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Crl.A.(MD)NO. 162 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2024

CORAM

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MS.JUSTICE R. POORNIMA**

Crl.A.(MD)No.162 of 2021

The State represented by
The Public Prosecutor,
High Court, Madras 104,
(Crime No.382 of 2010 on the
file of SIPCOT Police Station,
Thoothukudi District

... Appellant /Complainant

Vs.

Sudalaimuthu

... Respondent /Accused No.1

Prayer: Criminal Appeal filed under Section 378(1) of the Criminal Procedure Code, to set aside the judgment of acquittal of the respondent / accused passed by the Principal Sessions Judge, Thoothukudi in S.C.No. 104 of 2016 dated 04.02.2019.

For Appellant : Mr.T.Senthil Klumar
Additional Public Prosecutor

For Respondent : Mr.S.Manoharan

**JUDGMENT**

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The State has filed this appeal questioning the acquittal rendered by the learned Principal Sessions Judge, Tuticorin vide judgment dated 04.02.2019 in S.C.No.104 of 2016. A headless body was found in Jothi Nagar near Tuticorin to Yettayapuram Road on 07.11.2010 by the Village Administrative Officer of Sankaraperi Village. Based on her complaint, Crime No.382 of 2010 was registered by SIPCOT Police Station, Tuticorin. Investigation was taken up and the dead body was identified to be that of one Manoharan. The respondent herein / Sudalaimithu (A1) and one Gunasekaran (A2) were charged with having committed the crime. Final report was filed before the learned Judicial Magistrate No.3, Tuticorin. On account of the abscondence of the accused, the case was split up. The case against Gunasekaran (A2) was committed to the Sessions Court in S.C.No.214 of 2017. The case against Sudalaimuthu (A1) was committed to the Sessions Court in S.C.No.104 of 2016. The judgments were pronounced separately on 04.02.2019 acquitting both the accused, Crl.A(MD)No.162 of 2020 was filed questioning the acquittal of Sudalaimuthu (A1) and Crl.A(MD)No. 163 of 2020 was filed questioning the acquittal of Gunasekaran (A2).



Gunasekaran passed away during the pendency of these proceedings.

Therefore, Crl.A(MD)No.163 of 2020 was closed as abated. The only question that calls for consideration is whether the acquittal rendered in favour of Sudalaimuthu has to be reversed.

2.The learned Additional Public Prosecutor appearing for the State submitted that the impugned judgment suffers from perversity and that it has to be reversed.

3.Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment is well reasoned and that it does not call for interference. He also filed his written arguments.

4.We are conscious of the principles governing the exercise of our jurisdiction in such matters. The Hon'ble Supreme Court in the decision reported in **2024 INSC 104 (Mallappa & Others Vs State of Karnataka)** had held as follows:

“36. Our criminal jurisprudence is essentially based on the premise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to



prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”



5.We propose to examine the evidence on record as well as the impugned judgment of the trial Court in the light of the aforesaid principles.

6.The case of the prosecution is as follows:

Sudalaimuthu (A1) is a life convict. He had been convicted in 2 murder cases (Crime Nos.88 of 2001 and 104 of 2001 on the file of Thalamuthunagar Police Station). He was incarcerated in Central Prison, Trichy. On 30.10.2010, Sudalaimuthu (A1) came out for 3 days on parole. Sudalaimuthu (A1) conspired with Gunasekaran (A2) to murder one Manoharan, S/o.Malaiyarasan residing at D.No.30A/4, Anna Nagar 12th street, Tuticorin and make it appear as if the deceased person was Sudalaimuthu (A1). On 31.10.2010 at about 07.30 p.m, A1 and A2 came in a motor cycle and took Manoharan to a remote spot in Jothi Nagar. Manoharan was stabbed to death and his head was severed. The body was set on fire. The parole order of Sudalaimuthu was partially burnt and left at the spot to make it appear as if the deceased was Sudalaimuthu.



7. There is no eyewitness to the occurrence. The case of the prosecution rests on circumstantial evidence. We need to see if the chain of circumstances is complete and whether they unerringly point to the guilt of the respondent herein.

8.PW.1 Mrs.Kanagalakshmi was working as Village Administrative Officer of Sankaraperi during 2010. On receipt of information, she went to Jothi Nagar abutting Tuticorin – Yettayapuram road and found a headless body of a male in an abandoned well. The limbs had been tied. She lodged Ex.P1 complaint based on which Crime No.382 of 2010 was registered by SIPCOT Police for the offences under Section 302 and 201 of IPC.

9.PW.2 Mrs.Boopathi is a resident of Anna Nagar, Tuticorin. The deceased Manoharan was her relative. She deposed that on 31.10.2010 at about 07.00 a.m, Sudalaimuthu came to her house and took the said Manoharan in his motor cycle. She further stated that thereafter Manoharan did not return home. In the cross examination it was suggested to her that she was in illicit intimacy with the deceased and therefore her first husband had killed him. PW2 denied the said



suggestion. PW3 Shanmugaraj was the brother of the deceased Manoharan. PW4 was working as the Village Administrative Officer of Meelavittan during December 2010. He deposed that on 02.12.2010 at about 12 noon, the Inspector of Police arrested Sudalaimuthu and that based on his disclosure statement, MO2 LG mobile phone, MO3 mobile phone, MO4 & MO5 iron pipes, MO6 sickle and MO7 knife were seized. PW4 signed in the seizure mahazars. PW8 was working as Assistant Chemical Examiner / Deputy Director in Forensic Sciences Department, Chennai. She conducted the DNA tests. Her DNA report was marked as Ex.P11. DNA sample was extracted from the dead body that was the subject matter of Crime No.382 of 2010. It matched with the DNA of Pathirakali who was the admitted daughter of the deceased Manoharan. It was concluded that the culminative probability of paternity of the deceased Manoharan for being the father of Pathirakali is 99.9999999 %.

10.PW.11 performed post-mortem on the dead body. PW.12 Palani was working as Jail Superintendent, Central Prison, Trichy during 2010. He deposed that emergency leave for 3 days was given to Sudalaimuthu, S/o.Nallaperumal (Convict No.12000). Sudalaimuthu was to return to the prison on 03.11.2010. Since he did not surrender on the



appointed date, PW12 sent information to the Inspector of Police, South

Police Station, Tuticorin to arrest Sudalaimuthu and produce him. PW.

12 received information that on 02.12.2010, Sudalaimuthu was arrested by the Police personnel attached to Puthiyamputhoor Police Station and remanded in Central Prison, Palayamkottai. Sudalaimuthu was transferred to Central Prison, Trichy on 07.12.2010. PW13 was working as SI of Police in Puthiyamputhoor during the relevant time. She deposed that Sudalaimuthu signed before Puthiyamputhoor Police Station as per parole condition at 09.30 a.m on 31.10.2010. He however did not report on 01.11.2010, 02.11.2010 and 03.11.2010 before Puthiyamputhoor station. PW.13 entered this information in the general diary and communicated the same to Central Prison, Trichy over phone on 03.11.2010. PW.14 was the Inspector of Police, Puthiyamputhoor Police Station during the relevant time. He deposed that on 31.10.2010, Sudalaimuthu appeared before him and produced the parole order copy. He recorded the same. Even though Sudalaimuthu had come on 3 days parole, he did not appear on the subsequent 2 days. Hence on 03.11.2010, PW.14 informed the Superintendent, Central Prison, Trichy. Based on the intimation received from the Central Prison, Trichy he registered Crime No.178 of 2010 under Section 224 of IPC.



11.PW.16 was the Inspector of Police, SIPCOT Police during the relevant time. He took up the investigation in Crime No.382 of 2010 which was registered on the basis of Ex.P1 complaint received from PW1 Village Administrative Officer. He went to the spot and prepared observation mahazar and rough sketch. He collected the blood stained earth samples. He found a half burnt parole order of Sudalaimuthu and seized the same (Ex.P15). He conducted inquest and sent the body for post-mortem. He sent requisition to the Central Prison, Trichy to furnish the identification details pertaining to Sudalaimuthu including his photograph. PW.17 took up investigation from PW.16 on 10.04.2011. Since it was suspected that the deceased was one Manoharan, to establish the identity, PW.17 produced his daughter Pathirakali before the learned Judicial Magistrate No.1, Tuticorin. Her statement was also recorded on 22.04.2011. The second accused was thereafter formally arrested and police custody was taken. PW.19 continued the investigation thereafter. It was he who had arrested Sudalaimuthu on 02.12.2010 at 10.00 a.m. Based on the disclosure statement, recoveries were effected. He also took steps for conducting DNA tests of the parents as well as children of the deceased. PW.20 filed the final report.



12.The Court below acquitted the accused for the following

reasons :

- i) The prosecution failed to identify the dead body as that of Manoharan
- ii) The testimony of PW2 is not in consonance with the charge and she was not a credible witness
- iii) The incriminating circumstances against the accused (A1) are not sufficiently strong to find him guilty.

13.What has to be seen first is whether the prosecution has established that the deceased was one Manoharan. The person identified as the deceased Manoharan had a wife by name Esakkiammal, son named Rajesh, daughter named Pathirakali and father named Malaiyaran. The DNA report Ex.P11 was marked through PW8 Dr.Kamalatchi Krishnamoorthy. Her report ruled out the possibility of the deceased Manoharan being the son of Malaiyaran or the father of Rajesh. The conclusion of the forensic expert as regards Pathirakali is as follows:

“Inference: In a child, under each of the 15 STR locus, one allele should be contributed by the biological mother (maternal) and the other allele should be contributed by the biological father (paternal).”



1. Of the two alleles under each of the 15 STR loci found in Ms.Pathirakali, the admitted daughter of the deceased Manoharan, one allele (maternal) was contributed by the biological mother Ms.Isakkiammal and hence the other allele (paternal) ought to have been contributed by the father to this child.

2. All such paternal alleles, which ought to have been contributed by the father to this child Ms.Pathirakali are found to be present in the person to whom the femur bone (of ref 2) belongs.

3. Apart from the alleles accounted as present either in the biological mother Ms.Isakkiammal or in the person to whom the femur bone (of ref 2), belongs, no other unaccounted allele is present in Ms.Pathirakali.

4. Since the person to whom the femur bone (of ref 2) belongs is not found excluded from the paternity of Ms.Pathirakali under any of the 15 STR loci tested, the probability of his paternity has been computed.

5.The cumulative probability of paternity of the person to whom the femur bone (of ref 2) belongs for being the father of Ms.Pathirakali is 99.9999999%.

6. The cumulative chance of exclusion of any random man from the paternity of Ms.Pathirakali is 99.99999999999999% ”



14.It is true that the prosecution failed to examine the immediate members of the family of Manoharan. Neither Esakkiammal wife of Manoharan, nor Pathirakali, daughter of Manoharan were examined. However, PW3, the brother of Manoharan was examined. There cannot be any dispute that there was one Manoharan who was HIV positive. PW2 Mrs.Poopathi clearly deposed that the said Manoharan was in her house and that Sudalaimuthu took him in his motor cycle on the morning on 31.10.2010 and that Manoharan did not return thereafter. Her cross examination is significant. What was suggested to her was that she was in illicit intimacy with the deceased Manoharan and that her first husband who was also named Manoharan had killed him and that the accused was being falsely implicated. She denied the suggestion. PW17 who was one of the investigating officers deposed that he produced Pathirakali, daughter of Manoharan before the learned Judicial Magistrate No.1 and recorded her statement on 22.04.2011. It was not challenged. It is true that it was suggested to PW19 who was also an investigating officer that the deceased was not Manoharan, S/o.Malaiyarsan.



15. In the light of Ex.P11 DNA report and the evidence mentioned above, we are more than satisfied that the prosecution had established that the dead body found in Jothi Nagar on 07.11.2010 was that of Manoharan, father of Pathirakali, who was with PW2 on the fateful day. The circumstances against the accused will have to be noted. Admittedly, he was convicted in two different murder cases. He was incarcerated in Central Prison, Trichy. He was granted 3 days emergency leave. He was required to sign before the Inspector of Police, Puthiyamputhur Police station on 31.10.2010, 01.11.2010 and 02.11.2010. Sudalaimuthu signed before the said Police only on 31.10.2010. He did not sign on the subsequent 2 days. Ex.P10 is the seizure mahazar under which MO12 to MO15 were seized. MO15 is the blood stained and half burnt parole order of Sudalaimuthu. This mahazar was prepared on 07.11.2010 and it reached the learned Judicial Magistrate No.1, Tuticorin on 18.11.2010 itself. The Police as well as the Jail authorities were under the impression that it was Sudalaimuthu who had been killed and his head severed. That is why identification particulars including his photograph was sought from the Jail Superintendent, Central Prison, Trichy. Sudalaimuthu was arrested only on 02.12.2010. It is too obvious that Sudalaimuthu tried to pull the wool



over the eyes of the Police as well as the jail authorities. He wanted to make it appear that he had been killed. Since he had this criminal intention, he had taken the deceased Manoharan from the house of PW2. The deceased Manoharan was of similar build as that of Sudalaimuthu. In order to screen the crime he had also set fire to the body. That Sudalaimuthu was granted parole for 3 days has been convincingly proved through the testimony of PW.12 ; that he did not sign on 01.11.2010 and 02.11.2010 had also been proved through the evidence of PW13 and PW14. Sudalaimuthu admittedly went missing from 31.10.2010. He was secured only on 02.12.2010. Sudalaimuthu claimed during examination under Section 313 of Cr.P.C that the parole order was taken from him by SIPCOT Police and that they did not return it to him. This was obviously a false explanation. SIPCOT Police Station has nothing to do with Sudalaimuthu originally. Sudalaimuthu was required to appear only before the Puthiyamputhoor Police Station. He has also not explained as to his whereabouts from 31.10.2010 to 02.12.2010. These facts were only within the special knowledge of Sudalaimuthu. Section 106 of the Indian Evidence Act is as follows:



“106. Burden of proving fact especially within knowledge. - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

Sudalaimuthu miserably failed to discharge the burden cast on him. This can be taken as a culpable circumstance against him.

16.The trial court had directed its entire its attention on the identity of the dead body. Much of its reasoning has been devoted to demonstrating that the prosecution failed to prove that the deceased was Manoharan referred by PW.2. In fact, the identity cannot be said to be so fundamentally important. It was held in ***Prithipal Singh vs. State of Punjab (2012) 1 SCC 10*** that in a murder case, it is not necessary that the dead body of the victim should be found and identified, ie., conviction for offence of murder does not necessarily depend upon corpus delicti being found. In the case on hand, a dead body with a severed head was found. The question is whether the respondent had committed the crime. Since the half burnt parole order of Sudalaimuthu, the respondent herein was found near the dead body, the onus was entirely on Sudalaimuthu to satisfy the court as to how his parole order could have been there. It was very easy to connect the dots.



17. Section 3 of the Evidence Act defines the expression

“proved” as follows:

“Proved.—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. ”

It is true that in a criminal case, the prosecution is required to prove its case beyond reasonable doubt. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts (vide *Yogesh Singh vs. Mahabeer Singh [(2017) 11 SCC 195]*). The glaring circumstances cannot be lost sight of. In *Balvir Singh v. State of Uttarakhand (2023 SCC Online SC 1261)*, it was held as follows :

“62. These appeals remind us of what this Court observed in the case of *Dharam Das Wadhvani v. State of Uttar Pradesh*: “The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct.” The role of courts in



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such circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished.....

Sudalaimuthu had already been convicted in 2 murder cases. The convictions had become final. He had come out on parole for 3 days. He signed before the concerned Police only on the first day. Thereafter, he was not seen. The half burnt parole order was found near a dead body in an abandoned well. Its head had been severed. PW2 Mrs.Boopathi deposed that Sudalaimuthu came to her house on 31.10.2010 and took one Manoharan from her house and that the said Manoharan did not return thereafter. Manoharan referred to by PW2 had daughter by name Pathirakali. PW17 investigating officer produced the said Pathirakali before the Court and also arranged taking DNA sample from her. The said DNA sample matched with that of the deceased Manoharan.



18.This is a clear case where the last seen theory can be invoked. PW.2 Boopathi categorically deposed that on 31.10.2010 at about 07.00 A.M, Sudalaimuthu came to her house and took Manoharan in a motorcycle and that thereafter Manoharan did not return home. This incriminating circumstance was put to the accused during examination under Section 313 of Cr.Pc. Sudalaimuthu's reply was that Manoharan was still alive. Thus, he conceded the existence of Manoharan. He did not dispute that he had come to PW.2's house on 31.10.2010 and took Manoharan with him in a motorcycle. Thus, he made a positive assertion that Manoharan was still alive in the face of the prosecution version that Manoharan was killed. It is relevant to note that the accused disputed the incriminating circumstances as false. This particular incriminating circumstance alone was not denied. The court below failed to consider the aforesaid stand taken by the accused in the examination under Section 313 of Cr.PC.

19.It is not as if the respondent is being nailed only on the strength of the last seen theory. There are several other clinching circumstances which are adverse to him. The Court below brushed aside the presence of the half burnt parole order of Sudalaimuthu.



Sudalaimuthu did not dispute that the half burnt parole order pertained to himself. In the face of this undeniable circumstance, the onus shifted to the accused and it was not at all discharged. The respondent faced with the prospect of an indefinite period of incarceration had hatched a diabolic plan to identify a person of similar appearance and build and do away with him and make it pass off as if the deceased person was none other than himself. In order to screen the identity of the deceased, he went to the extent of severing the head of the deceased. The accused wanted to fake his death. That is why, the head was severed from the body.

20. In this view of the matter, we have no hesitation to come to the conclusion that the respondent is guilty of the crime. We would not characterise the judgment of the trial Court as perverse in its entirety. There was no legally acceptable evidence in respect of the charge of conspiracy. There is no convincing evidence against A2 Gunasekaran at all. But the findings of the Court below in respect of Sudalaimuthu can only be characterised as perverse. This is because, the court below cast the onus of explaining the presence of the half burnt parole order of Sudalaimuthu on the prosecution. The court below lost sight of Section



106 of the Evidence Act. The court below failed to attach any significance to the fact that Sudalaimuthu went missing after reporting before Puthiyamputhur Police Station in the morning of 31.10.2010 and was arrested only on 02.12.2010. Failure to consider material evidence amounts to perversity. We, therefore, set aside the impugned judgment insofar as the respondent is concerned. The respondent is found guilty of the offences under Sections 302 and 201 of IPC.

21.This case was listed for hearing on more than one occasion. Arguments were heard on 09.12.2024. The respondent was directed to be present in person. After finding him guilty, the matter was passed over to hear the respondent on the question of sentence. The accused told us in Tamil that he may not be visited with death sentence or life sentence. He wanted us to sentence him to imprisonment for a definite period {ஆயுள் தண்டனையோ, மரண தண்டனையோ வேண்டாம். வருச தண்டனையாக கொடுக்க வேண்டுகிறேன்.} The learned Additional Public Prosecutor on the other hand submitted that the case on hand would fall within the category of rarest of rare cases and pressed for imposing capital punishment on the respondent.



22.The respondent figured as A1 in SC No.447 of 2001 and SC No.173 of 2002 on the file of the Additional Sessions Judge cum Chief Judicial Magistrate, Tuticorin. Both were murder cases. But they ended in acquittal. The respondent was found guilty in two subsequent murder cases. The case on hand is fifth case in which he is involved. He had committed the crime when he was on parole. Call this case tomorrow (20.12.2024) to pronounce on the question of sentence.

23.Since the respondent has been found guilty, he shall be taken into custody forthwith.

[G.R.S., J.] [R.P., J.]
19.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

- 1.The Principal Sessions Judge,
Thoothukudi.
- 2.The Judicial Magistrate No.3,
Tuticorin.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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