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Crl.A(MD)Nos.84 and 96 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	21.02.2023
Date of Pronouncement	24.03.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE K.K. RAMAKRISHNAN**

Crl.A(MD)Nos.84 and 96 of 2021

Crl.A(MD)No.84 of 2021:

Floramary

.. Appellant/appellant No.3

Vs.

State rep by
The Inspector of Police,
Dindigul Town South Police Station,
in Crime No.490 of 2016
Dindigul District.

.. Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records and to set aside the judgment and order of conviction and sentence passed in S.C.No.64 of 2018 dated 23.01.2021 on the file of the learned Fast Track Mahila Judge, Dindigul and allow this appeal acquitting the appellant/appellant from the charge levelled against him.

For Appellant :Mr.AK.Azagarsami



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For Respondent :Mr.A.Thiruvadikumar
Additional Public Prosecutor

Crl.A(MD)No.96 of 2021:

M.Arockiya Jerald

.. Appellant/1st appellant

Vs.

The State rep by,
The Inspector of Police,
Dindigul Town South Police Station,
Dindigul District.
(in Crime No.490 of 2016)

.. Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records and set aside the judgment and order in S.C.No.64 of 2018 dated 23.01.2021 on the file of the Fast Track Mahila Session Judge, Dindigul and acquitted the appellant/appellant.

For Appellant :Mr.S.Ashok Kumar
Senior Counsel,
for Mr.M.Jegadeesh Pandian

For Respondent :Mr.A.Thiruvadikumar
Additional Public Prosecutor

COMMON JUDGMENT



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K.K. RAMAKRISHNAN,J.

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Since these two appeals are filed challenging the judgment and order passed in S.C.No.64 of 2018 dated 23.01.2021 on the file of the Sessions Judge, Fast Track Mahila Court, Dindigul, which emanated from the same crime number in Crime No.490 of 2016 on the file of the respondent police, these appeals are taken up together and disposed of by way of common judgment.

2. The first appellant/A1 is the husband of the deceased and A3 is the sister-in-law of the deceased. A1 filed Crl.A(MD)No.96 of 2021 challenging the conviction and sentence passed against him under Section 302 IPC to undergo Life Imprisonment along with a fine of Rs.15,000/- in default to undergo six months simple imprisonment. A3 filed Crl.A(MD)No.84 of 2021 challenging the conviction and sentence passed against her under Section 302 r/w. Section 109 IPC to undergo Life Imprisonment along with a fine of Rs.15,000/-, in default, to undergo six months simple imprisonment.

3. The case of the prosecution is that two years before the date of occurrence, ie., on 05.07.2016, the marriage between the deceased and A1



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was solemnized in Vadipatti Church in accordance with the Christian rights.

Within six months from the date of marriage, the relationship between the deceased and her husband, in-laws, was constrained. So, she left the matrimonial home and made a police complaint to P.W.15, under Ex.P.23 on 24.05.2016 and the same was enquired and advised the husband and in-laws of the deceased not to harass her. But, on 01.06.2016, A3 and others made harassment and hence she made another complaint on the same day to P.W.19 against her in-laws stating that they assaulted her. In the enquiry, the Police Officer advised the appellant/husband to arrange separate residence and asked the deceased to live with her parents and hence, the deceased went to her house. After 34 days, the deceased was called by A1 over phone to come for obtaining the Aadhar Card and also asked her to bring food to his workshop situated at Mettupatti Viyakulamatha Temple, Begambur. Immediately, the deceased informed the above fact to her mother P.W.1 and left the house. Subsequently, when P.W-1 tried to reach her through phone, the deceased did not pick up her phone upto 8 p.m., and duly informed by some identified person about her death in the workshop of A1. Thereafter, P.W.1 went to Government Hospital and found that the deceased sustained injuries in all over the body and with sign of strangulation. So, P.W.1 went



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to the respondent police station and gave a complaint to P.W.19.

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4. Upon receipt of complaint, P.W.19 registered an FIR under Ex.P.22 and transmitted the same to the Judicial Magistrate Court as well as the Investigation Officer-P.W.18. On 06.07.2016, P.W.18, upon receipt of the FIR, taken the investigation at 10.00 a.m., and visited the Government Hospital, Dindigul and conducted the inquest in the presence of the witnesses and after completing the inquest, he made a requisition to the P.W-12, postmortem Doctor to conduct the postmortem. Thereafter, he visited the occurrence place and prepared the observation mahazar and sketch and examined the witnesses. Thereafter, at 03.00 p.m., on the same day, he arrested the appellant and the appellant gave voluntary confession in the presence of the P.W-11 and P.W-7 and on the basis of the confession, the dress material of the appellant was recovered and he was sent to judicial custody. P.W-18 also submitted the recovered materials to the Judicial Magistrate Court under Form-95 and he conducted the investigation by examining the further witnesses by obtaining the postmortem report and subsequently, he was transferred to another station. Hence, P.W-20, subsequent Investigation Officer continued the investigation by examining



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all the witnesses afresh and also he also brought the CSR.Nos.175/2016 and 74/2016 relating to the earlier harassment made by the appellants to the victim and also examined the number of the witnesses and obtain the various reports including the serological report, viscera report, chemical analysis report and other documents and filed final report before the learned Judicial Magistrate No.III, Dindigul, for the offence under Sections 302, 302 r/w 109 IPC on 14.10.2016 against the appellants herein and also the father and sister of A1.

5. The learned Judicial Magistrate No.III, Dindigul, took cognizance and taken on file in PRC.No.3 of 2017 and after furnishing the copies under Section 207 Cr.P.C., to all the accused and committed the case to the learned Principal Sessions Judge, Dindigul and the same was taken on file in S.C.No.64 of 2018. The Court below after framing necessary charges, questioned the appellants under Section 235(2) Cr.P.C and they all pleaded not guilty and denied the charges and their involvement in the offence and stood trial.

6. The prosecution examined 20 witnesses as P.W.1 to P.W.20 and



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marked E.P.1 to Ex.P.29 and material objects 1 to 7 and the learned Trial Judge put the incriminating evidence to the appellants under Section 313 Cr.P.C., questioning and recorded their answer of total denial. On the side of the appellants, no witness and document was filed.

7. The learned trial Judge, on appreciation of prosecution witnesses both oral and document and answer given by the appellants under Section 313 Cr.P.C., held that A1 has committed murder of his wife at the instigation of A3 and passed conviction and sentence against him under Section 302 IPC simpliciter and imposed fine of Rs.15,000/- in default to undergo six months simple imprisonment. Further, the learned trial Judge passed the conviction and sentence against A3 under Section 302 r/w Section 109 IPC and acquitted the remaining appellants from all charges. Aggrieved over the same, the appellants preferred the above appeals.

8. Mr.S.Ashok Kumar, learned Senior Counsel appearing on behalf of the A1 would submit that the prosecution has not proved the case beyond reasonable doubt. This is a case of circumstantial evidence and the prosecution has not proved the case against the appellant by enumerating the circumstances beyond reasonable doubt. The learned Senior Counsel



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further submitted that the registration of FIR as alleged by the prosecution is highly doubtful. The prosecution did not prove that the appellant accompanied with the deceased in the alleged workshop on the date of occurrence as projected by the prosecution. None of the prosecution witnesses have not disclosed the ownership and occupation of the appellant/A1 in the said workshop. Further, the arrest of the appellants as projected by the prosecution is not correct. On considering the evidence of P.W.1, P.W.2 and P.W.4, who have categorically stated that they saw the appellant/A1 before the alleged date of arrest in the police station. It is the specific case of the prosecution that one Daniel, adjacent shop owner, who have seen the dead body at first instance and informed to the relative and police is material witness and non-examination of the said witness very much affected the prosecution case and also number of cluster shop are situated in the occurrence place and none of them was examined. They are the competent persons to speak about the company of the appellant/A1 along with the deceased in the shop. So, the non-examination of the said witnesses affected the prosecution case. The learned Senior Counsel further submitted that Ex.P.23 and Ex.P.24, in which, there was no single allegation against A1/husband of the deceased. In the said circumstances, the



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prosecution case is liable to be disbelieved.

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9. He further submitted that since the evidence on record shows that the appellant/A1 was already in the police station, the arrest and recovery from the appellant/A1 is not proved. Apart from that, the Trial Court acquitted two appellants holding that their presence is not proved by the prosecution on the basis of the prosecution evidence. The charge against A1 is 302 IPC. The charge against the acquitted appellants is under Section 302 r/w 109 IPC and only at the instigation, A1 has committed the murder. In the said circumstances, believing the evidence in part and disbelieving the evidence in another part, is not correct in considering the peculiar circumstances of the present case.

10. The learned counsel appearing for A3 adopting the above arguments of the learned Senior Counsel appearing for A1 would further submit that there was no evidence to show that A3 is present in the scene of occurrence. Apart from that, the common charge framed against A2, A3 and A4 under Section 302 r/w 109 IPC, and similar evidence adduced to prove the said charge and in the said circumstances, the Trial Court committed



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error in convicting the appellants/A1&A3 alone under Section 302 r/w 109 IPC., after acquitting A2 & A4 without any specific evidence against them.

11. The learned Additional Public Prosecutor repelled the said contention that in this case, the appellant/A1 is bound to explain the death of the deceased, who accompanied with the deceased at the time of occurrence, under Section 106 of the Indian Evidence Act and he has not explained. It is the evidence of the prosecution that she was called by the appellant/A1 and the same was immediately informed by the deceased to P.W.1 and hence, her statement is admissible under Section 32(2) of the Indian Evidence Act. Further, he placed the reliance on the photos(M.O1) taken in the scene of occurrence, which clearly establish the involvement of the appellant in the crime. He further submitted that the said M.O.1 was marked without objection and hence relevancy to be considered without 65B certificate as required under the Indian Evidence Act. Apart from that, recovery is made on the basis of the confession of the appellant/A1. In the said circumstances, without any explanation on the part of A1 and A3, conviction passed by the Court below is not liable to be interfered.



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12. The learned Additional Public Prosecutor relied upon the judgment of this Court passed in ***Crl.A.(MD)Nos.87, 88 & 360 of 2019, dated 06.04.2022.*** The learned Senior Counsel by way of reply submitted that the M.O.1 contains 6 digital photographs and the CD and the said CD alone was marked without certificate under Section 65B of the Indian Evidence Act, so it is not admissible one.

13. Upon appreciation of the above submission of the learned counsel for the appellants/A1&A3 and the learned Additional Public Prosecutor for the State, the question to be decided in this appeal is whether the prosecution has proved the case against A1 and A3 beyond reasonable doubt and whether the conviction and sentence imposed against the appellants/ A1 & A3 by the trial Court after acquitting the remaining appellants on the basis of the same evidence is correct.

14. This is the case of the circumstantial evidence and the prosecution has relied upon the following circumstances to sustain the conviction against the appellants:

14.1.1 The appellants in both the appeal as well as the remaining



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acquitted appellant harassed the deceased and she made the two complaints and police officers advised to arrange separate residence. This motivated the appellants to murder the deceased and hence motive was established.

14.1.2. The deceased was called by the appellant/A1 on the date of the occurrence through his mobile and he asked her to come to his workshop situated at the complex building situated opposite to the Viyakulamatha Kovil at Dindigul Begambur to obtain the Aadhar card. She informed the same to her mother.P.W-1 and she left her parental home. The said statement is admissible under Section 32(1) of the Indian Evidence Act and on the basis of the said statement, the conviction can be made without any further explanation from the appellant/A1.

14.1.3. The body of the deceased was found in the workshop of A1 and he did not give any explanation under Section 106 of the Indian Evidence Act.

14.1.4. The photographs along with the CD marked as M.O.1 clearly speak about the appellant's/A1 involvement in the above crime.

14.1.5. The appellants/A1&A3 did not give any explanation under 313 Cr.P.C., proceedings and hence, from the company of the appellant/A1 with the deceased is tent to presume that the appellant/A1 alone responsible



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for the death of the deceased.

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14.1.6. The investigation agency made a recovery on the basis of the confession of the appellants which proved his involvement in the crime and hence prosecution proved each circumstance beyond reasonable doubt.

15. The deceased is the wife of the appellant/A1 in Crl.A(MD)No.96 of 2021. Within six months from the date of marriage, the relationship between the deceased and her in-laws was constrained. So, she made a complaint to the P.W-15 under Ex.P-23 on 24.05.2016. The same was enquired and advised the appellant/A1 and his family members not to harass the deceased and asked to live with her. Within a short time, ie., on 01.06.2016, her in-laws once again beaten her and hence, she made another complaint to P.W-19 under Ex.P24 on 01.06.2016. In the complaint enquiry, the police officers advised the appellant/A1, namely, husband of the deceased to make arrangement for separate residence and till such time, the deceased was asked to live in her parental home. So, there was a strong motive to murder the deceased. This Court perused the Ex.P23 and Ex.P24 and the evidence of the P.W-19 as well as P.W-15 and this Court only found that there was some issues between the deceased and the family members of



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the appellant/A1 and there was no such material available to infer the motive on the part of the appellant/A1 to murder the deceased. There was an allegation that A3 harassed the deceased and no allegation against the husband/A1. Even the said allegation in the present case cannot be treated as the motive for the murder of the deceased. Hence, the motive was not established.

16. In this case, the Investigation Officer P.W.18 deposed that he did not collect any evidence to show that the appellant/A1 was in possession of the occurrence shop. Even P.W.1, P.W.2 and P.W.4 did not depose that the place, where the dead body was found, was in the occupation of A1. The prosecution witnesses did not speak about the occupation of A1 in the workshop and no evidence on the side of the prosecution was produced to prove that the deceased had entered into the said workshop and further, none of the witnesses have seen the deceased along with the appellant/A1 at the relevant point of time. In the said circumstances, the appellant/A1 is all along with the company of the deceased, has not been proved by the prosecution. Before invoking Section 106 of the Indian Evidence Act, the prosecution must be proved the appellant's/A1 company along with the deceased in the proximate time and some evidence to prove the factum of



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their company. But, in this case, no evidence to show the appellant was present in the occurrence place and nothing was available to prove the circumstances that the deceased entered into the workshop of the appellant/A1 and the same was witnessed by the some evidence just before the occurrence. As per the sketch, the topography of the occurrence place consists of cluster of shops and in the said circumstances, none of the witnesses from the locality disclose the above entry of the deceased into the workshop of the appellant/A1. In the said circumstances, the submission of the learned Additional Public Prosecutor that the appellant/A1 bound to explain the fact under Section 106 of the Indian Evidence Act, is not accepted. Furthermore, the prosecution not at all proved the company of the appellant along with the deceased. Moreover, before calling the explanation from the husband, the prosecution must be discharged its initial burden. The same was fortified by the following decision of the Hon'ble Supreme Court in the case of **Arvind Singh v. State of Bihar, reported in 2001(6)SCC407:**

“It is true that the husband being a bedroom companion ought to explain the circumstances, but initial burden is on the prosecution to prove guilt beyond all reasonable doubt, System of criminal jurisprudence of the country has been to that effect.



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There is neither any departure nor any escape from it.”

17. Before reaching P.W.1 to the scene of occurrence, the body was taken to the hospital. In the hospital only, P.W.1 seen the deceased. Hence, before she preferred the complaint under Ex.P.1, the investigation already commenced as per the evidence of the P.W-19. He received the information regarding the death of the deceased from one Daniel and visited the place of the occurrence and he shifted the body of the deceased to the Government Hospital, Dindigul and he received the complaint from P.W-1, who came from her native place Karichipatti, Theni District at 11.00 p.m., on 05.07.2016. In the said circumstances, the registration of FIR at the instance of P.W-1 is highly doubtful. It is a specific case of the prosecution that one Daniel had informed the death of the deceased to P.W.1's family. The said Daniel was not examined as a witness by the prosecution. The said Daniel is the first person who immediately witnessed the occurrence and he only found the deceased with injuries in the workshop of A1. The non-examination of the said Daniel not only create a doubt over the registration of the complaint as projected by the prosecution agency but also affect the



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entire prosecution case from the stage of the registration of FIR to the recovery of articles from the appellant/A1. If the said witness would have been examined, he might have disclosed the true fact about the presence of the appellant along with deceased. Usually the non examination of the witness has no bar in dealing the remaining witnesses. But in this case, the prosecution relied the circumstantial evidence and hence, the above non examination of the Daniel is important one in this case is concerned.

18. The repeated contention of the learned Additional Public Prosecutor that the statement of the deceased made to P.W-1 just before the occurrence that A1 was called her to obtain Aadhar card and he also asked to bring some food for him is the circumstances come under Section 32(1) of the Indian Evidence Act is concerned, the investigation Agency did not call for the CDR report of both A1 and the deceased to prove the telephonic conversation made between them and without proof of the said basic fact, the prosecution would not place reliance on the statement of the deceased admissible under Section 32(1) of the Indian Evidence Act.

19. The recovery made on the basis of the confession of the



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appellant/husband is doubtful. According to the evidence of P.W-1, P.W-2 and P.W-3, the appellant was in the custody of the police officer on the date of the occurrence, ie., on 05.07.2016. In the said circumstances, the arrest as spoken by P.W-18 on 06.07.2016 at 03.00 p.m, and consequential confession and recovery is false. According to the recovery witnesses, the evidence of P.W-11, the confession was recorded in handwritten, but the confession produced before the Court was in the typed printed format. So, the arrest and recovery is not believable.

20. Sofaras the photograph is concerned, in earlier period, the photograph without negative is not admissible, similarly, the present digital world, the CD without certificate under Section 65B of the Indian Evidence Act, is not admissible. Even the photograph did not improve the case of the prosecution when there was nothing in the photograph to show the presence of the appellant/A1 in the scene of the occurrence.

21. P.W-5 and P.W-6 were examined by the investigation agency to prove the conspiracy that all the accused were decided to murder the deceased, on account of the dispute between the family members of A1 and



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the complaints given by her to the police station. The said two witnesses P.W.5 and P.W.6 turned hostile. Further, no other independent evidence is available to prove the instigation on the part of the A3. So, the trial Court without any specific material, committed error in convicting A3 alone for the charge under Section 302 r/w 109 IPC. Hence, the conviction and sentence passed against A3 is liable to be set aside.

22. This case is based on the circumstantial evidence and it is the duty of the prosecution to prove all the circumstances beyond reasonable doubt as held by the Hon'ble Constitution Bench of the Hon'ble Supreme Court in the case of ***Govinda Reddy v. State of Mysore***, reported in AIR 1960 SC 29 in the following terms:

*“5.The mode of evaluating circumstantial evidence has been stated by this Court in **Hanumant Govind Nargundkar v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 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.”

23. In this case, the prosecution has not proved beyond peradventure the basic facts against A1/husband that,

- (i) the appellant/A1 was in the occupation or possession of the shop;
- (ii) he was present on the date of occurrence in the said shop and the deceased met the appellant/A1 in the shop;
- (iii) the deceased accompanied with the appellant/A1 in the shop before and after her death.

Hence, this Court does not find any material even to suspect the involvement of the appellants in the crime. So, the conviction and sentence passed against A1 also is not sustainable.



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24. In the result, the judgment of the Fast Track Mahila Session Judge, Dindigul, made in S.C.No.64 of 2018 dated 23.01.2021, is hereby set aside and both Criminal Appeals are allowed and the appellants are acquitted from the charges. The fine amount, if any, paid by A1 shall be refunded to him. The bail bond executed by the accused/A3 shall stand cancelled and the fine amount, if any, paid by A3 shall be refunded to her.

[G.J.,J.] & [K.K.R.K.,J.]
24.03.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
PJJ



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To

- 1.The Session Judge,
Fast Track Mahila Court,
Dindigul.
- 2.The Inspector of Police,
Dindigul Town South Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR. G.JAYACHANDRAN,J.
and
K.K. RAMAKRISHNAN,J.

PJL

Judgment made in
Crl.A(MD)Nos.84 and 96 of 2021

24.03.2023