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Crl.A.No.232 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.08.2024
Pronounced on	29.09.2024

CORAM :

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

Crl.A.No.232 of 2019

Aravindan

... Appellant/ Accused

Vs.

State rep. by
The Inspector of Police,
Dharmapuri Police Station
Dharmapuri District
Cr.No.406 of 2016

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed in S.C.No.69 of 2017 dated 28.03.2019 passed by the Additional Sessions Judge, Dharmapuri.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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J U D G M E N T

C.KUMARAPPAN, J.

The present criminal appeal is arising out of the order of conviction passed against the appellant herein in S.C.No.69 of 2017 dated 28.03.2019 under Section 302 IPC.

2. The prosecution case is that the deceased Chinnasamy and accused Aravindan are distantly related. It is the further case of prosecution that the accused Aravindan nurtured enmity and vengeance against the deceased Chinnasamy as he believed that his father was done away by the deceased. Owing to this unquenched anger and long drawn enmity, on 13.06.2016, the accused, who was under the influence of alcohol, picked up wordy quarrel with the deceased near the Sawalur bridge, and killed him by hitting with stone and fled away from the scene of occurrence.

3. While so, on knowing the death of the deceased, his son P.W.1-Madhu, rushed to the scene of occurrence and then went to the police station, and gave a complaint. The Sub-Inspector of Police PW6 -Srinivasan, on receipt of the same, on 13.06.2016 at 10.00pm, registered an FIR in Crime No.406 of 2016 under Section 302 IPC. Thereafter, he forwarded the same to



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the concerned jurisdictional Magistrate and to the investigating Officer PW17-Gandhi.

4. On receipt of the copy of the FIR, the Investigating Officer proceeded to the scene of occurrence on the same day at about 22.45 hours and prepared Observation Mahazar and Rough Sketch in the presence of PW10-Murugesan and PW11-Ravi. Further, in the intervening night of 13/14.06.2016, at about 00.15 hours he conducted inquest upon the body of the deceased and recovered the materials available near the body of the deceased, and prepared an observation mahazar. He then arranged for the postmortem and recorded the statements of PW1 to PW11. From the statements of the witnesses, he came to know that the assailant is the accused Aravindan.

5. While so, on 16.06.2016 at about 16.00 hrs, PW12-Rajkumar (VAO) came to the Police Station along with the accused and gave a special report along with an extra judicial confession statement said to have been given by the accused. The I.O thereafter arrested the accused, who once again voluntarily gave a confession statement in the presence of PW12-Rajkumar



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and one Munusamy. Immediately, thereafter a discovery of fact was made by recovering the blood stained stone and also the ash of the burned shirt. Thereafter, he recorded the statement of the postmortem doctor, and other witnesses, and ultimately laid the charge sheet before the concerned jurisdictional Magistrate.

6. Before the Sessions Court, the prosecution relied as many as 17 documents and 28 material objects, besides examining 18 witnesses to prove the charges. The Sessions Court, having considered the oral and documentary evidence, had found the accused to be guilty u/s.302 IPC and convicted him by sentencing to undergo life imprisonment.

7. Assailing the order of conviction, the learned counsel appearing for the appellant would vehemently contend that, though the prosecution attempted to prove the case on two-fold i.e., by way of ocular evidence, and through circumstantial evidence, there are no trustworthy eyewitnesses. That apart, the circumstances which were relied by the prosecution has not all surfaced, so as to form a complete chain and thus, contended that the order of conviction passed by the learned Sessions Judge is erroneous and contrary to



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the settled legal principle.

8. Per contra, the learned Additional Public Prosecutor would vehemently contend that, the learned Sessions Judge has elaborately gone into all the documents, and has also appreciated the evidence in its right perspective. It is the contention of the learned Additional Public Prosecutor that the occurrence witnesses, namely PWs 6, 7 and 8 had categorically spoken about the occurrence, besides there are abundant evidence to prove the presence of both accused and deceased together, and that the motive has also been established. He therefore, would contend that both on the basis of the circumstantial evidence and ocular evidence, the prosecution has proved the case beyond reasonable doubt. The learned Additional Public Prosecutor would also rely upon the extra judicial confession statement and would contend that this by itself is sufficient to lay the conviction and thus, the learned Additional Public Prosecutor would pray to dismiss this appeal.

9. We have given our anxious consideration to the submissions made on either side.



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10. In the instant case, the prosecution attempted to prove the case on three fold. Firstly through ocular evidence, secondly on the basis of the circumstantial evidence, and thirdly and lastly through the extra-judicial confession (Ex.P4).

11. Now let us consider whether the prosecution has accomplished in their attempt to prove their case beyond reasonable doubt through any of the above three grounds.

12. Let us first consider the ocular evidence. While perusing the evidence of the prosecution, PW1 (son of the deceased), who set the law in motion through Ex.P1 complaint, has not suspected the accused. However, PW2, wife of the deceased, states that, even prior to giving Ex.P1 complaint, they had knowledge that the accused is the culprit, as they were informed by PW3-Munusamy about the involvement of accused. If that being the case, PW1, who gave Ex.P1 complaint could have referred the name of the accused in the complaint itself. But the complaint is silent about the assailant. Therefore, the witness PW3, who visited the scene of occurrence had no clue about the assailants.



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13. But strangely the prosecution relies upon three witness, namely PW6-Madhaiyan, PW7-Vetri and PW8-Moorthy and projected them as the occurrence witness. Here, PW-7-Vetri is none other than the son-in-law of the deceased. These triumvirates qua PW6 to PW8, in unison voice would state that they witnessed the occurrence. But, for reasons best known to them, they neither complained to the police nor at least informed to the wife and son of the deceased. Therefore, their unnatural conduct would demonstrate the fallacy and falsity over their evidence.

14. This aspect is further strengthened through the delay in forwarding their 161 Cr.P.C Statement to the Court. The trial court, in para 14(ii) of its judgment, had extracted the dates on which Section 161 Cr.P.C. Statement of the witnesses reached the Jurisdictional Court. For ready reference the same is extracted hereunder:

<i>Sl.No.</i>	<i>Name of the Witnesses</i>	<i>Examined by the I.O</i>	<i>Received by the Magistrate</i>
1.	PW.6 Madhaiyan, eye witness	14.6.2016	24.4.2017
2.	PW.7 Vetri, eye witness	14.6.2016	24.4.2017
3.	PW.8 Moorthy, eye witness	14.6.2016	24.4.2017
4.	PW.1 Madhu	14.6.2016	15.6.2016



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Sl.No.	Name of the Witnesses	Examined by the I.O	Received by the Magistrate
5.	PW.2 Govindhammal	14.6.2016	15.6.2016
6.	PW.3 Munusamy	14.6.2016	15.6.2016
7.	PW.4 Chinnathambi	14.6.2016	15.6.2016
8.	PW.5 Chinnasamy	14.6.2016	15.6.2016
9.	PW.12 Rajkumar, VAO	2.12.2016	24.4.2017
	Extra judicial confession recorded on	14.6.2016	15.6.2016

15. While Section 161 Cr.P.C., statements of PW1 to PW5 recorded on 14.06.2016 reached the concerned jurisdictional Magistrate the next day i.e., on 15.06.2016, quite strangely, the 161 Cr.P.C statements of PW6 to PW8, who are now relied on as star witnesses by the prosecution, reached the jurisdictional Magistrate with an unexplained and inordinate delay of almost ten months qua on 24.04.2017. As already stated, when there are unnatural conduct of the so called eye witnesses, PW6 to PW8 in not informing the occurrence either to the police or to the relatives of the deceased, more specifically when PW7 is the son-in-law of the deceased, the delay in sending Section 161 Cr.P.C., statements to the Court, would further fan the flame of suspicion in the prosecution case. Therefore, we are of the strong view that the evidence of these triumvirate PW6 to PW8 who were projected as eye witnesses, is highly unreliable. Therefore, we can safely hold that the attempt



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of the prosecution to prove the case through ocular evidence did not materialise.

16. Coming to their next attempt qua circumstantial evidence, the circumstances relied by the prosecution is, last seen theory and motive. In respect of last seen theory, they relied upon the evidence of PW3. According to his evidence, he did not see the accused and the deceased together, but he saw the accused with blood stained shirt, which caused suspicion against the accused. More strangely, even PW3 did not refer such suspicion either to PW1 (son of the deceased) or to the police immediately. Therefore, PW3 evidence cannot be a conclusive proof for last seen theory. Further his statement also does not inspire confidence on account of his unnatural conduct. As we have already discussed, the evidence of PW6 to PW8 are also not reliable. Apart from these shaky witnesses, no other witnesses were examined to prove the circumstance of last seen theory. Therefore, we are of the firm view that the circumstances of last seen theory has not been proved beyond reasonable doubt.

17. Coming to the motive, it is the prosecution's case that, the mother and paternal uncle of the accused seeded their unquenched anger and grudge against the deceased, to the accused, and nurtured enmity within his mind.



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But, when looking at the evidence of PW2, qua wife of the deceased, it is apparent that the deceased and the accused were in talking terms, and just about six months back, the deceased had assisted the accused family to invite guests for his sister's marriage. Therefore, no materials surface even to prove the motive.

18. Before we get further 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:-



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(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*



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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)

19. 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



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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)

20. 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:



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"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.

(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



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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)"

21. Therefore, in the case of circumstantial evidence, all the circumstances has to be proved without there being any missing link. As we already discussed, in the present case the last seen theory has not been established, and the motive has also not been proved. Thereafter, the prosecution also miserably failed to establish the alleged incriminating circumstance. Thus, the issue is now narrow down to the only remaining factor *qua* the extra-judicial confession.

22. It is pertinent to mention here that, the extra-judicial confession is a weak piece of evidence, particularly in a case which rests upon the circumstantial evidence. In the case on hand, in order to prove the extra-judicial confession (Ex.P4), the PW12-Rajkumar was examined. According to his version, on 14.06.2016 when he was in the Office, the accused came and voluntarily gave the confession statement. However, if we look at his



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cross-examination, he fairly admits that immediately on arrival of accused, his presence was informed to the police station. Therefore, when PW12 has informed to the police about the arrival of the accused, naturally there is a reasonable doubt arising as to the voluntariness of the confession statement given to the PW12 vide Ex.P4.

23. Coming to the recovery, no blood stained dress material was recovered, as it is the case of the prosecution that the same was burnt by the accused. What was recovered is only the stone, which even does not establish its link to the alleged occurrence in the absence of serology report.

24. Therefore, it is apparent that the prosecution did not establish the case either through ocular evidence, or through circumstantial evidence. Even the extra-judicial confession and the recovery is not wholly believable. At this juncture, it is useful to refer to judgment of Hon'ble Supreme Court in ***Kalinga Alias Kushal Vs. State of Karnataka By Police Inspector, Hubli*** reported in ***(2024) 4 SCC 735***, where the Hon'ble Supreme Court has held that, extra-judicial confession is a weak type of evidence and as a rule of prudence, a corroboration is necessary. For ready reference, the relevant paragraph of the judgment is extracted hereunder:



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*"15. The conviction of the appellant is largely based on the extra-judicial confession allegedly made by him before PW 1. 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 v. State of Chattisgarh, this Court reiterated the evidentiary value of an extra judicial confession in the following words (SCC OnLine SC para 11:***

*"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 of such 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 case of State of M.P v. Paltan 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 coaccused."*

(Emphasis supplied by this Court)



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25. Similarly, the Hon'ble Division Bench of this Court in ***Sasikumar Vs. State rep. By Inspector of Police, Karungalpalayam Police Station, Erode District*** reported in ***2005-1-L.W (Crl.) 161***, has held that the extra judicial confession is a weak piece of evidence and therefore, caution must be there in the mind of the Court. The Division Bench further held that if the extra judicial confession is found to be reliable and trustworthy, then there will be no harm in basing the conviction on the said piece of evidence alone. But we have revised our findings that even the extra judicial confession attached with doubt regarding its voluntariness. Thus, from the detailed discussion made hereinabove, we are of the firm view that the prosecution has miserably failed to establish any incriminating circumstances against the accused. However, though the trial Court has passed an elaborate judgment, it had hardly appreciated the evidence in its right perspective, and thereby landed to a wrong conclusion and therefore, the same needs to be interfered by this Court by setting aside the same.

26. In the result, this Criminal Appeal is allowed and the judgment dated 28.03.2019 passed by the Additional Sessions Judge, Dharmapuri in S.C.No.69 of 2017 is set aside, and the appellant is acquitted of all charges.



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Fine, if any, paid shall be refunded to him. Bail bond, if any executed, shall stand cancelled.

[M.S.R., J.] [C.K., J.]
29.09.2024

Index: Yes
Neutral Citation: Yes
Speaking order: Yes
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Note to office: Issue order copy on 19.09.2024

To

1. The Additional Sessions Judge
Dharmapuri
2. The Inspector of Police,
Dharmapuri Police Station, Dharmapuri District
3. The Public Prosecutor,
High Court of Madras.



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Judgment made in
Crl.A.No.232 of 2019

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