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Crl.A.Nos.174, 209, 212 & 372 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM :

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

Crl.A.Nos.174, 209, 212 & 372 of 2019

Anand	... Appellant in Crl.A.No.174/2019
B.Elayaraja	... Appellant in Crl.A.No.209/2019
1.Senthil	
2.Nithiyaraj	... Appellants in Crl.A.No.212/2019
1.Arivazhagan @ Arivu	
2.Sarasu @ Saraswathy	... Appellants in Crl.A.No.372/2019

Vs.

State rep. by,
The Inspector of Police,
Kallakurichi Police Station,
Villupuram District.
Crime No.363/201

... Respondent in all Appeals

Common Prayer: Criminal Appeals filed Section 374(2) of Criminal Procedure Code, 1973, praying to set aside the judgment passed against the appellants in S.C.No.96/2018 on the file of the Hon'ble III Additional District and Sessions Court, Kallakurichi, Villupuram District, dated 22.02.2019.



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For Appellants : Mr.A.G.Rajan

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

COMMON JUDGMENT

(Judgment of the Court was made by *C.KUMARAPPAN, J.*)

The instant Criminal Appeals are arising out of the order of conviction dated 22.02.2019, passed in S.C.No.96 of 2018. Criminal Appeal No.174/2019 is filed by 7th accused namely Anand; Criminal Appeal No.209/2019 is filed by 5th accused namely B.Elayaraja; Criminal Appeal No.212/2019 is filed by 2nd & 3rd accused namely Senthil and Nithiyaraj and Criminal Appeal No.372/2019 is filed by 1st & 6th accused namely Arivazhagan @ Arivu and Sarasu @ Saraswathy. It is pertinent to mention here that A4 and A6 died during the trial. The accused were convicted and sentenced in the following manner:-

<i>S.No.</i>	<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
1.	A1 Arivazhagan	- U/s. 120B of IPC	Life imprisonment + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 148 of IPC	Rigorous imprisonment for



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			3 years
		U/s. 449 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 364 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 386 of IPC	Rigorous imprisonment for 10 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 302 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 201 r/w. 302 of IPC	Rigorous imprisonment for 7 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
2.	A2 - Senthil	U/s. 120B of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 148 of IPC	Rigorous imprisonment for 3 years
		U/s. 449 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 364 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 386 of IPC	Rigorous imprisonment for 10 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month



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		U/s. 302 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 201 r/w. 302 of IPC	Rigorous imprisonment for 7 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
3.	A3 - Nithiyaraj	U/s. 120B of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 147 of IPC	Rigorous imprisonment for 2 years
		U/s. 364 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 386 of IPC	Rigorous imprisonment for 10 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 302 r/w. 149 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 201 r/w. 302 of IPC	Rigorous imprisonment for 7 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
4.	A5 - Elayaraja	U/s. 120B of IPC	Life imprisonment + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 148 of IPC	Rigorous imprisonment for 3 years
		U/s. 386 of IPC	Rigorous imprisonment for 10 years + fine of Rs.1000/- i/d to undergo simple



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			imprisonment of one month
		U/s. 302 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 201 r/w. 302 of IPC	Rigorous imprisonment for 7 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
5.	A7 - Anand	U/s. 120B of IPC	Life imprisonment + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 147 of IPC	Rigorous imprisonment for 2 years
		U/s. 364 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 386 of IPC	Rigorous imprisonment for 10 years + fine of Rs.1000/- i/d to undergo simple imprisonment of one month
		U/s. 302 r/w. 149 of IPC	Rigorous imprisonment for life + fine of Rs.1000/- i/d to undergo simple imprisonment of one month

2.1. In order to understand the whole gamut of the issue, it is pertinent to refer the following facts of the prosecution's case:-

2.2. According to the prosecution, the deceased Joseph @ Chinnapaiyan had 2 wives; Samuel is the son of first wife, and one



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Benjamin (died) is the son of the second wife. The deceased Joseph Ratnakumar is the son of Samuel and other accused A1, A4 & A5 are the sons of Benjamin, and A6 is the wife of A1. There was a property dispute between Benjamin and Joseph Ratnakumar's family and there were also civil disputes pending between the parties. In view of these civil disputes, the accused A1, A4 & A5 nurtured grudge against the deceased Joseph Ratnakumar and planned to do away him. While so, on 07.05.2017 at 4.00 P.M., the accused A1 to A3 abducted the deceased in an auto bearing Registration No.TN 32 L 4977 and took him to a secluded place and assaulted him. After confirming that he died, they left the body in front of the deceased's house. On seeing the same, P.W.3 who is a watchman in the opposite establishment, informed P.W.1, who is the wife of the deceased. In pursuance thereof, P.W.1 who was away at that time, returned to Kallakurichi at 8.30 P.M. on 07.05.2017, and gave a police complaint before the jurisdictional Police, and they registered an F.I.R. in Crime No.363 of 2017 on 07.05.2017 at 10.00 P.M.

2.3. After registering the F.I.R., the Investigating Officer (P.W.21) proceeded to the scene of occurrence at about 23.00 hours, and prepared a rough sketch in the presence of the witnesses and thereafter conducted



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inquest upon the body of the deceased and made arrangements for post-mortem of the body of the deceased. The Investigating Officer had also recorded the statements of P.W.1 – Roseline, wife of the deceased, and P.W.2 – Vivek, son of the deceased and other witnesses. In the meanwhile, on 08.05.2017, he arrested the accused. The accused 3, 4 & 5 gave their confession statements in the presence of P.W.10, whereas the accused 1 & 2 have surrendered before P.W.11. After recording the confession statements, discovery of facts was effected by recovering the vehicle in which the deceased was abducted, and also identified the place where the stamp paper was purchased. The Investigating Officer had also recovered the two-wheeler and the weapons used in the occurrence. He also recorded the statements of Karunanidhi, Annamalai and the doctors who conducted the post-mortem upon the deceased. Eventually after concluding the investigation, he laid a final report against the accused.

3. In order to prove the prosecution's case, they relied upon 22 witnesses P.W.1 to P.W.22, 27 documents Ex.P.1 to Ex.P.27 and 5 material objects M.O.1 to M.O.5. On the side of the accused, 1 defence witness D.W.1 was examined, and 2 documents Ex.D.1 and Ex.D.2 were marked



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and C.W.1 and C.W.2 were examined as Court witnesses.

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4. The Trial Court, after having considered the oral and documentary evidences, has found that the prosecution has proved all the charges beyond reasonable doubts and thereby convicted all the accused. Assailing the said judgment, the appellants have filed the present appeals.

5. The learned counsel for the appellant would vehemently contend that the order of the Trial Court is without any reasoning, and that the Trial Court has simply believed the version of the witnesses, and even according to the testimony of the prosecution witnesses, though they have not at all identified any of the accused, the Trial Court had erroneously convicted them under the various Sections.

6. However, the learned Additional Public Prosecutor would refute the contention by saying that, P.W.3 was an eye witness and has spoken about the last seen theory, and P.W.12 and P.W.17 who are the friends of P.W.2 had corroborated the assault, as well as the last seen theory. Further, the motive has been spoken by P.W.1 and P.W.2 and therefore, the prosecution has established the charges beyond reasonable doubts.



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7. We have given our careful consideration to the submissions made on either side.

8. While ruminating the case of the prosecution, it is seen that it is wholly based upon the circumstantial evidences such as motive, last seen theory, and the injury sustained by the deceased, immediately after the abduction.

9. Admittedly, there are no eye-witnesses. According to the prosecution, the deceased was abducted, and was taken to a secluded place, where he was done to death. Much reliance was placed on the testimony of P.W.3, who was a watchman, and working in an establishment situated opposite to the deceased's house, to prove the last seen theory. But during his cross-examination, he has categorically stated that he was not in a position to identify the person who abducted the deceased. Even P.W.12 and P.W.17, who are the friends of P.W.2, have spoken only about the assault against the deceased. However, P.W.12, in his statement has stated that the deceased was attacked by 3 persons,



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whereas, P.W.17 in his evidence indicates that the deceased was attacked only by 2 persons. Unfortunately, both these witnesses could not identify the persons whom they claim to have attacked the deceased. Therefore, P.W.12 & P.W.17 are also not eye-witnesses, though were projected as eye-witnesses. As such, there are no evidence or material to implicate the accused in the chain of events.

10. It is the further case of the prosecution that only to get signature in the blank stamp paper, the deceased was abducted, and to prove such a factum, they examined P.W.7, who is the District Registrar and P.W.13 - Stamp Vendor. According to their evidence, they have sold the stamp paper (Ex.P10) to the accused. However, in the said stamp paper, the signature of the deceased was not found. If any stamp paper with the signature of the deceased was recovered from the accused, then the same could form a link connecting the accused with the occurrence. But while looking at the stamp paper register (Ex.P2) and Ex.P10 stamp paper, we could not find any signature of the deceased. Therefore, the absence of signature in Ex.P10 - stamp paper, is also in favour of the defence. It is a settled principle of law that in a case of circumstantial evidence, all the



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circumstances have to be proved, without there being any missing link.

11. Coming to the last seen theory, the prosecution relies on P.W.3, who is the watchman working opposite to the deceased's residence; P.W.12 and P.W.17, who are the friends of P.W.2 – son of the deceased. While harmoniously analysing their evidences, cumulatively, it emerges that they were not in a position to identify the person with whom the deceased was lastly seen. When the prosecution places much reliance on the last seen theory, it is mandatory on their part to prove that the deceased was with the company of the accused. On the contrary, though some occurrence had been spoken to by the other witnesses, they could not identify those persons. To put it differently, there is no proof as to the presence of these accused with the deceased, when those witnesses had seen the deceased.

12. Apart from this, the learned counsel for the appellants would also contend that though in Ex.P1 – complaint, P.W.1 stated that she came to know about the occurrence through P.W.3, in her statement before the Trial Court, she contradicted from her statement and stated that it was P.W.19 who informed her about the occurrence through a phone call. However, P.W.19, who was examined as an eye witness, had not supported



the prosecution's case.

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13. Though the prosecution raises so many circumstances, they were not in a position to prove even a single circumstance against the accused. Apart from the above, the prosecution has also relied upon the confession and arrest of the accused. But, when the prosecution was not in a position to prove the last seen theory, the question of arrest and confession would lose its significance, since the recovered materials have no nexus or link with the occurrence.

14. At this juncture, we deem it appropriate to refer to the settled legal principles in respect of the case arising out of circumstantial evidences. 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 need 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 the aforesaid judgment, which read as follows:



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“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



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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.”***



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(Emphasis supplied by this Court)

15. In yet another judgment in '**Raja Naykar Vs. State of Chhattisgarh**' reported in '**(2024) 3 SCC 481**', the 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)



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16. 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 the Hon'ble Supreme Court in '**Sharad Birdhichand Sarda Vs. State of Maharashtra**' reported in '**(1984) 4 SCC 116**'. In **Sharad Birdhichand Sarda's** case (*cited supra*), the Hon'ble Supreme Court laid down the *Panchsheel* principle in paragraphs 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



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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.

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)"

17. In the light of the above settled legal principles and based upon the detailed discussion hereinbefore, we are of the firm view that the prosecution has miserably failed to prove the alleged incriminating circumstances and concomitantly, had failed to prove the charges against



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the accused, beyond reasonable doubts.

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18. For all the foregoing reasons, the judgment of the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram District, dated 22.02.2019 passed in S.C.No.96 of 2018, is set aside. Consequently, the appellants/accused are acquitted of all the charges and are directed to be released forthwith, unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded and the bail bonds, if any, executed shall stand discharged. These Criminal Appeals thus stand allowed.

[M.S.R., J]

[C.K., J]

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Index: Yes

Speaking order

Internet: Yes

Neutral Citation: Yes

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To

1.III Additional District and Sessions Court,
Kallakurichi, Villupuram District.

2.The Superintendent of Prisons,
Cuddalore District.

3.The Inspector of Police,
Kallakurichi Police Station,
Villupuram District.

4.The Public Prosecutor,
High Court of Madras.



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