



Crl.A.No.340 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.A.No.340 of 2019

1.Jawaharbabu

S/o.Murugesan

No.51/36, Govindasamy Theru,

Chidambaram.

2.Aravalli

W/o.Jawaharbabu,

Ammankoil Street, C.Mutlur, Chidambaram.

Petitioner(s)/Accused

Vs

State represented by

The Inspector of Police

Chidambaram Town Police Station

Cuddalore District

Respondent(s)/Complainant

1/31



Crl.A.No.340 of 2019

WEB COPY

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 24.04.2019 passed in Spl.S.C.No.4 of 2015 on the file of the Sessions Court, Mahila Court, Cuddalore.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Mr.M.Karthikeyan

JUDGMENT

(delivered by M.Jothiraman, J.)

Challenging the judgment 24.04.2019 passed in Spl.S.C.No.4 of 2015 on the file of the Sessions Court, Mahila Court, Cuddalore, the appellants/accused have preferred the present criminal appeal.

2. The brief case of the prosecution is as follows:

2.1 PW1 and PW2 are the father and mother of the deceased boy



Crl.A.No.340 of 2019

“X” (name not divulged for the sake of anonymity). A1 and A2 are the

husband and wife. They are all tenants in the same building at Govindasamy Street, Chidambaram. The accused were running a small eatery in the ground floor of the building. In the year April 2014, “X” completed XI Standard and during vacation, he used to go to tuition. Usually, “X” leaves the house at 6.30 p.m. and return around 8.30 p.m., but, on 21.04.2014, he did not return home. Therefore, PW1 lodged a complaint (Ex.P1).

2.2 PW8 registered an FIR (Ex.P7) in Crime No.239 of 2014 under "boy missing". He (PW8) had sent the original complaint (Ex.P1) and FIR (Ex.P7) to the Judicial Magistrate No.II, Chidambarm and handed over the case to the Inspector of Police (PW17) for further investigation.

2.3 On 23.04.2014, around 4.00 p.m., when PW3 was having tea in a tea shop near the eatery of the accused, he sensed a foul smell and saw a



Crl.A.No.340 of 2019

blood like liquid coming out of the eatery; when the same was questioned by him (PW3), the accused told him that the foul smell was due to the crabs, which they have washed earlier and the blood like liquid was the soft drink, which was spilled earlier. As the smell continued, the boys around that locality insisted on opening the shutter and when they opened the same, the body of “X” was found tied up in a sack inside the eatery. PW3 also signed in the observation mahazar (Ex.P.2).

2.4 PW4, who is the elder sister of PW2, stated that on 22.04.2014, between 10.00 a.m. and 12.00 p.m., she called the mobile number of “X”, for which, a male person answered the same and told her that “X” was with him and demanded Rs.25 lakhs as ransom.

2.5 PW5, who is the daughter of PW4, also stated that a male person attended the call from “X’s” mobile phone when tried by PW5 and demanded ransom; later, PW5’s husband received a phone call from



somebody that the body of “X” was found inside the eatery of the accused.

WEB COPY

2.6 The Inspector of Police (PW17), after receiving the FIR (Ex-P7) from PW8 commenced the investigation. He (PW17) went to the place of occurrence and found that the body of “X” in the eatery of A1 and A2. Thereafter, he (PW17) prepared observation mahazar (Ex.P2) and rough sketch (Ex.P23). In order to avoid law and order problem, he (PW17) immediately transported the body of “X” to the mortuary of the Government Hospital, Chidambaram. Thereafter, he (PW17) altered the case to under Section 302 IPC and prepared alteration report (Ex.P24). He also called forensic officers to collect blood stains in the walls of the residence portion of A1 and A2. PW17 conducted inquest over the body of “X” and prepared inquest report (Ex.P25). He (PW17) seized the blood stained dress materials (M.Os.5 to 7) removed from the body of “X” during postmortem. He (PW17) also seized blood stained two polythene covers (M.Os.8 & 9) and



Crl.A.No.340 of 2019

blood stained white polythene cover (M.O.10), which is used to cover the body of “X”. Thereafter, he (PW17) gave a request to find out the call detail records of the mobile number of the accused - 87608 92877 and the mobile number of PW5 - 99760 27255. On 26.04.2014, he (PW17) arrested the first accused in the presence of Village Administrative Officer (PW6) and his assistant Sundararaj. A1 voluntarily gave his confession statement and the admitted portion of the confession statement was marked as Ex.P3. Based on the disclosure of A1, PW17 seized the cudgel (M.O.1), Micromax mobile phone and Nokia mobile phone (M.O.3) under seizure mahazar (Ex.P4). He (PW17) had sent all the seized items for forensic analysis. Since, PW17 got transfer, he handed over the file to PW19.

2.7 Dr.Geethanjali (PW18) analysed the hyoid bone of “X” and found that the same was intact and issued (Ex.P5). She (PW18) conducted autopsy on the body of “X” and issued postmortem certificate (Ex.P6) and



opined as follows:

WEB COPY

“The deceased would appear to have died of three lacerations were present in the scalp, opinion could not be given since the body was decomposed.”

She (PW18) has also gave final opinion (Ex.P26), wherein, it has been stated as follows:

“The external injuries and internal findings of the head are suggestive of head injuries.

The congestion of thee internal organs is suggestive of asphyxia.

The deceased would appear to have died due to combined effects of head injuries and asphyxia.”

2.8 The Inspector of Police (PW19) took over the investigation and examined the doctor and answers given by him were marked as Ex.P27. He arrested A2 on 01.11.2014 in the presence of Village Administrative Officer (PW6) and his assistant Sundararajan. The admitted portion of the confession statement of A2 was marked as Ex.P28. A2 had disclosed that she



Crl.A.No.340 of 2019

cleaned up the cudgel (M.O.1). Therafter, PW19 altered the case to one under Sections 302, 302 r/w 201 and 384 IPC and Section 7 r/w 8 of the POCSO Act, 2012 and prepared alteration reports (Ex.P29 and Ex.P30).

2.9 After completing the investigation and based on the evidence collected, the Investigating Officer (PW19) filed a final report in P.R.C.No.25 of 2014 before the Judicial Magistrate Court No.II, Chidambaram, against the accused A1 and A2.

2.10 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.4 of 2015 and was made over to the Sessions Court, Mahila Court, Cuddalore, for trial.



Crl.A.No.340 of 2019

2.11 The trial Court framed the charges under Section 302, 302 r/w

201 and 384 IPC and Section 3 r/w 18 of the POCSO Act against the

accused:

<i>Accused</i>	<i>Charges framed</i>
A1	Section 302 IPC
	Section 201 r/w 302 IPC
	Section 384 IPC
	Section 3 r/w 18 of the POCSO Act
A2	Section 302 r/w 201 IPC

When questioned, the accused pleaded 'not guilty'.

2.12 To prove the guilt of the accused, the prosecution examined nineteen witnesses and marked thirty exhibits and ten materials objects.

2.13 When the accused were questioned under Section 313 Cr.P.C.



Crl.A.No.340 of 2019

on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked on behalf of the accused.

2.14 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 24.04.2019 in S.C.No.4 of 2015, has convicted and sentenced the accused as under:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1	Section 302 IPC	Life imprisonment and fine of Rs.25,000/-, in default to undergo three years simple imprisonment.
	Section 201 r/w 302IPC	Seven years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo one year simple imprisonment.
	Section 384 IPC	Two years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment.
	Section 4 r/w 18 of the POCSO Act	Ten years rigorous imprisonment and fine of Rs.50,000/-, in default to undergo two years simple imprisonment.
A2	Section 201 r/w 302 IPC	Seven years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo two



Crl.A.No.340 of 2019

years simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

WEB COPY

2.15 Aggrieved by the aforesaid conviction and sentences, the appellants/accused have preferred the present criminal appeal.

3. Heard the learned counsel for the appellants/accused and the learned Additional Public Prosecutor appearing for the respondent/State.

4. Submissions made by the learned counsel appearing for the appellants/accused:

i. There is no evidence with regard to the implication of the accused based on the presumption under Section 29 of the POCSO Act.

ii. The circumstance that the body of “X” was found in the eatery of the



Crl.A.No.340 of 2019

accused alone is not sufficient to prove the offence of murder.

WEB COPY

iii. The non-examination of the owner of the eatery is fatal to the prosecution.

iv. The prosecution has not properly examined PW5 and PW17, as a needle of suspicion falls on PW5 by PW1 and PW2.

v. On the date of alleged occurrence, the first accused was also along with PW1 and PW2 and he also searched for "X".

vi. As per the evidence of PW3, on 23.04.2014, A1 and A2 were very much available at the place of occurrence and the accused alone broke down the shutter of the eatery.

vii. PW2 categorically admits that their neighbours caught hold of the accused and assaulted them and after the arrival of the police, the accused were taken to the police station on 23.04.2014 itself. If it is so, the evidence of PW17, who stated that A1 was arrested only on 26.04.2014, is contrary to the evidence of PW2. Therefore, the arrest



Crl.A.No.340 of 2019

and recovery from A1 is falsified by the defence.

WEB COPY

viii. The entire case is based on the circumstantial evidence, but, the chain of circumstances have not been established by the prosecution and therefore, the benefit of doubt must be given to the accused and they may be acquitted.

5. *Per contra*, the learned Additional Public Prosecutor appearing for the respondent would submit that the body of “X” was found in the eatery run by the accused in a sack with head injuries. The blood stains were also found in the residential portion of the accused situated just back side of the eatery, which shows that the incident took place in the residential portion of the accused, while A2 was in her mother's house at C.Mutlur and later, the body of “X” was transported to the eatery by the first accused in the early morning on 22.04.2014, as the same was witnessed by PW9 and another. Further, the call detail records of the accused (Ex.P11 series) prove that A1



Crl.A.No.340 of 2019

had called A2 and A2 had come to the house, went to the eatery and cleaned

the cudgel (M.O.1) and thereafter, admittedly suppressed the smell

emanating from the closed eatery by pouring phenyl, which was witnessed

by PW3 and PW10. The seizure of mobile phone (M.O.3) from the first

accused by PW17 shows that it was the first accused, who made those calls.

The first accused has to explain as to how the SIM card of “X” was used in

his mobile phone (M.O.3). There was no reason for the first accused to take

“X”, who was sixteen years old, inside his house except for sexually abusing

him. The second accused was well aware of the murder committed by A1

and with an intention to cause disappearance of evidence, A2 washed the

cudgel (M.O.1) used for murdering “X”. A2 also attempted to suppress the

bad odour from the eatery by pouring phenyl and diverted the curious

neighbours.



6. The prosecution has relied upon the following circumstances:

- motive;
- presence of the body of “X” in the eatery of the accused;
- evidence of PW9 witnessing the first accused taking the sack to his eatery;
- arrest and recovery; and
- medical evidence

7. PW1 and PW2, who are the father and mother of the “X”, deposed that the accused were running the eatery in the ground floor; since their son “X” did not return home on 21.04.2014 till 8.00 p.m., they started searching him along with their relatives PW4 and PW5 and A1; while so, somebody called PW5, who had earlier tried calling the mobile number of “X”, and demanded ransom.

8. PW3, who was the neighbour of PW1 and PW2, stated that a



Crl.A.No.340 of 2019

foul smell emanated from the eatery of A1 and A2, while he was having a tea in a nearby shop; he (PW3) and others enquired the accused about the foul odour emanating from their eatery, for which, A1 and A2 replied that they had washed crabs and it was that smell emanating; he (PW3) saw a blood like liquid flowing out of the shutter door of the eatery of A1 and A2; as suspicion grew strong, he (PW3) forced the accused to open the shutter and accordingly, the door was forcibly opened; he (PW3) and others went inside the eatery of A1 and A2 and found the body of “X” tied in a sack.

9. PW4, who is the elder sister of PW2, in her evidence, has stated about the search made by PW1 and PW2 for their missing son “X”. She also stated about calling the mobile number of “X” and a man demanding ransom.

10. PW5, who is the daughter of PW4, stated that on 21.04.2014



Crl.A.No.340 of 2019

PW2 informed her that “X” was missing; her husband Gopi told her about

2.00 a.m. to try and call the mobile number of “X”, abiding by the same, she called “X's” number at 2.15 a.m. on 22.04.2014, a person received the call, said 'hello' and disconnected the call; further, on 22.04.2014, between 1.00 p.m. and 1.30 p.m., a person again attended the call and demanded ransom and thereafter, the phone was switched off; around 4.00 p.m. on the same day, again she called the “X's” mobile number and spoke to the so-called kidnapper; around 5.00 p.m., the kidnapper told her to come to a particular place; the person, who spoke to her over the mobile phone made her run from pillar to post and thereafter, again the mobile phone was switched off; when they were searching for “X”, her husband received a phone call from someone and heard that the body “X” was found inside the eatery of A1; she rushed to the eatery of A1 and saw that the body of “X” tied in a sack and head covered with a polythene cover.

11. According to the prosecution, A1 was attracted to the same sex



Crl.A.No.340 of 2019

people and to have sex with with “X”, he had earlier attempted to fulfil his

desire, but, “X” had evaded; since “X” did not disclose the attempt made by

A1 to his parents, it was the instinct of A1 that “X” would be amenable for

his lust; on the fateful day *i.e.* on 21.04.2014, A1 waited in the ground floor

for the return of “X” from tuition and on some pretext, took “X” to his

residential portion; when “X” resisted and attempted to escape, A1 fearing

that “X” would disclose his true colours to others and put him to shame,

took a cudgel (M.O.1) and gave blows on the backside of the head of “X”

repeatedly and “X” died; thereafter, A1 concealed the body of “X” in his

house; when PW1 and PW2 started searching “X”, A1 also joined along

with them; at a later point of time, A1 tied the body of “X” and stuffed the

same in a plastic sack and shifted his body to the eatery.

12. PW17, Inspector of Police, deposed that on 23.04.2014 at 4.30



Crl.A.No.340 of 2019

p.m., he received information from one Venkatachalapathy and others that a

foul odour emanating from the eatery of the accused and they enquired the

same from A1. Based on the above information, he visited the scene of

occurrence, found the body of “X” inside the eatery of the accused and has

prepared observation mahazar (Ex.P2) and rough sketch (Ex.P23). In order

to avoid law and order problem, he had immediately transported the body to

the mortuary at Government Hospital, Chidambaram. Thereafter, he had

altered the case as a murder case vide alteration report (Ex.P24). He also

brought the forensic officers and they collected blood stains in the walls of

the residential portion of the accused and a gauze cloth identified by PW1.

On 20.04.2014, PW17 arrested A1 in the presence of Village Administrative

Officer (PW6) and recorded his voluntary confession statement, through

which, A1 disclosed about the whereabouts of the cudgel (M.O.1),

Micromax mobile phone (M.O.2) and Nokia mobile phone (M.O.3) under

seizure mahazar (Ex.P4).



Crl.A.No.340 of 2019

WEB COPY

13. As per the evidence of the Inspector of Police (PW17) and Village Administrative Officer (PW6), A1 was arrested on 26.04.2014 at 9.10 a.m., whereas, PW2/mother of “X”, deposed that after the body of “X” was found in the eatery of the accused, the residents of the street have caught hold of the accused and they have beaten them and thereafter, the police have arrived at the spot and taken the accused to the police station on 23.04.2014. Hence, the evidence of PW2 with regard to the arrest of the accused is contradicted by the evidence of Inspector of Police (PW17) and Village Administrative Officer (PW6).

14. PW4 was the elder sister of PW2 and she stated about the search by PW1 and PW2 for “X” and also spoke about calling the mobile number of the boy and someone demanding ransom.



15. PW5 is the daughter of PW4, who states that on 21.04.2014,

she received information from PW2 that her son was missing. PW5 informed her husband Gopi about the missing of “X” and to try and call the mobile number of “X”. PW5 called “X's” number around 2.15 a.m. on 22.14.2014, but, the person, who received the call said 'Hello' and disconnected the call. Further, on 22.04.2014, between 1.00 p.m. and 1.30 p.m., a person again attended the call and demanded ransom and thereafter, the mobile phone was switched off. Around 5.00 p.m. on the same day, PW5 called the “X's” mobile number and spoke to the so-called kidnapper and was informed by the so-called kidnapper to come to a particular place. PW5 states that the person, who spoke to her over the mobile phone, had made her run from pillar to post and thereafter, the mobile was switched off. While so, PW5 got an information from her husband that the body of “X” was found inside the eatery of the accused. Immediately, she rushed to the eatery of the accused and found the body of “X” in a sack and the head covered with a



Crl.A.No.340 of 2019

polythene cover.

WEB COPY

16. In this regard PW17, Inspector of Police, found that the cycle of “X” was stationed in the lane of the complainant and he had given requisition to trace the tower location of the mobile phone used by “X” in Mobile No.87608 92897. PW17 deposed that he was unable to receive the tower location and call detail records of A1.

17. PW5 deposed that call details recorded by her in a Compact Disc (CD) has been handed over to PW17, whereas, PW17 states that PW5 has not handed over any CD containing call recordings of the mobile number of “X” and the mobile number of PW5. There is a contradiction between the evidence of PW17 and PW5 with regard to the mobile phone conversation held between PW5, her husband and the so-called kidnapper.



Crl.A.No.340 of 2019

WEB COPY

18. Dr.Kumaradevi (PW7), who conducted autopsy on the body of “X” opined that there are three lacerations present in the scalp of “X” and opinion could not be given for the cause of death, since the body was decomposed.

19. PW12/Scientific Officer, Regional Forensic Sciences Laboratory, Villupuram, who examined the material objects collected during investigation, detected blood in all items except cudgel (M.O.1) and the same was reflected in his biological report (Ex.P8) and opined that the blood stains in M.Os.5 to 7 were found to be human blood, but, the origin of the blood stains in other items could not to be found out since the molecules were disintegrated.

20. PW14 is the sister-in-law of A2. She deposed that on



Crl.A.No.340 of 2019

21.04.2014, A2 was in her mother-in-law house in C.Mutlur; when she (A2)

was in her mother-in-law's house and at that time, A2 came to their house' also on 22.04.2014, she was having a mobile phone, in which, she had two SIM cards, one of which, was her husband's. While her mobile number is 8012887068, her husband mobile mobile number is 8012172004. She stated that her mobile mobile was put on charger during her stay at C.Mutlur and somebody had used the mobile mobile at that time. PW14, in her cross-examination, denied that A2 talking to her husband using the mobile phone of her.

21. PW2 deposed that on 22.04.2014, she has lodged the complaint at 11.00 a.m. On the same day, PW4 informed PW2 that the kidnapper demanded a sum of Rs.25,00,000/-. Immediately, PW2 informed the same to police. But, at that time PW2 was also in the police station. On 22.04.2014, PW17 informed PW2 that her son's mobile phone signal was at



Crl.A.No.340 of 2019

Chidambaram. The information received from PW5 was conveyed to PW17

on 23.04.2014, but PW17 has not investigated the same and simply ignored.

PW2 also deposed that on 23.04.2014 at 8.30 p.m., the police have secured A1 and A2. On 21.04.2014, while they were searching their son, PW2 tried to contact her son's mobile, since call was not picked up, in turn, her husband called her son through the mobile phone of A1.

22. PW1 deposed the PW5 recorded the mobile conversation with the so-called kidnapper in a CD and same was given to him, in turn PW1 handed over the same to PW17. The said CD contains the call recordings of PW5, who contacted “X” for seven times and its conversation. PW1 admits that A2 was in her parental house on 22.04.2014 at C.Mutlur.

23. According to the prosecution, there was a reason for A1 to take “X”, sixteen year old boy, inside his house except for sexually abusing him.



Crl.A.No.340 of 2019

Further, their presumptions under Sections 29 and 30 of the POCSO Act,

WEB C

2012, is also against A1. Therefore, the motive for the murder was also clear

and the injuries found on the head of “X” that A1 had caused those injuries

only with an intention to murder “X”.

24. It is to be noted that the Court conducting the trial of cases under the POCSO Act, can resort the presumptions incorporated under the POCSO Act. The presumption that abets under Section 29 of the POCSO Act is not absolute and it is triggered only when the prosecution is able to prove the foundational facts in the first place. The prosecution has not examined any witness to prove the motive for the occurrence. The evidence of PW2 is contradicted by the evidence of PW17 and PW6 with regard to the arrest of A1. The evidence of PW1 is contrary to the evidence of PW17 with regard to handing over of CD, which contains conversation of the so-called



Crl.A.No.340 of 2019

kidnapper. PW2 deposed that on 22.04.2014 around 11.00 a.m., she lodged the complaint (Ex.P1) and on the same day, while she was in the police station, PW4 informed her that the kidnapper demanded a sum of Rs.25,00,000/-, in turn, she informed the same to the police. On the other hand, PW1 and PW2 stated that on 21.04.2014, they started searching “X” along with A1 and their relatives PW4 and PW5. Further, PW1 tried to contact “X” through the mobile phone of A1. The above aspects creates serious doubt in this case and thereby, the prosecution has not established the foundational facts.

25. In such view of the case, the trial Court simply cannot convict the accused on the basis of presumption, because, the Court cannot resort with only on the basis of presumption. However, presumption will come into play only when foundational facts are established. Even though the age of



Crl.A.No.340 of 2019

the victim is sixteen years and the same is not denied by the accused, in this

case the foundational facts are not proved and the chain of circumstances have not been established. When the case rests upon the circumstantial evidence, the prosecution has to establish the chain of circumstances, pointing out the involvement of the accused. Therefore, the trial Court was wrong in taking recourse to the presumption under Section 29 and 30 of the POCSO Act. The prosecution has failed to prove the case beyond reasonable doubt. There are doubts in this case and the benefit of doubt goes to the accused.

26. *Ergo*, we find that the trial Court has committed nothing but a grave error in passing the conviction order against the accused. Hence, we have no hesitation in our mind to hold that the appeal deserves to be allowed.



Crl.A.No.340 of 2019

27. In view of the foregoing:

- i. The judgment dated 24.04.2019 passed in Spl.S.C.No.4 of 2015 on the file of the Sessions Court, Mahila Court, Cuddalore, is set aside;
- ii. The accused are acquitted of the charges framed against them;
- iii. Fine amount, if any, paid by the accused shall be refunded to them;
- iv. The bail bond, if any, executed by the accused shall stand cancelled; and
- v. The accused shall be released forthwith, if they are not required in any other case.

In the result, this criminal appeal stands allowed.

(N.S.K., J.) (M.J.R., J.)
10.11.2025

nsd

To

1. The Sessions Judge,
Mahila Court, Cuddalore.

2. The Inspector of Police

29/31



Crl.A.No.340 of 2019

Chidambaram Town Police Station, Cuddalore District

WEB COPY

3.The Superintendent, Central Prison, Cuddalore.

4.The Public Prosecutor, Madras High Court, Chennai – 600 104.

N.SATHISH KUMAR, J.

and

M.JOTHIRAMAN, J.

nsd

Crl.A.No.340 of 2019



WEB COPY



Crl.A.No.340 of 2019

10.11.2025