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CRL A No. 242 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2025

CORAM

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

CRL A No. 242 of 2019

Muniyan

Appellant

Vs

State Rep By Its,
The Inspector of Police,
Bagayam Police Station,
Vellore District.
Cr.No.351 Of 2017.

Respondent(s)

PRAYER

This Criminal Appeal has been filed under Section 374 of Cr.P.C. to call for the records of the learned Additional District and Sessions Judge (FTC), Vellore, Vellore District Made in S.C.No.62 of 2018 and set aside the judgment dated 02.03.2019.

For Appellant(s): Mr.B.M.Subash,
and
Mr.S.Bharanidharan
(Amicus curiae)



For Respondent(s): Mr. A.Damodaran,
Addl. Public Prosecutor,

Asst. by
Ms.S.Arifa Thasneem

ORDER

(Order of the Court was made by N.Sathish Kumar J.)

The conviction and sentence passed in Sessions Case No.62 of 2018 by the Additional Sessions Judge, Additional District and Sessions Court (FTC), Vellore, are being challenged in the present Criminal Appeal.

2. Since the counsel appearing for the appellant has not appeared, we appointed Mr. B.M.Subash and Mr.S.Bharanidharan, learned counsel, as *amicus curiae* to argue the appeal. After giving some time to read the file, they argued.

3. The case of the prosecution, in brief, is as follows: -

The accused is the father of the deceased, one Palanivel. On 25.11.2017 at about 10.30 p.m., when the accused had quarrelled with the deceased, the accused



strangled the neck of the deceased with a black-coloured wire and assaulted the middle portion of the head of the deceased with a wooden stick. Thereafter, in order to screen the offence, he made it appear that the deceased had committed suicide by hanging.

(ii) On 26.11.2017, on the information given by P.W.2, Village Assistant, P.W.1, Village Administrative Officer, Palavanshanthu, went to Virupatchipuram Perumal Koil Street and found the body of the deceased. As the friends of the deceased, namely, Kannappan and Rajesh, raised suspicion, the body of the deceased was sent to the hospital through ambulance and thereafter, he lodged a complaint (Ex.P.1).

(iii) On receipt of the complaint, P.W.12, Sub-Inspector of Police, registered a case in crime no.351 of 2017 under Section 174(3) of Cr.P.C. under Ex.P.11 First Information Report. P.W.12 forwarded the First Information Report to the higher officials and to the jurisdictional Court.

(iv) P.W.14, Inspector of Police, on receipt of the First Information Report, commenced the investigation, proceeded to the scene of occurrence, prepared Observation Mahazar(Ex.P.14) and drew a Rough Sketch (EX.P.15) in the presence of witnesses P.Ws.3 and 4. P.W.14 conducted inquest on the dead body of the



deceased in the presence of panchayathars and prepared the Inquest Report (Ex.P.16) and recorded the statements of the witnesses. Thereafter, he gave a requisition (Ex.P.10) for conducting post-mortem on the dead body of the deceased.

(v) P.W.13, Assistant Professor, Government Medical College Hospital, Vellore, on 27.11.2017, at about 12.45 p.m. conducted postmortem on the dead body of the deceased and found the following injuries:-

1. Reddish brown abrasions

- i) 12.1 x 1.5 cm curvilinear ligature abrasion was present on the right side of the neck.
- ii) multiple small nail scratch abrasions were present on front and left side of the neck
- iii) 3.5 x 4.5 c.m., on the left shoulder; 2.3 x 1.5 cm on the outer aspect of left side of abdomen; Four parallel scratch abrasions 2.5 x 0.5 cm each on the inner aspect of left forearm.

2. Darm red contusions:

- i) Two parallel patterned contusions 4.8 x 2.5 cm and 3.5 x 1.8 cm x muscle deep was present 3.5 cm apart on the outer aspect of left arm;
- ii) 6.5 x 2.5 cm x muscle deep on the back of left side of chest;
- iii) Diffuse swelling was present on the back of the head; on further dissection; dark red diffuse subgalea hematoma on the occipital region of the scalp with 5.5 x 4.8cm depressed fracture of the occipital region of the calvarium ; on opening of the calvarium; Dark red 3.5 cm thick subdural haematoma was noted on the occipital lobes; thin diffuse sub arachnoid haemorrhage on all over the surface of the



brain; brain; edematous; C/S: Pale, skull base: intact.

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P.W.13 issued post-mortem certificate (Ex.P.12) and Final Opinion(Ex.P.13) stating that the deceased would appear to have died to the effects of head injuries and also stated that viscera report revealed the presence of ethil alcohol in the body of the deceased.

(vi) In the meantime, on 27.11.2017, at about 5.00 p.m., the accused appeared before P.W.9, Village Administrative Officer, and gave a confession admitting the guilt. P.W.9, produced the accused before P.W.14.

(vii) P.W.14 arrested the accused and, on such arrest, he voluntarily gave a confession (Ex.P.6) and based on the disclosure statement, he seized the plastic rope(M.O.1) and wooden log(M.O.2) under Seizure Mahazar (Ex.P.7) and altered the charge into Section 302 IPC and sent the Alteration Report(Ex.P.17) to the jurisdictional Court. Pursuant to the requisition given by P.W.14 for recording the evidence under Section 164 Cr.P.C., the witnesses, namely Vigneshraj and Chettu @ Kannapiran were examined on 22.03.2018. After recording the statement of the other witnesses and the doctor, who conducted post-mortem on the dead body of the deceased, and on completion of investigation, he laid a charge sheet, and on



completion of investigation, he laid a final report.

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4. The Trial Court, after hearing arguments of both sides and upon perusing the relevant records, framed charges against the accused for offences under Section 302 and 201 of IPC and the same have been read over and explained to the accused. The accused has denied the charges and claimed to be tried.

5. In order to prove the case of the prosecution, on the side of the prosecution, as many as fifteen witnesses were examined as P.Ws.1 to 15 and twenty documents were marked as Ex.Ps.P.1 to 22. Besides, two Material Objects were marked as M.Os.1 and 2.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any documents on his side.

7. The learned counsel for the petitioner would submit that absolutely there is no evidence whatsoever implicating the accused. The Trial Court has erroneously appreciated the so-called confession given before the police and also the statement of the witnesses under Section 164 of Cr.P.C and has taken as a substantive piece of evidence. Therefore, the Trial Court's judgment is nothing, but erroneous and



shows non application of mind and the Trial Court has not even followed on the fundamental principles in a criminal case. Hence, he would submit that the conviction and sentence imposed by the Trial Court are liable to be set aside.

8. The learned Additional Public Prosecutor appearing for the respondent also fairly submitted that there is no eye witness to the occurrence and further, the case itself was registered due to some suspicion raised by the friends of the deceased. Thereafter, the investigation was proceeded with and a final report was laid. Further, he would submit that the Trial Court has given importance to the confession and also the Section 164 Cr.P.C statement. Further, in 313 Cr.P.C. questioning also, the accused has not given any explanation.

9. We have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on record carefully.

10. Though the First Information Report was originally registered under Section 174 of the Cr.P.C., for a suspicious death on the basis of the complaint given by P.W.1, the complaint itself was given only on the basis of suspicion raised by one Kannapiran and Rajesh, who were stated to be the friends of the deceased. Kannapiran was examined as P.W.5, and he has not deposed anything before the



Trial Court. He has completely turned hostile. Though his statement under Section 164 Cr.P.C. was recorded, he was not even confronted with that statement.

Absolutely, there is no eyewitness to the occurrence.

11. Of course, the Medical Officer's evidence clearly indicates that there was a fracture on the skull, which was the reason for death of the deceased. His evidence also clearly shows that the deceased was under the influence of alcohol. As per the Viscera Report (Ex.P.9), it was clearly proved that ethyl alcohol was found. Though the prosecution has relied upon the alleged confession given by the accused before P.W.9, the said witness has not recorded the confession. He merely produced the accused before the Investigating Officer(P.W.14). Further, it is relevant to note that the Village Administrative Officer is a responsible officer. When the accused appeared before him and gave a confession, prudence demands that a statement should be recorded, which has not been done. According to P.W.9, the accused appeared before her in the office at 5.00 p.m., on 27.11.2017. Her evidence is falsified by the evidence of P.Ws.1 and 2, who are also the Village Administrative Officer and his assistant. Their evidence clearly indicates that on the same day, namely on 26.11.2017, the police came to the place of occurrence and arrested the accused. Their evidence clearly indicates that the moment the friends of the deceased raised suspicion, the police came to the spot and took the accused



in the custody.

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12. Therefore, the very prosecution story that the investigation commenced only on the basis of Ex.P.1 and was completed later is highly doubtful. In fact, the police had already visited the spot, taken the accused into custody, and the accused was already in custody on 26.11.2017. Therefore, the prosecution theory that the so-called extra judicial confession came to their knowledge only on 27.11.2017 is highly doubtful and cannot be acceptable. The Trial Court has given undue importance to Section 164 Cr.P.C. statement of P.Ws. 5 and 6, but they have not supported the case of the prosecution in any manner. P.Ws.5 and 6 were not even confronted with their statements recorded before the learned Magistrate. Such being the case, the Trial Court ought not to have relied upon the Section 164 Cr.P.C. statements, as a statement under Section 164 Cr.P.C. cannot be a substantive piece of evidence. What is stated before the Court and recorded during trial alone will qualify as substantive evidence. The statement recorded under Section 164 of the Cr P.C., at the most, could be used for contradiction or corroboration. The very purpose of recording such a statement is to prevent the witness from resiling later under the fear of giving a false statement on oath before the Court. Therefore, merely because the statement was recorded by the Judicial Magistrate under Section 164 Cr.P.C, it cannot be treated as a substantive piece of evidence. This fundamental principal has been omitted by the Sessions Judge, who



has casually dealt with the life of the prisoner.

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13. Further, the Trial Court has simply extracted the evidence of P.W.9.

When P.W.9 has not even recorded any statement, believing her version blindly and without any support or corroboration. We are of the view that the Trial Court has not even appreciated the evidence in the light of well settled principles of appreciation of evidence.

14. No doubt, the Medical Officer's evidence clearly indicates that the deceased died due to injury on the skull. The fact that ethyl alcohol was found in his body also shows that the possibility of a fall and sustaining such injury cannot be ruled out. Therefore, merely because the family members made an attempt to cremate or bury the dead body cannot be a ground to implicate them in a serious crime. When other possibilities, particularly, the fall by the drunken person and sustaining such injury, cannot be ruled out. In such view of the matter, the appellant/accused is entitled to the benefit of doubt and the conviction and sentence imposed by the Trial Court are liable to be set aside.

15. In the result, this Criminal Appeal is allowed. The judgment of conviction and sentence passed by the Trial Court is set aside. The appellant/accused is acquitted of the charges framed against him. Bail bond, if any



executed, shall stand discharged. The fine amount, if any, paid by the appellant shall be refunded to him.

(N.SATHISH KUMAR J.) (M.JOTHIRAMAN J.)
30-10-2025

Speaking/Non-speaking order
Neutral Citation: Yes/No
mrp

To

1. The Additional District and Sessions Court,
Fast Track Court-I,
Vellore.
2. The Inspector Of Police,
Bagayam Police Station,
Vellore District



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AND
M.JOTHIRAMAN J.**

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