



CrI.A.(MD) No.795 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

CrI.A.(MD) No.795 of 2023
and
CrI.M.P.(MD) No.17373 of 2023

Kalimuthu

... Appellant

-VS-

State, rep.by
The Inspector of Police
Dhevaram Town Police Station
Theni District
(Crime No.324 of 2015)

... Respondent

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure against the Judgment dated 21.06.2023, in S.C.No.90 of 2016, on the file of the Additional District (Fast Track) Court, Theni.

For Appellant : Mr.M.Maran

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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J U D G M E N T

[Judgment of the Court was made by A.D.JAGADISH CHANDIRA, J.]

This criminal appeal is filed against the judgment and order dated 21.06.2023, passed in S.C.No.90 of 2016, by the learned Additional District Judge, Fast Track Court, Theni,

2. The Trial Court framed a charge against the appellant, as detailed below:

Charge	Penal Provision
1	302 I.P.C.

3. By judgment and order dated 21.06.2023, the Trial Court convicted the appellant and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
302 I.P.C.	To undergo imprisonment for life	Rs.1000/- in default to undergo simple imprisonment for one (01) month.

The period of sentence already undergone was directed to be set off under Section 428 of the Code of Criminal Procedure.



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4. The prosecution case is as under:

4.1. The deceased Chellapandi had illicit intimacy with the appellant/accused Kalimuthu's wife, namely, Muthu. On coming to know about the same, the appellant/accused had reproached his wife, due to which, the appellant's wife left the matrimonial home and went to her parental home along with her children. Hence, the appellant/accused nurtured enmity against the deceased and had premeditated to kill him.

4.2. In order to execute his intention, on 26.08.2015, at 08.00 p.m., the appellant/accused had taken the deceased Chellapandi to the *de facto* complainant Chellathai's (P.W.1) banana farm, which is situated close to a Government Tasmac Shop and had made him to consume liquor and while the deceased was in intoxication, the appellant had assaulted him with a wooden log (M.O.4) and thereafter, pushed him into a small water tank near a Well and immersed his head into the pool of water, due to which, Chellapandi died of immersion drowning. Initially the case in Crime No.325 of 2015, on the file



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4.3. After examining various witnesses and collecting reports from the experts, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.7 of 2016, before the learned District Munsif-cum-Judicial Magistrate, Bodinayakkanur, under Section 302 I.P.C. against the appellant.

5. On appearance of the appellant, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Sessions, Theni District, in S.C.No.90 of 2016 and was made over to the Additional District and Sessions Court, Theni, for trial. The Trial Court framed a charge against the accused, as detailed in Paragraph No.2, supra.



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6. When questioned, the appellant pleaded "not guilty". To prove the case, the prosecution examined eighteen witnesses and marked fifteen exhibits and four material objects. When the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the appellant nor any document marked.

7. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 21.06.2023, found the appellant guilty and convicted and sentenced him, as detailed in Paragraph No.3 supra. Challenging the above said conviction and sentence, the accused has filed the present appeal.

8. Mr.M.Maran, learned counsel for the appellant, would submit that it is a case of circumstantial evidence. Originally, the case was registered under Section 174 Cr.P.C. Since the accused was not known at that time, the relatives of the deceased resorted to a road roko and subsequently, the appellant was taken into illegal custody and based on his confession statement recorded in the Police Station, he was falsely implicated in this



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The case records have been tampered and manipulated to fix the appellant falsely in this case. Further, he would submit that in a case of circumstantial evidence, the prosecution is bound to prove the circumstances to substantiate its case. Whereas, in the present case, the prosecution has not let in cogent evidence to prove its case. The Trial Court failed to take into consideration the exaggerations and materials contradictions and embellishments in the evidence of the prosecution witnesses. The interpolations in Column No.4 of the Inquest Report (Ex.P11) would prove the manipulations done by the Investigating Officer to fix the appellant in this case. The evidence of Selvakumar (P.W.6), Marimuthu (P.W.7), Balamurugan (P.W.8) and Andavar (P.W.9) for having seen the appellant lastly along with the deceased cannot be believed, since, even as per the prosecution case, the motive is that there was a previous enmity between the appellant and deceased on account of the deceased was having illicit intimacy with the wife of the appellant and in such circumstances, it would not have been a natural conduct for the deceased to accompany the appellant for consuming liquor. He would further contend that there are several loose ends and missing links in the prosecution case creating grave doubts and thereby the prosecution has failed to prove its case beyond all reasonable doubts. Further, he would submit that the medical evidence is not conclusive as to whether the death is



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on account of homicidal death or due to drowning. Though it is a case of the prosecution that the appellant and the deceased consumed liquor together, the viscera report (Ex.P13) does not disclose the presence of either alcohol or poison in the internal organs of the deceased, thereby belying the prosecution case that they drank together. Further, the evidence of Dr.Sudha (P.W.14) is also not cogent and clear as to whether the death of the deceased is homicidal death. Further, the deceased was a hale and healthy man and if his death was a homicidal death by immersion into water, there would have been a resistance and violence from the victim/deceased resulting in several marks on the body. However, except a small abrasion, there were no other injury or mark to show that the death was on account of homicidal violence and further the evidence of Dr.Sudha (P.W.14) also does not categorically concludes that the death was a homicidal one. The non examination of the auto driver who is said to have taken the prosecution witnesses and the deceased to the hospital and the non examination of the doctor who is said to have seen and examined the deceased and declared him dead also creates a doubt in the prosecution case. Though it is the case of the prosecution that the accused was arrested on 03-09-2015, it is the admitted evidence of PW1 that she had seen him in the police station on the next day suggests that the accused was arrested on 27-08-2015 itself and was kept in illegal custody thereby belying the case of



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the prosecution regarding arrest, recovery and confession. In such circumstances, when the prosecution has failed to prove its case beyond reasonable doubts the appellant cannot be convicted on mere suspicion and surmises and thereby he is entitled for the benefit of doubt and for acquittal.

9. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent, would submit that though it is a case of circumstantial evidence, the evidences of Selvakumar (P.W.6), Marimuthu (P.W.7), Balamurugan (P.W.8) and Andavar (P.W.9) would speak about the deceased being seen in the company of the appellant immediately prior to his death and further PWs 6 and 7 are the panchayatdars to the inquest and a mention has been made about them in Column 4 of the Inquest Report Ex P11 having last seen the appellant and the deceased prior to his death. Further, when Mahalakshmi (P.W.2) was going in search of her husband (deceased), she had seen the appellant returning from the banana farm in a wet condition. Further, when appellant was questioned with regard to he being last seen in the company of the deceased, he had not given any proper explanation other than mere denial. Further, he would submit that the accused had caused injury with the wooden log (M.O.4) resulting in abrasion on the left thigh of the deceased. He would further submit that the prosecution has proved its case



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beyond all reasonable doubts and the Trial Court has rightly convicted the appellant and thereby would seek for dismissal of the appeal.

10. In reply, learned counsel for the appellant would submit that though it is a case of the prosecution that Chellathai (P.W.1) and Mahalakshmi (P.W.2) are said to have seen the appellant coming in the opposite direction when they were going towards the banana farm , Chellathai (P.W.1) has not spoken about the appellant coming out in a wet condition. Further, in the complaint (Ex.P1), she has not stated anything about having seen the appellant just prior to the time of occurrence and she has also not stated about having any suspicion on him. Further in Ex. P11 there had been tampering in Column 4 and interpolations have been made creating a doubt with regard to the last seen theory suggested by the prosecution. In so far as the submission of the learned Additional Public Prosecutor that the appellant has failed to give any explanation in his statement recorded under Section 313 Cr.P.C., is concerned, the basic principle of criminal jurisprudence is that only after the prosecution discharges its duty of proving its case beyond all reasonable doubts, false explanation or non-explanation of the accused would be taken into consideration. In this case when the foundational facts have not been proved beyond reasonable doubts, the burden of proof cannot be shifted



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11. Heard Mr.M.Maran, learned counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent and carefully perused the materials available on record.

12. Admittedly, it is a case of circumstantial evidence. In such circumstances, what is to be seen is whether the prosecution has proved its case beyond all reasonable doubts by letting in cogent evidence and whether the Trial Court is right in appreciating the evidence of the witnesses and finding guilt on the accused.

13. The case of the prosecution, as culled out from the evidence, is that Chellathai (P.W.1), mother of the deceased, is residing at Ward No.14, Thideerpuram, Dhevaram and she is a coolie. She is having a banana farm near Devikulam Government Tasmac Shop. Her husband had passed away twenty years ago. The deceased Chellapandi is her son and that he had married one Mahalakshmi earlier and due to misunderstanding, he got divorce from her. Thereafter, he married Mahalakshmi (P.W.2) and they have begotten



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two children. Prior to three years, at 12.00 Noon, her son had gone to the banana farm and he did not return back till 08.00 p.m. She along with her daughter-in-law Mahalakshmi (P.W.2) went in search of her son and when she was on the way to the farm, she found the appellant coming in the opposite direction and when she enquired the appellant about her son, he had replied that her son was swimming in the water tank. When she (P.W.1) and P.W.2 went there, she had seen her son lying in the water tank battling for life. Thereafter they had lifted and laid him on the floor and they came to road, where they had seen Raja (P.W.3) and Thangapandi (P.W.4) and informed them about the condition of her son and with their help, they had taken her son to Uthamapalayam Government Hospital, where the Doctor on examining her son declared him dead and thereafter, on the next day, after burying the deceased, she (P.W.1) went to the respondent – Police Station and gave a complaint orally and it was written by Raja (P.W.3). She (P.W.1) had further deposed that the appellant had informed her that her son was having illicit intimacy with his wife and thereby, he had murdered him.

14. In her cross-examination, Chellathai (P.W.1) had stated that she had seen lastly seen her son at 12.00 Noon and that the appellant had informed her at 07.00 p.m., that her son is dead and thereafter, she had



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picked up her son to the Hospital at 07.30 p.m., and on the next day, she had given complaint. She had also deposed that her son was buried on the next day at 05.00 p.m., and only thereafter, her relatives have resorted to a road roko and only thereafter, the Police came there and received the complaint from her and that at the time of giving complaint, she had informed about the suspicion on the appellant and also told them that the appellant had informed her about having murdered her son on the previous day at 07.00 p.m., and at that time, except her and her daughter-in-law(PW2), no one else was there and thereafter, she went to the place of occurrence and found her son dead in the water tank and that at that time, she did not think of informing the Police. She had also admitted to have seen the appellant in the Police Station on the next day of the occurrence.

15. Mahalakshmi (P.W.2) is the wife of the deceased. She had deposed in the chief-examination that on 26.08.2015, around 12.00 Noon, her husband (deceased) had gone along with the appellant and thereafter, her husband did not return back till 08.00 p.m., and that she along with her mother-in-law (P.W.1) had gone to the farm in search of him and while they were on the way, they had seen the appellant coming in a wet condition in the opposite direction and that when she enquired the appellant, he informed her



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that her husband was floating in the water tank inside the farm and that thereafter, they went inside the farm and pulled her husband out of the tank and laid him in the floor and went to the road and called Raja (P.W.3) and Thangapandi (P.W.4) and with their help, they took her husband to the Uthamapalayam Government Hospital in an auto rickshaw and that after examining her husband, the Doctor declared him brought dead and that on the next day morning, her mother-in-law (P.W.1) had given a complaint (Ex.P1) suspecting the appellant and that the accused had also told her that he had murdered her husband as he was having illicit intimacy with his wife.

16. In her cross-examination, Mahalakshmi (P.W.2) had stated that she had seen the appellant near the Wine Shop and that the police have arrested the appellant after one week and in between she had not seen the appellant and that the Police had enquired the appellant in her presence.

17. Raja (P.W.3) had deposed about having lifted the deceased from the water tank and had taken him to the Government Hospital in the Autorickshaw and deposed about the Doctor declaring the death of the deceased and he has spoken about having written the complaint (Ex.P1) and having attested the same. His attestation is Ex.P2. In his cross-examination,



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he had admitted that he is the person, who had written the complaint (Ex.P1) and that in the complaint (Ex.P1), he had mentioned about the suspicion on the appellant and having mentioned his name in the complaint (Ex.P1).

18. Thangapandi (P.W.4) is the yet another witness, who is said to have accompanied Chellathai (P.W.1) and Mahalakshmi (P.W.2) to the Hospital in the Autorickshaw and he had also attested the complaint (Ex.P1). His attestation in the complaint is Ex.P3. In his cross-examination, he had deposed that he was along with Mahalakshmi (P.W.2) till the deceased was buried and he had attested the complaint (Ex.P1).

19. Selvamurugan (P.W.5) is the witnesses to the preparation of the observation mahazar (Ex.P4). In his cross-examination, he had deposed that the police had not recovered anything from the scene of occurrence.

20. Selvakumar (P.W.6) is the witness, who is said to have lastly seen the appellant and the deceased. He had deposed that before 2 ½ years, around 06.00 p.m., he had gone to a Brandy Shop for drinking liquor and at that time, he had seen the appellant and the deceased purchasing liquor and going into the farm of the deceased. He had also deposed that he had seen the



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appellant coming back in a wet condition with mud over his body and that he had once again gone to the Tasmac Shop at 08.00 p.m., and at that time, Chellathai (P.W.1) enquired him as to whether he had seen her son and he had informed her that her son and the appellant had gone inside the farm and that at 08.30 p.m., he had seen Chellathai (P.W.1) coming with Mahalakshmi (P.W.2) wailing that her son was dead.

21. Marimuthu (P.W.7) is yet another witness for the last seen theory. He had deposed that he is the owner of a Petty Shop near the Tasmac Shop. He had deposed that on 26.08.2015, at 06.00 p.m., the deceased and the appellant purchased water packet and tumbler in his shop and went inside the banana farm and that at 08.00 p.m., he had seen Chellathai (P.W.1) and Mahalakshmi (P.W.2) crying and later, he was informed that they had taken the deceased to the Hospital, where he was declared dead. In his cross-examination, he had deposed that he used to get about 50-100 customers everyday and he may not be able to remember what products were purchased by them.

22. Balamurugan (P.W.8) is a resident of Dhevaram Village. On 26.08.2015, he had seen the appellant and the deceased buying liquor and



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going into the banana farm and that later, he came to know that at 08.00 p.m., the deceased was found dead in the water tank and that on the next day morning, he came to know that the appellant had murdered the deceased. In his cross-examination, he had deposed that he came to know about the death of the deceased from the neighbours and he had denied about having given a false complaint, since he happens to be a relative of the deceased.

23. Andavar (P.W.9) is the yet another witness, who has spoken about having seen the deceased and the appellant at about 07.00 p.m., on 26.08.2015 and that at 08.00 p.m., he came to know from Chellathai (P.W.1) and Mahalakshmi (P.W.2) that the deceased/victim was dead and that they had taken the deceased to the Hospital and he also heard that since the deceased was having illicit intimacy with the wife of the appellant, the appellant had given brandy to him and killed him. However, in his cross-examination, he had admitted to have not informed the Police about having seen the deceased and the appellant together and that he had not gone to the farm of the deceased.

24. Jeyapandi (P.W.10) is a relative of the deceased. He had deposed that on 26.08.2015, he was informed that the deceased was taken to



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the Hospital in a serious condition and that while he was getting ready to go to the Hospital, he was informed that the deceased was dead and he also came to know that the deceased was having illicit intimacy with the wife of the appellant and that was the reason why the appellant had committed the murder of the deceased. In his cross-examination, he had deposed that he had gone to the house of the deceased around 08.30 p.m., and at that time, they took the deceased to the Hospital and that the body was not brought back and postmortem was done in the Hospital.

25. Palanisamy (P.W.11), who was examined to speak about the motive, had not supported the case of the prosecution and thereby, he was treated as a hostile witness.

26. Muthuraj (P.W.12), Head Constable, had deposed that he was deputed the duty to handover the body of the deceased to the postmortem Doctor and after autopsy, to hand over the body to the relatives of the deceased and thereafter, he had collected the Lungi (M.O.1) and Shirt (M.O.2).

27. Nagarajan (P.W.13), Village Administrative Officer, was examined to speak about the recovery of material objects, arrest and



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confession statement of the appellant. He had deposed that on 03.09.2015, while he was in his office at 07.00 a.m., the Inspector of Police, Dhevaram Police Station, had informed him that he had arrested the suspected accused in Crime No.324 of 2015 registered under Section 174 Cr.P.C., and he along with the Village Assistant had gone to Sellaayamman Temple at 07.15 a.m., and at that time, the arrested accused was there and that he had given confession in their presence and that he and the Village Assistant attested the same. The admissible portion of the confession statement is Ex.P5. Subsequently, the appellant had confessed about the murder and he had taken them to his house, where he handed over the blue colour shirt and lungi worn by him at the time of occurrence and they were recovered under a cover of mahazar (Ex.P6). Thereafter, the appellant had taken them to the banana farm at 10.30 a.m., and had taken out the 180 ml. brandy bottle (M.O.3) and wooden log (M.O.4) and the same were recovered under the cover of mahazar (Ex.P7) and that he and his assistant had attested the same.

28. Dr.Sudha (P.W.14) is the Doctor, who had conducted autopsy. She had deposed that on 27.08.2015 at 12.30 p.m., she had performed autopsy on the body of the deceased and that she had found rigor mortis in the body and that she had also seen a froth on the mouth and abrasion on the



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left thigh and she had issued postmortem report (Ex.P8). As per the postmortem report (Ex.P8), she had found the following injuries:

“Both arms are by the side of the body. Both legs are extended. Teeth completed. Tongue within oral cavity. Both eyes are closed. White coloured frothy discharge seen left side of angle of mouth.

External Injuries: Abrasion on left side of thigh.

Internal examination : On opening of skull – No fracture of skull bone. Brain and its substances are pale. Hyoid bone intact. Thorax no fracture of rib bones. Both side of lungs are pale. All chambers of the heart filled with blood. Abdomen: Stomach contains black coloured semisolid materials about 200 gms. Intestine filled with gas, liver, spleen and both kidneys are congested. Urinary Bladder – Empty. Stomach and its contents loops of intestine. Sample of liver, one kidney and preservative sent to Chemical analysis. Postmortem concluded at 1.40 p.m., on 27.08.2015.”

29. P.W 14 had sent the viscera for chemical analysis and Ms.Hameeda Begum (P.W.16), Scientific Officer, had examined the viscera and she had given a viscera report (Ex.P13) stating that no poison was detected in the internal organs of the deceased and based on the viscera report (Ex.P13), Dr.Sudha (P.W.14) had given her final opinion (Ex.P9) stating that the cause of



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death was due to drowning. A perusal of the evidence of Dr.Sudha (P.W.14) shows that she has not given any categorical finding that the death was a homicidal one.

30. Selvakumar (P.W.15) is the Sub Inspector of Police. He had deposed that while he was on duty on 27.08.2015, based on the complaint (Ex.P1) given by Chellathai (P.W.1), he registered a case in Crime No.324 of 2015 under Section 174 Cr.P.C. The first information report is Ex.P10. He had forwarded the same to the Tahsildar / Executive Magistrate as well as to the higher officials and on the same day, at 09.15 a.m., when he had gone to the place of occurrence, the relatives of the deceased had indulged in a road roko and that he had gone to the Government Hospital at 10.00 a.m., where he had conducted inquest in the presence of panchayatars at the mortuary between 10.30 a.m., and 11.45 a.m., in the presence of the Panchayatars and he had prepared the inquest report (Ex.P11) and thereafter, he had deputed Muthuraj (P.W.12), Head Constable), for the purpose of attending the postmortem duty and receiving viscera and after completion of postmortem, he had gone to the place of occurrence at 14.30 hours and prepared observation mahazar (Ex.P4) and rough sketch (Ex.P12) in the presence of Selvamurugan (P.W.5) and Senthilkumar (not examined) and obtained their signatures and



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that when he had searched for the accused he was absconding and thereafter he had given a representation to forward the original first information report (Ex.P10) from the file of the Judicial Magistrate, Uthamapalayam to the file of the Judicial Magistrate, Bodi.

31. Selvakumar (P.W.15), in his cross-examination, had admitted that the victim/deceased was taken to the hospital at 11.00 p.m., and that only after the victim was declared dead, the complaint (Ex.P1) was given at 08.30 a.m., on the next day. He had further deposed that he had not received any information from the Government Hospital and that the complainant was responsible for the delay in lodging the complaint and that Chellathai (P.W.1) had not informed in her complaint (Ex.P1) that on whose instructions she had gone to the banana farm and she had not informed about having suspicion on the appellant. He had further admitted that the case was registered at 08.30 a.m., and the first information report (Ex.P10) had reached the Tahsildar/Executive Magistrate only at 02.25 p.m., and that he had sent the first information report (Ex.P1) at 09.30 a.m., to the Executive Magistrate and he was not aware through whom it was sent to the Executive Magistrate. He had further admitted that the witnesses who have attested the observation mahazar (Ex.P4) are not the persons living nearby the place of occurrence.



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32. Ms.Hameeda Begum (P.W.16), Scientific Officer, had spoken about the examination of the viscera and issuance of viscera report (Ex.P13).As stated above she had not detected any poisonous substance in the viscera.

33. Philip Kennedy (P.W.17), Inspector of Police, had deposed that on 03.09.2015, since the Inspector of Police, Dhevaram Police Station, had gone on medical leave, he had taken up the case for investigation and examined the witnesses, namely, Chellathai (P.W.1), Mahalakshmi (P.W.2), Raja (P.W.3), Thangapandi (P.W.4), Selvamurugan (P.W.5) and Senthilkumar (not examined) and that since Selvakumar (P.W.15), Sub Inspector of Police had already examined and obtained their statements and since they had stated the same facts, he did not record their statements again and that since Selvakumar (P.W.15), Sub Inspector of Police, had prepared observation mahazar (Ex.P4) and rough sketch (Ex.P12), he did not prepare the same and that on the same day, he had arrested the appellant and that the appellant had given confession statement in the presence of Nagarajan (P.W.13), Village Administrative Officer and Village Assistant that he had recorded the confession statement and obtained the signatures of the appellant and the



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witnesses and later, recovered 180 ml brandy bottle (M.O.3) and wooden log (M.O.4) under the cover of mahazar (Ex.P7) and thereafter, he had examined the witnesses and altered the case from 174 Cr.P.C., into one under Section 302 I.P.C., and sent the alteration report (Ex.P14) to the Judicial Magistrate, Bodi and thereafter, since the witnesses Selvakumar (P.W.6) and Marimuthu (P.W.7) agreed to give statement under Section 164(5) Cr.P.C., he had given a requisition to the Judicial Magistrate, Uthamapalayam and thereafter, since the Inspector of Police, Dhevaram Police Station, took charge, he had handed over the CD file to him and also instructed the Writer to produce the recovered material objects to the Court and also advised Selvakumar (P.W.13), Sub Inspector of Police, to transfer the first information report (Ex.P10) and the preliminary reports from the file of the Executive Magistrate to the Judicial Magistrate.

34. In the cross-examination, Philip Kennedy (P.W.17), Inspector of Police, had deposed that he took up the investigation on 03.09.2015 and completed the same on 04.09.2015 and that complaint (Ex.P1) in respect of the incident taken place on 26.08.2015 was given on 27.08.2015 at 08.30 a.m., and that Chellathai (P.W.1), in her complaint (Ex.P1), had stated that her son, who had gone out at 08.00 p.m., on the previous day, did not return



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back to home and that in the complaint (Ex.P1), there was no reference to the person, who had informed about having seen the victim in the farm and that in the complaint (Ex.P1), it was stated that when Chellathai (P.W.1) and her relatives went to the farm, they found the victim battling for his life. He had further deposed that Chellathai (P.W.1) had not mentioned about in which Autorickshaw, she had taken the victim to the hospital and that he also admitted that he had not examined the driver of the Autorickshaw and added him as a witness in this case. Further, in the complaint (Ex.P1), it had not been stated that Chellathai (P.W.1) and her relatives have reached the hospital at 11.00 p.m., and that the name of the appellant was not mentioned in the complaint (Ex.P1) and that she was not aware of the road roko done by her relatives.

35. Philip Kennedy (P.W.17), Inspector of Police, was again recalled for examination and he had deposed about receipt of the complaint (Ex.P1) and registering the first information report (Ex.P10) and Form 91 (Ex.P15); and having taken up the case for investigation; examining the witnesses; recording their statements; preparing observation mahazar (Ex.P4) and rough sketch (Ex.P12); having conducted inquest; preparing inquest report (Ex.P11) and thereafter, having handed over the file for investigation on



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03.09.2015 and that on 27.08.2015, after the postmortem, Muthuraj (P.W.12), Head Constable, had recovered lungi (M.O.1) and shirt (M.O.2) under Form 91 (Ex.P15) and that he had recorded the confession statement of the appellant and the admitted portion is Ex.P5 and that based on the confession statement, brandy bottle (M.O.3) and wooden log (M.O.4) were recovered under the cover of mahazar (Ex.P7) and that the dress worn by the appellant were recovered under the cover of mahazar (Ex.P6) and that he had examined Dr.Sudha (P.W. 14) and obtained postmortem report (Ex.P10) and final opinion (Ex.P9) from her and he had also collected viscera report (Ex.P13).

36. Kesavan (P.W.18), Inspector of Police, who had deposed about conducting further investigation in this case and filing final report before the Judicial Magistrate.

37. Taking into consideration the evidence on record there is no witness to the occurrence and the case of the prosecution hinges on circumstantial evidence and last seen theory.

38. The law regarding conviction and sentence, on the basis of circumstantial evidence, has been enunciated and crystallized by the



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Honourable Supreme Court in the case of **Sharad Birdhichand Sarda vs.**

State of Maharashtra, reported in **(1984) 4 SCC 116**, which has also been followed by the Apex Court in the Judgment in the case of **Ballu Vs State of M.P** reported in **2024 SCC Online SC 481** wherein the Apex Court has observed as follows:

“6. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda vs. State of Maharashtra, wherein this Court held thus:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4



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SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled



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before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and



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must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

7. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.



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8. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.”

39. While carefully analysing the evidence in consonance with the legal principles enunciated in the above decisions, it is seen that the first document, which has come into existence, is the complaint (Ex.P1), which is stated to have been given orally by Chellathai (P.W.1) and it was reduced into writing by Raja (P.W.3) and it was attested by Thangapandi (P.W.4). A perusal of the complaint (Ex.P1) shows that there is no reference about the witnesses having seen the appellant and the deceased together prior to the occurrence. Though Chellathai (P.W.1) and Mahalakshmi (P.W.2) have stated that they have seen the appellant on the way to the farm, there is no mention about having seen the appellant in the complaint (Ex.P1). Further, though Raja (P.W.3) and Thangapandi (P.W.4) having accompanied the victim along with Chellathai (P.W.1) and Mahalakshmi (P.W.2), they have also not spoken about having seen the appellant coming out from the farm. However, subsequently, statements have been obtained from Selvakumar (P.W.6), Marimuthu (P.W.7),



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Balamurugan (P.W.8) and Andavar (P.W.9) on 03.09.2015, on which date, they have stated that they had lastly seen the appellant along with the deceased/victim around 06.00 p.m.on 26-08-2015, while they were proceeding to the place of occurrence carrying liquor bottle for consumption. It is also the case of the prosecution that the appellant and the deceased had purchased liquor and drunk together and while the deceased was under intoxication, the appellant is said to have committed the murder by forcibly immersing him into water in the tank and causing his death. However, with regard to the evidence of Dr.Sudha (P.W.14) and postmortem report (Ex.P8) and final opinion (Ex.P9), there is nothing on record to suggest that the death was a homicidal one. Further, no external marks of resistance or violence were found on the body of the deceased and the viscera report (Ex.P13) also shows that the internal organs of the deceased does not contain the presence of alcohol or any poisonous substance. The opinion of Dr.Sudha (P.W.14) is only to the effect that the death was on account of drowning and it is also the admitted case of Chellathai (P.W.1) and Mahalakshmi (P.W.2) that when they had seen the deceased, he was found battling for life and floating in the water and he was not wearing shirt. There is no conclusive evidence that the death was on account of the drowning by forcibly immersion into water.



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40. Now, on analysing the evidence of Selvakumar (P.W.6), Marimuthu (P.W.7), Balamurugan (P.W.8) and Andavar (P.W.9), who are said to have have last seen the appellant, it is seen that their statements have been recorded by Philip Kennedy (P.W.17) only on 03.09.2015, after arrest of the appellant. The evidence of Selvakumar (P.W.6), Marimuthu (P.W.7), Balamurugan (P.W.8) and Andavar (P.W.9) further shows that they are residents of the same village. According to them, they are stated to have seen the deceased and the appellant on 26.08.2015 around 06.00 p.m. Admittedly, the complaint (Ex.P1) is stated to have been given on the next day of the occurrence date, at 08.30 a.m. If that is so, the suspicion about the involvement of the appellant should have been mentioned in the complaint (Ex.P1) itself. It is also the case of the prosecution that even during the Inquest conducted on 27-08-2015 PW 6& PW7 panchayatars have spoken about having last seen the appellant and the deceased together and it had also been entered in Column 4 of the Inquest Report Ex P11.However it was contended by the counsel for the appellant that there was tampering of Ex P11 and interpolations and overwritings were found in Column 4. In this regard this Court has also called for the original Inquest Report (Ex.P11), from the trial court wherein in Column No.4, this Court is able to find that the earlier entries were attempted to be screened by applying whitener and some



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interpolations have been made. On a careful analysis of the inquest report (Ex.P11) by a magnifying glass, this Court is able to see that originally it had been recorded as “ இறந்தவரின் அம்மா செல்லத்தாய் மனைவி மகாலெட்சுமி ஆகியோர்களால் சிகிச்சைக்கு கொண்டு செல்லப்பட்டார். But, subsequently, an attempt had been done to screen it by applying whitener and it has been entered as “கடைசியாக பெரிய தேவி குளத்திற்கு கிழக்கே உள்ள டாஸ்மாக் கடையின் பின்புறம் உள்ள வாழைத்தோப்பிற்குள் இறந்த நபரும் திடீர்புரம் கணேசன் மகன் காளிமுத்து என்பவரும் கையில் குவாட்டர் பிராந்தி பாட்டிலுடன் செல்வதை அப்பாவு பிள்ளை நகர் வீமரர் மகன் மாரிமுத்துவும், தேவாரம் திடீர்புரம் செல்லையா மகன் செல்வகுமாரும் இறுதியாக பார்த்துள்ளார்கள்.

41. This Court has also perused the CD file, which contains the carbon entry of the inquest report (Ex.P11). When all other entries have been made with carbon copy, Column No.4 has been rewritten by a ballpoint pen, which would go to show that Column 4 in Ex P11 had been tampered to project as if PW6 and PW7 have seen the appellant along with the deceased prior to his death. Further, though as per the prosecution version, the appellant is stated to have been arrested on 03.09.2015, it is the admitted case of Chellathai (P.W.1) that the appellant was found in the respondent – Police Station on the next day of the occurrence date ie on 27-08-2015 at 08.00 a.m., thereby creating a doubt with regard to the so called



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arrest, confession and recovery from the appellant on 03.09.2015 and thereby suggesting the probability of the accused being kept in illegal detention from 27.08.2015 and the fabrication of documents to suit the whims and fancies of the prosecution. Further the witnesses to the last seen theory also cannot be believed for the reason that the witnesses are stated to be from the same locality and well known to PW1 and if it is true that they had last seen the accused in the company of the deceased prior to his death it would have been reported and cited in the complaint Ex P1 which had been given on the next day morning, whereas there is absolutely no reference to same in the complaint and their statements have been recorded much later only on 03-09-2015 after the arrest of the accused.

42. On analysing the entire evidence on record, this Court finds that there are loose ends and missing links creating several doubts in the prosecution case and the prosecution has not proved its case beyond all reasonable doubts. As discussed earlier, the cause of death is not conclusive, the last seen theory is marred with suspicion and the tampering and interpolations in the original inquest report (Ex.P11) strongly support the case of the appellant of possibility of false implication in this case. Further, it is to be noted that the case on hand is based on circumstantial evidence and



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WEB motive plays a vital role. In this case motive has not been proved by the prosecution. Admittedly there had been a road roko by the relatives of the deceased suspecting the death of the deceased and there was every compulsion for the respondent to fix the accused and thereby the possibility of fixing the appellant who was already on illegal custody in this case cannot be ruled out. Further, as stated above, in this case which is based on the circumstantial evidence, non-explanation under Section 313 Cr.P.C., cannot be set forth against the appellant unless the foundational facts are proved by the prosecution.

43. In view of the above discussions, we are of the opinion that the prosecution has miserably failed to prove its case beyond all reasonable doubts and the appellant/accused cannot be convicted on the basis of suspicion and he is presumed to be innocent unless proved guilty beyond reasonable doubt and thereby he is entitled to be acquitted.

44. In fine, this criminal appeal is allowed. The conviction and sentence imposed on the appellant, by judgment and order dated 21.06.2023, made in S.C.No.90 of 2016, on the file of the Additional District (FTC) Theni, is set aside and the appellant is acquitted of the charge. Fine amount, if any,



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paid by the appellant shall be refunded to him. Since the appellant is in jail, he is directed to be set at liberty forthwith, unless his detention is authorized in connection with any other case. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [K.R.S., J.]

05.04.2024

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

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To:

- 1.The Additional District Judge,
Fast Track Court, Theni.
- 2.The Inspector of Police,
Dhevaram Town Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.

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Crl.A.(MD) No.795 of 2023
and
Crl.M.P.(MD) No.17373 of 2023

05.04.2024