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Crl.A.No.379 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	03.10.2024
<i>Pronounced on</i>	20.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

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1.Kumar

2.Marimuthu

...Appellants

Vs.

State represented by
Inspector of Police,
Dhali Police Station,
Coimbatore District.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence imposed on the appellants by the learned III Additional District and Sessions Judge, Tiruppur @ Dharapuram in S.C.No.214 of 2014 by a judgment dated 23.07.2018.

For Appellants : Mr.K.Balasubramaniam

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



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JUDGMENT

M.S.RAMESH, J.

As per the charge sheet filed by the prosecution, on 02.11.2013 at about 05.00 P.M., both the accused, along with two other children in conflict with law, had conspired and with an intention of killing one Lakshmanan, in view of the previous enmity with him, the first accused had assaulted Lakshmanan on the back neck and in order to conceal the evidence, had tied the body in a TVS 50 Moped and dumped it in a well and accordingly, all the accused had committed the offences under Sections 120-B, 302 r/w. 34 and 201 IPC.

2. In order to substantiate their case, the prosecution had examined 14 witnesses, P.W.1 to P.W.14 and marked 19 exhibits, Ex.P1 to Ex.P19, apart from 13 material objects, M.O.1 to M.O.13.

3.1. P.W.1, namely Nallammal, who is the wife of the deceased, had testified that she and her husband were residing in a hut inside M/s.Sterling Company and were eking their livelihood by chopping and selling wood from the Company lands and that on the day of Diwali, her husband had gone to fetch water in a water can and also to borrow some



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money from P.W.3, namely Muthuramalingam, for the festival expenses and thereafter did not return back. She further speaks about the information she had received that her husband's body was found one month later on 02.12.2013 inside a well and with the help of the TVS 50 Moped (M.O.1), his cellphone (M.O.2), his slippers (M.O.3) and 30 litres water can (M.O.4), she had identified the decomposed body. Though according to P.W.1, her husband went missing on 02.11.2013, she had given a complaint (Ex.P.1) only on 05.11.2013 at 11.30 A.M. with the help of her relative P.W.5, namely Karunanidhi, which was registered in F.I.R.No.158 of 2013 dated 05.11.2013 under the caption “Man Missing”.

3.2. P.W.3 is a Parotta Master, who confirms that the deceased had come to see him for borrowing money, but he could not meet him.

3.3. P.W.5, who is the nephew of P.W.1, has confirmed that he had written the complaint on behalf of P.W.1, when the deceased went missing. He also states that the deceased was missing from 02.11.2013 onwards and the information he received on 02.12.2013 from an unknown person, through a public phone about the body of the deceased lying in the well.

3.4. P.W.2, namely Veerasamy, is the Manager of the Sterlite Company, who confirms that the deceased and his wife were staying in a



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hut, inside the Company campus.

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3.5. P.W.4, namely Ramasamy, and P.W.6, namely Narayanasamy, are the mahazar witnesses, before whom the observation mahazar (Exs.P.2 and P.4) and rough sketch were prepared and through a seizure mahazar (Ex.P.5), a TVS 50 Moped, a cellphone, a pair of slippers and a water can were seized.

3.6. Since the body of the deceased was highly decomposed, the skull of the body was taken to the forensic lab by P.W.7, who is a Grade-II Police Constable, along with the photographs of the deceased.

3.7. The key witness relied upon by the prosecution is P.W.8, namely Saminathan, who is an Ex-Village Panchayat President, before whom a claim was made that all the accused had given their extra judicial confession statements, confessing that they had conspired and murdered the deceased on 02.11.2013 and concealed the body in a well. According to him, on 05.12.2013, the statements of all the four accused were recorded and under a special report (Ex.P6), he had handed over the accused to the Police. He further states about the voluntary confession made by the accused before the Police and based on the confession that they would show the place of occurrence, he had accompanied the Police and the accused to the place. He also speaks about the Investigation



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Officer preparing the observation mahazar (Ex.P.7), seizure of the blood stained soil (M.O.7), a chair (M.O.8) and a bill hook (M.O.9). The admitted portion of the confession statement of the first accused was marked through him as Ex.P.8 and the confession statement of the second accused as Ex.P.9.

3.8. P.W.9, namely Natarajan, is the Special Sub-Inspector of Police, who had prepared a special report (Ex.P.11) through which, he had handed over the dresses of the deceased (M.O.10 to M.O.12) and a coir rope (M.O.13) to the Investigation Officer.

3.9. P.W.10, namely Dr.T.Jeyasingh, is the Doctor, who conducted the postmortem on the body of the deceased and among the various injuries he found on the body, he speaks about a cut injury on the back right neck measuring 15x1 cms. The postmortem report (Ex.P.12), in which he had opined that the death was due to the cut injury in the neck, was marked through him.

3.10. P.W.11, namely C.Pushparani, is an Anthropologist, who had received the requisition letter from the Investigation Officer, in which three colour photographs were shown in item Nos.1 to 3 and a skull was shown as item No.4. She speaks about the identification done by her to match the skull with the photographs of the deceased and the statement of



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the Anthropology report (Ex.P.13).

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3.11. P.W.12, namely Sivasankari, is the Sub-Inspector of Police, who had received the complaint (Ex.P.1) and registered a FIR (Ex.P.14) in Crime No.158 of 2013, under the caption “Man Missing”.

3.12. P.W.13, namely Anandhanayagi, is the Inspector of Police, who had conducted the investigation. According to her, P.W.5 had never informed her that there was a dead body in a dried well inside the lands of Sterling Company, together with a two wheeler and a cellphone. She then speaks about retrieving the body from the well, as well as recovery of the shirt, TVS 50 Moped, water can and a cellphone. Thereafter, she had altered the offences in Crime No.158 of 2013 under Section 302 IPC and submitted the alteration report (Ex.P.15) to the jurisdictional Magistrate. She thereafter had prepared the observation mahazar and rough sketch (Ex.P.16). She then conducted an inquest over the body of the deceased and prepared an inquest report (Ex.P.17). She had then sent the body for postmortem and also sent the skull and thigh bone to the forensic experts for identification of the body. She also speaks about the extra judicial confession given by the accused before P.W.5 and consequentially handing over them to her and also the voluntary confession made by all the accused before the Investigating Officer. She thereafter had once



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again altered the offences into Sections 302 r/w 34, 120-B and 201 IPC and submitted an alteration report (Ex.P.19) and sent it to the concerned Magistrate.

3.13. P.W.14, namely Anbarasu, Inspector of Police is the subsequent Investigating Officer, who had continued the investigation, after P.W.13 had filed a final report.

4. The Trial Court had mainly relied on the oral testimony of P.W.8 and had come to the conclusion that the extra judicial confession before him was true and voluntary and by placing reliance on the case in ***Gura Singh Vs. State of Rajasthan*** reported in ***(2001) 2 SCC 205***, together with the special report of P.W.8, had found both A1 and A2 guilty of having committed the offences under Sections 120-B, 302 and 201 IPC and sentenced them to undergo imprisonment in the following manner, through its judgment passed in S.C.No.214 of 2014 dated 23.07.2018, which judgment is challenged in the present appeal:-

“the accused 1 and 2 found guilty for the offence u/s 120(b), 302 and 201 IPC and for the offence under section 302 IPC the accused both shall undergo imprisonment for life and fine Rs.3,000/- imposed to each, in default of payment of fine the accused shall undergo simple imprisonment for



another six months. For the offence under section 120-B IPC, since the criminal conspiracy is being to commit an offence punishable with death, as per law the accused are treated as abettors, therefore the accused are imposed with same punishment provided for the offence, thereby the accused each shall undergo imprisonment for life and fine of Rs.3,000/- imposed to each, in default of payment of fine the accused shall undergo simple imprisonment for another six months. For the offence under section 201 IPC, since the offence have been committed by the accused is being punishable with death, the accused each shall undergo rigorous imprisonment for four years and fine Rs.2,000/- imposed to each, in default of payment of fine the accused each shall undergo simple imprisonment for another three months. The sentence imposed against the accused shall run concurrently as per section 427(2) Cr.p.c. The imprisonment period of the accused in this case if any, shall be deducted under Sec.428 Cr.p.c.”

5. The learned counsel appearing on behalf of both the accused submitted that, apart from the extra judicial confession alleged to have been made by the accused before P.W.8, there is no other evidence to even remotely indicate the involvement of both the accused. The learned



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counsel further submitted that there is an inordinate delay of three days in giving the complaint on 05.11.2013, after the deceased went missing on 02.11.2013 and since the delay has not been properly explained, the very inception of the case is doubtful. He also submitted that there are serious contradictions in the manner in which the information of the body found in the dried well was received by the accused. The learned counsel lastly submitted that the prosecution had also failed to establish motive to the occurrence.

6. Per contra, the learned Additional Public Prosecutor submitted that the accused had voluntarily surrendered before P.W.8 and had given their voluntary confession statements, which was found to be true and voluntary. He further submitted that as per the voluntary confession made to P.W.8, a previous enmity between the accused and the deceased has been established as motive for the occurrence.

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

8. The entire case of the prosecution rests on circumstantial



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evidences. The circumstances, which the prosecution relied upon, are (a) motive; (b) recovery of the body of the deceased along with his personal belongings; (c) extra judicial confession made to P.W.8; (d) recovery of the weapon based on the extra judicial confession of the accused; and (e) medical evidence, namely, identification of the deceased and the postmortem report confirming the death to have been caused by a cut injury on the neck.

9. The main evidence among the above circumstances is the extra judicial confession alleged to have been given by all the accused to P.W.8. It is a settled proposition of law that an extra judicial confession, by itself is a very weak piece of evidence, which requires corroboration. However, a conviction can be sustained on the basis of extra judicial confession, provided that the confession is voluntary and truthful and not out of any inducement. The Hon'ble Supreme Court of India, in the case of ***Pawan Kumar Chourasia Vs. State of Bihar*** reported in ***2023 SCC OnLine SC 259***, had reiterated this legal proposition and further held that the evidentiary value of such a confession, also depends on the person to whom it is made.



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10. A similar view was taken by the Hon'ble Supreme Court in the case of *Jaswant Gir Vs. State of Punjab* reported in (2005) 12 SCC 438, wherein two prong tests were applied to check the evidentiary value of an extra judicial confession, namely, (i) whether they are made voluntarily? and (ii) are they true?

11. In the light of the above legal position, we have analysed the evidences let in before the Trial Court. It is the prosecution's clear case that all the four accused had voluntarily gone before P.W.8 and had confessed to have committed the offence. P.W.8, in this regard, would state that, after such a confession was made, he had prepared a special report (Ex.P.6) and had handed over all of them to the Investigating Officer (P.W.13). Before the Police, P.W.8 claims that all the accused had once again voluntarily confessed to the crime before the Investigating Officer, who had recorded the voluntary confession statement. As per the confession, they had volunteered to reveal the place where they had committed the crime and the place where they had concealed the weapon used while committing the crime.

12. During the course of cross examination, P.W.8 had stated that



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he did not obtain the signatures of the accused in the special report. Since he was illiterate, one Saravana Kumar had prepared the special report, in which P.W.8 had affixed his signature. He also pleaded ignorance of what was written in the special report and admitted that the special report did not mention anything about the TVS 50 Moped or the rope used to tie the body to the Moped. Apart from that, he confirmed that such confession in this regard was also not made to the Police by the accused.

13. The Investigating Officer (P.W.13), in his oral testimony, has stated that he had received the information on 02.12.2013 from P.W.5 that a body was found inside a well, along with a TVS 50 Moped and a Cellphone. P.W.5, in his cross examination, has stated that the Police had arrested all the accused and brought them to the Police Station on the same day, when the body was found, i.e., on 02.12.2013. His statement in this regard reads as follows:-

“பாடி கிடந்த அன்று எதிரிகளை கைது
செய்து காவல் நிலையம் கொண்டு
வந்தார்கள்.”

14. While reading the statement of P.W.5, along with the statement of P.W.8, it is highly doubtful as to whether all the accused had



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voluntarily appeared before P.W.8 and given their confession statement, in view of the specific claim of P.W.5 that the accused were arrested on 02.12.2013 itself, whereas P.W.8 claims that they had appeared before him and gave their extra judicial confession on 05.12.2013.

15. In the absence of any corroboration of the statements made by P.W.8 and by applying the well settled principles of law that the extra judicial confession by itself will not stand, we are constrained to hold that the prosecution has miserably failed to substantiate this vital and only piece of evidence.

16. It is also the case of the prosecution that there was a previous enmity between the deceased and the accused. What was the nature of the enmity has never been spelt out by them. On the other hand, P.W.1, who is the wife of the deceased, in her cross examination, had specifically admitted that the first accused is neither known to her nor to her husband. If that be so, we fail to understand as to how there could be any enmity between the first accused and the deceased, who are strangers. Not a single independent witness has been examined by the prosecution, to substantiate the previous enmity. In this regard, we thus come to the



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irretrievable conclusion that the prosecution has failed to establish motive in this case.

17. With regard to the circumstance of recovery, we have already held that the confession given by the accused to P.W.8, as well as the Investigating Officer itself, is very doubtful, since there is some evidence to show that the accused were arrested on 02.12.2013 itself and not on 05.12.2013. As such, the consequential recovery, based on the confession itself, is highly doubtful.

18. Insofar as the circumstance of medical evidence is concerned, namely, postmortem report and the Anthropologist report, though these evidences only establish that the body belongs to that of the deceased and that he could have died owing to the cut injury in his neck, the same by itself will not establish the culpability of the accused to the crime. Merely because the medical evidence may stand to the advantage of the prosecution's case, it cannot be said that the culpability of the accused would also stand established on this circumstance alone.

19. The Hon'ble Supreme Court, in the case of ***Shailendra Rajdev***



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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:-

(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



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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 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



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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)

20. 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 portion 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)

21. 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 the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in (1984) 4 SCC 116. In **Sharad Birdhichand Sarda's case (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 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



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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)”

22. The prosecution has effectively brought in only the extra judicial confession to fix the culpability of the crime on the accused. Now that we have held that this evidence also does not inspire our confidence, we come to the conclusion that the prosecution has miserably failed to prove the case.

23. The Trial Court had not appreciated the above facts in its correct perspective and also has not appreciated the evidences before it. Consequentially, the judgment of the trial Court itself cannot be legally sustainable.

24. For all the foregoing reasons, the judgment passed by the learned III Additional District and Sessions Judge, Tiruppur @ Dharapuram in S.C.No.214 of 2014, dated 23.07.2018, 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



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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. The Criminal Appeal thus stands allowed. No costs.

**[M.S.R., J] [M.J.R., J]
20.11.2024**

Index: Yes
Neutral Citation: Yes
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M.S.RAMESH, J.
and
M.JOTHIRAMAN, J.

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To

- 1.The III Additional District and Sessions Judge,
Tiruppur @ Dharapuram.
- 2.The Superintendent of Police,
Central Prison, Coimbatore.
- 3.The Inspector of Police,
Dhali Police Station,
Coimbatore District.
- 4.The Public Prosecutor,
High Court of Madras.

Pre-delivery judgment made in
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20.11.2024