



CRL.A.NO.30 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30 / 08 / 2023

JUDGMENT PRONOUNCED ON: 25 / 09 / 2023

CORAM:

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

CRL.A.NO.30 OF 2021

Anjalai

... Appellant

Versus

State by:

The Inspector of Police
Vadalur Police Station
Cuddalore District.
(Crime No.241/2016)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the conviction and sentence imposed in the judgment dated 17.12.2020 passed in Sessions Case No.378 of 2018, on the file of the I Additional District and Sessions Judge, Cuddalore.

For Appellant : Mr.R.Bharath Kumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT



CRL.A.NO.30 OF 2021

R.SAKTHIVEL, J.

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This Criminal Appeal is preferred by the appellant / sole accused in S.C.No.378 of 2018 on the file of I Additional District and Sessions Judge, Cuddalore, assailing the judgment passed by the learned Sessions Judge on 17.12.2020 in which she was convicted and sentenced to undergo imprisonment for Life and fine of Rs.2,000/-, in default, to undergo six months simple imprisonment for the offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter referred to as 'IPC' for the sake of brevity].

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

(i) The deceased Gunasekaran and the appellant / accused were living together as husband and wife without marriage in Kurinjipadi, Vadalur and Periyakurichi in rental houses. In the meantime, the deceased entered into a relationship with a woman YY (name masked for the sake of privacy) and did not visit the appellant / accused house regularly for the past six months

2/25



CRL.A.NO.30 OF 2021

prior to the occurrence. The appellant / accused was residing in a house at Muthu Reddy Street, Vadalur, as a tenant under one Tmt.Kaliyammal (L.W.3). As the appellant/accused quarreled with YY, the deceased Gunasekaran in turn quarreled with the appellant / accused and assaulted her. On 22.06.2016 at 10.00 P.M. deceased Gunasekaran came to the house of the appellant / accused, quarreled and assaulted the appellant / accused. This act of the deceased provoked the appellant / accused to do away the life of the deceased Gunasekaran. On 23.06.2016 at about 01.00 A.M., when the deceased was sleeping in the house of the appellant / accused, the appellant / accused with an intention to murder him, has made two cut injuries on his neck and chest by knife knowing well that her acts would likely cause his death. Hence, the charge under Section 302 of IPC against the appellant / accused.

(ii) The learned Sessions Judge framed charge against the appellant / accused under Section 302 of IPC and questioned her under Section 228 (2) of 'The Code of Criminal Procedure, 1973' [hereinafter 'Cr.P.C.' for the sake of brevity, convenience and clarity]. Since the appellant /



CRL.A.NO.30 OF 2021

accused denied the charges and pleaded not guilty, trial was ordered.

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(iii) With a view to prove the case, Prosecution examined ten witnesses as P.W.1 to P.W.10 and Ex-P.1 to Ex-P.14 documents and MO-1 to MO-9 were marked.

(iv) After hearing both sides, the learned Sessions Judge came to the conclusion that the Prosecution has proved the charge under Section 302 of IPC against the appellant / accused. Therefore, the learned Sessions Judge convicted and sentenced the appellant / accused to undergo imprisonment for life and also imposed a fine of Rs.2,000/-, in default of payment of fine, to undergo simple imprisonment for six months.

(v) Feeling aggrieved with the conviction and sentence passed by the learned I Additional District and Sessions Judge, Cuddalore, the appellant / accused preferred this criminal appeal.

3. The points that arise for consideration in this appeal are as



CRL.A.NO.30 OF 2021

follows:

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(i) Whether the Prosecution has proved the charge U/s 302 IPC against the appellant / accused beyond reasonable doubt?

(ii) Is there any reason to interfere with the Trial Court judgment?

Discussion and decision for Point Nos.(i) and (ii)

4. Learned counsel for the appellant / accused has argued that the appellant / accused has not committed any offence as alleged; that the learned Sessions Judge has not considered the evidence properly; that the deceased might have been killed by some other person; that the appellant / accused, in fact went to the police station and informed the occurrence; that the Investigating Officer without conducting proper enquiry and without hearing the appellant / accused has registered FIR against the appellant / accused; that the P.W.5 is stock witness of the police and his evidence cannot be relied upon; that the learned Sessions Judge has believed the evidence of



CRL.A.NO.30 OF 2021

P.W.5 and came to the conclusion that the appellant has committed the offence; that the Prosecution has not proved the statement of Late Kaliyammal (L.W.3) who is the important witness in this case. He further argued that in and around the alleged place of occurrence, many residential houses are there but the Investigating Officer has not examined any person residing in the locality, which creates doubt over the Prosecution case. Learned Counsel further argued that in this case, there are no eye witnesses and Prosecution case is rested solely on the circumstantial evidences and the alleged circumstances have not been clearly established by the Prosecution. He further argued that the investigation had not been conducted properly and finger print had not been collected from the scene of occurrence and from the MO-1. The sum and substance of the submission of learned counsel is that the investigation is a defective one which caused prejudice to the accused. Accordingly, he has prayed to allow the appeal and interfere with the Judgment of learned Sessions Judge and acquit the accused. In support of his argument, learned Counsel has relied on a case law reported in **2023 SCC ONLINE SC 746 [STATE OF PUNJAB VS. KEWAL KRISHNAN]**.

5. Learned Additional Public Prosecutor for the respondent /

6/25



CRL.A.NO.30 OF 2021

State has submitted that the occurrence took place at 01.00 AM (mid night) on 23.06.2016 in the house of the appellant / accused. The appellant / accused and the deceased were living under one roof without marriage. Further, Prosecution has established that the deceased died due to cut injury caused to him by examining the Post-Mortem Doctor; that the dead body of the deceased was recovered from the appellant / accused house. Further the Prosecution has proved the arrest and recovery of MO-9, based on the disclosure statement of the appellant / accused. Hence, Prosecution has proved its case and further submitted that in view of Section 106 of the Indian Evidence Act, 1872 (1 of 1872) the onus of proof has shifted to the appellant / accused to explain the circumstances. But the appellant / accused has not explained her case. Hence, the Prosecution has proved the case beyond reasonable doubt. The learned Sessions Judge after examining all the facts and circumstances has come to the conclusion that the appellant / accused committed the offence under Section 302 IPC and there is no warrant to interfere with. Accordingly, he has prayed to dismiss the appeal.

6. This Court has considered both side arguments and perused

7/25



the entire evidence available on record.

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7. In this case there is no eye-witness. This case is solely rested on circumstantial evidence. Before going into the merits of this case, this Court wants to state the legal position relating to a case arising out of circumstantial evidence. Hon'ble Supreme Court in **GOVINDHA REDDY VS. STATE OF MYSORE [AIR 1960 SC 29]** held as follows:

'5.The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of Madhya Pradesh, 1952 AIR(SC) 343, and it is as follows:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, 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.”

8. The Hon'ble Supreme Court in ***SHAIK MASTAN VALI VS. STATE OF ANDHRA PRADESH [(2007) 9 SCC 342]*** has held as follows:

'16. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra. Therein, while dealing with circumstantial evidence, it has been held that the onus is on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are; (SCC p. 185, para 153)

“(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;



CRL.A.NO.30 OF 2021

(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."*

This Court approaches this case in the light of the above legal principles.

9. The Prosecution has relied upon the following circumstances to connect the appellant / accused with the crime :

Circumstance (i): Whether the appellant / accused and the deceased were living in a relationship out of marriage?

(a) According to the Prosecution case, the appellant / accused and the deceased Gunasekaran were living under one roof without marriage. The Prosecution with a view to prove the said fact has examined Thiru. Sivakumar (P.W.3) and Tmt. Shanthi (P.W.4) who are brother and sister of the deceased. They deposed that the deceased had relationship with the



CRL.A.NO.30 OF 2021

appellant/accused. Prosecution did not examine any more witness to prove the said fact. As stated *supra*, the evidence of P.W.3 and P.W.4 did not establish the fact that the appellant / accused and the deceased had relationship out of marriage. Hence, the said circumstance has not been established by the Prosecution.

Circumstances (ii) and (iii): Whether the appellant / accused and the deceased were last seen together on the night of 22.06.2016 at 10.00 P.M. by the house owner Tmt.Kaliyammal (L.W.3) (land lady) and whether the appellant / accused left the house on 23.06.2016 at 5.30 A.M. and the same was seen by Tmt.Kaliyammal (L.W.3)?

(a) The Investigating Officer (P.W.10) examined Tmt.Kaliyammal (L.W.3) who is the owner of the house where the appellant / accused was residing. P.W.10 recorded Tmt.Kaliyammal (L.W.3) statement under Section 161(3) of the Cr.PC on 23.06.2016. On the same date he recorded the statement of Thiru.Radhakrishnan (P.W.1), Thiru.Sivakumar (P.W.3) and Thiru.Vijayaraghavan (P.W.5). P.W.10 sent the said witness



CRL.A.NO.30 OF 2021

statement to the Jurisdiction Magistrate on 23.06.2016 itself but the statement of Tmt.Kaliyammal (L.W.3) was sent to the Jurisdictional Magistrate in the month of August 2016 only, which creates suspicion as to whether P.W.10 examined Tmt.Kaliyammal (L.W.3) under Section 161(3) Cr.PC on 23.06.2016. It is to be noted that Tmt.Kaliyammal (L.W.3) died on 14.11.2018 before the commencement of the trial. Prosecution has not proved the statement of Tmt.Kaliyammal (L.W.3) as per the law. Prosecution did not examine any person to prove that the deceased and the appellant / accused were last seen together on 22.06.2016 in the appellant / accused house. P.W.10 has not spoken a single word about the death of Tmt.Kaliyammal (L.W.3) and her statement recorded by him under Section 161(3) of Cr.PC. Admittedly, in and around the appellant /accused house 20 houses are situated. P.W.10 did not examine any person except Tmt.Kaliyammal (L.W.3). The Village Assistant Thiru.Karmegham was examined as P.W.2. He deposed that Tmt.Kaliyammal (L.W.3) told him that the appellant / accused and the deceased were living as Husband and Wife in her house as tenant and there was a quarrel between the appellant / accused and the deceased on 22.06.2016 at 10.00 P.M. i.e. the night before the incident. But



CRL.A.NO.30 OF 2021

the aforesaid statement made in the court was not made by him while giving statement under Section 161(3) of Cr.PC. P.W.2 evidence in this regard is an improvement and an after thought and it does not inspire confidence of this Court. Hence, this Court is of the view that Circumstances No. (ii) and (iii) are not established by the Prosecution.

Circumstance (iv): Whether Thiru.Vijayaraghavan (P.W.5) went to the appellant / accused house and saw the dead body of the deceased?

(a) This Court has perused the deposition of P.W.5 carefully. P.W.5 is a retired employee of Neyveli Lignite Corporation (N.L.C.) and Councillor for 12th ward of Vadalur Town Panchayat at the time of occurrence. His deposition was recorded on 03.07.2019. He deposed that Muthu Reddy Street comes under Ward No.12. As a Councillor, he used to visit his ward to hear the grievance of his ward people. Three years before the date of this deposition, he went to Muthu Reddy Street for hearing grievances of his ward people. At that time appellant / accused was quarreling with a person. He enquired them and found that the appellant / accused name is Anjalai and the



CRL.A.NO.30 OF 2021

person with whom the appellant / accused quarreled was Gunasekaran (deceased) and both of them are living together without marriage. Two days thereafter, the appellant / accused and the deceased were quarreling in front of appellant / accused house as if the deceased has contact with another woman. He and house owner Tmt.Kaliyammal (L.W.3) pacified the appellant / accused and the deceased Gunasekaran. Next day early morning i.e. on 23.06.2016, when he visited Muthu Reddy Street, the house of the appellant / accused was kept open, when he went inside the house, he found deceased Gunasekaran in a pool of blood with cut injury on his neck. He called Tmt.Kaliyammal (L.W.3) and informed the incident. Tmt.Kaliyammal (L.W.3) and other persons who were living in the street came and saw the deceased body.

(b) He informed the incident to Thiru Karmegham (P.W.2) Village Assistant over phone. P.W.2 came to the spot and in turn he informed to the Village Administrative Officer, Thiru.Radhakrishnan (P.W.1). Thereafter P.W.1 filed Ex.P-1 complaint. P.W.5 further deposed that appellant/ accused had been living in Muthu Reddy Street for two months



CRL.A.NO.30 OF 2021

before the incident; that there are 20 residential houses around the scene of occurrence; that he did not see the appellant / accused on the date of incident; that the Inspector of Police (P.W.10) came to the scene of occurrence and started investigation. P.W.10 sent the body for Post-Mortem. Though denied that the appellant / accused side put a suggestion to P.W.5 that appellant / accused did not commit the offence and the appellant / accused and the deceased used to get along well, cannot be ignored.

(c) This Court has carefully considered the evidence of P.W.5. The evidence of P.W.5 is that he went to the appellant / accused house and saw the dead body of the deceased on 23.06.2016 and the same is being corroborated by P.W.1, P.W.2 and P.W.10 evidence. To that extent the evidence of P.W.5 is believable. The other portion of the evidence is that the appellant / accused and the deceased were fighting each other two days before the occurrence and that P.W.5 and Tmt.Kaliyammal (L.W.3) pacified them etc., have not been corroborated by any other witnesses. Investigating Officer did not examine any person who is residing in and around the area. No explanation was given by the Investigating Officer in this regard. Hence, this



CRL.A.NO.30 OF 2021

Court comes to the conclusion that P.W.5 saw the dead body of the deceased on early morning of 23.06.2016 at appellant / accused house.

Circumstance (v): Did the Investigating Officer (P.W.10) visit the alleged scene of occurrence on 23.06.2016 at 09.30 A.M. and collect MO-1 to MO-8 from the alleged scene of occurrence?

(a) Investigating Officer (P.W.10) visited the alleged scene of occurrence on 23.06.2016 at 09.30 A.M. and started investigation, seized the dead body, collected MO-1 to MO-8 and conducted Inquest on the dead body. The said fact has been corroborated by Thiru.Sundhar (P.W.6). It is to be noted that the alleged Panchayatars, who signed the Inquest Report have not been examined in this case. No explanation was offered by the Investigating Officer in this regard. The dead body was sent for Post-Mortem. The Post-Mortem Doctor was examined as P.W.8 and his report was marked as Ex.P-6. As per Ex.P-6, the deceased died due to shock and Hemorrhage consequent upon injury to neck structures. The Prosecution has established that the deceased died due to Homicidal Violence. It is apposite to state here that the



CRL.A.NO.30 OF 2021

blood stained materials or any marks found in and around the scene of occurrence are relevant and admissible under Section 7 of the Indian Evidence Act, 1872. But in this case, the Investigating Officer did not send the blood stained material objects to the Forensic Science Laboratory for Chemical Analysis. To be stated, the knife allegedly used in this crime was also not subjected to Chemical Analysis. Since, this case is solely rested on Circumstantial Evidence, the Investigating Officer ought to have sent the blood stained material objects for Chemical Analysis to confirm the place of occurrence and to connect the weapon with the crime. Hence, this Court comes to the conclusion that the Investigating Officer visited the alleged scene of occurrence on 23.06.2016 and collected MO-1 to MO-8 from the alleged scene of occurrence but the Investigating Officer miserably failed to prove that the occurrence happened inside the appellant / accused house. It is to be noted, the defense of the appellant / accused is that the deceased might have been killed by some other person.



CRL.A.NO.30 OF 2021

Circumstances (vi) and (vii): Arrest, Confession and Recovery

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(a) According to the Prosecution, the appellant / accused was arrested on 23.06.2016 at 03.30 P.M. near Vadalur Sathya Gnana Sabha and she gave confession in the presence of witness Thiru.Tamil Selvan (P.W.7) and Thiru.Sivakumar. Prosecution examined P.W.7 to prove the confession and disclosure statement of the appellant / accused. P.W.7 did not support the case of the Prosecution. He deposed that he saw the accused present in the Police Station when he went to Police Station for some other work and he signed the document in the Police Station. The Prosecution cross examined the said witness under Section 154 of the Indian Evidence Act, 1872. Despite cross examination, the Prosecution did not get any amount of evidence in its favour. Another witness Thiru.Sivakumar was not examined by the Prosecution and no explanation was offered in this regard. It is apposite to mention that, P.W.1 in his evidence clearly stated that on 23.06.2016 at about 8.00 A.M. when he came to Police Station for filing complaint (Ex-P.1), the appellant / accused was present in the Police Station. P.W.1 is an official witness. There is no reason to reject the evidence of P.W.1. Hence, the



CRL.A.NO.30 OF 2021

Prosecution theory that the appellant / accused was arrested on 23.06.2016 at 03.30 P.M. is belied. Moreover, the case of the Prosecution is that the Investigating Officer seized the blood stained MO-9 Knife. But MO-9 was not subjected to Chemical Analysis to connect the knife with the Crime. This aspect has been specifically put in the form of question to the Investigating Officer. Investigating Officer did not offer any explanation in this regard. Hence, this court comes to the conclusion that arrest of the accused, disclosure statement and the seizure of MO-9 are doubtful.

Circumstance (viii): Section 106 of Indian Evidence Act, 1872

(a) The learned Additional Public Prosecutor submitted that the appellant / accused did not enter in to the witness box and prove her defense. Further, he submitted that the learned Sessions Judge has correctly applied the provisions of law. This Court has carefully considered the submission made by the learned Additional Public Prosecutor. In general, the Prosecution has to prove the involvement of an accused beyond all reasonable doubt. If the Prosecution proved its case beyond reasonable doubt, then only the onus



CRL.A.NO.30 OF 2021

of proof will shift to the accused side. Hon'ble Apex Court in **AMBALAL VS**

UNION OF INDIA [AIR 1961 SC 264] in paragraph 9 held as follows:

'9. ... Under that section, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This Court in Shambu Nath Mehra v. State of Ajmer after considering the earlier Privy Council decisions on the interpretation of Section 106 of the Evidence Act, observed at p. 204 thus:

“The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the Prosecution and never shifts.”

If Section 106 of the Evidence Act is applied, then, by analogy, the fundamental principles of criminal jurisprudence must equally be invoked. If so, it follows that the onus to prove the case against the appellant is on the customs authorities and they failed to discharge that burden in respect of items 1 to 5. The order of confiscation relating to items 1 to 5 is set aside.

Further, the Hon'ble Supreme Court in the case in **STATE OF PUNJAB VS KEWAL KRISHAN [2023 SCC Online SC 746]** in paragraph 22 held as follows:

20/25



CRL.A.NO.30 OF 2021

'22...The argument that the accused has failed to discharge his burden under Section 106 of the Evidence Act and, therefore, his conviction was justified is misconceived. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a *prima facie* case, the question arises of considering facts of which the burden of proof would lie upon the accused. (See: *Shivaji Chintappa Patil v. State of Maharashtra* (2021) 5 SCC 626)...'

(b) In this case, as stated *supra*, the last seen theory of Prosecution has not been proved. Further, the chain of circumstances has not been proved. Admittedly, 20 houses are there in and around the scene of occurrence. Investigating Officer has not examined any person who was living in the locality except Tmt.Kaliyammal (L.W.3). As stated *supra*, Tmt.Kaliyammal (L.W.3) died before commencement of trial and could not be examined. Her statement was not proved as per law. The arrest and recovery of MO-9 is also not proved. In these circumstances, this Court is of the view that the Prosecution has not established the said circumstance beyond



CRL.A.NO.30 OF 2021

reasonable doubt and the onus of proof has not shifted to the accused. Hence, this Court does not accept the argument advanced by the learned Additional Public Prosecutor in this regard.

Circumstance (ix): Motive

(a) In a Criminal Case motive is irrelevant if the eye witnesses are available. If a case is rested upon Circumstantial Evidence, motive is also an additional link of the chain. In this case, the Prosecution has stated that the deceased had a relationship with YY and that is the motive for the crime. With a view to prove the motive, the Prosecution examined P.W.3 and P.W.4. Their evidence does not establish the alleged motive. Hence, the alleged motive for the crime has not been proved by the Prosecution.

10. As discussed above, the Prosecution has not established the chain of circumstances and proved the case beyond reasonable doubt. The conclusion of the learned Sessions Judge is incorrect and to be interfered with. The points are answered accordingly in favour of the appellant / accused and



CRL.A.NO.30 OF 2021

against the Prosecution.

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11. Resultantly, the Criminal Appeal is allowed and the judgment dated 17.12.2020 passed in S.C.No.378 of 2018 by the learned I Additional District and Sessions Judge, Cuddalore is hereby set aside. The appellant / accused is acquitted from the charge under Section 302 IPC and the bail bond if any, executed by her shall stand discharged. The fine amount if any paid by the appellant / accused shall be refunded to her.

(M.S., J.)

(R.S.V., J.)

25 / 09 / 2023

Index : Yes
Neutral Citation : Yes
Speaking order
SPP/TK



CRL.A.NO.30 OF 2021

To

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- 1.The I Additional District and Sessions Judge
I Additional District and Sessions Court
Cuddalore.
- 2.The Inspector of Police
Vadalur Police Station
Cuddalore District.
- 3.The Superintendent
Central Prison
Vellore.
- 4.The Public Prosecutor
High Court of Madras.



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CRL.A.NO.30 OF 2021

M.SUNDAR, J.

AND

R.SAKTHIVEL, J.

SPP/TK

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.30 OF 2021

25 / 09 / 2023