



Crl.A(MD)Nos.241 of 2020 & 45 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.241 of 2020 & 45 of 2021

Crl.A(MD)No.241 of 2020:

1.Vinish

2.Santhosh

... Appellants /
Accused 2 & 3

Vs.

The State represented by
The Inspector of Police,
Kumuli Police Station,
Theni District.
(Crime No.43 of 2014)

... Respondent /
Complainant

Prayer: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, 1973 to set aside the conviction and sentence passed in S.C.No.95 of 2016 dated 14.06.2020 by the learned Additional District and Sessions Judge (FTC), Theni.

For Appellants : Mr.K.Ananda Padmanabhan
Senior Counsel
for Mr.K.Muthu Ganesa Pandian

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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Crl.A(MD)No.45 of 2021:

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Jone

... Appellant /
Accused No.1

Vs.

The State represented by
The Inspector of Police,
Kumuli Police Station,
Theni District.
(Crime No.43 of 2014)

... Respondent /
Complainant

Prayer: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, 1973 to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge (FTC), Theni in S.C.No.95 of 2016 dated 14.02.2020 and acquit the appellant.

For Appellant : Mr.S.Jeyakumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

These criminal appeals arises out of the judgment dated 14.02.2020 rendered in S.C.No.95 of 2016 on the file of Additional District and Sessions Judge (FTC), Theni. By the impugned judgment, the appellants were found guilty for the offences under Sections 302 read with 34 of IPC and sentenced to undergo life imprisonment with fine of Rs.5000/- in default to undergo further period of one year simple imprisonment.



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2.The case of the prosecution is as follows :

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PW.1 Veerannan is the father of the deceased Krishnan @ Rajesh Kannan. PW.1 is residing with his family at Anaikarai, Kerala. His family comprised 4 children, namely, elder daughter Rajeswari, younger daughter Kowsalya and two sons, namely, Ranjith Kumar and Rajesh Kannan. On 03.08.2014, at about 12.00 Noon, Rajesh Kannan left for Kumuli. He was wearing red colour t-shirt and black pant. He never returned home. PW.1 was searching for his son for about 10 days. His enquiry revealed that his son left with A1, A2 and one Ananth and Omanakuttan. He lodged complaint before Vandanmedu Police Station. Information was received from forest officials that a dead body was found in Valliyamparai hills. PW.1 identified the body as that of his son. Based on the information received from Ananth and Omanakuttan, investigation concluded that A1 Jone pushed the deceased from the cliff of the hills. Ex.P1 is the complaint laid by PW.1. Based on the same, Crime No.43 of 2014 was registered by Kumuli Police on 16.08.2014. After conducting investigation, final report was laid against the appellants herein before the learned Judicial Magistrate, Uthamapalayam. The learned Judicial Magistrate took the same on file in PRC No.42 of 2015. It was committed to the Sessions Court in S.C.No.95 of 2016.



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3.Charges were framed against the accused under Sections 302 and 34 of IPC. The accused pleaded not guilty and claimed to be tried. On the side of the prosecution, as many as 22 witnesses were examined. Ex.P1 to Ex.P13 were marked. MO.1 to MO.3 were marked as material objects. Incriminating circumstances were put to the accused during examination under Section 313 of Cr.P.C. The accused characterised them as false. On the side of the accused, no witnesses were examined. After considering the evidence on record, the Court below found the accused guilty of the charges framed against them and sentenced them to undergo life imprisonment together with fine. Default sentence was also imposed. Challenging the same, the first accused filed Crl.A(MD)No.45 of 2021. A.2 and A.3 filed Crl.A(MD)No.241 of 2020.

4.The learned Senior Counsel appearing for the accused submitted that prosecution has failed to prove the charge against the accused beyond reasonable doubt and called upon this Court to set aside the impugned judgment and acquit the accused and allow these appeals.

5.Per contra, the learned Additional Public Prosecutor submitted that the impugned judgment is well reasoned and that it does not call for interference.



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6.We carefully considered the rival contentions and went through the evidence on record.

7.It may be noted at the very outset that there is no direct evidence to implicate the accused for the offence of murder. PW.1, the father of the deceased has no direct knowledge. He deposed that Ananth and Omanakuttan told him that the deceased had gone with the accused in auto to Valliyamparai and that they were sitting in the auto whereas the accused took Rajesh Kannan up the hills. They told P.W.1 that the accused alone returned and when Ananth and Omanakuttan enquired the accused as to the whereabouts of Rajesh Kannan, they had replied that Rajesh Kannan had gone to his uncle's house. PW.1 has merely had deposed what he heard from others. It is pure hearsay evidence and cannot be taken as admissible evidence against the accused. In Ex.P1 complaint, PW.1 had implicated the accused only based on suspicion. The accused could not have been found guilty on the strength of testimony of PW.1. PW.2 is the mother of the deceased and she also has no direct knowledge about the occurrence. PW.3 is the sister of the deceased. She admitted that she was in love with the first accused Jone and that when the relationship came to the knowledge of the deceased, the deceased had assaulted A1 and that therefore A1 had motive against the deceased. The testimony of PW.3 can at



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best furnish the basis for motive but it does not go beyond that. PW.3 also has no direct knowledge about the occurrence.

8.PW.4 Ananth and PW.9 Omanakuttan are the key witnesses. In their chief examination, they deposed that on 03.08.2014, when they were standing at a spot known as “8th Mile” in Kerala, the accused came along with Rajesh Kannan in an auto and compelled PW.4 and PW.9 to get into the auto to go up to Valliyamparai. They claimed that even though they were reluctant, they were compelled to accompany. They further claimed that they went up to Valliyamparai where the auto stopped. The accused told PW.4 and PW.9 to wait in the auto and the accused went along with the deceased Rajesh Kannan up the hill. After about one hour, the accused returned without Rajesh Kannan. When PW.4 and PW.9 enquired as to what happened to Rajesh Kannan, the accused had replied that he had gone to his uncle's house. One week thereafter, PW.1 met them and told them that his son was missing and he was searching for him. One day later, information was received that one headless body was found in the Valliyamparai Valley. PW.4 and PW.9 went to the spot. They found that the dead body was that of the deceased Rajesh Kannan.



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9. Though in the chief examination, both PW.4 and PW.9 had spoken on these lines, they turned completely hostile in the cross examination. In the cross-examination they deposed that what they stated in the chief examination was as per police instructions. PW.5, the retired forester was the one who found the body on 16.08.2014. The body was seized on 17.08.2014. PW.6 is also a forester. Nagarajan, PW.7 turned hostile. PW.8 Village Administrative Officer witnessed the arrest and recorded the confession of the accused. PW.10 to PW.13 turned hostile. PW.14 to PW.17 are formal witnesses. PW.18, PW.20 and PW.21 are medical witnesses. PW.22, Inspector of Police conducted the investigation and laid the final report.

10. Even though the learned Senior Counsel appearing for the appellants would even question the identity of the dead body and impeach the DNA findings, we are of the view that this issue need not be gone into. When there is no direct evidence to implicate the accused, the circumstantial evidence should unerringly point to the guilt of the accused. The chain of circumstances should be complete. The immediate family members of the deceased were examined as PW.1 to PW.3. Admittedly they did not have direct knowledge of the occurrence. The evidence of PW.3 at best can furnish the motive. PW.10 to PW.13 who were examined to bolster the last seen theory turned hostile. The



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Court is left only with the testimony of PW.4 and PW.9. Even PW.4 and PW.9

supported the prosecution only in the chief examination and completely turned hostile during cross examination. It is true that the evidence of even hostile witness can be taken into account. But, in the facts and circumstances of the case, it would be most unsafe to convict the accused on the strength of the evidence given by PW.4 and PW.9 in their chief examination alone. If the accused wanted to do away the deceased, they would not have taken PW.4 and PW.9 along with them in the auto. The version projected by PW.4 and PW.9 is inherently improbable. It is not the case of the prosecution that PW.4 and PW.9 are accomplices. In that event, they could have been examined only as approvers. Since the prosecution examined PW.4 and PW.9 as independent witnesses, we have to hold that their version does not sound credible. Rajesh Kannan went missing since 03.08.2014. Ex.P1 complaint was lodged only on 16.08.2014 after the discovery of a dead body in Valliyamparai hills. If the accused had really taken the deceased along with them on 03.08.2014 and PW.4 and PW.9 had actually accompanied them in the auto, they would have definitely informed PW.1 of the same much earlier. If there is any other evidence to corroborate the testimony of PW.4 and PW.9 made in their chief examination, it could have been relied upon. In this case, there is no other corroboratory evidence. The last seen theory projected by the prosecution does



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not appeal to us. Except the aspect of motive and highly doubtful testimony of PW.4 and PW.9, there is no other evidence to connect the accused with the crime. The chain of circumstances is not at all complete. The first complaint laid before Vandanmedu Police in Kerala State was also not brought on record.

11.The Court below has not appreciated these aspects. The Court below ought not to have relied on the testimony of PW.4 and PW.9 to find the accused guilty. Once their testimony is left out, there is nothing to connect the accused with the crime. The impugned judgment of the court below is set aside. We hold that prosecution has not at all established the charge against the accused. The accused are acquitted of the charge framed against them. The fine amount deposited by the accused shall be returned, if any. The bail bond executed by them, if any, stand cancelled.

12.These Criminal Appeals are allowed accordingly. No costs.

[G.R.S., J.] [R.P., J.]
04.12.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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G.R.SWAMINATHAN, J

and

R.POORNIMA, J.

MGA

To

- 1.The Additional District and Sessions Judge (FTC),
Theni.
- 2.The Judicial Magistrate,
Uthamapalayam.
- 3.The Inspector of Police,
Kumuli Police Station,
Theni District.
- 4.The Superintendent of Prison,
Central Prison, Madurai.

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