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Crl.A.No.484 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.09.2024
Pronounced on	05.12.2024

CORAM :

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

Crl.A.No.484 of 2019

Veeramani

... Appellant

Vs.

State Rep by
Inspector of Police,
Pudupettai Police Station,
Cuddalore.
Crime No. 84 of 2015

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence passed against this Appellant/accused by the learned Sessions Judge, Mahalir Neethi Mandram (Mahila Court), Cuddalore in S.C. No. 232 of 2015 dated 11.11.2016.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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J U D G M E N T

C.KUMARAPPAN, J.

The instant criminal appeal has been filed by the accused against the order of conviction passed in S.C. No. 232 of 2015, dated 11.11.2016.

2. The brief facts which give rise to the instant Criminal Appeal are that this is a case of uxoricide. According to the prosecution, the accused doubted the fidelity of his wife. While so, on 16.03.2015, he assaulted the deceased with a grinding stone. Then she complained the same to her father, on his advice, the deceased again went to her matrimonial home. However, on the next day, i.e., 17.03.2015, at about 11:00 o'clock, the accused developed a wordy quarrel with the deceased and suddenly slit her throat and fled from the scene of occurrence. Owing to the injury, the deceased succumbed on the spot.

3. After coming to know of the occurrence and the involvement of the accused, PW1/Saminathan, who is the father of the deceased, immediately rushed to the scene of occurrence, and thereafter went to the



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Police Station to give Ex.P1/complaint, which was received by PW9/Marimuthu, the Sub Inspector of Police, and who registered an FIR in Crime No. 84 of 2015 at about 12:30 hours. He also made arrangements to forward a copy of the First Information Report to the concerned jurisdictional Magistrate, as well as to the Investigating Officer, PW10/Chandrababu.

4. The Investigation Officer, after receipt of the copy of the First Information Report, proceeded to the scene of occurrence at about 13:15 hours, and prepared two rough sketches, and an observation mahazar in the presence of PW7/Shenbagavalli, and one Balu. On the very same day, at about 14:15 hours, the blood-stained cement flooring, as well as plain cement flooring, were collected. The Investigating Officer also seized the blood-stained bed, and pillow. At about 14:45 hours, the Investigating Officer collected blood-stained soil and sample soil from the place where the deceased fell outside her residence. At 15:00 hours, he conducted an inquest in the presence of PW1/Saminathan, PW2/Sheshayee, PW3/Sivanantham, and other witnesses and thereafter, made arrangements for the post-mortem of the body of the deceased. He then recorded the



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statements of PW1 to PW3 and one Velmurugan.

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5. It appears that on 17.03.2015, at about 18:00 hours, the accused surrendered before PW7/Shenbagavalli [VAO] and gave an extra-judicial confession. PW7/Shenbagavalli, produced the accused before the Police Station at about 20:10 hours, wherein, the accused again gave a voluntarily confession statement before the Police. In furtherance thereof, at about 21:45 hours, a discovery of facts was effected by recovering the Super Max Stainless Blade, from the accused's house. This recovery was made in the presence of PW7/Shenbagavalli, and Balu. Further, the blood-stained shirt and lungi were also recovered from the accused.

6. The Investigating Officer had then forwarded all those material objects to the concerned jurisdictional Magistrate under Form 95. He also made arrangements to send the blood-stained material objects for forensic examination. Later since he had superannuated, the investigation was taken over by his successor, PW11/Elumalai, who had recorded the statements of the forensic expert, the post-mortem doctor, and other witnesses who assisted in lifting the body from the scene of occurrence. Thus, after



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collecting the forensic report and completing the investigation, he laid the charge sheet against the accused under Sections 490A and 302 of IPC.

7. Before the Trial Court, the prosecution relied on as many as 11 witnesses and marked 20 documents, apart from relying on 9 material objects. On behalf of the accused, no witnesses were examined and no material objects were marked.

8. The Trial Court, after considering the oral and documentary evidences, as well as the material objects, found that the prosecution had proved the charge against the accused beyond reasonable doubt. Ultimately, the accused was convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and a fine of Rs. 1,000/-, in default, to undergo further six months' rigorous imprisonment. Aggrieved by the said judgement, the appellant/accused is now before this Court.

9. Assailing the said judgement of conviction, the learned counsel appearing for the appellant/accused vehemently contended that the alleged



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extra-judicial confession is not voluntary, but rather obtained through undue influence and coercion. The learned counsel further contended that there are material contradictions among the witnesses who spoke about the last seen theory. The learned counsel for the appellant/accused further contended that, according to the prosecution, the Super Max Stainless Blade was recovered at about 19:45 hours, whereas in Ex.P16 (inquest report) recorded at about 15.00 hours, there is already a reference about the Super Max Stainless Blade. This, demonstrates the height of falsity in the prosecution's case and reveals an attempt on the part of the prosecution to frame the accused in the present case.

10. It is also the specific contention of the learned counsel for the appellant/accused that the accused was not at all present at the scene of occurrence, and the alleged occurrence could have been the result of robbery. Further, the alleged recovery of blood-stained dress materials from the accused is fabricated and do not connect the accused with the occurrence. The learned counsel for the appellant/accused further contended that the motive has not been established; and that there are many missing links in the prosecution's case. Thus, the learned counsel for the



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appellant/accused prayed to interfere with the order of the trial Court by allowing the instant Criminal Appeal.

11. Per contra, the learned Additional Public Prosecutor vehemently contended that, this case rests upon circumstantial evidences, where there was a strong motive with the accused to do away the deceased, and that the company of the accused with the deceased was spoken through PW2 and PW4. Apart from this, the extra-judicial confession given to PW7 would go to show the involvement of the accused in the occurrence. It is the further contention of the learned Additional Public Prosecutor that, the recovered weapon, namely the Super Max Stainless Blade, as well as the dress material of the accused, had connected him with the occurrence. Accordingly, the learned Additional Public Prosecutor contended that the findings rendered by the Trial Court in convicting the accused, are well-merited and do not require any interference by this Court.

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



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13. From the submissions of the learned Additional Public Prosecutor, it is seen that the prosecution had relied upon the following circumstances, namely: (i) Motive - the conduct of the accused doubting the fidelity of the deceased; (ii) Last seen theory – spoken by PW2 and PW4; (iii) Extra-judicial confession given before PW7; and (iv) Recovery of blade and dress material at the instance of the accused.

14. Let us consider whether these circumstances unerringly point towards the guilt of the accused, with the exclusion of any other hypothesis. Before delving into the facts of this case, we would like to address certain precedents, which would enlighten us for the effective disposal of this case.

15. 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:-

(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 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”.



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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)

16. 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-



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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 nonexplanation 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)

17. 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:

"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



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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)"

18. Let us proceed to examine the facts of the case in the light of the aforementioned settled legal principles. Among the above referred incriminating circumstances, we would like to consider the validity of the extra-judicial confession, given before PW7/Shenbagavalli at the first instance. In this regard, it is apparent that the alleged extra-judicial confession (Ex.P6) does not contain the signature of the accused. The trial Court, after referring to the judgment of the Division Bench of this Court reported in **2016(2) Madras Weekly Notes 46 D.B. (Vijiya vs. State, represented by Inspector of Police, Kanthikuppam Police Station)**, held that, it would be unsafe to rely the alleged extra-judicial confession, without the signature of the accused. It is settled principle of law that, the extra-judicial confession by itself, is a weak piece of evidence. However, in the present case, even prior to recording of Ex.P6 confession, PW7 had



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visited the scene of occurrence and stood as witness to certain parts of the investigation. This would definitely raise a cause of concern to doubt the voluntariness of the ExP6/Extra-judicial confession.

19. As already stated, admittedly, the signature of the accused was not found in Ex.P6, the extra-judicial confession. Owing to such a material lapse, the trial Court had rightly arrived at the conclusion that it had become unsafe to rely upon Ex.P6/extra-judicial confession. We also find no grounds to deviate from such well merited findings. Therefore, in view of the above discussion, one of the circumstances, namely, the Extra-judicial confession, relied upon by the prosecution, stands dampened and attenuated.

20. At the same time, if the prosecution is able to establish the guilt through other circumstances, unerringly pointing towards the accused, without any other hypothesis, then this Court can safely lay conviction based upon those proved circumstances for the ultimate decision.

21. In this case, according to the prosecution, there was a strong



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motive for the accused to do away the deceased. To prove the motive, the prosecution has relied the evidence of PW1, the father of the deceased, and PW5, the brother of the deceased. Through their evidences, it has been proved that the accused developed suspicions with the deceased and doubted her fidelity, which gradually sowed an unquenched anger and grudge against her. Even a day before the occurrence, there was an altercation between the deceased and the accused, and there was also an attempt to do away her by throwing a grinding stone.

22. Though the accused confronted these witnesses, to dislodge their credibility, through cross-examination, he did not bring out any material contradictions or discrepancies to discredit their trustworthiness. Their evidence appears to be very natural, and their narration about the incident inspires confidence of this Court. Besides they are natural witnesses. Here, except an elusive suggestion of grudge on account of besmirch caused to the PW1 family due to the love marriage between the deceased and the accused, there was no worthwhile material placed before the Court to disbelieve the PW1 & PW5 testimony. But the alleged theory of besmirch, was strongly denied by them. Therefore, this Court is of the firm view that



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through the evidence of PW1 and PW5, the prosecution has proved the motive of the accused against the deceased.

23. A doubt regarding PW1's trustworthiness was raised on the basis of the contradiction regarding weapon used against the deceased, a day prior to the date of occurrence. PW1 and PW5 being the father and brother respectively of the deceased, had spoken about the motive by referring the previous day assault by grinding stone. But in contrast to their statement, in Ex.A1, the grinding stone does not find a place, instead wooden log was referred. But, we should be conscious of the fact that PW1 is an illiterate person and Ex.P1-complaint was admittedly written by some other person. Therefore, the defect crept in Ex.P1 could in no way be little, the testimony of PW1 and PW5. As a matter of fact, in the 161 Cr.P.C statement of PW1, the grinding stone was referred. Further, his 161 Cr.P.C statement also reached the Court on the same day of occurrence.

24. Further, it is pertinent to mention that PW1 and PW5 were examined only to prove motive. Notwithstanding the reference of wooden log in Ex.P1-complaint, what is important is, the statement of PW1 and PW5 about the conduct of the accused in suspecting the fidelity of the



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deceased. Through the evidence of PW1 and PW5, such conduct has been proved beyond reasonable doubts. It is in this background, the contradiction regarding the weapon used, on the previous day of occurrence, would loose its significance.

25. Coming to the next circumstance of the "last seen theory," the prosecution has relied on PW2 (Sheshayee), and PW3 (Sivanantham). According to PW2, on 17.03.2015, at about 10:30 hours, when they were conversing near the scene of occurrence, the deceased came out with blood gushing neck, and fell on the floor. On or at the same time, the accused ran away towards the backside of the house.

26. PW3, who is also a neighbour stated that at about 11:00 o'clock, when he was conversing with Sheshayee and Velmurugan, the deceased came out from her residence with her hand on her bleeding neck, and fell down on the floor. He also corroborated about the materials factum that, on or at the same time, the accused ran away from the residence.

27. Therefore, from the evidence of PW2 and PW3, two important



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instances emerges, namely:

- (i) the deceased coming with injury on her neck and falling down in front of the house; and
- (ii) On or about the same time, the accused running away from the residence.

28. But, contrary to the above instance, an argument was put forth by the accused that, PW2 and PW3 are unreliable witnesses as their 161 Cr.PC statement reached the Court with a delay of 8 days. It is thus contended that, there is a possibility of manipulation, embellishment and improvement in the prosecution case. But this Court could not countenance such argument, as the presence of PW2 and PW3 is fortified from Ex.P1-complaint and in the previous statement of PW1 [161 Cr.P.C statement] which reached the Court on the date of occurrence. In those statements, PW2-Seshayee's name and PW3-Sivanandam name are referred as the occurrence witnesses. In such a view of the matter, the mere lapse on the part of the prosecution in sending the 161 Cr.PC statement of Seshayee [PW2] and Sivanandam [PW3] to the Court would in no way cause any dent in the prosecution case.



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29. An yet another defence was also taken by the accused that, he was not present at the scene of occurrence. While looking at the cross examination of the witnesses with forensic insight, the case of the defence is that the accused was present in the residence [Scene of Occurrence] only upto 6.00 am. In other words, he was in the scene of occurrence about 5.00 hours prior to the occurrence, but not at the time of occurrence. Though the accused took such defence, he did not let in any evidence to substantiate the same. On the other hand, through PW2 and PW3 the prosecution has proved the last seen theory beyond reasonable doubts.

30. The learned counsel for the appellant/accused invites the attention of this Court about the statement given by PW2. He, while narrating the incidence, stated that, the accused fled from the scene of occurrence, through the backside. But according to the rough sketch [ExP14], there are no doors on the backside of the house. To appreciate this statement effectively, we deem it appropriate to extract the evidence of PW2. The same is as follows:-

“....வீரமணி உமாவின் வீட்டிலிருந்து பின்வழியே வெளியே போனார்.



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ஐனங்கள் ஓடி வீரமணியை பிடித்து வந்தார்கள்.....”

31. But PW3/Sivanandham, the other witnesses has categorically stated that, when the deceased came with neck injury, on or about the same time, the accused ran away from the residence. Therefore, the mere reference by PW2/Sheshayee that he ran away "through the backside" does not necessarily mean through the back door, but the another connotation of the word “பின் வழியே” would also refer back yard, qua the back side of the house.

32. However, while looking at the reply given by the accused during 313 Cr.P.C. questioning, he states that at the time of occurrence, he was not at all available at the scene of occurrence. But the prosecution, through the evidence of PW2 and PW3 have proved the presence of the accused and the deceased at the scene of occurrence and at the time of occurrence. To put it differently, the theory of last seen has been established beyond reasonable doubt.

33. Therefore, it is for the accused to explain as mandated under Section 106 of the Evidence Act, as to what had happened at the relevant



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point of time, and how the deceased sustained injury. It is also important to mention that subsequent conduct of the accused also would become relevant under Section 8 of the Evidence Act. When the factum of presence of the accused and deceased together at the scene of occurrence was proved, that too, when the deceased sustained injury, the conduct of the accused fleeing from the scene of occurrence, assumes much significance under Section 8 of the Indian Evidence Act, 1872. Further, there is no explanation from the accused as to what happened inside the house, when both the accused and the deceased were present, as the same was especially within the knowledge of the accused as enumerated under Section 106 of the Indian Evidence Act, 1872. However, he simply states that he and his mother were not at all present at the scene of occurrence. But as already stated there are no proof to that effect. Therefore, this Court is of the firm view that the theory of "last seen together" and the subsequent conduct of the accused and his non-explanation are material incriminating circumstances unerringly pointing towards the guilt of the accused.

34. Coming to the arrest and recovery, the Trial Court has disbelieved the case of the extra-judicial confession, and we also concur



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with the said finding. At the same time, by examining PW7, the prosecution has proved the recovery of dress materials MO8 and MO9, from the accused. These recoveries were effected after the arrest of the accused at the Police Station. Though the arrest and recovery were doubted by the accused, if we look at the seizure mahazar of MO8 and MO9, it reached the Court immediately after the occurrence, namely on 17.03.2015. The First Information Report, complaint, and other material documents have also reached the Court at 1.30 p.m. on 17.03.2015 itself. Further, the accused is the named accused in the FIR.

35. Therefore, in such peculiar circumstances, the recovery of blood-stained dress materials of the accused cannot be doubted at all. Further, through the serological and biological report, the blood stains found on the accused's lungi were determined to be human blood, whereas in the shirt of the accused, it could not be concluded whether it was human blood or otherwise. Therefore, in such a background, it also becomes necessary for the accused to explain as to how the blood stains were found in his lungi and shirt, which the accused again has miserably failed to explain.



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36. At this juncture, the learned counsel for the appellant would rely upon the inquest report, and would contend that the inquest report was prepared at about 15.00 hours, whereas, according to the prosecution, the accused was arrested at about 18:10 hours, and, thereafter the recovery of blade was effected. But in the inquest report, the brand of the blade, namely “Super Max Stainless Steel Blade”, had been referred, which according to the appellant would demonstrate the falsity over the prosecution case. But this discrepancy would in no way dent the prosecution case, as the prosecution has proved the circumstances of motive, last seen theory, subsequent conduct of fleeing from the scene of occurrence, and also the non-explanation as to the cause of injury sustained by the deceased.

37. From the above narration, we are of the firm view that there was a strong motive with the accused to do away the deceased, as he suspected the fidelity of the deceased. Further, PW2 and PW3 had spoken about the "last seen" theory. They also had spoken about the subsequent conduct of the accused immediately fleeing from the scene of occurrence. Top of all,



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the accused did not explain the cause of the injury sustained by the deceased. Additionally, the recovery of blood-stained dress material from the accused, and his failure to explain the presence of human blood on his dress materials would all form a complete chain of incriminating circumstances, which unerringly pointing towards the guilt of the accused, by excluding all other hypotheses.

38. Thus, we are of the firm opinion that, the prosecution has proved the guilt of uxoricide beyond reasonable doubt. Accordingly, we hold that the prosecution has proved all the charges against the accused. Hence, we do not find any grounds to interfere with the well-merited findings of the learned Trial Judge.

39. In the result, this Criminal Appeal stands dismissed.

[M.S.R., J.] [C.K., J.]
05.12.2024

Index: Yes/No
Speaking order /Non Speaking Order
Neutral Citation: Yes/No
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To

1. The Sessions Judge, Mahalir Neethi Mandram
(Mahila Court), Cuddalore.
2. The Inspector of Police,
Pudupettai Police Station,
Cuddalore.
3. The Public Prosecutor,
High Court of Madras.



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

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judgment made in
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05.12.2024