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CrI.A.No.446 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 22.08.2024

Pronounced On: 19.09.2024

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

and

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

CrI.A.No.446 of 2018

and

CrI.MP.No.651 of 2024

Sivamani

.. Appellant

Versus

State by Inspector of Police,
Nellikuppam Police Station,
Cuddalore District,
Cr.No.76 of 2016 on the file of
Naduverappatu P.S.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) Cr.P.C. to call for the records and set-aside the conviction and sentence imposed against the appellant on 06.02.2018, in S.C.No.243/2016 (on the file of the 1st Additional District and Sessions Court, Cuddalore) and acquit the appellant.



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For appellant: Mr.S.Pramod Narayan

For respondent: Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

(The Judgment of the Court was delivered by C.Kumarappan,J)

The instant criminal appeal has been filed against the order of conviction passed in S.C.No.243 of 2016 dated 06.02.2018, in and by which, the appellant was convicted under Sections 364, 302 and 201 of IPC and sentenced to undergo life imprisonment.

2. The prosecution story is that, one Suresh Kannan is the brother of the deceased Selvam. The accused is Suresh Kannan's co-brother's son. Since, both the accused and the deceased were relative, they became friends. While so, there was a loan transaction between the deceased and the accused. According to the prosecution, the accused borrowed a sum of Rs.45,000/- from the deceased, and when this was demanded from the accused for the marriage of his sister PW4 Monisha, the accused could not repay. But the deceased was persistent in demanding the said money, which caused the accused to carry a grudge against the deceased.

3. While so, on 28.01.2016, at about 08.30 pm, the deceased went to the accused house to receive the amount, whereby the accused by



machination, took him to his field under the pretext of consumption of alcohol. After that, the deceased again started demanding the loan amount.

Enraged by such conduct, the accused planned to do away the deceased and attacked the deceased with a wooden log. Due to the attack, the deceased lost his control, and believing the deceased to have died, he decided to bury him. While he was digging a grave, the deceased started screaming, and therefore, the accused again attacked him indiscriminately with the spade. After that he dumped the deceased body in the pit and vanished.

4. Since the deceased did not return, PW1/Suresh Kannan started enquiring about his whereabouts. Hence, a police complaint was given to Sub Inspector of Police, Kullanchavadi Police Station on 30.01.2016 with PW13/ Mr.Gajendran. After registering the FIR, PW13 forwarded the same to the concerned Jurisdictional Magistrate, as well as to the Investigating Officer. After that, the Investigating Officer/PW14 took up the investigation, and proceeded to the Suresh Kannan's residence and enquired and also recorded statements from PW1 to PW5, and the father of the accused qua Mr.Kesavan and other witnesses. During the investigation, he came to know about the registration of man missing FIR on 31.01.2016, at Naduverappatu



Police Station, against the accused. Therefore, the Investigating Officer had developed a suspicion against the accused.

5. In the meanwhile, on 11.02.2016, the PW7/Balamurugan, Village Administrative Officer of Naduverappatu Village brought the accused to the Police Station and submitted a special report along with an Extra Judicial Confession statement given by the accused. Then, the Investigating Officer arrested the accused, and on arrest, the accused again voluntarily gave a confession statement, which was recorded in the presence of one Anandan/PW8 Village Administrative Officer of Agaram East Village. Thereafter, an alteration report was sent to the concerned Judicial Magistrate altering the FIR to Sections 364, 302 and 201 of IPC. The accused then handed over the key of the two wheeler of the deceased and was recovered under Mahazar.

6. In pursuance of the above confession statement, a discovery of fact was also effected by identifying the place where the deceased body was buried. In pursuance thereof, the Investigating Officer prepared the Mahazar and rough sketch and also recovered the wooden log and spade. Thereafter, he also made arrangement to exhume the body of the deceased. In the



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presence, of Tahsildar, Cuddalore, the body was exhumed on 12.02.2016 and was identified by the PW1/Suresh Kannan.

7. Thereafter post-mortem was done there itself, and made arrangements to preserve the skull and thigh bones of the deceased, and forwarded the same to the Forensic Department for superimposition. The Investigating Officer had also made arrangements to take the accused under police custody. In the meanwhile, since the scene of occurrence comes within the limit of Naduveerappattu Police Station, the FIR was forwarded to the Inspector of Police, Naduveerappattu. After that, a fresh FIR was re-registered in the Naduveerappattu Police Station on 02.05.2016 under Crime No.76 of 2016, and the another Investigating Officer has recorded the statement of the post-mortem Doctor and those who gave the Forensic reports namely superimposition report, DNA and chemical report. Thus, after concluding the investigation, a charge-sheet was laid against the accused under Sections 364, 302 and 201 of IPC.

8. Before the Trial Court, to prove the prosecution case, the prosecution has marked 32 documents and 15 Material Objects and



examined 15 witnesses.

WEB COPY 9. The Learned Sessions Judge after considering the oral and documentary evidences, arrived at the conclusion that the prosecution has proved the charges against the accused, and convicted and sentenced the accused as follows:-

Sl.No.	Offence	Punishment
1.	364 of IPC	7 Years of R.I. with Rs.1,000/- fine i/d Six Months of R.I.
2.	302 of IPC	Life Imprisonment with a fine of Rs.1,000/- i/d six months of RI
3.	201 of IPC	2 Years of R.I. with a fine of Rs.1,000/- i/d Six Months of R.I.

10. Assailing the said order, the learned counsel appearing on behalf of the appellant would vehemently contend that the order of the learned Single Judge is erroneous and contended that the prosecution has not proved the circumstances relied by them beyond reasonable doubt. It was his contention that, there are no witnesses to speak about the last seen theory, and the case of the Extra Judicial Confession is doubtful and by itself, a weak piece of evidence. Besides it was contended that there is no corroboration to the Extra Judicial Confession.

11. The learned counsel for the appellant would further contend that the Trial Court did not take into consideration of the absence of traces of



alcohol in the body of the deceased, and also would contended that the only circumstance of last seen together is by itself not sufficient to lay conviction against the accused. In this regard, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Rambrakash Alias Jalim Vs. State of Chattisgarh*** [(2016) 12 SCC 251] and judgment of the Hon'ble Supreme Court in ***Ramesh Bai and Anr. Vs. State of Rajasthan*** [Crl.A.Nos.868-869 of 2004].

12. The learned counsel for the appellant would further contend that though certain material objects were recovered, no link between the material objects and the occurrence was established. Therefore, the learned counsel would contend that the prosecution has miserably failed to prove the case, whereas the Trial Court has erroneously convicted and imposed the sentence. Hence, he prayed to interfere with same.

13. *Per Contra*, the learned Additional Public Prosecutor would vehemently contend that this is a case of circumstantial evidence and that each circumstances qua the last seen theory, the Extra Judicial Confession, discovery of identification of burial pit and discovery of wooden log and spade were proved beyond reasonable doubt and these circumstances



completed the chain of circumstances, unerringly pointing towards the guilt of the accused, without any other hypothesis.

14. The learned Additional Public Prosecutor would also contend that the disappearance of the accused immediately after the occurrence, and filing of an missing man FIR, against the accused is yet another circumstance which could fortify the prosecution case. He, therefore, contended that the findings rendered by the learned Sessions Judge is well merited and does not require any interference. Hence, he prayed for dismissal of the appeal.

15. We have given our anxious consideration to either side submissions.

16. This is a case primarily based on circumstantial evidence. In the present case, the circumstances which relied by the prosecution are motive, last seen together, Extra Judicial Confession, discovery of fact qua identification of the grave and the weapons, and lastly proving the identity of the deceased body.

17. Before we get into the factual aspect, we deem it appropriate to discuss the legal position in respect of the circumstantial evidence. The



Hon'ble Supreme Court in the case of ***Shailendra Rajdev Pasvan and others Vs.State of Gujarat and Others*** reported in ***(2020) 14 SCC 750***, held that in the case relating to circumstantial evidence, law needs two fold requirements, i) Every link in the chain of the circumstances has to be established, and ii) All the circumstances must be consistent pointing only towards the guilt of the accused. For ready reference, we deem it appropriate to extract paragraphs 13, 14, 15 and 17 of ***Shailendra Rajdev Pasvan (cited supra)*** case, which read as follows:

'13. Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:-

(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

14. This court in the case of Trimukh Maroti Kirkan v. State of Maharashtra has enunciated the aforesaid principle as under:-

“12.....The normal principle in a case based on circumstantial evidence is that the circumstances from



which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence”.

15. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In the case of [Bodhraj v. State of J & K](#), [Rambraksh v. State of Chhattisgarh](#), [Anjan Kumar Sharma v. State of Assam](#) following principle of law, in this regard, has been enunciated: (Shailendra Rajdev Pasvan Case, SCC OnLine Guj para 16)-

“16.....The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other



than the Accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that Accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases”.

17. It is well settled by now that in a case based on circumstantial evidence the Courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused."

(Emphasis supplied by this Court)



18. In yet another judgment in ***Raja Naykar Vs. State of Chhattisgarh*** reported in (2024) 3 SCC 481, Hon'ble Supreme Court has held that in the case of circumstantial evidence any discovery of fact in a place accessible to all, and in common place, become doubtful. The relevant paragraph 31 reads as follows:

"31. Insofar as the finding of the High Court that the appellant has failed to give any explanation in his statement under Section 313 Cr. P.C. is concerned, we find that the High Court has failed to appreciate the basic principle that it is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false explanation or non-explanation of the accused could be taken into consideration. In any case, as held by this Court in the case of Sharad Birdhichand Sarda in a case based on circumstantial evidence, the non- explanation or false explanation of the accused under Section 313 Cr.P.C. cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances."

(Emphasis supplied by this Court)

19. Apart from the above precedents, it is also relevant to refer the judgment of the Hon'ble Supreme Court reported in ***Kalinga Alias Kushal Vs. State of Karnataka*** [(2024) 4 SCC 735] regarding the ratio of Extra



Judicial Confession. As per the above judgment the Hon'ble Supreme Court, held that the Extra Judicial Confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of Extra Judicial Confession. The relevant portions of the judgment are as follows:

“15.The Conviction of the appellant is largely based on the extra-judicial confession allegedly made by him before PW1. So far as an extra-judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record. In Chandrapal Vs. State of Chattisgarh, this Court reiterated the evidentiary value of an extra-judicial confession in the following words:

11.At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this Court has consistently held that an extra-judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra-judicial confession. As held in



State of M.P. Vs. Palatan Mallah, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra-judicial confession of the co-accused.”

“16. It is no more res-integra that an extra-judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra-judicial confession depends on trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra-judicial confession were true. The standard for proving an extra-judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra-judicial confession.”

Therefore, it is made clear that, the Extra Judicial Confession, must be accepted with great care and caution.



WEB COPY 20. Now let us discuss the facts of the case with the prism of the above legal principles.

21 (1). Coming to the motive, it is an admitted fact that the deceased and the accused are related to each other and were friends. Due to procrastination of the accused in repayment of loan amount, the enmity got infused and took the shape of revenge. In order to prove the loan transaction, the prosecution has examined brother of the deceased Suresh Kannan (PW1). According to his evidence, the factum of borrowal of Fourty Five Thousand Rupees from the deceased was proved. Further, this factum was further strengthened through Ex.P1 complaint, which was given prior to the arrest of the accused while narrating the time from which he was missing.

21 (2). Similarly, PW2, Mr.Kamalakaran, who is the friend of the deceased had also spoken about the information given by the deceased that on 28.01.2016, the deceased had informed to him that he is proceeding to Sivamani's house to get back the money. Though, PW2 was cross-examined, he was not questioned about the factum of money transaction. Similarly, even, while cross-examining PW1, though it was attempted to make some



nothing was elucidated. The evidence of PW1 and PW2's is to be appreciated in the background of Ex.P1 complaint, and they would candidly demonstrate the loan transaction.

21 (3). Further while appreciating the evidence of PW4, qua the sister of the deceased, we found that there was a prior demand made by the deceased with the accused. Therefore, if we look at the evidence of PW1, PW2 and PW4, cumulatively, along with Ex.P.1 complaint, we do not find any infirmity in establishing the loan transaction and the substratum of enmity between the deceased and the accused. Therefore, this Court is of the firm view that the prosecution has established the circumstance of motive of a strained relationship on account of the money transaction between the accused and the deceased. It is settled principle of law that in a case arising out of a circumstantial evidence, motive plays a crucial role in completing the chain of circumstances. Here in the case on hand, the prosecution has demonstrated the motive beyond reasonable doubt.



22. Coming to the next circumstance of “last seen together”, the prosecution relied on PW1, Sureshkannan, who is the brother of the deceased. He stated that on the fateful day, the deceased informed him that he was proceeding to the accused house. This was vindicated by PW2, and further reinforced and fortified by the evidence of PW3, who stated that, on the enquiry from the father of the accused about the deceased, he told him that both the accused and the deceased left the house after meal. This portion of the evidence could not be shattered by the accused through Cross-examination. Further when PW1 and PW3 went in search of the deceased, they firstly proceeded to meet PW4 and deceased's sister Monisha and thereafter, on getting clue from her, proceeded to Sivamani's (accused) residence, where his father confirmed that both Sivamani and Selvam (Deceased) had just left the house.

23. These facts were further strengthened through the evidence of PW5, who is the brother-in-law of the deceased, and husband of PW4, Monisha, wherein PW4 requested her husband PW5 to bring his brother Selvam [deceased] to their residence. In that process he had seen the accused and deceased together. More curiously this portion of the evidence



has not at all been challenged. Therefore, when we look at the evidences of PW1 to PW5 harmoniously, no material has been brought out in their cross-examinations to suspect their evidence. Thus, on a cumulative reading of the evidences of PW1 to PW5, there are no improbabilities and their description of events is simple and straight forward. Further they have also withstood their rigorous cross-examination, in material particulars and received corroboration from other witnesses. Therefore, the circumstance of “last seen together” also stands established beyond reasonable doubts.

24. Coming to the other circumstance of Extra Judicial Confession, it is the case of the prosecution that PW7, Mr.Balamurugan, the Village Administrative Officer, when he was in his office along with his assistants, on 11.02.2016, at about 6.30 am, the accused came with quiver and informed to PW7 about the murder committed by him, and his statement was recorded by PW7, according to the accused narration. In this regard, while looking at the evidence of PW7, it was challenged by the accused on the only ground that there is no possibility for PW7 to be present in his office at about 6.30 in the morning. It was contended by him, that the same is an un-natural factum, and could not be believed. However, PW7 has



categorically explained that due to rain he was compelled to be there at about 6.30 AM. Therefore, he sufficiently explained his presence at about 6.30 AM, and there is every rationale in his answer, and hence we do not find any suspicion on his presence at his office at about 6.30 am. If really, PW7 intended to fabricate any confession statement, he could very well stated that the accused had come at 9.30 am, which, he did not do so. Further, PW7 evidence was consistent in his statement and withstood the rigours cross-examination, which inspires the confidence of this Court.

25. It was only on 11.02.2016, in the Extra Judicial Confession, the accused has narrated, the reason for the enmity and also the nature of attack, and how he was provoked. It is pertinent to mention here that, in the Extra Judicial Confession, he has also stated about the place where the deceased body was buried. While reading this we could not find any artificiality over the same. We also found that, there was every compelling propensity for the accused to voluntarily confess, as at the relevant point of time, he was also under search, in pursuance of the Ex.P32 man missing FIR filed by his father. Therefore, we can safely arrive at a conclusion that the prosecution has also proved beyond reasonable doubt that the Extra Judicial Confession



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recorded and marked as Ex.P.3 is true and genuine.

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26. As we have already discussed that an Extra Judicial Confession by itself cannot be a sole ground to sustain a conviction. But, in the case on hand, the prosecution has also established the “motive” and “last seen together” with the deceased. Therefore, the Extra Judicial Confession being an another circumstance, which has been corroborated by the other circumstances, more particularly the discovery of fact in identifying the place where the deceased body was buried, this Extra Judicial Confession, inspires the confidence of the Court to place reliance on the same, safely.

27. As a matter of fact, after exhumation of the body, postmortem was also conducted, on the spot, and on such postmortem, the skull and thigh bone were identified to belong to that of the deceased, through forensic examination, besides, the identification by the PW1.

28. It is relevant to mention here that the accused did not set up any defence that he was arrested prior to the date of Extra Judicial Confession, or the Extra Judicial Confession was not voluntary. Though, recovery in respect of spade and the wooden logs, was challenged on the ground of absence of blood, the non-detection of the blood in the weapon will in no



way over shadow the unbridled evidence of PW1 to PW5 and the Extra Judicial Confession. Further, we also should keep in mind, that the recovery of the weapon took place after almost two weeks, and in the meanwhile due to rain and shine there was every possibility for the blood to be dis-integrated. Therefore, failure to give opinion as to the Blood Grouping in the spade and wooden log, will in no way dent the prosecution case.

29. Yet another circumstance, which stands against the accused is the recovery of the deceased's vehicle, at the instance of the accused. Here, while looking at the evidence of PW9, he would state that on 29.01.2016 at about 7 am in the morning, the accused left the vehicle in their cycle stand. Though it was cross-examined that the name of the accused was known to PW9, on 11.02.2016, there is no dispute as to the identity of the person (accused) who left the vehilce in the cycle stand. Therefore, the circumstance of recovering the vehicle would also strengthen the chain of circumstances and stand against the accused.

30. The learned counsel for the appellant made a feeble attempt by contending that though the prosecution projected a case of consumption of alcohol by both the accused and deceased, the report of the Forensic



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Department could not find any traces of alcohol, therefore, the same is a circumstance in favour of the accused and hence, the learned counsel would submit that such absence of trace would snap the link. However, we disagree, this Court with the above submissions of the learned counsel for the appellant, for the simple reason, that the body was buried on 28.01.2016, but exhumed only after two weeks. Therefore, expecting traces of alcohol from the body of the deceased after two weeks is too remote and therefore, that cannot be a circumstance in favour of the accused.

31. The Trial Court after taking into consideration of all these circumstances, arrived at a conclusion that the prosecution has proved the charges levelled against the accused, beyond all reasonable doubts. Even while reappreciating the evidence as discussed hereinabove, we are also of the firm opinion that the prosecution has proved all the circumstances, beyond all reasonable doubts and those circumstances would unerringly point towards the accused, without any other hypothesis. Therefore, we do not find any merits or grounds to interfere with the order of conviction passed by the learned Sessions Judge in SC.No.243 of 2016.



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32. In the result, the appeal is dismissed. Connected Criminal

Miscellaneous Petition is closed.

[M.S.R.,J] [C.K.,J]
19.09.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No
NST

Copy to:

1. 1st Additional District and Sessions Court,
Cuddalore District.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District. (Crime No.76 of 2016)



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