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Crl.A. No.837 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>RESERVED ON</i>	<i>19.03.2025</i>
<i>PRONOUNCED ON</i>	<i>18.06.2025</i>

CORAM

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

Criminal Appeal No.837 of 2019

R.Nanda @ Muthukumar

.. Appellant

Vs.

The State rep by its
The Inspector of Police
Palligonda Police Station
Vellore District
(Crime No.131 of 2018)

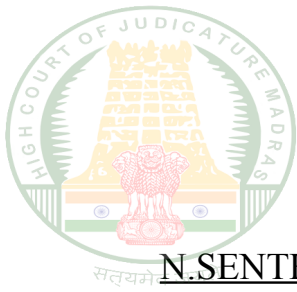
.. Respondent

Prayer : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of Additional District and Sessions Judge (FTC) Vellore District in S.C. No.97 of 2019 dated 11.11.2019 and to set aside the same.

For Appellant : Ms.N.Premalatha (Legal Aid Counsel)

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

J U D G M E N T



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N.SENTHILKUMAR, J.

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Challenging the judgment of conviction and sentence passed by the learned Additional district and Sessions Judge (FTC), Vellore District dated 11.11.2019 made in S.C. No.97 of 2019, the sole accused has preferred this appeal.

2. The learned Additional district and Sessions Judge (FTC), Vellore District in S.C. No.97 of 2019, has convicted the appellant and sentenced him as follows:-

<i>Offence</i>	<i>Sentence</i>
Section 449 IPC	Rigorous imprisonment for 10 years and a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months
Section 302 IPC	Imprisonment for life and a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment
Section 392 IPC	Rigorous imprisonment for 10 years and a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.

All the sentences are ordered to run concurrently.

3. On 28.05.2018, at about 5.00 p.m, a complaint was given by PW1, Srinivasan stating that his father was found dead near motor pumpset in their



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land at 2.40 p.m. As per the complaint, the complainant received a call from his sister Jayanthi/PW2 around 2.00 p.m, who informed him that their father was murdered. The respondent police registered an FIR in Crime No.131 of 2018 under Section 302 IPC. Charges were framed under Sections 499, 302 and 392 IPC by the learned Additional District and Sessions Judge (FTC), Vellore District in S.C. No.97 of 2019.

4. The prosecution produced as many as 22 witnesses, who were examined as PW1 to PW22 and marked 43 documents as Ex.P1 to Ex.P43 and nine material objects were produced as MO.1 to MO.9. On the side of the defence, no witnesses were examined nor documents produced to substantiate their case.

5.1. PW1 is the son of the deceased. PW2 is the daughter of the deceased and PW3 is the wife of the deceased. PW6 is another son of the deceased. PW7 is the brother of the deceased. According to the prosecution, on 28.05.2018, around 2.00 p.m, the accused with a criminal intention to commit robbery, had caused the death of the deceased by causing injury in his skull using a heavy stone and took away Rs.1,000/- which was in the pocket of the deceased and



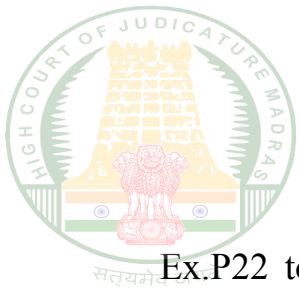
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had also taken away Nokia cellphone of the deceased. To prove the case of the prosecution, the prosecution had recovered the said amount of Rs.1,000/- (Rs.500/- Note – 2 Nos) and the stolen cellphone which were marked as MO3 and MO5. The said material objects were recovered pursuant to the confession statement given by the accused.

5.2. The body of the deceased was identified by PWs.1, 2, 3 and 6 to 8. The complaint was given by PW1, who had seen the dead body and the complaint was marked as Ex.P1 and thereafter, an FIR was registered which was marked as Ex.P33. The Inspector of Police, who had conducted the preliminary investigation, was examined as PW20. He had recorded the statement of PWs.1 to 3 and thereafter, PW21 and PW22 had conducted further investigation and examined the other witnesses.

5.3. PW20 recovered the body of the deceased in the presence of PWs.1 to 3 and sent the same to Government Hospital for conducting autopsy. PW19, who conducted the post-mortem of the deceased, gave the post-mortem certificate marked as Ex.P34. The viscera report was marked as Ex.P17 and Ex.P18 to P21 are the biological and serology reports.

5.4. The statements of the witnesses, namely PWs.1, 2, 6, 7, 10, 12 and 13 were recorded by the learned Judicial Magistrate, which were marked as



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Ex.P22 to Ex.P29. To prove the recording of 164 statement, PW16, Judicial Magistrate was examined.

6. Ms.N.Premalatha, the learned counsel appearing for the appellant would contend that the appellant was convicted only based on the confession statement, which led to the recovery of Rs.1,000/- which was marked as MO5 series and cellphone, MO3 along with the blood stained lungi, trouser and banyan which were produced as MO7 to MO9. The learned counsel contended that the prosecution failed to prove last seen theory through the statements of PW10 and the recovery from the accused. Therefore, there is no clinching evidence produced to prove that the appellant has committed the murder of the deceased.

7. The learned counsel contended that even in the chief examination of PW10, the prosecution had not established that the deceased was seen along with the accused. Therefore, in the absence of last seen alive theory, the prosecution had miserably failed to prove that the accused had committed the offence.

8. Per contra, the learned Additional Public Prosecutor appearing for the prosecution, would contend that the evidence of PW1, who identified the

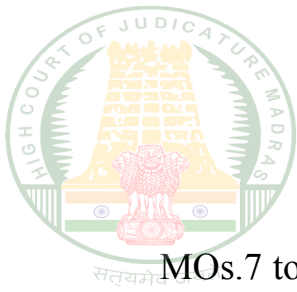


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deceased lying dead in their own land, has been corroborated by the evidence of PWs.2, 3, 6, 7 and 8. The accused was arrested by the respondent police. From the confession of the accused, MO2, cement mortar piece was recovered and MO3, cellphone and MO5 series Rs.1,000/- (Rs.500/- notes x 2 Nos) and an irregular stone weighing about 7 Kg with blood stain used for committing the murder on the deceased by the accused, were also recovered.

9. Admittedly, though the prosecution has examined 22 witnesses, the entire case rests on the evidence of PW10, who is the fulcrum of the prosecution case to establish the guilt of the accused. On a plain reading of the chief examination of PW10, he has not stated that the accused was seen along with the deceased before the commission of the offence, or thereafter. The evidence of PW10 is only that he has seen the accused and the deceased at different intervals. The said evidence cannot be taken into consideration, as last seen theory.

10. With regard to recovery of MOs.2 to 6, which were alleged to have been recovered on the basis of the confession given by the accused along with

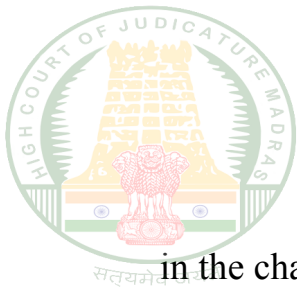


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MOs.7 to 9, it is not in dispute that the said recoveries are admissible in the eye of law as per Section 27 of the Indian Evidence Act. However, except the recovery based on the confession of the accused, there is no clinching evidence to implicate the accused for the commission of the offence.

11. As per the prosecution, cement mortar piece with blood stain (MO1) and cement mortar piece without blood stain (MO2) were recovered from the place of occurrence under Ex.P38, seizure mahazar in the presence of PW5 and one Kalavani, who is the Village Assistant. It is to be noted that the said Village Assistant was not examined. The material objects marked as MO3 (cellphone), MO5 (Rs.500 note x 2 Nos) and MO6, irregular stone weighing about 7 kg with blood stain were recovered under Exs.P41, P40 and P42 respectively. PW13 and one Parthiban who is the friend of PW13 have signed as witnesses to all the three recovery mahazars. However, the prosecution had chosen not to examine the said Parthiban.

12. It is settled law that in the case of circumstantial evidence, several circumstances should point towards the guilt of the accused without any break



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in the chain of circumstances pointing out the guilt as against the accused.

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13. As the prosecution had not even produced a single witness to establish the last seen theory, it is unsafe to convict the appellant only based on the recoveries made pursuant to the extra judicial confession, which is a weak piece of evidence. In the absence of any corroborating evidence, ocular witness and the exhibits marked therein, it cannot be said that the prosecution had proved its case. The evidence of PWs.1, 2, 6, 7, 10, 12 and 13 would only reveal that all the witnesses have seen the dead body, there is not even a single witness, who had seen the deceased and the accused together. That apart, the above witnesses are none other than son, daughter, wife and brother of the deceased.

14. It is relevant to rely upon the judgment of the Hon'ble Supreme Court in ***State of Madhya Pradesh vs. Balveer Singh*** in ***Criminal Appeal No.1669 of 2012 dated 24.02.2025***, in which the Hon'ble Apex Court, has held that unless and until the guilt is pointed out as against the accused in the case of circumstantial evidence, it is not safe to convict the appellant. In the said case, the Hon'ble Supreme Court has held as follows:



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"61. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows: -

(i) Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(ii) Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;

(iii) The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved. [See: Sharad Birdhichand Sarda v. State of Maharashtra reported in (1984) 4 SCC 116]

63. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement or guilt of the accused. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It



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is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.

64. Thus, in view of the above, the court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

15. As stated supra, the prosecution had miserably failed to prove the case that the appellant has committed the crime in the manner known to law. In the absence of any cogent and convincing material for the case of circumstantial evidence, we are inclined to allow the appeal.

16. Accordingly, this appeal is allowed. The judgment of conviction and sentence passed by the learned Additional district and Sessions Judge (FTC),



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Vellore District dated 11.11.2019 made in S.C. No.97 of 2019, is set aside. The

appellant shall be set at liberty, if his presence is not wanted in any other case.

The fine amount, if any, paid by the appellant herein, shall be returned to him forthwith.

17. We appreciate the legal aid counsel for her sincere efforts and assistance rendered to this court in disposing this criminal appeal. We hereby direct the Tamil Nadu State Legal Services Authority to pay a sum of Rs.10,000/- to Ms.N.Premalatha, Advocate towards the final hearing fees.

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

18.06.2025

Asr

Index : Yes

Neutral citation : Yes

To

1.The Additional District and Sessions Judge (FTC),
Vellore District

2.The Inspector of Police
Palligonda Police Station
Vellore District
(Crime No.131 of 2018)

3.The Superintendent of Prisons,



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Central Prison, Vellore

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4.The Public Prosecutor, High Court, Madras

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M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.
Asr

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Dated : 18.06.2025