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CrI.A.No.139 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

CrI.A.No.139 of 2019

S.Kumar

... Appellant

Vs.

State represented by
The Inspector of Police,
Panglaputhur Police Station,
Erode District
(Cr.No.153/2014)

... Respondent

Criminal Appeals filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 10.08.2015 in S.C.No.125 of 2014 on the file of the Sessions Court, Mahila Court (Fast Track Mahila Court) Erode.

For Appellant	:	Mr.M.Rajkumar
For Respondent	:	Mr.A.Damodaran
		Additional Public Prosecutor
		assisted by
		Ms.M.Arifa Thasneem



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JUDGMENT

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

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Aggrieved over the judgment of conviction and sentence, dated 10.08.2015 in S.C.No.125 of 2014 on the file of the Sessions Court, Mahila Court (Fast Track Mahila Court) Erode, accused has filed the instant criminal appeal. The accused was convicted under under Section 302 of IPC and sentenced by the trial Court for life imprisonment and fine of Rs.1,000/- in default, to undergo two years simple imprisonment.

2.The case of the prosecution is as follows :

2.1. Deceased is 7 years female child. PW1 is the mother of the deceased. Accused is the father the deceased. Out of their wedlock, two daughters were born namely Dhanushiya, elder daughter aged 7 years and Bhuva, younger daughter aged 4 years. After the birth of the first daughter, the accused started quarrelling with PW1 that the first daughter is not resembling like him and looks like some other person. The accused also demanded money from PW1 for solving criminal case, viz., theft case against him, when she refused, he threatened PW1 to leave the house with the children and thrown out the PW1. Accordingly, PW1 left the house with



her younger daughter, however, left the elder daughter to stay in the deceased house. When the matter stood thus, on hearing the fact that her elder daughter is admitted in the hospital and died, thereafter, PW1 had given a complaint under Ex.P1. PW2 is running a shop opposite the Elementary School, Kongarpalayam, on 10.06.2014, the accused at 1.30 purchased pencil and notebook from his shop. PW3, Head Master of Elementary School, Kongarpalayam stated that the accused came to the school at 1.45 pm and given pencil and note book to PW3 asking him to hand it over to the deceased, accordingly, PW3 had handed it over to the deceased. P.W.5 is also residing in the same locality, he deposed that accused used to quarrel with PW1 that the deceased is not born to him. On the date of occurrence, on finding that the deceased girl was vomiting, PW5 along with others took the deceased to the hospital. PW6 is working as salesman in TASMACH has deposed that while he was proceeding in a motorcycle near Vaniputhur, one Magali, who is residing in his village had requested him to drop in his house, accordingly, they proceeded near temple situated near Sengodu Road, accused and the deceased were standing together and the deceased girl was having cool-drinks bottles in her hand. PW7 is the medical



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officer attached to the Gobi Government Hospital deposed that on 10.06.2014 at 05.45 pm, the deceased was brought by the accused, on examination, he found that the child had already died, therefore, issued Accident Register (Ex.P2) and also returned the same to the police station and intimation under Ex.P3. PW8 also deposed that the accused left the child in front of one Rajesh's house at about 4 pm, thereafter, Rajesh and accused took the deceased to the hospital. PW13 had deposed that on 10.06.2014, the accused had purchased ½ litre miranda, later on 30.07.2014, the police enquired the purchase of the Miranda bottle from the shop of PW13, PW13 has identified the bottle.

2.2.On the basis of the complaint given by PW1 under Ex.P1 on 11.06.2014, an FIR (Ex.P15) came to be registered in Cr.No.153 of 2014 Bangalapudur Police Station.

2.3.After receipt of the FIR (Ex.P15), P.W.19 (Investigating Officer) went to the place of occurrence and prepared the Observation Mahazar (Ex.P5) in the presence of witnesses, conducted inquest and prepared inquest report (Ex.P23) and Rough Sketch (Ex.P28) and also recorded the statements of the witnesses. He gave a request to the postmortem doctor



under Ex.P24 and also gave request to examine viscera to the forensic lab

under Ex.25. After ascertaining the cause of death from the forensic lab, when he tried to examine the accused, he had absconded. Thereafter, on 30.07.2014 at about 9 am, the accused went to the office of the PW10/VAO and while VAO and his assistants were in his office, the accused confessed that since the first child did not resemble him, he raised suspicion which resulted in serious quarrel between him and his wife; as his wife left the house it caused severe stress, therefore, he decided to kill the child and purchased the mirinda and also pesticides and mixed the poison with the cool-drink and gave it to child. The confession was recorded by PW10. The confession of accused, exhibited under Ex.P4 and PW10 was handed over the same to the PW19/Investigating Officer. The Investigating Officer, after altering the charges under Ex.P26 arrested the accused, recorded the confession and seized the remaining Thimet insecticide and also the miranda bottle under Exs. P6, P7 and P8. The accused had purchased Thimet from the shop of PW12, the police also seized the bill-book relating to the sale of Thimet. The medical officer/PW11 conducted autopsy on the dead body of the deceased found that the deceased died to organophosphorous insecticide



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about 12 to 24 hours before post-mortem. In this regard, she also given Ex.P11. PW20/Scientific Officer, Forensic Lab has examined viscera and issued Exs.P30 and P31 indicating that viscera contain organophosphorous insecticide poison.

2.4.The Investigating Officer, after completing the investigation, laid final report against the accused for the offences under Section 302 of IPC against the accused in P.R.C.No.15 of 2014 before the learned Judicial Magistrate No.1, Gobichettipalayam.

3.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the learned Principal Sessions Judge, Erode as contemplated under Section 209 of CrPC in S.C.No.125 of 2014 and was made over to Sessions Court, Mahila Court (Fast Track Court), Erode, for trial.

4.The trial Court framed the charges for the offence against the accused under Section 302 of IPC. When questioned, the accused pleaded “not guilty”.



5.To prove the case, the prosecution has examined as many as 20 witnesses as P.W.1 to P.W.20 and marked Exs.P1 to P31 and produced M.Os.1 & 2.

6.The trial Court, after appreciating the oral and documentary evidence and materials on record, by judgment dated 10.08.2015, found the accused guilty of the offences under Section 302 of IPC and thereby, convicted and sentenced the A1 as stated *supra*.

7. Challenging the conviction and sentence, the instant appeal is filed by the accused/appellant.

8. The learned counsel for the appellant submitted that this case is based on circumstantial evidences, the entire circumstances has not been proved and the circumstances relied upon by the prosecution is highly doubtful and the same has been created only for the purpose of the case.



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9. Whereas, the learned Additional Public Prosecutor appearing for the State, would submit that based on the extra judicial confession by the accused to the PW10, PW10 took the accused to the police station and submitted Ex.P4, the Investigating Officer enquired him, accused confessed the crime and the confession was recorded, based on the information given by the accused, material objects were recovered. According to him, recovery includes thimet pack and mirinda plastic bottle, Postmortem Report and Viscera reports under Exs.P11 and P30 and P31 clearly proves that the deceased died due to organophosphorous insecticide poison, therefore, it is his contention that the Trial Court has considered all these facts and clearly found that the accused guilty. Hence, he would submit that the judgment of the trial Court does not require any interference.

10. We have perused the entire materials available on record.

11. The prosecution has relied on the following circumstances:- a. motive, b. last seen theory, c. extra-judicial confession recorded by PW10, d. recovery of the material objects.



12. It is not disputed that the deceased is 7 years old female child who was admittedly in the custody of the accused at the relevant point of time.

The motive attributed against the accused is that from the birth of the female child, he was not happy with her resemblance and developed suspicion that the child is not born to him which had resulted in quarrel between the accused/husband and the wife/A1. During such quarrel, PW1 left the house with the younger child and the elder child/deceased was in the custody of the accused. It is the specific case of the prosecution that due to suspicion developed against the child, the accused had decided to do away the child and mixed the Phorate in the cool-drink and administered the poison to the female child as a result of which the child died. From the evidence of prosecution side, particularly, the evidence of postmortem doctor PW11 under Ex.P11/postmortem certificate and P12/final opinion and the evidences of PW20 under Ex.P30 and Ex.P31, Biological and Serological reports clearly establishes that the the cause of death of the female child was due to Phorate poison.



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13. In light of the above facts, now, it has to be seen whether the prosecution has established the other circumstances brought against the accused. As far as the motive aspect is concerned, PW1/wife of the accused has clearly deposed that the accused had developed suspicion about the child birth that she does not resemble like him which resulted in frequent quarrel between the accused and PW1. Thereafter, the PW1 left the house with her younger child. Though PW1 has not stated with regard to the suspicious behavior in the FIR, during statement not only before the police but also in the statement under Section 164, she has reiterated the same. P.W.5 is also residing in the same locality, he has also clearly deposed that accused used to quarrel with PW1 that the deceased is not born to him. Their evidences has not been shattered in any manner and further, no foundation whatsoever has been laid as against the independent witnesses to prove that they are false evidences. Therefore, when no foundation has been laid to discredit the independent witness's account, their testimony is more likely to be accepted as truthful by the court. Therefore, the motive aspect has been clearly established.



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14. As far as the last seen theory is concerned, PW6 is working as salesman in TASMAC has deposed that while he was proceeding in a motorcycle near Vaniputhur, one Magali, who is residing in his village had requested him to drop in his house, accordingly, they proceeded near temple situated in Sengodu Road, accused and the deceased were standing together and the deceased girl was having cool-drinks bottles in her hand. From his evidence, it is clearly established that the child was having miranda cool drinks in her hand. It is not the case of the accused in the cross examination that PW6 has never seen him along with his daughter together. In the cross examination, the accused has not established anything against the witnesses that he has been falsely implicated. PW8 also in his evidence has deposed that the accused brought the deceased and made her to sit in front of Rajesh house at around 4 pm, thereafter, all of them took the child to the hospital. PW7/ medical officer in his evidence clearly stated that the child was brought dead at 5.45 pm.

15. This Court is of the view that the witnesses have no axe to grind against the accused for false implication in the case, we say so, because, the



witnesses supra had stated that the child was with the father at 3.45 pm, particularly, the child was having cool drinks bottle in her hand and he child was brought dead in 5:45 pm, within two hours. It is for the accused to explain as to what happened in between. There was no explanation whatsoever from his side, the facts are exclusive within his knowledge and the same has not been explained. It is not the case of the accused that the child came into contact with the poison insecticide accidentally, therefore, when the time gap between the deceased and accused were seen alive and the death of the child was so small, it is for the accused to explain, absolutely, there is no materials whatsoever is brought by the accused. PW6 has no axe to grind against the accused and no motive whatsoever is established against him for falsely implicating the accused. We are of the view that the evidence of PW6 cannot be ignored.

16. It is further to be noted that PW2 and PW3 in their evidence also clearly stated that the accused, in fact, purchased note book at 1.30 pm and handed over the same to PW3 in the school. This conduct also cannot be brushed aside altogether. If really, any note book or whatsoever is required,



the same will be given to the child when the child was going to the school in the morning itself. Therefore, accused appearing and supplying certain books at 1.45 pm appears to be strange. That conduct also goes against the normal human conduct. PW13, shop keeper in his evidence has deposed that on 10.06.2014, the accused came to his shop had purchased ½ litre of miranda cool drinks. The bottle is marked as M.O.1. He has clearly stated that the accused came to his shop on 10.06.2014 and the purchase is also explained to the police. PW12 in his evidence has clearly stated that on 10.06.2014, the accused came to his shop and purchased 1 kg thimet insecticide. Bill Book, Ex.P9 is also seized from PW12. The entire cause of death came to be known after the forensic report was given to the police. Thereafter, from the evidence of PW19, it is seen that the accused had absconded and only resurfaced after he appeared before PW10/VAO. PW10 in his evidence stated that the accused voluntarily appeared and he recorded his confession & in his confession his entire plan had come out. Thereafter, Investigating Officer after recording the discovery statement had seized miranda empty bottle and remaining thimet insecticide packets from the accused under Exs.P6 to P8.



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17. PW12 in his evidence has clearly stated that on 10.06.2014, the accused came to his shop and purchased 1 kg thimet insecticide. Bill Book/ Ex.P9 is also seized from PW12 from S.Nos.1 to 50. The accused has purchased Thimet on 10.06.2014, wherein, he has also signed in the receipt under Ex.P10. Ex.P10 contains the signature of the accused. The signature is also not disputed by the accused in the entire cross examination of PW12. All these facts clearly establish the purchases of pesticides and cool drinks to mix the cool drinks with the pesticides and also their evidences establishes that the accused and deceased were seen together and the deceased found dead within short span of time. All the circumstances coupled with extra judicial confession given before PW10/VAO clinchingly establishes the complexity of the accused with the crime. There was no explanation whatsoever as to what had happened to the 7 year female child, who was admittedly in the custody of the accused. When incriminating materials are put against the accused and the accused do not throw any light upon the facts which are proved to be within his special knowledge during the questioning under Section 313 of CrPC, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of



circumstances required to be proved against the accused. For better appreciation, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Ram Gopal Vs. State of Madhya Pradesh* reported in (2023) 5 SCC 543, wherein, it is held as follows:

'6. It may be noted that once the theory of "last seen together" was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution was proved against him.'

18. Similarly, the Hon'ble Supreme Court in the case of *Prahlad vs. State of Rajasthan* reported in 2018 SCC OnLine SC 2548, wherein, it has held as follows:-

"No explanation is forthcoming from the statement of the



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accused under Section 313 Cr.P.C. as to when he parted the company of the victim. Also, no explanation is there as to what happened after getting the chocolates for the victim. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused.”

19. Considering all these aspects and as the accused has not explained as against the incriminating materials put against the accused, this indicate that he has no answer to explain. Further, it is not the case of the accused that the child had accidentally come into the contact of the insecticide which resulted in death, whereas, the evidences of PW6 and PW13 would clinchingly prove that on 10.06.2014, the deceased and accused were standing together and the deceased was holding cool-drink bottle which was purchased on the same day, viz., 10.06.2014 and on the same day, within two hours, the child became victim and died. Therefore, circumstances relied upon by the prosecution clearly points towards the accused in respect of the charge. Hence, we do not find any infirmity in the prosecution case. The Criminal Appeal has no merit, and hence, the Criminal Appeal is liable to be dismissed.

20. Accordingly, the Criminal Appeal stands dismissed. The judgment



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of the trial Court dated 10.08.2015 in S.C.No.125 of 2014 on the file of the Sessions Court, Fast Track (Mahila Court) Erode is confirmed. The order dated 26.08.2019 made in Crl.M.P.No.11021 of 2019 in Crl.A.No.139 of 2019 suspending the sentence of the appellant stands vacated. We direct the Trial Court to secure his presence immediately to serve out the rest of his sentence.

(N.S.K., J.) (M.J.R., J.)
28.10.2025

dhk

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Neutral Citation : Yes / No

To

1.The Sessions Court, Fast Track (Mahila Court) Erode

2.The Inspector of Police,
Panglaputhur Police Station,
Erode District

3.The Public Prosecutor,
High Court, Madras.



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and
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