



Crl.A.(MD).No.264 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.09.2024

PRONOUNCED ON : 22.10.2024

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Crl.A.(MD)No. 264 of 2021

Tex Aravind

... Appellant

Vs

State represented by
The Inspector of Police
Aranthangi Division
Nagudi,
Pudukkottai District.
(Crime No. 75/2015)

...Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C. to call for the records and set aside the sentence and conviction imposed in S.C.No. 21 of 2017 on the file of the learned Sessions Judge Mahila Court, Pudukkottai, dated 15.03.2021.

For Appellant :Mr.S.M.A.Jinnah

For Respondent :Mr.S.Ravi

Additional Public Prosecutor



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Crl.A.(MD).No.264 of 2021

JUDGMENT

The accused in S.C.No. 21 of 2017 on the file of the Sessions Court Mahila Court, Pudukkottai, aggrieved by the Judgment dated 15.03.2021, by which Judgment, he had been convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.30,000/- in default to undergo rigorous imprisonment for one year and also convicted for offence punishable under Section 392 of IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.30,000/- in default to undergo rigorous imprisonment for three months and also convicted for offence punishable under Section 201 IPC and sentenced to undergo rigorous imprisonment for 7 years and fine of Rs.20,000/- in default to undergo rigorous imprisonment for three months, has filed the present Criminal Appeal.

2. It is the case of the prosecution that PW-4 Murugesan had gone in search of his mother, Saraswathi on 07.06.2015 in the morning since she had gone to the field of Subbaiya (PW-2) on 06.06.2015 in the morning at 10.00 a.m., to cut the weeds but did not return back. PW-4



Crl.A.(MD).No.264 of 2021

found the half burned dead body of his mother Saraswathi at 07.00 a.m., in the field of Subbaiya on 07.06.2015 with a cut injury on the left leg. He then informed this fact to his maternal uncle (PW1) Vijayakumar.

3. On receiving that information, PW-1 Vijayakumar came to Siruvaraivayal village along with his wife, brother and mother and identified the dead body as that of his sister Saraswathi. He then lodged a complaint (Ex.P-1) before Nagudi Police Station at 12.00 in the noon. Consequent to this complaint, FIR in Crime No. 25 of 2015 had been registered on 07.06.2015 for offence under Section 302 IPC.

4.PW-1 stated in his chief examination that after 7 to 8 months, he was called by the police to identify same jewels which had been seized. He went to Nagudi Police Station where he saw the accused, who was pointed out by the police as having committed the murder. He identified the jewels as belongings to his deceased sister. They had been produced during trial as MO-1 to MO-4.



Crl.A.(MD).No.264 of 2021

5.It was under those circumstances, after investigation, the respondent had filed final report which was taken cognizance as P.R.C.No. 33 of 2016 by the Judicial Magistrate, Aranthangi. After committal, it was taken on file as S.C.No. 21 of 2017 and after trial, as stated the accused had been convicted and sentenced for commission of offence under Sections 302, 392 and 201 IPC.

6.The facts in detail are that the deceased Saraswathi / wife of PW-2 Subbaiya had gone over to the field to cut weeds at 10.00 a.m., on 06.06.2015 but did not come back. Later, her half burned dead body was found by her son PW-4 Murugesan at around 07.00 am., when he went in search on 07.06.2015.

7.It is the case of the prosecution that PW-3 Chengalammal had seen the deceased Saraswathi at around 11.30 a.m., about four years prior to the date of her deposition in Court. She however stated that she did not see anyone else and was therefore declared hostile.



Crl.A.(MD).No.264 of 2021

8.The prosecution further relied upon the evidence of PW-5 Arokiyados, who stated that about 4 years prior to his date of deposition, on a Saturday afternoon, when he had gone to his field and went to a nearby pond, he saw the accused going that side. The next day, he came to know about the death of Saraswathi. Three months after that, he was enquired by the police and he stated about this particular fact.

9.The prosecution further relied on the evidence of Muthuvel (PW-6) who stated that on 06.06.2015 in the afternoon at 01.30 p.m., when he was going in his motorcycle past Siruvarai Kanmai, he saw the accused going that side with an Aruval. He also noticed the deceased Saraswathi cutting the weeds in her field. The next day, he came to know that Saraswathi had been murdered and that her body had been half burned.

10.The prosecution further placed reliance on the evidence of Thiaygarajan (PW-10), who was running a jewellery shop by name Selvarani Jewellers at Aranthangi, who stated that he knew the accused and also his parents. He further stated that the accused came along with



Crl.A.(MD).No.264 of 2021

his parents on 20.01.2016 in the morning at 10.30 a.m., and handed over a Thali, 1 pair of ear rings, two stones and two coins and pledged them for money by giving the reason that his mother was not keeping well. The witness stated that on 23.02.2016, the accused was brought to his shop by the Inspector of Police, Aranthangi, the Tahsildar, Revenue Inspector and the Village Administrative Officer and they pointed out the accused and asked whether he had pledged jewels and the witness had stated in the affirmative. He stated that the police seized the jewels which were pledged. He had signed in the seizure mahazar which was marked as Ex.P-4 and his signature was marked as Ex.P-7. He also stated that he had polished the jewels. He identified the jewels in Court.

11.The prosecution further placed reliance on the evidence of Balusamy (PW-12), who was Village Administrative Officer, Mithravoyal. He stated that on 14.02.2016 at 03.00 p.m., the accused came and gave a confession that he committed a murder at Sivagangai and also at Pudukkottai. PW-12 had then taken the accused to Sakkottai Police Station.



Crl.A.(MD).No.264 of 2021

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12.The prosecution also relied on the evidence of Selvaraj, Inspector of Police, Sakkottai, (PW-14) who stated that the accused had been brought to him by the Village Administrative Officer of Mithravoyal Village, Balusamy (PW-12). He enquired the accused. The accused stated that he was involved in FIR in Crime No. 75 of 2015 registered by the Nagudi Police Station. PW-14 therefore forwarded that information to the Inspector of Police, Nagudi.

13.The prosecution further relied on the evidence of Vijayakumar (PW-15), who was Inspector of Police at Nagudi Police Station, who on information received from PW-14 Selvaraj, had formally arrested the accused at 05.35 p.m on 16.02.2016.

14.The prosecution also relied on the evidence of Prem Anand, Inspector of Police at Nagudi (PW-16). He stated that he took up investigation on 07.06.2015 at around 12.40 p.m., after the registration of FIR in Cr.No.75 of 2015. At 01.00 pm, he went to the scene of occurrence where the half burned dead body of deceased Saraswathi was



Crl.A.(MD).No.264 of 2021

WEB COPY
lying. He prepared the observation mahazar Ex.P-5 and rough sketch Ex.P-11. He then seized the material objects found there, half burned palm dry leaves MO-6, half burnt sickle handle MO-7, sickle without handle MO-8, Palm Fruits 2 Nos. MO-9, burnt mud MO-10 and mud without burning MO-11 under seizure mahazar Ex.P-6 and forwarded the same to the Magistrate Court under Form-95. He then conducted inquest over the dead body in the presence of Panchayadars and prepared inquest report Ex.P-12. He then forwarded the dead body for post-mortem through Head Constable Rajendran.

15.The post-mortem was conducted by Dr.Subbu Sivaraj, PW-11, who issued post-mortem certificate Ex.P-8. During his evidence, he identified the Forensic Science Lab report, Ex.P-9. In Ex.P-8, he had noted that the body was charred and there was a contusion on the side of the neck and that the hyoid bone was fractured. He gave his opinion that the deceased would have died of throttling since the hyoid bone was broken.



Crl.A.(MD).No.264 of 2021

16.PW-16 Prem Anand, Inspector of Police in his further evidence stated that after post-mortem, the clothes owned by the deceased were also brought by Special Report Ex.P-13. The clothes were produced during trial as MO-12 and MO-14. They were also forwarded to the Magistrate Court under Form -95.

17.The investigation was then taken over by Balamurugan (PW-17) who was the Circle Inspector at Aranthangi. He received information about the confession of the accused, who had been taken into custody at Sakkottai Police Station, Sivagangai confessing to his involvement in FIR in Crime No. 75 of 2015 pending before Nagudi Police Station. He then recorded the confession of the accused in the presence of Palaniyammal (PW-8), Village Administrative Officer, and Murugiya (not examined). He then received information about the place where the Aruval was kept hidden and where the jewels had been pledged. He then recovered the Arugal (MO-5). He also recovered the jewels (MO-1 to MO-4) from Selvarani Jewellers run by Thiyagarajan, PW-10. He also asked PW-10 to identify the accused. He forwarded the Material Objects under Form-95 to the Court.



Crl.A.(MD).No.264 of 2021

WEB COPY

18.He then recorded the further statements of Subbaiya PW-2 and Changalammal PW-3.

19.He then filed an alteration report to alter the provision of law in the FIR from Section 302 IPC to Sections 302, 394 and 201 IPC. The alteration report was marked as Ex.P-14.

20.He then recorded the statements of Palaniyammal (PW-8), Village Administrative Officer and Murugaiya (not examined). He then recorded the statements of Thiyagarajan, PW-10 and Santhakumari (PW-13), the Sub Inspector of Police, who had registered the FIR. He also recorded the statement of Dr.Subbu Sivaraj PW-11, who had conducted the post-mortem. On completion of investigation, he filed final report on 31.03.2016 before the Judicial Magistrate at Aranthangi charging the accused with commission of offences punishable under Sections 302, 394, 397 and 201 IPC. He asserted that the witnesses, who had been declared turned hostile had spoken as he had recorded their statements.



Crl.A.(MD).No.264 of 2021

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21.As stated above, the final report had been taken cognizance by the Judicial Magistrate at Aranthangi as P.R.C.No. 33 of 2016. After following due procedure as enunciated under Section 207 Cr.P.C., the learned Magistrate committed the case to the Court of Sessions since the offence under Section 302 IPC was triable exclusively by the Court of Sessions.

22.The Sessions Court / Mahila Court, Pudukkottai, took the case on file as S.C.No. 21 of 2017 and framed charges against the accused for commission of offences punishable under Sections 302, 392 and 201 IPC. The accused denied the charges and claimed to be tried. The prosecution was then invited to prove the charges. The prosecution examined PW-1 to PW-17, witnesses and marked Exs.P-1 to P-14, documents and produced MO-1 to MO-14, material objects.

23.On completion of trial, the accused had been convicted of the offences charged and sentenced to life imprisonment for the substantial offence under Section 302 of IPC. Questioning that particular Judgment



Crl.A.(MD).No.264 of 2021

of the Sessions Court, Mahila Court, Pudukkottai, dated 15.03.2021, the present Criminal Appeal had been filed.

24. Heard arguments advanced by Mr. S.M.A. Jinnah, learned counsel for the appellant/accused and Mr. S.Ravi, learned Additional Public Prosecutor appearing for the respondent.

25. Mr. S.M.A. Jinnah, learned Counsel appearing for the appellant in his arguments pointed out that the prosecution relied only on circumstantial evidence to prove the charge against the accused. The learned Counsel argued that no witness spoke about seeing the accused and deceased together. Two witnesses had stated that they had seen the accused on 06.06.2015. The learned Counsel asserted that it was only natural, since the accused belonged to the same locality. He further pointed out the improbability of the alleged extra judicial confession before the Village Administrative Officer at Sakkottai in Sivagangai District. He further pointed out that even PW-2, the husband of the deceased had very categorically stated that the jewels which had been recovered does not belong to the deceased. The learned Counsel asserted



Crl.A.(MD).No.264 of 2021

that the evidence adduced by the prosecution were sketchy, bereft of details and disjointed. He therefore urged that the conviction of the accused should be set aside and the appeal must be allowed.

26.Mr.S.Ravi, learned Additional Public Prosecutor appearing for the respondent however disputed the said contentions. He stated that the accused was seen near the scene of crime by two separate witnesses. The accused will therefore had to explain the reason for his presence. The learned Additional Public Prosecutor further argued that on the basis of the confession, the respondent had also recovered the jewels which had been stolen. He pointed out the evidence that the jewels had been polished and therefore argued that it was for that reason that PW-2 was not able to identify the jewels. The learned Additional Public Prosecutor asserted that there was no break in the chain of evidence and therefore, insisted that the appeal should be dismissed and conviction of the accused must be upheld.

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



Crl.A.(MD).No.264 of 2021

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28.The case of the prosecution is based on circumstantial evidence.

29.It is the case of the prosecution that PW-4 Murugesan, the son of the deceased Saraswathi had at around 07.30 a.m., on 07.06.2015 gone in search of his mother since his mother had not returned after going to the field at around 10.00 a.m., on 06.06.2015 to cut the weeds. He then saw the half burnt dead body of his mother in the field of his father Subbaiya, PW-2. He informed this fact to his uncle PW-1 Vijayakumar.

30.PW-1 Vijayakumar came to the scene of occurrence at around 10.30 a.m., and after identifying the body as that of his sister Saraswathi, lodged a complaint, Ex.P-1 before the respondent, Nagudi Police Station. On receipt of the complaint, FIR in Cr.No. 75 of 2015 was registered by Santhakumari PW-13, Sub Inspector of Police, at 12.00 noon for offence under Section 302 of IPC. It was then forwarded to the Judicial Magistrate and received on the same day at 03.00 p.m. From the scene of crime PW-16, Inspector of Police had seized MO-6 half burnt palm dry



Crl.A.(MD).No.264 of 2021

leaves, MO-7 half burnt sickle handle, MO-8 sickle without handle, Palm fruit 2 Nos. MO-9, burnt mud MO-10 and mud without burning, MO-11.

31.PW-2 Subbaiya, the husband of the deceased also identified the dead body. He stated that his wife would go over to the house of PW-1 Vijayakumar and therefore, he did not search for her on 06.06.2015, even though she did not return from the field. He further stated that the jewels, MO-1 to MO-4 does not belong to them.

32.The post-mortem of the deceased body was conducted by PW-11 Dr.Subbu Sivaraj, who had issued post-mortem certificate Ex.P-8. He had noted that the whole body was charred, the whole skin was burnt with the muscle exposed on the left side of the body. He also found that the hyoid bone was fractured. There was a contusion on the right side of the neck. He had given his opinion that the deceased would have died of throttling since the hyoid bone was broken.

33.There are two witnesses, who claimed that they saw the deceased. They did not give the date but only stated that it was about four



Crl.A.(MD).No.264 of 2021

years prior to the date on which they deposed.

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34.PW-5 Arokiyados was the first witness, who stated that on a Saturday, when returned back from his field, he saw the accused near a pond.

35.The prosecution had also examined Muthuvel PW-6, who stated that when he was going across in a motorcycle at 1.30 p.m., in the afternoon on 06.06.2015 in the mud road near the Kanmai at Siruvarai, he saw the accused walking across with an Aruval.

36.The further evidence to connect the accused was adduced by Selvaraj, Inspector of Police, Subkkottai Police Station PW-14, to whom the accused was brought by Balusamy, Village Administrative Officer, PW-12.

37.PW-12 claimed that the accused had voluntarily given an extra judicial confession to him informing him about his involvement in FIR in Crime No. 75 of 2015 registered on 07.06.2015 on the complaint given



Crl.A.(MD).No.264 of 2021

by PW-1 Vijayakumar at Nagudi Police Station. The prosecution further relied on the evidence of Thiagarajan PW-10, who claimed that the accused had pledged MO-1 to MO-4 with him.

38.It is thus seen that the prosecution relied on the evidence of PW-5 and PW-6, who claimed to have seen the accused about four months prior to the date of their deposition. They did not see the accused along with the deceased. Except for PW-6, none of the witnesses saw the deceased, when she was cutting the weeds. There are no witness to speak about the accused and the deceased together.

39.It is therefore not clear as to how the prosecution had framed charges by stating that when the accused was having palm fruits, the deceased came there and sought a palm fruit and at that time with intention to rob her the accused had murdered her. The entire charge is based on assumptions and presumptions.

40.The fact that PW-4 and PW-5 had seen the accused cannot by any stretch of imagination be construed to hold that the accused



Crl.A.(MD).No.264 of 2021

strangled / murdered and burnt the deceased.

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41.The prosecution placed reliance on the evidence of PW-10 Thiagarajan, the Proprietor of Selvarani Jewellers at Aranthangi. He claimed that he knew the accused and his parents and that the accused had pledged MO-1 to MO-4 jewels with him. However, the material objects produced in Court had been polished and therefore, PW-2 the husband of the deceased very categorically stated that the jewels brought before the Court does not belong to him.

42.Thiagarajan, PW-10 in his evidence admitted that he did not give any receipt for the pledging of the jewels. As a matter of fact, in his chief examination, he stated that the police had pointed out to the accused and stated whether he had given any jewels to be pledged and the witness had stated in the affirmative.

43.Thus there are only two witnesses, namely, PW-5 Arokiyados and PW-6 Muthuvel, who claim to have seen the accused about four months prior to the date of their deposition and PW-10 Thiagarajan, the



Crl.A.(MD).No.264 of 2021

Proprietor of Selvarani Jewellers, who claimed that the accused had pledged the jewels. There is no break in the chain in the evidence connecting the accused to the actual commission of offence for which he had been charged.

44.In **2012 (12) SCC 158 [Shanti Devi Vs. State of Rajasthan]**, the principles relating to circumstantial evidence had been stated as follows:-

“8. Having heard learned counsel for the respective parties and having bestowed our serious consideration to the judgment impugned before us and other material papers, as it is a case of circumstantial evidence, we wish to quote the well settled principles laid down by this Court in various decisions which are to be applied in order to examine the conclusions arrived at by the Courts below while convicting the accused based on circumstantial evidence. The principles laid down in those decisions can be mentioned before finding out whether or not the conviction and sentence on the appellant can be held to have been established as stated in the judgment of the High Court as well as that of the



CrI.A.(MD).No.264 of 2021

learned Trial Court. The principles can be set out as under:

(i) The circumstances from which an interference of guilt is sought to be proved must be conjointly or firmly established.

ii) The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

iii) The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that with an all human probability, the crime was committed by the accused or none else.

iv) The circumstances should be incapable of explanation on any reasonable hypothesis, same that of the guilt of the accused.”

45.In 1996 (10) SCC 193 [Trimukh Maroti Kirkan Vs. State of Maharashtra], it had been held as follows:-



“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence. ”

46.The principles laid down hold that analysis of evidence must lead to only one inference and that is the accused is guilty of the offence.

47.In the instant case, there is no proper link in the chain of evidence. In the charge, the prosecution had stated that the deceased had gone to her field to cut weeds and at that time she saw the accused with palm fruits and that she asked for a palm fruit and in return, the accused is said to have strangled her, murdered her and burnt her body and robbed her jewels. The entire inference is extremely farfetched.



Crl.A.(MD).No.264 of 2021

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48.PW-5 and PW-6 stated that they had seen the accused about four years prior to their deposition. There is no explanation given as to why they had not informed this fact to the police immediately on the discovery of the dead body on 07.06.2015. Moreover, PW-2 Subbaiya, the husband of the deceased disowned the jewellery produced before the Court. It is in evidence that PW-10 Thiyagarajan had polished the jewels but that would not make such material difference to totally disown the jewellery recovered by the respondent police.

49.We hold that the evidence relied on by the prosecution does not form a chain at all. We hold that the prosecution had not proved the case beyond reasonable doubt.

50.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



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Crl.A.(MD).No.264 of 2021

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.”

51. In the instant case, the only view discernible from the evidence is that the prosecution has failed to prove the charges beyond reasonable doubt.



Crl.A.(MD).No.264 of 2021

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52. In view of the above reasons, we are of the firm view that the conviction of the accused will have to be set aside. The accused stands acquitted of all charges and is directed to be set at liberty. The surety bonds executed shall be discharged. The fine amount paid shall be refunded. Accordingly, the Criminal Appeal stands allowed.

[C.V.K., J.] & [J.S.N.P., J.]

vsg

22.10.2024

Internet : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. The Sessions Judge Mahila, Pudukkottai,

2. The Inspector of Police
Aranthangi Division,
Nagudi, Pudukkottai 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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Crl.A.(MD).No.264 of 2021

C.V.KARTHIKEYAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

vsg

Judgment made in
Crl.A.(MD)No. 264 of 2021

22.10.2024