



Crl.A.No.154 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	21.08.2024
<i>Pronounced on</i>	20.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Crl.A.No.154 of 2019

Raja @ Rajasekaran

...Appellant

Vs.

State rep. by,
 The Inspector of Police,
 Bhuvanagiri Police Station,
 Cuddalore District.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of conviction and sentence passed against the appellant under Section 302 IPC (2 Counts) dated 05.03.2019 in S.C.No.122 of 2016 by the learned II Additional District Sessions Judge, Chidambaram and acquit him.

For Appellant : Mr.K.V.Sridharan

For Respondent : Mr.A.Gokulakrishnan,
 Additional Public Prosecutor



Crl.A.No.154 of 2019

JUDGMENT

WEB CO **M.S.RAMESH, J.**

The judgment of the learned II Additional District Judge, Chidambaram, dated 05.03.2019, finding the accused/appellant guilty of having committed the offence under Section 302 IPC (2 Counts) and sentencing him to undergo two life imprisonments, together with fine of Rs.5,000/- for each count, in default of which to further undergo six months rigorous imprisonment for each count, is assailed in the present appeal.

2. For the sake of convenience, the parties in the appeal are addressed according to their ranks in the trial Court.

3. The brief case of the prosecution is that the accused Raja @ Rajasekaran was having an illicit intimacy with Mahalakshmi, who worked along with him in a Covering Jewellery shop. After Mahalakshmi had married Sathish, the accused had plotted to do away with Sathish. Accordingly, in the night hours of 19.01.2016, he had offered to buy alcohol for Sathish and when he found that Sathish came along with his friend Manikandan, he had taken them to a motor shed belonging to one



Crl.A.No.154 of 2019

Vasudevan and had mixed cyanide in the beer bottles of both Sathish and Manikandan and thereby caused their death. According to the prosecution, the accused had caused the death of Sathish, owing to his marriage with his paramour, and in order to avoid Manikandan being an witness to the incident, he had caused his death also. After the Investigation Officer had completed the investigation and filed the final report, the concerned Judicial Magistrate had supplied the final report and all the relevant documents to the accused under Section 207 Cr.P.C., and committed the case to the Sessions Court. When the trial Court had framed the charges against the accused, charging him of having committed the offence under Section 302 (2 Counts) IPC and the same was read over and explained to the accused, he pleaded that he was 'not guilty'. Accordingly the case proceeded for trial.

4. Before the trial Court, the prosecution had examined 30 witnesses P.W.1 to P.W.30 and marked 25 documents Ex.P.1 to Ex.P.25, apart from 12 material objects M.O.1 to M.O.12. The trial Court had examined C.W.1 and C.W.2 and marked the summons sent to the Investigation Officer by the trial Court as Ex.C.1.



Crl.A.No.154 of 2019

5. This is a case that rests on circumstantial evidence and in order to substantiate their case, the prosecution had predominantly put forth motive and last seen theory as the key circumstances to prove the guilt on the accused, apart from relying upon recovery of certain material objects from the scene of occurrence.

6. In order to prove motive, the prosecution had examined Mahalakshmi (P.W.15), who is the alleged paramour of the accused, as well as the wife of the first deceased Sathish (D1), together with Mathiazhagan (P.W.16), who is the brother of P.W.15. However, both P.W.15 and P.W.16 did not support the case of the prosecution and hence were treated as hostile witnesses.

7. Insofar as the circumstance of last seen theory is concerned, Anbu, S/o.Ethiraj, (P.W.1), who is the father of Sathish (D1), Ramachandran (P.W.11) and Anbu, S/o.Gopal, (P.W.12) were examined. According to P.W.1, his son Sathish had left his house on 19.01.2016 at 07.00 P.M., along with the deceased Manikandan (D2) in his two wheeler and thereafter, when he heard the death of his son on the next day, he had given a complaint (EX.P.1) before Bhuvanigiri Police Station on



Crl.A.No.154 of 2019

20.01.2016, which was registered as a suspicious death under Section 174 Cr.P.C.

8. P.W.11, whose daughter was given in marriage to the brother of Sathish (D1), claims to have seen the accused along with D1 and D2 on 19.01.2016 at 08.30 P.M. at Bungalow bus stop, when D1 and D2 were in one motorcycle and the accused was in another motorcycle.

9. P.W.12, namely Anbu, has stated in his oral testimony that on 19.01.2016 between 08.00 P.M. and 8.45 P.M., when he was riding his motorcycle towards Bhuvanagiri, he had seen the accused coming in the opposite direction in a two wheeler and D1 and D2 together in another two wheeler, who were proceeding towards the motor shed, where the occurrence had taken place.

10.1. Apart from the aforesaid witnesses, the following witnesses were also examined in support of the prosecution's case:-

10.2. P.W.2, namely Ravi, is the Villager, who found the bodies of both the deceased on 20.01.2016.

10.3. P.W.3 to P.W.7 are also the villagers, all of whom on hearing



Crl.A.No.154 of 2019

the news of death of both the deceased, had come to the scene of occurrence and witnessed the bodies.

10.4. P.W.8 and P.W.9 are the mahazar witnesses in whose presence, the Investigation Officer had prepared the observation mahazar (Ex.P.2). He had also witnessed the seizure of two beer bottles (M.O.1 and M.O.2), brandy bottle (M.O.3), two cellphones (M.O.4 and M.O.5), two disposable tumblers (M.O.6), two empty water packets (M.O.7), two empty snacks cover (M.O.8 and M.O.9), under a seizure mahazar (Ex.P3).

10.5. P.W.10, namely Krishnamoorthy, is the Head Constable of the Police Dog Squad, who speaks about the Police Dogs tracking the scent from the scene of occurrence till the round-about in Kannikovil Village and stopped there.

10.6. P.W.13, namely Anbuchejian is the Village Administrative Officer and P.W.14, namely Jagan is the Village Assistant, who had witnessed the arrest and confession of the accused, the admitted portion of which was marked as Ex.P.7. Based on the confession, the Investigation Officer had recovered a small jewellery box (M.O.11) with a white powder (M.O.12) inside it from under a tamarind tree in Bhuvanagiri-Kurinjpadi main road, in their presence, through a seizure



Crl.A.No.154 of 2019

mahazar (Ex.P.6). They had also witnessed the Investigation Officer seizing the two wheeler (M.O.10) of the accused under a seizure mahazar (Ex.P.8).

10.7. P.W.17, namely Saravanakumar and P.W.18, namely Lakshmi, are the two Doctors who had conducted the postmortem of both the bodies of D1 and D2 and the postmortem reports were marked as Ex.P.9 and Ex.P.10 respectively.

10.8. P.W.19, namely Kalaimani, is the photographer who had taken photos at the scene of occurrence.

10.9. P.W.20 to P.W.22 are the Nodal Officers, who speak about the cellphone tower location of both the deceased, as well as the accused. When the CDR particulars of both the deceased, as well as the accused (Exs.P.11 to P.13) were marked, the defence had objected to the marking of these documents for want of a certificate under Section 65B of the Indian Evidence Act.

10.10. P.W.23, namely Mahimaidas, is the Grade-I Constable who had accompanied both the corpses to the Hospital for conducting postmortem.

10.11. P.W.24, namely Sukumar, is the Police Constable, who had taken the viscera samples to the forensic laboratory.



Crl.A.No.154 of 2019

10.12. P.W.25, namely Shanmugam, is the Forensic Scientific Officer who had given his expert opinion of hyoid bones being 'intact' of both the deceased under Ex.P.14 and Ex.P.15.

10.13. P.W.26, namely Rosemani, is the Forensic Expert, who had examined the beer bottles collected from the scene of occurrence and confirmed the contents therein as 'beer'.

10.14. P.W.27, namely Singaravelu, is the Sub-Inspector of Police, who had registered the FIR (Ex.P.17) in Crime No.12 of 2016 on 20.01.2016 under Section 174 Cr.P.C. He had prepared the postmortem report of both the corpses (Ex.P.19 and Ex.P.20).

10.15. P.W.28, namely Anandhi, is the Scientific Officer of the Forensic Department, who had examined the viscera of both the deceased and gave separate reports (Ex.P.21 and Ex.P.22), recording that cyanide was detected in the inner body parts of both the deceased. Likewise, she had given a report about the presence of cyanide in some of the material objects seized from the scene of occurrence, as well as from M.O.11 seized from the accused (Ex.P.23 and Ex.P.24).

10.16. P.W.29, namely Rameshraj, is the initial Investigation Officer, who had arrested the accused on 29.01.2016 and submitted the alteration report (Ex.P.25).



Crl.A.No.154 of 2019

10.17. P.W.30, namely Elavarasan, is the subsequent Investigation

Officer, who had filed the charge memo.

11. On completion of the trial, when the incriminating evidences let in by the witnesses were read over and explained to the accused under Section 313 Cr.P.C., he denied the same claiming it to be a false case foisted against him.

12. The Trial Court, on appreciation of the oral and documentary evidences before it, as well as the material objects, had come to the conclusion that the chain of circumstances put forth by the prosecution stands fully established and thus had found the accused guilty of having committed both the murders and thereby convicted and sentenced him, as stated above.

13. The learned counsel appearing for the accused submitted that in a case based on circumstantial evidence, the prosecution is required to establish each and every circumstance fully, which has not been done in the instant case. He would submit that the very motive, based on which the accused has been charged for the offence of murder, has been



Crl.A.No.154 of 2019

established, since P.W.15 and P.W.16, who were examined for substantiating the prosecution's case for the motive, have turned hostile and had not supported the case of the prosecution. In these circumstances, he would state that since the motive is an important link in the chain of circumstances, the finding of the trial Court cannot be legally sustained. Insofar as the last seen theory is concerned, the learned counsel submitted that the evidences of P.W.11 and P.W.12 are totally unreliable. According to him, it is far fetched to believe the statement of P.W.12 that he had identified the accused along with the deceased, while he was driving on his two wheeler, from the head lamps of a truck behind him. Even otherwise, he would submit that both P.W.11 and P.W.12 are closely related to both the deceased and therefore, being interest witnesses, their testimonies should not be given much importance. Insofar as the CDR particulars marked through the Nodal Officers to connect the accused to the crime is concerned, his specific case is that the electronic evidences, namely, Ex.P.11 to Ex.P.13 cannot be relied upon, since they were not supported with a certificate under Section 65B of the Indian Evidence Act, which objection also he had raised at the time of marking of those documents before the trial Court.



Crl.A.No.154 of 2019

14. In reply, the learned Additional Public Prosecutor submitted that though P.W.15 and P.W.16 had not supported the prosecution's case, for establishing motive, there is a clinching evidence from the oral testimonies of P.W.11 and P.W.12, both of whom had seen both the deceased in the company of the accused, immediately before the occurrence. He also referred to the medical evidence and submitted that since the consumption of liquor mixed with cyanide was established and the box containing the cyanide was also recovered, based on the confession of the accused, the recovery contributes to another important link in the chain of circumstances. He further referred to the evidences of the Forensic Experts, who ratified the presence of cyanide from M.O.11, as well as from the viscera report, which also strengthens the prosecution's case and therefore sought for dismissal of the appeal.

15. We have given our careful consideration to the submissions made by the respective counsels and have perused the original records.

16. This is a case based on circumstantial evidences alone and the law as to appreciation of evidences in such a case has been well settled. In the case of ***Sharad Birdhichand Sardas Vs. State of Maharashtra***



Crl.A.No.154 of 2019

reported in **(1984) 4 SCC 116**, the Hon'ble Supreme Court had summarized five essential conditions that is required to be fulfilled to establish a case against an accused based on circumstantial evidences.

Following are those five circumstances:-

“(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 v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the 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



Crl.A.No.154 of 2019

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.”

17. The aforesaid principles have been time and again reiterated by the Hon'ble Supreme Court and had been followed in numerous decisions. With these established principles of law in our minds, we shall now analyze the evidences let in by the prosecution, touching upon the various circumstances let in by them, to prove the guilt of the accused.

Motive:-

18. The clear case of the prosecution is that the accused was having an illegal intimacy with Mahalakshmi (P.W.15), who was his co-worker. However, when P.W.15 fell in love with Sathish (D1) and married him,



Crl.A.No.154 of 2019

the accused developed grudge and in order to wreck vengeance, had planned to do away with D1. It is also the case of the prosecution that on the fateful day, when he had invited D1 to consume liquor along with him, Manikandan (D2) also accompanied D1. The prosecution would further add that though the accused intended to do away with D1 alone, he had felt that if D2 was spared, he might reveal his crime and therefore decided to finish both of them and accordingly executed his plan.

19. The genesis of motive commences from the illegal intimacy between the accused and P.W.15. However, when P.W.15 was examined before the trial Court, she deposed that she did not know as to how her husband had died. Thereafter, the prosecution had treated her as a hostile witness and had cross examined her. However, none of her further statements supported the case of the prosecution and they could not establish the illegal intimacy or any other relationship between the accused and P.W.15.

20. Apart from P.W.15, her brother P.W.16 was also examined by the prosecution to establish motive of the accused. However, P.W.16 also stated that he did not know as to how his sister's husband had died and



Crl.A.No.154 of 2019

that the accused was a stranger to him. He was also treated as a hostile witness by the prosecution and all his further statements did not support the case.

21. Apart from P.W.15 and P.W.16, no other independent evidences were let in by the prosecution to establish the circumstance of motive in this case. In the absence of any other evidence, we have no hesitation to hold that the prosecution has miserably failed to establish motive on the accused. As such, the most important link in the case of the prosecution stands de-linked.

22. In the case of ***Babu Vs. State of Kerala*** reported in (2010) 9 ***SCC 189***, the Hon'ble Supreme Court had held that absence of motive in a case resting upon circumstantial evidence is a factor that weighs in favour of the accused. Following the decision in ***Babu's case (supra)***, in the case of ***Anwar Ali and Another Vs. State of Himachal Pradesh*** reported in (2020) 10 ***SCC 166***, this proposition was further reiterated. The consequence of absence of motive in a case that rests on circumstantial evidence was also dealt with in the case of ***Amitava Banerjee alias Amit alias Bappa Banerjee Vs. State of West Bengal***



Crl.A.No.154 of 2019

reported in **(2011) 12 SCC 554**, by holding that absence of motive for commission of the offence would require the Court to be more careful and circumspect in scrutinising the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.

23. In the light of the above well settled rulings, we shall now proceed to analyze the next important circumstance put forth by the prosecution, namely, the last seen theory.

Last seen theory:-

24. According to the prosecution, P.W.1, who is the father of Sathish (D1), had seen both D1 and D2 leaving his house on 19.01.2016 at 07.00 P.M. Even thereafter, they had not returned and he heard about the news of their death the next day. P.W.1 does not speak about having seen the accused along with D1. Thus, the evidence of P.W.1 only establishes the fact of both D1 and D2 going out of P.W.1's house on 19.01.2016 at 07.00 P.M.

25. To establish that both the deceased were seen in the company



Crl.A.No.154 of 2019

of the accused before the date of occurrence, P.W.11, a resident of Poomanaveli Village and P.W.12, a resident of Therkuthittai Village, were examined. P.W.11 would state that on 19.01.2016, at about 08.30 P.M., while he was standing in the bus stop, he saw both the deceased in the company of the accused near the bus stop. He had then boarded the bus to his house. P.W.12, on the other hand, would state that on 19.01.2016, between 08.00 P.M. and 08.45 P.M., while he was riding his two wheeler towards Bhuvanagiri, two motorcycles came from the opposite direction. He further adds that he had identified both the deceased from the head lights of a lorry and had identified them as persons from the nearby Village. He also states that the accused was following them in his two wheeler. The direction, which both the deceased, as well as the accused were heading to, was towards the motor shed, where the occurrence took place.

26. It is the submission of the learned counsel for the accused that P.W.11 and P.W.12 are closely related to both the deceased. In his cross examination, P.W.11 would admit that his daughter was given in marriage to the brother of Sathish (D1) and that he used to regularly visit the family members of D1. Likewise, the younger brother of P.W.12 had



Crl.A.No.154 of 2019

married Manikandan's (D2) sister. He had attended the funeral of D1 and also that of his death ceremonies. Both P.W.11, as well as P.W.12, who are closely related to D1 and D2 respectively, have not spoken about their acquaintance with the accused. Neither have they stated that they knew the accused before 19.01.2016. While P.W.11 hails from Poomanaveli Village, P.W.12 is from Therkuthittai Village. The accused resides at Valampadugai Village. P.W.11 claims to have seen the deceased in the company of the accused at the bus stop. Though he is closely related to Sathish (D1) and had seen him along with the accused and D2 within five feet distance, he curiously would state that he did not speak with Sathish nor enquired about who was standing with him. Likewise, P.W.12 had seen the accused coming in his two wheeler in the opposite direction, while he was riding his own two wheeler. It was the night hours of 19.01.2016 between 08.00 P.M. and 08.45 P.M., he claims to have seen him, while the two wheeler crossed him, with a help of a head light of a lorry, which was behind him. Even P.W.12 has not stated to have known or acquainted with the accused prior to 19.01.2016. Since both P.W.11 and P.W.12 do not hail from the Village of the accused, but from a neighbouring Village, there arises a suspicion as to whether these two witnesses may have known the identity of the accused at all. Admittedly,



Crl.A.No.154 of 2019

no test identification parade has been conducted in this case and P.W.11 and P.W.12 seem to have identified the accused only during the course of trial, after more than 2½ years from the date of incident.

27. In the case of ***Kannan and Others Vs. State of Kerala*** reported in (1979) 3 SCC 319, the Hon'ble Supreme Court had held that, where a witness identifies an accused who is not known to him, in the Court for the first time, his evidence is absolutely valueless unless there has been previous test identification parade to test his powers of observation. The idea of holding a test identification parade under Section 9 of the Indian Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person, whom the witness may have seen only once. If no test identification parade is held, it would be wholly unsafe to rely on his testimony regarding the identification of an accused for the first time in the Court.

28. In this background and by taking into account that P.W.11 and P.W.12 are closely related to D1 and D2 respectively, it would be highly unsafe to rely on their evidences, since they could be termed as partly reliable and partly unreliable witnesses. In the celebrated judgment of



Crl.A.No.154 of 2019

Vadivelu Thevar Vs. State of Madras reported in ***AIR 1957 SC 614***, the

Hon'ble Supreme Court had held that in cases of witnesses, who are neither wholly reliable nor wholly unreliable, the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. It was also observed therein that the Court naturally has to weigh carefully such a testimony and if it is satisfied with the evidences reliable and free from all taints, which tend to rely oral testimony open to suspicion, it becomes its duty to act upon such testimony.

29. When viewed in the light of the aforesaid decision of the Hon'ble Supreme Court, the prosecution has let in no other evidences, apart from P.W.11 and P.W.12, to establish that the deceased were last seen with the accused within a close proximity of time before the occurrence.

30. This apart, the main circumstance of motive has also not been established in this case and therefore, there is no other evidence to connect the culpability of crime on the accused.



Crl.A.No.154 of 2019

31. The learned Additional Public Prosecutor had also referred to the recovery of M.O.11 and M.O.12, based on the confession of the accused and projected it to be one of the links to the chain of circumstances. We are unable to endorse such a submission. Even assuming that the recovery of M.O.11 and M.O.12 has been established by the prosecution, still the requirement of the standard of proof in a case based on circumstantial evidence have not been fulfilled. As held by the Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sards (supra)***, the burden of proof on the prosecution is five fold, namely, circumstances from which the conclusion of guilty is to be drawn should be fully established, so as to be consistent only with the hypothesis of the guilty of the accused, without any alternate hypothesis. Furthermore, these circumstances should be of a conclusive nature and tendency to exclude every possible hypothesis, except the one to be proved. Above all, the chain of evidence must be 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 that the act must have been done by the accused. In the instant case, the prosecution has not complied with any of the aforesaid conditions touching upon the standard of proof to be adopted and thus, the resultant conclusion that we are constrained



Crl.A.No.154 of 2019

to arrive, would be to extend the benefit of doubt to the accused.

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32. The trial Court has not adopted the requirement for the standard of proof in a case based on circumstantial evidence, but had simply relied on the evidences of P.W.11 and P.W.12, as well as the medical evidences and had drawn the conclusion of guilty on the accused. Such appreciation of evidences is totally opposed to the well settled principles of law set forth by the Hon'ble Supreme Court in the decisions, which have been relied upon in the preceding portions of this judgment. As such, the finding of guilt, as well as the consequential conviction and sentence on the accused, cannot be legally sustained.

33. For all the foregoing reasons, the judgment of the learned II Additional District Sessions Judge, Chidambaram, dated 05.03.2019 passed in S.C.No.122 of 2016, is set aside. Consequently, the appellant/accused is acquitted of all the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded and the bail bonds, if any, executed shall stand discharged. This Criminal Appeal thus stands allowed.



Crl.A.No.154 of 2019

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[M.S.R., J] [C.K., J]
20.09.2024

Index: Yes

Neutral Citation: Yes

Speaking order

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Note: Issue order copy on 20.09.2024

To

1. The II Additional District Sessions Judge,
Chidambaram.
2. The Superintendent of Prisons,
Cuddalore District.
2. The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
3. The Public Prosecutor,
High Court of Madras.



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Crl.A.No.154 of 2019

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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Pre-delivery judgment made in
Crl.A.No.154 of 2019

20.09.2024