



Crl.A.(MD)No.886 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.12.2024

CORAM

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

**Crl.A.(MD)No.886 of 2024
and
Crl.M.P.(MD)No.11503 of 2024**

Muthulakshmi

... Appellant

Vs.

The State of Tamil Nadu through,
The Inspector of Police,
Thottiyam Police Station,
Trichy District.
(Crime No.29 of 2012)

... Respondent

PRAYER: Criminal Appeal filed under Section 415(2) of the Bharathiya
Nagarik Suraksha Sanhita, to call for the entire records connected to the
judgment in S.C.No.180 of 2012 on the file of the Sessions Judge of
Tiruchirappalli Division, Tiruchirappalli dated 13.12.2012 and set aside
the conviction and sentence imposed against the appellant.

For Appellant : Dr.R.Alagumani

For Respondent : Mr.T.Senthilkumar,
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 13.12.2012 in S.C.No.180 of 2012 on the file of Sessions Judge, Tiruchirappalli Division, Tiruchirappalli.

2.One Ponnusamy and Muthulakshmi were shown as accused. By the impugned judgment, they were convicted for the offences under Section 120(B) and 302 of IPC and sentenced to undergo life imprisonment. The first accused / Ponnusamy had passed away. The second accused / Muthulakshmi filed this appeal only in the year 2024.

3.The case of the prosecution is as follows:-

(i) The second accused / Muthulakshmi's husband namely, Paramasivam passed away and thereafter, she was living with the first accused / Ponnusamy. She then developed illicit intimacy with one Jagannathan, who was a friend of the first accused. The second accused



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and Jagannathan were working in a hotel together. Jagannathan wanted the second accused to snap her relationship with the first accused. This gave rise to quarrel between Jagannathan on the one hand and the second accused on the other. Jagannathan had also advanced certain sum of money to the first accused and he wanted the money back. On account of these two reasons, the first and second accused conspired together to do away with the life of Jagannathan. On 08.02.2012 at about 05.30 pm, the second accused took the unsuspecting Jagannathan to Thottiyam where the first accused also joined them. The trio went to the banks of Kaveri river in Thiruengoimalai. The first and second accused assaulted Jagannathan with stone, iron rod and knife and murdered him. To screen the commission of crime, they pushed the dead body into the river. On 09.02.2012 at about 07.45 am, Ramu / P.W.2 who was working as Village Assistant in Mullipatti Village and who is a resident of Thiruengoimalai happened to see the dead body. He informed the Village Administrative Officer namely, Vimala Devi / P.W.1. P.W.1 lodged Ex.P1 complaint before the Sub Inspector of Police, Thottiyam Police Station. Based on the said complaint, Crime No.29 of 2012 was registered under Section 174 of CrPC. P.W.24 / Inspector of Police took up the investigation and



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went to the spot. He prepared Ex.P39 / rough sketch. He also prepared the observation mahazar / Ex.P2. He seized the articles found in the scene of occurrence. After conducting inquest, the dead body was sent for postmortem to the government hospital. Thereafter, alteration report / Ex.P41 was submitted. He examined the other witnesses and recorded their statements. The accused were arrested on 20.02.2012. Their confessions were also recorded. Based on their disclosure statements, weapons used for committing the murder were seized. The seized objects were sent under Form – 95 to the Court (Ex.P45). After concluding the investigation, he filed final report before the Judicial Magistrate, Musiri. It was taken on file in P.R.C.No.17 of 2012. The case was committed to the Sessions Court in S.C.No.180 of 2012.

4.On the side of the prosecution, P.W.1 to P.W.24 were examined. Exs.P1 to P45 and M.O.1 to M.O.13 were marked. The incriminating circumstances were put to the accused during examination under Section 313 of CrPC. The accused characterized them as false. On the side of the accused, no evidence was adduced.



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5.After considering the evidence on record, the trial Court convicted both the accused for the offences under Sections 120(B) and 302 of IPC but acquitted them of the charge under Section 201 of IPC. The first accused had passed away. The second accused alone filed this criminal appeal.

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

7.Per contra, the learned Additional Public Prosecutor for the State submitted that the prosecution had established its case beyond reasonable doubt and called upon this Court to sustain the impugned judgment and dismiss the criminal appeal.

8.We carefully considered the rival contentions and went through the evidence on record. P.W.1 / Vimala Devi is the defacto complainant in this case. It was she who lodged Ex.P1 / complaint based on which



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Ex.P38 / FIR was registered. She has no direct knowledge of the occurrence.

9.P.W.2 / Village Assistant happened to see a dead body on the bank of river Kaveri on 09.02.2012 and informed P.W.1. He has also no direct knowledge of the occurrence.

10.P.W.3 is a villager residing in Thiruengoimalai. He also does not have any knowledge of the occurrence. P.W.4 is only a mahazar witness. P.W.5 is a relative of the deceased / Jagannathan and he identified the dead body.

11.P.W.6 is the brother of the deceased. He deposed that Jagannathan and the first accused were close friends and that the first accused took away a sum of Rs.13,000/- from Jagannathan. He has also no knowledge about the occurrence.

12.P.W.7 / Meenambal is the sister of the deceased. She deposed that there was illicit intimacy between Jagannathan and the second



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accused / Muthulakshmi and that as a result, the relationship between Jagannathan and his wife came under strain. She further deposed that since the second accused got close to the first accused, it gave rise to dispute between Jagannathan and the first accused. She also has no direct knowledge of the occurrence.

13.P.W.8 is a resident of Thiruengoimalai. On 08.02.2012 at around 09.00 pm, he went to the river bank to answer nature's call. He deposed that he saw the deceased / Jagannathan and the first accused talking to each other. He subsequently identified the first accused in the test identification parade. It is relevant to note here that P.W.8 did not implicate the second accused / Muthulakshmi.

14.P.W.9 is working as poclain operator. He was known to the first accused. P.W.9 deposed that on 08.02.2012, he came to the river bank in Thiruengoimalai to lay road at around 10.00 pm to 11.00 pm and he saw four persons walking in front and two persons sitting and chatting. The next day morning, he saw that the person whom he was chatting was lying dead. P.W.9 also did not implicate the second accused.



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15.P.W.10 / Rajendran is also a resident of Thiruengoimalai. He went to the river bank on the occurrence day at around 10.00 pm to catch fish. He saw two persons chatting with each other. The next day morning, one of them was lying dead. He identified the first accused as the other person who was found chatting. PW.10 also did not implicate the second accused. P.W.11 is also a resident of Thiruengoimalai. He went with P.W.10 for fishing in the river. His testimony is also on the same lines.

16.P.W.12 deposed about the relationship between the deceased on the one hand and the first and second accused on the other. P.W.13 was the Judicial Magistrate, Thuraiyur before whom the test identification parade was conducted and the first accused was identified by the prosecution witnesses.

17.P.W.14 is the sole witness who had deposed against the appellant / second accused. P.W.14 is a forest contractor. He deposed that he was engaged in a contract work in Thiruengoimalai. He had about 20 to 25 persons working under him. In order to house the workers, he had set up a temporary camp. On 08.02.2012 between 09.00



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to 09.30 pm, P.W.14 went to see his men. He was riding a two wheeler.

He saw two men (one stout & one lean) and a woman walking in front.

Since it was night hour, he asked them where they were going. They

replied that they were going to the river. Even as PW.14 was going past,

one of them called the second accused by name and laughed at the

naivete of P.W.14. After giving instructions to the workmen, P.W.14

returned from the camp at around 01.00 am. He came to

Thiruengoimalai bus stop to board the bus. Out of the three persons, he

had earlier seen, only two were standing there. He saw the stout

individual and the lady alone but not the third person who was lean.

When he enquired about the third person, he was informed that he had

already left. Later, he came to know that a person was found on the river

bank. On 10.02.2012, the photograph of the deceased was published in

the newspaper. Since it resembled the face of the person whom he had

seen the previous night, P.W.14 went to the police station and informed

them as to what he saw. P.W.14 identified the first and second accused in

the Court as the persons whom he saw at Thiruengoimalai bus stop. As

already noted, except the testimony of P.W.14, there is no other evidence

as against the second accused.



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18.The question that calls for consideration is whether it is safe to convict the appellant on the uncorroborated testimony of P.W.14.

19.It is not in dispute that P.W.14 is an utter stranger and he had no prior acquaintance with the appellant. No test identification parade was conducted. Even according to P.W.14, he had seen the accused only during night hours. The learned counsel for the appellant drew our attention to the decision reported in **2023 SCC OnLine SC 1329 (Mohd. Rijwan Vs. State of Haryana)**. It was observed that a test identification parade is conducted as a part of the investigation when an eyewitness does not know the accused before the incident. It is conducted to ascertain whether the witness can identify the accused from the midst of several persons having similar appearances. The identification of the accused in the test identification parade by the eyewitness, though not conclusive, may, in a given case, give credence to the identification of the accused before the Court by the eyewitness. In the said case, no identification parade was conducted. Only in the Court, the witness identified the accused. The Hon'ble Supreme Court held that such identification is not free from reasonable doubt. The Hon'ble Supreme



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Court in the decision reported in **(2012) 13 SCC 750 (Kunjumon Vs. State of Kerala)** had held that where accused is stranger to a witness and there has been no test identification parade, the trial Court should be very cautious while accepting the dock identification by such a witness. This judgment was recently followed by the Hon'ble Supreme Court in the decision reported in **2024 LiveLaw (SC) 460 (P.Sasikumar Vs. State).**

20.In this case, apart from the above infirmity, it is improbable that the first accused would have made the comment attributed to him. P.W. 14 claimed that he enquired the trio as to where they were going. According to P.W.14, the first accused replied that they were going to the river bank. Even as P.W.14 just going past, the first accused is said to have laughed aloud and called the second accused by name and commented that PW.14 had believed their words. It is impossible to believe that the first accused would have uttered the words attributed to him. The testimony of P.W.14 is highly artificial and it cannot be believed.



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21.The occurrence had taken place on 08.02.2012. P.W.14 was examined by the police only on 15.02.2012. P.W.14 emerges as an unreliable witness. It would be most unsafe to rest the appellant's conviction on the basis of such a testimony.

22.In this view the matter, the impugned judgment is set aside insofar as the conviction and sentence of the appellant, the appellant is acquitted of the charges framed against her and the criminal appeal is allowed. The fine amount, if any paid by her shall be refunded. The bail bond, if any, executed by her shall stand cancelled. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (R.P. J.)
11.12.2024

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

1.The Sessions Court,
Tiruchirappalli Division,
Tiruchirappalli.

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2. The Inspector of Police,
Thottiyam Police Station,
Trichy 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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