



Crl.A.No.893 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.893 of 2019
and Crl.M.P.No.19459 of 2023

Kattaiyan @ Prabu

... Appellant/sole accused

v.

The State,
Represented by the Inspector of Police,
Neyveli Township Police Station,
Cuddalore District.
(Cr.No.199 of 2017)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to call for the records and set aside the order of conviction and sentence passed in S.C.No.17 of 2018 dated 09.07.2019 on the file of the learned III Additional District Sessions Judge at Virudhachalam, Cuddalore District and allow this appeal and acquit the appellant/accused from the charge levelled against him.

For Appellant : Mr.A.M.Rahamath Ali

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor
High Court of Madras



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JUDGMENT

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

This Criminal Appeal has been filed by the Accused, challenging the conviction and sentence imposed upon him vide judgment dated 09.07.2019 in S.C.No.17 of 2018 on the file of the learned III Additional District Sessions Judge at Virudhachalam, Cuddalore District.

2. (i) It is the case of the prosecution that the appellant and the deceased were working as sub contractors under P.W.3 and were known to each other; that the deceased had a huge bank balance; that the appellant knew about it and wanted to take the ATM card of the deceased and thereafter do away with the deceased; that on 08.06.2017 at about 10.00 p.m., after the construction work got over, the appellant called the deceased stating that he would drop him at his house; that the appellant asked for money on the way and asked the deceased to withdraw some money from the ATM; that they both went into the ATM and the appellant found out the ATM pin of the deceased and thereafter, they both consumed liquor and stopped the vehicle near a newly constructed building; and that the accused



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used this as an opportunity and caused injuries on the deceased with a knife which he had concealed and took away the ATM card of the deceased.

(ii) It is the further case of the prosecution that the body of the deceased was found lying dead the next day Morning by P.W.2, who was the room mate of the deceased; that he informed P.W.1, the brother of the deceased who in turn lodged a complaint, [Ex.P1] on 09.06.2017 at about 9.00 a.m. The said complaint was registered by P.W.12, the Sub Inspector of Police in Cr.No.199 of 2017 for the offence under Section 302 IPC. In the complaint, the appellant was shown as a suspect.

(iii) The prosecution case is that the appellant voluntarily surrendered before P.W.10, VAO and gave a confession which was recorded by P.W.10 and handed over the ATM card of the deceased. The said confession was marked as Ex.P.10. Thereafter, P.W.10 took the appellant along with the ATM card to the police station and the respondent arrested him.



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(iv) After registration of the FIR, P.W.13, Investigating Officer took up the investigation and went to the scene of occurrence at 10.30 a.m., and prepared the Rough Sketch, [Ex.P16] and Observation Mahazar, [Ex.P17]. He seized the blood stained sand, which was marked as M.O.4 and the sand without blood stains as M.O.5, and also the bike of the deceased in the presence of the witnesses under Seizure Mahazar, [Ex.P18]. He ascertained the apparent cause of death and prepared an inquest report, [Ex.P.19]. Thereafter, he made a requisition to conduct post-mortem on the deceased and the same was conducted by P.W.7 who issued post-mortem certificate, [Ex.P5]. He arrested and recorded the confession of the appellant and the admissible portion of which was marked as [Ex.P20]. He seized the knife in the presence of VAO under Seizure Mahazar, Ex.P.13. Thereafter, he handed over the investigation to P.W.14. P.W.14 examined the other witnesses and the report of the forensic science experts who had examined the blood stained cloths of the deceased, the cloths of the accused, and filed a final report against the appellant for the offences under Section 382, 404 and 302 IPC before the learned Sessions Judge.



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(v) On the 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.17 of 2018 and was made over to the learned III Additional District Sessions Judge, Virudhachalam, Cuddalore District, for trial. The trial Court framed charges against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.14 and marked 21 exhibits as Exs.P1 to P21, and marked 6 Material Objects as M.O.1 to M.O.6. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the appellant, no witnesses and exhibits were examined and marked.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant guilty of the offence under Section 302 IPC and not guilty of offences under Sections 382 and 404 IPC. The appellant was



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convicted and sentenced as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for six months

Hence, the appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.A.M.Rahamath Ali, learned counsel appearing for the appellant, and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4.The learned counsel for the appellant submitted that the prosecution is based on circumstantial evidence; that the circumstances have not been established; that the extra judicial confession cannot be relied upon as the VAO was a total stranger to the appellant; that the said confession was not signed by the appellant; that the ATM card said to have been produced by the appellant was not identified by any of the witnesses as that belonging to



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the deceased; and that the motive has not been established.

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5. The learned Additional Public Prosecutor *per contra* submitted that the appellant was last seen with the deceased as it could be seen from the evidence of P.W.2 and other witnesses; that the extra judicial confession is reliable and the production of ATM card by the appellant would corroborate the extra judicial confession and therefore submitted that the trial Court was right in convicting the appellant and prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and have perused all the relevant records.

7. P.W.1 is the cousin brother of the deceased and the de facto complainant. P.W.2 worked along with the deceased and was his room-mate who speaks about talking to P.W.1, who informed him about the appellant and the deceased going together after withdrawing money from the ATM. P.W.3 is a hearsay witness and is the employer of the appellant and the deceased. P.W.4 is the wife of the deceased, and she is a hearsay witness.



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P.W.5 is the Scientific Officer in the forensic science laboratory and had issued Ex.P3 report. P.W.6 is the Assistant Professor at the Government Medical College and Hospital and has stated that he has examined the hyoid bone of the deceased and issued Ex.P4 certificate. P.W.7 is a Doctor who conducted the post-mortem and issued Ex.P5, the post-mortem certificate. P.W.8 and P.W.9 are the mahazar witnesses who are turned hostile. P.W.9 is the Village Administrative Officer, to whom the accused was given the Extra Judicial Confession and produced the ATM card of the deceased. P.W.11 is the Corpse Constable. P.W.12 is the Sub Inspector of Police who registered the FIR. P.W.13 and P.W.14 are the Investigating Officers.

8. The evidence of the P.W.7/post-mortem doctor and his report Ex.P5 suggested that the deceased died of shock and haemorrhage due to head injury and multiple injuries. The injuries suffered by the deceased are cut injuries. The post-mortem certificate and the evidence of the doctor shows that the deceased was subjected to homicidal violence.



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9. As regards the involvement of the appellant, the prosecution case primarily rests upon the extra judicial confession, which is said to have been given by the appellant to P.W.10, VAO. It was marked as Ex.P10. Strangely, the said confession, recorded by P.W.10, is not signed by the appellant. Moreover, P.W.10 is a total stranger to the appellant. There is no reason for the appellant to confess about the crime to P.W.10. Furthermore, P.W.10 was aware of the occurrence even before the appellant made the alleged extra judicial confession. He stated that he came to know through his assistant at about 8.00 a.m., that a person was found dead with cut injuries at Om Muruga Nagar; and that while he was getting ready to the place of occurrence, the appellant appeared before him. Though P.W.10 claims that the appellant came in the Morning, he produced the appellant only at 2.30 p.m., before the respondent. Additionally, it is also in evidence that P.W.10 signed the confession recorded by the police and the recovery Mahazar, Ex.P12 for recovering the knife from an abandoned well. The sequence of events and the evidence of P.W.10 would make it clear that it is highly doubtful that the appellant gave a confession to P.W.10. Even assuming that the said extra judicial confession was made by the appellant, it is a trite law



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that the extra judicial confession is a weak piece of evidence and has to be corroborated.

10. We find from the evidence that the ATM card said to have been handed over by the accused to P.W.10 was not identified by any of the witnesses, including P.W.1, the brother of the deceased, P.W.2, the room mate of the deceased, and P.W.3, wife of the deceased. Therefore, in the absence of any such evidence, we cannot hold that the ATM card produced by the appellant belonged to the deceased.

11. The next circumstance relied upon by the prosecution is that the appellant took the deceased at about 10.00 p.m., from the workplace which was spoken to by P.W.2. It is the admitted case that all the appellant and the deceased were known to each other. Hence, merely because the appellant had taken the deceased, one cannot conclude that he had caused the death of the deceased. It is well settled that in a case based on circumstantial evidence, all the circumstances must be established and the circumstances must form a complete chain which points out only to the guilt of the



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appellant and rule out any other hypothesis.

12. As stated earlier, the circumstances have not been established and in any case, they do not form a chain that points out only to the guilt of the accused. Therefore, the appellant cannot be convicted on the basis of such evidence. Hence, the judgement of the trial Court is liable to be set aside.

13. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/accused in S.C. No.17 of 2018 dated 09.07.2019, on the file of the learned III Additional District Sessions Judge, Virudhachalam, Cuddalore District, are set aside. The appellant/accused is acquitted of all the charges and is directed to be released forthwith unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bonds, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
10.04.2024

Index : yes
Neutral citation : yes
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

Anu

To

1. The III Additional District Sessions
Judge, Virudhachalam, Cuddalore District.

2. The Inspector of Police,
Neyveli Township Police Station,
Cuddalore District.

3. The Superintendent,
Central Prison, Cuddalore.

4. The Public Prosecutor,
High Court, Madras

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10.04.2024