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CrI.A.No.677 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2025
PRONOUNCED ON : 23.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.677 of 2022

Chinnaraj

... Appellant

Vs.

State rep. by
The Inspector of Police,
Peranampet Police Station,
Vellore District.
Cr.No.465 of 2018.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence passed by the learned Additional Sessions Judge (Fast Track Court), Vellore in S.C.No.131 of 2019 dated 02.11.2019.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.L.Baskaran
Government Advocate (CrI. Side)



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JUDGMENT

This Criminal Appeal has been filed to set aside the impugned order in S.C.No.131 of 2019 dated 02.11.2019 on the file of the learned Additional Sessions Judge (Fast Track Court), Vellore.

2.The appellant/accused in S.C.No.131 of 2019 was convicted by the Trial Court dated 02.11.2019 and sentenced to undergo ten years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment for the offence under Section 304(2) IPC. Aggrieved against the same, the present appeal is filed.

3.The case of the prosecution is that the appellant is residing in Poojari Street, Kalaignar Nagar, Peranampet. The deceased Lalitha and the appellant having illicit relationship for nearly three years, both are rag pickers, they would collect the plastic articles and rags, store it and hand over to P.W.7/Ashok who was running waste paper and articles collection mart. Both deceased Lalitha and appellant used to stay in the said mart and



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with the money they earn, they consume alcohol, have food and sleep in the waste paper mart. They were also in the habit of picking up quarrel between them in sharing their income. On 21.10.2018, there was a fight between the appellant and the deceased. P.W.3, brother of P.W.7 having a welding shop opposite to waste paper mart intervened and advised them not to fight, which was at 8.00 p.m. and thereafter left the place. At 9.00 p.m., P.W.4, a two wheeler mechanic having mechanic shop opposite to the waste paper mart intervened and pacified them. Thereafter at 10.00 p.m., P.W.5, a tailor intervened and advised them not to fight and left the place. On 22.10.2018 at about 9.00 a.m., P.W.3 came there to clean the waste paper mart, at that time, smelt foul smell, found the deceased Lalitha dead in a pool of blood, Lalitha's right side face and right side of the body with injuries and there was a stone (M.O.4) nearby. P.W.3 informed P.W.1/sister of the deceased Lalitha and others. P.W.1 came along with her son/P.W.2 and lodged a complaint/Ex.P1 at about 10.00 a.m. to P.W.11. On receipt of complaint, FIR/Ex.P14 naming the appellant as accused registered in Crime No.465 of 2018. Thereafter, P.W.11 visited the scene of occurrence, recorded the statement of witnesses present there, recovered M.O.2 to M.O.7 in the



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presence of P.W.7, prepared observation mahazar/Ex.P15 and rough sketch/Ex.P16 in the presence of one Pandian and Ashok, conducted inquest and sent the body for postmortem. The appellant appeared before P.W.6/Village Administrative Officer (VAO) on 22.10.2018 at 3.00 p.m. and gave a confession admitting that he murdered Lalitha by using M.O.4. Thereafter, the appellant was produced before P.W.11 and again gave a confession, M.O.1 (Shirt) seized from the thatched house of the appellant. The internal organs were sent for viscera test and the Material Objects were sent to forensic examination. Human blood stains found in M.O.1, M.O.2., M.O.4, M.O.5, M.O.6, M.O.8 and M.O.9. On collecting the medical records, forensic report, postmortem certificate and on examining the witnesses, charge sheet filed. During trial, P.W.1 to P.W.11 examined, Ex.P1 to Ex.P20 marked and M.O.1 to M.O.10 produced on the side of the prosecution. No witness examined and no documents marked on the side of the defence. On conclusion of trial, the Trial Court convicted the appellant as stated above.

4.The learned counsel for the appellant submitted that in this case,



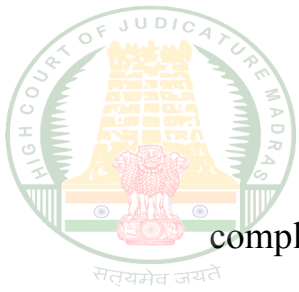
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Ex.P1/complaint is highly doubtful. P.W.1 states that her Left Thumb Impression [LTI] was received by the Police at the time of inquest but she is not aware as to what is written in the complaint. The admitted position is that P.W.1 is an illiterate and there is nothing in Ex.P1 to show that the contents of the complaint was read over to P.W.1, she understood the same and thereafter affixed her LTI. In this case, even in the complaint/Ex.P1 and FIR/Ex.P14, the name of the appellant is shown as accused. P.W.2 is the son of P.W.1. Both P.W.1 and P.W.2 state that both the appellant and the deceased Lalitha were living together in the godown of P.W.7, they are rag pickers, collect plastic items and other articles and make their earnings. P.W.1 states that two days prior to the occurrence, Lalitha complained about appellant constantly demanding money from her, abusing and assaulting her. Despite P.W.1 advise calling Lalitha back home, Lalitha continued to live with the appellant. The evidence of P.W.2 is that on 22.10.2018 he was informed about his aunt's death, went to the hospital, received the body and conducted last rites. The evidence of P.W.3 to P.W.5 is that on 21.10.2018, they saw both the appellant and the deceased fighting. P.W.3 at 8.00 p.m., P.W.4 at 9.00 p.m. and P.W.5 at 10.00 p.m., they intervened and pacified



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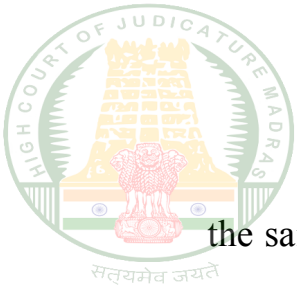
them separately. They further state that both were living together, having food and alcohol together and it is common for them to pick up fight with each other. P.W.7, owner of waste paper mart denies that he is the owner of the mart and the appellant and the deceased used to sell their collected waste materials to him. P.W.8 running a waste paper mart, states that the appellant and the deceased used to sell their collected articles to him. From the evidence of these witnesses, it is projected that the appellant and the deceased were living together in the waste paper mart and the appellant was last seen with the deceased on the previous day night. P.W.6 Village Administrative Officer, whose evidence is that the appellant appeared before him on 22.10.2018 at 3.00 p.m. and gave a confession. Thereafter, the appellant was produced before P.W.11 and again gave a confession. On appellant's confession, M.O.1/Shirt recovered with blood stains and it is proved to be human blood. P.W.9 is the Forensic Scientific Officer confirms the blood stains found in M.O.1, M.O.2., M.O.4, M.O.5, M.O.6, M.O.8 and M.O.9 as that of human blood. P.W.10 is the Constable who collected M.O.8 to M.O.10, dress and articles found on the body of the deceased. P.W.11 is the Investigating officer who received the



complaint/Ex.P1 and registered FIR/Ex.P14 in Crime No.465 f 2018.

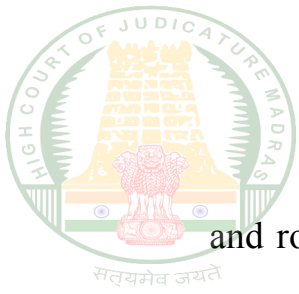
Thereafter, P.W.11 took up the investigation and on completion of investigation, final report filed.

5.The learned counsel would submit that in this case, the complaint is doubtful, only LTI obtained from P.W.1 and there is nothing to show that what is written in the complaint explained to the defacto complainant. Hence, the foundational fact become doubtful. The alleged confession given to P.W.6 is not admissible and the recovery of M.O.1/Shirt is also doubtful. In this case, there is considerable delay in sending the complaint, FIR and other articles to the Court and no reason given for the delay. The Postmortem Doctor not examined, Ex.P12/Postmortem Certificate and Ex.P13/Final report has been marked as genuine and admitted. P.W.2 admits that in this case, the appellant was present in the scene of occurrence and he was taken by the Police to the Police Station at about 10.00 a.m. Hence the Special Report/Ex.P2 and confession/Ex.P3 has no consequence. The prosecution projected a case of circumstantial evidence, there is no chain of link, unerringly pointing to the appellant to be the cause of death of



the said Lalitha. The Trial Court on its own had given a finding that P.W.1 admitted that her LTI was obtained after the contents of the complaint was read over, understood and accepted to be correct but the evidence of P.W.1 is otherwise. P.W.1 and P.W.2 admit that the appellant resides in Poojari Street, Kalaignar Nagar, Peranampet separately. In this case, the arrest and recovery highly doubtful. P.W.7 denies no observation mahazar/Ex.P15 and seizure mahazar/Ex.P17 prepared in his presence and no material objects M.O.2 to M.O.7 seized. He further submitted that in this case no proper investigation conducted and the prosecution not proved with materials to show unerringly the chain of events leads to conclusion that the appellant had committed the murder of said Lalitha. Hence, prayed for acquittal.

6.The learned Government Advocate (Crl. Side) submitted that in this case P.W.1 is the sister of the deceased Lalitha, P.W.1 was informed that her sister was lying in a pool of blood in the waste paper mart of P.W.7 where she normally sleeps. P.W.1 came there and thereafter lodged the complaint/Ex.P1. On receipt of the complaint, P.W.11 registered FIR/Ex,P14, visited the scene of occurrence, prepared observation mahazar



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and rough sketch, recorded the statement of witnesses P.W.1 to P.W.5 and P.W.7, collected material objects M.O.2 to M.O.10, conducted inquest, handed over the body to P.W.10 to produce the body for autopsy and M.O.8 to M.O.10 collected from the body of the deceased. The seized material objects sent to forensic examination. P.W.9/Forensic Scientific Officer confirms the presence of human blood in M.O.1, M.O.2, M.O.4, M.O.5, M.O.6, M.O.8 and M.O.9. On 22.10.2018 at 3.00 p.m., the appellant appeared before P.W.6/VAO gave a confession, admitting that he had thrown the stone/M.O.4 and smashed her head on the right side, confirmed by the Postmortem certificate/Ex.P12 and the final report/Ex.P13. Based on his confession, M.O.1/Shirt recovered from the thatched house of the appellant and sent for forensic examination. On recording the statement and on collection of reports, charge sheet filed. He would submit that for the relationship between the appellant and the deceased Lalitha is proved by the evidences of P.W.1 to P.W.5. P.W.3 to P.W.5 are the opposite shop owners who regularly see the appellant and the deceased having a fight. On 21.10.2018 at 8.00 p.m. P.W.3, at 9.00 p.m. P.W.4 and at 10.00 p.m. P.W.5 independently saw the appellant and Lalitha fighting. Thereafter, on the



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next day i.e. 22.10.2018 P.W.3 saw the said Lalitha in a pool of blood. In the presence of P.W.7, observation mahazar and rough sketch prepared and material objects seized. The appellant failed to give any explanation as to how the blood stains found in his Shirt/M.O.1. Hence, the chain of events with regard to motive, fight, last seen together and recovery of M.O.1 would unerringly confirm that the appellant had caused the death of the deceased Lalitha using M.O.4/Stone. The Trial Court on the evidence and materials had rightly convicted the appellant. Hence, prayed for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that P.W.1 is the sister of the deceased, who lodged the complaint/Ex.P1. Admittedly P.W.1 is an illiterate and she only affixed her LTI which is seen in Ex.P1 as well as her evidence before the Lower Court. In Ex.P1, there is no recording that the complaint written down as stated by P.W.1 and read over to her, accepted to be correct and affixed her LTI. The Trial Court on the contrary gives a finding in paragraph 28 of the judgment that the contents of Ex.P1/complaint had been read over, accepting and understanding the same, P.W.1 affixed her LTI is contrary to the evidence.



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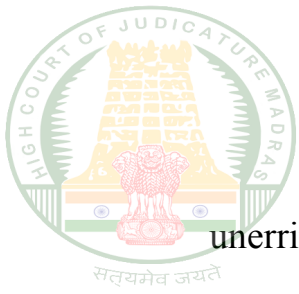
Thus the foundational fact becomes doubtful and shaky. In FIR/Ex.P14, the appellant's name recorded as accused. This being so, the theory of appellant appearing before P.W.6 on 22.10.2018 at about 3.00 p.m., giving voluntary confession and P.W.6 recording the same, producing the appellant to P.W.11 along with his report/Ex.P2 and thereafter, the appellant arrested by P.W.11, recorded confession/Ex.P3 in the presence of P.W.6 and one Jaikumar, Village Assistant and based on his confession M.O.1/Shirt recovered through Seizure mahazar/Ex.P5 becomes highly doubtful. It is to be seen that in this case, Ex.P1/complaint is received on 22.10.2018 at about 10.00 a.m. and FIR/Ex.P14 registered at the same time. On the contrary, from the Special report/Ex.P2, it is seen that the appellant appeared at about 3.00 p.m. and he was produced before P.W.11 who arrested the appellant at about 4.00 p.m. on 22.10.2018. Hence, the arrest, confession and recovery of M.O.1/Shirt becomes doubtful.

8.Added to it, in this case all the materials objects M.O.1 to M.O.10 had been produced before the Court and Case Property No.492 assigned only on 24.10.2018. The evidence of P.W.6/VAO in Ex.P2 it is shown that



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the appellant appeared before him on 22.10.2018 at 3.00 p.m. and his confession recorded, but in his statement to the Police he states that the appellant surrendered before him at about 11.00 a.m. and he produced him to P.W.11 at about 12.00 noon. Further, he admits that in Ex.P2 and Ex.P3 the signature of the appellant is not available. Hence these documents are created documents as contended by the appellant cannot be ignored and Ex.P1 to Ex.P3 are highly doubtful. Likewise, Ex.P6 and Ex.P7 is also doubtful through which M.O.6 and M.O.7 seized. P.W.7 confirms that in his presence no documents prepared and no articles recovered. In this case, the Postmortem Doctor not examined and no reason given for non-examination. P.W.2 admits that the appellant was in the Police custody from 10.00 a.m. but the documents Ex.P2 to Ex.P5 come into existence at a later point of time as though recovery made on the confession of appellant who is said to have been arrested at about 4.00 p.m. P.W.3 to P.W.5 admit that next to the waste paper mart, leather factory is there and normally there will be movement of factory workers but no investigating in this regard conducted. It is a case of circumstantial evidence where the prosecution is duty bound to prove each circumstances by chain of link to confirm



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unerringly that it is the appellant who alone committed the murder of the said Lalitha and none else. From the above facts, it is seen that the prosecution had miserably failed to prove the case beyond all reasonable doubt.

9.In the case of ***Digamber Vaishnav and another vs. State of Chhattisgarh*** reported in (2019) 4 SCC 422, the Hon'ble Supreme Court held as follows:

“16.In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and*
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else,*



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and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17.In Varkey Joseph v. State of Kerala[1993 Supp (3) SCC 745 : 1993 SCC (Cri) 1117], this Court has held that suspicion is not the substitute for proof. There is a long distance between “may be true” and “must be true” and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18.In Sujit Biswas v. State of Assam [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677], this Court, while examining the distinction between “proof beyond reasonable doubt” and “suspicion” has held as under: (SCC p. 412, para 13)

“13.Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be”



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true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.”

42.In Kanhaiya Lal v. State of Rajasthan [(2014) 4 SCC 715 : (2014) 2 SCC (Cri) 413], the Court has reiterated that the last seen together does not by itself lead to the inference that it was the accused who committed the crime. It is held thus: (SCC p. 719, para 12)



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“12.The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.”

8.In the result, the Criminal Appeal is allowed setting aside the judgment of the trial Court, dated 02.11.2019 in S.C.No.131 of 2019. The appellant/accused is acquitted from all the charges levelled against him. The appellant is directed to be released forthwith. The bail bond, if any, executed shall stand cancelled. Fine amount, if any, paid, shall be refunded to him.

23.04.2025

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Note: Issue order copy on 23.04.2025

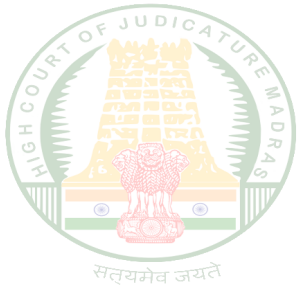


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To

- 1.The Additional Sessions Judge
(Fast Track Court),
Vellore.
- 2.The Inspector of Police,
Peranampet Police Station,
Vellore District.
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery judgment in

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