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*Crl.A.No.114 of 2019*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM :

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

Crl.A.No.114 of 2019

State represented by  
The Public Prosecutor,  
High Court, Madras.  
(Salavakkam PS Crime No.240/2011)

...Appellant

Vs.

1.Vimal

2.Saravanan

3.Pachai @ Pachaiyappan

...Respondents

**Prayer:** Criminal Appeal filed under Section 378(1)(b) of the Criminal Procedure Code to set aside the judgment of acquittal of the respondents/accused in S.C.No.7/2012 dated 13.06.2016 on the file of the learned Sessions Judge, Mahalir Court, Chengalpattu and convict the respondents/A1 to A3 for the offence committed by them under Section 376(2)(g), 302 and 201 of IPC.



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

For R1 : Mr.R.Vijayakumar

For R2 : Mr.R.Shanmugssundaram, Sr. Counsel  
for Mr.V.Purushothaman

For R3 : Mr.S.Parthasarathy

### **JUDGMENT**

**(Judgment of the Court was made by M.S.RAMESH, J.)**

For the sake of convenience, the parties in the appeal are addressed according to their ranks before the trial Court.

2. The case of the prosecution is that on 11.06.2011 at 18.45 hours, A1-Vimal, A2-Saravanan and A3-Pachai @ Pachaiyappan, with a common intention to rape a minor girl aged about 16 years (deceased), who was a resident of the same Village, had taken her in a motorcycle, driven by A1, while A2 and A3 came in another motorcycle, to a Casuarina Farm near RRK Chamber, Thirumukkudal and raped her, several times, against her will. Fearing that the victim may reveal the occurrence to her relatives, A1 strangled her with the help of A2 and A3 and thereby caused her murder. Thereafter, they took the dead body in



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A3's motorcycle and threw it into a well owned by one Chinnkannu Pillai.

On completion of the investigation, the Investigating Officer had filed a final report, charging all the accused of having committed the offences under Sections 376, 302 and 201 of the Indian Penal Code (IPC). The case was taken on file by the learned Sessions Judge, Mahila Court, Chengalpattu, in S.C.No.7/2012.

3. In order to prove their case, the prosecution had examined 20 witnesses P.W.1 to P.W.20 and marked 46 documents Exs.P.1 to P.46, apart from 15 material objects M.O.1 to M.O.15.

4. On consideration of all these oral and documentary evidences, the Sessions Court had passed a judgment on 13.06.2016, acquitting all the accused from the charges. Aggrieved against the judgment of acquittal, the prosecution has preferred the present appeal.

5. The learned Additional Public Prosecutor submitted that the trial Court had erroneously acquitted all the accused from a gruesome crime committed by them. According to him, the medical evidence before the trial Court establishes the offence of rape committed on the deceased, as



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well as confirms the case of death owing to strangulation and shock from forced sexual assault. He further submitted that when P.W.1, who had seen all the accused, while she was waiting for her daughter at the bus stop, had also given some vague statements that they were the ones who dropped the deceased near a tamarind tree, the trial Court ought to have drawn an inference from such statements of their culpability and should have convicted the accused. He also submitted that the case of the prosecution was corroborated in the extra judicial confession statements and therefore, sought for setting aside the judgment of the trial Court.

6. Per contra, the learned counsels appearing on behalf of all the accused would submit that the prosecution had projected P.W.6 to P.W.10 as the witnesses, who had last seen the deceased in the company of all the accused and all these independent witnesses did not support the case of the prosecution and had turned hostile. Even P.W.11, who was the Village Administrative Officer, before whom the prosecution claims that all the accused had volunteered and given their extra judicial confession, was treated as an hostile witness by the prosecution. By pointing out to the oral testimonies of the parents of the deceased, namely P.W.1 and P.W.2, the learned counsels submitted that even the parents did not implicate



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these accused of having committed the offence, but rather had spoken only about missing of their child. He further submitted that though the occurrence had taken place after 20.00 hours on 11.06.2011, the complaint was given only on 13.06.2016 at 10.00 hours, after the body was discovered from the well on 12.06.2011 at 16.00 hours and there was no explanation for this delay.

7. This is a case which rests entirely on circumstantial evidences. In order to prove their case, the prosecution had essentially put forth four incriminating circumstances, namely, (i) last seen theory of the deceased, whereby P.W.6 to P.W.10 was seen along with all the accused, (ii) recovery of the purse belonging to the deceased from the accused, as well as the two wheelers used by the accused and the stained clothes owned by them, (iii) extra judicial confession statements made by the accused before P.W.11 and (iv) the medical evidences that establish rape and death due to strangulation.

8. The law with regard to the mode of proving any case relating to circumstantial evidence has been well settled through several case laws.

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



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***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*



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*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*



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*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)*

9. 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:-



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*"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)*

10. 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



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**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*



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*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 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)''*

11. Insofar as the first circumstance, namely the last seen theory, is concerned, the prosecution had examined P.W.6 to P.W.10, who are all co-villagers. However, none of these witnesses had supported the case of the prosecution, which had prompted them to treat these witnesses as hostile. Apart from these five witnesses, there is no other evidence to establish or even remotely indicate that the deceased was last seen in the company of the accused. Thus, the circumstance of last seen theory put forth by the prosecution, does not stand to the test of scrutiny.



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12. Insofar as the circumstance of extra judicial confession is concerned, it is claimed by the prosecution that all the accused had appeared before the Village Administrative Officer/P.W.11 and had voluntarily confessed to the crime of rape and murder. However, when P.W.11 was examined, though he initially deposed that when he was in his office at 12.30 hours on 17.06.2011, A1 had voluntarily confessed that he, along with A2 and A3, had committed the offences of rape and murder, he thereafter did not support the case of the prosecution and thus, the prosecution has treated him as an hostile witness.

13. Even as per the evidence of P.W.11, it was only A1, who had given the voluntary confession by implicating A2 and A3 together with him. Based on his confession before P.W.11, the involvement of A2 and A3 cannot be taken as a conclusive proof, in the absence of their respective extra judicial confession statements. Even otherwise, the extra judicial statement itself is not supported by P.W.11, who had turned hostile. Similarly, the prosecution had examined P.W.14, who is the Village Assistant in the office of P.W.11, who was also treated as an hostile witness by the prosecution.



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14. 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.

15. 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?

16. By applying the aforesaid principles to the facts of the present case, no reliance can be placed to the alleged extra judicial confession put forth as a circumstance by the prosecution to prove their case.



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17. This leads us to the next circumstance of alleged recovery of purse (M.O.1) of the deceased by the prosecution, based on the confession of A1. The Investigating Officer (P.W.19) had deposed during the time of trial, that on 17.06.2011 at about 13.33 hours, he had received a call from P.W.11 about the confession made by A1 to him, based on which information, he had gone to the VAO's office and arrested A1 in the presence of P.W.11 and P.W.14. It is his further statement that after the arrest, A1 voluntarily confessed of having committed the crime and further volunteered to disclose the place where they have committed the crime and disposed of the body, apart from identifying the other two accused. The admissible portion of the confession statement was marked as Ex.P.36.

18. It is claimed by the Investigating Officer that based on the confession of A1, he had recovered a black colour purse (M.O.1) with some money in it (M.O.2), which was buried in a cemetery. M.O.1 and M.O.2 were seized under a seizure mahazar (Ex.P.37). He was then taken to the scene of occurrence by the accused, where he had prepared the observation mahazar (Ex.P.38) and rough sketch (Ex.P.39). He had also



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seized the two wheeler (M.O.3), which A1 had used for taking the deceased, under a seizure mahazar (Ex.P.40). Thereafter, at about 20.15 hours, he had arrested A2 and A3 in the presence of the witness, who had also voluntarily gave their confession, the admissible portions being marked as Ex.P.41 and Ex.P.42. He then claims that these two accused also had volunteered to disclose the place of occurrence. He thereafter had seized the two wheeler (M.O.4) of A3, under a seizure mahazar (Ex.P.43), along with the stained dresses of the accused (M.O.5 to M.O.10).

19. The entire investigation, revolving around the recovery, is surrounded by doubts, since the very inception of the arrest of A1 itself was not established by the prosecution in a manner known to law, which we have already discussed in the preceding portions of this judgment. It is only on the basis of the extra judicial confession claimed to have been given to P.W.11, did the arrest of A2 and A3 happen and the consequential recovery. Likewise, the only other witness to give the extra judicial confession, namely P.W.14, also did not support the case of the prosecution.



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20. P.W.1, who is the mother of the deceased, in her oral testimony, had stated that her daughter was working in a pickle manufacturing unit and on the day before the incident, she had gone to the company to receive her salary. When her daughter did not return till about 21.00 hours, she had gone to the bus stop and was waiting for her, when A1 and A2 had come there and on their enquiry, she had informed them about missing of her daughter, to which A1 had told her that he had dropped her daughter near a tamarind tree. She then claims to have called the house of their relatives and on the next day, she had gone to the pickle manufacturing company, when she was informed that her daughter had not come there. Thereafter, she narrates about her daughter's dead body found in the well and the complaint given by her after about four days, suspecting foul play in the death of her daughter. She also had identified her daughter's purse (M.O.1). P.W.2, who is the father of the deceased, had also deposed in similar lines as that of P.W.1.

21. In both their oral testimonies, they had not at all indicated the involvement of A1 or A2 to the crime. On the other hand, their evidences may indicate the concern shown by A1 and A2, on the missing of their daughter. We could not find any other statements in the evidences of



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P.W.1 and P.W.2, which would point to the culpability of A1 and A2 to the crime. Thus, the other circumstance, namely recovery of the purse belonging to the deceased, as well as stained dresses of the accused, have not been well established, so as to point out the culpability of the crime on these accused.

22. The last circumstance put forth by the prosecution is the medical evidence let in before the trial Court. Ex.P.11 is the postmortem certificate issued by the doctor (P.W.12). As per Ex.P.11, as well as the oral testimony of P.W.12, the following ante mortem injuries were seen on the body of the deceased:-

*“1. CONTUSIONS:*

- 1. A 10cm x 8cm contusion over the frontal region of the scalp with haematoma in the subcutaneous layer.*
- 2. A 10cm x 8cm contusion over the occipital region with haematoma in the subcutaneous layer.*
- 3. A 15 cm x 10 cm contusion over the right shoulder and arm.*
- 4. A 15 cm x 8 cm contusion over the right forearm.*
- 5. A 10 cm x 10 cm contusion over the left shoulder and upper arm.*



6. A 15 cm x 8 cm contusion over the left forearm.  
7. A 10 cm x 8 cm reddish contusion present over the inner aspect of the upper right thigh.  
All the above mentioned contusions were reddish brown in colour.

2. NECK: A 15cm x 10cm contusion over the anterior aspect of the upper neck. On dissection reddish brown contusion present in the subcutaneous layer with corresponding contusion of the strap muscles, para tracheal muscles.

HYOID BONE: Inward compression fracture seen over both born of hyoid bone with surrounding areas of contusion.

3. CHEST: A 25cm x 15cm contusion over the anterior aspect of the chest and breast with subcutaneous contusion.

4. GENITAL REGION: A 10cm x 8cm reddish brown contusion present over the inner aspect of the upper right thigh. About 8cm x 5cm diffuse contusion present over the labia majora, diffuse contusion seen around the hymenal orifice with mild bleeding from it.”

23. The final opinion as to the cause of death, as per Ex.P.11, is as



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follows:-

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*“Died of ASPHYXIA due to Compression Force over the region of Neck {Manual strangulation} and Sexual violence, Death would have occurred 40 to 50 hours prior to postmortem.”*

24. The postmortem doctor (P.W.12) has also ratified the injuries, as well as the final opinion of Ex.P.11 in his oral testimony. On a co-joint reading of the oral testimony of P.W.12, along with Ex.P.11, it stands established that this is a case of homicidal death. However, the consequential issue is as to whether the accused had committed the crime or not, would be crucial.

25. As held by the Hon'ble Supreme Court of India in the case of ***Shailendra Rajdev Pasvan (cited supra)***, every link in the chain of circumstance of a case relating to circumstantial evidence, has to be established and all the circumstances must be consistently pointing out only to the guilt of the accused for finding him guilty. In this case, though the medical evidence establishes the death as homicide, none of the circumstance fixes the cause of death on the accused. Though the medical



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evidence establishes this to be a case of unnatural death, the prosecution has failed to substantiate the consequential issue of pointing out the guilt on the accused and therefore, the discovery from the medical evidence may not be in any way help the case of the prosecution.

26. The trial Court had taken into consideration that all the independent witnesses, who had last seen the deceased in the company of the accused, had turned hostile, including P.W.11, before whom the extra judicial confession of A1 was recorded. The evidences of P.W.1 and P.W.2, who are the parents of the deceased, were also dealt with appropriately by the trial Court and had ultimately come to the correct finding that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and had therefore acquitted all of them. We do not find any infirmity or illegality in such findings and therefore, no interference is warranted to the well considered judgment of the trial Court.

27. In the result, there are no merits in this Criminal Appeal and hence, the same stands dismissed. No costs.



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**[M.S.R., J] [M.J.R., J]  
23.10.2024**

Index: Yes/No  
Neutral Citation: Yes/No  
Speaking/Non-speaking order

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To

- 1.The Sessions Judge,  
Mahila Court,  
Chengalpattu,
- 2.The Public Prosecutor,  
High Court of Madras.



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**M.S.RAMESH, J.**  
**and**  
**M.JOTHIRAMAN, J.**

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