



Crl.A.No.916 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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1. Ramesh

2. Anandharaj

3. Karthick

...Appellants/Accused 1 to 3

Vs.

State rep. by

Inspector of Police

Valavanthinadu Police Station,

Namakkal District.

(Crime No.67/2016)

.. Respondent/Complainant



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Criminal Appeal filed under Section 374 (2) r/w 389 of Code of Criminal Procedure, 1973, to set aside the order of conviction and sentence passed by the learned Special Judge for SC & ST (POA) Act and Additional District & Sessions Judge (FAC), Namakkal in S.C.No.124 of 2018 dated 06.09.2019 and acquit the appellants.

For Appellants : Mr.Arun Anbumani
for Mr.R.Jayaprakash

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by **SUNDER MOHAN,J.**)

This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon them vide Judgment dated 06.09.2019 in S.C.No.124/2018 on the file of the learned Additional District and Sessions Judge (FAC) Namakkal.

2. For the sake of convenience, the parties are referred to as per their



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rank before the Trial Court.

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3.(i) It is the case of the prosecution that A1 and A3 are brothers and A2 is the cousin of A1 and A3; that the deceased was the brother of one Logeshwari (PW3); that A1 and PW3 were in love with each other; that the family members of PW3, including the deceased opposed the said relationship; that the deceased warned A1 of dire consequences, if he continued his relationship with PW3; that A1 feared that he would be done away by the deceased and hence, decided to eliminate the deceased with the help of A2 and A3; that on 29.05.2016 at about 9 P.M., the accused joined together at a place near Pappanam Junction situated at the Akkarai Valavu to Mekinikadu road; that the accused called the deceased to meet them there; that when the deceased came there, A2 gagged the mouth of the deceased, A3 caught hold of the hand of the deceased and inflicted cut injuries on the neck with a bill hook; that A3 further stabbed and cut the throat of the deceased besides stabbing near his private part; that A1 using the bill hook inflicted cut injuries on the leg, forehead and neck of the deceased and caused the death of the deceased; and that in order to screen the offence,



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all the accused took the dead body and threw it in a land belonging to a private company.

(ii) It is the further case of the prosecution that on coming to know that P.W.1 - father of the deceased, went in search of the deceased the next day morning; that during his search, he found the body of the deceased with cut injuries at a Casuarina farm, belonging to one Mr. Selvam (not examined); that one Mr.Mahindran (P.W.4) and Mr.Elango (P.W.5) had informed him that they last saw the deceased along with A1 and two others on the previous day night i.e., on 29.05.2016; that P.W.1 gave a complaint to the respondent police (Ex.P1) at 10.30 A.M; that on receipt of the complaint, the Sub Inspector of Police - P.W.13, registered the FIR in Crime No.67 of 2016, (Ex.P2).

(iii) The Investigation Officer - P.W.15, thereafter, took up the investigation and visited the scene of occurrence. He prepared Observation Mahazar (Ex.P.16) and Rough Sketch (Ex.P.17). He examined P.W.1 and conducted an inquest over the body of the deceased in the presence of



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witnesses. The inquest report was marked as Ex.P18. Thereafter, he sent the body of the deceased to Namakkal Government Hospital for Post-mortem. The Investigation Officer seized the blood-stained earth – M.O.8 and the earth which was not blood-stained – M.O.9 under the Seizure Mahazar - Ex.P19.

(iv) On 31.05.2016, A1 and A2 were arrested near Othakadai Bus Stand at about 7.00 A.M., in the presence of Village Administrative Officer - P.W.11, and his assistant (not examined). The Investigation Officer recorded the confessions of A1 and A2 and the admissible portions of their confession statements were marked as Exs.20 and 21 respectively, and seized M.O.2 and M.O.3 from the house of A1's grandmother at Vazhakaadu under a Seizure Mahazar (Ex.P22). The Doctor - P.W.12, conducted Post-mortem and found the following injuries :

- 1) 2 x 10 x 5cm laceration of two over below right ears to cheek.*
- 2) 10 x 20 x 7cm laceration over center of back of neck to center of throat of neck.*
- 3) 1 x 5 x 1cm laceration over center of neck*

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- 4) *2 x 7 x 1cm center of forehead*
- 5) *1 x 2cm left side neck*
- 6) *1 x 2 x 05cm laceration both side inguinal region*
- 7) *1 x 3cm x 0.5 cm laceration right hand*

- 8) *2 x 7 x 0.5 cm laceration right leg, 1 x 2 cm laceration left right finger*
- 9) *2 x 1 cm abrasion left wrist*
- 10) *2 x 1 cm abrasion of three left side abdomen.*

He opined that the deceased died on account of excessive bleeding due to the cut injuries on the neck.

(v) On 01.06.2016, the third accused was arrested by P.W.15 and on his confession, the admissible portion of which was marked as Ex.P.23, a Hero Honda Motor Cycle belonging to A3 was seized under Seizure Mahazar - Ex.P24.

(vi) After examination of witnesses and obtaining the report of the Forensic Science Laboratory, P.W.15 laid the Final Report against the



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accused for the offences under Sections 302 r/w 34 and 201 r/w 302 r/w 34 of the Indian Penal Code, before the learned Judicial Magistrate No.I, Namakkal.

(vii) On the appearance of the appellants, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Session in S.C.No.124/2018 and was made over to the Additional District and Sessions Court, Namakkal, for trial. The trial Court framed charges u/s.302 r/w 34 and 201 r/w 302 r/w 34 of the Indian Penal Code, as against the appellants and when questioned, the appellants pleaded 'not guilty'.

(viii) The prosecution examined P.W.1 to P.W.15 and marked Exs.P1 to P27, besides M.O.1 to M.O.9 to prove their case. The accused neither examined any witness nor marked any document. When the accused were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same.

(ix) The Trial Court found the accused guilty and accordingly



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convicted them for the offences under Section 302 r/w 34 and 201 r/w 302 r/w 34 IPC and sentenced them as follows:

<i>Accused No.</i>	<i>Offence</i>	<i>Sentence imposed</i>
A1 to A3	302 r/w 34 IPC	Each of them to undergo life imprisonment and pay a fine of Rs.1000/-, in default to undergo RI for three months
	201 r/w 302 r/w 34 IPC	Each of them to undergo RI for three years and pay a fine of Rs.1,000/- in default to undergo RI for three months
The sentences are directed to run concurrently		

4. Heard Mr.Arun Anbumani, the learned counsel for the appellants and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor.

5. (i) The learned counsel for the appellants submitted that the case of the prosecution rests on circumstantial evidence; that the circumstances have not been conclusively established; that in any case, they do not point out only



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to the guilt of the accused ruling out any other hypothesis; that motive has not been established; that last seen theory spoken to by P.W.4 and P.W.5 cannot be believed as even according to the prosecution, A2 and A3 were not known to P.W.4 and P.W.5 and no Identification Parade was conducted; and that the recovery also cannot be believed and pointed out to the contradictions in the evidence of P.W.1 and P.W.15 about the place of arrest of A3.

(ii) The learned counsel further pointed out the inconsistencies in the evidence of P.W.4 and P.W.5 and why the last-seen theory cannot be believed. The learned counsel also pointed out that in the Seizure Mahazar, there is no reference to blood stains in the weapons, However, in the weapons that were sent to the Forensic Science Laboratory, blood stains were found; and that all this would create a doubt with regard to the recoveries.

6. (i) The learned Additional Public Prosecutor, per contra, submitted that the prosecution had established the case beyond reasonable doubt. P.W.1



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to P.W.3 and P.W.7 have deposed about the motive, and nothing has been elicited in the cross-examination to disbelieve their versions as regards motive.

(ii) The learned Additional Public Prosecutor also submitted that P.W.4 and P.W.5 are natural witnesses and their evidence about the circumstances of last seen coupled with the motive establishes the prosecution case. The learned Additional Public Prosecutor also pointed out that the recovery of the weapons, in which blood-stains were found and matched with that of the deceased is also the circumstance against the accused and therefore, submits that there is no reason to interfere with the Judgment of conviction and prayed for dismissal of the appeal.

7. The case rests on circumstantial evidence. The prosecution relies upon three main circumstances namely:

- (a) Motive,
- (b) Last seen theory,
- (c) Arrest and recovery of material objects from the accused.



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8. It is trite that in a case based on circumstantial evidence, the conviction can be recorded only if the prosecution satisfies five principles as laid down by the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** reported in ***1984 4 SCC 116***, which has been followed by the Hon'ble Supreme Court in several other cases. The relevant observations made by the Hon'ble Supreme Court in the aforesaid decision are as follows:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade & Anr v. State of Maharashtra* [(1973) 2 SCC 793: 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the following



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observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

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(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.

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

9. In the instant case, we find that the prosecution has established the fact that the deceased died due to homicidal violence, from the evidence of the Post-mortem Doctor - P.W.12, Postmortem Certificate - Ex.P.12, and the other evidence on record. The accused have not disputed the said fact.



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10. The next question is whether the appellants are guilty. As stated earlier, the three broad circumstances relied upon by the prosecution are motive, last seen theory and Arrest and recovery.

(A) Motive:

(i) It is the case of the prosecution that A1 and P.W.3 were in love with each other; that the family members of P.W.3 and the parents namely P.W.1 and P.W.2 and the deceased opposed the said relationship; that A1 was warned by P.W.1 and his son (the deceased) and therefore, A1 decided to do away with the deceased. P.W.1- father of the deceased, P.W.2 - mother of the deceased and P.W.7 - uncle of the deceased, have spoken about the relationship between A1 and P.W.3. It is P.W.1's version that A1 harassed his daughter/P.W.3 and hence, the deceased warned A1 to refrain from talking to P.W.3. P.W.2 has stated that A1 had destroyed the trees on their farm (Paakku thotam) and also stated that she had requested her husband - P.W.1, to warn A1.



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(ii) P.W.3 had stated about her relationship with A1 and would also admit that she used to talk with A1 over the phone; and that A1 threatened and asked her to talk to him and therefore, she spoke to A1. She had also stated that A1 threatened her, saying that if she did not marry him, he would malign her name by exposing their relationship. However, in the cross-examination, she would admit that she had not stated so when she was examined by the Police. She would also say that she did not remember whether she told the Police about A1's threat that he would immolate her if she did not marry him. P.W.15 - the Investigation Officer had also admitted in his deposition that P.W.3 had not stated regarding any threat made by A1.

(iii) P.W.7 is the uncle of P.W.3. He deposed that P.W.3 told him that A1 threatened her. He would however admit in the cross examination that he was not aware of the relationship between A1 and P.W.3. Further, we find that P.W.3, herself has not stated in her deposition that she informed P.W.7 about the alleged threats.



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(iv) We find from the evidence of the above four witnesses that the motive for the occurrence also has not been clearly and cogently established. There are inconsistencies and improvements in their versions, even about motive.

(B) Last Seen Theory:

(i) P.W.4 and P.W.5 are witnesses examined by the prosecution to prove that the deceased was last seen with the accused at 8 P.M on 29.05.2016 at Pappanam junction. This version of P.W.4 and P.W.5, we find is contrary to the evidence of P.W.1, who had stated that the deceased left the house at 9 P.M on 25.09.2016, as usual to the farmhouse. Be that as it may, P.W.1 in the complaint had stated that he came to know through P.W.4 and P.W.5 that A1 along with two others were talking to the deceased at 8.00 P.M.

(ii) However, we find from the evidence of P.W.4, that he had deposed that he saw only A3 talking with the deceased and that A1 and A2 thereafter, came in a two-wheeler to the said place. He would also admit in the



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cross - examination that A1 and A2 came in the opposite direction and that they did not stop at the said place. Therefore, this version is contrary to the version in the complaint and that of P.W.1 that all the three accused were seen talking to the deceased.

(i i i) That apart, we find that P.W.4 had admitted in the cross examination that A3 was a total stranger to him. The prosecution had not conducted any Test Identification Parade after the arrest of A3, to ascertain if P.W.4 saw A3 talking to the deceased i.e., on the previous night. Similarly, No Identification Parade was also conducted, so far as A2 is concerned, who also admittedly is a stranger. P.W.5 is another witness whose version is parrot like repetition of P.W.4's version. He also admits that he neither knew A2 nor A3, prior to the occurrence. Both the witnesses admitted that they did not know the name of A3. In such circumstances, there is no explanation as to how the prosecution had determined that A3 was a person who spoke to the deceased at 8 P.M. The admissions of both P.W.4 and P.W.5 that A1 and A2 came in a bike on the opposite side, and they did not stop the vehicle, further makes the circumstance of last seen doubtful.

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(c) Arrest and recovery:

(i) We also find that there are contradictions about the place where A3 was arrested in the evidence of P.W.11-VAO, who is said to have witnessed the arrest and the evidence of P.W.15 - the Investigation Officer. P.W.11 had stated that A3 was arrested at Othakadai Bus Stand, whereas P.W.15 - the Investigation Officer, had stated that A3 was arrested near Vazhakaadu Bus Stand. The learned counsel pointed out that the version of P.W.11, that the confession was recorded in the laptop of the accused at the place of arrest and print out was taken there itself appears to be highly improbable. The contradiction in the place of arrest and the improbable version would falsify the prosecution case, about the arrest and recovery.

(ii) It is also seen that Ex.P.12 - Seizure Mahazar, for the recovery of M.O.2 and M.O.3, the weapons alleged to have been used by A1, there is no mention about blood stains. However, the Forensic Science Laboratory Report would show that the blood-stains were found in the weapons. This also throws doubt on the prosecution case with regard to the recovery of the alleged blood stained weapons. If the weapons seized had blood stains,



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there is no reason why the same was not mentioned in Ex.P.22 - Seizure Mahazar. Therefore, we are of the view that the arrest and recovery also is doubtful.

(iii) That apart, we find that pursuant to A1's confession, M.O.2 and M.O.3 were recovered from a bath room in the house of A1's grand mother at Vazhakaadu. This at best establishes that the accused knew that M.O.2 and M.O.3 were hidden in the bathroom in his grandmother's house. This is the fact discovered. As stated earlier, the Seizure Mahazar does not refer to blood stains in those two weapons.

11. Considering all the above facts, we are of the view that in the chain of circumstances, the prosecution has failed to establish the last-seen theory for the reasons, we have recorded earlier. The recovery of the blood stained weapons is also doubtful. Even assuming that the prosecution had established the motive, we are of the view that the prosecution had failed to establish the other circumstances conclusively and in any event, the chain of circumstances is not complete and does not point out only to the guilt of the accused ruling out any other hypothesis.



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12. For the aforesaid reasons, we are of the view that the judgment of conviction and sentence passed in S.C.No.124/2018 dated: 06.09.2019 on the file of learned Additional District and Sessions Court, Namakkal, is liable to be set aside.

13. In the result, this Criminal Appeal is allowed and the appellants are acquitted of the charges u/s.302 r/w 34 and 201 r/w 302 r/w 34 of the Indian Penal Code. The conviction and sentence passed in S.C.No.124/2018 on the file of the learned Additional District and Sessions Court, Namakkal, *vide* Judgment dated 06.09.2019 are set aside. Fine amount, if any paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

(S.S.S.R.,J.) (S.M.,J.)

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Index : yes/no

Neutral citation : yes/no

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To

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- 1.The Additional District and Sessions Court,
Namakkal.
- 2.The Inspector of Police
Valavanthinadu PoliceStation,
Namakkal District
- 3.The Superintendent,
Central Prison,
Coimbatore
- 4.ThePublicProsecutor,
High Court of Madras,
Chennai – 600 104.



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