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Crl.A. No.48 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>RESERVED ON</i>	<i>01.04.2025</i>
<i>PRONOUNCED ON</i>	<i>18.06.2025</i>

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

Criminal Appeal No.48 of 2019

Anand

.. Appellant

Vs.

State rep.by
Inspector of Police
J-6 Thiruvanmiyur Police Station
Chennai
(Crime No.413/2016)

.. Respondent

Prayer : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence passed by the Sessions Judge, Mahila Court, Chennai dated 08.10.2018 made in S.C. No.219 of 2016 and set aside the same.

For Appellant : Mr.V.Parthiban
For M/s.M.Mohana Sundaram

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

J U D G M E N T



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N.SENTHILKUMAR, J.

Challenging the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chennai dated 08.10.2018 made in S.C. No.219 of 2016, the sole accused has preferred this appeal.

2. The learned Sessions Judge, Mahila Court, Chennai in S.C. No.219 of 2016, has convicted the appellant and sentenced him as follows:-

<i>Offence</i>	<i>Sentence</i>
Section 302 IPC	Imprisonment for life and a fine of Rs.10,000/-, in default, to undergo six months rigorous imprisonment

3. The case of the prosecution is that on 21.02.2016 at about 5.45 p.m, the accused and the deceased Suriya had exchange of words owing to their indifferences over tonsuring the head of the child in the temple at his native place. The deceased had insisted the accused for the same, for which the accused had expressed his inability to arrange money to meet the expenses. In the fit of anger, the accused is alleged to have strangled the deceased by



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pulling her 'Thali' (mangalsutra) which was hanging in the neck of the deceased and that the accused had committed the murder of the deceased. Originally a case was registered under Section 174 Cr.P.C and thereafter, the same was altered to 302 IPC. The learned XVIII Metropolitan Magistrare, Chennai, has taken the final report as PRC No.36 of 2016. As the case was triable by a Court of Session, the case was committed to the learned Sessions Judge, Mahila Court, Chennai and the same was taken on file as S.C. No.219 of 2016.

4. To prove the prosecution's case, the prosecution had examined as many as 12 witnesses as PW1 to PW12, marked 14 documents as Ex.P1 to P14 and produced five material objects as MOs.1 to 5. On the side of defence, neither a witness was examined nor any documentary evidence was produced to substantiate the case.

5. Mr.V.Parthiban, the learned counsel appearing for the appellant contended that it is a case of circumstantial evidence. PW1 is the father of the deceased. PW2 is the second wife of PW1. PW3 is the first wife of PW1 and the mother of the deceased. PW4 is the brother of the deceased. According to the

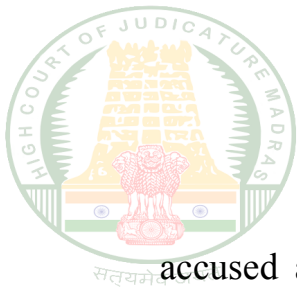


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prosecution, the accused had informed PW4 that the deceased was lying unconscious; that they have received this information on 21.02.2016 at about 5.45 p.m and immediately PW1 rushed to the house of the deceased and found that the deceased was lying unconscious. When they rushed to the private hospital, they were informed that the deceased was brought dead. PW1 had stated in the chief examination that when he entered the house of the deceased, the accused went out . PW2 and PW3 had also supported the version of PW1 and the evidence of PW4 is that the accused called him over phone and informed that the deceased was lying unconscious at home. PW5 is he observation mahazar witness. PW6 is a person residing in the same locality. PW6 is an independent witness, who had deposed in the chief examination that the deceased and the accused were quarrelling with each other and suddenly the deceased fell down and it looked like she was feeding the child. At that point of time, PW1 entered the house of the accused.

6. The learned counsel appearing for the appellant contended that in the earliest version of PW1, he had not stated anything about the presence of the deceased in the scene of occurrence. Exs.P2, P3 and P4 are the statements of PWs.1, 3 and 4, given before the RDO. As the marriage took place between the



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accused and the deceased one year prior to the date of occurrence, the case records were sent to the Assistant Commissioner of Police, Taramani Range (examined as PW11) and RDO, Chennai for further investigation. As the investigation revealed that there was no dowry harassment and the case is a murder, he sent the records to the Inspector of Police, Tiruvanmiyur for further investigation. PW12, the then Inspector of Police, has deposed that he has taken up further investigation in the above case, obtained inquest report, which was marked as Ex.P14. However, the Revenue Divisional Officer was not examined as a witness.

7. In the chief examination, PW6 had deposed that she came to the house of the deceased to inform that she is going to her native place for a festival. In the cross-examination, PW6 had stated that when she entered the house, she had seen the deceased lying unconscious. She did not pass this information to anyone and she did not inform this to PW1 also. In the cross-examination she further stated that the accused was sitting next to the deceased Suriya.

8. The learned counsel by taking note of the cross-examination of PW1



that on 21.02.2016, PW1 along with others had went to the police station to know the cause of death of the deceased. He further contended that as per PW1, PW6 has informed PW1 that she saw the accused and the deceased picking up a quarrel and the deceased had been strangulated by the accused by getting hold of her neck and pulling her hair. PW6 had warned the accused not to behave in this manner. In the cross-examination of PW1, he had admitted that after receiving this information from PW6, they suspected that the accused could have committed the crime. Therefore, the prosecution had not proved the theory of circumstantial evidence with regard to the last seen alive and recovery thereafter.

9. Per contra, Mr.S.Rajakumar, the learned Additional Public Prosecutor appearing for the respondents contended that the evidence of PW1 in the chief examination had categorically stated that when he went to the house of the deceased, he saw the accused coming out of the house and this version was corroborated by the evidence of PWs.2 and 3 and the fact that accused informed PW4 that the deceased was lying at home in an unconscious state is undisputed. The other incriminating circumstances that the accused did not take part in the cremation ceremony and his abscondence, is also an important factor. After his



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arrest, there was recovery of MOs.1 to 5 pursuant to the confession given by the accused and more particularly, MO5-Thali rope which was used for commission of the offence by the accused.

10. Admittedly, while examining the evidence of PW1, who had set the law in motion by preferring a complaint under Ex.P1, it is clear that PW1 who is the father of the deceased had not stated anything about the involvement of the accused in the commission of the offence, and in the absence of the crucial factum of presence of the accused at the place of occurrence, namely his house, while PW1 had entered the house, conviction cannot be based on the evidence of PW1. The only available evidence is PW6, who is an independent witness.

11. The evidence of PW6, is that she had witnessed the accused and the deceased quarrelling with each other when she went to the house of the accused and the deceased to inform that she is going to attend the temple festival. PW6 found the accused and the deceased picking up quarrel and later she found that the deceased was lying unconscious and the accused was sitting next to her. Though PW6 has stated such details in the chief-examination, in the cross-examination she had not stated that she had seen the accused and the deceased



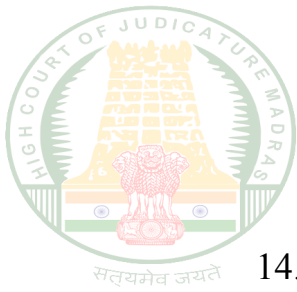
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were quarrelling.

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12. The said factum was not spoken by PW1 also. In the cross-examination, PW1 had stated that two days after the occurrence, PW1 had seen the deceased when they were going to police to know the nature of the death of the deceased and while going towards police station, PW6 has informed PW1 that on the date of occurrence, at about 5.00 p.m, the deceased and the accused were quarrelling. Only after hearing this information from PW6, PW1 suspected the nature of death of the deceased. The said fact is relevant for the reason that, in the complaint given by PW1, which is the earliest document, there is no whisper about the presence of the accused while entering the house of the deceased and the evidence of PW2 and PW3 supports the version of PW1.

13. PW8 and PW9 are doctors who had conducted post-mortem of the deceased and the post-mortem certificate was marked as Ex.P7. Ex.P8 is viscera report. In the post-mortem certificate, the doctor has opined that the deceased appeared to have died of asphyxia due to aspiration of gastric contents due to effects strangulation of neck.



14. Though it is the case of the prosecution that the accused had informed PW4 about the unconsciousness of the deceased, who in turn informed PW1, who had visited the place of the deceased, there is no evidence to corroborate or to prove that PW4 had informed PW1 pursuant to the information given by the accused.

15. Apart from this, no vital incriminating question was put-forth by the prosecution under Section 313 Cr.P.C to the accused and the accused had no opportunity to explain the incriminating circumstance, which is fatal to the prosecution. It is to be noted that except the observation mahazar and the evidence of PW5, who is a mahazar witness, there is no independent witness examined to prove the confession statement. In the absence of any witness to prove that the material objects are recovered pursuant to the confession given by the accused, the recovery goes without any sanction of law. The Hon'ble Supreme Court in ***Raj Kumar v. State (NCT of Delhi)***, reported in (2023) 17 SCC 95 has made the following observations on the importance of 313 questioning:

“22. The law consistently laid down by this Court can be summarised as under:



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22.1. *It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.*

22.2. *The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.*

22.3. *The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.*

22.4. *The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.*

22.5. *If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.*

22.6. *In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.*



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22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313 CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered”.

In view of the above observations, the evidentiary value regarding the questions to be posed by the Trial Court under section 313 Cr.P.C. by putting forth the material object recovered cannot be ignored.

16. It is very unfortunate to see the manner in which the investigation was conducted by PW11 and PW12. PW11 has initially registered the FIR and subsequently, PW12 has marked Ex.P10, sketch and the observation mahazar, which was prepared and marked as Ex.P5. The deceased was taken to private hospital, the accident register was marked as Ex.P11 and the material objects, which were recovered from the body of the deceased from MOs.1 to 5 were forwarded to the learned Magistrate under Form 95 which was marked as Ex.P12. Based on the complaint given by PW1 in Ex.P1, a case was registered



under Section 174 Cr.P.C. Subsequently the same was altered to 302 IPC under

Ex.P13 alteration report and the post-mortem certificate was marked as Ex.P7.

Since the death of the deceased had taken place within one year from the date of marriage, an inquest was conducted by RDO, and the inquest report was marked as Ex.P14. In the absence of any recovery from the accused for the alleged commission of offence, the prosecution had miserably failed to establish the genesis of the crime so as to prove the theory of last seen alive and the other chain of circumstances, which points out the guilt of the accused. PW1 had given a contrary statement in the complaint regarding the presence of the accused. Therefore, the evidence of PW1 projecting the case that he had seen the accused coming out of the house which was corroborated by PW2 and PW3 is highly improbable and in the absence of any mention or whisper about the presence of PWs.2 and 3, the prosecution had not established the chain of circumstances pointing out the guilt that the accused had committed the offence.

17. There is no semblance of material to show that the accused had committed the offence and the prosecution had failed to establish the case against the accused. In this regard, it is useful to rely on the judgment of the Hon'ble



Supreme Court in *State of Madhya Pradesh vs. Balveer Singh* in *Criminal Appeal No.1669 of 2012 dated 24.02.2025*, wherein, the Hon'ble Supreme Court

has held as under:

"61. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows: -

(i) Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(ii) Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;

(iii) The circumstances, if 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; and

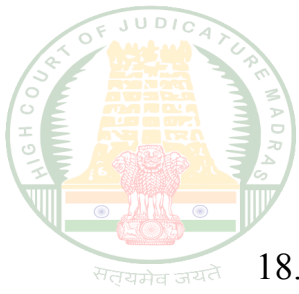
(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved. [See: Sharad Birdhichand Sarda v. State of Maharashtra reported in (1984) 4 SCC 116]



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63. *It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement or guilt of the accused. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.*

64. *Thus, in view of the above, the court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.*



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18. In view of the settled legal position and the facts and circumstances stated above, we are inclined to allow the appeal. Accordingly, the criminal appeal is allowed and the judgment of conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Chennai dated 08.10.2018 made in S.C. No.219 of 2016, is hereby set aside. The appellant can be set at liberty forthwith, if his presence is not required in connection with any other case. Fine amount, if any, paid shall be returned to him forthwith.

[M.S.R., J.] [N.S., J.]

18.06.2025

Asr

Index : Yes

Neutral Citation : Yes

To

1.The Sessions Judge, Mahila Court, Chennai

2.Inspector of Police

J-6 Thiruvanmiyur Police Station

Chennai

(Crime No.413/2016)

3.The Superintendent of Prisons

Central Prison, Puzhal

4.The Public Prosecutor, High Court, Madras



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M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.

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Dated : 18.06.2025