim. They are independent witnesses.

7.Both P.W-8 and P.W-9 went to 'Arthi Hotel' after receiving intimation of murder of Rajamani at about 6.30 a.m., and found the dead body of the victim. They also saw a Coir rope with a noose around the neck of the deceased and tightened by rotating it three times around the neck. The postmortem certificate also confirms this and therefore, the death of Rajamani is homicidal death and not a suicide as alleged by Ms.C.Jaya Indra Patel, learned counsel for the appellant.

8. Apart from this, in the instant case, the appellant has given an extra-judicial confession [Ex.P4] before Veeraragavan[P.W-11], Tahsildar, Srivilliputhur on 29.01.2012 at about 5.00 p.m, when the Tahsildar was in his office. The evidence of Tahsildar [P.W-11] is that the accused came down to his office and gave a confessional statement



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voluntarily and he recorded the same. Since the FIR was initially registered under Section 174 Cr.P.C., it was sent to Revenue Divisional Officer for enquiry. After the extra-judicial confession, FIR was sent to Court on 29.01.2012. The learned Judicial Magistrate received the FIR on the same day at about 9.05 p.m. There was no undue delay in any of the processes.

9. The prosecution has been able to prove the motive behind the murder of Rajamani through the evidence of P.W-1, P.W-3, P.W-4 and P.W-15, who have deposed about the incident in which the appellant threatened the victim of dire consequences upon the latter's refusal to give money. It is pertinent to note that both P.W-3 and P.W-4 were also working in the same hotel and also had witnessed the appellant picking up quarrel with the deceased demanding money prior to the murder. It is also clear from the evidence of P.W-15 that the appellant went missing on the date of occurrence and in-fact, as already observed, the appellant was



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last seen by Muthuselvan [P.W-7], P.W-8 and P.W-9. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 Cr.P.C., he did not explain as to why he left the Hotel on 17.01.2012 and went absconding. It is not the case of the defense that the appellant left the Hotel after getting prior permission from the owner of the Hotel [P.W-1] or that he quit the job.

10. Ms.Jaya Indra Patel, learned counsel for the appellant contended that the prosecution had failed to recover the lock in the Grill gate and that the Tahsildar also was not able to identify the appellant. It is also her contention that the hotel is situated in a busy locality and it is very much possible for some other person to have entered inside the hotel and commit the offence.



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11. Non-recovery of the lock is not fatal to the case of the prosecution in the light of the circumstantial evidence in this case. The chain of events coupled with the missing accused and the 'last seen' theory are all unbreakable. The Tahsildar [P.W-11] was examined two years after the extra-judicial confession given by the appellant. The time lapse and the nature of duty performed by a Tahsildar also can be attributed to this. Besides the extra-judicial confession, the other circumstances also clearly point fingers at the appellant. There can be no reason why or how an intruder came inside the hotel, which was under lock and key, and kill the victim by strangulating him. In fact, the lock was found intact by all the witnesses and it is not also the case of the appellant that the lock was broken. Such suggestions or conjectures cannot break the chain of events put forth by the prosecution. If that was so why was the appellant who stayed in the hotel was missing in the hotel immediately after the murder. This has not been explained properly by the appellant when he was questioned under Section 313 Cr.P.C.



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12. Another aspect harped upon by the learned counsel for the appellant is that the hotel was not functioning during Pongal festival and therefore, the prosecution theory that the appellant was staying in the hotel is a concocted version of the prosecution. This contention of the learned counsel for the appellant cannot be accepted, because P.W-15, who was working along with the appellant had clearly deposed that the appellant was staying in the hotel and that on the night of 16.01.2012, he and the appellant were sleeping in the first floor of the hotel. Nothing useful was suggested to him during the course of cross-examination to discredit or disbelieve his version. For the sake of arguments, even if we assume that there was a holiday for the hotel due to Pongal festival, it would not mean that no staff would stay in the hotel. Some workers, who may not wish to go home may prefer to remain in the hotel. Moreover, it is in evidence that the appellant, who married thrice got separated from all his wives and was living alone. No motive was suggested to PW15 the co-worker, to falsely implicate the appellant in the murder during the



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course of cross-examination.

13. The owner of the hotel, who was examined as P.W-1 had also deposed that the appellant was staying in his hotel. The behaviour of the appellant after the commission of the offence has also to be taken into account. Though the learned counsel for the appellant had contended that it is possible for some other person to enter the hotel and commit murder, the prosecution version carried more credibility with no conjectures or surmises. It was also suggested to P.W-1, during the course of cross examination, that the deceased could have committed suicide. In this regard, the evidence of the doctor and the postmortem certificate, are clear that it is a case of homicide. In fact, the doctor in his postmortem certificate has clearly mentioned that the deceased was strangulated with a Coir rope measuring 15 feet long with a diameter of 1.5 c.m. in which a slip knot was found and it was tightened by rotating it three times around his neck. A person, who commits suicide could not



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have rotated the rope around his neck all by himself. Therefore, the contention of the learned counsel for the appellant cannot be accepted and the prosecution has proved the case beyond reasonable doubt that the appellant had committed the offence punishable under Section 302 IPC.

14. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The conviction and sentence passed by the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur, against the appellant in S.C.No.97 of 2012 dated 02.07.2015, is hereby confirmed.

(iii) We place on record our appreciation to Ms.C.Jaya Indra Patel, the counsel nominated by the High Court Legal Services Authority for effectively arguing the case of the appellant and we



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direct that she be paid a remuneration of Rs.10,000/- (Rupees Ten Thousand only).

[P.N.P., J.] & [R.H., J.]
22.07.2022

Index : Yes/No
Internet : Yes/No
PJJ

To

- 1.The Principal District and Sessions Judge,
Virudhunagar at Srivilliputhur.
2. The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Secretary,
High Court Legal Services Committee,
Madurai Bench of Madras High Court,
Madurai.



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**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

Judgment made in
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22.07.2022