



Crl.A.No.566 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

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M.Subramaniam

... Appellant

Vs.

1. The Inspector of Police,
Kavindapadi Police Station,
Erode District.
Crime No.269/2011.

2. Thilagavathy
3. Kokulraj
4. Krishnaveni
5. Ramesh

... Respondents

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgement passed in SC.No.108/2012 dated 26.11.2012 on the file of the Principal Sessions Judge, Erode District and convict the accused person in accordance with law and pass such further or other orders as this Hon'ble Court may deem fit and proper.

For Appellant : Mr.M.Nandhakumar



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For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1
Mr.B.Mohan for R2 to R5

J U D G M E N T

C.KUMARAPPAN, J.

The instant Criminal Appeal has been filed against the order of acquittal passed against the respondents 2 to 5 in SC.No.108 of 2012. The appellant herein is the *de facto* complainant and the father of the deceased.

2. The short facts which are necessary for the disposal of the instant Criminal Appeal is as follows:-

(a). The 1st accused is the wife of one Sekar. The 3rd accused is her servant maid. The accused 2 and 4 are friends. All the four accused reside in and around Kavindapadi village. The 1st accused's husband had leased out a shop to PW3-Suguna to run a Tailoring Institute, where the deceased was a student. It appears that the deceased and the 1st accused's husband had developed intimacy, which caused unfathomable grudge to the 1st accused, against the deceased. In the meanwhile, the 2nd accused proposed



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his love to the deceased, which was not accepted by her and hence, developed unquenched anger against her. The 1st and 2nd accused assume themselves as victims, and with the assistance of the 3rd and 4th accused, hatched criminal conspiracy to murder the deceased by administering poison qua aluminum phosphate tablet, and also by assaulting repeatedly with iron rod and dumped the body in Kalingarayan Canal, thereby all the accused were charged under Sections 120(B), 302, 302 r/w 109 and 201 IPC. According to prosecution, the above offence was committed by the accused on 05.08.2011.

3. Before the Trial Court, the prosecution relied on as many as 19 witnesses as PW1 to PW19, and 37 documents as Exs.P1 to P37, and 17 Material Objects as M.O.1 to M.O.17 were marked. On the side of the defence, no witness was examined and no documents were marked.

4. The Trial Court, after having considered the oral and documentary evidences, have arrived at a conclusion that the prosecution has miserably failed to prove the charges and acquitted all the accused. Assailing the said order of acquittal, the father of the deceased/ *de facto* complainant preferred



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the instant Criminal Appeal.

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5. The learned counsel for the appellant would vehemently contend that the Trial Court did not consider the evidence of PW4 and PW5, who had heard the noise and screaming from the house of the 1st accused at the relevant point of time. It was also further contended by the learned counsel for the appellant that, the Trial Court has failed to consider the crucial testimony of PW3, who had spoken about the last seen theory of having seen the 2nd accused and the deceased together on 05.08.2011. He would further contend that PW3 is natural witness and if we consider the evidence of PW3, who last saw the accused and deceased together on 05.08.2011 at 10.30 hours, and noticing of screaming more or less on the same time, the involvement of the 2nd accused would stand established. The learned counsel would further contend that from the confession statement of the 2nd accused, the place where the body of the deceased was discovered and the recovery of vehicle, which has been used for transporting the body of the deceased, would also implicate the accused with the offence. Whereas, the Trial Court, without going into the real intent of the evidence, has swayed by the flimsy contradictions and therefore, prayed to allow the instant



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Criminal Appeal by setting aside the order of acquittal.

6. The learned Additional Public Prosecutor has also supported the contention of the learned counsel for the appellant.

7. Per contra, the learned counsel for the accused would contend that the findings rendered by the Trial Court is a plausible one and that in a case that rests upon circumstantial evidence, the alleged circumstances projected by the prosecution namely the motive, last seen theory, recovery and the injury sustained by the 2nd accused have not at all been proved. It was the further contention of the learned counsel that even the motive has also not seen the light of the day. Further, the very case of the appellant is only based upon the evidence of Investigating Officer [PW19], which cannot be a ground to convict the accused. Therefore, he contended that the Trial Court has rightly taken into consideration of all the material evidences and has arrived at a right, plausible and reasonable finding and hence, there are no grounds to interfere with the order of acquittal.

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



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9. The case of the prosecution rest upon the circumstantial evidence.

The circumstances relied by the prosecution is,

(i) a Motive on account of illegal affair between the deceased and the husband of the 1st accused on the one hand, and the deceased rejection of the 2nd accused love proposal on the other hand. Both the above instances connected the 1st and 2nd accused to hatch a criminal conspiracy and do away the deceased.

(ii) The last seen theory spoken by PW3 of deceased and the 2nd accused together.

(iii) the alleged recovery of weapon used in the alleged occurrence.

(iv) injury in the finger of the 2nd accused.

(v) administering the poison to the deceased.

10. Before we delve into the factual position, it is appropriate to understand the settled legal principles 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** 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



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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”.

16. In the case at hand, evidence of PW 28 and PW 29, who were crucial to the case of prosecution to establish that deceased was last seen with Appellant Accused 1, is riddled with explained contradictions and thus were rightly disbelieved by the trial court. The High Court committed an error of law in placing reliance upon the evidence of the aforesaid two witnesses. The High Court also failed to take into account the time gap between the point when the appellant-Accused 1 and the deceased were seen together and when the death is alleged to have occurred. According to the prosecution evidence, the two were seen together on 4-2-2001 at about 10:30 a.m. The dead body was recovered on 13-2-2001. Post-mortem was conducted on 14-2-2001. Although the possible time of death is not indicated in the post-mortem report but the doctor who carried out the post-mortem opined in the statement that the time of death can be estimated to be 36 to 48 hours before the post mortem. This clearly goes to show that there was a huge time gap between the point when the accused and deceased were last seen together and the time of death. This crucial fact has been miserably overlooked by the High Court. Apart from extra-judicial confession by appellant-Accused No.-1, no direct evidence was adduced by the prosecution to establish involvement of the accused in the alleged crime. Entire case of the prosecution was based on circumstantial evidence and theory of last seen together. The extra-judicial confession of Appellant 1 before the complainant and other



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relatives and recovery of the dead body were linked together by the prosecution to form a chain.

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."

11. 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."

12. In the case of ***Pardeep Kumar Vs. State of Haryana*** reported in



(2024) 3 SCC 324, the Hon'ble Supreme Court relied on the oft-quoted judgment of Hon'ble Supreme Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** reported in (1984) 4 SCC 116. In ***Sharad Birdhichand Sarda*** case (cited supra), Hon'ble Supreme Court laid down the Panchsheel principle in paragraph 153 and 154 and the same read as follows:-

"153. A close analysis of this decision would show that the following conditions 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 & Anr. v. State of Maharashtra](#) (1973) 2 SCC 793 : 1973 SCC (Crl) 1033 where the following observations were made (SCCp.807, para 19):

"19.....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.



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(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence (Sharad Birdhichand Sarda v. State of Maharashtra, SCC p.185, paras 153-54)"

Therefore, in the case of circumstantial evidence, all the circumstances has to be proved without their being any missing link.

13. While looking into the facts of the instant case, in the prism of the above settled principles, it becomes mandatory on the part of the prosecution to prove all the circumstances beyond reasonable doubts.



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14. Coming to the motive, the prosecution projected that there was a relationship between the 1st accused's husband with the deceased, which caused enmity to the 1st accused against the deceased. Similarly, the 2nd accused also fell in love with the deceased, which was not accepted by the deceased, thereby, the 2nd accused carried a grudge against the deceased. Since the 1st and 2nd accused are neighbors and knew each other's problem, have decided to do away the deceased with the assistance of servant maid of the 1st accused and friend of the 2nd accused. But, admittedly, no witnesses speak about such a motive. The so called motive was not even spoken by PW1, who is the father of the deceased, and PW2-sister of the deceased. Thus, the prosecution has covertly and overtly, miserably failed to examine any witnesses to prove the motive, as one of the circumstance, which is a prime link to the chain of circumstances.

15. Coming to the last seen theory, it is the contention of the learned counsel for the appellant that the deceased was the student in PW3's Tailoring Institute. According to her evidence, on 05.08.2011 at about 12.30 p.m, she had witnessed the confabulation between the deceased and the accused near her Institute. While considering this aspect, the Trial



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Court has found that the mere presence of the 2nd accused and the deceased, cannot be an ultimate factum to conclude that the 2nd accused was the real culprit, as it was the prosecution case that, the 2nd accused has forcibly administered the poison, qua aluminum phosphate, to the deceased. But, according to the viscera report, there was absolutely no traces of poison. Therefore, the very prosecution case of administering the poison also stands disappeared.

16. Furthermore, PW3 in her cross examination, had also admitted that, when she was examined by the police, the 2nd accused was in the custody of the police. If that being the case, when other witnesses did not speak about the motive, the presence of the 2nd accused at the police station, while PW3, who had spoken about the last seen was examined, would also cause a reasonable doubt of false implication. Therefore, the findings rendered by the Trial Court that the 2nd accused and the deceased were last seen together, has not been proved beyond reasonable doubt, would be a plausible and reasonable view.

17. An yet another argument was also advanced that, PW4 and PW5, who are the neighbors to the 3rd accused, heard a scream from the 3rd



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accused's residence. The mere sound of screaming from the 3rd accused's residence, by itself, cannot be projected as a link to the chain of circumstances. More so, when the 3rd accused had explained to PW3 and PW4 that it was her daughter's sound. Therefore, the contention put forth by the learned counsel for the appellant that the evidence of PW4 and PW5 would support the prosecution is nothing, but a fallacious argument.

18. The learned counsel would further urge before this Court by referring Ex.P6 viz., the accident register of the 2nd accused, through which it was contended that the 2nd accused had some bite injury in his finger, which is a result of thrusting poison in the mouth of the deceased. But, while closely scrutinising Ex.P6, it came into existence on 10.08.2011 at about 9.20 hours, whereas prior to Ex.P6, the accused were arrested on 09.08.2011 by 11.00 hours itself. Therefore, when the accused was in the police custody, the reference of injury in Ex.P6, cannot held to be an incriminating circumstance against the 2nd accused.

19. Before we proceed further, it is appropriate to mention that there is no difference between an appeal against acquittal and an appeal against



conviction, except the fact that in appeal against acquittal, the presumption of innocence is reinforced and fortified. In this regard, it is relevant to refer to the judgment in ***Mallappa v. State of Karnataka*** reported in (2024) 3 SCC 544, wherein the Hon'ble Supreme Court, after discussing various judgments, had summarised the principles in deciding an appeal arising from an order of acquittal. For ready reference, the relevant paragraph is extracted hereunder:-

“42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;*
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*
- (iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;*
- (iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*
- (v) If the appellate court is inclined to reverse the acquittal in appeal on a reappraisal of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;*
- (vi) In a case of reversal from acquittal to conviction, the appellate*



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court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court.”

In view of the above principles, it is apparent that unless the findings of the Trial Court are perverse, the Appellate Court cannot interfere with the findings rendered by the Trial Court.

20. According to the prosecution, apart from poisoning, it is the contention of the learned counsel for the appellant that the deceased was attacked with an iron pipe, which was marked as M.O.11. But, there is no scientific evidence to connect the weapon with the alleged occurrence. Therefore, we are of the firm view that none of the circumstances relied by the prosecution has been proved. Admittedly, there are no discovery of facts at the instance of any of the accused and apogee to all, the circumstances of administering poison was evidently falsified. Therefore, the finding rendered by the Trial Court that the prosecution has miserably failed to prove the charge beyond reasonable doubt, cannot be found faulted with. Thus, there are no merits in this appeal.

21. In the result, this Criminal Appeal stands dismissed.



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[M.S.R., J.] [C.K., J.]
25.09.2024

Index: Yes

Neutral Citation: Yes

Speaking order
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To

1. The Principal Sessions Judge,
Erode District.
2. The Inspector of Police,
Kavindapadi Police Station,
Erode District.
3. The Public Prosecutor,
High Court of Madras,
Chennai-104.



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