



Crl.A.(MD) No.725 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	15.11.2023
Pronounced on	19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) No.725 of 2022

Sepastiyam
S/o.Amirtham

... Appellant

Vs.

State represented by
The Inspector of Police,
Watrap-Koomapatti Police Station,
Virudhunagar District.
(Crime No.95/2010)

... Respondent

Criminal Appeal filed under Section 374 of The Code of Criminal Procedure, 1973 [Act No.2 of 1974] praying to call for the records of the impugned Judgment made in S.C.No.34 of 2011 on the file of the Fast Track Mahila Court, Virudhunagar District at Srivilluputtur dated 29.09.2021 and set aside the same.

For Appellant : Ms.S.Prabha

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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J U D G M E N T

WEB CODE: **R.SAKTHIVEL, J.**

This Criminal Appeal is preferred by the appellant assailing the 'Judgment dated September 29th, 2021' [henceforth 'impugned Judgment' for the sake of brevity] passed by 'The Fast Track Mahila Court, Virudhunagar District at Srivilliputtur' [henceforth 'Trial Court' for the sake of brevity] in Sessions Case No.34 of 2011 in which the appellant [henceforth 'accused' as per Trial Court's description for the sake of clarity and convenience] was convicted for the offence punishable under Section 302 of 'The Indian Penal Code' 1860 (Act No.45 of 1860) [henceforth 'IPC' for the sake of brevity] and sentenced to undergo Rigorous Imprisonment for Life and also ordered to pay a fine of Rs.3,000/-, in default thereof, to undergo Rigorous Imprisonment for a further period of 1 year and the period of imprisonment already undergone was ordered to be set off under Section 428 of Criminal Procedure Code, 1973 (Act No.2 of 1974) [henceforth 'Cr.P.C.' for the sake of brevity].

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

2.1. The accused-Sepastiyam and his second wife, Motchiyam (deceased) had been married for about 15 years at the time of occurrence.



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They were residing in Kansapuram Village. Out of their wedlock, they had two sons and one daughter. The deceased's family had a lot of relatives in Kansapuram. The accused, fuelled by suspicion over the deceased's fidelity as she frequently spoke to her relative men in Kansapuram, used to frequently assault her and the deceased family members used to pacify the situation. On the night of June 6th, 2010, the accused suspected and assaulted the deceased again for speaking with her relatives. Upon learning the same from their relatives in Kansapuram, the deceased's parents namely, Sabarimalai (P.W.2) and Pakkiyam (P.W.3) decided to proceed to Kansapuram the next day morning as it was late in the night.

2.2. When they went to the deceased's house at Kansapuram the next day morning i.e., on June 7th, 2010, they learnt that the deceased and the accused went to Mangalsamy's mango farm situate in the foothills of western ghats to collect firewood and left to that place at about 08.00 hours. Upon reaching that place and witnessing the accused quarrelling with the deceased, Sabarimalai (P.W.2) and Pakkiyam (P.W.3) yelled to halt the quarrel. Then the accused vehemently declared to kill the deceased and struck the billhook which, the deceased tried to resist, sustaining a cut in her left palm. Then the accused struck the billhook at



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the right side neck of the deceased. The deceased collapsed and died instantly. Upon witnessing the incident, the deceased's parents got frightened and ran away to Kansapuram. They then informed their son Jayganesh (P.W.1) who visited the scene of occurrence and then went to Koomapatti Police Station on the same day at 11.30 hours and lodged Written Complaint (Ex.P.1). Upon receiving the complaint, Special Sub Inspector of Police, Koomapatti Police Station (P.W.16) registered FIR (Ex.P.10) in Crime No.95/2010 under Section 302 of IPC.

2.3. Upon receiving the case file, Inspector of Police, Watrap Circle (P.W.14) [henceforth 'Investigation Officer' for the sake of clarity] went to the scene of occurrence on the same day i.e., on June 7th, 2010 and prepared Rough Sketch (Ex.P.11) and Observation Mahazar (Ex.P.2) in the presence of the witnesses Motchiyam (P.W.8) and Ramachandran (L.W.10). Then he collected blood-stained Soil (M.O.4) and sample Soil with no blood stains (M.O.5) from the scene of occurrence under Seizure Mahazar (Ex.P.3) in the presence of the same witnesses. Thereafter, he conducted inquest over the body and prepared Inquest Report marked as Ex.P.12. Then, he sent the body for post-mortem. Then he examined the witnesses and recorded their statements. Then he examined Dr.Rajendran



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(P.W.12) who conducted the post-mortem and gave Post-mortem Certificate (Ex.P.8). Then, the Investigation Officer seized the blood-stained Saree (M.O.2) and blood-stained Blouse (M.O.3) under Seizure Mahazar (Ex.P.9).

2.4. On the same day, i.e. June 7th, 2010, at 16.15 hours, the accused went to the office of the Village Administrative Officer [VAO] (L.W.13) and voluntarily gave an extra-judicial confession which the VAO (L.W.13) recorded in the presence of the Village Assistant (P.W.11) and reported to the police. The VAO then handed over the accused to the Police. Then, the accused gave a voluntary confession statement to the police, the admissible portion of which is marked as Ex.P.6 in the presence of VAO (L.W.13) and Village Assistant (P.W.11). Thereafter, the accused led the police to the Mango farm where he had hid the billhook. Investigation Officer (P.W.14) recovered the blood-stained billhook [அரிவாள்] (M.O.1) in the presence of the same witnesses. Then, along with the properties, he sent the accused to Judicial Magistrate No.1, Srivilliputtur for remand. Thereafter, Investigation Officer (P.W.14) sent Material Objects for chemical examination after obtaining permission from the Judicial Magistrate. Meanwhile, Investigation Officer (P.W.14)



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was transferred from Watrap Police Station, so, he handed over the case file to the newly posted Inspector of Police (P.W.15).

2.5. P.W.15 continued the investigation and recorded the statement of officers of Forensic Science Laboratory and also re-examined the witness who were examined by P.W.14. After completion of investigation, P.W.15 filed Charge Sheet against the accused for the offence punishable under Section 302 of IPC before the Judicial Magistrate Court No.1, Srivilliputtur.

2.6. The Judicial Magistrate No.1 registered the case on file as PRC.No.01/2011. After furnishing copies under Section 207 of Cr.P.C. to the accused, he committed the case file to the Principal District and Sessions Court, Virudhunagar District at Srivilliputtur, under Section 209(a) of Cr.P.C. The learned Principal District and Sessions Judge, after receiving the case file, assigned Sessions Case No.34 of 2011, framed charges under Section 302 of IPC, read over and explained the charge to the accused in Tamil on April 1st, 2014. Since the accused pleaded not guilty, trial was ordered. Then since the victim is a women, the case was made over to the Trial Court on March 17th, 2016.



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WEB COPY 2.7. To prove its case, the prosecution examined P.W.1 to P.W.16 (Witnesses) and marked Ex.P.1 to Ex.P.12 (Documents) and M.O.1 to M.O.5 (Material Objects).

2.8. The Trial Court after hearing either side, concluded that the prosecution has proved the offence under Section 302 of IPC against the accused. Accordingly, the Trial Court convicted the accused *vide* Judgement dated September 26th, 2019 passed in Sessions Case No.34 of 2011 sentencing him to undergo Life Imprisonment and ordered to pay a fine of Rs.5,000/-, in default thereof, to undergo 1 year Simple Imprisonment.

2.9. Feeling aggrieved with the Conviction recorded and Sentence imposed by the Trial Court, the accused had presented the Criminal Appeal in Crl.A.(MD) No.262 of 2020 on July 21st, 2020 under Section 374(2) of Cr.P.C. and the same was admitted by a Hon'ble Division Bench of this Court on August 19th, 2020. The Hon'ble Division Bench after hearing either side, set aside the Conviction recorded and Sentence imposed by the Trial Court as stated *supra* and remanded the matter back



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to the Trial Court *vide* Judgement dated March 4th, 2021. The relevant portions of the said Judgment reads thus:

24. Here, as mentioned earlier, the learned counsel for the appellant vehemently contended that the defence counsel failed to cross examine the witnesses properly. But, that ground was not available to the appellant. Retrial cannot be ordered on the ground that the defence counsel has not exhibited his utmost professional high quality of the caliber required of from him. But perusal of the records shows that in most of the time, the defence counsel was not available in the Court, When examination of the witnesses were undertaken. Even though, P.W.2 and P.W.3 were shown as eye witnesses, apart from that relying upon the evidence of the eye witnesses, the Trial Court has also taken into account the last seen theory. For that purpose, the prosecution, has examined P.W. 7. But, she was not cross examined by the defence. So, P.W.7's evidence remains unchallenged. If the evidence of P.W.2 & P.W.3 become unbelievable for any reason that maybe assigned considering their conduct in the relevant time, then, the evidence of P.W.7, must be taken into account for considering the appeal. It might not be appropriate or proper for this Court to rely upon the



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evidence of P.W.7, which remains unchallenged by way of cross examination.

...

25. If we to rely upon the evidence of P.W.7, it will amount to miscarriage of justice. We are of the opinion that this is the fittest case, which requires for retrial. But, at the same time, a judgment of the Hon'ble Supreme Court in **Sathyajith Banerjee and Others Vs State of West Bengal and Others** reported in **2005 1 SCC 115**, wherein, it has been observed like this.

“So far as the position of law is concerned we are very clear that even if a retrial is directed in exercise of revisional powers by the High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case. The trial judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial.”

26. So, the judgment of conviction and sentence imposed by the Trial Court on the appellant, is set aside and the matter is remanded back to the Trial Court.



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27. The Trial Court may permit the prosecution as well as the accused to re-call and re-examine any of the witnesses, who have already been examined and also at liberty to examine additional witnesses by filing proper list of witnesses in advance. As observed earlier, the evidence, which were already recorded, will remain on record and further particulars brought on record, by way of further examination of the witnesses, must be taken into account. The Trial Court shall dispose the matter on merits as per law within 5 months from the date of receipt of copy of this order by conducting the trial on day-to-day basis, without being influenced by any of the observations of this Court. It is also made clear that the observations made here are only for the limited purpose of disposing this appeal. Since the accused is in custody, he shall be produced before the Trial Court namely, Mahila Court (Mahila Fast Track Court) Virudhunagar District at Srivilliputhur for further remand. Consequently, connected miscellaneous petition is closed.

2.10. Pursuant to the above direction of the Hon'ble Division Bench of this Court, Trial Court recalled P.W.1 to P.W.6, P.W.8 and P.W.11 for cross-examination. To be noted, Annapakkiyam (P.W.7) passed away on June 10th, 2020 i.e., before the date of admission of the aforementioned



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Crl.A.(MD) No.262 of 2020. Hence, P.W.7's evidence stays the same, without any cross-examination, as it was before the remand.

2.11. The Trial Court after hearing either side, concluded that the prosecution has proved the charge under Section 302 of IPC levelled against the accused and accordingly convicted and sentenced the accused *vide* the impugned Judgement as stated *supra* in paragraph no.1.

2.12. Feeling aggrieved with the Conviction recorded and Sentence imposed by the Trial Court, the accused has preferred this Criminal Appeal under Section 374(2) of Cr.PC.

Arguments:

3. The learned counsel appearing for the accused argued that the Trial Court has not properly appreciated the evidence of P.W.1 and P.W.2; that the Trial Court failed to consider the fact that the prosecution failed to examine any person connected with the Mango Farm; that it is highly improbable for P.W.2 and P.W.3 to have witnessed the alleged occurrence; that the Trial Court failed to consider the fact that P.W.1 to P.W.8 are relatives of the deceased and interested witnesses; that the Trial



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Court has not properly evaluated the alleged extra-judicial confession; that there is no independent witness available on record to connect the accused with the crime; that the case is falsely foisted against the accused. Accordingly, she prayed to allow the appeal and acquit the accused from the charge.

4. In response to the arguments of the learned counsel for the accused, the learned Additional Public Prosecutor for the respondent-State argued that the evidence of P.W.1 and P.W.2 are believable, reliable and trustworthy; that the prosecution proved the extra-judicial confession, admissible portion of the confession made to the Police (Ex.P.6) and the recovery of the murder weapon, M.O.1 in pursuance of Ex.P.6; that deceased and the accused were seen together going to collect firewood by P.W.7; that the evidence of P.W.7 is admissible, clear and cogent; that, even if the evidence of P.W.7 is not considered in view of the findings rendered by the Hon'ble Division Bench in Crl.A. (MD) No.262 of 2020, the prosecution has proved the guilt of the accused beyond reasonable doubt; that the Trial Court considered all the evidence and materials placed on record and accordingly passed the impugned Judgement which deserves to be sustained. Accordingly, he prayed to dismiss the appeal.



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WEB COPY 5. This Court has heard either side, perused the case file and the Memorandum of grounds of appeal. The following points arose for consideration:-

- i. Whether the evidence of P.W.7 is to be considered by this Court?
- ii. Whether the prosecution has proved the charge levelled against the accused under Section 302 of IPC beyond reasonable doubt?
- iii. Whether there exist any reason to interfere with the Impugned Judgement?

Discussion and Decision for Point No.(i)

6. In the present case, date of the alleged occurrence is June 7th, 2010. Annapakkiyam (P.W.7) was residing opposite to the accused's house. The said fact has not been disputed by the accused in his examination under Section 313 of Cr.P.C. After examination of P.W.7 in chief, P.W.8 to P.W.15 were examined before the Trial Court and among them, P.W.14 and P.W.16 were alone cross-examined. The prosecution side evidence was closed with P.W.16 on July 12th, 2019. The accused was examined under Section 313 of Cr.P.C on July 25th, 2019. Since the



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accused side, submitted no defence witness, the case was posted for argument on August 13th, 2019. Then, the arguments were concluded on September 16th, 2019 and the Judgement was pronounced on 26th September, 2019. To be noted, though the defence side had such a wide opportunity to seek permission for cross-examination before the Trial Court, it chose not to do so.

6.1. The accused was then incarcerated pursuant to the above-mentioned Judgement. Then he presented the Criminal Appeal in Crl.A. (MD) No.262 of 2020 on July 21st, 2020. The Hon'ble Division Bench admitted the appeal on August 19th, 2020 while P.W.7 passed away on June 10th, 2020 i.e., before the date of admission. Neither the prosecution nor the defence side brought to the notice of the Hon'ble Division Bench, the factum of death of P.W.7. To be noted, the accused has been incarcerated till date since the date of Judgment i.e., September 26th, 2019, which means he might not have known the factum of death of P.W.7. If the factum of death had been brought to the notice of the Hon'ble Division Bench, the resultant Judgement in Crl.A.(MD)No.262 of 2020 could have been otherwise.



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6.2. It is a settled legal position that examination in chief and cross examination should be done on the same day or the following day in view of Section 309 of Cr.P.C. [*vide Vinod Kumar v. State of Punjab*, reported in **(2015) 3 SCC 220**]. Further, it is a settled legal position that when a witness passes away after chief-examination and before cross-examination, evidence of such witness would be admissible since the witness has been examined in Court under oath. Hence, the said evidence cannot be expunged. But, the Court shall consider its evidentiary or probative value along with other evidence available on record.

6.3. In this case, the Hon'ble Division Bench in paragraph 25 of its Judgement in Crl.A.(MD) No.262 of 2020, has specifically recorded that "*If we rely upon the evidence of P.W.7, it will amount to miscarriage of Justice...*". However, the prosecution has not filed any appeal or revision against the said finding which means the said finding has reached its finality. Hence, in view of the this finding, the prosecution is not entitled to rely upon the evidence of P.W.7 since P.W.7 was not cross-examined by the accused. To be noted, this is a one-off case and shall not act as a precedent. **Point No.(i) is answered accordingly.**



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Discussion and Decision for Point Nos.(ii) & (iii)

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7. In this case, the Investigation Officer inspected the scene of occurrence on June 7th, 2010 and prepared Rough Sketch (Ex.P.11) and Observation Mahazar (Ex.P.2) in the presence of witnesses Motchiyam (P.W.8) and Ramachandran (L.W.10). Then he collected blood-stained Soil (M.O.4) and sample Soil with no blood stains (M.O.5) from the scene of occurrence under Seizure Mahazar (Ex.P.3). Blood stains found in M.O.4 matches with the blood of the deceased *vide* FSL Report. Though the FSL Report is available in the case file, it was not marked. However, the prosecution examined Motchiyam (P.W.8) to prove the place of occurrence. This Court has perused the evidence of P.W.8 and finds no reason to disbelieve P.W.8's evidence. Therefore, the evidence of P.W.14 coupled with the evidence of P.W.8 and the FSL Report, prove the place of occurrence.

8. The prosecution examined Dr.Rajendran (P.W.12) who conducted the post-mortem and gave Post-mortem Certificate (Ex.P.8). He deposed that while conducting post-mortem upon the deceased's body, he found the following injuries:



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- i. a cut injury measuring 15 x 10 x 6 cm on the right side neck portion wherein, the blood vessels and nerves are found cut;
- ii. a cut injury measuring 10 x 2 x 1 cm on the temporal region above right ear;
- iii. a cut injury measuring 2 x 1 x 0.5 cm between the left thumb and the left pointing finger.

In view of the above evidence, the prosecution has proved that the deceased died due to homicidal death.

Ocular Witnesses

9. The prosecution examined P.W.2 and P.W.3, who are parents of the deceased, as Ocular witnesses. They are residing in W.Pudupatti. The place of occurrence is 'Kansapuram Mangalsamy's mango farm situate in the foothills of western ghats'. The distance between W.Pudupatti and the place of occurrence is 7 Kilometer. P.W.2 and P.W.3 in their evidence have deposed that on June 6th, 2010, they learnt that the accused suspected and assaulted the deceased for speaking over phone with their relatives in Kansapuram; that they went to the deceased's house at Kansapuram the next day morning i.e., on June 7th, 2010 where they learnt that the



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deceased and the accused went to 'Mangalsamy's mango farm situate in the foothills of western ghats' to collect firewood; that they proceeded to that place at about 08.00 hours; that upon reaching that place they saw the accused quarrelling with the deceased; that they yelled to halt the quarrel; that the accused vehemently declared to kill the deceased and struck the billhook which, the deceased tried to resist, sustaining a cut in her left palm; that then the accused struck the billhook at the right side neck of the deceased; that the deceased collapsed and died instantly; that the accused after killing the deceased, ran away from the scene of occurrence; that they got frightened and ran away to Kansapuram; that they then informed their son Jayganesh (P.W.1) who visited the scene of occurrence and then went to Koomapatti Police Station on the same day at 11.30 hours and lodged Written Complaint (Ex.P.1).

9.1. If really P.W.2 and P.W.3 were present in the scene of occurrence, naturally they would have tried to intervene and save their daughter (deceased). They would not have left their daughter all alone though she appeared to be dead. Atleast one of them would have stayed there and raised alarm for help while the other would have gone to the village to call for help, which would be the natural conduct of an Ordinary



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Prudent Man. On the other hand, both of them got frightened and ran away from the scene of occurrence to Kansapuram and came back to the place of occurrence along with their son P.W.1. Further, none of the witnesses except P.W.7 has deposed supporting the presence of P.W.2 and P.W.3 in Kansapuram or in the scene of occurrence on the fateful day. For the reasons alluded to *supra*, the evidence of P.W.7 cannot be relied upon. Hence, the prosecution has not proved the presence of P.W.2 and P.W.3 in the scene of occurrence beyond reasonable doubt.

Extra-Judicial Confession

10. As far as the extra-judicial confession is concerned, it is admissible under Section 24 of the Evidence Act, provided, if it is free from any inducement, threat or promise. It is a rule of caution that the Court would generally look for independent reliable corroboration before placing reliance upon an extra-judicial confession. But when such extra-judicial confession is corroborated with several other proved circumstances, the Court can rely upon such extra-judicial confession [*vide Balwinder Singh Vs. State of Punjab*, reported in *1995 Supl. (4) SCC 259 : AIR 1996 SC 607*].



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10.1. According to the prosecution, on June 7th, 2010 at 16.15 hours, the accused went to the office of the Village Administrative Officer [VAO] (L.W.13) and voluntarily gave an extra-judicial confession which the VAO (L.W.13) recorded in the presence of the Village Assistant (P.W. 11) and reported to the police. The VAO then handed over the accused to the Police.

10.2. Admittedly, the accused is rustic and illiterate. The said VAO passed away before commencement of trial. The prosecution examined Village Assistant-Karaiyah (P.W.11) to prove the alleged extra-judicial confession. P.W.11 in his evidence has deposed that his office is in a busy and bustling place. Notably, though not mandatory, no other witnesses were examined to prove the alleged extra-judicial confession. In his cross-examination, he admitted that the police called the VAO to the Police Station since the occurrence took place within the VAO's jurisdiction. Further, FIR was registered on the fateful day at 11.30 hours. The above two facts make it less likely for the accused to approach the VAO to give an extra-judicial confession in this case. There is nothing to show that the VAO and the accused were related or known to each other. Unless a person trusts another, there is no question of unburdening his heart to that



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person. In view of the foregoing narrative and the overall facts and circumstances of the case, the alleged extra-judicial confession does not inspire confidence of this Court.

Arrest and Recovery

11. According to the prosecution, on June 7th, 2010 after the VAO surrendered the accused to the Police, the accused gave a voluntary confession statement to the police, the admissible portion of which is marked as Ex.P.6. in the presence of the VAO (L.W.13) and Village Assistant (P.W.11). Thereafter, the accused led the police to the Mango farm where he had hid the billhook. Investigation Officer (P.W.14) recovered the blood-stained billhook [அரிவாள்] (M.O.1) in the presence of the same witnesses. As stated *supra*, the VAO passed away before commencement of trial. The Investigation Officer has not examined any independent witness, to prove the alleged confession and pursuant recovery of M.O.1. Notably, no one connected with the Mango farm has been examined by the Investigation Officer. Hence, the confession and pursuant recovery of M.O.1 are doubtful as the prosecution has not proved the same beyond reasonable doubt.



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WEB COPY **Motive**

12. In general, motive is a thing primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited the accused to commit a particular crime. It is a settled legal position that even if the absence of motive as alleged is accepted, it is of no consequence and it pales into insignificance when direct evidence establishes the crime. Likewise, if motive is however strong, in the absence of convincing ocular-witnesses, the accused cannot be convicted.

12.1. P.W.2 and P.W.3 are the parents of the deceased. P.W.1, P.W.4 to P.W.6 are their sons and daughters. P.W.7 is the sister of P.W.3 and aunt of the accused. There is no dispute or contest over the fact that all the above witnesses and the accused are related to one another. P.W.1 to P.W.6 deposed that the accused used to suspect the deceased's fidelity as she spoke frequently with her relative men and quarrelled with her. This was the alleged motive. The prosecution has proved the motive by examining the above witnesses.



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12.2. In this case, as discussed in the paragraphs above, there is no convincing ocular witnesses. Therefore, motive pales into insignificance.

Examination under Section 313 of Cr.P.C.

13. In this case, this Court has perused the records pertaining to the examination of the accused under Section 313(1)(b) of Cr.P.C.

13.1. Entire deposition of each witness, was bundled together and posed as one single question to the accused. Totally 18 questions were posed. Out of which, 2 questions are general in nature. Each of the remaining 16 questions pertain to each of the 16 witnesses. Hence, the accused might not have been able to put forth a rational and intelligible explanation as to the incriminating circumstances against him [*vide Jai Prakash Tiwari Vs. State of Madhya Pradesh*, reported in **2022 LiveLaw (SC) 658**]. Therefore, it can be seen that principles of natural justice have not been duly followed in this case by the Trial Court. It is pertinent to reiterate that the examination of the accused under Section 313 of Cr.P.C is not an empty formality. Further, the Hon'ble Supreme Court in *Indrakunwar's* case [*Indrakunwar v. State of Chhattisgarh* reported in **(2023) SCC Online SC 1364**] has held in paragraph 34 as follows:



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34. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.

34.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

34.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

34.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

34.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

34.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version



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of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

34.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

34.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

34.8 This statement is to be read as a whole. One part cannot be read in isolation.

34.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

34.10 The circumstances not put to the accused while rendering his statement under the Section are to



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be excluded from consideration as no opportunity has been afforded to him to explain them.

34.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

34.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

14. In view of the foregoing narratives and overall facts and circumstances of the case, this Court is of the opinion that the prosecution has not proved the charge under Section 302 of IPC levelled against the accused beyond reasonable doubt.

15. The Trial Court without appreciating the evidence of the prosecution witnesses in the right perspective has gravitated to convict the accused. Hence, this Court inclines to interfere with the impugned Judgement. **Point Nos.(ii) and (iii) are answered accordingly.**



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WEB COPY 16. Resultantly,

- i. This Criminal Appeal is allowed.
- ii. The impugned Judgment dated 29.09.2021 passed by the Fast Track Mahila Court, Virudhunagar District at Srivilliputtur in Sessions Case No.34 of 2011 is hereby set aside and accused (appellant) is acquitted from the charge levelled against him.
- iii. Accused (appellant) shall be released forthwith if his custody is not required in any other case/cases.
- iv. The bail bond if any, executed by accused (appellant) shall stand discharged. The fine amount if any paid by accused (appellant) shall be refunded to him.

(M.S., J.) (R.S.V., J.)
19.12.2023

Index: Yes
Neutral Citation: Yes
Internet: Yes
Speaking order

JEN

To
1. The Inspector of Police,
Watrap-Koomapatti Police Station,
Virudhunagar District.



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- 2.The Judge,
Fast Track Mahila Court,
Srivilluputtur,
Virudhunagar District.
- 3.The Superintendent,
Central Prison, Madurai.
- 4.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD) No.725 of 2022

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

JEN

Pre-Delivery Judgment made
in
Crl.A.(MD) No.725 of 2022

19.12.2023