



CrI.A.No.82 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.A.No.82 of 2023

Apponianraj

... Appellant

Vs.

The State rep. by
The Inspector of Police,
K-10, Koyambedu Police Station,
Koyambedu, Chennai - 107.
Crime No.896 of 2017

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction imposed in judgment dated 04.01.2023 made in S.C.No.427 of 2019 on the file of the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai, by allowing this Criminal Appeal.

For Appellant : Mr.M.Mohamed Riyaz
For Mr.D.Lakshmipathy

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed as against the order dated 04.01.2023 passed by the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai, made in S.C.No.427 of 2019, thereby convicting the appellant for the offence punishable under Section 304 (Part I) of the Indian Penal Code (hereinafter referred to as “IPC”).

2. The case of the prosecution is that on 17.04.2017 at about 3 a.m., while the defacto complainant was sleeping in his house, the appellant had called him and informed that his wife died. Thereafter, the appellant visited the house of the appellant along with police. Initially, the FIR was registered under Section 174 of Cr.P.C., and thereafter it was altered into offence under Section 302 of IPC. After completion of investigation final report was filed and the same was taken cognizance by the trial Court in S.C.No.427 of 2019.

3. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.11 and marked documents in Ex.P.1 to Ex.P.15. The prosecution also produced material objects in M.O.1 to M.O.7. On the side of the accused, no one was examined and no documents were



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marked to disprove the prosecution case. On perusal of oral and documentary evidences, the trial Court convicted the appellant for the offence punishable under Section 304(1) of IPC and sentenced him to undergo ten years rigorous imprisonment and also imposed fine of Rs.5,000/- in default to undergo simple imprisonment for further period of six months. Aggrieved by the same, the present criminal appeal.

4. The learned counsel appearing for the appellant submitted that the prosecution had examined 11 witnesses to bring the charges to home and marked 15 exhibits. Out of 11 witnesses, P.W.1, P.W.2 & P.W.4 to P.W.8 turned hostile. Further, there was no eye witness to the alleged occurrence. Even according to the case of the prosecution, it is a case of circumstantial evidence and the entire case of the prosecution rest on the extra judicial confession statement of the appellant, which was marked as Ex.P.14, allegedly recorded by Village Administrative Officer, who was examined as P.W.6. Even then, the trial Court convicted the appellant for the offence punishable under Section 304(1) of IPC, on the basis of the sole evidence of P.W.3 who was the last seen witness under the last seen theory.



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4.1. Further, the trial Court convicted the appellant on the ground

that he did not discharge the burden under Section 106 of the Evidence Act. He also pointed out that there was absolutely no link to connect the appellant in this case. The appellant being the husband of the deceased, had gone out of the house at the time of occurrence and when he reached the house, he had found that his wife was dead. Immediately, it was informed to his employer viz., P.W.1. Thereafter, the complaint was lodged and the FIR was registered that too under Section 174 of Cr.P.C.

4.2. He further submitted that there was delay in sending the FIR to Court. FIR was registered on 17.04.2017 at about 5.00 a.m. However, it was reached the Court on the next day viz., on 18.04.2017 at about 18.40 hours. There was absolutely no explanation for delay in sending the FIR to Court. Further, the investigation officer cooked up a story as if the appellant was produced by P.W.1 before P.W.6, who was the Village Administrative Officer on 18.04.2017 at about 10 a.m., and then he was arrested. Thereafter, his extra judicial confession statement was recorded and the same was marked as Ex.P.14. In fact, the trial Court completely disbelieved the extra judicial confession statement and directed to take appropriate action as against the Village Administrative Officer and the



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Investigation officer, who deposed as P.W.6 and P.W.11 respectively.

Even then, the trial Court convicted the appellant under Section 304(1) of IPC without any evidence. In fact, there was no recovery of any weapon and there was no forensic investigation. Therefore, the prosecution failed to prove the charge beyond any doubt and the conviction and sentence imposed by the trial Court cannot be sustained and is liable to be set aside.

5. Per contra, the learned Additional Public Prosecutor appearing for respondent submitted that the employer of the appellant viz., the defacto complainant (P.W.1) had informed the police that there was a quarrel between the appellant and his wife on 16.04.2017 and he advised them and thereafter he went to his home and slept. Thereafter, at about 3.20 a.m., the appellant informed that his wife was died. Immediately, P.W.1 lodged complaint and the same was marked as Ex.P.1. Even before the complaint, he found the external injuries on the deceased body. Thereafter, the accused was produced before the Village Administrative Officer and recorded his confession statement was recorded and the same was marked as Ex.P.14. That apart, the material objects were also produced in order to prove the charges. The appellant,



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who is being the husband of the deceased, failed to disprove the case of the prosecution as contemplated under Section 106 of Evidence Act.

Therefore, the trial Court rightly convicted the appellant for the offence under Section 304 (Part I) of IPC, and it doesn't warrant any interference by this Court.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. It is the case of circumstantial evidence. The appellant is the husband of the deceased. The occurrence had taken place on the intervening night between 16.04.2017 and 17.04.2017 at about 8.45 p.m., to 03.20 a.m., in the house of the appellant. According to the complaint viz., Ex.P.1, the appellant quarreled with the deceased and thereafter he slept. Thereafter, he found that his wife had died. Immediately he went to the house of P.W.1 and informed the same. Thereafter, P.W.1 went to the house of the appellant and the appellant's wife to be dead. P.W.1 also found some injuries on the deceased's forehead and right eyebrow.



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8. The complainant was examined as P.W.1. But he turned hostile. On his evidence, it is clear that the distance between the appellant's residence and P.W.1's residence is 1000 meters. While P.W.1 visited the appellant's house, the police personnels were there. Further, at about 5.00 a.m., he lodged complaint and the FIR was registered. It was marked as Ex.P.7. Though the FIR was registered at about 5.00 a.m., on 17.04.2017, it reached the jurisdictional Court only on 18.04.2017, that too at about 18.40 hours. There was no explanation from the side of the prosecution for the sending the FIR belatedly.

9. Further according to the prosecution case, after registration of FIR, the appellant went to the Village Administrative Officer's office along with P.W.1. Thereafter, his extra judicial confession statement was also recorded before P.W.6, which was marked as Ex.P.14. It is curious to note that after registration of FIR and even after finding injuries on the deceased's body, the appellant was not arrested by the investigating officer and he himself had gone to the Village Administrative Officer's office to give confession statement along with P.W.1. Till then, the appellant was not arrested and he was allowed to go out. Therefore, it is clear that the prosecution cooked up a story as if the appellant went to the



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office of the Village Administrative Officer and had given confession statement, which was marked as Ex.P.14. Therefore, the trial Court came down and recorded as follows :-

“47. In fact, there is evidence to establish that after the occurrence on and 17.04.2017 by 5:00 AM P.W.1, Tr. Vijayakumar lodged a complaint and the accused was taken custody by the police. P.W.5, Tr.Anandaraj, son of the accused has stated that on 17.04.2017, he saw the accused at the police station. Therefore the accused was already in custody at the police station on 17.04.2017. The Investigating officer P.W.11, Tr.Azhagu along with the Village Administrative Officer, P.W.6, Tr.Janardhanan has therefore created false evidence as if the accused gave an extra judicial confession by appearing before the Village Administrative Officer at his office on 18.04.2017. Being public servants P.W.6/Tr.Janardhanan is not supposed assist or bend for the pressure given by the police officer to create false evidence. Such act of P.W.6 and P.W.11 would amount to serious misconduct and will attract not only penal action but also necessary departmental action for committing misconduct. This Court cannot be blindfolded to such misconduct of Village Administrative Officer and investigating officer in creating false evidence, which is an offence punishable under IPC. If this court remains a silent spectator it will be a bad example and will embolden others to commit similar acts in creating false evidence and coolly



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go scot-free.

48. *P.W.11 being an Investigating Officer and Inspector of Police should have used scientific methods and other interrogating methods to collect proper evidence for the purpose of prosecuting the accused. It can be noted that P.W.11 has deposed that he went to the place of occurrence and seized P.M.O.1 liquor bottles, PM.O.2, broken cellphone, PM.O.7, blood stained cement mortar at the place of occurrence. He has not even chosen to send the same for chemical examination. Further, P.W.11, the Investigating Officer has not chosen to conduct forensic examination on the place of occurrence to collect and find out availability any other finger print other than the inmates of the house to exclude the complicity of the accused in the crime. Instead of making such scientific and proper investigation he has chosen to find an easy way by fabricating a false evidence with the help of P.W.6. Such misconduct of the Investigating Officers is deprecated. Such act of the Investigating Officer (PW.11) would also amount to serious dereliction of duty attracting departmental proceedings and penal action.”*

Therefore, the trial Court also directed to take appropriate action as against the investigation officer and the Village Administrative Officer.

10. Even then, the trial Court convicted the appellant for the offence punishable under Section 304 (part-I) of IPC, on the basis of the



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evidence of P.W.3 by last seen theory. P.W.3 is none other than the neighbour of the appellant and she deposed that on 16.04.2017, there was a quarrel between the appellant and his wife. Even while she was returning to her home at about 8.30-9.00 pm., there was a quarrel between them. She further deposed that one person asked about the quarrel for which the appellant scolded him. On the next day, she had heard that the appellant's wife had died. Further she did not visit the house of the appellant. On the basis of the said evidence, the trial Court convicted the appellant on the ground that the appellant, who is the husband of the deceased, failed to discharge his burden under Section 106 of the Indian Evidence Act.

11. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in **(2017) 14 SCC 359** in the case of **Anjan Kumar Sarma & ors Vs. State of Assam**, which held as follows :-

“19. The circumstance of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715 this court held that:

“12. The circumstance of last seen together does



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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.

.....

*15. The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan* [(2010) 15 SCC 588].”*

*20. In *Arjun Marik v. State of Bihar*, 1994 Supp (2) SCC 372, this court held that:*

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the



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deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

Thus, it is clear that in the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction.

12. It is also relevant to rely upon another judgment of the Hon'ble Supreme Court of India reported in **CDJ 2025 SC 915** in the case of **Padman Bibhar Vs. State of Odisha**, which held as follows :-

“20. This Court in Kanhaiya Lal vs. State of Rajasthan [(2014) 4 SCC 715], has held that evidence on ‘last seen together’ is a weak piece of evidence and conviction only on the basis of ‘last seen together’ without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 IPC. The following passage from the judgment in paras 12 and 15 can be profitably referred:

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Thus, it is clear that the nature of circumstantial evidence available against the appellant, though raises doubt that he may have committed murder, is not so conclusive that he can be convicted only on the basis of evidence of 'last seen together'.



13. Insofar as the discharging the burden of the accused under

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Section 106 of the Indian Evidence Act is concerned, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in **CDJ 2021 SC 166** in the case of **Shivaji Chintappa Patil Vs. State of Maharashtra.**, which held as follows :-

“20. In the case of Subramaniam (supra), reliance was placed on behalf of the State on the judgments of this Court in Trimukh Maroti Kirkan v. State of Maharashtra 9 and Ponnusamy v. State of Tamil Nadu¹⁰. This Court observed thus:-

“26. In both the aforementioned cases, the death occurred due to violence. In this case, there was no mark of violence. The appellant has been found to be wholly innocent. So far as the charges under Section 498-A or Section 4 of the Dowry Prohibition Act is concerned, the evidence of the parents of the deceased being PW 1 and PW 2 as also the mediators, PWs 4 and 5 have been disbelieved by both the courts below. That part of the prosecution story suggesting strong motive on the part of the appellant to commit the murder, thus, has been ruled out..... ”

21. It will also be relevant to refer to the following observations of this Court in the case of Gargi (supra):-

“33.1. Insofar as the “last seen theory” is concerned, there is no doubt that the appellant being



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none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in Sawal Das v. State of Bihar, (1974) 4 SCC 193 in the following: (SCC p. 197, para 10)

“10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.””

Thus, it is well settled that Section 106 of the Indian Evidence Act does not directly operate against the accused staying under the same roof and being the last person seen with the deceased. It does not absolve the



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prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. In this case, the prosecution has even failed to prove beyond reasonable doubt, that the death was homicidal.

14. Except P.W.3, no one has spoken about the appellant. Even P.W.1, who lodged the complaint, turned hostile and did not support the case of the prosecution. Even from the chief examination, it is seen that there are some contradictions in respect of reaching the house of the appellant, lodgement of complaint, presence of the police personnels in the house of the appellant and registration of FIR. According to the case of the prosecution, after registration of FIR, the appellant himself along with P.W.1 had gone to the office of the Village Administrative Officer and had given extra judicial confession statement. The same is not believable and as such the trial Court rightly directed the authorities to take appropriate action against the Village Administrative Officer, who was examined as P.W.6 and the investigation officer, who was examined as P.W.11. However, without any material the trial Court mechanically convicted the appellant under Section 304(1) of IPC. If at all the trial Court had taken into consideration the evidence of P.W.2, the appellant should have been convicted for the offence under Section 302 of IPC. If



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the trial Court did not believe the version of the prosecution, it should not convict the appellant for the offence punishable under Section 304(1) of IPC.

15. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the trial Court in respect of the charge against the appellant cannot be sustained and is liable to be set aside.

16. In view of the above discussions, the conviction and sentence imposed by the learned Principal Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai, in S.C.No.427 of 2019 dated 04.01.2023, is hereby set aside. The appellant/accused is acquitted of all charges in S.C.No.427 of 2019 on the file of the learned Principal Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai. Fine



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amount, if any paid, shall be refunded to the appellant forthwith. Bail

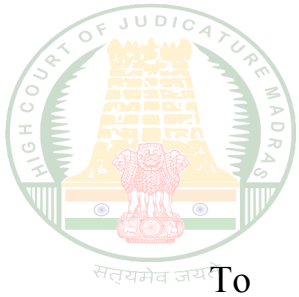
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17. Accordingly, this Criminal Appeal stands allowed.

27.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To
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1. The Sessions Judge,
Mahalir Neethimandram,
Allikulam, Chennai.
2. The Inspector of Police,
K-10, Koyambedu Police Station,
Koyambedu, Chennai - 107.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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