



Crl.A(MD)No.579 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	21.02.2023
Pronounced on	10.03.2023

CORAM

**THE HONOURABLE DR JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR JUSTICE K.K.RAMAKRISHNAN**

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Muthupandi

.. Appellant/Sole Accused

Vs.

The State,
Represented by the Inspector of Police,
Sethubavachatram Police Station,
Thanjavur District.
(Crime No.149 of 2017)

.. Respondent/Complainant

Prayer: Criminal Appeal has filed under 374(2) of the Criminal Procedure Code to set aside the judgment of the learned III-Additional District Judge, Pattukottai, dated 29.08.2019 made in S.C.No.85 of 2018.

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For Appellant : Mr.N.Ananda Kumar,
for Mr.P.Balamurugan

For Respondent : Mr.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

K.K.RAMAKRISHNAN, J.

The sole accused in S.C.No.85 of 2018 on the file of the III Additional District Judge, Pattukottai, is the appellant before this Court and he challenged the following conviction and sentence passed against him under Section 302 IPC by the judgment, dated 29.08.2019.

Accused	Conviction for offence under Section	Sentence of imprisonment
Muthupandi (Sole Accused)	302 of IPC	(i)Life Imprisonment. Fine of Rs. 10,000/-, in default 6 months Simple Imprisonment.

2.The case of the prosecution runs thus:



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2.1. The case of the prosecution is that P.W.11, Jeyaraman was running a Ice Company in the name and style of “Aswini” at Pattukottai. Both the accused and the deceased were worker of P.W.11. P.W.11 scolded the accused for selling lesser quantity of ice-cream than the deceased which impulsed the appellant to make quarrel with the deceased. Further, on 11.09.2017, at about 03.00 p.m., the appellant attacked the deceased with M.O.4 in his rental residence situated at Irandam Pulikadu belonged to P.W.8 which resulted in to death.

2.2. The next day, P.W.1 incidentally went to the residence of the deceased and found him dead. Immediately, she informed the same to her husband and neighbour. Thereafter, she lodged a complaint(Ex.P.1) to P.W.13 on 12.09.2017 at 05.00 p.m. On receipt of the complaint, P.W.13 registered the case in Crime No.147 of 2017 for the offence under Section 302 of IPC and express FIR is marked as Ex.P.6 and he transmitted the FIR to the learned Judicial Magistrate Court, Pattukottai, as well as the Inspector of Police, P.W.18.



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2.3. P.W.18, the Inspector of Police, upon receipt of the FIR, conducted the investigation by preparing the observation mahazar (Ex.P. 2), sketch (Ex.P.11) and also recovered M.Os.1, 2 & 3 from the occurrence place in the presence of the witness namely, P.W.8 and conducted inquest under Ex.P.12 and sent requisition to P.W.15 to conduct postmortem.

2.4. Thereafter, on 13.09.2019, between 10.30 a.m, to 12.00 p.m, he arrested the accused on Pudupattinam in the ECR Road and the accused gave the voluntary confession in the presence of P.W.10 and on the basis of the said confession, he recovered M.O.4 in the occurrence place. Thereafter, he continued the investigation by collecting Postmortem Certificate and sent M.Os.1 to 3 for obtaining Serological Report by submitting the requisition to P.W.17. After collecting all the reports and examining all the witnesses, he filed final report before the learned Judicial Magistrate, Pattukottai, under Section 302 IPC.



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2.5. The learned learned Judicial Magistrate, Pattukottai, has taken the final report on file in P.R.C.No.77 of 2017 and committed the case to the learned Sessions Judge, Thanjavur, after furnishing the copies to the appellant in compliance with Section 207 Cr.P.C. The learned III- Additional Sessions Judge, Pattukottai, took up the case on file in S.C.No.579 of 2019.

3.The learned Trial Judge after framing necessary charges, questioned the accused under Section 235(2) of Cr.P.C and the appellant pleaded not guilty and hence, the trial was conducted by examining P.W.1 to P.W.18 upon marking Exs.P1 to P13 and M.Os.1 to 4.

4. After recording the prosecution witnesses, the appellant called upon to answer under Section 313 Cr.P.C questioning by enumerating the incriminating material available against him and he denied the same. Neither defence witness examined nor defence document marked. The



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learned Judge, came to the conclusion that the charge under Section 302 IPC framed against the appellant held to be proved beyond reasonable doubt and imposed the sentence of life imprisonment along with fine of Rs.10,000/- and in default to undergo six months simple imprisonment vide judgment dated 29.08.2019 and the same was challenged in the present appeal.

5.1. Mr.N.Ananda Kumar, for Mr.P.Balamurugan, the learned counsel for the appellant submitted that the case against the appellant rest on the basis of the circumstantial evidence and the prosecution miserably failed to prove none of the circumstance beyond the reasonable doubt. The learned counsel for the appellant further submitted that the prosecution relied the 4 circumstances, namely, (i) extra judicial confession alleged to be made to P.W.5 & P.W.6 by the appellant admitting his act of murder of deceased; (ii) the deceased and the appellant were last seen together and made quarrel prior to the date of the occurrence in the rental residence of the deceased; (iii) the motive



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namely, the appellant got annoyance on the basis of the scolding of P.W.

11, the owner of the ice company regarding the sale of ice cream by the appellant was lesser than the deceased and (iv) the recovery of M.O.4 at the instance of the appellant on the basis of the confession recorded under Section 27 of the Indian Evidence Act.

5.2. None of the above circumstances are established by the prosecution and the learned Trial Judge has not properly appreciated the evidence and recorded the erroneous findings that the prosecution proved the case on the basis of the evidence of P.W.2, P.W.3 & P.W.4 that they have seen the accused in the previous day of the occurrence and they witnessed the scuffle between the accused and the deceased and they pacified the accused and the deceased. Hence, the conviction is liable to be set aside.

5.3. The learned counsel for the appellant further submitted that P.W.2, P.W.3 & P.W.4 was examined by the Investigation Officer only on



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13.09.2017 and the statement was reached the Court only on 27.11.2017

and hence, the witnesses are planted in order to suit the prosecution case.

5.4. Mr.Thiruvadikumar, learned Additional Public Prosecutor, countenanced the above contention by making the submission that even though P.W.5 & P.W.6 turned hostile, the prosecution witnesses P.W.1, P.W.2, P.W.3 & P.W.4 cogently deposed before the Court regarding the quarrel taken place between the appellant and the deceased prior to the proximate time of murder. Further P.W.2, P.W.3 & P.W.4 clearly deposed before the Court without any infirmities that the deceased and the appellant made quarrel on the prior day of the occurrence and the same was pacified by P.W.2, P.W.3 & P.W.4. In all circumstances, they have seen the accused along with the deceased and their evidence is treated as last seen evidence and the appellant duty bound to explain regarding the same and there was no such explanation either in 313 questioning or examining himself. Further, the learned Additional Public Prosecutor submitted that when P.W.1 visited the deceased's house on the



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previous day of occurrence, the deceased have had telephonic conversation with the appellant. In the telephonic conversation, the appellant criminally intimidated the deceased to cause death. The deceased informed to P.W.1 that the appellant threatened to kill him on the said telephonic conversation. That part of statement is admissible under Section 32(1) of the Evidence Act and hence, the prosecution proved the case beyond reasonable doubt and the conviction and sentence passed by the Court below is not liable to be interfered with.

6. This Court considered the rival submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor. The question to be decided in the appeal is ***whether the prosecution proved the charge of the murder of the deceased by the appellant beyond reasonable doubt on the basis of the evidence of the prosecution witnesses, prosecution exhibits and material objects.***

7.This is the case of the circumstances. So, it is the duty of the



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prosecution to draw the material circumstances available against the appellant into complete chain and the same to be fully established and all the facts established should be consistent towards the hypothesis on the guilt of the deceased. At his juncture, it is profitable to bear in mind the guideline enumerated in the judgment of the Hon'ble Supreme Court in **1984 4 SCC 116 (Sharad Birdhichand Sarda Vs. State of Maharashtra)**.

“153. A close analysis of this decision would show that the following condition 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 Vs. State of***



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***Maharashtra** where the following observations were made: [SCC para 19, p.807 : SCC (Cri) p.1047]*

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.

(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.



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

8.1. Back to the appreciation of the evidence relied by the prosecution, we find, the prosecution case is that the accused made extra judicial confession to P.W.5 & P.W.6 and the last seen alive together. Further, the deceased prior to his death said about the quarrel with the accused to P.W.1.

8.2. As far as extra judicial confession, not materially reliable in view of the fact that P.W.5 and P.W.6, who are the witnesses have turned hostile.

8.3. Last seen Theory:-

The prosecution relies on the last seen theory on the basis of the evidence of P.W.2, P.W.3 & P.W.4. P.W.2 stated that around 02.00 p.m, on the previous day of the occurrence, P.W.2, P.W.3 & P.W.4 saw the



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entry of the accused in the residence of the deceased and visited the residence of the deceased upon hearing the noise of quarrel taken place between the deceased and the appellant and they are pacified the appellant and the accused. P.W.3 & P.W.4 also corroborated the version of P.W.2. In their evidence they stated that they had seen the accused and the deceased on the previous day of the occurrence, i.e., on 11.09.2017 at 02.00 p.m.

8.4. Their evidence is not that the appellant all along with the company of the deceased on 11.09.2017 from 02.00 p.m onwards. Further, according to the prosecution, time of death is ascertained 12 to 24 hours prior to the postmortem. So, it is clear that there was no proximity of time between the company of the accused and the appellant. Hence, last seen theory is liable to be rejected.

8.5. Further, P.W.2, P.W.3 & P.W.4 did not disclose their place of business whether it exist adjacent or near to the rental residence of the



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deceased and material circumstance what prompted them to watch the entry of the appellant into the deceased's house. Further, their version that on hearing noise, they went to the house of the deceased is doubtful in the absence of their residence, the near or adjacent place of the residence of the deceased. Apart from that their statement under Section 161 Cr.P.C was recorded on 13.09.2017 and the same was reached the Court only on 27.11.2017. Hence, their evidence lost their credibility. So, the submission of the appellant that they are planted to create the theory of last seen is accepted.

8.6. Statement made to P.W.1 by the deceased not proved:-

Insofar as Section 32(1) of Evidence Act is concerned, the evidence of P.W.1 is that there was quarrel between the appellant and the deceased during the telephonic conversation made between the deceased and the accused on the previous day of the occurrence. The deceased revealed the same to P.W.1 that the appellant threatened him to murder him through phone. To prove that fact, the Investigation Officer did not



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collect any CDR report. So, the version of the P.W.1 that the deceased informed to her that the appellant criminally intimidated the deceased to kill him is highly doubtful. Without proof of the conversation between the deceased and accused, the statement made to P.W.1 by the deceased is not proved and hence the question of applicability of Section 32(1) of the Evidence Act need not be answered.

8.7. Recovery is doubtful:-

The recovery is concerned, P.W.18 arrested the accused and recovered MO.4 in the place of the occurrence and his disclosure is also false and incorrect one. It is the concrete evidence of P.W.1 and other prosecution witnesses that the broken T.V (MO.4) also very much available in the scene of occurrence and the same was within the knowledge of P.W.18. P.W.18 asked P.W.12 to take photos and P.W.2 in his cross-examination clearly deposed that the broken T.V also available in the scene of occurrence. Apart from that, even in the FIR itself, it is stated that the broken T.V was available in the place of occurrence.



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Hence, the prosecution case of recovery of M.O.4 on the basis of the accused is not proved.

8.8. Motive

So far as the motive is concerned, P.W.11 the owner of the Company deposed that he has not scolded the accused for his lessor sale of ice-cream and also in his cross-examination, he stated that there was no dispute between the deceased and the appellant regarding the sale of the ice-cream and hence, the prosecution miserably failed to prove the motive for murder as alleged in the charges.

9. Suppression of complaint made by the brother of the deceased:-

P.W.9, brother of the deceased in his cross-examination stated that he gave a complaint and the same was not produced. So, the prosecution has not explained the suppression of the complaint given by P.W.9. So, investigation on the basis of the complaint given by P.W.1



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creates doubt over the prosecution case in the present fact and circumstance of the case. On that score also prosecution case of deceased murdered by the appellant is liable to be rejected.

10. For the reasons stated above, we hold that the prosecution in all angle failed to prove the case. Accordingly, the question framed is answered negatively and this Criminal Appeal is allowed. The conviction and sentence passed by the learned III-Additional District Judge, Pattukottai, in S.C.No.85 of 2018, dated 29.08.2019, is set aside and the appellant is acquitted from the charge. The bail bond executed by the accused person shall stand canceled and fine amount, if any paid by him, shall be refunded to him.

[G.J.J.] & [K.K.R.K.J.]
10.03.2023

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

DSS/PJL

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To:-

- 1.The III-Additional District Judge,
Pattukottai.
- 2.The Inspector of Police,
Sethubavachatram Police Station,
Thanjavur 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.

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Pre-delivery Judgment made in
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