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Crl.A.No.587 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.08.2024
Pronounced on	06.09.2024

CORAM :

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

Crl.A.No.587 of 2018

C.Vignesh Kumar

... Appellant/Accused

Vs.

The State rep. by
The Inspector of Police,
R.S.Puram Police Station,
Coimbatore.
(Cr.No.681/2015)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed by the learned Trial Court namely III Additional District and Sessions Judge, Coimbatore in S.C.No.176 of 2016 dated 27.07.2018 and acquit the appellant herein of all the charges.

For Appellant : Mr.T.Surendran

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



Crl.A.No.587 of 2018

J U D G M E N T

C.KUMARAPPAN, J.

The instant Criminal Appeal has been filed by the sole accused against the judgment of conviction passed against him, by III Additional District and Sessions Judge, Coimbatore in S.C.No.176 of 2016 vide order dated 27.07.2018 for the offence under Section 302 of IPC.

2. The gist of the prosecution case is that the accused Vigneshkumar and the deceased Prabakaran are neighbours. The deceased Prabakaran serendipitously came to know about the relationship between the accused and one Divya [PW15] out side of marriage . Taking advantage of the same, the deceased started blackmailing Divya and the accused. Enraged by such conduct, the accused nurtured enmity against him and decided to do away him. In furtherance of the same, and with stratagem, he took the deceased to a secluded place and done him to death. The prosecution attempted to prove the case on two folds, qua based on the ocular evidence, and through the circumstantial evidence.



Crl.A.No.587 of 2018

WEB COPY

3. According to the prosecution, Saravanakumar [PW1] is the son of the deceased, and Ramesh [PW4] is the co-brother of PW1. It appears that on the fateful day on 25.09.2015 at about 3.00.p.m, PW1 just went to his co-brother (PW4)'s house. However, PW4 returned home at 3.50.p.m, while they were in conversation, PW4 informed his co-brother PW1, that the deceased and the accused were proceeding to a secluded place near New Scheme Road. On such information, when PW1 rushed to the scene of occurrence, the accused attacked PW1's father. But on seeing PW1, the accused escaped and fled from the scene of occurrence.

4. Thereafter on seeing his father dead, PW1 rushed to the police station along with Mr.Rajeshkumar [PW3], who is the scribe for the Ex.P1-complaint, and gave a complaint to Mr.S.Balachandar [PW16]. On receipt of the complaint, PW16 registered Ex.P13 FIR in Crime No.681 of 2015 for the offence under Section 302 of IPC. After registering the FIR, he forwarded the same to the Investigating Officer [PW17], and also to the concerned jurisdictional Magistrate. PW17, on receipt of the copy of the FIR, at about 17.50 hours, commenced his investigation and proceeded to the scene of occurrence and has arranged for lighting facility. Thereafter, he examined the



Crl.A.No.587 of 2018

WEB COPY

witness Mr.Palanisamy [PW9] and one Mr.Aravind and prepared the rough sketch [Ex.P14] and observation mahazar [Ex.P4]. Between 19.00 hours to 22.00 hours, he conducted inquest upon the body of the deceased in the presence of Mr.Saravanakumar [PW1], Tmt.Neelavathi [PW2] (wife of the deceased), Mr.Rajeshkumar [PW3], Mr.Ramesh [PW4] and one Priya. The said inquest report was marked as Ex.P15. After that, he also recorded the statement of Mr.Palanisamy [PW9] and Mr.Aravind.

5. The Investigation Officer further states that, at the scene of occurrence, he has also recovered one pair of rubber chappal, a blood stained brick and an electoral Identity card in the name of Vigneshkumar. Apart from that, he also collected the sample soil and the blood stained soil. The seizure mahazar was marked as Ex.P5, and the recovered materials have been marked as MOs.2, 4 to 7. At about 10.45 hours, he has also recovered the vehicle bearing Registration No.TN 37 BL 8582 in the presence of Mr.Palanisamy [PW9] and Mr.Aravind, the seizure mahazar of which was marked as Ex.P6 and the photograph of motor vehicle was marked as M.O.8. Thereafter, he has also recorded the statement from the above witnesses. On the next day 26.09.2015 he made arrangements for the postmortem of deceased.



Crl.A.No.587 of 2018

WEB COPY

6. While so, he arrested the accused at about 14.00 hours on 26.09.2015 near Poosaripalayam Bus stand. After arresting the accused, he informed to Telungupalayam VAO one Ms.Thamaraiselvi [PW8] and her assistant Mr.Karuppasami to stand as witness for the confession statement, as the accused had willingly volunteered to confess his involvement in the offence. The confession statement of the accused was recorded in the presence of PW8 and PW9 at about 14.30 hours to 15.30 hours. In pursuance of the recording of the confession statement, a discovery of fact was effected by recovering a blood stained Maroon colour shirt from the house of the accused in the presence of the very same witnesses, and the seizure mahazar was marked as Ex.P3.

7. Thereafter, he had also examined the witnesses Mr.Srinivasan [PW5], Mr.Sivakumar, Mr.Satheesh [PW14], Mr.Loganathan [PW6], Mr.Saravanan [PW7], Mrs.Thamaraiselvi [PW8] and her assistant Mr.Karuppasami. Besides, he also recovered the dress materials [M.Os.11, 12 and 13] of the deceased and forwarded the same to the jurisdictional Magistrate under Form-95. On 28.09.2015, he had recorded the statement of Divya [PW15], who according to the prosecution is the witness to prove motive.



Crl.A.No.587 of 2018

WEB COPY

8. While so, in view of his transfer, he handed over the case file to his successor Mr.Jayaram, who was examined herein as PW18. After that, Mr.Jayaram [PW18] has recorded the statement of the Doctor, who conducted the postmortem, and also of the scientific officer. After completing the investigation, PW18 laid the charge sheet against the accused for the offences under Sections 364 and 302 of IPC.

9. Before the Trial Court, the prosecution had examined as many as 19 witnesses as PW1 to PW19, marked 17 documents and also 13 Material Objects to prove their case.

10. The Trial Court, after having considered the oral and documentary evidence has arrived at a conclusion that the charge under Section 364 of IPC has not been proved, albeit found that the charge under Section 302 IPC was proved by the prosecution beyond reasonable doubts and thereby convicted the accused for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life. The order of conviction is impugned in this Criminal Appeal.



Crl.A.No.587 of 2018

WEB COPY

11. The learned counsel for the appellant would vehemently contend that the prosecution has attempted to prove their case based upon both through ocular and the circumstantial evidence. The prosecution attempted to project PW1 as the occurrence witness. But, the same has become a non-starter as the PW1 gracefully admitted that he did not see the occurrence. Therefore, the entire prosecution case now rest upon the circumstantial evidence, that too primarily on the question of last seen theory.

12. It is also the contention of the learned counsel for the appellant that the prosecution has not at all substantiated the alleged last seen theory, and that the prosecution has also miserably failed to prove the alleged motive and the discovery of fact. It was also the contention of the learned counsel for the appellant that though the Trial Court has rightly disbelieved many witnesses, while appreciating the evidence of PW2 [wife of the deceased] and another witness PW15 [Divya], has erroneously believed their evidence and reached a wrong conclusion that the prosecution has proved motive and last seen theory.

13. It is the further contention of the learned counsel for the appellant that PW2 is wholly unreliable witness, and further more, the alleged recovery



Crl.A.No.587 of 2018

is very much doubtful, which according to the appellant is evident from the inherent contradiction of the recovery witness PW8. Apart from that, it is the case of the learned counsel for the appellant that in the present case, the motive has not at all surfaced, and this by itself is sufficient to snap the chain of circumstances. Therefore, it is the contention of the learned counsel for the appellant that this is a fit case where the judgment of the Trial Court is to be interfered with by setting aside the same. Hence, prayed to allow the appeal.

14. Per contra, the learned Additional Public Prosecutor would vehemently contend that the case of last seen theory has been proved to its hilt, through the evidence of PW2, PW4, PW5, PW6, PW7 and also through PW14. He would further contend that the very evidence of Divya [PW15] has demonstrated the motive. Therefore, when the case of last seen together at the scene of occurrence was proved, it is for the accused to explain as to how he was not involved in the offence. It was also contended by the learned Additional Public Prosecutor that the recovery of voter ID card of the accused at the scene of occurrence is also yet another circumstance in the chain. It was also contended by the learned Additional Public Prosecutor



Crl.A.No.587 of 2018

that PW8 confession witness has categorically stated about the recovery of blood stained shirt from the residence of the accused, and the tallying of the blood stain found in the recovered shirt with the blood group of the deceased is another circumstance against the accused. Hence, the learned Additional Public Prosecutor would vehemently contend that the last seen theory coupled with the recovery of blood stained shirt and proof of motive would unerringly pinpoint the involvement of the accused in the offence, without any other hypothesis. Therefore, prayed to dismiss the appeal.

15. We have given our anxious consideration to either side submissions.

16. Before we get into the facts regarding the circumstantial evidence, it is appropriate to deal with Ex.P1-complaint. While perusing the Ex.P1-complaint, it was given by the deceased's son PW1. During his chief examination, he projected himself as an eye witness to the occurrence. But, during cross examination, he fairly admitted that he had never seen the occurrence and had reached the scene of occurrence only after hearing about the death of his father. More importantly, it was his further admission that



Crl.A.No.587 of 2018

when he reached the scene of occurrence it was 7.00 p.m, and that there were no police. In this back ground, the very registration of FIR at 5.00 p.m also becomes doubtful. The relevant admission of PW1 is as follows:-

“..... அன்றைய தினம் எனது தகப்பனார் அடிபட்டு இறந்துவிட்டார் என்பதை கேள்விப்பட்டு நான் வந்து பார்த்தேனா என்றால் ஆமாம். அவ்வாறு கேள்விப்பட்டது சம்மந்தமாகத்தான் நான் போலீசில் வாக்குமூலம் கொடுத்தேன் என்றால் சரிதான். எனக்கு எழுத படிக்க தெரியாது என்பதால் ராஜேசை வைத்து எழுதி புகார் கொடுத்தேன் என்றால் சரிதான். சம்பவம் கேள்விப்பட்டு வந்தேன் என்றுதான் நான் புகார் கொடுத்தேன் என்றால் சரிதான். புகாரில் சொல்லியபடி சம்பவத்தை நேரில் பார்த்ததாக நான் புகார் எழுத சொன்னேனா என்றால் இல்லை. நான் எனது அப்பா இறந்ததை எங்கு சென்ற பார்த்தேன் என்றால் முன் காட்டிலும் பார்த்தேன். ஆஸ்பத்திரியிலும் பார்த்தேன். முன் காட்டில் சென்று எனது தந்தையின் உடலை பார்க்கும் போது எத்தனை மணி இருக்கும் என்றால் மாலை சுமார் 7 மணியிருக்கும். நான் செல்லும்போது அங்கே போலீசார் இருந்தனரா என்றால் இல்லை.”

17. In this background, the Trial Court had rightly rejected the attempt of the prosecution in proving the case through the alleged ocular evidence.

18. Let us now see whether the prosecution have proved their case through the another mode qua circumstantial evidence. From the submissions of the learned Additional Public Prosecutor, the three



Crl.A.No.587 of 2018

incriminating circumstances which are projected against the accused are as follows:-

- (i) the accused and the deceased were last seen together.
- (ii) The motive for the occurrence is the knowledge of the deceased about the relationship between the accused and PW15 out side of their marriage.
- (iii) The blackmailing act of the deceased against the accused and PW15, and
- (iv) the recovery of blood stained shirt and matching of the blood group found in the recovered shirt with the deceased blood group.

These are the circumstances relied by the prosecution to sustain the conviction.

19. Let us discuss the above circumstances one by one.

20. Now, firstly, let us take the circumstance of last seen theory. The prosecution relied upon the evidence of Mrs.Neelavathi/PW2 [wife of the deceased] and PW4-Mr.Ramesh [co-brother of PW1], PW5, PW6 and PW7, who are all the neighbours of the deceased, to prove that the deceased and the accused were seen together, just prior to the occurrence. Similarly,



Crl.A.No.587 of 2018

PW14, who is the TASMAL Bar attender also speaks in the above line. But, the Trial Court, except the evidence of PW2 [wife of the deceased] has rightly disbelieved the testimonies of all other evidences, as there were inherent improbabilities in their testimonies.

21. Therefore, it becomes necessary to appreciate as to whether the evidence of PW2, who was believed by the Trial Court, is reliable? If we read the evidence of PW2, she states that her husband had informed about the alleged debauchery relationship between PW15 [Divya] and the accused. She [PW2] would further state that on 25.09.2015 between 2.30 p.m to 3.00.p.m, the accused picked up the deceased in his motor cycle, from their residence. It is also her statement that, in spite of her objection, the deceased accompanied the accused. Therefore, the Trial Court appears to have compelled to believe the statement of PW2, only on the ground that, the theory of last seen spoken by PW2 was not challenged by the accused in cross examination. However, this Court is not in a position to agree with reasonings given by the Trial Court, as there are abundant material to discredit her veracity.



Crl.A.No.587 of 2018

WEB COPY

22. It is pertinent to mention here about the inherent inconsistency and improbabilities between the evidence of PW1 and PW2. According to PW1 (son of the deceased), he reached the scene of occurrence at about 7.00 p.m, when there were no police. He further states that after visiting the scene of occurrence at 7.00 p.m, he proceeded to the police station. However, PW2 [wife of the deceased] states incongruously about the presence of police, when she reached the scene of occurrence. If we take this statement, on its face value, she could have reached the scene of occurrence only after 7.00.p.m. Because the death of the deceased came to light only after PW1 reached the scene of occurrence at 7.00.pm.

23. Therefore, if we consider and appreciate her statement in the above backdrop, her statement that she was expecting her husband from 4.00 p.m onwards, and that she came to know about the incident at about 4.00 p.m and that she rushed to the scene of occurrence all would become irrational and palpably plummeting her statement from the standard of wholly reliable. As a resultant, the same ushers to the conclusion that PW2 cannot be construed as a trustworthy witness. Here, admittedly, there are no corroboration to the evidence of PW2, as the other witnesses, who were examined to prove the



Crl.A.No.587 of 2018

last seen theory has been rightly disbelieved by the Trial Court. Hence, the findings rendered by the Trial Court that there was no cross examination against PW2's statement in respect of the last seen theory cannot be a ground to rely her, as there are other wild contradictions which raises serious doubt in her evidence. Therefore, when the accused demonstrated that the PW2 is not wholly reliable, the mere non confrontation of PW2 in respect of last seen theory by itself, will not overshadow the other infirmity touching the core issue.

24. Apart from that, it is well settled principle of law that where a case rest upon the circumstantial evidence, the prosecution has to prove each and every chain of the circumstances beyond reasonable doubts, which should unerringly indicate the only hypothesis that the accused alone is responsible for the death of the deceased. Furthermore, the Hon'ble Supreme Court, in many cases has categorically held that in a case of a circumstantial evidence, the onus is upon the prosecution to prove the complete chain of events, which shall undoubtedly turn towards the guilt of the accused. Further, the Hon'ble Supreme Court has also held that the last seen theory, though has become a definite tool in the hands of the prosecution to establish the guilt of



Crl.A.No.587 of 2018

the accused, the mere circumstances of last seen theory alone cannot be sufficient to complete the entire chain of circumstances, to reach the finding of a guilt.

25. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***Sahadevan and another Vs. State of Tamil Nadu*** reported in **(2012) 6 SCC 403**. For ready reference, this Court deems it appropriate to extract the relevant paragraphs:-

“28. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and the deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt.

29. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court took the view that where the appellant was alleged to have gone to the house of one Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram, the evidence was very shaky and inconclusive. Even if it was accepted that they were there, it would, at best, amount



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to be the evidence of the appellants having been last seen together with the deceased. The Court further observed that: (SCC p. 385, para 31)

“31. ... it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record [a] finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.”

30. *Even in State of Karnataka v. M.V. Mahesh [(2003) 3 SCC 353 : 2003 SCC (Cri) 795] this Court held that: (SCC p. 354, para 3)*

“3. ... Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that [the deceased] had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court.”

31. *In State of U.P. v. Satish [(2005) 3 SCC 114 : 2005 SCC (Cri) 642] this Court had stated that (SCC p. 123, para 22) the principle of last seen comes into play*

“where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than



Crl.A.No.587 of 2018

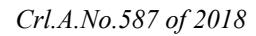
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the accused being the author of the crime becomes impossible.””

Therefore, the last seen theory by itself would not be sufficient to lay conviction. Besides, upon the reason discussed hereinabove, even the case of last seen theory is doubtful.

26. Secondly, now let us proceed to analyse the other circumstance, namely, motive. It is well settled principle of law that when the prosecution proceeds with the case based upon the circumstantial evidence, motive plays vital role in proving the guilt. To support the above view, it is useful to refer the judgment of the Hon'ble Supreme Court in ***Mahamadkhan Nathekhan Vs. State of Gujarat*** reported in **(2014) 14 SCC 589**. The relevant paragraphs in the above judgement is paragraph 16 and the same reads as follows:-

“16. There was no motive for the occurrence. Though large amounts are said to be due from the customers at Savarkundla, there is no evidence on record in the form of books of accounts. Practically, there is no evidence on this aspect. In fact, according to PW 3 Mohammed Usman as per Ext. 19 a sum of Rs 35,640 was due from Accused 3 and a sum of Rs 18,240 was due from Accused 1. In the cross-examination he has stated that the said amount is due from the clients of Savarkundla and not from Accused 3 Ismailbhai and



[Emphasis supplied by this Court]

28. Strangely, the Trial Court derives motive based on the absence of cordial relationship between PW15 and the deceased. Such instances cannot



Crl.A.No.587 of 2018

be projected as motive against the accused, though the same may be a motive for PW15. Therefore, the findings rendered by the Trial Court that the prosecution has proved the motive is perverse and without evidence. Therefore, we are of the firm view that there are no materials to establish motive, and that this is also a point in favour of the accused. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in ***Varun Chaudhary Vs. State of Rajasthan***, reported in ***(2011) 12 SCC 545***.

29. Now, finally and thirdly let us consider the other circumstance relied by the prosecution by way of discovery of fact. Though the learned Additional Public Prosecutor would contend that there was a recovery of voter ID card [M.O.7] of the accused in the scene of occurrence, the Trial Court has rightly disbelieved the evidence of the Mahazar witness [PW9] as his first presence at 5.35. pm was doubted in the light of the evidence of PW1 as the occurrence came to light only at 7.00.p.m. Therefore, as rightly held by the Trial Court, the evidence of PW9 is not wholly reliable and also lacks corroboration.



Crl.A.No.587 of 2018

WEB COPY

30. The last circumstance relied by the learned Additional Public Prosecutor is the recovery of blood stained shirt from the residence of the accused. In this connection, the learned counsel for the appellant would draw attention of this Court in respect of the evidence of PW8, who allegedly witnessed the confession statement given by the accused. It is the case of the prosecution that they have allegedly recovered the blood stained maroon shirt [M.O.3] of the accused from the residence of the accused and that the grouping of the blood stained maroon shirt tallies with the blood grouping of the deceased.

31. It is common principle that contradictions will not be given undue importance, unless such contradiction touches upon the core issue. Here, the contradiction brought out from PW8 [witness to confession] touches upon the core issue namely the veracity of the alleged factum of presence and witnessing of the confession statement. These contradictions assume much significance. If we look at the evidence of PW8, she has stated that she has signed only in the handwritten confession statement. Whereas, the admissible portion of the confession statement which was marked as Ex.P2, is a print out taken from the computer. The Trial Court, though rightly



Crl.A.No.587 of 2018

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recorded about the suppression of first confession statement, erroneously proceeded further and held that M.O.3 contains the trace of blood grouping as that of the blood grouping found in the body of the deceased. But the trial Court failed to take into consideration of the suppression of the initial confession. This suppression affects the purity and reliability of recovery. Therefore, when the purity of recovery of blood stained shirt is compromised, the alleged tallying of blood grouping between the blood stained recovered shirt and the deceased blood, loses its relevance and significance. This Court is of the firm view that even the last circumstance of recovery, is not reliable.

32. For all the foregoing discussions, we are not in a position to sustain the view taken by the Trial Court on the circumstances qua theory of last seen, motive and recovery, as the entire evidence, which relied by the Trial Court are riddled with unexplained contradictions and lacks corroboration. Hence, this Court is of the indubitable view that the prosecution has miserably failed to prove the charges against the accused beyond all reasonable doubts and thus, the judgment of the Trial Court is liable to be set aside.



Crl.A.No.587 of 2018

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33. Accordingly, this Criminal Appeal stands allowed. The judgment of the learned III Additional District and Sessions Judge, Coimbatore made in S.C.No.176 of 2016 dated 27.07.2018 is hereby set aside. As a concomitant, the appellant is acquitted from all the charges and the fine amount, if any paid by him shall be directed to be refunded. The bail bond, if any, executed by the Appellant, shall stand cancelled.

[M.S.R., J.] [C.K., J.]
06.09.2024

Index:Yes

Neutral Citation: Yes

Speaking order: Yes
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To

1. The Inspector of Police,
R.S.Puram Police Station,
Coimbatore.

2.The Public Prosecutor,
High Court of Madras,
Chennai-104.



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Crl.A.No.587 of 2018

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

kmi

Crl.A.No.587 of 2018

06.09.2024