



Crl.A.(MD).No.185 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.06.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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Sathishkumar

.. Appellant/Accused No.1

Vs.

State through
The Inspector of Police,
Aeral Police Station,
Tirunelveli District.
(Crime No.350/2015)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records connected to the judgment in S.C.No.21 of 2017 on the file of the I Additional District Sessions Judge, Thoothukudi dated 26.07.2019 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor



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JUDGMENT

(Judgment of the Court was made by A.D.JAGADISH CHANDIRA,J.)

This Criminal Appeal is filed against the judgment dated 26.07.2019 passed in S.C.No.21 of 2017, by the learned I Additional District Sessions Judge, Thoothukudi.

2. The Trial Court framed the charges against the accused, as detailed below:

Accused	Penal Provision
A1 & A2	302, 120(b), 450 and 380 IPC

3. By judgment dated 26.07.2019, the Trial Court convicted the appellant/A1 and sentenced him, as detailed below:

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	life imprisonment	Rs.1000/- in default to undergo six months rigorous imprisonment



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380 IPC	5 years rigorous imprisonment	Rs.1000/- in default to undergo six months rigorous imprisonment
120(b) IPC	Life imprisonment	Rs.1000/- in default to undergo six months rigorous imprisonment
450 IPC	7 years rigorous imprisonment	Rs.1000/- in default to undergo six months rigorous imprisonment

The sentences imposed on the accused were ordered to run concurrently.

Since A2 and A3 died, the charges framed against them were abated.

4. The case of the prosecution is as under:

4.1. The deceased Thangakani was residing as a tenant in the house of P.W.11. She was a widow and she had no children and her siblings were residing elsewhere. The deceased Thangakani was working as a labourer under P.W.14 and that she used to have financial transactions with her co-workers and she used to wear earrings along with chain. The accused and the deceased are co-workers. The appellant/A1 had received a sum of Rs.10,000/- as loan from the deceased and on 13.12.2015, at about 10.00 AM, the deceased had gone to vegetable shop to purchase vegetables, at that



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time, the deceased had seen the appellant and asked for return of her money or otherwise to give his house document as security. During that time, there was a quarrel between the appellant and the deceased and due to the quarrel, the appellant nurtured enmity against the deceased. On 19.12.2015 at about 22.30 hours, the appellant/A1 along with two other accused persons, who are his friends, went to the house of the deceased in the Bajaj Discover motorcycle belonging to A3 and they trespassed into the house and murdered the deceased by forcibly suffocating her with a pillow and had stolen the gold studs and mobile phone belonging to the deceased.

4.2. Based on the complaint given by P.W.1, sister of the deceased, that her sister was found dead, the Special S.I. Boomiraj registered a case in Crime No.350 of 2015 for the offences under Sections 450, 302 and 380 IPC on 20.12.2015 and he handed over the FIR and other connected records to P.W.27, Inspector of Police at 10.45 AM.

4.3. P.W.27, on receipt of the FIR, took up the investigation and had visited the place of occurrence and examined Kanagaraj (P.W.8) and one Natarajan and in their presence, prepared observation mahazar Ex.P2 and



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rough sketch Ex.P19. Thereafter, he had summoned the fingerprint expert, sniffer dog squad and the mobile forensic officer and in their presence, he examined the place of occurrence. At 12.00 noon, he conducted inquest in the presence of the witnesses, house owner, Pushpalatha (P.W.7), Murugan (not examined), Petchiyammal (not examined), Leelavathi (P.W.1), Bakkiyaraj (P.W.2), Amutha (P.W.3) and prepared the inquest report Ex.P20 and thereafter, had sent the body of the deceased for postmortem through Rameswari, Woman Constable and the Special S.I., Navaneethakrishnan was sent to assist her. Between 2.00 and 2.30 PM, P.W.27 had recovered the blood stained and ordinary portion of cement floor (M.O.1 and M.O.2) and blood stained pillow (M.O.3) in the presence of the witnesses under Ex.P3 mahazar and obtained their signatures. Thereafter, he examined the witnesses, Leelavathi (P.W.1), Backkiyaraj (P.W.2), Amutha (P.W.3), Muthu Eswari (P.W.4), Vaitheeswari, Latha (P.W.5), Lakshmi (P.W.6), Pushpalatha (P.W.7), Velnadar, Petchiyammal (P.W.20), Kanagaraj (P.W.8), Natarajan, Head Constable Muthu (P.W.22), Woman Constable Rameswari, Head Constable Kandhan and Special S.I. Boominathan and recorded their individual statements.



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4.4. On 21.12.2015, P.W.27 examined Lakshminarayanan, Vijayalalitha, Wireman Paramasivan (P.W.9), Grade I Police Marimuthu and recorded their statements. Later, on 23.12.2015, he examined the witnesses, Thanigaivel (P.W.10), Selvam (P.W.11), Mariappan (P.W.12), Muthuraj, Karuvelamuthu (P.W.13) and recorded their statements.

4.5. On 27.12.2015, at 12.00 noon, on suspicion, P.W.27 arrested the second accused Esakkidurai, while he was coming in his Bajaj Discover motorcycle bearing Registration No.TN 69 S 8726 in the presence of the witnesses, Karnamaharaja (P.W.25), Village Assistant of Vaazhavallaan and Muruganantham (P.W.26), Village Assistant of Siruthondanallur. During enquiry, Esakkidurai/A2 gave a voluntary confession admitting the crime. His confession was recorded in the presence of the witnesses and based on his confession, the vehicle was seized under mahazar Ex.P18. Thereafter, A2 was brought to the Police Station along with the motorcycle and was remanded to judicial custody. He recorded the statements of Karnamaharaja, (P.W.25) and Muruganantham (P.W.26) and Dawood Sheriff.



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4.6. Based on the confession of A2, on 29.12.2015 at 11.00 AM, he arrested the first accused Sathishkumar near the cattle market near Kamatchiamman Temple at Siruthondanallur Sayarapuram Road and during enquiry, in the presence of the witnesses, Gopal, Village Administrative Officer of Siruthondanallur (P.W.15) and Muruganantham, Village Assistant (P.W.26), Sathishkumar/A1 had given a voluntary confession and in his confession, he admitted the crime and admitted to have stolen the jewels from the deceased. Based on his confession, a pair of gold ear studs weighing about 5.250 grams and a pair of gold ear chain weighing about 3.20 grams (தங்க காது மாட்டி) were recovered near a bush in Chinnanataathi Village under Ex.P5 Mahazar and they were marked as M.O.4 and M.O.5.

4.7. While P.W.27 was in search of the other accused Rajaselvan, he received an information that the said Rajaselvan had committed suicide, based on which, FIR was registered in Crime No.355/2015 by Aeral Police Station on 24.12.2015. In the meanwhile, Women Constable Rameswari had recovered the blood stained clothes M.O.6 to M.O.9 and the same was produced before the Court under Form 95 - Ex.P21.



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4.8. P.W.27 had altered the offences to Sections 120(b), 450, 302 and 380 IPC and forwarded the alteration report - Ex.P22 to the jurisdictional Court. Thereafter, he examined Head Clerk Vairamani (P.W.21) on 22.01.2016 and had sent the request for chemical examination. Thereafter, on 25.02.2016, he examined Dr.Ganapathi (P.W.24), who conducted the postmortem and obtained Ex.P15 postmortem certificate. After collecting the medical and forensic reports, P.W.27 completed the investigation and filed the final report on 25.02.2016 under Sections 120(b), 450, 302 and 380 IPC before the Judicial Magistrate, Srivaikundam.

4.9. The case was taken up in PRC.No.24/2016. After compliance of the mandate under Section 207 Cr.P.C., finding that it is a case triable by the Court of Sessions, the case was committed to the file of the I Additional District Sessions Judge, Thoothukudi. After framing of the charges, the second accused Esakkidurai committed suicide and the appellant/A1 was tried alone.

5. On the side of the prosecution, P.W.1 to P.W.27 were examined and Ex.P1 to Ex.P24 and M.O.1 to M.O.9 were marked. When the appellant



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was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. However, no witnesses were examined on the side of the accused nor any documents marked. The Trial Court, after hearing the arguments, had convicted the appellant as stated above. Against the judgment of conviction and sentence, the present Criminal Appeal is filed.

6. The learned counsel for the appellant would submit that there are material contradictions, improbabilities and inconsistencies in the evidence of the witnesses and the Trial Court had convicted the appellant/accused based on the last seen theory evidence of P.W.16 Ramar and the extra-judicial confession statement of the Accused No.2 implicating the appellant/A1 and the alleged recovery of M.O.4 and M.O.5 based on the confession of the appellant. The Trial Court failed to take into consideration, the material contradictions in the evidence of the crucial witnesses, more particularly, P.W.16, who is alleged to have seen the accused lastly on 19.12.2015 at about 10.30 PM and his evidence cannot be believed, since he had admitted to have not informed the Police on the very



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next day during enquiry. The learned counsel would further submit that conviction on the basis of extra-judicial confession of the co-accused, which is a weak piece of evidence, is not sustainable and the evidence relating to the arrest and recovery of M.O.4 and M.O.5 is also highly doubtful. The accused are said to have gone to the place of occurrence in a motorcycle and the non-marking of the motorcycle as a material object before the Trial Court creates a doubt in the case of the prosecution. The learned counsel for the appellant further submitted that the statements recorded from the witnesses have been sent to the jurisdictional Court belatedly, thereby, creating a doubt with regard to the evidences as projected by the prosecution. Though the prosecution has suggested the previous enmity and subsequent conspiracy to do away with the deceased, the prosecution witnesses relating to conspiracy have not supported the case of the prosecution and the aspect of motive behind the occurrence has also not been established by the prosecution. In a case of circumstantial evidence, the prosecution is bound to prove the chain of circumstances and in this case, there are several loopholes and missing links in the prosecution case, thereby, the prosecution has failed to prove its case beyond all reasonable doubts. The appellant cannot be convicted on the basis of suspicion.



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Suspicion however grave cannot take the place of proof. In such circumstances, the conviction rendered by the Trial Court without proper appreciation of evidence has to be set aside.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that it is a case of murder for gain. The appellant along with two other accused had trespassed into the house of the deceased in the night hours and committed the murder of the deceased by assaulting her on the head and by smothering her with a pillow, due to which, she died of suffocation and head injury. P.W.16, resident of the Village and the neighbour of the deceased had seen all the accused entering the house of the deceased prior to the occurrence. P.W.9, the staff of the Electricity Board has spoken about the availability of electricity at the night hours on the date of occurrence. Later, A3 committed suicide on 24.12.2015. Subsequently, on suspicion, A2 was intercepted on 27.12.2015 and during enquiry, he had confessed to have committed the crime along with A3 and the appellant herein and based on his confession, the two wheeler used by the accused to go to the house of the deceased was recovered. The appellant was arrested based on the confession of A2, from



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whom, pair of ear studs (M.O.4) and ear chain (M.O.5) were recovered.

Further, the evidence of the postmortem Doctor P.W.15 is cogent relating to the manner in which the death occurred and the crime had been committed. Hence, the learned Additional Public Prosecutor submitted that the Trial Court had rightly convicted the accused and thereby, he would seek for dismissal of the appeal.

8. Heard the learned counsels on both sides and also perused the materials available on record.

9. It is a case of circumstantial evidence based on the last seen theory. P.W.16 is the person, who is said to have seen the accused entering the house of the deceased prior to the occurrence. P.W.12 and P.W.13 are the persons, who are said to have deposed about the money transaction between the deceased and the accused. P.W.17 to P.W.20 are the witnesses, who are said to have spoken about the conspiracy and motive. Now what is to be seen is that whether the prosecution has proved its case beyond all reasonable doubts and whether the Trial Court has properly appreciated the evidence on record to hold the appellant guilty and convict him.



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10. As seen from the evidences, P.W.1 is the younger sister of the deceased and she had deposed that on 20.12.2015 at 9.00 AM, the house owner of his sister has called her and informed that her sister Thangakani was lying dead and that she along with her son P.W.2 and daughter P.W.3 rushed to her sister's house and she had found her sister dead with bleeding injuries. P.W.1 has also deposed that her sister's ear studs weighing 1¼ sovereigns of gold were missing and that she gave a complaint Ex.P1. P.W.2 and P.W.3, children of P.W.1, have corroborated the statement of their mother P.W.1 and deposed about having attested the complaint. P.W.4 is a person known to the deceased and she had deposed that her mother was working under the deceased as a coolie and that on her mother's instructions, when she had gone to receive the coolie, she had seen the deceased with bleeding injuries. P.W.5 is a co-worker of the deceased. She has corroborated the evidence of P.W.4, having seen the deceased lying dead and having informed the house owner P.W.7. P.W.6 is a co-worker and she had corroborated the evidence of P.W.5. P.W.7 is the house owner of the deceased and she had deposed about having informed about the death to P.W.1 and having last seen the deceased alive on 19.12.2015 at about 8.00 PM. P.W.8 is the person in the locality and he had deposed about having



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been present at the time of preparation of observation mahazar, Ex.P2, recovery of M.O.1, blood stained cement floor, M.O.2, ordinary floor and M.O.3, blood stained pillow under Ex.P3 Mahazar and having attested the same. P.W.9 is the staff of the Electricity Board and he had deposed about the availability of the electricity in the locality on the night of the occurrence. P.W.10 is a construction worker/Supervisor, who used to employ the deceased for construction work. He had deposed about the deceased having worked under him and that he had given the salary to Esakkidurai/A2 to hand it over to the deceased on 19.12.2015 and that on 20.12.2015, he came to know that the deceased was found dead in suspicious circumstances. P.W.11 is a labourer working under P.W.10. He had deposed that the second accused Esakkidurai worked with him and that the deceased was also a co-worker and that whenever they need any money, the deceased used to lend money to them and some persons have not returned money and that on 20.12.2015, he heard about the death of the deceased. P.W.12 had deposed that he knows the deceased and the appellant and that the deceased had told him that the appellant having borrowed money from her. He also deposed that he came to know that on 20.12.2015, the said Thangakani was dead. However, in his cross-examination, P.W.12



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admitted that he does not directly know about any financial transactions between the deceased and the appellant. P.W.13 is also a co-worker and he had deposed that the deceased had told him that the appellant and the other accused Esakkidurai had borrowed money from her and that they have not returned the same. While so, in his cross-examination, he had deposed that he does not directly know about the money transaction. P.W.14 is a mobile shop owner. He had deposed that on 21.12.2015, one Esakkidurai and Rajaselvan had come to him and sold a Samsung button Cell and that he had paid Rs.150/- for the same and that his Assistant had sold the same to some other unknown person. P.W.15 is the Village Administrative Officer of Nattathi Village. He had deposed that on 29.12.2015, the Police had arrested the appellant near Siruthandanalloor cattle market in Crime No. 350/2015 and were examining him and during that time, the appellant had voluntarily given a confession and that the confession was recorded by the Inspector and that he and his Assistant have attested the confession. The admitted portion of the confession is Ex.P4 and based on his confession, the Police recovered M.O.4 and M.O5 under a bush in the backside of his house. P.W.16 is the star witness in this case, who is said to have seen the accused entering the house of the deceased. He had deposed that on



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19.12.2015 at 10.30 hours, while he was returning home after closing the shop, he had seen three persons standing along with a bike near the house of the deceased and had seen them entering into the compound of the deceased. In his cross-examination, he had admitted that he was examined by the Police on the very next day of the offence and that he had not informed the Police about having seen all the accused on the previous day. P.W.17 to P.W.20, who have been examined to speak about the conspiracy and motive have not supported the case of the prosecution and they have been treated hostile.

11. While analyzing the evidence, it is the specific case of the prosecution that on 19.12.2015, at about 10.30 PM, P.W.16, who is a resident of the Village and the neighbour of the deceased, had seen the accused entering the house of the deceased. The body of the deceased was first seen by P.W.4 on 20.12.2015 at about 9.00 AM at the house of the deceased. P.W.1 had preferred the complaint at about 10.00 AM. The names of the accused were not mentioned in her complaint. It is the case of the prosecution that the FIR in Crime No.350/2015 had reached the jurisdictional Magistrate on 20.12.2015 at 1.00 PM and the inquest was



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conducted on 20.12.2015 from 12.00 PM to 2.00 PM. P.W.16 has admitted that he was enquired by the Police on 20.12.2015. It is really strange that during such time, P.W.16, being a resident of the same Village and neighbour of the deceased, who is said to have seen the accused, had not mentioned about having seen the accused on the previous day either to the relatives or to the Police officials. It is strange that only after the arrest of A2, the statement of P.W.16 has been recorded by P.W.27 on 29.12.2015. However, that statement has also been sent to the Court only on 05.04.2016 after a delay of four months. P.W.16 has also admitted that despite his knowledge, he had not informed it to the Police on the next day. P.W.16 had also deposed that the Police have examined him on the next day of occurrence and that he was not examined thereafter. This aspect and the conduct of P.W.16 creates a doubt with regard to the evidence of P.W.16 and thereby, the evidence of him having last seen the accused entering the house of the deceased is highly suspicious and doubtful and thereby, cannot be believed.

12. Now coming to the evidence of arrest, confession and recovery, it is the case of the prosecution that the appellant was arrested on 29.12.2015



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at about 11.00 AM in the presence of P.W.15 and P.W.26 and the same was also confirmed by P.W.27, Investigating Officer. P.W.15 had deposed in his evidence that at the time of arrest of the appellant/A1, M.O.4 and M.O.5 were recovered. However, P.W.26 had deposed that the Accused No.2 was arrested on 27.12.2015 at about 12.00 PM and based on his confession, the ear studs and ear chain (M.O.4 and M.O.5) were recovered. There is a material contradiction between the evidence of P.W.15 and P.W.26 with regard to the recovery of M.O.4 and M.O.5. Further, P.W.27, Investigating Officer has stated that the place of recovery of M.O.4 and M.O.5 was a open place. In view of the above, the recovery of M.O.4 and M.O.5 is suspicious and doubtful.

13. Further, in this case, the Bajaj Discover motorcycle, which was said to be recovered from Esakkidurai/A2 was not produced before the Court and marked by the prosecution as a material object and this aspect also creates a doubt in the prosecution case. P.W.17 and P.W.18, who have been examined to speak about the conspiracy and motive have also not supported the case of the prosecution and they have been treated hostile.



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14. Coming to forensic evidence, P.W.2 and P.W.3 have deposed in their evidence that they found the teeth of the deceased near the dead body. But the Investigating Officer has not recovered the teeth, which also creates a doubt about the manner in which the occurrence had taken place.

15. Apart from the evidence of P.W.16, the Trial Court had also relied on the extra-judicial confession of A2 said to have been given to P.W.27 before P.W.25 and P.W.26 to convict the appellant. As regards the credibility of confession, the Hon'ble Supreme Court in ***Kalinga alias Kushal Vs. State of Karnataka reported in (2024) 4 SCC 735***, has held as follows:

"15.The conviction of the appellant is largely based on the extra-judicial confession allegedly made by him before PW 1. So far as an extra-judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record. In Chandrapal v. State of Chhattisgarh [Chandrapal v. State of Chhattisgarh, (2023) 16 SCC 655 : 2022 SCC OnLine SC 705], this Court reiterated the evidentiary value of an extra-judicial confession in the following words : (SCC OnLine SC para 11)

"11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such



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confession. However, this court has consistently held that an extra-judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra-judicial confession. As held in State of M.P.v.Paltan Mallah [State of M.P.v.Paltan Mallah, (2005) 3 SCC 169 : 2005 SCC (Cri) 674], the extra-judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra-judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra-judicial confession of the co-accused.” "

16. It is no more res integra that an extra-judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra-judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra-judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra-judicial confession.



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16. In this case, excepting the extra-judicial confession recorded from A2, the co-accused, there is no other material to link the appellant to the crime. In this regard, the recovery of M.O.4 and M.O.5 is also doubtful. Further, the judicial confession also loses its significance and apart from the same, there is no substantive evidence linking the appellant.

17. Further, in ***Pardeep Kumar Vs. State of Haryana*** reported in **(2024) 3 SCC 324**, the Hon'ble Supreme Court has held as follows:

“30. There is a yawning gap between the charge against the appellant and the evidence that the prosecution has adduced. The circumstances do not establish the guilt of the appellant at all. While the principle applicable to circumstantial evidence requires that the facts must be consistent with the hypothesis of the guilt of the accused, in the present case the evidence adduced gives rise to doubts, improbabilities and inconsistencies.”

18. From the above analysis, this Court could see that there is a wide gap between the charges framed against the appellant and the evidence of the prosecution as adduced by them to prove the guilt of the accused. The circumstances as projected by the prosecution do not establish the guilt of the appellant beyond all reasonable doubts.



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19. Having considered the matter in detail and having noted various material discrepancies and improbabilities, we are of the firm view that the prosecution has not established its case beyond reasonable doubt and thereby, the appellant is entitled to be acquitted and the judgment of conviction and sentence is liable to be set aside.

20. In view of the above, the Criminal Appeal stands allowed and the judgment of conviction and sentence passed by the I Additional District Sessions Judge, Thoothukudi in S.C.No.21 of 2017 dated 26.07.2019 is set aside and the appellant/A1 is set at liberty. Bail bonds, if any executed by the appellant, shall stand cancelled. Fine, if any paid by the appellant, shall be refunded.

(A.D.J.C.,J.) (K.R.S.,J.)
13.06.2024

NCC : Yes / No
Index : Yes / No
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To

1.The I Additional District Sessions Judge,
Thoothukudi.

2.The Inspector of Police,
Aeral Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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