



CrI.A.(MD)No.381 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.10.2024

PRONOUNCED ON : 25.10.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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and

CrI. MP(MD)No.9174/2024

Selvi

... Appellant/A1

Vs.

The Inspector of Police,
Usilampatti Nagar Police Station,
Madurai District.

(in Cr.No.440 of 2011)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the entire records connected to the judgment in S.C.No.131 of 2012 on the file of the VI Additional District and Sessions Court, Madurai, dated 09.10.2013 and set aside the conviction and sentence imposed against the appellant.

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For Appellant : Dr.R.Alagumani

For Respondent : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The first accused Selvi in S.C.No.131 of 2012 who had been convicted for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.1,000/-, in default, to undergo 6 months rigorous imprisonment by judgment, dated 09.10.2013, by the VI Additional District and Sessions Court, Madurai, has filed the present Criminal Appeal.

2. It must be stated that totally eight (8) accused faced trial before the trial Court and apart from this appellant /A1, A2, A3, A4, A5, A6 and A7 were also convicted for the substantial offence punishable under Section 302 IPC and sentenced to life imprisonment. The 8th accused was a juvenile offender.



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3. Questioning that conviction and sentence, A4, A5 and A7 had filed Crl.A.(MD)No.332 of 2013 and A6 had filed Crl.A.(MD)No.61 of 2014. By a common judgment dated 25.05.2015, the conviction and sentence had been confirmed by a Co-ordinate Bench of this Court. Thereafter, A3, A4 and A5 had independently filed Criminal Appeals before the Hon'ble Supreme Court. They had been acquitted of all the charges. A6 had also filed Criminal Appeal before the Hon'ble Supreme Court and though it is pending, A6 had been granted bail. A2 had died and therefore, the charges had abated. There is no information about A7.

4. It is the case of the prosecution that the present appellant /A1 was the wife of the deceased. It is contended that she had developed an intimate relationship with A2. It is further contended that in furtherance of the said relationship the accused had conspired to commit the murder of the deceased and accordingly, on 27.07.2011 in the early morning at 2.00 a.m., it is stated that all the eight accused had entered into the house of A1 and the deceased and had committed the murder of the deceased.



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5. In this connection, P.W.1 Lakshmi, the mother of the deceased had given a complaint which was marked as Ex.P.1. On the basis of the said complaint, P.W.17 Sub Inspector of Police at Usilampatti Town Police Station had registered FIR in Crime No.440 of 2011 for the offences punishable under Sections 120(B) and 302 IPC. In the said FIR, the appellant-Selvi and A2-Karikalan were named. The FIR was registered at 03.30 a.m., on 27.07.2011 and had been received by the Judicial Magistrate at 05.20 a.m., on the same day/ 27.07.2011. On conclusion of investigation by P.W.18 Aundiappan, Inspector of Police, final report was filed before the District Munsif – cum – Judicial Magistrate No.I, Usilampatty and taken cognizance as PRC.No.21 of 2011. Since the offence under Section 302 IPC was triable exclusively by the Court of Sessions, the case was committed to the Principal District and Sessions Court at Madurai. It was taken on file as S.C.No.131 of 2012 and made over to the VI Additional District and Sessions Court, Madurai for trial.

6. The following charges were framed against the accused:

(i) against A1 & A2 for the offence
punishable under Section 120(B) IPC;



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(ii) against A2, A3, A5, A6 & A7 for the offence punishable under Section 449 IPC;

(iii) against A1, A2, A3, A4, A5, A6 & A7 for the offence punishable under Section 302 IPC;

(iv) against A4 for the offence punishable under Section 449 r/w.120(B) IPC.

7. The accused denied the charges and claimed to be tried. Accordingly, the prosecution was called upon to prove the charges. The prosecution examined P.W.1 to P.W.18 witnesses and marked Ex.P1 to Ex.P37 documents. The prosecution also produced M.O.1 to M.O.52 material objects.

8. On conclusion of evidence on the side of the prosecution, the incriminating portions were put to the accused. Their statements were recorded. The accused did not examine any witnesses not marked any documents.



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9. As stated above, on conclusion of trial by judgment, dated 09.10.2013, the accused were convicted for the substantial offences charged. This Criminal Appeal had been filed by A1 questioning that conviction and consequent sentence. A2 had died and therefore, the charges against him had abated. A3, A4 and A5 had been acquitted by the Hon'ble Supreme Court. The Criminal Appeal filed by A6 is pending before the Hon'ble Supreme Court, but A6 had been released on bail. There are no particulars available relating to A7. A8, the juvenile offender had been tried separately.

10. P.W.1-Lakshmi was the mother of the deceased Velu. He was residing in Nethaji Nagar at Usilampatti. He was doing centering work. A1-Selvi was his wife. She had begun a relationship with A2-Karikalan. This was objected to by the deceased. A1 threatened the deceased that she, along with A2 would murder him. P.W.1 stated that the deceased informed her that A1 and A2 had tried to run him over by a car. P.W.1 further stated that she came to the house of her son and when she came there she found the dead body of her son with injuries all over the body. She had been informed by P.W.8-Rajangam. She stated that A1, however, was standing



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very calmly with flowers in her head and kumkum in her forehead. P.W.1, accused her of murdering the deceased. She had given the complaint Ex.P.1.

11. P.W.8 Rajangam in his evidence stated that around 02.00 to 02.15 a.m., on 27.07.2011, P.W.5 Divya, the elder daughter of the deceased and A1 called him over phone and stated that her father had been murdered. He then informed this to the parents of the deceased and they all reached the house of the deceased. He stated that A1 was standing without showing any emotion.

12. P.W.5 Divya, the elder daughter of the deceased and A1 who was studying 9th standard stated that on 27.07.2011 in the early morning at 02.00 a.m., on hearing some noise, she knocked at the door of her room. After some time, her mother /A1 opened the door. When she went to the other room she saw her father lying dead. She stated that A1 was standing without showing any emotion. She then informed P.W.7 Rajangam. She further stated that about 20 days prior to the incident, the deceased/father informed her that A1 and A2 had tried to run him over by a



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car. She further stated that her mother had an illegal relationship with A2, which was objected to by her father. She further stated that her father informed to her that her mother/A1 and A2 had threatened that they would kill him.

13. Prosecution also examined P.W.7 Monisha, the other daughter of the deceased and A1. In her evidence, she stated that she and her sister and brother were sleeping in the inside room and that her parents were sleeping in the front room of the house. In the early morning at 02.00 a.m., she heard a noise and she and her brother knocked at the door. After sometime, her mother /A1 opened the door. She noticed her father lying dead. She further stated that A1 was standing there without any emotion. She stated that A2 used to come home often and her mother used to cook food for him. She also stated that A3, A4 and A5 had also come home with A2.

14. Prosecution examined P.W.2-Prem Rose Selvi and P.W.3-Chinnan who are neighbours to speak about the fact that A1 and A2 had been in relationship. Prosecution also examined P.W.4-Sekar brother of the



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deceased who also spoke about the same fact. Prosecution further examined P.W.9 who spoke about the presence of A2, A3, A4, A5, A6 and A7 outside the house late at night on 26.07.2011. Prosecution also examined P.W.10-Perumal who spoke about the alleged conspiracy among the accused.

15. Consequent to the registration of the complaint Ex.P.1, P.W.17-Chellapandi, the Sub Inspector of Police had registered FIR-Ex.P. 24 at 03.30 a.m., on 27.07.2011 in Crime No.440 of 2011 for the offences punishable under Sections 120(B), 302 IPC. A1 and A2 were named in the FIR. In his evidence P.W.17 stated that he informed this fact to the Inspector of Police through phone and went to the scene of crime and handed over the copy of the FIR to the Inspector of Police at 04.00 a.m. He also made arrangements for the original FIR and complaint to be handed over to the concerned Judicial Magistrate through Police Constable, Mayakannan, who was examined as P.W.13 and stated that the FIR and complaint were handed over to the Judicial Magistrate No.I, Usilampatti at 05.20 a.m.



16. The investigation was then taken over by P.W.18 Aayudaiappan, the Inspector of Police. In his evidence, he stated that he went to the scene of crime at 04.00 a.m., and in the presence of witnesses Andi, Village Administrative Officer and Anbuchezhian (not examined), he prepared observation mahazar Ex.P.2 and rough sketch Ex.P.25. He then seized the green, blue and sandalwood coloured mats – M.O.1 (two numbers), one pillow with bloodstain-M.O.2, another bloodstained pillow-M.O.3, another bloodstained pillow with pillow cover-M.O.4, blue and orange colour bedsheets-M.O.5, cement piece with bloodstain-M.O.6, cement piece without bloodstain-M.O.7 and two cell phones – M.O.8 and M.O.9 under Seizure Mahazar Ex.P.3. He then conducted inquest over the dead body in the presence of witnesses and panchayathars. The inquest report was marked as Ex.P.26.

17. He then also collected bloodstained sand and sand without bloodstain in the pathway near the house which were produced as – M.O.10 and M.O.11. He then recorded the statements of Lakshmi – P.W.1, Prem Rose Selvi-P.W.2, Karuppaiah Thevar (not examined), Rajangam – P.W.8, Chinnan – P.W.3, Andi – P.W.11. He also recorded the statements of Sekar



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– P.W.4, Veeramani (not examined), Arivu – P.W.9, Divya – P.W.5, Monisha – P.W.7, Mayakannan – P.W.13, Chellapandi, Sub Inspector of Police – P.W.17.

18. He then took into custody of the accused and recorded their confession and statements. The admissible portion of the confession of A2 was marked as Ex.P.5 and the admissible portion of the confession of A3 was marked as Ex.P.6 and that of A4 was marked as Ex.P.7. The admissible portion of the confession of A1 was marked as Ex.P.11. The admissible portion of the confession of A6 was marked as Ex.P.13 and that of A5 was marked as Ex.P.14 and that of A7 was marked as Ex.P.19. On the basis of said confession statements, he also recovered a knife - M.O.12, bloodstained lungi and shirt – M.O.13 and M.O.14, cash of Rs.16,000/- – M.O.15, a dhoti and shirt – M.O.16 and M.O.17, cash of Rs.2,500/- – M.O.18, another lungi and shirt and cash of Rs.200/- – M.O.19, M.O.20 and M.O.21, Ambassador car and auto – M.O.22 and M.O.23, the clothes of A1 which were bloodstained – M.O.24, M.O.25 and M.O.26, another cell phone – M.O.27, cash of Rs.1,04,000/- – M.O.28, silver and gold jewellery – M.O.29 to M.O.33, another knife – M.O.34, cash of Rs.30,500/- – M.O.35,



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bloodstained clothes – M.O.36 and M.O.37, tata Ace vehicle – M.O.38, bloodstained knife – M.O.39, cash of Rs.17,000/- M.O.40, another knife – M.O.41, 4 cell phones – M.O.42 to M.O.45, cash of Rs.17,500/- – M.O.46, lungi of the deceased – M.O.47 and further jewellery M.O.48 to M.O.52. He forwarded the material objects under Form-95 to the Court. He then recorded the statements of Dr.Parimala Selvi – P.W.12 who conducted post mortem and had issued postmortem certificate Ex.P.20.

19. The following injuries were found on the body of the deceased :

- i) cut injury over the neck
- ii) cut injury over the thumb
- iii) cut injury over the left index finger
- iv) cut injury on the right middle finger
- v) cut injury on the right littler finger
- vi) cut injury on the left palm
- vii) cut injury on the left middle finger
- viii) cut injury on the left little finger
- ix) simple wound on right wrist



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- x) cut injury on the right cheek
- xi) stab injury on the right side of the chest
- xii) stab injury around the abdomen
- xiii) cut injury on the back of the right ear.

20. The bloodstained material objects were also forwarded for chemical examination and the reports were marked as Ex.P.21 to Ex.P.23. Human blood with 'o' group was found on the pillow, blanket and the lungi worn by the deceased.

21. P.W.18 then recorded the statement of P.W.16 Vijayendran, the Junior Scientific Officer, who conducted the chemical examination test. He then filed final report before the Court charging the accused A1 to A7 with commission of offences punishable under Sections 120(B), 449 and 302 IPC.

22. As stated above, this final report was taken cognizance as P.R.C.No.21 of 2011 by the Judicial Magistrate No.I, Usilampatti who after completing formalities, had committed the case to the Court of Sessions. It



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was taken on file as S.C.No.131 of 2012 and made over to the VI Additional District and Sessions Court, Madurai for trial.

23. The following charges were framed against the accused:

- (i) against A1 & A2 for the offence punishable under Section 120(B) IPC;
- (ii) against A2, A3, A5, A6 & A7 for the offence punishable under Section 449 IPC;
- (iii) against A1, A2, A3, A4, A5, A6 & A7 for the offence punishable under Section 302 IPC;
- (iv) against A4 for the offence punishable under Section 449 r/w.120(B) IPC.

24. On conclusion of trial, the accused were convicted by judgment dated 09.10.2013 and for the substantial offence under Section 302 IPC, sentenced to undergo life imprisonment.



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25. Questioning such conviction and sentence A1 has filed the present Criminal Appeal. As stated above, A2 had died and the Hon'ble Supreme Court had acquitted A3, A4, A5 of all charges. The Criminal Appeal filed by A6 is pending before the Hon'ble Supreme Court, but bail had been granted to A6. There is no information about A7. A8 was a juvenile offender.

26. Heard arguments advanced by Dr.R.Alagaumani, learned counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent.

27. Dr.R.Alagumani, learned counsel for the appellant has pointed out that there were no eyewitnesses for the offence of murder charged against the appellant/A1 herein. The only evidence produced by the prosecution is that when P.W.5 and P.W.7, on hearing some noise, knocked at the door at 02.30 a.m., on 27.07.2011, this appellant/A1 opened the door and they found their father lying dead with cut injuries.



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28. The learned counsel stated that the case of the prosecution is not that this appellant/A1 had caused the fatal injuries to the deceased. It is the case of the prosecution that A2 to A7 and also A8 the juvenile had entered into the house and had caused the injuries. No weapons were recovered from this appellant/A1. The learned counsel pointed out that the Hon'ble Supreme Court had disbelieved the evidence of conspiracy and had therefore, acquitted A3, A4, A5 and bail had also been granted to A6. A2 had died and therefore, the charges had abated.

29. It was thus pointed out that there is no surviving evidence about conspiracy. The first charge against this appellant/A1 was that she had been in conspiracy with A2 but owing to the death of A2 and no evidence produced independently, that though this appellant /A1 and A2 could have been in relationship, they had taken a decision to murder the husband of this appellant/A1, the charge under Section 120(B) IPC naturally fails.

30. The learned counsel further pointed out that the 2nd charge against this appellant/A1 was an independent charge under Section 302 IPC.



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Again, there being no overt act alleged against this appellant/A1, the learned counsel stated that the appellant could not be convicted for the offence under Section 302 IPC, particularly, when the prosecution had specifically arrayed A2 to A7 and A8 the juvenile accused for having caused the injuries which led to the death of the husband of A1.

31. The learned counsel further pointed out that in the absence of credible evidence relating to the actual commission of offence by this appellant, the judgment of conviction will have to be necessarily set aside.

32. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, however, contested these statements made by the learned counsel for the appellant. According to the learned Additional Public Prosecutor, when A1 opened the door, and P.W.5 and P.W.7 entered into the room where the dead body of their father was lying with cut injuries, the only person who was present, was this appellant/A1. It was, therefore, stated that this appellant/A1 should explain the circumstances under which her husband had suffered the cut injuries. It was knowledge known only to her and therefore, she had a duty to explain under Section 106 of the Indian



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Evidence Act, how the injuries were caused.

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33. The learned Additional Public Prosecutor further pointed out that the prosecution had proved motive by examining direct witnesses who had witnessed the relationship between A1 and A2. It was also on record that about 20 days prior to the incident, A1 and A2 had tried to run over the deceased in a car.

34. The learned Additional Public Prosecutor stated that the fact that A3, A4 and A5 have been acquitted by the Hon'ble Supreme Court would not affect the evidence produced by the prosecution that this appellant/A1 had motive to commit the murder. The learned Additional Public Prosecutor also pointed out that the prosecution had proved arrest and recovery. He also argued that P.W.5 and P.W.7, who spoke about the relationship between A1 and A2, were natural witnesses, since they were daughters of this appellant /A1. He, therefore, urged that this Court should uphold the conviction against the appellant herein /A1.



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35. We have carefully considered the arguments advanced and perused the material records.

36. The appellant herein/A1 was the wife of the deceased and mother of P.W.5 and P.W.7. They were living together. Unfortunately, it is alleged that A2 entered into the privacy of the family and shattered their peace. It is alleged that A1 and A2 developed an intimate relationship. This fact had been spoken to by not only P.W.1, P.W.2, P.W.3 and P.W.4, but, more importantly, also by P.W.5 and P.W.7, the daughters of the deceased and this appellant/A1.

37. The case of the prosecution rested on the presumption that the deceased had died, since the appellant/A1 was of the opinion that he was obstructing her relationship with A2. It is the further case of the prosecution that in furtherance of that intention and with common object, A1 and A2 had entered into a conspiracy to kill the deceased/husband of this appellant/A1. It is the further case of the prosecution that therefore, they had engaged A3 to A7 and A8 the juvenile, to commit the murder. Unfortunately, the evidence adduced by P.W.9 and P.W.10 relating to the



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presence of A3 to A7 and A8, the juvenile accused on the night of the incident had been disbelieved by the Hon'ble Supreme Court. Similarly, the evidence of P.W.10 who spoke about conspiracy among the accused persons had also been disbelieved by the Hon'ble Supreme Court.

38. The Hon'ble Supreme Court had acquitted A3 who had filed Crl.A.No.198 of 2019 and A4 who had filed Crl.A.No.199 of 2019. In the course of such acquittal, while examining the evidence of P.W.9 and P.W.10 it had been had held as follows:

"6. The prosecution case against the accused appellants herein is built on circumstantial evidence. The sum total of the circumstances relied by the prosecution against the accused appellants herein are as follows:

(i) Arivu (P.W.9), a mason by profession, had testified that at about 1.30 a.m. on the date of occurrence he had finished work and while returning he had seen two accused appellants along with Accused Nos. 5, 6, 7 and 8 alighting from the TATA ACE vehicle outside the house of Velu (deceased);

(ii) Perumal (P.W.10) had deposited that at about 6.00 p.m. on 26th July, 2011 (sic) i.e.



a day prior to the day of occurrence he had seen three (03) accused engaged in a conversation about terminating the life of some other person. P.W. 10 had further deposed that at about 9.00 p.m. on the same day he had seen seven (87) accused, who were identified by him for the first time in the Court.

(iii). Fifteen (15) days prior to the occurrence, a First Information Report (FIR) was lodged by the deceased that a white Ambassador Car belonging to the Sasikumar (Accused No.4) had made an attempt to run him over. The investigation of the case was pending.

7. P.W.9, the mason, is a chance witness. The defence had put a suggestion to P.W.9 that he is a cousin of the deceased and there was animosity between P.W.9 and Selvi (Accused No.1). That apart, even though P.W.9 had gone to console the family of the deceased on the next day in the morning of 27th July, 2011 he did not report, what he had claimed to have seen in the previous night to any person including the Police. P.W.9's testimony, that the accused appellants along with other accused were spotted outside the house of the deceased a little while before the incident, is a weak and shaky



evidence given the background of facts. It is not conclusive and reliable and would require corroboration and affirmation from other evidence, which as noticed below is virtually absent and is not forthcoming.

8. So far as the evidence of P.W.10 is concerned, he is not known to the accused persons from before. His statement regarding conversation amongst the accused was recorded by the Police two months after the incident and he had purportedly identified the accused in the dock several months after the incident. He did not name any of the accused at any point of time. The evidence of P.W.10 and his identification made by him is not safe circumstance and evidence which can be relied upon against the accused appellants.

9. The third circumstance, namely, filing of the FIR by the deceased with regard to the attempt to run over by a white Ambassador Car belonging to Sasikumar (accused No.4) is again a rather weak and tenuous circumstance that by itself or even in conjunction with unreliable version by P.W.9 to lead to an irresistible and firm conclusion that the accused Nos.3 and 4 (appellants herein) were involved and had committed the offence." Since the appellant has also been

10. The law relating to circumstantial evidence would hardly need any reiteration, save and except, that



the circumstances proved and established together must unerringly point to the guilt of the accused which, in our considered view, is conspicuously lacking in the present

11. We, therefore, deem it proper to allow the appeals; set aside the conviction of the accused appellants (Accused Nos. 3 and 4) under Section 302 IPC and sentence of life imprisonment imposed. The accused appellants are acquitted and we direct their release forthwith unless their custody is required in connection with any other case.”

39. A similar reasoning had been given, when the Hon'ble Supreme Court had acquitted A5 who had filed Crl.A.No.1365 of 2022.

40. The Hon'ble Supreme Court had also granted bail to A6.

41. It is seen from the above discussion by the Hon'ble Supreme Court that both P.W.9 and P.W.10 are unreliable witnesses. Both of them had spoken about the conspiracy among the accused persons. Once A3 to A5 had been acquitted on the ground that the theory of conspiracy faced, naturally, the said benefit would also accrue to this appellant/ A1.



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42. The facts of the case reveal that on 27.07.2011, when P.W. 5 and P.W.7 the two daughters of A1 were sleeping in a room along with their younger brother, they had heard a sound coming from the other room at 02.30 a.m. They knocked at the door. A1 opened the door, after some time. Though P.W.5 and P.W.7 stated that they saw the dead body of their father lying with injuries, only the appellant /A1 was present at that place. None of the other accused were present. The prosecution to bring home the theory of offence punishable under Section 302 IPC should adduce evidence that this accused had committed the murder of her husband. But however, the prosecution had brought in A3 to A7 and A8 the juvenile accused as the persons who had committed the actual murder. This would automatically mean that the appellant/A1 herein had not committed the murder. She, at the most could have entered into conspiracy with A3 to A7 and the juvenile accused, A8 who committed the murder. But the witnesses who spoke about the conspiracy namely P.W.9 and P.W.10 stood discredited by the Hon'ble Supreme Court.

43. This leaves out only the alleged relationship between A1 and A2. There is sufficient evidence adduced that the appellant/A1 was



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actually in illicit relationship with A2. But the question before the Court is whether an inference can be drawn that merely because there is such evidence, this appellant/A1 who was alone found in the room had committed the murder of her husband. The answer is vehement 'no'. There must be a link in the chain of events. Stating that there was a relationship is not sufficient. Evidence must be adduced that A1 and A2 conspired to kill the husband of this appellant/A1 in furtherance to that relationship.

44. Prosecution had relied on the evidence of P.W.1 mother of the deceased who stated that the deceased informed her that about 20 days prior to the incident this appellant / A1 and A2 had tried to run a car over him. Even that aspect had been examined by the Hon'ble Supreme Court and they have termed it as a “*rather weak and tenuous circumstance*”.

45. The other circumstance pressed by the prosecution is the evidence of P.W.1, P.W.5 and P.W.7 who stated that this appellant/A1 was standing without any emotion near the dead body of her husband. This could not be interpreted that she had committed the murder and that she had witnessed the murder. She could also have been standing in a stupor. She



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was not agitated which would have been the natural reaction if she had committed the offence. She would have tried to screen the offence. She had however, opened the door for the children to come out. She had taken sometime for it. But she did open the door. This only shows that she was not screening anybody or anything. This attitude could also be interpreted as a shock for her also.

46. It was pointed out by the learned Additional Public Prosecutor that the arrest of this accused had been proved by the evidence of P.W.11. But it must be stated that as a fact, it cannot be denied that this appellant/A1 had been arrested, but no weapons used for the offence had been recovered from the appellant/A1.

47. Further P.W.11 is a stock witness who had witnessed the arrest of all the accused and the recovery of all the material objects.

48. It had also emanated, during cross examination of P.W.11 that he was not the jurisdictional Village Administrative Officer. He had also not obtained permission from his higher officials to assist the



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Investigation Officer, during arrest and recovery and in recording of confession. He had willingly participated in the investigation. There is no reason given by the Investigating Officer as to why he did not take the assistance of the jurisdictional Village Administrative Officer. This creates a strong suspicion that P.W.11 is a stock police witness. As a matter of fact, he admitted that fact in his cross examination. He had also stated that separate inks had been used in the seizure mahazar. These contradictions touch upon the facts of arrest and recovery of the material objects. It must also be pointed out that though the dress of this appellant/A1, her phone, cash and jewels had all been seized during the course of investigation, they did not contain bloodstains. The weapon used for the alleged offence had not been recovered from this appellant/A1.

49. It is thus seen that expect for the presence of this appellant/A1 in front of the body of her dead husband, there is no evidence linking her to the commission of the offence punishable under Section 302 IPC. There is oral evidence available so far as her relationship with A2 is concerned. But again, it cannot be presumed that she had committed the murder of her husband or had instigated the murder of her husband, merely



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because she was in relationship with A2. This theory falls to the ground also because A3 to A5 had been acquitted by the Hon'ble Supreme Court. P.W.9 and P.W.10 who had tendered evidence linking this appellant/A1 with the other accused stood discredited by the Hon'ble Supreme Court. Therefore, viewed independently, there is no evidence at all that this appellant /A1 committed the offence punishable under Section 302 IPC. The trial Court had not framed charge under Section 34 IPC.

50. The learned Additional Public Prosecutor placed reliance on the judgment of the Hon'ble Supreme Court in ***Rimukh Maroti Kirkan Vs. State of Maharashtra*** reported in ***2006(10) Supreme Court Cases 681***, for the aspect that if an offence takes place inside the privacy of a house under Section 106 of the Indian Evidence Act, there is a burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The learned Additional Public Prosecutor placed reliance on the following paragraphs :

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will



*be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 - quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:*

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."



15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

51. The learned Additional Public Prosecutor also placed reliance on the judgment in ***Tulshiram Sahadu Suryawanshi and another Vs. State of Maharashtra*** reported in ***2012(10) Supreme Court Cases 373***, again on the same principle and placed reliance on paragraph No.23 which is as follows:

“23) It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful



may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. It is useful to quote the following observation in State of West Bengal vs. Mir Mohammed Omar, (2000) 8 SCC 382:

*“38. Vivian Bose, J., had observed that
Section 106 of the Evidence Act is designed to*



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meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambhu Nath Mehra v. State of Ajmer the learned Judge has stated the legal principle thus:(AIR p.406, para 11)

'11.This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.'"



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52. In **2006(10) Supreme Court Cases – 681** referred to supra, the facts were that there was a demand for dowry from the parents of the bride. It was not the case of the prosecution that a 3rd party stranger had entered into the house and had committed the offence. There were no strangers inside the house. Therefore, the Hon'ble Supreme Court had held that only the inmates should explain how the offence happened.

53. In **2012(10) Supreme Court Cases – 373**, referred to supra, again in a murder / dowry death which happened inside the house and there was no allegation that 3rd party strangers had entered into the house, the Hon'ble Supreme Court had held that the inmates of house will have to explain how the death occurred.

54. In the instance case, there is one very important distinguishing circumstance, namely, that it is not the case of the prosecution that this appellant/A1 had actually murdered the deceased. It is the case of the prosecution that owing to her relationship with A2, she and A2 had entered into a conspiracy to commit the murder of her husband and



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in furtherance of such conspiracy had engaged A3 to A7 and A8, the juvenile offender to commit the murder. But the theory of conspiracy failed owing to P.W.9 and P.W.10 being discredited by the Hon'ble Supreme Court. A3, A4 and A5 had been acquitted by the Hon'ble Supreme Court. A2 had died and therefore, the charge against him has also abated. The only charge which remained was the charge under Section 302 IPC. There was no charge framed against this appellant /A1 for offence under Section 302 r/w. 34 IPC. No weapons were recovered from A1.

55. The only evidence adduced was about the relationship between her and A2. But that cannot be stretched to hold this appellant/A1 is guilty of the offence of committing murder of her husband. The earlier incident of A1 and A2 having tried to run over the deceased had not been established and had been termed by the Hon'ble Supreme Court as a “*rather weak and tenuous circumstance*”.

56. In ***Raju @ Rajendra Prasad Vs. State of Rajasthan*** reported in ***2022 Supreme Court Cases Online 1242***, while laying down the dictum for analysis of evidence when the case rested on circumstantial



evidence, the Hon'ble Supreme Court has held as follows :

“16. At the outset, it is required to be noted that the case rests on the circumstantial evidence. There is no direct evidence by which it can be said that the appellants killed or committed the murder of the deceased. There is no direct evidence recorded indicating involvement of the appellants in the crime and as observed hereinabove, the case of the prosecution is based on the circumstantial evidence. As held by this Court in a catena of decisions, in case of a circumstantial evidence, 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 none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”



56. In (2016) 10 SCC 519 (*Jose @ Pappachan vs the Sub*

Inspector of Police), the Hon'ble Supreme Court had held as follows:

“56.It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.”



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57. In view of the above reasons, we hold that the prosecution had not proved the case beyond reasonable doubt as against the appellant herein/A1 and we are of the firm view that the judgment of conviction and sentence against this accused/A1 rendered by the VI Additional District and Sessions Court, Madurai in S.C.No.131 of 2012, dated 09.10.2013 should be set aside.

58. In the result, the Criminal Appeal is allowed. The judgment of conviction and sentence rendered by the VI Additional District and Sessions Court, Madurai in S.C.No.131 of 2012, dated 09.10.2013 is set aside. The appellant herein/A1 is acquitted of all the charges. The appellant is directed to be set at liberty forthwith. The bail bonds executed, if any, shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellant. Consequently, connected miscellaneous petition is closed.

[C.V.K., J.] & [R.P., J.]
25.10.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
RM



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To

- 1.The VI Additional District and Sessions Court,
Madurai.
- 2.The Superintendent,
Special Prison for Women,
Trichy.
- 3.The The Inspector of Police,
Usilampatti Nagar Police Station,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.V.KARTHIKEYAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
CrI.A(MD)No.381 of 2023

25.10.2024