



Crl.A.No.285 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.285 of 2021
and Crl.M.P.No.15277 of 2022

Arasan

...Appellant/A1

VS

State rep. by
The Inspector of Police,
Poraiyur Police Station,
Nagapattinam District.
Crime No.589 of 2016

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to set aside the Judgment and sentence passed in S.C.No.119 of 2017, dated 21.04.2021 on the file of the learned Sessions Judge, Fast Track Mahila Court Nagapattinam, and acquit the appellant.



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For Appellant : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by **SUNDER MOHAN,J.**)

This Criminal Appeal has been filed by the first accused, challenging the conviction and sentence imposed upon him vide judgment dated 21.04.2021 in S.C.No.119 of 2017 on the file of the learned Sessions Judge, (Fast Track Mahila Court), Nagapattinam.

2(i). It is the case of the prosecution that the appellant/A1 and the deceased studied in the same college namely Poombuhar Arts College; that in the year 2015-2016, the appellant became friendly with the deceased; that they had a love affair and decided to marry each other; that however the parents of the deceased wanted the deceased to marry one Manikandaraja; that infuriated by that, the appellant decided to cause the death of the deceased with the help of his friend/A2, (since deceased); that on 19.09.2016 at about 7.30 p.m., the appellant called the deceased and asked her to go to an isolated place; that the appellant/A1, and A2 came in a motor cycle ridden by A2; that the appellant brought a spade with him; that A2 dropped



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the appellant and left from that place; that there was an altercation between the appellant and the deceased; and that the appellant attacked the deceased with the spade on the head of the deceased, as a result of which the deceased succumbed to the injuries.

(ii) P.W.1/the mother of the deceased lodged a complaint [Ex.P1] and stated that after a search for the victim, she had found the body of the deceased on 20.09.2016, at about 6.00 a.m. The said complaint was registered by P.W.24/Sub Inspector of Police in Ex.P16. P.W. 25/Deputy Superintendent of Police, took up the investigation, went to the scene of the occurrence, and examined the witnesses at about 9.00 a.m., and prepared the Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P17]. He seized the blood stained earth [M.O.4] and the earth that was not blood-stained [M.O.5] under the Seizure Mahazar [Ex.P4], examined the other witnesses, conducted an inquest in the presence of the Panchayathars, and prepared the inquest report [Ex.P18]. He thereafter took steps to send the body of the deceased to conduct a post-mortem, which was conducted by Doctor [P.W.18], who had issued a post-mortem certificate [Ex.P9]. On 21.09.2016, one Elangovan (not examined by the prosecution) brought the appellant



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along with a report and the extra-judicial confession [Ex.P21] said to have been given by the appellant. The Investigating Officer thereafter, arrested the appellant and recorded his confession, and on his confession, he arrested A2. After examination of all the other witnesses and after obtaining the report of the Forensic Science Expert, he filed the Final Report for the offence under Section 302 of the IPC against the appellant/A1 and offence under Section 302 r/w 109 as against A2, before the learned Judicial Magistrate No.II, Mayiladuthurai.

(iii) On appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.119 of 2017 and was made over to the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, for trial. The trial Court framed charges under Section 302 of the IPC against the appellant and when questioned, the appellant pleaded 'not guilty'. The second accused died even before the framing of charges.



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(iv) To prove the case, the prosecution examined 25 witnesses as P.W.1 to P.W.25, marked 27 exhibits as Ex.P1 to Ex.P27, and marked 10 Material Objects as M.O.1 and M.O.10. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witnesses or marked any documents on his side.

(v) On the appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of the charge levelled against him. Accordingly, the appellant was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months for the offence under Section 302 of the IPC. Hence, he has preferred the appeal challenging the said conviction and sentence.

4. Heard, M/s.Philip Ravindran Jesudoss, learned counsel for the



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appellant/1st accused, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the appellant submitted that the case, which is based on circumstantial evidence, has not been conclusively established; that the circumstance of motive has not been proved by the prosecution and the evidence of witnesses who allegedly last saw the deceased with the appellant cannot be believed; and that the extra-judicial confession said to have been made by the appellant cannot be believed. Therefore, the appellant is entitled to acquittal.

6. The learned Additional Public Prosecutor, *per contra*, submitted that the motive has been established by the prosecution through the evidence of P.W.1 and P.W.4, the father of one Manikandaraja, to whom the deceased was engaged; that the evidence of last seen is established through the evidence of P.W.2; that the appellant had given an extra judicial confession to one Elangovan, who passed away before his examination; and that the said extra judicial confession recorded and marked as Ex.P21 is sufficient to



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establish the guilt of the appellant and prayed for dismissal of the appeal.

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7. We have carefully considered the rival submissions and perused the materials available on record.

8. As stated earlier, the prosecution examined 25 witnesses. P.W.1 is the mother of the deceased/de facto complainant. P.W.2 is a neighbour of the deceased. According to the prosecution, he had last seen the deceased with the appellant. P.W.3 is the other brother of P.W.1, and he is a hearsay witness. P.W.4 is the father of one Manikandaraja, to whom the deceased was supposed to get married, and speaks about the said fact. P.W.5 is a van driver who had turned hostile. P.W.6 is the brother-in-law of P.W.1 and he is a hearsay witness. P.W.7, had seen the appellant walking near a pump set at 7.30 p.m., on 19.09.2016, and he was treated as hostile. P.W.8 had seen the appellant alone at the pump set at 7.30 p.m. on 19.09.2016. P.W.9 is a sculptor who had given the cellphone of the deceased to P.W.1/mother of the deceased. P.W.10 is a witness to the confession of A1. P.W.11 is the uncle of A1 and has turned hostile. P.W.12 is a classmate of the deceased. P.W.13 is A1's sister. P.W.14 is the Observation Mahazar witness and had identified the material objects viz., M.O.4 to M.O.6. P.W.15, the Assistant Engineer,



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Tamil Nadu Electricity Board, says about the interrupted power supply near the scene of occurrence on the fateful day. P.W.16 is the Principal of the College where the deceased and the appellant studied and speaks about the issuance of educational certificates for the deceased and the appellant viz., Ex.P6 and Ex.P7, respectively. P.W.17 is the Registrar of the College where A2 studied and had issued a certificate [Ex.P8]. P.W.18 is the Doctor who conducted post mortem and issued Ex.P9-post mortem report. P.W.19 is the corpse constable. P.W.20 had collected the Call Detail Records of certain telephone numbers said to the phone numbers of the appellant and the deceased. P.W.21 is the post mortem Doctor who conducted post mortem along with P.W.18 and made an endorsement [Ex.P12]. P.W.22 is the Court Clerk, who speaks about sending the articles for the Forensic Science Examination. P.W.23 is the constable who handed over the FIR to the Court. P.W.24 is the Sub Inspector of Police who registered the FIR. P.W.25 is the Investigating Officer.

9. The above narrative would show that the prosecution case rests on circumstantial evidence. The prosecution primarily relies upon the



following circumstances:

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- (a) Motive;
- (b) The circumstance of last seen together;
- (c) The extra judicial confession of the appellant given to one Elangovan and marked as Ex.P21.

10. The motive, according to the prosecution, is that the appellant and the deceased had a love affair, and the appellant was aggrieved by the fact that the deceased was to marry one Manikandaraja. P.W.1, the mother of the victim, has stated that they intended to get her daughter married to Manikandaraja. However, she had not referred to any motive. Further, in the cross examination, she stated in the complaint that the deceased had a close relationship with a boy; and that the boy that she had referred to in the complaint was one Vijay Sundar, son of Nagarajan. Her evidence is of no avail to the prosecution to establish motive. P.W.4, who is the father of Manikandaraja, stated that he warned the deceased and asked her not to talk to the appellant. In our view, this evidence would at best suggest appellant/A1 and the deceased had a love affair.



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11. The next evidence relied upon by the prosecution is that the Call Detail Records marked through P.W.20, the constable who was working as a Computer Operator at the Armed Reserved Police Force. According to the prosecution, he had collected the Call Detail Records from the cell phone companies, and marked Ex.P11 series as the CDRs pertaining to the mobile numbers of the appellant and the deceased. However, it is seen that the representatives of the telecom companies were not examined by the prosecution. There is no 65-B certificate issued, even in respect of Ex.P11. Therefore, in our view, the Ex.P11 series does not help the prosecution case in any manner.

12. As regards the last seen, the only evidence relied upon by the prosecution is the evidence of P.W.2. P.W.2, stated that he saw the deceased along with the appellant at about 07.30 p.m., near the house of the one Rajamanicam, and that the appellant was then talking to the deceased. However, he had not stated the said fact to P.W.1, who was in search of the deceased the whole night. Though in the cross-examination, he would state



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that he told P.W.1, P.W.1 has not stated the said fact, in her deposition.

Further, P.W.1 has not referred to the said information in her complaint [Ex.P1]. P.W.2's evidence as regards the last seen is an afterthought. In any case, he was examined by the police on 22.09.2016, after the arrest of the appellant. His evidence therefore is very doubtful. Therefore, in our view, the circumstances of the last seen have not been conclusively established by the prosecution.

13. As regards the extra judicial confession said to have been given to one Elangovan, we find that Elangovan was not examined. According to the Investigating Officer, he died pending trial. Ex.P21 is said to be the statement given by the appellant to the said Elangovan. The prosecution, in the absence of the witness, who had recorded the said confession, ought to have proved the signature said to be that of the appellant in the said confession. Though the defence had objected to the marking of the document, stating that the signature was not that of the appellant. The prosecution had not taken any steps to prove the signature. In any case, even according to the prosecution, the said Elangovan was not known to the



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appellant, and there is no reason for the appellant to make a confession to him. Therefore, we are of the view that the said extra judicial confession, marked as Ex.P21 would be of no avail to the prosecution. In this regard, we rely upon the Judgment of the Hon'ble Supreme Court in ***Pawan Kumar Chourasia v. State of Bihar*** reported in **2023 SCC Online SC 259**.

14. Thus, we are of the view that the prosecution has failed to establish the circumstances conclusively in a manner known to law, and in any event, the circumstances do not form a complete chain, pointing out only the guilt of the appellant and ruling out any other hypothesis.

15. In this case, we are constrained to make an observation. We do not usually refer to the Judgment of the trial Court while appreciating the evidence on appeal. However, we were shocked to note certain observations in the Judgment. The learned trial Judge had observed that P.W.1 in her evidence had wrongly stated certain facts and it was natural for her to forget events since she was a grieving mother of the deceased. The learned Judge



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did not stop with that. He had extracted the Section 161 Cr.P.C., statement of P.W.1 and observed that the said statement of P.W.1 is cogent.

We would like to remind the trial Courts to be more cautious, careful and avoid such fundamental error in law, in the anxiety to render a finding of guilt.

16. For all the above reasons, we are of the view that the prosecution has failed to establish its case beyond reasonable doubt. Hence, the Judgment of the Trial Court is liable to be set aside.

17. In the result, the Criminal Appeal is allowed and the appellant is acquitted of the charge levelled against him. The conviction and sentence imposed upon the appellant in S.C.No.119 of 2017 dated 21.04.2021, on the file of the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected miscellaneous petition is closed.



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(M.S.R.,J.) (S.M.,J.)

09.07.2024

Internet : yes
Neutral citation : yes/no
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To

1. The Sessions Judge,
Fast Track Mahila Court
Nagapattinam.
2. The Inspector of Police,
Poraiyur Police Station,
Nagapattinam District.
3. The Superintendent of Prisons,
Central Prison, Cuddalore.
4. The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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