



Crl.A.No.111 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2023

PRONOUNCED ON : 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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Chinnasamy

... Appellant

Vs.

State rep. by
Inspector of Police,
Kadathur Police Station,
Erode District,
Crime No.81 of 2019

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set-aside the conviction and sentence imposed on the appellant in S.C.No.72 of 2019 by the judgment dated 23.12.2020 on the file of the III Additional District and Sessions Judge, Gobichettipalayam, Erode District.



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For Appellant : Mr. K.M. Subheramaniam

For Respondent : Mr. C.E.Pratap,
Government Advocate (crl.side)

ORDER

Challenging the conviction and sentence passed by the learned III Additional District and Sessions Judge, III Additional District and Sessions Court, Erode at Gobichettipalayam, the present Criminal Appeal has been filed.

2. The fact of the case is that the appellant is an accused in S.C.No.72 of 2019 on the file of the III Additional District and Sessions Judge, Erode at Gopichettipalayam. One Tmt. Thangamani is the deceased, who was residing at Ambedkar Nagar, Alukkuli Village, Gopichettipalayam. She was married with one Kumar 10 years back and have two children, namely, Vinodhini and Yazhini, aged about 8 years and 6 years respectively. Due to



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some misunderstanding, she separately lived from her husband Kumar and residing at her parents house for the past 3 years. She attended the work at Banian Company situated at Thittamalai. The accused/appellant is the resident of Varappallam, Athani and his wife Chinthamani died 9 years back. He had two children, namely, Gopal and Loganathan. The deceased Thangamani and the accused developed illegal intimacy and used to meet at Pillayar Thurai, Chozhmadevikarai leading to Edakkadu. Thereafter, the accused developed illegal intimacy with another woman Subbulakshmi, who is the resident of Puliyanpatti and lived with her. Having known this fact, the deceased talked with the Subhulakshmi and quarreled with her, in turn, she disclosed the quarrel to the accused. Hence, the accused decided to eliminate the deceased for his peaceful life. In order to make an end to the life of the deceased, on 24.03.2019, the accused went to the Banian Company at Thittamalai by his TVS moped TN 36 B 9798 and took the deceased in his two wheeler and went to Cholamadevikarai, Edakkadu. There, they entered into quarrel and the accused snatched the cellphone of the deceased and thrown it near the canal. When she made an attempt to



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take the cellphone, the accused pushed her head into the canal water and thereby, caused the death of the deceased.

3. On the complaint given by Mr.Sujesh, Village Administrative Officer, the case has been registered in Crime No.81 of 2019 for the offence under Section 174 Cr.P.C. After investigation, altered the offence into Section 302 IPC. After completion of investigation, Final Report has been filed before the Judicial Magistrate No.II, Gobichettipalayam. After committal, the case was taken on file in SC.No.72 of 2019 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam.

4. Based on the above materials, the Trial Court framed charges as against the accused under Section 302 IPC and the accused denied the same as false. In order to prove the case of prosecution, as many as 10 witnesses were examined, 22 documents were marked besides 8 material objects.



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5. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he did not choose to examine any witness nor mark any documents.

6. Having considered all the materials, the Trial Court found the accused guilty for the offence 304(i) IPC and convicted and sentenced to under go 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- ,in default, to undergo 6 months Simple Imprisonment and also granted set off for the detention period already undergone. Challenging the above conviction and sentence, the accused is before this Court with this appeal.

7. The learned counsel for the appellant/accused submitted that the judgment of the Trial Court is contrary to law and weight of evidence and all probabilities of the case. The learned counsel further contended that there is no eye witness to the occurrence. The prosecution relied upon the circumstantial evidence, projected the evidence of Mani @ Shanmugam(P.W.5) to support the last seen theory and also relied upon the



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evidence of Mr.Sugesh, VAO,(P.W.1). Even though it is stated that the accused gave an extra judicial confession, it is not filed before the Trial Court. The letter given by the Village Administrative Officer, stating about the confession of the accused, is marked before the Court as Ex.P.2 and the alleged confession of the accused is inadmissible. The prosecution failed to find out the owner of TVS 50 (TN 36 D 9798)(M.O.6). The evidence of P.W.3, P.W.4 & P.W.5 are not enough to prove the charge against the accused. There are material discrepancies in the prosecution evidence. Further in the absence of eye-witness to the occurrence, the prosecution relied upon the circumstances of last seen theory and the Extra Judicial Confession given by the accused before the Village Administrative Officer. In order to convict on the strength of circumstantial evidence, the circumstances in question must be satisfactorily established and proved circumstances must bring home the offence to the accused beyond all reasonable doubt. In this case, It is absent. Circumstances is not conclusive in nature. There is no chain of evidence to complete the circumstances. Therefore, the finding of the Trial Court is without evidence and hence



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unsustainable. Hence, the accused is entitled for acquittal and thus, pleaded to acquit the accused.

8. The learned Government Advocate (crl.side) appearing for the respondent supported the judgment of the Trial Court and further contended that the prosecution proved the last seen theory that the accused was last seen by the prosecution witness Mani @ Shanmugam(P.W.5) with the deceased on 24.03.2019. Thereafter, the deceased was missing. It is supported by the evidence of Suganya(P.W.3), Maheswari(P.W.4), Mani @ Shanmugam (P.W.5). The Village Administrative Officer Sujesh(P.W.1) clearly deposed about the Extra Judicial Confession given by the accused to him. Further the circumstances against the accused are completed one. Therefore, the Trial Court, rightly found the accused guilty and convicted him. There is no ground to interfere with the findings of the Trial Court and pleaded to dismiss the Criminal Appeal.



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9. I have considered the case in the light of the submissions made by the counsel for the parties and perused the materials carefully.

10. In this case, the appellant/accused is prosecuted by the respondent police for having murdered Tmt.Thangamani, wife of one Kumar on 24.03.2019 for the offence punishable under Section 302 IPC. The prosecution case is based solely on the circumstantial evidences. Before the Trial Court, the prosecution examined 10 witnesses. Sujesh(P.W.1), V.A.O. gave the complaint(Ex.P.1) and Letter(Ex.P.2) stating about the confession of the appellant/accused. Saravanan(P.W.2), Village Assistant, who accompanied P.W.1 for giving complaint. Suganya(P.W.3) is the sister of the deceased Thangamani. She deposed that on 24.03.2019 at about 1.00 p.m., the accused came to her house in TVS moped and enquired about her sister, deceased Thangamani and searched her in the house. Thereafter, on 25.03.2019, the police by showing her sister's dress enquired about Thangamani and thereafter, she went to Gobichettipalayam Government Hospital and seen the body of her sister. Mageswari(P.W.4), who was



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working along with the deceased Thangamani in a Banian Company at Thittamalai, deposed that on 24.03.2019 Sunday, at about 4.00 p.m., while she was working at Banian Company, the accused took the deceased Thangamani from the Company in his TVS Moped. On 25.03.2019, she came to know that Thangamani died and on 26.03.2019, she went Gobi Government Hospital and seen the dead body of Thangamani. Mani @ Shanmugan(P.W.5), deposed on 24.03.2019 at about 7.30 p.m. while he was sitting in Pillaiyar Temple with one Subramanian, he had seen a man and a woman travelled in a TVS 50 Moped. After one hour the man alone returned in the TVS 50. He did not know the accused. Dr.Kalyani(P.W.6), on 25.03.2019 examined Thangamani, who was brought to the Hospital in a Ambulance and declared she dead and gave the Accident Register(Ex.P.7). Dr. Sivasankar(P.W.7) conducted Post Mortem upon the dead body of the deceased Thangamani and issued certificates (Ex.P.8 to Ex.P.11). Dhanalakshmi, Grade-I Police, (P.W.8) handed over the letter given by the Inspector of police to the Doctor for conducting postmortem and after completing the postmortem, she delivered the ornaments wore on the body



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of the deceased, in turn, she handed over the same to the father of the deceased, namely, Pattan after getting acknowledgment letter, Ex.P.12 and she has submitted the Special Report (Ex.P.13) to the Inspector of Police. Mr.Rajasekaran(P.W.9) , Sub-Inspector of police, on 25.03.2019 at about 3.30 p.m., on receiving the complaint(Ex.P.1) from the Village Administrative Officer(Ex.P1), registered the First Information Report(Ex.P.14) in Crime No.81 of 2019 under Section 174 Cr.P.C. MrAlbert(P.W.10), Inspector of Police, Investigated the case and filed a final report.

11. Among the 10 witnesses, the prosecution relied upon the evidence of Suganya(P.W.3), Maheswari(P.W.4) and Mani @ Shanmugam(P.W.5) to connect the accused with the crime on the basis of last seen theory and also relied upon the statement of accused in Ex.P.2 as Extra Judicial Confession. It is not a case of direct evidence. But the conviction of the accused was found on circumstantial evidence by the Trial Court. The argument of the learned counsel for the appellant is that the Trial Court



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had not examined the complete chain of evidence and failed to appreciate that all the material facts are not established by the prosecution.

12. There is no dispute that the prosecution case is based solely on the circumstantial evidence. As per Indian Evidence Act 1872, for conviction on circumstantial evidence, the following condition must be fulfilled :-

" (1) The circumstances from which the conclusion of the guilt is to be drawn should be fully established. (2) The facts so established should be consistent not 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 conclusive nature and tendency. (4) They should exclude every possible hypothesis except the one to be proved. (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



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probability, the act must have been done by the accused-
[Sharad Birdhichand Sharda /vs/ State AIR 1984 SC 1622:
(1984) 4 SCC 116: 1984 Cr.LJ 1738: (1984) 2 Crimes 235;
Sudama Pandey /vs/ State AIR 2002 SC 293: (2002) 1 SCC
679: 2002 SCC (cri) 239; Subhash Chand /vs/ State (2002) 1
SCC 702; Ashish Batham /vs/ State AIR 2002 SC 3206: (2002)
7 SCC 317 : 2003 SCC (Cri) 1718] ."

13. Therefore, the Court had to examine the complete chain of evidence and then see whether all material facts sought to be established by the prosecution to bring home guilt of the accused had been proved beyond all reasonable doubt.

14. The incriminating circumstances projected by the prosecution in the instant case is that the appellant/accused had illicit connection with the deceased Thangamani. Subsequently, he had illicit connection with one Subbulakshmi. Therefore, deceased Thamangani had questioned



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Subulakshmi about her contact with the appellant/accused, in turn, she informed the matter to the appellant/accused. Hence, he decided to eliminate the life of Thangamani.

15. The second incriminating circumstances is the evidence of Suganya (P.W.3). As per her evidence, on 24.03.2019 at about 1.00 p.m., the accused came to her house in TVS 50 and enquired about her sister Thangamani and thereafter, he went out of house. The another evidence is Maheswari(P.W.4). She is working at a Banian Company at Thittamalai with the deceased Thangamani. Her evidence is that on 24.03.2019 Sunday at about 4.00 p.m, the appellant/accused came to the company in the TVS 50 and took her from the Company. Another evidence Mani @ Shanmugam(P.W.5) deposed that on 24.03.2019 at about 7.30 p.m., when he was sitting in a Pillaiyar Koil with one SubaManian, he saw one man and woman travelled in TVS 50 and after one hour, the man alone returned in the TVS 50. Thus, the evidences are focused by the prosecution to support the last seen theory to fix the accused with the crime. The above three



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witnesses' evidence are not incriminating circumstantial evidences unless it is very near to the scene of occurrence. Further, Mani @ Shanmugam(P.W.5), in his evidence stated that he did not know the accused. He Simply stated that one man and woman travelled in the TVS 50. Even in the Court, he did not identified the accused that he had travelled along with the deceased Thangamani on 24.03.2019. Under these circumstances, the evidence of P.W.5 is not an incriminating evidence against the accused to connect him with the crime. The evidence of P.W.3 that the accused on 24.03.2019 at about 1.00 p.m ., the accused came to her house and searched Thangamani is not enough because the deceased was found in Cholamadevikarai sub canal bank. Therefore, there is no evidence that the accused and the deceased were seen near the scene of occurrence or they were found in suspicious circumstances at Cholamadevikarai, Sub-canal Bank. Further another witness Maheswari(P.W.4), deposed that on 24.03.2019 while she was working at Banian Company, the accused came to the company at 4.00 p.m., and took the deceased Thangamani in his TVS Moped is not believable one. In her cross examination ,she deposed that in



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the Banian Ccompany, 25 workers are working and if they went to Company in the morning for work, they will return at 8.30 p.m., and if any one want to come out from the Company in the middle of the working hours, they have to inform the same to the owner of the company and he will note it and on that date, the deceased Thangamani came to the Banian Company was known to his owner's wife Baby alone. She has also deposed that the accused took Thangamani was not known to any one. Under these circumstances, the prosecution not examined Baby as stated by the witness P.W.4 to establish the fact that the deceased Thangamani was working in the Banian Company on 24.03.2019. In the absence of any evidence to corroborate the evidence of P.W.4 that the deceased Thangamani came to the Banian Company on 24.03.2019 for work, then the accused took her at 4.00 p.m., is not believable one.

16. Further, it is important to note that the prosecution failed to produce any evidence to show that the deceased Thangamani was attended work in the Banian Company on 24.03.2019. Unless , there is some



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evidence to show that the deceased Thengamani had attended Banian company for work at 24.03.2019, it cannot be inferred that the accused took her at 4.00 p.m., from the Company. Hence the evidence of P.W.4 cannot be believed.

17. Further, the motive fact that appellant/accused had illicit intimacy with the deceased Thangamani seems to have no legal basis or sufficiently proved to constitute the circumstances to connect the appellant/accused with the occurrence.

18. I am of the view that the Trial Court committed serious error in appreciating the circumstantial evidence in this case. Therefore, the finding of the Trial Court has to be set aside. The prosecution failed to prove that the appellant had committed the offence charged against him. The appellant/accused is found not guilty and he has to be acquitted of the charges framed against him.



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19. In the result, the Criminal Appeal is allowed and the conviction and sentence passed by the Trial Court is set aside and the appellant/accused is acquitted from all the charges. Fine amount paid by the appellant/accused to be refunded to him. The appellant/accused, who is in custody shall be set at liberty forthwith, if his presence is not required in connection with any other criminal case.

02.03.2023

mrp

To

1. The District and Sessions Judge,
III Additional District and Sessions Court,
Erode at Gobichettipalayam.
2. The Superintendent,
Central Prison,
Coimbatore.
3. The Public Prosecutor,
High Court,
Madras



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V.SIVAGNANAM, J.,

mrp

Pre-delivery order in

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