



Crl.A(MD)Nos.545 and 596 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.12.2022

Pronounced on : 04.01.2023

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN  
AND  
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

**Crl.A.(MD).Nos.545 and 596 of 2019**

**Crl.A.(MD).No.545 of 2019**

Chinnadurai

....Appellant / Accused No.4

**Vs.**

State Represented by  
The Inspector of Police,  
Tiruchendur Police Station,  
Tiruchendur,  
Thoothukudi District.  
(Crime No.313 of 2010)

....Respondent / Complainant

**Prayer** : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code to call for the records in S.C.No.281 of 2017 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, Thoothukudi District and set aside the judgment dated 25.10.2019 and acquit the accused/appellant of the charges.



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**Crl.A.(MD).No.596 of 2019**

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1.Muthu Kumar

2.Jeyabharath @ Bharath (died)

....Appellants / Accused No.2 & 3

*[Appeal abated as against 2<sup>nd</sup> appellant vide order dated 05.12.2022 in Crl.A.(MD).No.596 of 2019 by this Court.]*

**Vs.**

State Represented by  
The Inspector of Police,  
Tiruchendur Police Station,  
Tiruchendur,  
Thoothukudi District.  
(Crime No.313 of 2010).

....Respondent / Complainant

**Prayer:** Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code to call for the records in S.C.No.281 of 2017 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, Thoothukudi District and set aside the judgment dated 25.10.2019 and acquit the accused/appellants of the charges.

For Appellants : Mr.K.K.Ramakrishnan  
for Mr.K.Veilmuthu

For Respondent : Mr.S.Ravi,  
Additional Public Prosecutor.

(In both cases)



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**COMMON JUDGMENT**

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**SUNDER MOHAN, J.**

The Accused Nos.2 and 3 have preferred Criminal Appeal in Crl.A. (MD).No.596 of 2019 and the Accused No.4 has preferred Criminal Appeal in Crl.A.(MD).No.545 of 2019 aggrieved by the judgment and sentence passed in S.C.No.281 of 2017 dated 25.10.2019 on the file of the learned I Additional District and Sessions Judge, Thoothukudi. The Accused Nos.1, 2 and 3 were convicted for the offence under Section 302 IPC and sentenced to life imprisonment besides offences under Section 201 and 379 IPC. The Accused No.4 was convicted for the offence under Section 414 IPC and sentenced to undergo three years of imprisonment. During the pendency of the Appeals, the Accused No.3 died. The appeal as against him abated and recorded vide order dated 05.12.2022 passed by this Court. The second accused and the fourth accused are before us.

2. The case of the prosecution is that all the accused had the common intention to hire any vehicle and cause the death of driver, thereafter take away the vehicle and sell it. With that intention, the accused hired the



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TATA Ace Auto bearing Registration No.TN 19 9349 belonging to the deceased under the guise of transporting scrap material to Tirunelveli from Chengalpattu. The Accused met the deceased in his house on 30.04.2010. On 01.05.2010, after the material was offloaded at the house of the first accused and while they were returning, the accused had lunch with the deceased in the afternoon at about 1.00 P.M. Thereafter, at 5.00 P.M., the accused caused the death of the deceased. The first accused is said to have strangled the neck of the deceased by an electric wire assisted by the second accused. The first and the second accused are further said to have stamped the stomach of the deceased. The third accused is said to have held the legs of the deceased and the second accused squeezed the testicles of the deceased and thereby caused the death of the deceased. The first three accused, A1 to A3 were charged for the offence under Section 302, 379 and 201 IPC. The accused are alleged to have set fire to the body of the deceased by pouring petrol over his body. It is further the case of the prosecution that A1 to A3 sold the TATA Ace Auto bearing Registration No.TN 19 9349 to the fourth accused and fixed the consideration as Rs.1,00,000/- and received an advance of Rs.20,000/- The fourth accused is said to have changed the number plate of the said vehicle and used another



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Registration No.TN 22 BV 9569 with intent to conceal that it was a stolen vehicle and hence was charged for the offence under Section 414 IPC.

3. The case of the prosecution further is that on 04.05.2010, P.W.2, the Village Assistant saw an unidentified dead body in a decomposed state at about 10.00 P.M in Poochikadu Nalumavadi road of Kudiraimoli Village. He had informed P.W.1, the Village Administrative Officer, who in turn filed a complaint, which is marked as Ex.P1. In the said complaint, P.W.1 had stated that she saw the dead body of a male person, which was found naked and in a decomposed state. The First Information Report was registered and marked as Ex.P14. Thereafter, the investigation commenced and the dress materials of the deceased and his chappals which were found in a burnt condition (M.O.6 and M.O.7) were seized by Mahazar Ex.P19. Thereafter, Ex.P16, Observation Mahazar and Ex.P17, rough sketch, was prepared. An inquest was conducted at the place, where the dead body was found, on 05.05.2010 at about 3.45 P.M and the inquest report was marked as Ex.P6. It is also the case of the prosecution that information about the presence of unidentified dead body was also given by P.W.3, the Forest Ranger and P.W.4, the Forester, to the Police on 05.05.2010 in the evening.



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The Police, in order to confirm that the dead body found was that of the deceased, conducted super imposition test by comparing the skull of the deceased with his photograph. The expert evidence was marked as Ex.P22.

4. The prosecution sought to establish the case by circumstantial evidence. P.W.1 is the Village Administrative Officer, who had lodged the complaint, after getting information from the Village Assistant, P.W.2, that an unidentified dead body was found. P.W.3 and P.W.4 are the Forest officers, who had also informed the Police and confirmed the fact that the Police was present at the scene of occurrence at 8.00 P.M. on 04.05.2010. P.W.5 is the Mahazar witness, who turned hostile. P.W.6 and P.W.7 were examined to establish that the accused and the deceased came to a hotel on 01.05.2010 at about 2.30 P.M. in a TATA Ace Auto bearing Registration No.TN 19 9349 and bought lunch. Both P.W.6 and P.W.7 turned hostile. P.W.8 is the Doctor, who conducted the postmortem. P.W.9 and P.W.13 are Constables, who assisted the investigation. P.W.10 is the Village Administrative Officer, who speaks about the arrest of the accused and her witnessing the seizure of three mobile phones from the accused and the seizure of the TATA Ace vehicle from the residence of the fourth accused.



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P.W.11 is the owner of the vehicle bearing Registration No.TN 22 BV 9569, which was purchased by him from the fourth accused. P.W.12 is the Village Administrative Officer, who speaks about seizure of M.O.5, sticker, from the vehicle seized from the residence of the fourth accused. P.W.13 is the Constable, who speaks about the cremation of the deceased after the inquest was conducted. He would further state that since the body was unclaimed, he had performed the cremation. P.W.14 is the mother of the deceased, who is said to have seen the accused on 30.04.2010 at her residence when they spoke to the deceased for hiring his vehicle. Similarly, P.W.15 is the brother-in-law of the deceased, who also is said to have seen the accused talking to the deceased on 30.04.2010. P.W.16 is the Sub Inspector of Police, who speaks about the registration of FIR on the complaint of P.W.1, the Village Administrative Officer. P.W.17 is the Sub Inspector of Police, who speaks about obtaining the call details from the service provider for the cell phone No.9940648005, which is stated to have used to by the second accused. P.W.18 is the Inspector of Police, who conducted investigation and filed the final report.



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5. The Trial Court found that the prosecution had proved the case by circumstantial evidence of last seen and by recovery of material objects from the accused connecting to the crime. The Trial Court also took into consideration the call details produced by P.W.17, which is said to contain the details of phone calls made from the cell phone of the second accused, which establishes that second accused had spoken to the deceased on several occasions. The further conduct of the fourth accused in changing the number plate of the TATA Ace vehicle also was taken into consideration by the Trial Court for finding the accused guilty of the offences charged.

6. Mr.K.K.Ramakrishnan, learned counsel for the appellants submitted that the circumstances have not been fully established by the prosecution and hence the judgment of conviction rendered by the Trial Court is erroneous. The learned counsel submitted that P.W.14 and P.W.15, who are said to have seen the Accused Nos.1 to 3 at the house of the deceased on 30.04.2010, cannot be believed. They identified the accused in the Police Station. Further, their complaint alleging that P.W.14's son was missing, lodged before the Chengalpattu Police Station in Crime No.267 of



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2010 was not marked. Non-production of the said complaint creates suspicion in the prosecution case that P.W.14 and P.W.15 saw the Accused Nos.1 to 3 in the house of the deceased on 30.04.2010. Further, the identification parade was not conducted by the prosecution and it is fatal to the prosecution case, as admittedly, A1 to A3 were strangers to P.W.14 and P.W.15. The other witnesses, P.W.6 and P.W.7, who are said to have last seen the accused, had turned hostile. Therefore, the prosecution had failed to prove the circumstance of last seen. The learned counsel further submitted that the recovery of TATA Ace vehicle from the residence of the fourth accused is highly doubtful. In any event, that recovery by itself would not show that the fourth accused knew that the vehicle was a stolen property and he thereafter concealed it. The prosecution sought to prove the fact that the fourth accused had changed the number plate from TN 19 9349 to TN 22 BV 9569 by recovery of M.O.5, which is a sticker containing Tamil letters “rp.t.jp.”. The M.O.5 sticker by no means can establish that the number plate was changed by the fourth accused. The recovery of other material objects from the accused would not connect the accused to the crime. The call details said to have been obtained from the Nodal Officer of the service provider, namely, Airtel containing the details of phone calls



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made from the cell phone used by the second accused cannot be accepted.

There is no explanation for the prosecution for non-examination of the Nodal Officer. Further, the details did not contain a certificate under Section 65(B) of the Evidence Act. That apart, the details of the call records show that the phone said to have been used by the second accused was in the name of one Mr.Rathai. The prosecution has not established the link between the said Rathai and the second accused. Therefore, the learned counsel submitted that the links to circumstances have not been established by the prosecution with break in the chain.

7. Mr.S.Ravi, the learned Additional Public Prosecutor appearing for the respondent submitted that the evidence of P.W.14 and P.W.15 who are the mother and brother-in-law of the deceased can be believed. They had nothing against the accused and therefore, there was no reason for them to falsely implicate the accused. Further, the recovery of TATA Ace vehicle from the fourth accused would establish the prosecution case. There was no necessity for the fourth accused to have changed the number plate of his vehicle. He, in order to conceal the fact that the said vehicle was stolen, had used the vehicle number of another TATA Ace vehicle bearing Registration



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No.TN 22 BV 9569, which had already been sold to P.W.11. The call details and the recovery of material objects on the confession of the accused established the prosecution case.

8. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent.

9. The case is based on circumstantial evidence. Admittedly, the deceased was found in a decomposed state on 04.05.2010. The prosecution sought to establish the identity of the deceased through super imposition test and through the identification of the dress materials found in the scene of occurrence by P.W.14 and P.W.15. Strangely, we find that the expert, who had issued P.W.22 certificate by comparing the skull of the deceased with his photograph, has not been examined by the prosecution. Further, we find that the version of P.W.2, Village Assistant, is that when he first saw the deceased, the body was found in a naked condition. When that being the case, the recovery of dress materials becomes highly doubtful. The identity of the deceased also appears to be doubtful. Ex.P22 also does not give a definite opinion that the skull of the dead body found on 04.05.2010 matched with the photograph of the alleged deceased. The opinion only



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says that it is possible that it belongs to one and the same person.

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10. However, even assuming that we accept the report of the Assistant Director, Anthropology Division, who issued Ex.P22, the circumstances relied upon by the prosecution have not been conclusively established. P.W.14 is the mother of the deceased. Her version is that the Accused Nos.1 to 3 came to the house on 30.04.2010 to hire the vehicle belonging to the deceased. Further, she would admit in the cross-examination that her husband had earlier given a complaint before the Chengalpattu Police Station complaining that her son was missing and in that complaint, there is no reference to the Accused Nos.1 to 3 calling the deceased to transport the scrap material to Tirunelveli. Further, she would also admit in the cross-examination that she went to the Police Station at Tirunelveli to identify the accused. There, she found four persons in the Police Station and the Police had told her that they were the accused in the case. P.W.15 also would state about his visiting the Police Station, wherein, the Police had told him that the accused committed the crime. In the light of the admission of P.W.14 that her husband did not state in their complaint before the Chengalpattu Police Station about three persons talking to the



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deceased, the subsequent version becomes highly doubtful. That apart, for reasons best known to the prosecution, the complaint in Crime No.267 of 2010 registered on the file of Chengalpattu Police Station has not been marked by the prosecution. The earliest version can be found only in the said complaint. The suppression of the said FIR makes the version of P.W.14 and P.W.15 highly doubtful. That apart, they had admitted that the Tirunelveli Police had shown the accused and stated that they committed the offence. P.W.6 and P.W.7, who were examined to establish that the accused came and bought food on the afternoon of 01.05.2010, turned hostile. Therefore, we find that the prosecution has not established the circumstances of accused last seen with the deceased.

11. The call records produced by P.W.17 said to have been obtained by him from the Nodal Officer of Airtel and marked as Ex.P15 cannot be accepted for more than one reason. The said document ought to have been marked through the Nodal Officer himself by examining him. The prosecution had not examined him for reasons best known to them. The document Ex.P15 shows that the number said to have been used by the second accused belonged to one Rathai. The prosecution had not established



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as to how the second accused came in possession of the sim card in the name of the said Rathai. Since this vital link is missing, we cannot treat Ex.P15 as containing the call records of the second accused.

12. The other circumstance relied upon by the prosecution is the recovery of TATA Ace vehicle from the fourth accused and the fact that he had changed the number plate of the vehicle from TN 19 9349 to TN 22 BV 9569. The recovery of M.O.5 is sought to be relied upon by the prosecution to establish that fact. M.O.5 sticker in our view does not conclusively establish the fact. It is a sticker which contains the Tamil words “rp.t.jp.”. This would not establish that the accused changed the number plate. That apart, the vehicle according to the prosecution bearing registration number TN 22 BV 9569 was already sold to P.W.11 and the fourth accused used the very same registration number for the stolen vehicle belonging to the deceased. P.W.11 does not say that his vehicle had the Registration No.TN 22 BV 9569. He would just say that his vehicle sold by the fourth accused had the Registration No.9569. The prosecution had not seized the RC Book from P.W.11 to establish their case. Therefore, in our view, this recovery also cannot be treated as a circumstance against the accused.



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13. It is well settled that in a case based on circumstantial evidence, the prosecution has to not only prove the circumstances conclusively, but the circumstances must form a complete chain pointing out only to the guilt of the accused ruling out any other hypothesis. However, in this case, the prosecution had failed to conclusively establish the circumstances to prove the charge of 302 IPC as against the second accused/appellant in Crl.A.(MD).No.596 of 2019.

14. As regards the fourth accused, who is convicted for offence under Section 414 IPC, the evidence does not suggest that he had purchased the TATA Ace vehicle with the knowledge that it was stolen. The facts of his changing the number plate also is not established. Hence, we cannot hold that he had concealed the fact that it was stolen. Therefore, the charge under Section 414 IPC against the appellant in Crl.A(MD).No.545 of 2019 also has to fail.

15. Hence, we set aside the judgment of conviction and sentence imposed by the I Additional District and Sessions Court, Thoothukudi in



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S.C.No.281 of 2017 as against the appellants and set them at liberty. The

Criminal Appeals in Crl.A.(MD).Nos.545 and 596 of 2019 are allowed. Bail bonds, if any executed by the appellants, shall stand cancelled. Fine, if any paid by them, shall be refunded. There shall be no order as to costs.

[G.J.,J.] [S.M.,J]  
04.01.2023

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
Lm

To

- 1.The I Additional District and Sessions Judge,  
I Additional District and Sessions Court,  
Thoothukudi District.
- 2.The Inspector of Police,  
Tiruchendur Police Station,  
Tiruchendur,  
Thoothukudi District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**DR.G.JAYACHANDRAN, J.**  
**and**  
**SUNDER MOHAN, J.**

Lm

Judgment made in  
Crl.A.(MD).Nos.545 and 596 of 2019

04.01.2023