



Crl.A.(MD)No.1017 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
18.03.2024	28.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**Crl.A.(MD)No.1017 of 2023
and
Crl.M.P.(MD)No.1945 of 2024**

Jagendra, S/o.Kailash

... Appellant / Sole Accused

vs.

State through
The Inspector of Police,
Surandai Police Station,
Tirunelveli District.
(Crime No.588 / 2020)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the entire records connected in S.C.No.308 of 2021, dated 18.11.2022, on the file of the learned Sessions Judge, Mahila Court, Tirunelveli, and set aside the conviction and sentence imposed against the appellant.



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For Appellant

: Mr.R.Alagumani

For Respondent

: Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

**DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.**

The sole accused in S.C.No.308 of 2021, on the file of the learned Sessions Judge, Mahila Court, Tirunelveli, is the appellant herein.

2. The appellant tried for the offence punishable under Section 302 I.P.C. and found guilty by the trial Court. He was sentenced to undergo life imprisonment and to pay fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.

3. The case of the prosecution is that, the appellant herein came from Orissa to Tiruppur five years ago for his livelihood. He was working in a Mill at Palladam, Tiruppur District. He fell in love with one Poongothai, who was working along with him in the said Mill. Without intimating her parents, she



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married the appellant/accused and was living with him. Three months prior to the occurrence, Poongothai informed her parents about her marriage with the appellant/accused and expressed her desire to settle at Surandai, a Village near her parents' house. Her father arranged a rental house in the compound house of Mayakarpaga Indumathi at Kottai Street, Surandai. A week prior to the occurrence, Poongothai came to her parents' house at Uchipothai and stayed with them. At that time, she was complaining about her husband for being suspicious of her conduct. Four days prior to the occurrence, the accused called her over phone and pressurised her to come back or else, he will commit suicide. Hence, Poongothai left her parents' house three days prior to the occurrence. On 24.12.2020, Poongothai called her sister Kalaiselvi over phone and told her that her husband suspecting her fidelity and he may kill her. The next day, one of the neighbours in that compound house, called the father of Poongothai and informed that Poongothai's house is found locked and key is lying outside. The parents of Poongothai immediately rushed to Surandai, collected the key lying outside and opened the house. They saw Poongothai dead with injuries over her neck. The appellant / husband of Poongothai was not found anywhere nearby.



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4. On the complaint given by Velsamy [P.W.1], the father of the deceased Poongothai, the respondent Police took up the investigation. On 30.12.2020, the accused was arrested. Based on his confession, the Knife used by him to commit the crime was recovered and the body of Poongothai was sent for postmortem and postmortem report was marked as Ex.P13.

5. On completion of investigation, final report filed. Charge under Section 302 I.P.C. was framed and the accused was tried for the said charge. To prove the charges, the prosecution examined 27 witnesses, marked 16 exhibits and 8 material objects.

6. The Court below held that the prosecution has proved the charge without any doubt. Sentenced the accused to undergo life imprisonment with the fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.

7. The learned counsel appearing for the appellant submitted that it is a case of circumstantial evidence. No direct witness to the occurrence in this case. While so, the chain of circumstances ought to have been proved without any



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break. In the present case, the circumstances are not linked to hold the appellant guilty of the charge.

8. The learned counsel appearing for the appellant submitted that the appellant was not in Tamil Nadu during that period. He had gone to his native place at Orissa to meet his ailing father. However, his absence in the Town has taken adverse by the prosecution and fixed him in the case.

9. The learned counsel for the appellant submitted that P.W.1, P.W.2, P.W.3 and P.W.4 are the father, mother, uncle and sister of the deceased, respectively. They are not the residents of Surandai. They are not competent to speak about the alleged quarrel and misunderstanding between the spouses. Except these four witnesses, no other independent witnesses endorse the allegation of quarrel between them. The belated registration of the F.I.R. and the inordinate delay in sending the copy to the learned Judicial Magistrate creates a doubt over the case of the prosecution. The suspicion over the recovery of M.O.1 to M.O.7 based on the confession statement of the accused, does not vouchsafe the case of the prosecution.



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10. The testimony of P.W.9 and P.W.10 is that on 24.12.2020 at about 09.30 p.m., they saw the accused near the Surandai Bus Stand. When they called him, he did not respond. The evidence of P.W.9 and P.W.10 does not lend any credence to the prosecution case, since their presence near the Surandai Bus Stand at that time not explained.

11. The case of the prosecution is that, the accused strangled Poongothai with his hand and there were lacerated wounds around the neck of Poongothai. But, the postmortem report reveals that the hyoid bone intact, which rules out possibility of strangulation.

12. Per contra, the learned Additional Public Prosecutor submitted that, independent witnesses like, the nearby residents in the compound house had deposed about the fact that the accused and Poongothai were staying in the house. On 25.12.2020 Poongothai found dead inside the house and the appellant gone missing. P.W.6 had deposed that sometimes they used to quarrel. On date of occurrence, P.W.9 and P.W.10 saw the accused near the Surandai Bus Stand.



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Except the accused, none where in the house at the time of occurrence, therefore, the accused has to explain about the death of Poongothai.

13. The learned Additional Public Prosecutor further submitted that through the witnesses, prosecution has proved the fact that the appellant fell in love with the deceased and married her. Three months prior to the occurrence, the deceased and the accused settled at Surandai, for which, P.W.1 helped them. A week before the occurrence, the deceased went to her parents' house. This had created problem in their domestic life. On 24.12.2020, there was a quarrel between the couple. Since Poongothai was not ready to go with the accused to Orissa and was comfortable at her parents' place, the accused committing murder by strangulation, had tried to flee. At that time, P.W.9 and P.W.10 had witnessed him near the Surandai Bus Stand. The defence been taken by the accused that he was not at all at Surandai during that period, is falsified through the evidence of P.W.9 and P.W.10.

14. The learned Additional Public Prosecutor submitted that it is a case of circumstantial evidence, since the prosecution has proved the circumstances link without any break, therefore, the conviction of the trial Court has to be confirmed.



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15. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

16. The appellant tried for the offence under Section 302 I.P.C. To prove the charge, the prosecution examined 27 witnesses. P.W.1 is the de-facto complainant. He is the father of the deceased Poongothai. According to his testimony, two years prior to the occurrence, his two daughters went to a Mill at Palladam for job. His elder daughter Kalaiselvi returned back to the Village few months prior to the occurrence. His younger daughter Poongothai continued her job at Palladam. She fell in love with Jagendra [the accused], who was a co-worker in the Mill. She married him without intimating the same to her parents. When P.W.1 came to know about the same, he went to Tiruppur and searched for her. He could not trace her, hence, returned back to his Village. Few months prior to the occurrence, P.W.1 received a call from Poongothai and she expressed her desire to settle at Surandai along with the accused and requested P.W.1 to arrange for a rental house. Accordingly, P.W.1 had arranged a house at Surandai for rent of Rs.3,000/- per month and paid advance of Rs.10,000/-. This has been spoken by Ganesan [P.W.20], who is the brother of the house owner. The house owner



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Mayakarpaga Indumathi was examined as P.W.24 to corroborate P.W.1 and P.W.20.

17. Mahalakshmi [P.W.5], Maheshwari [P.W.6], Kaliraj [P.W.7] and Parvathi [PW8] are the residents in the same compound. These witnesses in their evidence, had identified the accused as the husband of deceased Poongothai and had corroborated the fact that he was living with her in that house at the time of occurrence. P.W.9 and P.W.10, who are the persons known to the accused, deposed that they have seen the accused near the Surandai Bus Stand on 24.12.2020 at about 09.30 p.m. Through these witnesses, the prosecution has proved that the accused was seen near the Surandai Bus Stand on 24.12.2020 at about 09.30 p.m.

18. P.W.1 and P.W.2 are the parents of the deceased. On 25.12.2020, they received a phone call from Mahalakshmi [P.W.5], who informed them that the house of Poongothai found locked. Immediately, they rushed to Surandai, opened the house with help of the key lying outside the house. P.W.1, P.W.2 and P.W.5 saw the dead body of Poongothai lying inside the house. P.W.6 is yet another



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resident in that compound house, living opposite to the house of the appellant and the deceased. She had deposed that sometimes the appellant and the deceased used to quarrel.

19. P.W.26 postmortem doctor had noticed following external injuries on the body of Poongothai:-

"Ligature mark seen around the neck, anteriorly above the hyoid bone about 5 - 7 c.m. breadth, running posteriorly on either side of angle of jaw about 3 - 4 c.m. breadth, externally into hairline. Curvilinear multiple abrasion of varying size present in front of neck."

20. P.W.13 is the Village Administrative Officer of the Village. On 30.12.2020 on the instruction of the Headquarters Deputy Tahsildar, he went to the Police Station along with his Assistant. He saw the accused inside the Police Station. The accused was conversant in Tamil language and offered voluntarily to give his statement. In his statement, he disclosed the place where they had thrown the Knife. In his presence, the Knife was recovered under a Mahazar. In the course of investigation, the Knife, blood stained clothes of the deceased and the banian cloth were sent for biological and serological test. The banian cloth used

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to strangle the deceased and the deceased clothes disclosed presence of human blood 'O' group. In the remaining articles, nothing traced.

21. The appellant/accused is not a stranger. He is the husband of the deceased. P.W.25 the Manager of Sulochana Spinning Mills had deposed that the deceased and the accused were working in his Mill. The residents of the opposite house and next house had identified the appellant/accused as the husband of the deceased. P.W.1 had deposed that he with the help of P.W.20 arranged the rental house and paid advance. This is corroborated by P.W.20, who is the brother of the house owner, who was examined as P.W.24.

22. Referring the postmortem report, the learned counsel for the appellant raised doubt about the prosecution version of death by strangulation, since the hyoid bone found intact. The postmortem doctor P.W.26 in his evidence, in clear and unambiguous term, had denied the said suggestion, indicating by compression of neck even without damaging hyoid bone, death may occur.



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23. The learned counsel appearing for the appellant though contended that circumstantial link not cogent but broken, on analysing the evidence, in the given facts and circumstances, we hold that the prosecution was able to prove that Poongothai died due to homicide. Her death is due to asphyxia. The banian cloth piece and the compressed injury over the neck substantiate the prosecution version. The accused was with the deceased at the relevant point of time and none others were living with them. Hence, the accused is bound to discharge the legal presumption against him. Unfortunately, the accused has failed to discharge the said burden. Contrarily, he had suggested to the father and mother of the deceased that they had ill-will against Poongothai for marry a stranger and they murdered her to save their honour. This suggestion put in the cross examination of P.W.1 and P.W.2, if it is true, then, they would not have sent her to the accused place after their daughter came to their house and stayed with them for four days. Further, P.W.1 would not have arranged for a house for them at Surandai.

24. Yet another plea by the accused is that, he was in Orissa and not present at Surandai on 24.12.2020. To believe his version, there must be some evidence that he was elsewhere at the relevant point of time. While the accused



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failed to produce evidence to discharge the burden of *alibi*, in contra, the prosecution has examined P.W.9 and P.W.10, who know the accused by engaging him for labour work previously. P.W.9 and P.W.10 had deposed that they saw the accused on 24.12.2020 near the Surandai Bus Stand at 09.30 p.m. When they called the accused to pay his daily wages, he did not respond to their call, but he hurriedly rushed towards the Surandai Bus stand. The conduct of the accused as spoken by P.W.9 and P.W.10 not only to prove the presence of the accused at Surandai Bus Stand on 24.12.2020 at 09.30 p.m., but also relevant to know his conduct soon after the occurrence.

25. The accused has miserably failed to discredit the evidence of the prosecution. The prosecution having proved the circumstantial chain without any break, is bound to succeed. Thus, the trial Court has come to the right conclusion on proper appreciation of the evidence. Therefore, we find no ground to interfere with the judgment of conviction.

26. In the result, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant / accused by the learned Sessions Judge,



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Mahila Court, Tirunelveli, in S.C.No.308 of 2021, dated 18.11.2022, stands confirmed. Consequently, connected Miscellaneous Petition also stands dismissed.

Index : Yes
NCC : Yes
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[G.J., J.] & [C.K., J.]
28.03.2024

To

- 1.The Sessions Judge,
Mahila Court, Tirunelveli.
- 2.The Inspector of Police,
Surandai Police Station,
Tirunelveli District.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.1017 of 2023

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