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Crl.A. Nos.745/2019 & 192/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>RESERVED ON</i>	24.04.2025
<i>PRONOUNCED ON</i>	24.06.2025

CORAM

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

Criminal Appeal Nos.745 of 2019 and 192 of 2022

Criminal Appeal No.745 of 2019

Alagiri

.. Appellant/A1

Vs.

State, represented by
The Inspector of Police
Perambalur Police Station
Perambalur District
Crime No.128/2016

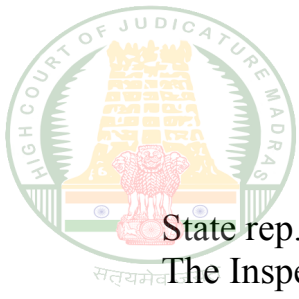
.. Respondent

Prayer : Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence passed by the Sessions Judge, Mahila Court, Perambalur dated 18.10.2019 made in S.C. No.18 of 2016 and set aside the same.

For Appellant : Mr.Shanmugavelayudham, Sr. Counsel
For Mr.M.Maharaja

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

Criminal Appeal No.192 of 2022



Crl.A. Nos.745/2019 & 192/2022

State rep. by
The Inspector of Police
Perambalur Police Station
Perambalur District
Crime No.128/2016

.. Appellant/Complainant

Vs.

1.Ilangovan
2.Swamymalai
3.Deeban
4.Manju @ Deepak
5.Sakthivel
6.Sasikaran
7.Ravikaran
8.Suresh
9.Ranjith @ Kirubakaran
10.Vicky @ Vickneshwaran
11.Jeyaprakash

.. Respondents/A2 to A8,
A10 to A13

Prayer : Criminal Appeals filed under Section 378(i) of the Criminal Procedure Code against the judgment of acquittal as against the respondents herein, passed by the Sessions Judge, Mahila Court, Perambalur dated 18.10.2019 made in S.C. No.18 of 2016 and set aside the same and convict the respondents herein/accused.

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

For Respondents : Mr.R.Rajan for R1, 2, 4, 7 to 10
Mr.S.Senthilkumar for R3
Ms.K.Akshara,
Legal Aid Counsel for R5
Mr.D.Mario Johnson for R6
Mr.J.Milton Arul Rajendran for R11

COMMON JUDGMENT



Crl.A. Nos.745/2019 & 192/2022

N.SENTHILKUMAR, J.

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There are two criminal appeals, Crl.A. No.745 of 2019 was filed by the first accused challenging the judgment of conviction and sentence passed against the appellant herein/A1 and Crl.A. No.192 of 2022 was filed by the State as against the judgment of acquittal against the respondents in the said appeal/Accused 2 to 8 and 10 to 13 passed by the learned Sessions Judge, Mahila Court, Perambalur dated 18.10.2019 made in S.C. No.18 of 2016.

2. The learned Sessions Judge, Mahila Court, Perambalur in S.C. No.18 of 2016, had acquitted A2 to A8, A10 to A13 and convicted the appellant in Crl.A. No.745 of 2019/A1 and A9. The learned Sessions Judge had acquitted the appellant/A1 under Sections 294(b), 147, 148, 324, 364(A), 365, 343 and 302 r/w109 IPC. The learned Sessions Judge had convicted the appellant/A1 under Sections 302 and 364 IPC and sentenced him as follows:-

<i>Accused/Appellant</i>	<i>Offence</i>	<i>Sentence</i>
<i>A1</i>	<i>Section 302 IPC</i>	<i>Life imprisonment. No fine amount</i>
	<i>Section 364</i>	<i>10 years rigorous imprisonment. No fine amount.</i>
<i>A2 to A8 & A10 to A13</i>	<i>Acquitted of all charges</i>	

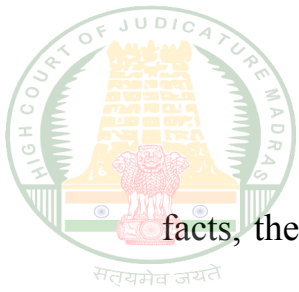


The trial court ordered that the sentences shall run concurrently.

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3. The case of the prosecution is that one Saravanan had projected himself as an influential person who is working in Flying Squad of Teachers Recruitment Board. The said Saravanan had promised to secure various Government jobs. A2 had collected a sum of Rs.64.00 Lakhs and handed over the same to the said Saravanan for obtaining Government jobs for his friends and relatives. A sum of Rs.40.00 Lakhs had been given to Saravanan and some more money was deposited in Saravanan's bank account. Also a sum of Rs.35.00 Lakhs was deposited to one Selvaraj who is the friend of Saravanan for obtaining Government job. On verification, they came to know that the said Saravanan had cheated and embezzled a sum of Rs.64.00 Lakhs.

4. On 02.02.2016, at about 11.30 p.m, the accused 1 to 13 had kidnapped two persons believing that they are Sakthivel and Saravnan. After verifying the identity, they came to know that the abducted persons are one Arivazhagan and Govindaraj. The said Arivazhagan and Govindaraj were kidnapped in a car bearing Registration No.TN-38 M-3703 and thereafter, the said Arivazhagan was done to death. An attempt was made to commit murder on PW22 – Govindaraj, who had escaped from the scene of occurrence. Based on the above



facts, the respondent police had registered a case in Crime No.128 of 2016 for offence under Section 302 IPC.

5. To prove the case of the prosecution, the prosecution had examined 34 witnesses as PW1 to PW34, marked 41 documents as Exs.P1 to P41 and produced 12 material objects as MO1 to MO12. On the side of defence, neither a witness nor a document was produced to substantiate their case.

6. According to the prosecution, PW1 is the Village Administrative Officer, who had preferred a complaint after identifying the dead body, which was found in the scene of occurrence situated near Vishal Petrol Bunk. Based on the said complaint, FIR came to be registered.

7. The first accused, Azhagiri after committing the offence had appeared before PW1 and had given a voluntary extra judicial confession by narrating the motive and the modus of committing the murder of the deceased Arivazhagan. After giving the confession statement, the first accused had affixed his signature on the confession statement recorded by PW1. PW2 to PW12 are hostile witnesses. PW13 was in-charge of the lodge, where the deceased and the said Govindaraj - PW22 were detained by the accused. Ex.P9 is the receipt of the



lodge where the accused had stayed. However, PW13 had not identified the accused and the victims. PW14 is another Village Administrative Officer who had attested the confession statement given by A2 to A4 on 09.03.2016 and his signature is marked as Ex.P10. TVS Apachi motorcycle was recovered from A3 in the presence of PW14 which is recorded in the seizure mahazar under Ex.P11. Ex.P12 is the confession statement of A2 through whom MO5, Bolero car was seized under the seizure mahazar marked as Ex.P13. Based on A4's confession statement marked as Ex.P16, MO6-blue Indica car was seized. The confession statement of A4 was marked as Ex.P18, based on which, three iron pipes were seized, which were produced and marked as MO7.

8. PW15 is the doctor, who conducted post-mortem on the deceased and the post-mortem report was marked as Ex.P20. PW16 and PW17 are mahazar witnesses, who spoke about the seizure of MOs.8 to 10, which are blue colour sweater, blood stained innerwear and blood stained lungi, respectively. PW18 is the Sub Inspector of Police, who initially recorded CSR No.35 of 2016 and thereafter, a case was registered in crime No.23 of 2016 for offence under Section 364 IPC. PW19 is the wife of the deceased, who had deposed that her husband was found missing and she came to know about the same only on the next day. Thereafter, she preferred a complaint on 06.02.2016. PW20 is the



mother of the deceased who had disclosed that PW22 had informed her that her son Arivazhagan was done to death by A1. PW21 is the father of the deceased, who received information through others about the death of the deceased and PW22 is the paternal uncle of the deceased. PW22 is the person who was kidnapped along with the deceased by all the accused.

9. PW22 had deposed that he and the deceased have gone to Tiruchittrambalam village and consumed alcohol around 10.00 p.m on 2.2.2016 and slept in the land leased by the accused around 11.30 p.m. Suddenly, six persons armed with iron rods, brutally attacked the deceased and him and thereafter, the said six persons threw chilli powder on their eyes. They tied their mouth and hands and took them in a white colour Bolero car. All the accused were contemplating to commit murder of the deceased as well as PW22.

10. The evidence of PW22 speaks about a specific overt act of A1 and had narrated the sequence of incident from consuming alcohol along with the deceased at Thiruchittrambalam village, where six persons had caused injury on them and threw chilli powder. As per his statement, both of them were kidnapped and taken to a lodge and on the next day, they were taken to the scene of occurrence. Since the deceased has children and family, PW22 had



requested the accused to let off the deceased and take the life of PW22. As per the statement of PW22, first accused was extremely furious and he was holding a knife in his hand. Hence, A1 took the deceased to the scene of occurrence. PW22 had categorically stated that A1 was carrying MO1-knife and he took the deceased to the scene of occurrence and while returning, A1 was not having the weapon and the deceased did not return along with A1. When PW22 enquired A1 regarding the whereabouts of the deceased, A1 had given an extra judicial confession to PW22 that he had committed murder of the deceased. He further stated that the driver of the car had given some money to PW22, therefore, he escaped from the clutches of the accused.

11. PW23 is the photographer, who had taken photographs of the body of the deceased and the photographs were marked as Ex.P24. PW24 is Grade I woman constable who spoke about the seizure mahazar and the confession statement given by the accused. PW25 is the Grade II constable who had recorded the statement of three accused persons on 15.03.2016. PW26 is the brother of the deceased, who had spoken about the receipt of money by Saravanan. PW27 to PW29 are the villagers, who spoke about the death of the deceased (however they had turned hostile). PW30 is the Sub Inspector of police, who had registered the FIR on 06.02.2016 based on the complaint given



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by the Village Administrative Officer in Crime No.128 of 2016.

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12. PW31 is the Inspector of Police, who took up the investigation and on instructions of the Deputy Superintendent of Police, the case was monitored. They had recovered a Sim Card bearing No.897311029 belonging to A1, who had contacted the deceased from 01.01.2016 to 10.02.2016. The call details are marked as Ex.P26. PW32 is the Inspector of Police, who had recorded the statements of witnesses and had prepared the observation mahazar and sketch, marked as Ex.P27 and Ex.P28 and had recorded the statement of PW19 and PW26 as well. Subsequently, PW33, who is the Inspector of Police, took up further investigation and examined PW1, PW2, PW3, PW4, PW12 and PW33. He had arrested all the accused.

13. PW34 is the Deputy Superintendent of Police, who has been specially appointed by the Superintendent of Police for further investigation, had examined PW19, PW13 and one Krishnamoorthy and recorded the statement on 09.03.2016 and altered the FIR by including offence under Sections 120-B, 147, 148, 364, 365, 343, 324 and 302 IPC. Ex.P32 is the express FIR. After completion of investigation, a charge-sheet was filed. As the case is triable by a Court of Session, the charges were framed by the trial court on 19.10.2016,



where all the accused have denied the charges framed against them.

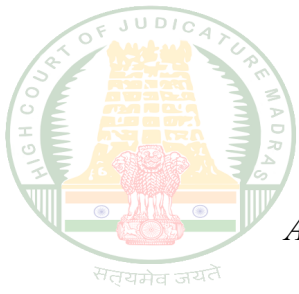
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14. The trial court, after examination of all the witnesses and after considering the documentary evidence and the material objects produced as MOs.1 to 12, has come to the conclusion that the case as against A1 was proved and a sentence was imposed on A1 as stated supra. For lack of evidence, A2 to A8 and A10 to A13 were acquitted. As A9 was absconding, the case was split up.

15. Aggrieved by the judgment acquitting A2 to A13 except A9, the State has preferred an appeal against acquittal and A1 has preferred an appeal challenging his conviction.

16. The learned senior counsel appearing for the appellant in Cr.A. No.745 of 2019 submitted that the extra judicial confession alleged to have been given by A1 to PW1 was reduced to writing and marked as Ex.P3 and the Special Report of the Village Assistant, was marked as Ex.P2, wherein, the following points emerge for consideration.

(a) The extra judicial confession given to PW1, the Village



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Administrative Officer, who belonged to a different village, is no way connected to neither the village of the accused nor the complainant's village and this creates a serious doubt.

(b) Non-examination of one Saravanan, who according to the prosecution, had collected the entire money and misrepresented about securing the job requires consideration.

(c) The mistaken identity of the deceased and PW22 was not clearly spelt out by the prosecution witnesses;

(d) In the absence of any specific overt act against the deceased, the conviction cannot be sustained.

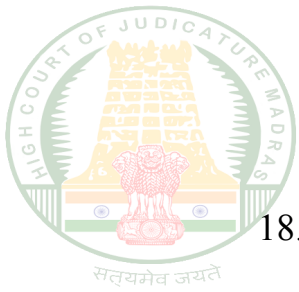
(e) PW22 who did not witness the occurrence cannot be treated as an eye witness.

17. Per contra, Mr.S.Rajakumar, the learned Additional Public Prosecutor contended that A1 had chosen to give an extra judicial confession, which was subsequently recorded by PW1. The fact that A1 had affixed his signature and handed over MO1-knife to PW1 by itself would show that the extra judicial confession given to PW1 was voluntary. A1, in his extra judicial confession had narrated that the said Saravanan and Sakthivel had cheated the other accused persons with a false promise to secure employment, this by itself would



demonstrate that there was a clear motive behind the murder of the deceased.

Regarding the third contention, as the deceased and PW22 were in an inebriated state, in the night hours at about 11.30 p.m, the accused persons 6 in number, armed with deadly weapons attacked and inflicted injury on the deceased, who is a close relative of Sakthivel. The conduct of A1 and other accused has been elicited by PW22, who enquired the whereabouts of the deceased with the accused. To which the accused confessed that by kidnapping the deceased and PW22, A1 and other accused had also threatened the family members of the deceased, holding them as hostage to get back the amount. This confession only makes it clear that there was no mistaken identity of the deceased and PW22 and by kidnapping the deceased and PW22 and holding them as hostage, the accused had a common intention to get back their money. Regarding the fourth contention, it has to be taken into consideration that PW22 was also kidnapped by accused persons. Before committing the crime, A1 had stated to PW22 that he has to teach a lesson to the deceased, after which, he took the deceased along with him by holding the knife (MO1) in his hand. When A1 returned, neither the deceased nor the weapon was there. The contention of the appellant that PW22 did not witness the occurrence cannot dislodge the case of the prosecution regarding the concept of eye witness.



18. Admittedly, in a case of full-fledged trial before the trial court, the cascading effect of establishing the theory of motive by the prosecution plays a vital role. Failure to establish the motive of the accused in committing the crime by itself will not dislodge the case of the prosecution. The trial court has taken into consideration that the prosecution has not proved the case as against A2 to A13 except A9, who was absconding and the case was split up and now the trial is going on. Though PW2 to PW12, have turned hostile, the same is not fatal to the prosecution case as PW22 has narrated the entire sequence of overt act attributed by A1 in kidnapping the deceased and PW22 to the scene of occurrence.

19. Though the prosecution claimed that PW22 was an eye witness to the occurrence, the evidence would clearly show that PW22 had not witnessed the murder committed by A1. However, the deceased was taken by A1 along with knife (MO1) and after committing the crime, A1 alone returned without the weapon, which he carried. When PW22 enquired, A1 had stated that he had committed murder of the deceased. This statement of A1 to PW22 is an extra judicial confession and such a statement cannot be ignored in consonance with the extra judicial confession statement of A1 given to PW1, which was recorded and the signature has been consciously affixed by the accused. In a case of eye



witness/circumstantial evidence, the entire circumstance has to be taken into consideration. The recovery mahazar and the material objects will clearly demonstrate the course of investigation and the credibility of PW22, who was kidnapped along with the deceased on 02.02.2016 at about 11.30 p.m. There is no reason to disbelieve the evidence of PW22, who is an independent witness, suffered the attempt to murder. Above all, the deceased was taken by A1 and PW22 had seen A1 taking the deceased with knife (MO1) and he had also seen the accused returning without the deceased and knife. The sole witness is a victim and his statements were not discredited or disproved by the defence in their cross-examination.

20. In view of the same, the appeal filed by the first accused in Crl.A. No.745 of 2019 is dismissed and the appeal preferred by the State against the acquittal of A2 to A13 except A9, is also dismissed due to lack of evidence. The appeal filed by prosecution had failed to prove the identity of the acquitted accused and their overt act. When identity, presence and overt act of the acquitted accused is not available, there is no reason to interfere with the trial court's judgment. The judgment of the trial court in S.C. No.18 of 2016 dated 18.10.2019 passed by the learned Sessions Judge, Mahila Court, Perambalur convicting and sentencing the appellant/first accused and acquitting A2 to A8



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and A10 to A13 is confirmed.

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[M.S.R., J.] [N.S., J.]
24.06.2025

Index : Yes
Asr

To

- 1.The Sessions Judge, Mahila Court,
Perambalur District
- 2.The Inspector of Police
Perambalur Police Station
Perambalur District
Crime No.128/2016
- 3.The Public Prosecutor, High Court, Madras

Copy to:

The Superitendent of Prisons
Central Prison, Trichirappalli

M.S.RAMESH, J.



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Cr.L.A. Nos.745/2019 & 192/2022

and
N.SENTHILKUMAR, J.

Asr

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and 192 of 2022

Dated : 24.06.2025