



Crl.A.(MD)No.356 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.12.2024

CORAM

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

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Pandiarajan @ Pandiraja

... Appellant

Vs.

The State Rep. by,
The Inspector of Police,
Theni Police Station,
Theni District.
(Crime No.918 of 2016)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records pertaining to the judgment delivered by the learned Additional District and Sessions Court (Fast Track Court), Theni, Theni District in S.C.No.76 of 2017 vide judgment dated 20.01.2010 and set aside the same and consequently, acquit the appellant honourably.

For Appellant : Ms.S.Prabha

For Respondent : Mr.E.Antony Sahaya Prabahaar,
Additional Public Prosecutor.



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JUDGMENT

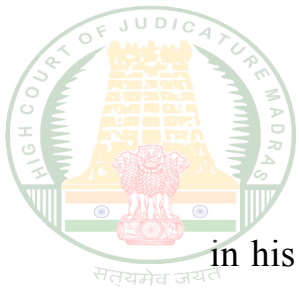
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(Judgment of the court was delivered by G.R.Swaminathan, J.)

This criminal appeal is directed against the judgment dated 20.01.2010 made in S.C.No.76 of 2017 on the file of the Additional District and Sessions Court (FTC), Theni. By the impugned judgment, the appellant was found guilty of the offences under Sections 302 and 201 of IPC. For the offence under Section 302 of IPC, the appellant had been sentenced to undergo life imprisonment with fine of Rs.10,000/-. Default sentence of one year simple imprisonment was also imposed. For the offence under Section 201 of IPC, the appellant was sentenced to undergo seven years rigorous imprisonment with fine of Rs.5,000/-. Default sentence of one year simple imprisonment was also imposed.

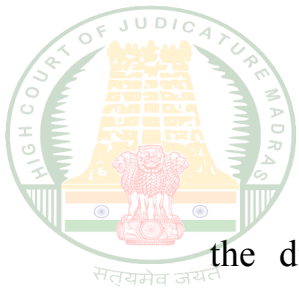
2.The case of the prosecution is as follows:

(i) P.W.1 / Rajamani had three sons namely, Pandiarajan @ Pandiaraja (accused), Dhanapandi (P.W.2) and Sundarapandi (deceased). The accused / appellant is the eldest son of P.W.1 and brother of the deceased. The accused had been demanding transfer of family property



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in his name. He attacked P.W.2 with Aruval on 04.12.2016. P.W.2 was admitted in the hospital. P.W.1, the mother was with him as attendant. P.W.2 was discharged from hospital on 07.12.2016. When P.W.1 and P.W.2 returned home, they were informed that the accused had killed the other son namely, Sundarapandi and buried him in Theni Pallivasal burial ground. Thereupon, P.W.1 went to Theni Police Station and lodged Ex.P1 / complaint on 07.12.2016 at about 11.00 pm. In the said complaint, Dhanapandi signed as a witness (Ex.P2). Based on the same, Crime No.918 of 2016 was registered for the offence under Section 174 of CrPC. P.W.22 / Kumaresan, the Inspector of Police took up investigation. He went to the spot at 07.00 am on 08.12.2016 and prepared a rough sketch. He examined the relevant witnesses. On 09.12.2016, the body of the deceased was exhumed from Theni Pallivasal burial ground at about 11.30 am. He also examined the grave diggers. Postmortem was conducted on the spot. Inquest was also conducted. The FIR was altered by including the offences under Sections 302 and 201 of IPC on 12.12.2016 and Ex.P13 / alteration report was submitted to the jurisdictional Magistrate. The accused was arrested on 15.12.2016. Confession was also taken from him. Based on



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the disclosure statement, the wooden log and coir ropes used for committing the offence were recovered at 19.30 hours on 15.12.2016 in the presence of P.W.18 / Village Administrative Officer and one Balusamy. Recovery mahazar was also prepared. After examining the postmortem doctors and after confirming that the death had taken place due to homicidal violence, final report was filed against the accused for the offences under Sections 302 and 201 of IPC before the Judicial Magistrate No.I, Theni. Final report was taken on file in P.R.C.No.7 of 2017. Summon was issued to the accused and copies were also served. The case was committed to Sessions Court and made over to Additional District and Sessions Court (FTC), Theni in S.C.No.76 of 2017.

3.The trial Court framed charges against the accused under Sections 302 and 201 of IPC. The accused pleaded not guilty and claimed to be tried. On the side of the prosecution, P.W.1 to P.W.22 were examined. Exs.P1 to P13 and M.O.1 to M.O.4 were marked. The incriminating circumstances were put to the accused during examination under Section 313 of CrPC and the accused characterized them as false. No evidence was adduced on the side of the defence.



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4.The learned trial Judge after consideration of the evidence on record came to the conclusion that the prosecution had established the charges against the accused beyond reasonable doubt. The charges were held to be proved and the accused was sentenced as mentioned above. Questioning the same, this criminal appeal has been filed.

5.The learned counsel for the appellant reiterated all the contentions set out in the grounds of appeal. She submitted that there are no eye witness to the occurrence. Her core argument is that the chain of circumstances established by the prosecution are not complete and do not unerringly point to the guilt of the accused. She further submitted that the accused had married one Latchakodi who is a divorcee and this was frowned upon by the other family members and that is why, a false case was foisted against the accused. She called upon this Court to set aside the impugned judgment and acquit the accused.

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



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7. We carefully considered the rival contentions and went through the evidence on record. The case of the prosecution is that the accused had two brothers namely, Dhanapandi and Sundarapandi and that the accused wanted the family property for himself and that he was threatening the mother to transfer the property in his name. The accused was residing at Viswadas Nagar. P.W.1 / mother and two other sons were residing at Sivaji Nagar. On 04.12.2016 at about 09.30 pm, the accused entered the Sivaji Nagar house and assaulted Dhanapandi with weapon and caused him injuries. In this regard, Dhanapandi lodged complaint before the jurisdictional police. He was taken to K.Villaku Government Hospital. Dhanapandi was admitted and he was under treatment till 07.12.2016. During this period, P.W.1 was also with Dhanapandi. Sundarapandi, the third son was suffering from mental illness. When P.W.1 and P.W.2 returned home on 07.12.2016, their neighbours informed them that Sundarapandi was done to death by Pandiarajan (accused).



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8.It is true that no eye witness had deposed that they saw Pandiarajan murdering his brother / Sundarapandi. The entire case of the prosecution rests only on circumstantial evidence.

9.P.W.1 / mother has not witnessed the occurrence. P.W.2 has also not witnessed the occurrence. But from a reading of the testimony of P.W.1 and P.W.2, one can come to the conclusion that Pandiarajan (appellant) had an eye on the family property and he was threatening the other family members to vacate the house at Sivaji Nagar and transfer the same in his name. P.W.1 deposed that she never wanted to transfer any property in favour of Pandiarajan during her lifetime. Thus, the relationship between Pandiarajan on the one hand and the other members of the family was under strain.

10.P.W.5 / Ganesan is the key witness. He was working as a grave digger at Theni Pallivasal burial ground. He categorically deposed that on the day when former Chief Minister Selvi.J.Jayalalitha passed away, at about 04.00 am in the morning, when he was sleeping at home, the accused accompanied by two persons came to his house and woke him



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up. When P.W.5 enquired them as to what was the matter, the accused

told P.W.5 that his brother had passed away and that he had to be buried.

P.W.5 informed the accused that he would require the assistance of his

co-workers namely, Ranjith and Muthuraj. P.W.5 asked Ranjith and

Muthuraj to join him. P.W.5 enquired the accused as to how the death

took place. The accused replied that the deceased was afflicted with HIV

disease. The accused gave Rs.1,000/- as advance. P.W.5 along with his

co-workers buried the body at Theni Pallivasal burial ground. Few days

later, the body was exhumed and postmortem was also conducted on the

spot. The chief examination of P.W.5 took place on 04.10.2018. He was

cross examined only on 20.06.2019. Even though the cross examination

took place after lapse of quite some time, P.W.5 could not be shaken.

P.W.6 / Paramasivam was also working as grave digger at Theni

Pallivasal burial ground. He also deposed that on the day when former

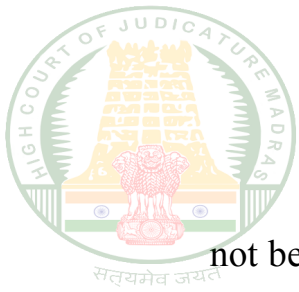
Chief Minister Selvi.J.Jayalalitha passed away, at about 04.00 am, he

received a phone call from P.W.5 to join him. Thereafter, P.W.6 /

Paramasivam called upon Ranjithkumar and all of them went to the

burial ground. At around 06.00 am, the dead body was brought. P.W.5,

P.W.6 and P.W.7 dug a pit and buried the dead body. His testimony could



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not be shaken during cross examination. The testimony of another grave digger is also on the same lines.

11.P.W.8 / Balamurgan was employed as ambulance driver. He deposed that at the instance of the accused, he had transported a dead body to Theni Pallivasal burial ground.

12.P.W.20 conducted postmortem and issued the postmortem certificate / Ex.P8. Ex.P9 is the final opinion given by the doctor. P.W.20, the doctor had noticed the following ante-mortem injuries on the dead body:

“THE FOLLOWING ANTE MORTEM INJURIES WERE NOTED:

1) A complete transverse ligature mark of size 46 x 2.5cm seen around in middle part of neck. The upper margin of the ligature mark lies 5cm below right ear. 9cm below chin and 5cm below left ear. The lower margin of the ligature mark lies 6cm above supra sternal notch. The skin of the ligature mark is dark in colour and hard in consistency. On bloodless dissection of neck, underlying soft tissues appears pale and there is



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extravasation of blood in surrounding soft tissues. Hyoid bone found fractured in its left side greater cornu with surrounding contusion.

2) Contusion of size 4 X 3cm seen in back of upper part of right shoulder.

3) Contusion of size 5 X 3cm seen in outer aspect of lower part of right side abdomen.

4) Contusion of size 4 X 3cm seen in back of lower part of right side abdomen.

5) Contusion of size 6 X 3cm seen in outer aspect of upper part of left arm.

6) Contusion of size 4 X 3cm seen in back of upper part of left side shoulder.

7) Contusion of size 4 X 3cm seen in outer aspect of middle part of left leg.”

His final opinion was to the effect that the deceased had died due to asphyxia and that he was strangled to death.

13.The accused was arrested on 15.12.2016 and based on his disclosure statement, M.O.1 / wooden log and M.O.2 to M.O.4 / coir ropes were recovered in the presence of P.W.18 / Village Administrative Officer.



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14.From a careful analysis of the foregoing evidence, we conclude that the following circumstances have been established beyond reasonable doubt by the prosecution:

(a) The accused had a strained relationship with his mother and brothers and that he was demanding transfer of the family property in his favour.

(b) The accused assaulted his brother / Dhanapandi (P.W.2) with a weapon on 04.12.2016, as a result of which, P.W.2 had to be in K.Villaku Government Hospital for three days.

(c) Sundarapandi (deceased brother) was alone as his mother / P.W.1 had to be with her injured son / P.W.2 in the hospital from 04.12.2016 to 07.12.2016.

(d) On the day following the death of former Chief Minister Selvi.J.Jayalaitha ie., 06.12.2016 at about 04.00 am, the accused approached P.W.5 / Ganesan (grave digger) to arrange burial of a dead body. The accused transported the dead body to Theni Pallivasal burial ground in an ambulance driven by P.W.8. At about 06.00 am on 06.12.2016 at the instance of the accused, the dead body was buried at Theni Pallivasal burial ground.



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(e) The dead body buried by the accused was exhumed on 09.12.2016 and it was identified as that of Sundarapandi by P.W.1 and P.W.2.

(f) The medical evidence is to the effect that there were contusions all over the body and Sundarapandi died due to asphyxia and on account of strangulation. Sundarapandi was said to be suffering from mental illness.

15.The prosecution has established beyond reasonable doubt that Sundarapandi died due to homicidal violence. He was buried in Theni Pallivasal burial ground. Sundarapani was not an orphan. He had a mother and two brothers including the accused. When death in a family takes place, it is normal that all the family members and relatives are informed. There will be performance of final ceremony and there will be a funeral procession also. It has been established beyond reasonable doubt that it was the accused who transported the dead body to the burial ground and arranged the burial.



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16.The question that arises for consideration is why the accused should have buried the dead body of his brother in a secretive manner without informing the mother and the other brother.

17.Section 106 of the Indian Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The accused can discharge his burden either by eliciting appropriate answers in the cross examination or by adducing evidence. In the case on hand, this onus has not at all been discharged by the appellant / accused.

18.The accused suggested that this was a case of suicide. The suicide theory has to be rejected. The medical evidence falsifies it. The postmortem certificate mentions the presence of several injuries and contusions on the body of the deceased. It has also been brought out in evidence that M.O.1 / wooden log can cause those injuries and that with the help of M.O.2 to M.O.4 / coir ropes, strangulation can be done.



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19.The case of the prosecution is that the deceased was tied down and then beaten and finally strangled. The testimony of grave diggers coupled with the testimony of ambulance owner and driver and also the testimony of the doctor, unerringly point to the guilt of the accused. The Court below rightly found the accused guilty of the charges. Interference is not warranted. The criminal appeal is dismissed.

(G.R.S. J.) & (R.P. J.)
06.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

- 1.The Additional District & Sessions Court (FTC),
Theni.
- 2.The Inspector of Police,
Theni Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

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G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.

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