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Crl.A.(MD)NO. 576 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

Crl.A.(MD)No.576 of 2023

Kalimuthu

... Appellant /
Sole Accused

Vs.

The State represented by
The Inspector of Police,
Avudaiyarkovil Police Station (Karur),
Pudukottai District.
(Crime No.01 of 2018)

... Respondent /
Complainant

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, to admit the appeal on file, to call for the records from the lower court in SC.No.37 of 2020 on the file of the Mahila Court, Pudukottai District and set aside the judgment dated 05.03.2022 by acquitting the accused and by allowing the Appeal.

For Appellant : Mr.K.Jeyamohan

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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J U D G M E N T

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

This Criminal Appeal is directed against the judgment dated 05.03.2022 made in S.C.No.37 of 2020 on the file of the learned Sessions Judge (Mahila Court), Pudukottai. By the impugned judgment, the appellant was convicted and sentenced as follows:

Convicted U/S.	Sentenced	Fine amount
201 IPC	To 7 years rigorous imprisonment	and to pay a fine of Rs.25,000/- in default to undergo S.I. for 1 Year
404 IPC	To 3 years rigorous imprisonment	and to pay a fine of Rs.25,000/- in default to undergo S.I. for 1 Year
449 IPC	To 10 years rigorous imprisonment	and to pay a fine of Rs.25,000/- in default to undergo S.I. for 1 Year

2.The case of the prosecution is as follows:

The deceased Kanagambal was the wife of the defacto complainant Kalimuthu. The defacto complainant and the accused were residents of Kumulur Village. They were living opposite to each other. There was a



property dispute between the defacto complainant and Lakshmanan, father of the accused. The defacto complainant was also the priest of the village temple. The defacto complainant declined to perform pooja for Lakshmanan. Angered by the defacto complainant's refusal, Lakshmanan beat him up. The defacto complainant took the matter to the village panchayat. Lakshmanan was fined Rs.5001/-. There used to be frequent quarrels between Kanagambal and the family of the accused. The accused concluded that Kanagambal was the cause for all the disputes. He therefore wanted to kill her. The defacto complainant and others had gone on Sabarimala pilgrimage. Kanagambal was alone in the house. On coming to know the same, the accused trespassed into her house at around 03.00 a.m on 06.01.2018 and after striking blows on the neck, he severed the head of Kanagambal. He also took away the gold jewellery found on her person. In order to cause disappearance of the evidence, he poured kerosene on the body of Kanagambal and burnt her.

3.While PW.1 was returning from the pilgrimage, he received information from PW.7 about the occurrence. He lodged Ex.P1 complaint. He indicated that there was prior enmity with the family of Lakshmanan. It was registered as Crime No.1 of 2018 on the file of



Karur Police Station for the offences under Section 302 of IPC. PW.11

took up investigation. He went to the occurrence spot and prepared observation mahazar and rough sketch. Inquest was conducted. Thereafter, the body was sent to Pudukottai Government Medical College Hospital for conducting post-mortem. Several witnesses were examined and their statements were recorded. PW.12 continued the investigation. He was enquiring the accused in connection with another murder case. The accused gave a voluntary confession on 24.09.2019 about his involvement in the subject crime. Based on his disclosure statement, the sickle used for murdering the deceased as well as the jewels robbed from her were recovered. After completing the other formalities, final report was filed. The case was taken on file by the learned Judicial Magistrate, Aranthangi in PRC.No.2 of 2020 and the case was committed to the Principal Sessions Court, Pudukottai since the case was exclusively triable by the Court of Sessions. The case was made over to Mahila Court, Pudukottai for disposal. The prosecution examined 12 witnesses and marked 19 exhibits. M.O.1 to M.O.12 were also marked. Incriminating circumstances were put to the accused. But, he characterised the same as false. On the side of the accused, no evidence was adduced. After hearing both sides and examining the



evidence on record, the learned trial Judge by the impugned judgment convicted him and imposed the sentence as mentioned above.

4.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of appeal and called upon this Court to set aside the impugned judgment and acquit the accused.

5.Per contra, the learned Additional Public Prosecutor submitted that the prosecution has convincingly established the charges against the accused beyond reasonable doubt and that the impugned judgment deserves to be sustained.

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

7.There is no dispute that Kanagambal, wife of the PW.1 died on account of homicidal violence. The question that calls for consideration is whether there is legally acceptable evidence against the appellant herein for finding him guilty of the offences under Sections 449, 302, 201 and 404 of IPC. There is no eye witness to the occurrence.



The case against the appellant is based on circumstantial evidence. The prosecution case rests on motive, last seen theory and recovery.

8.As regards motive, it has been clearly established by the prosecution. PW.1, husband of the deceased admitted that for more than 10 years, there has been a property dispute between his family and that of the accused. In the year 2009, the parents as well as the sister of the accused beat up the deceased. In that regard, complaint was lodged before the Karur Police Station and the accused was prosecuted. PW.1, being the temple priest, refused to perform poojas for the accused. In 2017, when Lakshmanan came to the temple, PW.1 did not give him viboothi. Hence, Lakshmanan beat up PW.1. PW.1 complained to the village head. Panchayat was convened. Lakshmanan was fined Rs. 5001/-. Lakshmanan refused to pay the fine. In the meeting, the accused stood up and declared that since his father had been publicly humiliated because of Kanagambal and PW.1, consequences would soon follow. Four months prior to the occurrence, the accused came to the defacto complainant and requested him to carry out pooja service in connection with the hair offering of his daughter. PW.1 told him that if the villagers would make a request, he would do pooja but not otherwise. The



accused is said to have threatened PW.1 with dire consequences. PW.2 /

Chandran, PW.3 / Ayyappakumar, PW.4 / Muthuraman, PW.5 / Paulraj and PW.7 / Elambal have also deposed about the long standing enmity between the two families.

9.It is well settled that motive by itself is not sufficient to prove the guilt (*Vide State of M.P Through C.B.I., Etc Vs Paltan Mallah, 2005 (3) SCC 169*) and that motive alone can hardly be a ground for conviction (*Vide Sunil Rai Alias Pauya & Others Vs Union Territory, Chandigarh, (2011) 12 SCC 258*).

10.PW.5 Paulraj is the village head. He knew the accused as well as the deceased. He deposed that PW.1, husband of the deceased left for Sabarimala on 02.01.2018. On 05.01.2018, at around 09.00 p.m, he organised a meeting regarding distribution of water for irrigation. After the meeting was over, he returned home. It was informed by one Kupusamy and Balasubramanian that a person was irrigating his field. PW.5 went with those two persons to the field and found that Sundaram, S/o.Chelliah was irrigating his field. He shouted at him and returned home. It was around 12.15 a.m midnight when he returned home. When



PW.5 returned, he found the accused standing near the house of the deceased. Only at around 03.00 a.m, he heard a big noise in the house of the deceased and when he rushed out he saw the house ablaze.

11.The question that calls for consideration is whether on the strength of this testimony of PW.5, the last seen theory can be invoked against the accused. The Hon'ble Supreme Court in its decision reported in **2006 (10) SCC 172 (Ramreddy Rajeshkhanna Reddy Vs State of A.P)** had held that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It was further held that even in such a case Courts should look for some corroboration. In this case, the accused was only found standing near the house of the deceased. The accused is not a stranger to the village. On the other hand, he was very much a permanent resident of the village. More than anything else, he was residing in the opposite house. If at 12.15, past midnight, PW.5 can walk past the house of the deceased, there is nothing unusual in the accused standing near the house of the deceased. Of course, the learned counsel



for the accused would dispute even this testimony. Even according to

PW.5, he saw the accused near the house of the deceased at 12.15 a.m .

The occurrence however took place only at 03.00 a.m. From the fact that the accused was found near house of the deceased at 12.15 past midnight, one cannot come to the conclusion that it was he who was the author of the crime. There is no necessary connection between the two. In the absence of any corroboration, the conviction could not have been based on the last seen theory.

12.The Court below was of the view that the case against the accused had been established by the prosecution beyond reasonable doubt on the strength of recovery of gold jewellery belonging to the deceased.

13.The accused was arrested on 24.09.2019 in connection with Crime No.110 of 2019 on the file of Avudaiyarkoil Police Station. According to the prosecution, he had given a voluntary confession in that case. Subsequently, on 14.10.2019, the accused was arrested in the case on hand. Police custody was taken from 17.10.2019 to 19.10.2019. On 18.10.2019, the accused gave confession. Ex.P7 is the admissible



portion of the said confession. Based on the said disclosure statement, under Ex.P6, the gold articles M.O.1 to M.O.5 were recovered in the presence of PW.8 and one Vedaraj. On the same date, at around 9.30 hrs, under Ex.P5 seizure mahazar M.O.12 sickle was also recovered. M.O.1 to M.O.5 are as follows:

- MO1 - gold chain weighing 39.860 gram
- MO2 - gold dollar weighing 15.600 gm
- MO3 - gold bead 2 No's weighing 3.300 gm
- MO4 - 2 Gold earrings weighing 3.390 gm
- MO5 - Gold ring with red stones weighing 3.730 gm

14.As rightly pointed out by the learned counsel for the appellant, if there was a robbery of the jewellery found on the person of the deceased, there would have been a reference to the missing jewellery in the complaint. The fact that those details were absent in Ex.P1 complaint throws considerable doubt on the prosecution case.

15.The occurrence took place on 06.01.2018 at 03.00 a.m. The accused had not absconded from the village. He was arrested only on 24.09.2019. The recovery took place on 19.10.2019. The gold jewellery



had been buried on the banks of the tank near the house of the aunt of the accused at Thunjanur. Even according to PW.1, M.O.1 gold chain was not the one worn by his wife. Moreover, it is highly doubtful if the gold jewellery could have been kept buried in an open place. There are five items of jewellery. If it was a murder for gain, obviously the gold jewellery would have been converted into cash. It is difficult to believe that for 1 ½ years, the jewellery were kept intact and untouched by the accused. The Hon'ble Supreme Court in its decision reported in **2021 INSC 706 (Bijender Vs State of Haryana)** had held that though the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material, however, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. It was further held that the period of interval between the malfeasance and the disclosure is a relevant factor to consideration while gauging the intrinsic evidentiary value and credibility of the recovery. Furthermore, the Hon'ble Supreme Court in its decision reported in **2024 INSC 60 (Krishnan Vs State of Haryana)**, elucidated factors that rendered the prosecution theory regarding recovery very suspicious and doubtful. In the case above, recovery was made after a month of the occurrence



and from an open place in a garden. The Hon'ble Supreme Court characterised the recovery as “unreliable” and allowed the appeal. In the present case, several factors throw considerable doubt on the recovery. The omission in the complaint about the missing articles goes to the root of the matter. More than 1 ½ years had lapsed between the occurrence of the crime and recovery of the golden articles. The place of recovery also raises doubt if the articles were really recovered as claimed by the prosecution.

16. In the light of the Hon'ble Supreme Court's categorical pronouncement in *Krishnan Vs State of Haryana*, we are of the view that the guilt of the appellant cannot rest on recovery alone. The case on hand involves a brutal murder of an unarmed woman. Her head was severed and her body was burnt. However, as held by the Hon'ble Supreme Court in more than one case, the brutality of the offence does not dispense with legal requirement of proof beyond reasonable doubt. In this case, there is no legal evidence to prove the involvement of the accused and connect the crime to him except for the motive.



17.The learned Additional Public Prosecutor insinuated that the accused was found guilty of murder in another case and that except the accused no other person in the village had any motive to do away with the deceased. But it is well settled that there cannot be something called moral conviction. When there is no legally admissible evidence against the appellant, we have to necessarily interfere in his favour. The accused can be held guilty on the strength of circumstantial evidence only if the chain of circumstances is so complete and they unerringly point to his guilt. Such is not a case here. The impugned judgment is set aside. The appellant is acquitted. His bail bond stands discharged.

18.This Criminal Appeal is allowed accordingly. No costs.

[G.R.S., J.] [R.P., J.]
11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA

To:

1.The Sessions Judge (Mahila Court),
Pudukottai.



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G.R.SWAMINATHAN,J.

AND

R.POORNIMA, J.

MGA

- 2.The Judicial Magistrate,
Aranthangi.
- 3.The Inspector of Police,
Avudaiyarkovil Police Station (Karur),
Pudukottai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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